AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Vol.41–No.150
8–3–76
PAGES
32399–32574

federal register

TUESDAY, AUGUST 3, 1976



highlights

PART I:

ESTABLISHMENT OF THE FEDERAL ENERGY OFFICE
Executive order 32399

SALE OF AGRICULTURAL COMMODITIES TO PORTUGAL
Presidential determination 32403

FUEL SHORTAGES
FPC prescribes procedures for conservation action reports for natural gas pipeline companies 32473

CHILD NUTRITION PROGRAM
USDA/FNS reissues regulations on State Administrative Expense Funds; effective 8–1–76 32405

EQUAL EMPLOYMENT
Labor/FCCPO publishes format for bid conditions for Federal and federally assisted construction; effective 9–1–76 32482

SAVINGS AND LOAN ASSOCIATIONS
FHLBB issues rules on loans to one borrower; effective 9–6–76 32419

LOAN INSURANCE
FHLBB adopts regulations on scheduled items; effective 8–6–76 32419

RAILWAY REVITALIZATION
ICC proposes rate incentives for capital investment; comments by 8–23–76 32434

PRIVACY ACT
Justice issues notice of systems of records and regulation on exemption for Criminal Division; effective 8–3–76 32423
Postal Service announces transfer of a system of records 32478

TREASURY NOTES AND BONDS
Treasury announces sale of notes of series J–1979 and B–1986 and bonds of 1996–2001 32437–32439

MEETINGS—
DOD: Defense Science Board; Task Force on Specifications and Standards Improvement, 9–16 and 9–17–76 32441
Task Force on Electronic Test Equipment, 10–5 and 10–6–76 32441

CONTINUED INSIDE

reminders

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

Rules Going Into Effect Today

CAB—Air carriers and foreign air carriers; construction, publication, filing and posting..... 28946; 7–14–76
DOT/FAA—Airworthiness directive, McDonnell Douglas..... 27029; 7–1–76

List of Public Laws

NOTE: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's LIST OF PUBLIC LAWS.

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

Twelve 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
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/NHTSA	USDA/FNS		DOT/NHTSA	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/OHMO	CSC		DOT/OHMO	CSC
DOT/OPSO	LABOR		DOT/OPSO	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.

ATTENTION: Questions, corrections, or requests for information regarding the contents of this issue only may be made by dialing 202–523–5286. For information on obtaining extra copies, please call 202–523–5240. To obtain advance information from recorded highlights of selected documents to appear in the next issue, dial 202–523–5022.

federal register
Area Code 202 Phone 523–5240

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

The FEDERAL REGISTER provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $5.00 per month or $50 per year, payable in advance. The charge for individual copies is 75 cents for each issue, or 75 cents for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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

DOT/FHA and UMTA: Urban System Study, 8–12–76.. 32461
NCUA: National Credit Union Board, 8–12 and 8–13–76 32477
Treasury/FS: Advisory Committee on Federal Consolidated Financial Statements, 9–8–76..... 32437

PART II:

EMPLOYMENT BENEFITS
Labor/EBSO adopts temporary rules on annual reporting requirements 32521

PART III:

SECURITIES
SEC proposes amendments and rescissions for forms; comments by 9–27–76..... 32539

PART IV:

RAILWAY SUBSIDIES
ICC issues orders on determination standards for commuter service; effective 8–3–76 32545

PART V:

MOBILE HOME LOANS
HUD/HP&MC proposal concerning insurance of lending institutions; comments by 9–6–76..... 32563

PART VI:

LEGAL SERVICES CORPORATION
OMB publishes Presidential proposal for budget rescission 32569

contents

THE PRESIDENT

Executive Orders
Federal Energy Office; establishment 32399

Memorandums:
Portugal; sale of agricultural commodities 32403

EXECUTIVE AGENCIES

AGRICULTURAL MARKETING SERVICE
Rules
Milk marketing orders:
Oregon-Washington 32418
Tampa Bay..... 32417
Nectarines grown in Calif..... 32410
Pears, plums, and peaches (fresh) grown in Calif. (3 documents)... 32410, 32411
Raisins produced from grapes grown in Calif..... 32412

AGRICULTURE DEPARTMENT
See also Agricultural Marketing Service; Animal and Plant Health Inspection Service; Food and Nutrition Service; Forest Service; Rural Electrification Administration.
Notices
Feed grain donations:
Crow Creek and Lower Brule Indian Lands, and Lake Traverse Indian Lands..... 32460

ANIMAL AND PLANT HEALTH INSPECTION SERVICE
Rules
Livestock and poultry disease control:
Screwworms 32432
Plant pest regulations:
Mediterranean fruit fly..... 32409

ANTITRUST DIVISION, JUSTICE DEPARTMENT
Notices
Competitive impact statements and proposed consent judgments, U.S. versus listed companies:
N.V. Nederlandsche Combinatie Voor Chemische Industrie, et al 32441
United Artists Theatre Circuit, Inc., et al..... 32445

CIVIL AERONAUTICS BOARD
Notices
Hearings, etc.:
Allegheny Airlines, Inc..... 32462

CIVIL SERVICE COMMISSION
Notices
Noncareer executive assignments:
Health, Education, and Welfare Department 32462

COMMERCE DEPARTMENT
See Maritime Administration.

COMMODITY FUTURES TRADING COMMISSION
Notices
Registration as associated person; changes to Form 4–R..... 32463

CUSTOMS SERVICE
Rules
Antidumping:
Tuners (of the type used in consumer electronic products) from Japan..... 32421

DEFENSE DEPARTMENT
Notices
Meetings:
Defense Science Board Task Force on "Electronic Test Equipment" Advisory Committee 32441
Defense Science Board Task Force on Specifications and Standards Improvement Advisory Committee..... 32441

EMPLOYEE BENEFITS SECURITY OFFICE
Rules
Employee Retirement Income Security Act:
Annual reporting requirements.. 32521

ENVIRONMENTAL PROTECTION AGENCY
Rules
Pesticides chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
n-Octyl bicycloheptenedicarboximide; correction..... 32426
Notices
Pesticide programs:
Scientific Advisory Panel membership nominations..... 32464

FEDERAL COMMUNICATIONS COMMISSION
Rules
Cable Television Services and Relay Services; miscellaneous amendments 32429
Remote Broadcast Stations; correction 32429
Proposed Rules
FM broadcast stations; table of assignments:
Indiana 32434
Radiotelegraphy use in maritime services:
Frequencies, operating procedures, technical standards and other criteria; extension of comment period..... 32434
Notices
Domestic public radio services; applications accepted for filing.. 32467

FEDERAL CONTRACT COMPLIANCE PROGRAMS OFFICE
Notices
Equal employment opportunity:
New format for bid conditions... 32482

FEDERAL DISASTER ASSISTANCE ADMINISTRATION
Notices
Disaster areas:
New York..... 32461

FEDERAL HIGHWAY ADMINISTRATION

Notices

Meeting:
Urban System Study 32461

FEDERAL HOME LOAN BANK BOARD

Rules

Federal Savings and Loan Insurance Corporation:
Loans to one borrower 32419
Scheduled items 32419

FEDERAL MARITIME COMMISSION

Notices

Complaints filed:
Caterpillar Overseas, S.A. v. South African Marine Corp. (N.Y.) 32470
Agreements filed, etc.:
Pacific Coast European Conference 32470

FEDERAL POWER COMMISSION

Notices

Natural gas companies:
Nationwide fuel emergency; reporting requirements 32473
Hearings, etc.:
Alabama Power Co 32470
Arkansas Louisiana Gas Co 32472
Georgia Power Co 32472
Great Lakes Transmission Co 32472
Northern Natural Gas Co 32473
Sea Robin Pipeline Co 32475
South Carolina Public Authority 32476

FEDERAL TRADE COMMISSION

Rules

Prohibited trade practices:
Benton & Bowles, Inc 32420

FISCAL SERVICE

Notices

Meeting:
Federal Consolidated Financial Statements Advisory Committee 32437

FISH AND WILDLIFE SERVICE

Rules

Hunting:
Browns Park National Wildlife Refuge, Colo 32430
J. Clark Salyer National Wildlife Refuge, N. Dak. (2 documents) 32430
Ouray National Wildlife Refuge, Utah 32431
Valentine National Wildlife Refuge, Nebr. (2 documents) 32431
Sport fishing:
Valentine National Wildlife Refuge, Nebr 32431

Proposed Rules

Public access, use, and recreation:
Johnston Atoll National Wildlife Refuge 32433

FOOD AND DRUG ADMINISTRATION

Proposed Rules

Animal drugs:
Hexachlorophene, correction 32434

Notices

Human drugs:
Meprobamate and chlordiazepoxide, correction 32461

FOOD AND NUTRITION SERVICE

Rules

Child Nutrition Programs:
State Administrative Funds; payment 32405

FOREST SERVICE

Notices

Environmental statements, availability, etc.:
Gallina Land Use Plan, New Mexico 32460
Olympic National Forest, designating types of travel on trails and areas permitted, restricted or prohibited 32459

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

See Food and Drug Administration.

HISTORICAL PRESERVATION ADVISORY COUNCIL

Notices

Executed memoranda of agreement 32461

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

See Federal Disaster Assistance Administration; Housing Production and Mortgage Credit, Office of Assistant Secretary.

HOUSING PRODUCTION AND MORTGAGE CREDIT, OFFICE OF ASSISTANT SECRETARY

Proposed Rules

Combination and mobile home lot loans 32563

IMMIGRATION AND NATURALIZATION SERVICE

Rules

Statement of organization:
Coral Bay, St. John, Virgin Islands; closing of port of entry 32419

INDIAN AFFAIRS BUREAU

Rules

Enrollment:
Alaska natives 32421

INTERIOR DEPARTMENT

See also Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; National Park Service; Reclamation Bureau.

Notices

Procurement actions, legal review of:
Aircraft Services Office, Boise, Idaho 32459

INTERSTATE COMMERCE COMMISSION

Rules

Car service orders:
Providence and Worcester Co. (2 documents) 32429, 32430
Commuter rail service continuance subsidies and emergency operation payments; determining standards 32545

Proposed Rules

Rate incentives for capital investment 32434

Notices

Abandonment of railroad services, etc.:
Illinois Central Gulf Railroad Co 32499
Hearings assignments 32498
Motor carriers:
Temporary authority applications 32499
Special certificate letter notices:
Transportation of waste products for reuse or recycling 32502

JUSTICE DEPARTMENT

See also Antitrust Division; Immigration and Naturalization Service.

Rules

Privacy Act:
Criminal Justice Information Systems; exemption 32423
Procurement:
Initial issue and establishment 32426

Notices

Privacy Act of 1974; systems of records 32448

LABOR DEPARTMENT

See also Employee Benefits Security Office; Federal Contract Compliance Programs Office; Occupational Safety and Health Administration.

Notices

Adjustment assistance:
APECO Corp 32485
Brainard Rivet Co 32486
C. F. Hathaway Co 32486
Chico Sportswear Inc 32487
Enflo Corp 32488
Engelhard Mineral and Chemicals Corp 32488
Forest Hills Sportswear 32488
Gross Galesburg Co 32489
GTE Sylvania, Inc 32490
Hoover-Seng Co 32490
Lewis Weiner Industries, Inc 32491
Mayflower Coat Manufacturing Co., Inc 32491
Modern Slack Creations, Inc 32492
Nyanza, Inc 32492
Scovill Manufacturing Co., Inc 32493
Southern Screw Co 32493
Sperry Univac 32494
Standard Locknut and Lockwasher Inc 32494
Star Sportswear Manufacturing Co 32495
Town and Country Shoes, Inc 32495
Tracy Fashions 32495

Universal Cyclops Specialty Steel Co 32496
Wear Well Trouser Co 32496
William H. Haskell Manufacturing Co 32497
Wrought Washer Mfg., Inc. (2 documents) 32497, 32498

LAND MANAGEMENT BUREAU

Notices
Applications, etc.:
Utah (2 documents) 32449
Opening of public lands:
Utah 32449

MANAGEMENT AND BUDGET OFFICE

Notices
Clearance of reports; list of requests (2 documents) 32477
Proposed budget rescission:
Legal Services Corporation 32569

MARITIME ADMINISTRATION

Notices
Capital Construction Fund Agreement Applications, permanent; availability 32460
Foreign construction cost computations:
Containership, MA design C5–S–78a 32461

NATIONAL CREDIT UNION ADMINISTRATION

Notices
Meeting:
National Credit Union Board 32477

NATIONAL PARK SERVICE

Notices
Historic Places National Register; additions, deletions, etc. 32450
Historic Places National Register; notification of pending nominations 32458

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

Rules
State plans for enforcement of standards:
South Carolina 32424

POSTAL SERVICE

Notices
Privacy Act of 1974; transfer of record systems 32478

RECLAMATION BUREAU

Rules
Public Works Appropriation Act: Administrative claims for Teton Dam 32427

RURAL ELECTRIFICATION ADMINISTRATION

Proposed Rules
Rural telephone program:
Trunk Carrier Equipment, REA Specification PE–60, revision 32433

SECURITIES AND EXCHANGE COMMISSION

Proposed Rules
Forms for registration statements:
Amendments and rescission 32539

Notices
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc. 32478
Pacific Stock Exchange, Inc. 32482
Hearings, etc.:
Boston Stock Exchange 32478
Gulf Power Co 32479
National Municipal Trust, et al. 32480

TEXTILE AGREEMENTS IMPLEMENTATION COMMITTEE

Notices
Cotton textiles:
El Salvador 32463
India 32462

TRANSPORTATION DEPARTMENT

See Federal Highway Administration; Urban Mass Transportation Administration.

TREASURY DEPARTMENT

See also Customs Service; Fiscal Service.

Notices
Bonds, Treasury:
1996–2001 32437
Notes, Treasury:
Series B–1986 32439
Series J–1979 32438

URBAN MASS TRANSPORTATION ADMINISTRATION

Notices
Meeting:
Urban System Study 32461

WAGE AND PRICE STABILITY COUNCIL

Notices
Inflation Impact Statement Program; intention to appraise 32463

"THE FEDERAL REGISTER—WHAT IT IS AND HOW TO USE IT"

Weekly Briefings at the Office of the Federal Register

(For Details, See 41 FR 22997, June 8, 1976)

RESERVATIONS: BILL SHORT, 523–5282

list of cfr parts affected in this issue

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

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

3 CFR

PROCLAMATIONS:

3279 (See EO 11930) 32399

EXECUTIVE ORDERS:

11790 (See EO 11930) 32399
11814 (See EO 11930) 32399
11912 (See EO 11930) 32399
11930 32399

MEMORANDUMS:

July 19, 1976 32403

7 CFR

220 32405
235 32405
331 32409
916 32410
917 (3 documents) 32410–32411
989 32412
1012 32417
1124 32418

PROPOSED RULES:

1701 32433

8 CFR

100 32419

9 CFR

83 32432

12 CFR

561 32419
563 32419

16 CFR

13 32420

17 CFR

PROPOSED RULES:

239 32540

19 CFR

153 32421

21 CFR

PROPOSED RULES:

500 32434

24 CFR

PROPOSED RULES:

201 32564

25 CFR

43h 32421

28 CFR

16 32423

29 CFR

1952 32424
2520 32522

40 CFR

180 32426

41 CFR

28–1 32426

43 CFR

419 32427

47 CFR

74 32429
76 32429
78 32429

PROPOSED RULES:

2 32434
13 32434
73 32434
81 32434
83 32434

49 CFR

1033 (2 documents) 32429, 32430
1127 32546

PROPOSED RULES:

1109 32434

50 CFR

32 (6 documents) 32430, 32431
33 32431

PROPOSED RULES:

26 32433

CUMULATIVE LIST OF PARTS AFFECTED DURING AUGUST

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

3 CFR

PROCLAMATIONS:
3279 (See EO 11930) 32399

EXECUTIVE ORDERS:
11790 (See EO 11930) 32399
11814 (See EO 11930) 32399
11912 (See EO 11930) 32399
11930 32399

MEMORANDUMS:
July 19, 1976 32403

7 CFR

52 32222
220 32405
235 32405
331 ..... 32229, 32409
908 32229
916 32410
917 32410–32411
947 32230
989 32412
1012 32417
1124 32418

PROPOSED RULES:
47 32231
909 32234
919 32234
1701 32419

8 CFR

100 32419

9 CFR

83 32432

12 CFR

561 32419
563 32419

14 CFR

13 32205
39 ..... 32206, 32207
288 32208

PROPOSED RULES:
39 ..... 32238, 32239
71 32240

16 CFR

13 32420

17 CFR

PROPOSED RULES:
239 32540

18 CFR

157 32212

19 CFR

153 32421
159 32230

21 CFR

510 32213

PROPOSED RULES:
500 32434

23 CFR

PROPOSED RULES:
658 32240

24 CFR

203 32216
207 32216
220 32216
1914 32216
2205 32359

PROPOSED RULES:
201 32564
868 32370
2205 32237

25 CFR

43h 32421

26 CFR

PROPOSED RULES:
31 32231

28 CFR

16 32423

29 CFR

1952 32424
2520 32522

32 CFR

PROPOSED RULES:
642 32346
1286 32231

33 CFR

117 32217

PROPOSED RULES:
117 32238

38 CFR

21 32217
36 32218

PROPOSED RULES:
1 32247

40 CFR

180 32426
420 32218

PROPOSED RULES:
52 32241
420 32242

41 CFR

8–1 32219
8–3 32219
28–1 32426

PROPOSED RULES:
105–61 32245

43 CFR

419 32427

45 CFR

PROPOSED RULES:
73b 32235

46 CFR

PROPOSED RULES:
93 32237

47 CFR

72 ..... 32219, 32220
74 32429
76 32429
78 32429
83 32220

PROPOSED RULES:
2 32434
13 32434
73 32434
81 32434
83 32434
87 32242

49 CFR

571 32221
1033 ..... 32221, 32429, 32430
1127 32546

PROPOSED RULES:
1109 32434

50 CFR

32 ..... 32430, 32431
33 ..... 32222, 32431

PROPOSED RULES:
26 32433

FEDERAL REGISTER PAGES AND DATES—AUGUST

Pages	*Date*
32205–32398	Aug. 2
32399–32574	3

presidential documents

Title 3—The President

Executive Order 11930 • **July 30, 1976**

Performance by the Federal Energy Office of Energy Functions of the Federal Energy Administration

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Energy Policy and Conservation Act (89 Stat. 871, 42 U.S.C. 6201 *et seq.*), the Emergency Petroleum Allocation Act of 1973, as amended (15 U.S.C. 751 *et seq.*), the Energy Supply and Environmental Coordination Act of 1974 (88 Stat. 246, 15 U.S.C. 791 *et seq.*), the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), the Energy Reorganization Act of 1974 (88 Stat. 1233, 42 U.S.C. 5801 *et seq.*), Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c), Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), Section 301 of Title 5 of the United States Code, and section 3301 of Title 5 of the United States Code, and consistent with the provisions of 5 CFR 351.301, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. There is hereby established in the Executive Office of the President a Federal Energy Office, which shall be under the immediate supervision and direction of an Administrator of the Federal Energy Office, hereinafter referred to as the Administrator, who shall be appointed by the President. The Administrator shall be compensated at the rate now or hereafter prescribed by law for level II of the Executive Schedule.

SEC. 2. Within the framework of the Energy Resources Council, the Administrator shall advise the President with respect to the establishment and integration of domestic and foreign policies relating to the production, conservation, use, control, distribution, and allocation of energy and with respect to all other energy matters, and shall perform such other functions as may be delegated to him pursuant to law.

SEC. 3. There shall be in the Federal Energy Office the following officers each of whom shall be appointed by the President and each of whom shall receive compensation at the rate now or hereafter prescribed by law for that level of the Executive Schedule indicated: Two deputy administrators (level III); six assistant administrators [(level IV); a general counsel (level IV); and a director of intergovernmental, regional and special relations (level V).

SEC. 4. The Administrator is hereby designated, pursuant to section 14 of the Energy Supply and Environmental Coordination Act of 1974, as the Federal Energy Administrator for purposes of the Energy Supply and Environmental Coordination Act of 1974, and section 119 of the Clean Air Act, as amended (42 U.S.C. 1857).

SEC. 5. The Federal Energy Office established by this order is designated the agency to carry out all functions vested in the Administrator of the Federal Energy Administration under the Energy Policy and Conservation Act.

SEC. 6. There is hereby delegated to the Administrator all the authority that was delegated to the Administrator of the Federal Energy Administration pursuant to Executive Order No. 11790 of June 25, 1974 and Executive Order No. 11912 of April 13, 1976.

SEC. 7. The Administrator is designated a member of the Energy Resources Council established by the Energy Reorganization Act of 1974 and Executive Order No. 11814 of October 11, 1974, as amended, and shall perform the functions assigned by the President and by the Chairman of the Council, who is the Secretary of Commerce, to the Administrator of the Federal Energy Administration.

SEC. 8. The Administrator shall exercise the functions of the Administrator of the Federal Energy Administration under Proclamation No. 3279, as amended.

SEC. 9. (a) All orders, rules, regulations, rulings, interpretations, or other directives issued or pending, all rule making, judicial or administrative proceedings commenced or pending, all voluntary agreements, plans of action, and all other actions commenced or taken by, under the authority of or ratified by the Administrator of the Federal Energy Administration prior to the effective date of this order that would be valid under the authority delegated or transferred by this order, are hereby continued, confirmed, ratified and made effective under this order and shall remain in full force and effect, unless or until altered, amended, or revoked by the Administrator or by such competent authority as he may specify.

(b) All personnel, property, records, contracts, obligations, cooperative agreements, rights, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available, in connection with functions of the Administrator of the Federal Energy Administration are hereby transferred to the Federal Energy Office.

(c) The Administrator is authorized to exercise the authority of the President under the Defense Production Act of 1950, as amended, to establish not more than eight positions and to appoint individuals to such positions compensated at the rate now or hereafter prescribed by law for level V of the Executive Schedule.

(d) All individuals who, immediately prior to the effective date of this order, are serving in or have been nominated to positions under the Federal Energy Administration Act of 1974, which correspond to the positions established in the Federal Energy Office by sections 1 and 3 of this order are, on the effective date of this order, appointed to the positions established in the Federal Energy Office by sections 1 and 3 of this order.

(e) All individuals appointed to and serving in positions in grades GS–16, 17 and 18 pursuant to the Federal Energy Administration Act of 1974, which appointments have been approved as to classification and qualifications by the Civil Service Commission, shall be continued in such grade unless any such position is determined by the Civil Service Commission to involve responsibilities substantially less than those responsibilities involved when originally established pursuant to the Federal Energy Administration Act of 1974. Continuation in such grades shall also be subject to allotment by the Civil Service Commission of available positions in grades GS–16, 17 and 18. The Civil Service Commission shall discharge its responsibilities with respect to the allotment of positions in grades GS–16, 17 and 18 by providing, consistent with law, the efficiency of the Civil Service, and the provisions of this order, for the allotment of sufficient positions in grades GS–16, 17 and 18 to carry out the first sentence of this subsection (e) and to provide for such additional positions as the Administrator and the Civil Service Commission deem necessary.

(f) Nothing in the order shall affect rights to reemployment under the provisions of section 5(a)(1)(B) of the Emergency Petroleum Allocation Act of 1973, as amended, or section 212(g) of the Economic Stabilization Act of 1970, as amended. Any employee transferred pursuant to subsection (b) of this section having a right to reemployment under the provisions of section 28 of the Federal Energy Administration Act of 1974 shall retain that right during the period of his employment with the Federal Energy Office established by this order. Any employee of the Federal government appointed, without a break in service of one or more work days, to any position in the Federal Energy Office established by this order shall have the rights of reemployment provided by subpart B of Part 352 of title 5 of the Code of Federal Regulations.

SEC. 10. The Administrator shall, before promulgating proposed rules, regulations, or policies affecting the quality of the environment, provide a period of not less than five working days from receipt of notice of the proposed action during which the Administrator of the Environmental Protection Agency may provide written comments concerning the impact of such rules, regulations, or policies on the quality of the environment. Such comments shall be published along with public notice of the proposed action. The review required by this section may be waived for a period of 14 days if there is an emergency situation which, in the judgment of the Administrator, requires immediate action.

SEC. 11. The Administrator of General Services shall provide, on a reimbursable basis, such administrative support as may be needed by the Federal Energy Office. All departments and agencies of the Executive branch shall, to the extent permitted by law, provide assistance and information to the Administrator of the Federal Energy Office.

SEC. 12. This order shall become effective on July 31, 1976.

Gerald R. Ford

THE WHITE HOUSE,
July 30, 1976.

[FR Doc.76-22709 Filed 8-2-76;10:56 am]

EDITORIAL NOTE: For the text of the President's statement, dated July 30, 1976, on signing Executive Order 11930, see the Weekly Compilation of Presidential Documents (vol. 12, no. 32).

Memorandum of July 19, 1976

Determination Under Section 103(d)(3) of the Agricultural Trade Development and Assistance Act of 1954, as Amended (Public Law 480)—Portugal

[Presidential Determination No. TQ1]

Memorandum for the Secretary of State, the Secretary of Agriculture

THE WHITE HOUSE,
Washington, July 19, 1976.

Pursuant to the authority vested in me under the Agricultural Trade Development and Assistance Act of 1954, as amended (hereinafter "the Act"), I hereby:

Determine that for Portugal the waiver of the exclusion provided for by Section 103(d)(3) of the Act, for the purpose of selling up to $5 million of agricultural commodities under Title I, is in the national interest of the United States.

Gerald R. Ford

STATEMENT OF REASONS THAT A WAIVER UNDER SECTION 103(d)(3) OF THE AGRICULTURAL TRADE DEVELOPMENT AND ASSISTANCE ACT OF 1954, AS AMENDED (PUBLIC LAW 480), IS IN THE NATIONAL INTEREST

In response to current Portuguese import needs, it is proposed to export to that country an additional five million dollars of agricultural commodities bringing the total assistance provided in fiscal year 1976 and the transitional quarter under Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (P.L. 480), to $25 million.

The United States has consistently supported the efforts of the moderate Pinheiro Azevedo government to restore political stability to Portugal. Beset with enormous economic problems, exacerbated by the influx of thousands of refugees, Portugal needs urgent economic assistance. Concessional sales of agricultural commodities to Portugal constitute a tangible demonstration of our willingness to help provide this assistance.

Portuguese nationalized firms exported to Cuba in 1975, and it is likely they will do so again this year. Therefore, in order to enter into an agreement with the Government of Portugal for such a sale under Title I, it is necessary that the President determine that such sales to Portugal would be in the national interest of the United States. Section 103(d)(3) of P.L. 480 excludes from eligibility for concessional sales under Title I any country which sells or furnishes or permits ships or aircraft under its registry to transport to or from Cuba or North Vietnam any equipment, materials, or commodities, so long as those countries are governed by Communist regimes. However, under Section 103(d)(3), as amended by Section 203 of P.L. 94-161, the President is authorized to waive this exclusion if he determines that such a waiver is in the national interest.

The considerations noted above make the proposed sale of agricultural commodities to Portugal and the necessary waiver important to the national interest of the United States.

[FR Doc.76-22589 Filed 7-30-76;2:41 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 II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—CHILD NUTRITION PROGRAMS

PART 220—SCHOOL BREAKFAST AND NONFOOD ASSISTANCE PROGRAMS AND STATE ADMINISTRATIVE EXPENSES

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

Redesignation

Regulations governing a program for the payment of State Administrative Expense Funds, formerly contained in Part 220 of this chapter, are hereby redesignated as Part 235.

Sections 220.1–220.3 and §§ 220.24–220.29 are superseded insofar as they refer to State Administrative Expense Funds and §§ 220.19–220.23 are deleted.

Since this part has been removed from Part 220, with the primary changes being of an editorial nature to conform the regulations to the revised child nutrition program regulations necessitated by Pub. L. 94–105 and a minor change in the allocation formula, the Department finds that proposed rulemaking and public participation procedure is impracticable and unnecessary.

Accordingly, the regulations governing State Administrative Expense Funds are amended and reissued, as follows:

Part 235 is added to read as follows:

Sec.

235.1 General purpose and scope.
235.2 Definitions.
235.3 Administration.
235.4 Allocation of funds to States.
235.5 Payments to States.
235.6 Use of funds by State agencies.
235.7 Records and reports.
235.8 Management evaluations and audits.
235.9 Procurement standards.
235.10 Property management requirements.
235.11 Other provisions.

AUTHORITY: Secs. 7 and 10, Pub. L. 89–642, 80 Stat. 888, 889 (42 U.S.C. 1776, 1779).

§ 235.1 General purpose and scope.

This part announces the policies and prescribes the regulations necessary to carry out the provisions of section 7 of the Child Nutrition Act of 1966, as amended. It prescribes the methods for making advances of funds to State agencies for use for administrative expenses incurred in supervising and giving technical assistance in connection with additional activities undertaken by them under the special assistance phase of the National School Lunch Program (7 CFR Part 210), the Child Care Food Program (7 CFR Part 226), the School Breakfast Program (7 CFR Part 220), and the Nonfood Assistance Program (7 CFR Part 230).

§ 235.2 Definitions.

For the purpose of this part, the term:

(a) "Act" means the Child Nutrition Act of 1966, as amended.

(b) "CND" means the Child Nutrition Division of the Food and Nutrition Service of the U.S. Department of Agriculture.

(c) "Department" means the U.S. Department of Agriculture.

(d) "Distributing agency" means a State, Federal, or private agency which enters into an agreement with the Department for the distribution of commodities pursuant to Part 250 of this chapter.

(e) "Expendable personal property" means all tangible personal property other than nonexpendable property.

(f) "FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.

(g) "FNSRO" means the appropriate Food and Nutrition Service Regional Office of the Food and Nutrition Service of the U.S. Department of Agriculture.

(h) "Fiscal year" means a period of 12 calendar months beginning October 1, 1976, and October 1 of each calendar year thereafter and ending with September 30 of the following calendar year.

(i) "Institution" means a child care center or a sponsoring organization as defined in Part 226 of this chapter.

(j) "Nonexpendable personal property" means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit. The State agency may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined herein.

(k) "OA" means the Office of Audit of the Department.

(l) "OI" means the Office of Investigation of the Department.

(m) "Personal property" means property of any kind except real property. It may be tangible—having physical existence—or intangible having no physical existence—such as patents, inventions, and copyrights.

(n) "Real property" means land, land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

(o) "School" means (1) An educational unit of high school grade or under operating under public or nonprofit private ownership in a single building or complex of buildings. The term "high school grade or under" includes classes of preprimary grade when they are conducted in a school having classes of primary or higher grade, or when they are recognized as a part of the educational system in the State, regardless of whether such preprimary grade classes are conducted in a school having classes of primary or higher grade. (2) With the exception of residential summer camps which participate in the Summer Food Service Program for Children and private foster homes, any distinct part of a public or nonprofit private institution or any public or nonprofit private child care institution which (i) maintains children in residence, (ii) operates principally for the care of children, and (iii) if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government. The term "child care institution" includes, but is not limited to: homes for the mentally retarded, the emotionally disturbed, the physically handicapped, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care hospitals for chronically ill children; and juvenile detention centers. (3) With respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico.

(p) "School Food Authority" means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a breakfast or a lunch program therein. The term "School Food Authority" also includes a nonprofit agency or organization to which such governing body has delegated authority to operate the lunch or breakfast program in schools under its jurisdiction, provided the governing body retains the responsibility to comply with breakfast or lunch program regulations.

(q) "Secretary" means the Secretary of Agriculture.

(r) "State" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands.

(s) "State agency" means (1) the State educational agency or (2) such other agency of the State as has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer programs under Part 210, Part 220, Part 226, or Part 230 of this chapter.

(t) "State educational agency" means, as the State legislature may determine, (1) the chief State school officer (such as the State Superintendent of Public Instruction, Commissioner of Education, or similar officer), or (2) a board of education controlling the State department of education.

§ 235.3 Administration.

(a) Within the Department, FNS shall act on behalf of the Department in the administration of the program for payment to States of State Administrative Expense Funds covered by this part. Within FNS, CND shall be responsible for administration of the program.

(b) Each State agency desiring to receive payments under this part shall enter into a written agreement with the Department. Each agreement shall cover the operation of the Program during the period specified therein and may be extended at the option of the Department.

§ 235.4 Allocation of funds to States.

(a) For the period beginning July 1, 1976, and ending September 30, 1976, FNS shall determine the amount of State Administrative Expense Funds payable to each State as follows: To the extent that funds are available, FNS shall establish a tentative allocation for each State agency which shall include: (1) A basic amount related to the number of man-years required to establish, maintain and expand the programs for needy children, including the State's outreach effort. This amount shall be determined by FNS on the basis of information available as to the salary level of State food service personnel; and (2) an additional amount determined by dividing 2 per centum of the remaining funds among Guam, Puerto Rico, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands on the basis of the number of children, aged 3 to 17, inclusive, in each State and by dividing the balance of 98 per centum of such remaining funds among other States on the basis of the number of children, aged 3 to 17, inclusive, in each State in families with incomes of less than $6,000 per annum. Information as to the program or programs for which these funds are available for each State shall be supplied by FNS to each State agency. Appropriate reductions from or additions to the tentative allocation so computed shall be made by FNS for any State where FNS determines that the scope and size of the State's child nutrition programs warrant such changes.

(b) Beginning with the fiscal year ending September 30, 1977, FNS shall determine the amount of State Administrative Expense Funds for each State each fiscal year as follows: To the extent that funds are available, FNS shall establish a tentative allocation which shall include: (1) A basic amount related to the number of man-years required to establish, maintain and expand the programs for needy children, including the State's outreach effort. This amount shall be determined by FNS on the basis of information available on an application form prescribed by FNS that conforms with Attachment M (Standard Form for Applying for Federal Assistance) of Federal Management Circular 74–7 (34 CFR Part 256). (2) An amount determined by dividing the remaining available funds among the States on the basis of the estimated total number of meals served free or at reduced price the previous fiscal year under the National School Lunch Program, the School Breakfast Program and the Child Care Food Program. FNS shall inform each State agency as to the child nutrition program or programs for which allocated funds are available. Appropriate reductions from or additions to the tentative allocation so computed shall be made by FNS for any State where FNS determines that the scope and size of the State's child nutrition programs warrant such changes.

§ 235.5 Payments to States.

State Administrative Expense Funds allocated to any State shall be made available by means of Letters of Credit issued by FNS in favor of the State agency. The basic amount of funds based on man-years may be made available to each State agency upon receipt of the application. Additional funds shall not be made available before approval of the State Plan of Child Nutrition Operations provided for under 7 CFR 210.4a or the State Plan of Child Care Food Program Operations provided for under 7 CFR 226.7 (the "State Plan").

§ 235.6 Use of funds by State agencies.

(a) State Administrative Expense Funds paid to any State shall be used by State agencies to employ additional personnel, as approved in the applicable State Plan, to supervise and give technical assistance to School Food Authorities and to institutions in their initiation, expansion, and conduct of any program for which the funds are made available. State agencies may also use these funds, in an amount approved by FNSRO in the application form, for their general administrative expenses in connection with any such program, including travel and related expenses. Additional personnel or part-time personnel hired to give assistance to any such program are expected to meet professional qualifications and to be paid at salary scales of positions of comparable difficulty and responsibility under the State agency. Personnel may be used on a man-year equivalent basis, thus permitting new personnel and existing staff to be cross-utilized for most effective and economical operation under existing and new programs.

(b) State Administrative Expense Funds shall be used consistent with the cost principles and constraints on allowable and unallowable costs and indirect cost rates as prescribed in Federal Management Circular 74–4 (7 CFR Part 255).

(c) State Administrative Expense Funds may also be used by the State agency to pay administrative expenses of a distributing agency (when such agency is an agency other than the State agency) to employ additional personnel relating to supervisory and technical assistance provided by such distributing agency to School Food Authorities and to institutions in the initiation, expansion, and conduct of any program for which State Administrative Expense Funds are made available.

(d) The amount of State Administrative Expense Funds paid to a distributing agency shall be based on the amount of additional funds needed to perform such supervisory and technical assistance deemed necessary by the State agency: *Provided, however,* That the total amount paid to a distributing agency in any fiscal year shall not exceed 10 percent of the total amount of the State Administrative Expense Funds made available to the State agency for that fiscal year, unless specific written approval is obtained from FNSRO. Requests for State Administrative Expense Funds for a distributing agency which exceed the 10 percent limitation shall be submitted to FNSRO, with the State Plan, for approval.

(e) Where State Administrative Expense Funds are used to acquire personal property or services the provisions of § 235.9 and § 235.10 must be observed.

(f) Each State agency shall release to FNS any Federal funds made available to it under this part which are unobligated at the end of each fiscal year. Release of funds by the State agency shall be made as soon as practicable, but in any event not later than 30 days following demand by FNSRO and shall be reflected by related adjustment in the State agency's Letter of Credit.

(g) Each State agency shall adequately safeguard all assets and assure that they are used solely for authorized purposes.

§ 235.7 Records and reports.

(a) Each State agency shall keep records on administrative expenses conforming with the applicable State Plan, and shall make such records available, upon a reasonable request, to FNS, OA, OI, or the U.S. Comptroller General and shall maintain current accounting records of State Administrative Expense Funds which shall adequately identify fund authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income. The records may be kept in their original form or on microfilm, and shall be retained for a period of three years after the date of the submission of the final Financial Status Report, subject to the exceptions noted below:

(1) If audit findings have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit.

(2) Records for nonexpendable property acquired with State Administrative Expense Funds shall be retained for three years after its final disposition.

(b) Each State agency shall submit information on State Administrative Expense Funds on forms provided by FNS and shall continue to report information on the use of State Administrative Expense Funds after the end of the fiscal year to which they pertain until all unpaid obligations have been liquidated at which time the next report made should be marked "Final" and submission discontinued for that fiscal year.

§ 235.8 Management evaluations and audits.

(a) Each State agency shall provide for audits of State agency operations under this part to be made with rea-

sonable frequency, but beginning in fiscal year 1978 once every two years. The audits shall determine the fiscal integrity of financial transactions and reports, and the compliance with applicable laws and regulations and with the administrative requirements set forth in Attachment H of Federal Management Circular 74–7 (34 CFR Part 256). Audits may be made by State Auditors General, by State Controllers, or other comparable State audit groups, or by Certified Public Accountants or State licensed public accountants.

(b) Each State agency shall develop a plan for the conduct of such audits which shall be incorporated into the State Plan where applicable. The State Plan shall: (1) State the frequency of audits of the State agency and delineate the positive action to be taken during fiscal years 1976 and 1977 to achieve audit frequency of not less than once every two years as set forth in paragraph (a) of this section; (2) provide a description of the State agency in adequate detail to demonstrate the independence of the audit organization; and (3) provide a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(c) While OA shall rely to the fullest extent feasible upon State sponsored audits, it shall, whenever considered necessary, (1) perform on-site test audits, and (2) review audit reports and related working papers of audits performed by or for State agencies.

(d) Use of audit guides available from OA is encouraged. When these guides are utilized, OA will coordinate its audits with State sponsored audits to form a network of intergovernmental audit systems.

(e) Each State agency shall provide FNS with full opportunity to conduct management evaluations of all operations of the State agency under this part and shall provide OA with full opportunity to conduct audits of all such operations. Each State agency shall make available its records, including records of the receipt and expenditure of funds, upon a reasonable request by FNS, OA, or the U.S. Comptroller General.

§ 235.9 Procurement standards.

(a) *General purpose and scope.* This section provides standards for use by State agencies in establishing procedures for the procurement of supplies, equipment, and other services with State Administrative Expense Funds. These standard are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal law and Executive Orders. State agencies may use their own procurement regulations which reflect applicable State law, rules, and regulations, provided that procurement adheres to the standards set forth in this section.

(b) The standards contained in this section do not relieve the State agency of the responsibilities arising under its contracts. The State agency is the responsible authority regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into with State Administrative Expense Funds. This includes, but is not limted to: disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violations of law are to be referred to the State or Federal authority that has proper jurisdiction.

(c) Each State agency shall maintain a code or standard of conduct which shall govern the performance of its officers, employees, or agents in contracting with and expending State Administrative Expense Funds. The State agency's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. To the extent permissible under State law, rules, or regulations, such standards shall provide for appropriate penalties, sanctions, or other disciplinary actions to be applied for violations of such standards either by the State agency's officers, employees, or agents, or by contractors or their agents.

(d) All procurement transactions of the State agency, regardless of whether negotiated or advertised and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. The State agency should be alert to organizational conflicts of interest or noncompetitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade.

(e) The State agency shall establish procurement procedures which comply with the provisions of this section.

(f) Proposed procurement actions shall be reviewed by appropriate officials of the State agency to avoid purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(g) Invitations for bids or requests for proposals shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal description may be used as a means to define the performance or other salient requirements of a procurement and, when so used, the specific features of the named brand which must be met by offerors should be clearly specified.

(h) Positive efforts shall be made by the State agency to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts to be performed with State Administrative Expense Funds.

(i) The type of procuring instruments used (e.g., fixed-price contracts, cost reimbursable contracts, purchase orders, incentive contracts, etc.) shall be appropriate for the particular procurement and for promoting the best interest of the Federal program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(j) Formal advertising, with adequate purchase description, sealed bids, and public openings shall be the required method of procurement unless negotiation pursuant to paragraph (j)4 of this section is necessary to accomplish sound procurement. However, procurements of $10,000 or less need not be so advertised unless otherwise required by State law or regulations. When formal advertising is employed:

(1) The awards shall be made to the responsible bidder whose bid is responsive to the invitation and is most advantageous to the State agency, price and other factors considered. Factors such as discounts, transportation costs, and taxes may be considered in determining the lowest bid.

(2) Invitations for bids shall clearly set forth all requirements which the bidder must fulfill in order for his bid to be evaluated by the State agency.

(3) Any or all bids may be rejected when it is in the State agency's interest to do so, and such rejections are in accordance with applicable State law, rules, and regulations.

(4) Procurements may be negotiated by the State agency if it is not practicable or feasible to use formal advertising. Notwithstanding the existence of circumstances justifying negotiations, competition shall be obtained to the maximum extent practicable. Generally, procurements may be negotiated if one or more of the following conditions prevail:

(i) The public exigency will not permit the delay incident to advertising;

(ii) The material or service to be procured is available from only one person or firm; all contemplated sole source procurements where the aggregate expenditure is expected to exceed $5,000 shall be referred to FNS for prior approval;

(iii) The aggregate amount involved does not exceed $10,000;

(iv) The contract is for personal or professional services, or for any service to be rendered by a university, college, or other educational institution;

(v) No acceptable bids have been received after formal advertising;

(vi) The purchases are for highly perishable materials or medical supplies, for materials or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work, for supplies purchased for authorized resale, and for technical or specialized supplies requiring substantial initial investment for manufacture; or

(vii) Negotiation is otherwise authorized by law, rules, or regulations.

(k) Contracts shall be made by State agencies only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and techni-

cal resources, and accessibility to other necessary resources.

(l) The procurement records or files of State agencies for negotiated purchases in amounts in excess of $10,000 shall provide at least the following pertinent information: (1) Justification for the use of negotiation in lieu of advertising, (2) contractor selection, (3) the basis for the cost or price negotiated.

(m) A system for contract administration shall be maintained by the State agency to assure contractor compliance with terms, conditions, and specifications of the contract or order, and to assure adequately and timely follow-up of all purchases.

(n) The State agency shall include provisions to define a sound and complete agreement in all contracts which it awards when the contract costs are to be borne by State Administrative Expense Funds.

(o) In awarding contracts the State agency must comply with the following requirements:

(1) The State agency's contracts shall contain contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

(2) All contracts awarded by State agencies in excess of $10,000 shall contain suitable provisions for termination by the State agency, including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall set forth the conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) Where applicable, all contracts awarded by State agencies in excess of $2,500 which involve the employment of mechanics or laborers shall include a provision for compliance with section 103 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5). Under section 103 of the act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard work day or work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market or contracts for transportation.

(4) Contracts awarded by State agencies, the principal purpose of which is to create, develop, or improve products, processes or methods; or for exploration into fields which directly concern public health, safety, or welfare; or contracts in the field of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to inventions, and materials generated under the contract or agreement are subject to the regulations issued by the Department. The contractor shall be advised as to the source of additional information regarding these matters.

(5) All negotiated contracts (except those of $10,000 or less) awarded by State agencies shall include a provision to the effect that the State agency, the Department, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to State Administrative Expense Funds, for the purpose of making audit, examination, excerpts, and transcriptions.

(6) Contracts in excess of $100,000 shall contain a provision which requires compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. 1857b et seq.). Suspected violations shall be reported by the State agency in writing to the Regional Office of the United States Environmental Protection Agency, with a copy to the Department.

(p) State agencies shall observe their regular requirements and prices with respect to bonding and insurance.

§ 235.10 Property management requirements.

(a) *General purpose and scope.* This section prescribes policies and procedures governing title, use, and disposition of personal property obtained by the State agency, whose cost was borne in whole or in part with State Administrative Expense Funds. State agencies may follow their own property management policies and procedures provided they observe the requirements of this section.

(b) *Nonexpendable personal property.* The following requirements shall be observed in the acquisition, use and disposition of nonexpendable personal property:

(1) *Title.* When nonexpendable personal property is acquired by a State agency, in whole or in part with Federal funds, title shall be vested in the State agency.

(2) *Use.* The State agency shall retain such property as long as there is a need for such property to accomplish the purpose for which it was acquired whether or not the State agency continues to receive Federal funds for programs administered by the Department.

(3) *Disposition.* When there is no longer a need for such property to accomplish the purpose for which it was acquired, the State agency shall use the property in connection with other Federal programs it administers. Priority shall be given to Federal programs administered by the Department over the programs administered by other Federal agencies. When the State agency no longer has need for such property in any of its federally assisted programs, the property may be used for the State agency's own official activities. In such situations, the State agency may use the property without reimbursement to the Department or sell the property and retain the proceeds if the property had an acquisition cost of less than $500 per unit and has been used 4 years or more. In the case of other property, the State agency may retain the property for its own use, provided that a fair compensation is made to the Department for the Federal share of the property. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the property to the current fairmarket value of the property. If the State agency has no need for the property, disposition shall be made as follows:

(i) Except for property having an acquisition cost of less than $500 per unit which has been used for 4 years or more, the State agency shall sell property having an acquisition cost of $1,000 or less per unit and reimburse the Department in accordance with paragraph (a) (3) (ii) of this section.

(ii) If the property had an acquisition cost of over $1,000 per unit, the State agency shall request disposition instructions from the Department. If the Department has no need for the property, the availability of the property shall be reported to the General Services Administration (GSA) by the Department to determine whether a requirement for the property exists in other Federal programs. The Department shall issue instructions to the State agency within 120 days following the receipt of the request. If the State agency is instructed to ship the property elsewhere, the State agency shall be reimbursed by the Department with an amount which is computed by applying the percentage of the State agency's participation in the cost of the property to the current fair market value of the property, plus any shipping or interim storage costs incurred. If the State agency is instructed to otherwise dispose of the property, the State agency shall be reimbursed by the Department for the costs incurred in the disposition. If disposition instructions are not issued within 120 days after reporting, the State agency shall sell the property and reimburse the Department an amount which is computed by applying the percentage of Federal participation in the cost of the property to the sales proceeds. Further, the State agency may be permitted to retain $100 or 10 percent of the proceeds, whichever is greater, for the State agency's selling and handling expenses.

(iii) *Special property.* When the Department determines that nonexpendable personal property with an acquisition cost of $1,000 or more and financed solely with Federal funds is unique, or difficult or costly to replace, the Department may reserve the right to require the State agency to transfer title to the property to the Department, or to another party subject to the following provisions:

(A) The right to require the transfer of title may be reserved only by means of an express special condition in the grant

or contract, or, if approval for the acquisition of the property is given after the grant is awarded, by means of a written stipulation at the time the approval is given.

(B) The property shall be appropriately identified in the award document or otherwise made known to the State agency.

(C) The Department shall not exercise this right until the State agency no longer needs the property for the purpose for which it was acquired. That need shall be deemed to end on the date of completion or termination of the grant or contract unless the State agency continues to conduct a program or programs administered by the Department after that date and demonstrates to the Department a continued need for the property in the program or programs.

(D) The Department shall issue disposition instructions within 120 days after the completion of the need for the property under the program for which it was acquired. If instructions are not issued within such 120-day period, the Department's right shall lapse, and the State agency shall apply the applicable standards contained in paragraphs (b)(2) and (b)(3) of this section.

(E) The State agency shall be entitled to reimbursement for any shipping and interim storage costs it incurs pursuant to the Department's disposition instructions.

(4) *Property management standards.* The State agency property management standards for nonexpendable personal property shall also include the following procedural requirements:

(i) Property records shall be maintained accurately and provide for: (A) A description of the property; (B) manufacturer's serial number or other identification number; (C) acquisition date and cost; (D) source of the property; (F) location, use, and condition of the property; and (G) ultimate disposition data including sales price or the method used to determine current fair market value if the State agency reimburses the Department for its share.

(ii) A physical inventory of property shall be taken and the results reconciled with the property records at least once every 2 years to verify the existence, current utilization, and continued need for the property.

(iii) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or the theft of the property. Any loss, damage, or the theft of nonexpendable property shall be investigated and fully documented. The State agency shall be responsible for replacing or repairing (with funds of the State agency) property which is lost, damaged, or destroyed due to the negligence of the State agency.

(iv) Adequate maintenance procedures, recommended by the manufacturer, shall be implemented to keep the property in good condition.

(v) Proper sales procedures shall be established for unneeded property which would provide for competition to the extent practicable and result in the highest possible return.

(c) *Expendable personal property.* The State agency may at its option either retain or sell items of expendable personal property when no longer needed for any federally sponsored activity (including activities sponsored by other Federal agencies). Compensation to the Department is required if the aggregate fair market value of all of those items acquired under the grant or contract exceeds $500 when no longer needed for any federally sponsored activity. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original property to the current fair market value of items retained and to the sales proceeds of items sold.

(d) *Intangible personal property.* (1) *Patents and inventions.* If any program activity produces patents, patent rights, processes or inventions in the course of work aided by the Department, such fact shall be promptly and fully reported to the Department. Unless there is prior agreement between the State agency and the Department on disposition of such items, the Department shall determine whether protection of such invention or discovery will be sought and how the rights in the invention or discovery—including rights under any patent issued thereon—shall be disposed of and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies. August 23, 1971), and "Statement of Government Patent Policy" (36 FR 16889).

(2) *Copyrights.* When a program activity results in a book or other copyrightable material, the author or State agency is free to copyright the work, but the Department reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use the work for government purposes.

(e) *Publications.* Any publication or presentation resulting from or primarily related to Federal financial assistance shall contain the following acknowledgement:

The activity which is the subject of the report was supported in whole or in part by the U.S. Department of Agriculture, Food and Nutrition Service. However, the opinions expressed herein do not necessarily reflect the position or policy of the U.S. Department of Agriculture, and no official endorsement by the U.S. Department of Agriculture should be inferred.

§ 235.11 Other provisions.

(a) *State funds.* Expenditures of funds from State sources for the administration of food programs for children shall not be diminished as a result of funds received under this part.

(b) *Termination for cause.* FNS may terminate a State agency's participation in the program for payment of State Administrative Expense Funds in whole, or in part, whenever it is determined that the State agency has failed to comply with the conditions under this part. FNS shall promptly notify the State agency in writing of the termination, together with the effective date. When the program for payment of State Administrative Expense Funds has been terminated for cause, any further payments made to the State agency or any recoveries by FNS from the State agency shall be in accordance with the legal rights and liabilities of the parties.

(c) *Termination for convenience.* FNS and the State agency may terminate the State agency's participation under this part in whole, or in part, when both parties agree that continuation would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The State agency shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. FNS shall allow full credit to the State agency for the Federal share of the noncancellable obligations, properly incurred by the State agency prior to termination.

(d) *State requirements.* Nothing contained in this part shall prevent a State agency from imposing additional operating requirements which are not inconsistent with the provisions of this part.

NOTE.—The reporting and/or recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Effective date: This part becomes effective August 1, 1976.

Dated: July 29, 1976.

JOHN DAMGARD,
Deputy Assistant Secretary.

[FR Doc.76-22472 Filed 8-2-76;8:45 am]

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

PART 331—PLANT PEST REGULATIONS GOVERNING INTERSTATE MOVEMENT OF CERTAIN PRODUCTS AND ARTICLES

Subpart—Mediterranean Fruit Fly

REVOCATION OF NOTICE OF EXISTENCE OF EMERGENCY AND REGULATIONS RELATED THERETO

• Purpose: To revoke the Mediterranean fruit fly emergency regulations in Los Angeles County, California. •

The notice of existence of emergency and regulations related thereto with respect to the Mediterranean fruit fly, in 7 CFR 331.1 (40 FR 49784), are hereby revoked. However, such provisions shall be deemed to continue in full force and effect for the purpose of sustaining any action or other proceeding with respect to any right that accrued, liability that was incurred, or violation that occurred prior to said date.

Statement of Considerations.—An intensive eradication program was begun

following the discovery in September 1975 of an infestation of the Mediterranean fruit fly in Los Angeles, California. Delimiting surveys utilizing traps indicated that the Mediterranean fruit fly infestation was limited to an area of approximately 100 square miles of Los Angeles County. Foliar spraying of citrus and related host trees and soil treatments were begun in October 1975. Because of the urban environment, however, the normal chemical treatments in the amounts needed to achieve eradication could not be utilized and, therefore, a sterile fly release program was instituted for the purpose of eradicating the Mediterranean fruit fly. Ground releases of sterile flies began in late October 1975, and aerial releases began in December. Ground and aerial releases ended the last of May 1976. The trapping program has continued since the pest was discovered. The last adult nonsterile fly was trapped on November 14, 1975. The Deputy Administrator has determined that eradication of the Mediterranean fruit fly has been achieved because enough time has elapsed for development of three complete life cycles without the detection of nonsterile flies, and a followup intensive surveillance has confirmed such finding.

§ 331.1 [Reserved]

Accordingly, the Mediterranean fruit fly notice of existence of emergency and regulations related thereto in § 331.1 (7 CFR 331.1) are hereby revoked. Also, § 331.1 is reserved.

This revocation relieves restrictions heretofore imposed, and should be made effective promptly in order to be of maximum benefit to the persons subject to the restrictions that are being relieved. Also, it does not appear that public participation in rulemaking procedures concerning this action would make additional relevant information available to the Department. Therefore, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that such public participation with respect to this action is impracticable, unnecessary, and contrary to the public interest and good cause is found for making the revocation effective less than 30 days after publication in the FEDERAL REGISTER.

(Secs. 105, 106, 107; 71 Stat. 32, 33, 34 (7 U.S.C. 150dd–150ff); 37 FR 28464, 28477, 38 FR 19141.)

The foregoing revocation of notice of existence of emergency and regulations related thereto shall become effective August 2, 1976.

Done at Washington, D.C. this 27th day of July 1976.

T. G. DARLING,
Acting Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

NOTE: This document is reprinted without change from the issue of Monday, August 2, 1976.

[FR Doc.76–22231 Filed 7–30–76;8:45 am]

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

PART 916—NECTARINES GROWN IN CALIFORNIA

Expenses and Rate of Assessment for the 1976–77 Fiscal Period

This document authorizes $765,380 of Nectarine Administrative Committee expenses, under Marketing Order No. 916, for the 1976–77 fiscal period and fixes a rate of assessment of $0.065 per No. 22D standard lug box of nectarines handled in such period to be paid to the committee by each first handler as his pro rata share of such expenses.

On July 7, 1976, notice of proposed rulemaking was published in the FEDERAL REGISTER (41 FR 27844) regarding proposed expenses and the proposed rate of assessment for the period March 1, 1976, through February 28, 1977, pursuant to the marketing agreement, as amended, and Order No. 916, as amended (7 CFR Part 916) regulating the handling of nectarines grown in California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The notice provided that all written data, views, or arguments in connection with said proposals be submitted not later than July 23, 1976. None were received. After consideration of all relevant matters presented, including the proposals set forth in such notice which were submitted by the Nectarine Administrative Committee (established pursuant to said marketing agreement and order), it is hereby found and determined that:

§ 916.215 Expenses and rate of assessment.

(a) *Expenses.* Expenses that are reasonable and likely to be incurred by the Nectarine Administrative Committee during the period March 1, 1976, through February 28, 1977, will amount to $765,380.

(b) *Rate of Assessment.* The rate of assessment for said period, payable by each handler in accordance with § 916.41, is fixed at $0.065 per No. 22D standard lug box of nectarines, or equivalent quantity of nectarines in other containers or in bulk.

(c) *Terms.* Terms used in the marketing agreement, as amended, and order, as amended, shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order, and "No. 22D standard lug box" shall have the same meaning as set forth in section 1380.19 of the California Code of Food and Agriculture.

It is hereby further found that good cause exists for not postponing the effective date hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of the current crop of nectarines grown in California are now being made; (2) the relevant provisions of said marketing agreement and this part require that the rate of assessment herein fixed shall be applicable to all assessable nectarines handled during the aforesaid period; and (3) such period began on March 1, 1976, and said rate of assessment will automatically apply to all such nectarines beginning with such date.

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

Dated: July 29, 1976.

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

[FR Doc.76–22402 Filed 8–2–76;8:45 am]

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

Peach Commodity Committee Expenses, Rate of Assessment, and Carryover of Unexpended Funds

This document authorizes $686,409 of Peach Commodity Committee expenses, under Marketing Order No. 917, for the 1976–77 fiscal period and fixes a rate of assessment of $0.065 per No. 22D standard lug box of peaches handled in such period to be paid to the committee by each first handler as his pro rata share of such expenses. It also authorizes the carryover, as a committee reserve, of unexpended assessment income from fiscal 1975–76.

On July 13, 1976, notice of rulemaking was published in the FEDERAL REGISTER (41 FR 28794) regarding proposed expenses and the related rate of assessment for the fiscal year beginning March 1, 1976, and ending February 28, 1977, and the carryover of unexpended 1975–76 assessment income pursuant to the marketing agreement, as amended, and Order No. 917, as amended (7 CFR Part 917; 41 FR 17528), regulating the handling of fresh pears, plums, and peaches grown in California. The notice invited interested persons to submit written data, views, or arguments through July 26, 1976. No such material was submitted. This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). After consideration of all relevant matters presented, including the proposals set forth in such notice which were submitted by the Peach Commodity Committee (established pursuant to said marketing agreement and order), it is hereby found and determined that:

§ 917.216 Peach Commodity Committee expenses, rate of assessment, and carryover of unexpended funds.

(a) *Expenses.* Expenses that are reasonable and likely to be incurred during the fiscal period March 1, 1976, through February 28, 1977, will amount to $686,409.

(b) *Rate of Assessment.* The rate of assessment for such fiscal period payable by each handler in accordance with § 917.37 is fixed at six and five-tenths cents ($0.065) per No. 22D standard lug box of peaches, or its equivalent in other containers or in bulk.

(c) *Reserve.* Unexpected assessment funds in excess of expenses incurred during the fiscal period ended February 29, 1976, be carried over as a reserve in accordance with the applicable provisions of § 917.38.

(d) *Terms.* Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order, and "No. 22D standard lug box" shall have the same meaning as set forth in Section 1380.19 of the California Code of Food and Agriculture.

It is hereby further found that good cause exists for not postponing the effective date hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of the current crop of peaches are currently underway; (2) the relevant provisions of said amended marketing agreement and this part require that the rate of assessment fixed for a particular season be applicable to all fresh peaches handled from the beginning of such fiscal period; and (3) the fiscal period began March 1, 1976, and the rate of assessment herein fixed will automatically apply to all peaches beginning with such date.

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

Dated: July 29, 1976.

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

[FR Doc.76-22401 Filed 8-2-76;8:45 am]

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

Pear Commodity Committee Expenses and Rate of Assessment for the 1976–77 Fiscal Period

This document authorizes expenses of $541,625 of the Pear Commodity Committee, under Marketing Order No. 917, for the 1976–77 fiscal period and fixes a rate of assessment of $0.125 per box of pears. This assessment is to be paid to the committee by each handler as his pro rata share of expenses. It also authorizes the carryover, as a committee reserve, of unexpended assessment income from fiscal 1975–76.

A notice of rulemaking on this matter was published in the FEDERAL REGISTER (41 FR 26703) on June 29, 1976, regarding proposed expenses and the rate of assessment for the fiscal period beginning March 1, 1976, and ending February 28, 1977. The notice afforded interested persons opportunity to submit written data, views, or arguments on the proposal. None were received. This action is taken under the marketing agreement, as amended, and Order No. 917, as amended (7 CFR Part 917; 41 FR 17528), regulating the handling of fresh pears, plums, and peaches grown in California. This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

After consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by the Pear Commodity Committee (established under the marketing agreement and Order No. 917), and other available information, it is found and determined that the expenses and rate of assessment for that committee for the 1976–77 fiscal period and authorization to carryover unexpended assessment income from fiscal 1975–76 as a reserve shall be contained in a new § 917.214, hereinafter set forth.

It is further found that good cause exists for not postponing the effective time of this action until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of the current crop of pears are currently underway; (2) the relevant provisions of the amended marketing agreement and this part require that the rate of assessment fixed for a particular season be applicable to all fresh pears from the beginning of such fiscal period; and (3) the fiscal period began March 1, 1976, and the rate of assessment herein fixed will automatically apply to all such pears beginning with that date.

§ 917.214 Pear Commodity Committee expenses and rate of assessment.

(a) *Expenses.* Expenses that are reasonable and likely to be incurred during the fiscal period March 1, 1976, through February 28, 1977, will amount to $541,625.

(b) *Rate of Assessment.* The rate of assessment for such fiscal period payable by each handler in accordance with § 917.37 is fixed at twelve and one-half cents ($0.125) per No. 29B special lug box of pears, or its equivalent in other containers or in bulk.

(c) *Reserve.* Unexpended assessment funds in excess of expenses incurred during the fiscal period ended February 29, 1976, shall be carried over as a reserve in accordance with the applicable provisions of § 917.38.

(d) *Terms.* Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order.

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

Dated: July 29, 1976.

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

[FR Doc.76-22400 Filed 8-2-76;8:45 am]

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

Plum Commodity Committee Expenses and Rate of Assessment for the 1976–77 Fiscal Period

This document authorizes expenses of $813,650 of the Plum Commodity Committee, under Marketing Order No. 917, for the 1976–77 fiscal period and fixes a rate of assessment of $0.08 per lug box of plums. This assessment is to be paid to the committee by each handler as his pro rata share of expenses. It also authorizes the carryover by the committee, as a reserve, of unexpended assessment income from fiscal 1975–76.

A notice of rulemaking on this matter was published in the FEDERAL REGISTER (41 FR 25017) on June 22, 1976, in which expenses of $848,650 and an assessment rate of $0.075 per lug box of plums was proposed. On July 6, 1976, a notice of rulemaking was published in the FEDERAL REGISTER (41 FR 27735), to amend the original proposal so as to recommend expenses of $813,650 and a rate of assessment of eight cents ($0.08) per lug of plums. The notices afforded interested persons opportunity to submit written data, views, or arguments on the proposals. None were received.

This action is taken under the marketing agreement, as amended, and Order No. 917, as amended (7 CFR Part 917; 41 FR 17528), regulating the handling of fresh pears, plums, and peaches grown in California. This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

After consideration of all relevant matter presented, including that in the notices, the information and recommendations submitted by the Plum Commodity Committee (established under the marketing agreement and Order No. 917), and other available information, it is found and determined that the expenses and rate of assessment for that committee for the 1976–77 fiscal period and authorization to carry over the unexpended assessment income from fiscal 1975–76 as a reserve shall be contained in a new § 917.215, hereinafter set forth.

It is further found that good cause exists for not postponing the effective time of this action until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that: (1) Shipments of the current crop of plums are now underway; (2) the relevant provisions of the amended marketing agreement and this part require that the rate of assessment fixed for a particular fiscal period be applicable to all fresh plums from the beginning of such fiscal period, and (3) the fiscal period began March 1, 1976, and the rate of assessment herein fixed will automatically apply to all such plums beginning with that date.

§ 917.215 Plum Commodity Committee expenses and rate of assessment.

(a) *Expenses.* Expenses that are reasonable and likely to be incurred during the fiscal period March 1, 1976, through February 28, 1977, will amount to $813,650.

(b) *Rate of Assessment.* The rate of assessment for such fiscal period payable by each handler in accordance with § 917.37 is fixed at eight cents ($0.08) per No. 22D standard lug box of plums, or its equivalent in other containers or in bulk.

(c) *Reserve.* Unexpended assessement funds in excess of expenses incurred

during the fiscal period ended February 29, 1976, shall be carried over as a reserve in accordance with § 917.38.

(d) *Terms.* Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said marketing agreement and order.

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

Dated: July 29, 1976.

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

[FR Doc.76-22399 Filed 8-2-76;8:45 am]

[Docket No. AO-198-A8]

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Order Amending Order

FINDINGS AND DETERMINATIONS

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and each previously issued amendment thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon a proposed amendment of the marketing agreement, as amended, and Order No. 989, as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California.

Upon the basis of the record it is found that:

(1) The order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The order, as amended, and as hereby further amended, regulates the handling of raisins produced from grapes grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order[1] upon which hearings have been held;

(3) The order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) There are no differences in the production and marketing of raisins produced from grapes grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of raisins produced from grapes grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order, as amended, effective not later than August 4, 1976. Any delay beyond that date would tend to disrupt the orderly marketing of raisins produced from grapes grown in California. The amendatory order moves the beginning date of the crop year from September 1 to August 1. Thus, the 1976–77 crop year begins August 1, 1976. The provisions of this amendatory order should become effective as soon as practicable following their publication in the FEDERAL REGISTER (which will occur after August 1, 1976) so that they are applicable before raisins are handled in volume during the 1976–77 crop year. Some provisions of the amendatory order may require rulemaking and, therefore, should be made effective in time to enable the Raisin Administrative Committee to make such considerations before active raisin harvesting starts.

In view of the foregoing, it is hereby found and determined that good cause exists for making this order effective August 4, 1976, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the FEDERAL REGISTER (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) The "Marketing Agreement, as Amended, Regulating the Handling of Raisins Produced from Grapes Grown in California" upon which the aforesaid public hearing was held has been signed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping raisins covered by the said order, as amended, and as hereby further amended who, during the period August 1, 1975 through April 30, 1976, handled not less than 50 percent of the volume of such raisins covered by the said order, as amended, and as hereby further amended, and

(2) The issuance of this amendatory order, amending the aforesaid order, as amended, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who during the period August 1, 1975 through April 30, 1976 (which has been deemed to be a representative period), have been engaged within the State of California, in the production of grapes which were sundried or dehydrated by artificial means until they became raisins for market, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

ORDER RELATIVE TO HANDLING

It is therefore ordered, That on and after the effective date hereof, the handling of raisins, shall be in conformity to and in compliance with the terms and conditions of the said order, as amended, and as hereby further amended, as follows:

1. Section 989.18 is revised to read:

§ 989.18 Committee.

"Committee" means the Raisin Administrative Committee established under § 989.26.

2. Section 989.19 is revised to read:

§ 989.19 Executive Operations Committee.

"Executive Operations Committee" means the Executive Operations Committee established under § 989.43.

3. Section 989.21 is revised to read:

§ 989.21 Crop year.

"Crop year" means the 12-month period beginning with August 1 of any year and ending with July 31 of the following year.

4. Section 989.22 is amended to read:

§ 989.22 District.

"District" means any one of the geographical areas referred to in §§ 989.26 or 989.43, and specified in § 989.96.

5. The center heading, "Raisin Advisory Board" appearing between §§ 989.25 and 989.26 is changed to read, "Raisin Administrative Committee".

6. Section 989.26 is amended to read:

§ 989.26 Establishment and membership.

A Raisin Administrative Commitee is hereby established consisting of 47 members, of whom 35 shall represent producers, nine shall represent handlers, one shall represent dehydrators, one shall represent the cooperative bargaining association(s), and one shall be a public member. The producer members shall be selected in the number and for the districts as designated in § 989.96, or as such number or districts may be authorized pursuant to § 989.26a. The handler members shall include the following:

(a) One member selected from and representing handlers doing business as cooperative marketing associations or cooperative marketing organizations engaged in the business of packing raisins, each of which acquired not less than 10 percent of the total raisin acquisitions during the 12-month period preceding the then current crop year;

(b) Two members selected from and representing the three handlers, other than cooperatives, who acquired the largest percentages of the total raisin acquisitions during the 12-month period preceding the then current crop year;

(c) Two members selected from and representing the three handlers, other than cooperatives, who acquired the next largest percentages of the total raisin

[1] Text of the marketing agreement filed as part of the original document.

acquisitions during the 12-month period preceding the then current crop year;

(d) Two members selected from and representing the four handlers, other than cooperatives, who acquired the next largest percentages of the total raisin acquisitions during the 12-month period preceding the then current crop year; and

(e) Two members selected from and representing all other handlers, including cooperatives, each of which acquired less than 10 percent of the total raisin acquisitions during the 12-month period preceding the then current crop year, and including all processors.

The dehydrator member shall be selected from dehydrators as provided in § 989.29(b)(4). The bargaining association member shall be selected from the cooperative bargaining association(s). The public member shall be nominated by the committee and selected by the Secretary as a public member. For each member of the committee there shall be an alternate member who shall have the same qualifications as the member for whom he is an alternate.

7. Section 989.26a is amended to read:

§ 989.26a Changes in producer representation.

The Secretary, on recommendation of the committee, may change the total number of producer members on the committee, may change the number of districts designated in § 989.96, may redefine such districts into which the production area is divided, or may change the number of producer members which shall be selected to represent particular districts. In making any such change consideration shall be given to such factors as geographical shifts in the numbers of producers and in raisin production within the area.

8. Section 989.26b is amended to read:

§ 989.26b Changes in handler representation.

The Secretary, on recommendation of the committee, may change the total number of handler members on the committee, the handler size groups set forth in § 989.26 from which handler members shall be selected, the number of handlers comprising any such size group, or the number of handler members to represent any such size group. In making any such change, consideration shall be given to such factors as changes in the numbers of handlers, relative raisin acquisition positions of handlers, and their similarity of interests in the handling of raisins.

9. Section 989.26c is amended to read:

§ 989.26c Changes in dehydrator representation.

The Secretary, on recommendation of the committee, may change the number of dehydrator members on the committee or may discontinue dehydrator representation on the committee. In making any such change or discontinuing dehydrator representation, consideration shall be given to such factors as total number of dehydrators currently operating, the number of dehydrators operated by raisin packers, and the extent to which the interest of dehydrators is adequately served by other members on the committee.

10. Section 989.27 is amended to read:

§ 989.27 Eligibility.

No person shall be selected or continue to serve as a member or alternate member of the committee who is not actively engaged in the business of the group which he represents, either in his own behalf, or as an officer, agent, or employee of a business unit engaged in such business: Provided, That, any handler eligible to represent a particular size group shall continue to represent for the entire term the size group for which he was selected. The committee shall certify during April of each crop year each member's and alternate member's eligibility to continue to serve on the committee.

11. Section 989.28 is amended to read:

§ 989.28 Term of office.

(a) *Producer members.* The term of one-third or approximately one-third of the producer members and producer alternate members of the committee shall end on April 30 each year, but each such member and alternate member shall continue to serve until his respective successor is selected and has qualified. The producer members and producer alternate members of the committee shall serve for terms of 3 years beginning May 1 and ending April 30 of the third following year.

(b) *Handler, dehydrator, cooperative bargaining association and public members.* The handler, dehydrator, cooperative bargaining association and public members, and their respective alternates, shall each serve for terms of 1 year, beginning May 1 and ending April 30 of the following year, but each shall continue to serve until his respective successor is selected and has qualified.

12. Section 989.29 is amended to read:

§ 989.29 Initial members and nomination of successor members.

(a) *Initial members.* Members and alternate members of the Raisin Advisory Board serving immediately prior to the effective date of this amended subpart shall, if thereafter they are also eligible, serve on the committee for their specified terms of office and until their respective successors have been selected and have qualified.

(b) *Nomination for successor members.* Nominations for successor members and alternate members of the committee shall be made as set forth in subparagraphs (1) to (6) of this paragraph.

(1) The committee shall give reasonable publicity of a meeting or meetings of producers, handlers and dehydrators, and if applicable, cooperative bargaining association(s), for the purpose of making nominations for member and alternate member positions to be filled on the committee: *Provided,* That with respect to producer members and producer alternate members, a meeting or meetings shall be held in each district for which nominations are to be made to fill producer member and producer alternate member positions on the committee: *And provided further,* That member and alternate member nominations of handlers, dehydrators, and cooperative bargaining association(s) may be made to the committee by mail in lieu of meetings.

(2) Only producers as defined in § 989.11, engaged as such with respect to the most recent grape crop in the particular districts for which nominations are to be made, may nominate, or vote for, any producer member or producer alternate member for such district. Any producer so engaged with respect to the most recent grape crop in the particular district for which nominations are to be made, may be nominated to represent said district as a producer member or producer alternate member of the committee; in the event any of such nominees are engaged as producers in more than one district, he may be a nominee for only one district. One or more eligible producers for each producer member position to be filled on the committee may be proposed for nomination and one or more eligible producers for each alternate member position to be filled may be proposed for nomination. Each producer shall cast only one vote with respect to each position for which nomination is to be made. The person receiving a majority of the votes with respect to each producer member or producer alternate member position shall be the person to be certified to the Secretary as the nominee for each such position. In the event no person receives a majority, there shall be a runoff vote between the two persons receiving the largest number of votes. The eligibility of each producer voting in a nomination meeting shall be certified by the committee, during or after the meeting, and, in the event one or more who voted was not eligible and this may have affected the result of any nomination vote, another meeting with respect to such nomination shall be held.

(3) Only handlers who packed or processed raisins during the then current crop year may nominate, or vote for, handler members or handler alternate members. One or more eligible handlers for each handler member position to be filled may be proposed for nomination and one or more eligible handlers for each alternate member position to be filled on the committee may be proposed for nomination. Nominations by each of the handler groups specified in § 989.26 or pursuant to § 989.26b, shall be made by and from handlers, or employees, representatives, or agents of handlers falling within such groups. Each handler shall cast only one vote with respect to each position for which nomination is to be made: *Provided,* That only handlers coming within the particular group, as specified in § 989.26 or pursuant to § 989.26b, as applicable, for which nomination is to be made, shall vote. The per-

son receiving the most votes with respect to each handler member or handler alternate member position shall be the person to be certified to the Secretary as the nominee for each such position.

(4) Only dehydrators who produced raisins by dehydrating grapes during the then current crop year may nominate, or vote for, dehydrator members or dehydrator alternate members. One or more eligible dehydrators for each dehydrator member position to be filled on the committee may be proposed for nomination, and one or more eligible dehydrators for each alternate member position may be proposed for nomination. Each dehydrator shall cast only one vote with respect to each position for which nomination is to be made. The person receiving the most votes with respect to each dehydrator member or dehydrator alternate member position shall be the person to be certified to the Secretary as the nominee for each such position.

(5) Each vote cast shall be on behalf of the person voting, his agents, subsidiaries, affiliates, and representatives. Voting at each meeting shall be in person. The result of each ballot at each such meeting shall be announced at that meeting. Voting at each meeting of producers shall be by secret ballot, and at each meeting of handlers, and dehydrators, voting may be by secret ballot.

(6) Each such nomination shall be certified by the committee to the Secretary on or before April 5 immediately preceding the commencement of the term of office of the member or alternate member position for which the nomination is certified.

13. Section 989.30 is amended to read:

§ 989.30 Selection.

The Secretary shall select producer, handler, dehydrator, cooperative bargaining association and public members and alternate members in the numbers specified in § 989.26 or pursuant to §§ 989.26a, 989.26b, or 989.26c, as applicable, and with the qualifications specified in § 989.27. Such selections may be made from nominations certified pursuant to § 989.29 or from other eligible producers, handlers, dehydrators, or cooperative bargaining association officers or employees.

14. Section 989.31 is amended to read:

§ 989.31 Failure to nominate.

In the event nomination for a member or alternate member position on the committee is not certified pursuant to and within the time specified in § 989.29, the Secretary may select an eligible person to fill such position without regard to nomination.

15. Section 989.32 is amended to read:

§ 989.32 Acceptance.

Each person selected by the Secretary as a member or as an alternate member of the committee shall, prior to serving on the committee qualify by filing with the Secretary a written acceptance within 10 calendar days after being notified of his selection.

16. Section 989.33 is amended to read:

§ 989.33 Alternate members.

The alternate for a member of the committee shall act in the place and stead of such member (a) during his absence, and (b) in the event of his removal, resignation, disqualification, or death, until a successor for such member's unexpired term has been selected and has qualified.

17. Section 989.34 is amended to read:

§ 989.34 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the removal, resignation, disqualification, or death of any member or alternate member, a successor for such person's unexpired term shall be nominated and selected in the manner set forth in §§ 989.29 and 989.30, insofar as such provisions are applicable. If nomination to fill any vacancy is not filed within 40 calendar days after such vacancy occurs, the Secretary may select an eligible person to fill such vacancy without regard to nomination.

18. Section 989.35 is amended to read:

§ 989.35 Powers.

The committee shall have the following powers:

(a) To administer the terms and provisions of this part;

(b) To make rules and regulations to effectuate the terms and provisions of this part; and

(c) To recommend to the Secretary amendments to this part.

19. Section 989.36 is amended to read:

§ 989.36 Duties.

The committee shall have, among others, the following duties:

(a) To act as intermediary between the Secretary and any producer, packer, dehydrator, processor or cooperative bargaining association;

(b) To keep minutes, books, and other records, which shall clearly reflect all of its acts and transactions, and such minutes, books, and other records shall be subject to examination by the Secretary at any time;

(c) To investigate and assemble data on the production, handling and market conditions with respect to raisins;

(d) To submit to the Secretary such available information with respect to raisins and grapes as he may request, and such other information as the committee may deem desirable and pertinent;

(e) To select from among its members a chairman and other officers, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(f) To appoint or employ such other persons as it may deem necessary, and to determine the salaries and define the duties of each such person;

(g) To cause the books of the committee to be audited by certified public accountants at least once each year, or at such other times as the committee may deem necessary or as the Secretary may request, and the report of each such audit shall show, among other things, the receipts and expenditures of funds, and at least two copies of each such audit shall be submitted to the Secretary;

(h) To prepare quarterly statements of its financial operations and make such statements, together with the minutes of its meetings, available at the office of the committee for inspection by producers, handlers and dehydrators;

(i) To give reasonable advance notice of the times, places, and purposes of its meetings by mail or other appropriate means to each member and alternate member and such notice shall be given as widespread publicity as is practicable.

(j) To conduct meetings for the purpose of making nominations for membership on the committee and the certifying of nominations made for such purposes to the Secretary, and the making of nominations to the Secretary for member and alternate member positions on the Executive Operations Committee; and

(k) To establish, with the approval of the Secretary, such rules and procedures relative to administration of this subpart as may be consistent with the provisions contained in this subpart and as may be necessary to accomplish the purposes of the act and the efficient administration of this subpart.

20. Section 989.37 is revised to read:

§ 989.37 Obligation.

Upon the removal, resignation, disqualification, or expiration of the term of office of any member or alternate member, such member or alternate member shall account for all receipts and disbursements and deliver to his successor, to the committee, or to a designee of the Secretary all property (including, but not limited to, all books and records) in his possession or under his control as member or alternate member, and he shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor, committee, or designee full title to such property and funds, and all claims vested in such member or alternate member. Upon the death of any member or alternate member of the committee, full title to such property, funds, and claims vested in such member or alternate member shall be vested in his successor or, until such successor has been selected and has qualified, in the committee.

21. The center heading "Raisin Administrative Committee" appearing between §§ 989.37 and 989.39 is deleted.

22. A new § 989.38 is added, reading as follows:

§ 989.38 Procedure.

The committee shall meet at the call of its chairman or its vice-chairman when acting as chairman, or at the call of any three members. Except as otherwise provided in § 989.45, all decisions of the committee reached shall be by majority vote of the members present. All

votes shall be cast in person and a quorum must be present. The presence of 25 members shall be required to constitute a quorum. The Secretary, on recommendation of the committee, may change the quorum requirements if warranted by a change made pursuant to § 989.26a in the total number of producer members on the committee or by a change made pursuant to § 989.26b in the total number of handler members on the committee, or by a change made pursuant to § 989.26c in the total number of dehydrator members on the committee. The committee shall give to the Secretary the same notice of meetings of the committee as it gives to its members.

23. Section 989.39 is revised to read:

§ 989.39 Compensation and expenses.

The members of the Committee and the Executive Operations Committee, and the alternate members when acting as members, shall serve without compensation but shall be allowed their necessary expenses as approved by the committee. Whenever specifically authorized in advance by the committee, or when requested to attend due to the anticipated absence of a member, an alternate member of the committee shall be reimbursed for reasonable expenses incurred by him in attending not to exceed three committee meetings per crop year when the committee member for whom he serves as alternate also attends such meetings.

§§ 989.39a—989.42 [Deleted]

24. Section 989.39a is deleted.
25. Section 989.39b is deleted.
26. Section 989.39c is deleted.
27. Section 989.40 is deleted.
28. Section 989.41 is deleted.
29. Section 989.42 is deleted.

30. A center heading "Executive Operations Committee" is added between §§ 989.42 and 989.43.

31. Section 989.43 is revised to read:

§ 989.43 Establishment and membership.

An Executive Operations Committee is hereby established to receive, investigate, and report to the Secretary, complaints of violations of this part and to perform such functions as assigned by the committee. Any action of the Executive Operations Committee is subject to disapproval by the committee. The Executive Operations Committee shall consist of 15 members, of whom eight shall represent producers, five shall represent handlers, one shall represent dehydrators and one shall represent the cooperative bargaining association(s). The producer members shall be selected to represent such district or group of districts as the committee may establish with the approval of the Secretary. Of the five handler members, one shall be selected from and represent each of the following divisions:

(a) The handlers doing business as cooperative marketing associations, or cooperative marketing organizations engaged in the business of packing raisins, each of which acquired not less than 10 percent of the total raisin acquisitions during the 12-month period preceding the then current crop year;

(b) The three handlers, other than cooperatives, who acquired the largest percentages of total raisin acquisitions during the 12-month period preceding the then current crop year;

(c) The three handlers, other than cooperatives, who acquired the next largest percentages of total raisin acquisitions during the 12-month period preceding the then current crop year;

(d) The four handlers, other than cooperatives, who acquired the next largest percentages of total raisin acquisitions during the 12-month period preceding the then current crop year; and

(e) All other handlers, including cooperatives, each of which acquired less than 10 percent of the total raisin acquisitions during the 12-month period preceding the then current crop year, and including all processors. For each member of the Executive Operations Committee, there shall be an alternate member who shall have the same qualifications as the member for whom he is an alternate.

32. A new § 989.43a is added, reading as follows:

§ 989.43a Changes in producer representation.

The Secretary, on recommendation of the committee, may change the total number of producer members on the Executive Operations Committee and may change the number of producer members which shall be selected to represent particular districts or groups of districts. In making any such change consideration shall be given to such factors as changes in producer and handler membership on the committee, representation of the several producing districts, maintenance of producer positions as majority of the Executive Operations Committee, and geographical shifts in the number of producers and in raisin production within the area.

33. A new § 989.43b is added, reading as follows:

§ 989.43b Changes in handler representation.

The Secretary, on recommendation of the committee, may change the total number of handler members on the Executive Operations Committee, the handler size groups set forth in § 989.43 from which handler members shall be selected, the number of handlers comprising any such size group, or the number of handler members to represent any such size group. In making any such change, consideration shall be given to such factors as changes in the numbers of handlers, relative raisin acquisition position of handlers, and their similarities of interest in the handling of raisins.

34. A new § 989.43c is added, reading as follows:

§ 989.43c Changes in dehydrator representation.

The Secretary, on recommendation of the committee, may change the number of dehydrator members on the Executive Operations Committee or may discontinue dehydrator representation on the Executive Operations Committee. In making any such change or discontinuing dehydrator representation, consideration shall be given to such factors as total number of dehydrators currently operating, the number of dehydrators operated by raisin packers, and the extent to which the interest of dehydrators is adequately served by other members on the Executive Operations Committee.

35. Section 989.44 is revised to read:

§ 989.44 Term of office.

Members and alternate members of the Executive Operations Committee shall each serve for terms of one year, beginning on June 1, and ending on May 31 of the following year but each such member and alternate member shall continue to serve until his respective successor is selected and has qualified.

36. Section 989.45 is revised to read:

§ 989.45 Nomination.

(a) *Producer members.* The producer members of the committee, and producer alternate members when acting as members, shall nominate from among the producer members and producer alternate members of the committee the required number of persons for producer member positions on the Executive Operations Committee and an alternate for each person.

(b) *Handler members.* The handler members of the committee and handler alternate members when acting as members, shall nominate from among the handler members and alternate members of the committee, the required number of persons for handler member positions on the Executive Operations Committee, and an alternate for each such person. Nomination for such handler members shall be made by and from handlers, employees, representatives or agents of handlers falling within each such group.

(c) *Dehydrator member.* The dehydrator member and alternate member on the committee shall be the dehydrator nominees for member and alternate member on the Executive Operations Committee.

(d) *Cooperative bargaining association member.* The cooperative bargaining association(s) member and alternate member on the committee shall be the association nominees for member and alternate member of the Executive Operations Committee.

(e) *Initial members.* Members and alternate members of the Raisin Administrative Committee serving immediately prior to the effective date of this amended subpart shall, if thereafter they are also eligible, continue to serve on the Executive Operations Committee as the initial members and alternate members for their specified terms of office and until their respective successors have been selected and have qualified.

(f) *Successor members.* Nominations for successor members and alternate members of the Executive Operations Committee shall be certified by the com-

mittee to the Secretary annually within 30 days following the selection by the Secretary of committee members.

37. Section 989.46 is revised to read:

§ 989.46 Selection.

The Secretary shall select producer, handler, dehydrator, and cooperative bargaining association members and alternate members of the Executive Operations Committee in the numbers specified in § 989.43. Such selections may be made from the nominations certified pursuant to § 989.45, or from any other eligible producers, handlers, dehydrators, or cooperative bargaining association officers or employees.

38. Section 989.47 is revised to read:

§ 989.47 Failure to nominate.

In the event nomination for a member or alternate member position on the Executive Operations Committee is not certified pursuant to and within the time specified in § 989.45, the Secretary may select an eligible person to fill such position without regard to nomination.

39. Section 989.48 is revised to read:

§ 989.48 Acceptance.

Each person selected by the Secretary as a member or as an alternate member of the Executive Operations Committee shall, prior to serving, qualify by filing with the Secretary a written acceptance within 10 calendar days after being notified of such selection.

40. Section 989.49 is revised to read:

§ 989.49 Alternate members.

An alternate for a member of the Executive Operations Committee shall act in the place and stead of such member (a) during his absence, and (b) in the event of his removal, resignation, disqualification, or death until a successor for such member's unexpired term has been selected and has qualified.

41. Section 989.50 is revised to read:

§ 989.50 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the Executive Operations Commitee to qualify, or in the event of the removal, resignation, disqualification, or death of any member or alternate member, a successor for such person's unexpired term shall be nominated and selected in the manner set forth in §§ 989.45 and 989.46, insofar as such provisions are applicable. If nomination to fill any such vacancy is not filed within 40 calendar days after such vacancy occurs, the Secretary may select an eligible person to fill such vacancy without regard to nomination.

42. Section 989.51 is revised to read:

§ 989.51 Powers.

The Executive Operations Committee shall have the power to receive, investigate, and report to the Secretary, complaints of violations of this part.

43. Section 989.52 is revised to read:

§ 989.52 Duties.

The Executive Operations Committee shall have the following duties: (a) To investigate compliance with and to use means available to it to prevent violation of the provisions of this part; and (b) to perform such other functions as assigned by the committee.

44. Section 989.54 is revised to read:

§ 989.54 Marketing policy.

(a) *Free tonnage.* On or before August 15 of each crop year, the committee shall review shipment data, inventory data, and other matters relating to the quantity of raisins of all varietal types. For any varietal type for which a free tonnage percentage may be recommended, the quantity of free tonnage shall be 90 percent of the prior crop year's free tonnage shipments for that varietal type, adjusted by the physical year-end carryin inventory. The desirable carryin inventory on August 1 for natural Thompson Seedless raisins shall be a minimum of 35,000 tons. This free tonnage quantity shall be made known by the committee in accordance with paragraph (f) of this section. In years following limited free tonnage shipments, the committee may use the highest shipments of any one of the prior three years as a base to determine the free tonnage.

(b) *Free and reserve percentages.* On or before October 5 of each crop year (except that this date may be extended by the committee not more than 5 days if warranted by a late crop) the committee shall submit to the Secretary an estimate of raisin production of any varietal type for which a free tonnage quantity has been computed by the committee. If the committee determines that a field price is firmly established on any varietal type of raisin for which a free tonnage has been computed, it shall recommend a preliminary free tonnage percentage to the Secretary which, when applied to the estimated production of that varietal type, would release 85 percent of the free tonnage for such varietal type. If the committee determines that a field price is not firmly established, it shall recommend a preliminary free tonnage percentage to the Secretary which would release 65 percent of the free tonnage for such varietal type. No later than February 15, the committee shall recommend to the Secretary a free tonnage percentage which will tend to release the full free tonnage for any varietal type. Prior to February 15, interim changes of percentages may be recommended by the committee to the Secretary to release less than the full free tonnage for any varietal type. The difference between any free tonnage percentage designated and 100 percent shall be the reserve tonnage percentage. In developing its free and reserve percentages for any varietal type, the committee shall consider and report to the Secretary on the following factors:

(1) The estimated tonnage held by producers, handlers, and for the account of the committee at the beginning of the crop year;

(2) The expected general quality and any modifications of the minimum grade standards;

(3) The estimated tonnage of standard and offgrade raisins which will be produced;

(4) If different than the free tonnage, the estimated trade demand for raisins in free tonnage outlets;

(5) An estimated desirable carryout at the end of the crop year for free tonnage and, if applicable, for reserve tonnage;

(6) The estimated market requirements for raisins outside free tonnage outlets, considering the estimated world raisin supply and demand situation;

(7) Current prices being received and the probable general level of prices to be received for raisins by producers and handlers;

(8) The trend and level of consumer income;

(9) Any prohibition of trade practices, pursuant to § 989.62, intended for the crop year; and

(10) Any other pertinent factors bearing on the marketing of raisins including the estimated supply of and demand for other varietal types and regulations applicable thereto.

(c) *Modification.* In the event the committee subsequently deems it advisable to modify its marketing policy on any crop, because of national emergency, crop failure or other major change in economic conditions, it shall hold a meeting for that purpose, and file a report thereof with the Secretary within 5 days (exclusive of Saturdays, Sundays, and holidays) after the holding of such meeting, which report shall show such modification, the basis therefor, as well as the recommendation of the committee.

(d) *Reserve tonnage to sell as free tonnage.* On or before November 15 of the crop year, the committee shall offer to handlers a quantity of reserve tonnage raisins. One offer shall consist of a quantity equal to 10 percent of the prior year's shipments of free tonnage to equate the current year's supply with the prior year's shipments. This offer shall be allocated to handlers on the basis of their prior year's acquisitions. At the same time, the second offer shall consist of a quantity equal to 10 percent of the prior year's shipments of free tonnage for market expansion. The offer shall be allocated to handlers on the basis of their prior year's shipment of free tonnage. Each offer shall be open to handlers not more than five business days, and subsequently, two reoffers of any tonnage unsold in the original offers open not more than two business days each, may be made. The reoffer tonnage shall be allocated to handlers who purchase 100 percent of their allocation in preceding offers and shall be on the basis of the quantity each handler purchased as a

percentage of the total allocation of all handlers eligible to participate. At the close of the second reoffer any remaining tonnage may be offered to handlers purchasing all of their previous allocations on a first-come, first-served basis and such offer shall be open to handlers for two business days. Any handler who had no shipments or acquisitions of raisins during the prior crop year would be allocated raisins under these offers on the basis of his acquisitions (up to the time the first offer is made) of raisins in the current crop year. If field prices are not established on or before November 15, the offers shall be made not more than 15 days following such establishment. The price of reserve tonnage raisins offered to handlers to sell as free tonnage under this section shall be the established field price for free tonnage raisins of the applicable varietal type, plus estimated costs to equity holders incurred by the committee, plus 3 percent of the established field price for free tonnage raisins of the applicable varietal type.

(e) *Verbatim record.* The committee shall file with its report to the Secretary a verbatim record of that portion of its meeting or meetings relating to its marketing policy.

(f) *Publicity.* The committee shall promptly give reasonable publicity to producers, dehydrators, handlers, and the cooperative bargaining association(s) of each meeting to consider a marketing policy or any modification thereof, and each such meeting shall be open to them. Similar publicity shall be given to producers, dehydrators, handlers, and the cooperative bargaining association(s) of each marketing policy report or modification thereof, filed with the Secretary and of the Secretary's action thereon. Copies of all marketing policy reports shall be maintained in the office of the committee, where they shall be made available for examination by any producer, dehydrator, handler, or cooperative bargaining association representative. The committee shall notify handlers, dehydrators, and cooperative bargaining association(s) of the Secretary's action on percentages by registered or certified mail.

§ 989.66 [Amended]

45. The word "desirable" appearing in the first sentence of § 989.66(g) is deleted.

46. Paragraph (a), the second sentence of paragraph (c), the first sentence of paragraph (d)(1), the first sentence of paragraph (f), and the first sentence of paragraph (j) of § 989.67 are amended to read:

§ 989.67 Disposal of reserve raisins.

(a) At the time the committee meets to consider free and reserve percentages for a crop year, the committee shall consider the marketing of reserve tonnage raisins for the subsequent 12-month period. The committee shall dispose of all reserve tonnage in such manner as to achieve, as nearly as may be practicable, maximum disposal of such raisins by the time reserve tonnage raisins from the subsequent crop year are available. Any reserve tonnage raisins held unsold by the committee on May 1 of the subsequent crop year shall be physically disposed of promptly in any available outlet not competitive with normal market channels for free tonnage raisins or sales of new crop reserve tonnage raisins in export: *Provided*, That, whenever the Secretary finds, based upon a recommendation of the committee, or on the basis of information otherwise available to him that because of national emergency, crop failure, an insufficient supply of reserve tonnage raisins for export, or other change of economic or marketing conditions, retention of reserve tonnage raisins carried over is warranted, the foregoing requirements as to disposal shall not apply and such raisins may be disposed of in any outlet recommended by the committee and approved by the Secretary.

* * * * *

(c) * * * The list of countries shall be reviewed by the committee annually when it reviews matters relating to the free tonnage, and shall recommend any changes in the list to the Secretary for approval. * * *

(d)(1) Reserve tonnage raisins shall be sold to handlers at prices and in a manner intended to maximize producer returns and achieve maximum disposition of such raisins by the time reserve tonnage raisins from the subsequent crop year are available. * * *

* * * * *

(f) Whenever the committee concludes that the orderly disposition of reserve tonnage would be promoted by the committee replacing any portion or all of handlers' export shipments of free tonnage raisins, to other than free tonnage outlets, made prior to the committee's first offer to sell reserve tonnage, it may do so and may specify such requirements and conditions as are necessary to carry out the replacement consistent with the objectives of this amended subpart. * * *

* * * * *

(j) The committee shall not sell reserve tonnage raisins of any varietal type to handlers to provide them with raisins to sell as free tonnage, other than as provided in § 989.54, unless it files with the Secretary complete information and receives from the Secretary notice that he does not disapprove of such sale and that because of: National emergency, crop failure; change of economic or marketing conditions; free tonnage shipments during the then current crop year exceeding shipments of a comparable period of the prior crop year by more than 5 percent: *Provided*, That, such sale of reserve tonnage shall be limited to the quantity exceeding 105 percent of shipments for the first 10 months of the prior crop year; and/or an inadequate carryover, the free tonnage outlets cannot be reasonably well supplied by the tonnage released to the industry as a whole by the committee's marketing policy for that varietal type. * * *

47. The first sentence of § 989.79 is amended to read:

§ 989.79 Expenses.

The committee is authorized to incur such expenses (other than those specified in § 989.82) as the Secretary finds are reasonable and likely to be incurred by it during each crop year, for the maintenance and functioning of the committee and for such purposes as he may, pursuant to this subpart, determine to be appropriate. * * *

48. Section 989.85 is revised to read:

§ 989.85 Personal liability.

No member or alternate member of the committee or any employee or agent thereof and no member or alternate member of the Executive Operations Committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or any person, for errors in judgment, mistakes, or other acts either of commission or omission, as such member, alternate member, employee, or agent, except for acts of dishonesty.

§ 989.91 [Amended]

49. The date contained in the proviso in § 989.91(c) is changed from "August 31" to "July 31".

50. Section 989.95 is amended to read:

§ 989.95 Right of Secretary.

The members of the committee and the Executive Operations Committee (including alternates and successors) and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary, in his discretion, at any time. Every decision, determination, or other act of the committee or of the Executive Operations Committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee or the Executive Operations Committee shall be deemed null and void.

§ 989.96 [Amended]

51. Section 989.96 Exhibit A is amended as follows:

(a) The heading is amended to read "§ 989.96 Producer members of the Raisin Administrative Committee".

(b) The reference to § 989.26b in paragraph (h) is changed to read "§ 989.26a".

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

Effective date: August 4, 1976.

Signed at Washington, D.C., on: July 29, 1976.

JOHN M. DAMGARD,
Deputy Assistant Secretary.

[FR Doc.76–22475 Filed 8–2–76;8:45 am]

CHAPTER X—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS: MILK) DEPARTMENT OF AGRICULTURE

[Milk Order No. 1012]

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

Order Suspending Certain Provisions

This order of suspension is issued pursuant to the provisions of the Agricul-

tural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Tampa Bay Marketing Area.

It is hereby found and determined that for the months of July and August 1976 the following provisions of the order do not tend to effectuate the declared policy of the Act:

Paragraphs (2) and (3) of § 1012.13(b).

STATEMENT OF CONSIDERATION

This action suspends for July and August 1976, provisions limiting diversions of milk to nonpool plants to not more than 25 percent of member and nonmember milk, respectively, that is physically received at pool plants during the month. Diversions in excess of that quantity are not producer milk.

The suspension was requested by Suncoast Milk Producers Cooperative in order to maintain pool status for milk of its member producers in July and August.

The cooperative unexpectedly lost a substantial part of its business with one pool handler. Since other fluid outlets are not immediately available, the cooperative now must move to nonpool outlets for surplus disposition the milk formerly moved to this handler. As a result, during July the cooperative's movements of milk from members' farms directly to nonpool manufacturing outlets will exceed 25 percent of its member producer milk physically received at pool plants during the month. It is expected that this situation will continue in August. However, the association expects that seasonally declining production along with seasonally increasing Class I sales will remedy the situation after September 1.

Absent the suspension, the cooperative's diversions of milk in excess of the 25 percent limit would lose pool status. This would result in substantially reduced returns to certain of the cooperative's member producers regularly associated with the fluid market, thus disrupting the orderly marketing of milk in the Tampa Bay market.

No such problem is indicated with respect to milk of nonmember producers. Nevertheless, should the need arise the suspension action also will allow greater diversions of nonmember milk.

Statements supporting the requested suspension were received from other cooperatives representing the vast majority of producers regularly supplying the market.

Accordingly, it is hereby found and determined that notice of proposed rulemaking, public procedure thereon, and thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area in that substantial quantities of milk of producers who regularly supply the fluid market otherwise would be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk; and

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date.

Therefore, good cause exists for making this order effective August 3, 1976.

It is therefore ordered, That the aforesaid provisions of the order are hereby suspended for the months of July and August 1976.

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

Effective date: August 3, 1976.

Signed at Washington, D.C., on July 29, 1976.

JOHN DAMGARD,
Deputy Assistant Secretary.

[FR Doc.76-22473 Filed 8-2-76;8:45 am]

[Milk Order No. 124]

PART 1124—MILK IN THE OREGON-WASHINGTON MARKETING AREA

Order Suspending Certain Provisions

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Oregon-Washington marketing area.

It is hereby found and determined that for the month of August 1976 the following provisions of the order do not tend to effectuate the declared policy of the Act and are therefore suspended:

1. In § 1124.11(a), "and from whom at least three deliveries are received at a pool plant during the month", and

2. In § 1124.11(b), "and from whom at least three deliveries are received during the month at his pool plant(s)".

STATEMENT OF CONSIDERATION

This action suspends for August 1976 the requirement that three deliveries of a producer's milk be received at a pool plant during the month to qualify his milk (as producer milk) for diversion to a nonpool plant. This action continues for an additional month an earlier suspension of identical provisions for the months of April through July 1976 (41 FR 15398).

The basis of this action and the earlier action cited above is the record of a public hearing held March 10–11, 1976, for the Oregon-Washington order market (Docket No. AO–368–A9, Hearing Notice 41 FR 8189). At this hearing, eligibility requirements for diversion were fully reviewed.

A decision issued by the Deputy Administrator, Program Operations, on July 1, 1976 (41 FR 27844), based upon record evidence, recommended that the eligibility requirements for diversion be limited to only a single delivery of a producer's milk each month of September, October, and November. If delivery is made in all three such months, no further diversion eligibility requirements need be met through August. The diversion terms proposed by the Department under such circumstances, if adopted, would not require any pool plant delivery of a producer in August solely for the purpose of qualifying his milk for diversion that month.

Cooperative handlers in the market have found it difficult at times to qualify all their members for producer status under the order because of the 3-delivery diversion requirement. As a result, unnecessary hauling costs are incurred in connection with meeting the 3-delivery requirement, particularly during the months of heavy milk production when a greater quantity of market reserves must be moved for manufacture. This period of heavy production extends into the month of August and warrants the same interim action, pending the outcome of the amendatory proceeding, as was effectuated for the months of April–July 1976 by the earlier suspension.

This suspension action is the only means available to the Department for reasonably ensuring that the diversion provisions, now at issue in the aforementioned proceeding, may not be a contributing factor to market disorder in August this year.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area since, under the circumstances described herein, the most efficient method of handling the market's reserve milk supply is by diversion direct from producers' farms to milk manufacturing plants. This suspension will permit greater flexibility in the movement of market reserves to manufacturing plants pending the outcome of a public hearing held March 10–11, 1976, at which a proposal to reduce the number of pool plant deliveries required to qualify for diversion was reviewed for this order. Producers requested this suspension at the public hearing. Interim action is necessary pending amendatory procedures. A decision issued by the Deputy Administrator, Program Operations, on July 1, 1976 (41 FR 27844), based upon record evidence, recommended that the eligibility requirements for diversion be limited to only a single delivery of a producer's milk each month of September, October, and November.

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date, therefore, good cause exists for making this order effective with respect to producer milk deliveries during August 1976.

It is therefore ordered, That the aforesaid provisions of the order are hereby suspended for the month of August, 1976.

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

Effective date: August 3, 1976.

Signed at Washington, D.C., on July 29, 1976.

JOHN DAMGARD,
Deputy Assistant Secretary.

[FR Doc.76-22474 Filed 8-2-76;8:45 am]

Title 8—Aliens and Nationality

CHAPTER I—IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

[File No. CO 845–P]

PART 100—STATEMENT OF ORGANIZATION

Closing of Port of Entry at Coral Bay, St. John, Virgin Islands

Reference is made to the notice of proposed rule making which was published in the FEDERAL REGISTER of June 11, 1976 (41 FR 23718) pursuant to section 553 of Title 5 of the United States Code (80 Stat. 383) and in which there was set forth the proposed amendment to § 100.4(c)(2) of Title 8 of the Code of Federal Regulations pertaining to the proposal to close the port of entry at Coral Bay, St. John, Virgin Islands.

No representations were received concerning the proposed rule of June 11, 1976. No change has been made in the proposed rule and it is hereby adopted as set forth below.

As amended, § 100.4(c)(2) reads in pertinent part as follows:

§ 100.4 Field Service.

* * * * *

(c) *Suboffices.** * *

(2) *Ports of entry for aliens arriving by vessel or by land transportation.** * *

DISTRICT NO. 27—SAN JUAN, P.R.

CLASS A

Aguadilla, P.R.
Ensenada, P.R.
Fajardo, P.R.
Humacao, P.R.
Jobos, P.R.
Mayaguez, P.R.
*Ponce, P.R.
San Juan, P.R.
*Christiansted, St. Croix, V.I.
Frederiksted, St. Croix, V.I.
*Cruz Bay, St. John, V.I.
*Charlotte Amalie, St. Thomas, V.I.

* * * * *

(Sec. 103, 66 Stat. 173 (8 U.S.C. 1103))

The basis and purpose of the regulation prescribed herein is to close the port of entry at Coral Bay, St. John, Virgin Islands because only three or four inspections are performed there each month, mostly of United States citizens returning from adjacent British islands. These inspections can readily be performed without inconvenience to the public at the port of entry located at Cruz Bay, St. John, Virgin Islands.

Effective date: The amendment to the regulation contained in this order shall become effective September 2, 1976.

Dated: July 28, 1976.

L. F. CHAPMAN, Jr.,
Commissioner of Immigration and Naturalization.

[FR Doc.76–22380 Filed 8–2–76;8:45 am]

Title 12—Banks and Banking

CHAPTER V—FEDERAL HOME LOAN BANK BOARD

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

[No. 76–520]

PART 561—DEFINITIONS

Scheduled Items

JULY 28, 1976.

The Federal Home Loan Bank Board considers it desirable to amend Part 561 of the rules and regulations for Insurance of Accounts (12 CFR Part 561) by revising §561.15 thereof as described below.

Prior to this amendment, paragraph (g) of § 561.15, which defines "scheduled items", appeared by implication to require that a security acquired in exchange for a scheduled item be classified as a scheduled item, and the provision was so interpreted as to securities not qualifying as "liquid assets" under § 523.10(g) of this chapter. The purpose of this amendment is to implement the Board's determination that such a requirement is unnecessarily stringent and that securities so exchanged should not be categorized as scheduled items if they (1) qualify as liquid assets under § 523.10 (g) of this chapter or (2) have a market value at least equal to their par value.

The Board also takes this opportunity to make technical amendments to paragraphs (d)(1)(i) and (d)(2)(i) of § 561.15 by changing the references therein to "paragraph (i)" to read "paragraph (1)", to conform to the redesignation of § 561.15(i) as § 561.15(1).

The Board finds that notice and public procedure are unnecessary under 12 CFR 508.11 and 5 U.S.C. 553(b), since the amendments relieve restriction or clarify and conform existing regulations, and that publication of said amendments for the 30-day period specified in 12 CFR 508.14 and 5 U.S.C. 553(a) prior to effective date is unnecessary for the same reason.

Accordingly, the Board hereby amends § 561.15 by amending paragraphs (d)(1)(i), (d)(2)(i), and by revising paragraph (g) thereof, as set forth below, effective August 6, 1976.

§ 561.15 [Amended]

1. Paragraphs (d)(1)(i) and (d)(2)(i) of § 561.15 are amended by changing the references therein to "paragraph (i)" to read "paragraph (1);" and 2. Section 561.15(g) is revised to read as follows:

* * * * *

(g) Real estate acquired in exchange for any of the scheduled items described above or securities so acquired unless (1) the market value of such securities when they are acquired at least equals their par value or (2) such securities qualify as liquid assets under § 523.10(g) of this chapter.

* * * * *

(Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended; (12 U.S.C. 1725, 1726, 1730). Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. FINN,
Secretary.

[FR Doc.76–22487 Filed 8–2–76;8:45 am]

[No. 76–521]

PART 563—OPERATIONS

Loans to One Borrower

JULY 28, 1976.

The following summary of the amendment adopted by this Resolution is provided for the reader's convenience and is subject to the full explanation in the following preamble and to the specific provisions of the regulation.

I. *Previous Regulation.* Limited the amount that an insured institution could loan on the security of real estate to one borrower.

II. *Proposed Amendment.* Would have extended the limitation to include all types of loans by an insured institution.

III. *Final Amendment.* Same as proposed except the limitation is not extended to include loans by an insured institution on the security of its savings accounts.

The Federal Home Loan Bank Board, by Resolution No. 76–347, dated May 14, 1976, proposed to amend § 563.9–3 of the Rules and Regulations for Insurance of Accounts (12 CFR 563.9–3) for the purpose of extending the limitation on the amount an insured institution may loan on the security of real estate to one borrower to include all types of loans. Notice of such proposed rulemaking was published in the FEDERAL REGISTER on May 21, 1976 (41 FR 20895–20896), with an invitation to interested persons to submit written comments by June 21, 1976.

On the basis of its consideration of all relevant material presented by interested persons and otherwise available to it, the Board deems it advisable to adopt the amendment as proposed, with one modification: the limitation is not extended to include loans on the security of an insured institution's savings accounts. This change reflects the Board's view that the unique character of such loans makes it unnecessary to apply the § 563.9–3 limitation to them.

Accordingly, the Board hereby amends § 563.9–3 to read as set forth below, effective September 6, 1976.

§ 563.9–3 Loans to one borrower.

(a) *Definition of terms.* For the purposes of this section the term "one bor-

rower" means (1) any person or entity that is, or that upon the making of a loan will become, obligor on a loan, (2) nominees of such obligor, (3) all persons, trusts, partnerships, syndicates, and corporations of which such obligor is a nominee or a beneficiary, partner, member, or record or beneficial stockholder owning 10 percent or more of the capital stock, and (4) if such obligor is a trust, partnership, syndicate, or corporation, all trusts, partnerships, syndicates, and corporations of which any beneficiary, partner, member, or record or beneficial stockholder owning 10 percent or more of the capital stock, is also a beneficiary, partner, member, or record or beneficial stockholder owning 10 percent or more of the capital stock of such obligor; and the term "total balances of all outstanding loans" means the original amounts loaned by an insured institution plus any additional advances and interest due and unpaid, less repayments and participating interests sold and exclusive of any loan on the security of such institution's savings accounts or real estate the title to which has been conveyed to a bona fide purchaser of such real estate.

(b) *Limitations.* No insured institution shall have outstanding any loan to one borrower, as defined in paragraph (a) of this section, if the sum of (1) the amount of such loan and (2) the total balances of all outstanding loans owed to such institution and its service corporation affiliates by such borrower exceeds an amount equal to 10 percent of such institution's withdrawable accounts or an amount equal to such institution's net worth, whichever amount is less: *Provided,* That, notwithstanding any other limitation of this sentence, any such loan may be made if the sum of subparagraphs (1) and (2) of this paragraph does not exceed $100,000 or if such loan is secured by a first lien on low-rent housing.

(c) *Determination by institution; maintenance of records.* If an insured institution or service corporation affiliate thereof makes a loan to any one borrower, as defined in paragraph (a) of this section, in an amount which, when added to the total balances of all outstanding loans owed to such institution and its service corporation affiliates by such borrower, exceeds $250,000 or 2 percent of the net worth of such institution, whichever is greater, but in all cases where such outstanding loans exceed $1,000,000, the records of such institution or its service corporation affiliate with respect to such loan shall include documentation showing that such loan was made within the limitations of paragraph (b) of this section; for the purpose of such documentation such institution or service corporation affiliate may require, and may accept in good faith, a certification by the borrower identifying the persons, entities, and interests described in the definition of one borrower in paragraph (a) of this section.

(Sec. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended; (12 U.S.C. 1725, 1726, 1730). Reorg Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. FINN,
Secretary.

[FR Doc.76-22488 Filed 8-2-76;8:45 am]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket C-2826]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Benton & Bowles, Inc.

Subpart—Advertising falsely or misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.135 Nature of product or service; § 13.170 Qualities or properties of product or service; 13.170–63 Non-toxic; 13.170–64 Nutritive; § 13.195 Safety; 13.195–60 Product; § 13.205 Scientific or other relevant facts. Subpart—Misrepresenting oneself and goods—Goods: § 13.1685 Nature; § 13.710 Qualities or properties; § 13.1740 Scientific or other relevant facts. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1870 Nature. Subpart—Using deceptive techniques in advertising: § 13.2275 Using deceptive techniques in advertising; 13.2275–70 Television depictions.

(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, 52)

In the Matter of Benton & Bowles, Inc., a corporation.

Consent order requiring a New York City advertising agency for General Foods Corporation, among other things to cease misrepresenting that a plant, or any part thereof, is suitable for human consumption in its raw state, where the plant is depicted growing in its natural, uncultivated environment. Further, respondent is prohibited from representing, through depictions, descriptions, etc., anything commonly recognized as food or lawful food additive which tends to influence behavior creating imminent risk or physical harm to viewers.

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

ORDER

For the purposes of this order, the following definitions apply:

1. The term "commerce" means commerce as defined by the Federal Trade Commission Act, as amended.

2. The term "plant" means any whole plant or any constituent part thereof.

3. The term "suitable for human consumption" shall not apply to the sole depicting or sole act of picking a plant or any constituent part thereof in its raw state.

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

I

It is ordered, That respondent Benton & Bowles, Inc., a corporation (hereinafter referred to as respondent), its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution in or affecting commerce of any product, forthwith cease and desist from, directly or indirectly:

A. Representing, through depictions, descriptions, or otherwise, that a plant is suitable for human consumption in its raw state in an advertisement containing a visual depiction of (1) the plant in its growing state or natural surroundings which depiction is not a clear portrayal of conditions of domestic cultivation for human consumption or (2) the consumption of a raw plant, described in the advertisement as wild.

B. Representing, through depictions, descriptions, or otherwise, that a plant is suitable for human consumption in its raw state in an advertisement containing a visual depiction of the plant in its growing state or natural surroundings where said plant is not the advertised product or an ingredient, or characterizing flavor, or source thereof, in the advertised product.

C. Representing, through depictions, descriptions, or otherwise, that any given thing or things, other than things that are commonly recognized as foods or lawful food additives, are suitable for human consumption as a food where it is reasonably foreseeable, through reasonable inquiry, that such representation has the tendency and capacity to influence members of the audience in reasonably good health to engage in behavior which creates an imminent risk of physical harm to those persons or to others.

D. Provided, however, that paragraph B shall not prohibit the representation, through depictions, descriptions, or otherwise, that a plant is suitable for human consumption in its raw state where the provisions of paragraphs A and C are met, and said plant:

(1) Is nontoxic in its raw state; and

(2) Does not have the tendency and capacity to be confused with a plant, which if consumed in its raw state, is toxic.

II

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

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

It is further ordered, That respondent shall, within sixty (60) days after service upon it of this Order, file with the Com-

mission a report in writing setting forth in detail the manner and form in which it has complied with this Order.

The Decision and Order was issued by the Commission July 6, 1976.

JOHN D. MACOLL,
Acting Secretary.

[FR Doc.76-22384 Filed 8-2-76;8:45 am]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 76-215]

PART 153—ANTIDUMPING

Tuners (of the Type Used in Consumer Electronic Products) From Japan

On May 24, 1976, there was published in the FEDERAL REGISTER (41 FR 21207) a "Notice of Tentative Determination to Modify or Revoke Dumping Finding" with respect to tuners (of the type used in consumer electronic products) from Japan produced and sold for export to the United States by Sanyo Electric Co., Ltd., and Sanyo Electric Trading Co., Ltd.

Reasons for the tentative determination were published in the above-mentioned notice, and interested persons were afforded an opportunity to make written submissions or request the opportunity to present oral views in connection therewith.

No written submissions or requests to present oral views having been received, I hereby determine that for the reasons stated in the above-mentioned notice, tuners (of the type used in consumer electronic products) from Japan are no longer being, nor are likely to be, sold in the United States at less than fair value by Sanyo Electric Co., Ltd., and Sanyo Electric Trading Co., Ltd., and the above mentioned finding of dumping is hereby modified to exclude tuners (of the type used in consumer electronic products) from Japan produced and sold by Sanyo Electric Co., Ltd., and Sanyo Electric Trading Co., Ltd.

Accordingly, § 153.46 of the Customs Regulations (19 CFR 153.46) is hereby amended to show the exclusion from the finding of dumping of tuners (of the type used in consumer electronic products) from Japan produced and sold by Sanyo Electric Co., Ltd., and Sanyo Electric Trading Co., Ltd.

Finding of dumping

Merchandise	Country	T.D.	Modified by—
Tuners (of the type used in consumer electronic products), except: (I) Those produced and sold by Matsushita Electric Industrial Co., Ltd., and Matsushita Electric Trading Co., Ltd.; (II) those sold by Victor Co. of Japan Ltd.; (III) those sold by Tokyo Shibaura Electric Co., Ltd.; and (IV) those produced and sold by Sanyo Electric Co., Ltd., and Sanyo Electric Trading Co., Ltd.	Japan	70-257	75-80, 76-143, 76-215

This determination is published pursuant to § 153.44(d), Customs Regulations (19 CFR 153.44(d)).

(Secs. 201, 407, 42 Stat. 11, as amended, 18 (19 U.S.C. 160, 173))

DONALD R. MCDONALD,
Assistant Secretary of the Treasury.

July 29, 1976.

[FR Doc.76-22430 Filed 8-2-76;8:45 am]

Title 25—Indians

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

SUBCHAPTER F—ENROLLMENT

PART 43h—ENROLLMENT OF ALASKA NATIVES

Applications, Preparation and Approval of Roll

The authority to issue regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9).

Beginning on page 22566 of the FEDERAL REGISTER of June 4, 1976 (41 FR 22566), there was published a notice of proposed rulemaking to amend Part 43h, Subchapter F, Chapter I of Title 25 of the Code of Federal Regulations. The amendment was proposed pursuant to the authority contained in Section 25 of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688, Pub. L. 92-203, as amended and supplemented by the Act of January 2, 1976, 89 Stat. 1145, Pub. L. 94-204. The purpose of amending the regulations governing the preparation of the roll of Alaska Natives was to permit the filing and review of applications for enrollment pursuant to the Act of January 2, 1976, supra.

Other revisions and amendments were proposed to include in the regulations necessary revisions and amendments to make the regulations conform with the provisions of the Act of January 2, 1976, supra.

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

Suggested changes were submitted by The 13th Regional Corporation on July 7, 1976. Although not timely received the comments and suggestions were carefully considered. The three suggested modifications, if adopted, would provide for the enrollment of eligible nonresident Natives in the 13th region unless the applicant affirmatively elected to be enrolled in another region. The 13th Regional Corporation argues that, based on the court order establishing the 13th region, it is appropriate to assume an eligible nonresident Native who fails to indicate his or her preference for being enrolled in one of the 12 regions in Alaska or the 13th region prefers to be enrolled in the 13th region.

In its order establishing the 13th region the Court addressed itself primarily to the manner in which the Interior Department counted the votes for enrollment in or out of the 13th region in determining whether the 13th region would be established; i.e., counting the abstaining enrollees in the total number of voters to determine a majority of votes. By excluding the number of abstaining enrollees in computing the total number of voters, a majority of actual votes cast were in favor of establishing the 13th region. The Court did not order that the abstaining enrollees be counted as votes in favor of the 13th region. Had it been the Court's intent to assume the presumption offered by The 13th Regional Corporation we believe it would not have provided for a final election for nonresident enrollees to indicate their preference for enrollment in or out of the 13th region.

Section 5 of the 1971 Act specifies as an exception to the priorities for determining in which of the 12 regions in Alaska a nonresident Native is to be enrolled, that such an enrollee may elect to be enrolled in the 13th region. We interpret this provision as requiring affirmative action by the enrollee to elect enrollment in the 13th region.

In the original enrollment nonresident enrollees were not specifically advised that if they failed to indicate their preference they would be enrolled in the appropriate region in Alaska. But such was the actual result, implicitly approved by the Court, of their abstention from voting. This information is now contained in the amendment to the regulations and in the instructions which will be provided with each application.

We believe The 13th Regional Corporation's suggested modifications would not reflect the intent of the Congress or the Court, and therefore, they have not been adopted.

The only changes made in the text of the regulations are corrections of printing errors. Accordingly, with those corrections, the proposed amendment is hereby adopted and is set forth below.

Since the January 2, 1976 Act set a statutory deadline for applying for enrollment and the filing period is now running, the 30-day deferred effective date would further reduce the filing period. Therefore, the 30-day deferred effective date is dispensed with under the exception provided in subsection (d)(3) of 5 U.S.C. 553 (1970). Accordingly, these regulations will become effective on August 3, 1976.

THOMAS S. KLEPPE,
Secretary of the Interior.

JULY 30, 1976.

Part 43h of Subchapter F, Chapter I, Title 25 of the Code of Federal Regulations is amended as follows:

1. By revising paragraphs (a) and (j) of § 43h.1 and adding a new paragraph (o) to § 43h.1 to read as follows:

§ 43h.1 Definitions.

(a) "Act" means the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688, Public Law 92-203, as amended and supplemented by the Act of

January 2, 1976, 89 Stat. 1145, Public Law 94–204.

* * * * *

(j) "Region" means the geographic area covered by the operation of one of the 12 Native associations recognized in Section 7(a) of the Act, or its successor regional corporation, and includes the 13th region.

* * * * *

(o) "Adopted person" means a person whose natural parents' parental rights have been terminated by court order and given to others to exercise.

2. By revising paragraphs (a) and (b) of § 43h.4 to read as follows:

§ 43h.4 Enrollment in regions.

(a) Permanent residents of Alaska: A Native permanently residing in Alaska on April 1, 1970, shall be enrolled in the region and village or other place in which he or she was a permanent resident on that date.

(b) Nonresidents of Alaska: A Native who is 18 years of age or older at the time of filing his or her application for enrollment and who, on April 1, 1970, was not a permanent resident of one of the regions in Alaska shall be enrolled according to the following order of priority:

(1) In the 13th region, if he or she so elects, or

(2) In the region where he or she resided on April 1, 1970, if he or she had resided there without substantial interruption for 2 or more years, or

(3) In the region where he or she previously resided for an aggregate of 10 years or more, or

(4) In the region where he or she was born, or

(5) In the region from which an ancestor came.

* * * * *

3. By revising § 43h.5 to read as follows:

§ 43h.5 Enrollment in the 13th region.

A Native eligible for enrollment who is 18 years of age or older and who, on April 1, 1970, was not a permanent resident of Alaska shall on the date he or she files an application for enrollment, elect whether to be enrolled in the 13th region or in the region determined pursuant to § 43h.4(b). Such election shall apply to all dependent members of his or her household who are less than 18 years of age on the date of such election, but shall not affect the enrollment of anyone else. Eligible Natives, entitled to make such an election but who abstain from indicating their preference when they file their applications, shall be enrolled in the appropriate region in Alaska pursuant to paragraphs (2) through (5) of § 43h.4(b).

4. By revising § 43h.6 and adding a new paragraph (h) to read as follows:

§ 43h.6 Applications for enrollment.

(a) All applications for enrollment shall be in writing on forms provided by the Bureau of Indian Affairs and shall be signed by or for the head of each household, spouse, and/or the dependent members of his or her household under 18 years of age. A separate application shall be completed and signed by or for other members of a household 18 years of age or older.

(b) Applications for adopted children or other minors not living with their parents, mentally incompetent persons, members of the Armed Services and/or any eligible members of their immediate families stationed outside the Continental United States, or persons who have died since December 18, 1971, may be filed by a sponsor on or before the deadline specified in this section. Applications for adopted children should be supported by copies of decrees of adoption, if available. Applications for deceased persons should be supported by copy of death certificate or other document which establishes the date of death.

(c) The application shall contain, among other information, the applicant's Social Security number, name, address, sex, date and place of birth, degree of Alaska Native Blood, permanent residence as of April 1, 1970, the village from which his or her ancestors came, and for a nonresident of Alaska, his or her election regarding enrollment in the 13th region. Social Security numbers and cards will be issued by the Social Security Administration to those persons who do not have them.

(d) Completed applications must be submitted to the Enrollment Coordinating Office (Kaloa Building, 16th & "C" Streets), Pouch 7–1971, Anchorage, Alaska 99510, within one year from January 2, 1976.

(e) Residents of Alaska: An enumerator shall be assigned temporarily to each of the 12 Regional Corporations in Alaska to assist in the completion and submission of applications. Upon the request of a Village Corporation, provided there are five or more applications to be filed, an enumerator shall be sent to the village to assist in the completion and submission of applications. They shall also visit centers in urban areas to furnish assistance in completion and submission of applications. Persons who are missed by the enumerators may apply to the Enrollment Coordinating Office by mail or in person.

(f) Nonresident of Alaska: (1) Enumerators shall be assigned or detailed temporarily to the following places to assist in completion and submission of applications by persons residing outside the State of Alaska:

(i) One enumerator to The 13th Regional Corporation;

(ii) One enumerator to the Bureau of Indian Affairs Seattle Liaison Office;

(iii) Enumerators in various urban localities where there is a heavy concentration of Natives.

(2) Persons who are missed by an enumerator or who reside in an area not served by an enumerator may apply to the Enrollment Coordinating Office by mail or in person.

(g) Notice to regional and village corporations: Each regional corporation shall be notified of the name, date, and place of birth, and claimed residence of every applicant for enrollment, including dependents, within the region. Each village corporation shall be notified of the name, date, and place of birth, and claimed residence of every applicant for enrollment, including dependents, within the village. The provisions of this section shall not be applied to the application of an adopted person.

(h) Use of address of record: All notices of action shall be sent to the most current name and address of record in an applicant's file. It is the responsibility of the applicant to advise the Enrollment Coordinating Office of any change of name or address.

5. By revising § 43h.7 to read as follows:

§ 43h.7 Determination of eligibility.

(a) Determination of eligibility shall be made by decision of the Coordinator on the basis of information set forth in the application, records of the Bureau of Indian Affairs, village and tribal rolls and such other evidence as is available, including the submissions, if any, of the regional or village corporations.

(b) Each applicant shall be notified in writing of the decision. If such decision is favorable, the name of the applicant shall be placed on the roll. If the decision is adverse as to enrollment or as to the region or village in which enrolled, the applicant or sponsor shall be notified by certified mail, return receipt requested, of the decision together with the reasons for the decision and of his or her right of appeal.

(c) Each regional corporation shall be notified by certified mail, return receipt requested, of the Coordinator's decisions with respect to persons enrolled or denied enrollment with that region. Each village corporation shall be notified by certified mail, return receipt requested, of the Coordinator's decisions with respect to persons enrolled or denied enrollment in that village. Except with respect to adopted persons, the regional and village corporations shall be further notified of their rights to appeal such decisions and the reasons for acceptance or rejection of the enrollment application.

* * * * *

6. By revising § 43h.8 to read as follows:

§ 43h.8 Appeals.

(a) Appeals by individuals from adverse decisions must be in writing and filed with the Enrollment Coordinating Office not later than 30 days after the date of receipt by certified or registered mail, return receipt requested, of the notice of the adverse decision or not later than 37 days after the date of mailing of such notice where certified or registered mail service to the individual is not available or where any notice is returned to the Coordinator in accordance with postal regulations. Appeals by regional and village corporations from the Coordinator's decisions must be in writing and filed with the Enrollment Coordinating Office not later than 30 days after receipt of the notice sent by certified or

registered mail, return receipt requested, or not later than 37 days after the date of mailing of such notice where certified or registered mail service is not available or where any notice is returned to the Coordinator in accordance with postal regulations. A decision of the Coordinator on the application of an adopted person, as defined in § 43h.1(o), will not be subject to appeals by regional or village corporations, leaving such decisions subject to appeal only by the adopted person or his or her guardian or sponsor, if such adopted person is a minor.

(b) Each appeal from a decision on an application for enrollment shall be by petition, which shall state the bases and reasons for the appeal, and which shall include or be accompanied by all arguments, briefs, records, or other evidence which the appellant urges as grounds for reversal. No additional presentation will be allowed except upon a showing satisfactory to the Regional Solicitor.

(c) A copy of each appeal petition and its supporting documents filed by an applicant shall be served by the Coordinator upon the regional and/or village corporation whose region or village names appear on the decision appealed from. A copy of each appeal petition and its supporting documents filed by a regional corporation shall be served by the Coordinator upon the applicant for enrollment and upon the village corporation whose village name appears on the decision appealed from. A copy of each appeal petition and the supporting documents filed by a village corporation shall be served by the Coordinator upon the applicant for enrollment and upon the regional corporation for the region whose name appears on the decision appealed from.

(d) Service as provided for in paragraph (c) of this section shall be made by the Coordinator at the time an appeal is filed with the Enrollment Coordinating Office by delivering a copy of the appeal petition and supporting documents either in person or by certified or registered mail, return receipt requested. If certified or registered mail service to an addressee is not available, service may be made on that addressee by sending to that addressee a copy of the appeal petition and supporting documents by first class mail which is neither certified nor registered. Service will be considered to have been made at the time: (1) Of acknowledgment; (2) of personal service; (3) of delivery by certified or registered mail, return receipt requested; (4) seven (7) days after the date of mailing by first class mail which is neither certified nor registered; or (5) seven (7) days after the date of mailing by certified or registered mail, return receipt requested, which is returned by the Postal Service undelivered. Within 15 days of filing the appeal petition with the Enrollment Coordinating Office, proof of service must be furnished to the Regional Solicitor by the Coordinator. This proof may be made by informing the Regional Solicitor in writing of the names of the parties served; whether service was made personally or by certified, registered, or first class mail which was neither certified nor registered; and the address, if mailed, to which copies of the appeal petition and supporting documents were sent.

(e) A party served with a copy of an appeal petition and supporting documents shall have 20 days from the date of service in which to file written views on the appeal with the Regional Solicitor.

(f) Upon receipt of an appeal petition, the Coordinator will forward the petition, with all records pertaining thereto, to the Regional Solicitor. Determination on appeals will be made by the Regional Solicitor on behalf of the Secretary and shall be final. The applicant and the appropriate village and regional corporation shall be notified in writing of the determination of the Regional Solicitor.

7. By revising § 43h.9 to read as follows:

§ 43h.9 Preparation, certification, approval and amendment of the roll.

(a) The Alaska Native Roll shall be prepared by the Enrollment Coordinating Office, and shall contain for each enrollee his or her name, Social Security number, last known address, sex, date of birth, degree of Alaska Native blood or other basis for determining eligibility, permanent residence as of April 1, 1970, and the village and/or region in which he or she is enrolled.

(b) The roll approved December 17, 1973, subject to appeals and the legal determinations shall be maintained by the Enrollment Coordinating Office, and shall be amended from time to time as necessary to correct errors to show changes in names, addresses, place of enrollment, or other information entitled to recognition, to reflect determinations of eligibility and ineligibility, and for such other purposes as may be required.

8. By revising § 43h.10 to read as follows:

§ 43h.10 Establishment of a 13th Region.

(a) Effective October 1, 1975, by Secretarial Order No. 2980, there was established a 13th region for the benefit of Alaska Natives who are not permanent residents of Alaska and who elected to be enrolled therein. Order No. 2980 was issued pursuant to an order entered on December 30, 1974, in the consolidated cases entitled *Alaska Native Association of Oregon, et al.*, v. *Morton, et al.*, and *Alaska Federation of Natives International, et al.*, v. *Morton, et al.*, Civil Nos. 2133–73 and 2141–73, in the United States District Court for the District of Columbia, and as provided by Section 7(c) of the Act.

(b) Nonresidents of Alaska who are eligible for enrollment pursuant to applications submitted under authority of Section 1 of the Act of January 2, 1976, 89 Stat. 1145, Pub. L. 94–204, may be enrolled in the 13th region or in the appropriate region in Alaska as provided in § 43h.4.

9. By revising § 43h.11 to read as follows:

§ 43h.11 Metlakatla Community members.

No person who was enrolled in the Metlakatla Indian Community of the Annette Islands Reserve as of April 1, 1970, shall be eligible for enrollment under this Part.

§ 43h.13 [Reserved]

10. By revoking and reserving § 43h.13.

11. By revising § 43h.14 to read as follows:

§ 43h.14 Deadlines for amending enrollment applications.

Amendments to enrollment applications or amended applications filed pursuant to the Act of January 2, 1976, will not be considered originally or on appeal unless filed (received by the Enrollment Coordinating Office) on or before April 2, 1977. All such amendments or amended applications received subsequent to April 2, 1977, will be returned to the applicant without action.

[FR Doc.76–22582 Filed 8–2–76;8:45 am]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

[Order No. 659–76]

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

Subpart E—Exemption of Record Systems Under the Privacy Act

ADOPTION OF REGULATIONS EXEMPTING A CRIMINAL DIVISION SYSTEM OF RECORDS

On June 9, 1976, the Department of Justice published in the FEDERAL REGISTER (41 FR 23206) a proposed regulation amending subpart E to 28 CFR Part 16 exempting a system of records maintained by the Criminal Division of the Department of Justice from provisions of the Privacy Act of 1974 (5 U.S.C. 552a). Interested persons were invited to submit written comments not later than July 9, 1976. No comments were received.

Pursuant to the authority vested in me by 5 U.S.C. 552a, and as Attorney General of the United States, the amendment to Subpart E of Part 16 of Chapter I of Title 28, Code of Federal Regulations, is adopted as published in the FEDERAL REGISTER of June 9, 1976 (41 FR 23206).

Dated: July 23, 1976.

EDWARD H. LEVI,
Attorney General.

§ 16.91 Exemption of Criminal Division Systems—Limited access, as indicated.

* * * * *

(s) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G), (H) and (I), (e)(5) and (8), (f), and (g) of 5 U.S.C. 552a; in addition, the following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a (k)(1) and (k)(2) from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) of 5 U.S.C. 552a:

(1) Freedom of Information/Privacy Act Records (JUSTICE/CRM–024).

(2) These exemptions apply only to the extent that the records contained in this system have been obtained from other systems of records maintained by the Criminal Division for which exemptions from one or more of the foregoing provisions of the Privacy Act of 1974 have been promulgated. The exemption claimed for this system of records applies only to records obtained from such other Criminal Division systems and only to the same extent as the records contained in such other systems have been exempted.

(t) The system of records listed under paragraph (s) of this section is exempted for the following reasons:

(1) In the course of processing requests for records pursuant to the Freedom of Information Act (5 U.S.C. 552) or for access or correction of records pursuant to the Privacy Act (5 U.S.C. 552a), it is frequently necessary to search for records in systems of records for which exemptions have been claimed pursuant to 5 U.S.C. 552a (j) or (k). When records are located in said systems, it is frequently necessary to prepare copies for the purpose of consulting with agency personnel or with other agencies, either with regard to determining whether or to what extent the records should be disclosed, or access provided, or correction made or denied, or for review in the event of administrative appeal or judicial review.

(2) If records otherwise exempt pursuant to published rules should lose their exempt character when taken from such exempt systems for the purpose of compliance with the Freedom of Information Act and the Privacy Act in reviewing such records and making determination with regard to disclosure, access, and correction, the purpose of the Privacy Act in providing such exemptions, and of the Department of Justice in claiming such exemptions would be defeated and nullified. The proper, efficient, and timely processing of citizens' requests pursuant to said Acts would be hindered and impeded.

[FR Doc.76–22404 Filed 8–2–76;8:45 am]

Title 29—Labor

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

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

South Carolina; Certification of Completion of Developmental Steps

1. *Background.* Subpart D of Part 1902 of Title 29, Code of Federal Regulations (40 FR 54780) sets out procedures under which the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary) will make a determination under section 18(e) of the Occupational Safety and Health Act of 1970 (hereinafter referred to as the Act) whether, on the basis of actual operations under a State plan, the criteria of section 18(c) of the Act are being applied under the plan. Such a determination may not be made until at least three years after commencement of operations under the plan and, in the case of a developmental plan, until the State has satisfactorily completed all developmental steps and the Assistant Secretary has had at least one additional year to evaluate the plan on the basis of actual operations. Upon making a determination under 18(e) that the 18(c) requirements are being applied, Federal enforcement of standards and Federal standards (except with regard to on-going cases) cease to apply in the State with respect to any occupational safety and health issue covered under the determination.

Section 1902.34 of Subpart D provides that the evaluation of a State's fully operational program, preparatory to an 18(e) determination, shall commence upon publication in the FEDERAL REGISTER of a certification that all developmental steps have been completed. Such certification must list the developmental steps, including approved amendments thereto, and the dates their approvals were published in the FEDERAL REGISTER; approved substantive changes in the State plan and dates published in the FEDERAL REGISTER; documentation that the State merit system has been approved and found acceptable; and a description of the occupational safety and health issues covered by the certification. If the Assistant Secretary finds that the State has completed all the developmental steps specified in the plan, he shall give notice of same by publishing the certification in the FEDERAL REGISTER and amend the appropriate Subpart of Part 1952 of this Chapter to reflect this finding.

On December 6, 1972, notice was published in the FEDERAL REGISTER (37 FR 25932) of the approval of the South Carolina plan as a developmental plan and adoption of Subpart C of Part 1952 containing the decision and describing the plan. During the three year period, ending December 31, 1975, following commencement of State operations (three years from the date of the State's first 23(g) grant award), Edgar L. McGowan, Commissioner, South Carolina Department of Labor, submitted documentation attesting to the completion of each State developmental commitment for review and approval as provided in 29 CFR Part 1953. Following Departmental review, opportunity for public comment, and subsequent modification of the State's submissions, as deemed appropriate, the Assistant Secretary has approved the completion of all individual South Carolina developmental steps.

2. *Notice of certification of completion of developmental steps under the South Carolina Plan.* In accordance with the provisions of 29 CFR 1902.34, notice is given that the South Carolina occupational safety and health plan is hereby certified, effective August 3, 1976, as having completed all the developmental steps specified in the plan as approved November 30, 1972, on or before December 31, 1975 (see Subpart C of 29 CFR Part 1952) as follows:

(a) All developmental steps specified in the plan and amendments thereto have been completed:

(1) Legislative amendments required to bring the South Carolina occupational safety and health statute (§ 40–257.1 through § 40–274, South Carolina Code of Laws, 1962) into conformity with Federal requirements were enacted effective June 12, 1973, and approved by the Secretary of Labor on September 22, 1975 (40 FR 44132, September 25, 1975);

(2) South Carolina occupational safety and health standards identical to Federal standards have been promulgated, subsequently amended to reflect changes in Federal standards and approved by the Regional Administrator for Occupational Safety and Health (hereinafter referred to as the Regional Administrator) on February 27, 1975 (40 FR 16257, April 10, 1975), September 10, 1975 (40 FR 50584, October 30, 1975), October 22, 1975 (40 FR 55405, November 28, 1975), and April 26, 1976 (41 FR 23809, June 11, 1976);

(3) A management information system has been developed. Documentation was submitted on July 10, 1975, and approved by the Assistant Secretary on April 20, 1976 (41 FR 17547, April 27, 1976);

(4) A voluntary compliance program, including on-site consultation services, has been developed and implemented by South Carolina. Documentation on completion of this developmental step was approved by the Secretary of Labor on September 22, 1975 (40 FR 44132, September 25, 1975);

(5) A program to provide coverage of State and local government employees in a manner identical to that of employees in the private sector has been developed and implemented. Documentation on completion of this developmental step was initially submitted on May 23, 1974, resubmitted with amendments on June 24, 1975, and approved by the Assistant Secretary on April 20, 1976 (41 FR 17547, April 27, 1976);

(6) Coverage of agricultural workers was initiated directly by the South Carolina Department of Labor on July 1, 1973. Documentation on completion of this developmental step was approved by the Secretary of Labor on September 22, 1975 (40 FR 44132, September 25, 1975);

(7) Merit system coverage was extended to South Carolina Department of Labor, Division of Occupational Safety and Health employees effective May 31, 1973. Agreement with the Department of Health and Environmental Control requires that all health personnel cooperating in the State occupational safety and health program be likewise covered by the State merit system. Documentation on the completion of this developmental step was approved by the Secretary of Labor on September 22, 1975 (40 FR 44132, September 25, 1975);

(8) A revised South Carolina compliance manual has been developed. Documentation was initially submitted on July 24, 1974, resubmitted with amend-

ments on November 20, 1975, and approved by the Assistant Secretary on July 20, 1976 (41 FR 31204, July 27, 1976);

(9) Regulations establishing procedures for the review of contested cases (Article IV) were revised and promulgated by the State on June 5, 1975, submitted on June 6, 1975, and approved by the Assistant Secretary on April 20, 1976 (41 FR 17547, April 27, 1976);

(10) An Affirmative Action plan to promote equal employment opportunity was submitted on October 10, 1975, and approved as a completed developmental step by the Assistant Secretary on May 19, 1976 (41 FR 21774, May 28, 1976);

(11) The South Carolina Safety and Health poster which informs both private and public employees of their rights and obligations under the South Carolina plan and is to be displayed in all workplaces in the State was submitted on October 20, 1975, and approved by the Assistant Secretary on February 19, 1976 (41 FR 9547, March 5, 1976);

(12) Amendments to State administrative regulations in response to previous commitments and to achieve compatibility with revised enabling legislation were submitted by the State during the period May 23 through November 8, 1974, and approved by the Secretary of Labor on September 22, 1975 (40 FR 44132, September 25, 1975):

(i) Temporary variance procedures (Article II, sec. 2.06);
(ii) Permanent variance procedures (Article II, sec. 2.07);
(iii) Employee complaint procedures (Article V, sec. 5.08);
(iv) Employee walkaround procedures (Article V. sec. 5.06);
(v) Prohibition of advance notice of inspection (Article V, sec. 5.04); and
(vi) Recording and Reporting of Occupational Injuries and Illnesses (Article III).

Further minor regulatory amendments were submitted during the period January 15, through November 26, 1975, and approved by the Assistant Secretary on March 19, 1976 (41 FR 12654, March 26, 1976):

(i) Definition of person expanded to include "organization of employees" in Article I, General (Section 1.02G); Article II, Variances (Section 2.01G); Article III, Recordkeeping and Reporting (Section 3.01G); and Article V, Inspections (Section 5.01G).
(ii) Article I, General: Section 1.08—Incorporation by Reference (standards), Section 1.12—General Duty Clause.
(iii) Article II, Variances: Section 2.21—Public Notice of Petition for a Variance and Interim Order, Section 2.22—Variance from Recordkeeping Requirements (available only through U.S. Secretary of Labor), Section 2.23—Variances Granted by Secretary of Labor (honored upon employer filing with South Carolina Commissioner of Labor).
(iv) Article V, Inspections: Section 5.01D—New section reflecting South Carolina legislative provision prohibiting employee loss of wages or other benefits during participation in walkaround with State inspector.

(13) As a result of certain administrative actions the following changes in the South Carolina plan narrative were submitted during the period May 23 through November 8, 1974, and approved by the Secretary of Labor on September 22, 1975 (40 FR 44132, September 25, 1975):

(i) South Carolina Department of Labor to assume responsibility originally intended to be delegated to the State Fire Marshal (secs. 7.03 and 8.02–3);
(ii) South Carolina Department of Labor to assume responsibility originally intended to be delegated to the State Liquefied Petroleum Gas Board (secs. 7.04, 8.01–3, and 8.02–4);
(iii) South Carolina Department of Labor to assume responsibility originally intended to be delegated to the State Department of Agriculture (secs. 7.05 and 11.02);
(iv) Standards Advisory Council disbanded as unnecessary since the State is adopting Federal standards; and
(v) Total number of safety inspectors reduced to twenty-nine (29) and industrial hygienists to six (6) (Appendix 7–a).

(14) A description of the State's occupational health program as performed by the Division of Occupational Health, Department of Health and Environmental Control, together with a formal agreement were submitted as an amendment to the plan during the period May 1974, through April 1975 and approved by the Secretary of Labor on September 22, 1975 (40 FR 44132, September 25, 1976).

(b) The personnel operations of the South Carolina Department of Labor, Occupational Safety and Health Division and the servicing merit system agency have been found to be in substantial conformity with the "Standards for a Merit System of Personnel Administration" by the U.S. Civil Service Commission by letter dated January 22, 1976 (See section (7) above.)

(c) This certification covers all occupational safety and health issues covered under the Federal program except for the longshoring and maritime standards found in 29 CFR Parts 1915, 1916, 1917, and 1918 (longshoring, ship repairing, shipbuilding, shipbreaking), which are excluded from coverage under the plan, and the State program covering State and local government employees.

3. *Location of the plan and its approved supplements for inspection and copying.* A copy of the approved supplements along with the approved plan may be inspected and copied during normal business hours at the following locations: Office of the Associate Assistant Secretary for Regional Programs, Occupational Safety and Health Administration, Room N–3112, 200 Constitution Avenue, N.W., Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, Suite 587, 1375 Peachtree Street, N.E., Atlanta, Georgia 30309; and Office of the Commissioner of Labor, South Carolina Department of Labor, 3600 Forest Drive, Columbia, South Carolina 29206.

4. *Effect of certification.* The operation of the South Carolina occupational safety and health program will be monitored and evaluated for a period of not less than one year after publication of this certification, to determine whether the State program in operation is at least as effective as operations under the Federal program in order to make a determination under section 18(e) of the Act that Federal enforcement authority and standards should cease to apply in issues under the plan.

In accordance with 29 CFR 1902.35 Federal enforcement authority under sections 5(a)(2), 8, 9, 10, 13 and 17 of the Act (29 U.S.C. 654(a)(2), 657, 658, 659, 662 and 666) and Federal standards authority under section 6 (29 U.S.C. 655) of the Act will not be relinquished during this evaluation period. However, under the terms of the operational agreement entered into with South Carolina on May 9, 1975, (40 FR 27024, June 26, 1975), the exercise of this authority by the U.S. Department of Labor will continue to be limited to, among other things: Complaints filed with the U.S. Department of Labor about violations of the discrimination provisions of section 11(c) of the Act; enforcement of new Federal standards, such as emergency temporary standards, promulgated under section 6 of the Act where necessary to protect employees until such time as the State shall have promulgated equivalent standards; enforcement of Federal standards in the maritime and longshoring issues of 29 CFR Parts 1915, 1916, 1917 and 1918 which issues have been specifically excluded from coverage under the South Carolina plan; and investigations and inspections for the purpose of the evaluation of the South Carolina plan under section 18 (e) and (f) of the Act.

In accordance with this certification 29 CFR 1952.104 is hereby amended to reflect successful completion of the developmental period by changing the title of the section and by adding a paragraph (m) as follows:

§ 1952.104 Completion of developmental steps and certification.

* * * * *

(m) In accordance with § 1902.34 of this chapter, the South Carolina occupational safety and health plan was certified, effective August 3, 1976, as having completed all developmental steps specified in the plan as approved on November 30, 1972, on or before December 31, 1975.

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

Signed at Washington, D.C. this 28th day of July 1976.

MORTON CORN,
Assistant Secretary of Labor.

[FR Doc.76–22444 Filed 7–29–76;8:45 am]

Title 40—Protection of the Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[PP1F1134/R105; (FRL 589-4)]

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

N-Octyl Bicycloheptenedicarboximide

Correction

In FR Doc. 76-21743, appearing on page 31207 in the issue of Tuesday, July 27, 1976; in the table to § 180.367, the second entry under the commodity heading reading "Costs, fat" should read "Goats, fat".

Title 41—Public Contracts and Property Management

CHAPTER 28—DEPARTMENT OF JUSTICE

PART 28-1—GENERAL

Procurement Regulations; Initial Issue

This is the initial portion of the Department of Justice Procurement Regulations published under the authority of the Federal Property and Administrative Services Act of 1949, as amended and §§ 0.75(j) and 0.76(j) of Title 28, Code of Federal Regulations. This portion establishes the Department of Justice Procurement Regulations as Chapter 28 of the Federal Procurement Regulations System, and provides for the delegation of contracting authority within the Deparment.

Chapter 28, is added to Title 41 of the Code of Federal Regulations to read as follows:

Part 28-1 is added to read as follows:

Subpart 28-1.1—Introduction

Sec.

28-1.101 Scope of Subpart.
28-1.102 Purpose.
28-1.103 Authority.
28-1.104 Applicability.
28-1.105 Exclusions.

Subpart 28-1.2—Definition of Terms

28-1.205 Procuring activities.
28-1.206 Head of the procuring activity.

Subpart 28-1.3 [Reserved]

Subpart 28-1.4—Procurement Responsibility and Authority

28-1.404-50 Delegation of contracting officers.
28-1.404-51 Redelegation of contracting ofcer authority.
28-1.404-52 Modification of contracting ofcer's delegation.
28-1.404-53 Contracting officer's representatives to contractors.
28-1.404-54 Contracting officer's representative—receipt of supplies, equipment or services.
28-1.405 Ratification of unauthorized contract awards.

AUTHORITY: 40 U.S.C. 486(c); 28 CFR 0.75 (j) and 0.76(j).

Subpart 28-1.1—Introduction

§ 28-1.101 Scope of Subpart.

This subpart establishes the Department of Justice Procurement Regulations (JPR) as Chapter 28 of the Federal Procurement Regulations System (41 CFR Ch. 28) and states the relationship of the JPR to the Federal Procurement Regulations (FPR), 41 CFR Ch. 1.

§ 28-1.102 Purpose.

The purpose of these regulations is to provide direction, control and uniformity in the Department's procurement of personal property and nonpersonal services (including construction).

§ 28-1.103 Authority.

JPR are issued under the Federal Property and Administrative Services Act of 1949, as amended and §§ 0.75(j) and 0.76(j) of Title 28, Code of Federal Regulations.

§ 28-1.104 Applicability.

The FPR as implemented and supplemented by the JPR apply to the procurement operations of all Department of Justice procuring activities. However, nothing in those regulations shall impair or affect the authority of the Federal Prison Industries with respect to any program conducted for the purpose of rehabilitation, *Provided*, That the Federal Prison Industries shall, to the maximum extent practicable, consistent with the fulfillment of the purposes of the program and the effective and efficient conduct of its business, coordinate its operations with the requirements of the regulations prescribed by the FPR and JPR. Therefore, the Federal Prison Industries shall comply with those regulations except for reasons peculiar to the operation of the Federal Prison Industries. Where compliance with a specific regulation would be inconsistent with Federal Prison Industries programs, a deviation shall be requested in accordance with § 28-1.109-2(b).

§ 28-1.105 Exclusions.

(a) Certain Department of Justice procurement policies and procedures which come within the scope of this Chapter 28 may nevertheless be excluded under special circumstances such as the following:

(1) The subject matter has a security classification.

(2) The policy or procedure is expected to be effective for a period of less than 6 months.

(3) The policy or procedure is being instituted on an experimental basis for a reasonable period.

(4) The policy or procedure must be implemented in less time than is required to incorporate it as a part of this Chapter 28.

(b) Policies and procedures issued under paragraph (a)(4) of this section will be codified into Chapter 28 not later than 6 months from the date of issue.

Subpart 28-1.2—Definition of Terms

§ 28-1.205 Procuring activities.

(a) "Procuring activity" means any of the following elements of the Department of Justice:

(1) Office of Management and Finance, Operations Support Staff.

(2) Drug Enforcement Administration.

(3) Federal Bureau of Investigation.

(4) Federal Prison Industries.

(5) Law Enforcement Assistance Administration.

(6) U.S. Marshals Service.

(7) Immigration and Naturalization Service.

(8) Bureau of Prisons.

§ 28-1.206 Head of the procuring activity.

"Head of the procuring activity" means those officials identified in § 28.1.404-50(a) having the responsibility for supervision and direction of the procuring activities identified in § 28-1.205.

Subpart 28-1.3 [Reserved]

Subpart 28-1.4—Procurement Responsibility and Authority

§ 28-1.404-50 Delegation of contracting officers.

(a) Pursuant to 28 CFR 0.139(a), the authority vested in the Attorney General to execute, award and administer contracts, including purchase orders, Government bills of lading and other agreements for the expenditure of funds in the acquisition of supplies, nonpersonal services, personal services negotiated under the authority of FPR 1-3.204, for the sale of personal property and to take such actions specifically designated as the responsibility of the contracting officer by the FPR and JPR is hereby delegated to those employees appointed, designated to or acting in the following positions:

(1) Director, Operations Support Staff, Office of Management and Finance.

(2) Director, Federal Bureau of Investigation.

(3) Director, Bureau of Prisons.

(4) Commissioner, Federal Prison Industries.

(5) Commissioner, Immigration and Naturalization Service.

(6) Administrator, Drug Enforcement Administration.

(7) Administrator, Law Enforcement Assistance Administration.

(8) Director, U.S. Marshals Service.

(b) In addition to the authority delegated by the Attorney General in paragraph (a) of this section, the LEAA derives procurement authority from the Omnibus Crime Control and Safe Streets Act of 1968; however, the Department-wide procurement policy of the Attorney General must be adhered to by the LEAA.

§ 28-1.404-51 Redelegation of contracting officer authority.

(a) The contracting officers listed in § 28-1.404-50(a) may redelegate authority to one or more of their subordinates to act as contracting officers. Such delegated authority shall be without power of further redelegation except as follows:

(1) Contracting authority delegated by the Director, Bureau of Prisons; Commissioner, Federal Prison Industries; and the Director, U.S. Marshals Service to Regional Office heads and heads of offices of individual field installations may be further delegated to subordinate

individuals at the respective regional offices and installations without power of redelegation.

(2) Contracting authority delegated by the Commissioner, Immigration and Naturalization Service to Heads of Regional Offices may be further delegated to (i) subordinate individuals to provide supply support for the Regional Office, without power of redelegation and (ii) heads of District and/or Sector Offices who may redelegate such authority to subordinate individuals without power of further redelegation.

(b) Contracting authority to other than those positions expressly identified in paragraph (a) of this section shall be redelegated only to subordinate individuals who (1) are actively engaged in procurement, (2) must function as contracting officers in the performance of their duties and (3) meet the qualification requirements of FPR 1–1.404. However, authority to make individual small purchases by the imprest funds (petty cash) method (FPR 1–3.604) may be delegated to subordinate individuals not actively engaged in procurement, *Provided*, (i) That the office(s) they serve would otherwise be without supply support for their immediate needs and (ii) that they have been adequately instructed in the regulations concerning small purchases. The redelegation of contracting authority directly to specific persons without regard for intermediate organizational levels only establishes authority to represent the Government in its commercial business dealings. It is not intended to affect the organizational relationship between the contracting officers and higher administrative and supervisory levels in the performance of their duties.

(c) Designations to other than those positions expressly identified in paragraph (a) of this section shall be made only to individuals. Designations, whether to individuals or by position, shall be in writing and shall specfically state the scope and limitation of the designated contractual authority. A copy of each designation shall be forwarded to the Assistant Attorney General for Administration, Office of Management and Finance.

(d) When exercising delegated contracting authority, a designated employee shall be identified as the contracting officer and shall function within the limits prescribed by law, the FPR and JPR.

(e) A contracting officer shall maintain evidence of his delegation and scope of authority and while functioning as a contracting officer shall make such evidence available upon request by anyone.

§ 28–1.404–52 Modification of contracting officer's delegation.

Designation documents shall not be modified. To effect modification, the current delegation shall be revoked and a new delegation issued.

§ 28–1.404–53 Contracting officer's representatives to contractors.

(a) Contracting officers, other than those delegated authority to purchase only by the imprest fund (petty cash) method under § 28–1.404–51(b), may designate other Government employees to act as their authorized representative to the contractor for specified purposes of contract administration. Such designation shall contain specific instructions as to the extent to which the representative has been delegated authority to take action for the contracting officer. The designation shall state that it does not include authority to sign contractual documents or to otherwise make commitments or issue changes which will affect the price, quantity, quality or performance terms of the contract as these rights are reserved to the contracting officer. The designation may include authority such as the following:

(1) To act as liaison and to coordinate contractor/government activities.

(2) To arrange for and coordinate the use of government resources (personnel, space, documents, etc.).

(3) To provide technical guidance in the performance of the contract.

(4) To receive, review and approve, (but not reject or deny), progress reports, invoices, final reports or other functions of a technical nature.

(b) Designations shall be in writing to the designee and a copy shall be furnished to the contractor. This may be accomplished by inclusion in the contract or by a separate document.

§ 28–1.404–54 Contracting officer's representative—receipt of supplies, equipment or services.

(a) A contracting officer, other than those delegated authority to purchase only by the imprest fund (petty cash) method under § 28–1.404–51(b), may, without notice to the contractor, designate other competent Government personnel, by name or by position and location, to represent him in receiving and inspecting supplies, equipment or services. Duties such as, but not limited to, the following may be performed by these designees:

(1) The inspection and certification as to compliance with quality and quantity requirements; and

(2) Inspection of supplies and equipment for condition and quantity and the acceptance of supplies, equipment or services based on quality inspections made by other authorized representatives.

(b) Designation shall be accomplished by a written notice and as may be otherwise prescribed by the head of the procuring activity.

(c) Representatives shall not advise contractors as to either acceptable or unacceptable contract performance. Findings and recommendations shall be provided to the contracting officer as appropriate. Notices to contractors concerning receipt of unacceptable supplies, equipment or services shall be made only by the contracting officer.

§ 28–1.405 Ratification of unauthorized contract awards.

In each instance where an unauthorized contract award occurs (including small purchases), whether ratified or not, the head of the procuring activity shall report the following data to the Assistant Attorney General for Administration, Office of Management and Finance:

(a) Circumstances regarding the unauthorized contract.

(b) Vendor.

(c) Product or service.

(d) Value.

(e) Action taken by procuring activity.

Effective date: This regulation is effective October 1, 1976.

Dated: July 21, 1976.

GLEN E. POMMERENING,
Assistant Attorney General for Administration.

[FR Doc.76–22393 Filed 8–2–76;8:45 am]

Title 43—Public Lands: Interior

CHAPTER 1—BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

PART 419—ADMINISTRATIVE CLAIMS UNDER PUBLIC WORKS APPROPRIATION ACT FOR TETON DAM

On July 14, 1976 final regulations were published in the FEDERAL REGISTER (41 FR 29084) governing the processing of claims for actual damages to or loss of property, income, personal injury or for death directly resulting from the failure on June 5, 1976, of Teton Dam of the Lower Teton Division of the Teton Basin Federal Reclamation Project. The regulations were intended to provide payment to the victims of the tragic flood as soon as possible. Interested persons were given 30 days to comment to the Commissioner, Bureau of Reclamation. In addition the Secretary of the Interior reserved the right to modify the regulations from time to time.

While the 30 day comment period has not yet expired, the Secretary of the Interior has recognized through experience with actual claims program administration that in order to compensate flood victims fairly and expeditiously, three immediate changes are necessary in the regulations. First, due to the nature of flood damage, damage to or loss of property, income or personal injury may not be discovered for some time. For example, a building foundation which seems to be sound today may collapse after a claim has been paid due to undetected water seepage caused by the floodwaters. In order to consider fairly such claims a sentence has been added to § 419.1–0(b) providing that an additional claim may be submitted if the claimant had not discovered and by the exercise of reasonable diligence could not have discovered the damage or injury prior to the authorized officer's determination of the claimant's single original claim.

Second, § 419.1–1(a)(5) has been deleted. It required the claimant to certify that if the claim was withdrawn, the claimant would refund or repay to the Treasury all amounts received as partial or emergency payments. Corresponding references to § 419.1–1(a)(5) have been omitted in § 419.3 and § 419.4. The repayment provision could cause serious hardship to individuals, be viewed as a possible penalty for participating in the ad-

ministrative claims program and have a detrimental effect on the administration of the program. The interest of the Federal government is adequately protected by other provisions in the regulations and other legal remedies.

Third, an addition has been made to § 419.7. Section 419.7 governs release of the United States, its agents and employees upon acceptance by the claimant of the payment voucher. In many cases disputes may arise as to the adequacy of the authorized officer's determination. In order to carry out the purpose of these regulations, that is to provide payment to the flood victims as soon as possible so they may rebuild their lives and communities, a new paragraph (d) has been added to § 419.7. This new paragraph provides that if the claimant is unwilling to release the United States, its agents and employees from liability for damages caused by the incident, the claimant may elect to accept payment of 50 percent of the amount determined by the authorized officer. If the claimant files a timely request for reconsideration, the remaining 50 percent, or whatever amount is determined by the Office of Hearings and Appeals, will be paid upon final decision by the Office of Hearings and Appeals. If the Office of Hearings and Appeals decides that an amount less than 50 percent of the amount initially determined by the authorized officer and paid to the claimant under this provision is due, the claimant must repay the excess to the Treasury. If the claimant fails to file a timely request for reconsideration, the authorized officer will send the claimant a payment voucher for the remaining 50 percent of the amount determined by the authorized officer. The claimant must execute and return the payment voucher within 45 days or no payment will be made for the remaining 50 percent and the claimant shall be considered to have waived any claim to further payment under these regulations. This waiver does not affect any other rights of the claimant. Acceptance of payment for the final 50 percent of the amount determined by the authorized officer or of the amount decided upon by the Office of Hearings and Appeals shall release the United States, its agents and employees from all possible liability caused by the incident.

Finally, one additional change in the regulations is necessary. Section 419.9(f) only was meant to exclude payment of interest based on any payments authorized or made under these regulations. Direct interest on loans to flood victims made by public or private entities may be claimed under these regulations. Some confusion has arisen about this provision, therefore the last clause of § 419.9 (f) has been deleted.

The Secretary of the Interior has determined that due to the need to provide expeditious relief for disaster victims, public notice and hearings on these regulations are contrary to the public interest and such proceedings shall not be followed. For the same reason, these regulations shall be effective immediately, rather than 30 days following publication. (See 5 U.S.C. 553.)

In consideration of the administrative problems and inequities discussed above and pursuant to the authority contained in the Annual Public Works Appropriation Act of 1976, Pub. L. 94–180, 89 Stat. 1035, and the Act of July 12, 1976, 90 Stat. 889, 43 CFR Part 419 is amended as follows, effective immediately.

Dated: July 28, 1976.

KENT FRIZZELL,
Acting Secretary of the Interior.

1. 43 CFR Part 419 is amended by revising § 419.1–0(b) to read as follows:

§ 419.1–0 When presented.

* * * * *

(b) Single claim. All claims for actual damages to or loss of property, income, personal injury or death, by a single claimant shall be submitted by the claimant as and in a single claim, except as otherwise provided in this section, and each claim shall designate clearly that it is being submitted under the provisions of the Public Works Appropriation Act of 1976, Pub. L. 94–180, 89 Stat. 1035, and the Act of July 12, 1976, 90 Stat. 889. An additional claim may be submitted by the claimant if the claimant had not discovered and by the exercise of reasonable diligence could not have discovered the damage to or loss of property, income or personal injury prior to determination of the claimant's single original claim by the authorized officer.

* * * * *

2. In § 419.1, paragraph (a) is revised to read as follows:

§ 419.1–1 Eligibility.

(a) In order to qualify for payment under these regulations the claimant must certify at the time of submitting his claim, that:

(1) The loss or injury being claimed has not been compensated for by any assistance from other means.

(2) Should the claimant subsequently receive assistance from other means the claimant will refund or repay to the Treasury any payments made under these regulations, to the extent they are duplicated by such subsequent assistance from other means.

(3) The damage, injury, or loss for which a claim is made occurred within the major disaster area as a direct result of the incident.

(4) Upon payment of claims under the provisions of these regulations, with the exception of payment of emergency claims under § 419.3 or partial payments under § 419.4, the claimant shall release the United States, its agents and employees from all possible liability arising from the incident. (See § 419.7)

* * * * *

3. Section 419.3 is revised to read as follows:

§ 419.3 Emergency claim.

(a) The claims officer may in his discretion and upon request of the claimant refer any claim filed under these regulations or portion thereof, to the authorized officer prior to final completion of the investigative report if the claim or portion thereof is for an item or service essential to the claimant to prevent personal hardship or injury.

(b) The authorized officer may, under the authority of this section of these regulations, make payment to the claimant; however, such payment shall not exceed $10,000.

(c) Payment of emergency claims under this section shall be made in accordance with the provisions of § 419.6.

4. Section 419.4 is revised to read as follows:

§ 419.4 Partial payment of claim.

(a) The claims officer may in his discretion and upon request of the claimant refer a portion of any claim filed under these regulations to the authorized officer upon completion of the investigation of such portion of the claim. Only logically severable portions of the claim, as determined by the claims officer, shall be referred to the authorized officer.

(b) Upon receipt of the claims officer's partial investigative report under paragraph (a) of this section, the authorized officer shall make a determination of the claim under the procedures of § 419.2–1. If the authorized officer finds that partial determination is inappropriate, the authorized officer shall return the partial investigative report to the claims officer.

(c) Notice of determination of each partial claim shall be sent in accordance with § 419.2–1(b). Payment of partial claims under this section shall be made in accordance with the provisions of § 419.6.

5. A new paragraph (d) is added to 43 CFR 419.7 to read as follows:

§ 419.7 Release.

* * * * *

(d) If the claimant is unwilling to release the United States, its agents and employees from liability for damages caused by the incident under paragraphs (a) and (b) of this section, the claimant may elect to accept payment of 50 percent of the amount determined by the authorized officer. The acceptance of such payment shall not constitute a release of the United States, its agents and employees under these regulations. If the claimant files a timely request for reconsideration under § 419.5 of these regulations after receiving payment under this paragraph, the remaining 50 percent of the amount determined by the authorized officer, or whatever amount is determined by the Office of Hearings and Appeals, will be paid to the claimant under § 419.6 upon final decision of the Office of Hearings and Appeals decides that an amount less than 50 percent of the amount initially determined by the authorized officer and paid to the claimant under this provision is due, the claimant must promptly repay or refund to the Treasury the amount by which the payment made to the claimant exceeds the amount found by the Office of Hearings and Appeals to have been due. If the claimant fails to file a timely request for

reconsideration under § 419.5 after receiving payment under this paragraph or, after filing a timely request for reconsideration withdraws the request or fails to prosecute the request for any reason, the authorized officer will send the claimant a payment voucher under § 419.6 for the remaining 50 percent of the amount determined by the authorized officer. The claimant must execute and return the payment voucher within 45 days or no payment will be made for the remaining 50 percent of the amount determined by the authorized officer and the claimant shall be considered to have waived any claim to further payment under these regulations as to the claim determined by the authorized officer for which the claimant elected to accept payment of 50 percent of the amount determined. Acceptance of payment for the final 50 percent of the amount determined by the authorized officer or for the amount decided upon by the Office of Hearings and Appeals shall release the United States, its agents and employees from all possible liability for damages caused by the incident to the extent provided in under paragraphs (a) and (b) of this section, whichever is applicable.

6. Section 419.9 is revised to read as follows:

§ 419.9 Limitation of damages.

(a) *General.* Claims shall be paid only for damages directly resulting from the incident and which occurred within the major disaster area. No claims shall be paid for punitive damages. The burden of proof on all claims shall be on the claimant.

(b) *Death.* Death claims shall be paid only if the death was directly caused by the incident including, but not limited to, drowning or injuries caused by floodwaters. The measure of damages in the case of a death shall be the actual pecuniary loss suffered by the heirs as would be determined under the laws of the State of Idaho.

(c) *Personal injury.* Claims based on personal injury shall be paid only if the injuries claimed were directly caused by the incident. The measure of damages in the case of a personal injury shall be actual special damages as recoverable under the laws of the State of Idaho.

(d) *Property damage.* Claims based on property damage shall be paid only if the damage claimed was directly caused by the incident, such as, but not limited to, floodwaters or Federal agency activities undertaken as a part of disaster relief activities. No claims shall be paid in excess of whichever of the following constitutes equitable compensation for loss as determined by the authorized officer: (1) The replacement cost of the property, (2) the cost of repairing the property to its condition prior to June 5, 1976, or (3) the amount determined necessary to replace or repair the property under the rules of the Federal agency which has made a disaster loan for such damage.

(e) *Loss of income.* Claims for loss of income whether resulting from personal injury, property damage or death will be paid to the extent such damages would be determined under the laws of the State of Idaho.

(f) *Interest.* No interest shall be paid any claimant based on any payments authorized or made under these regulations.

[FR Doc.76-22379 Filed 8-2-76;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20189; RM 1735]

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST, AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

Remote Broadcast Stations; Correction

In the matter of amendment of Part 74, Subpart D (Remote Pickup Broadcast Stations) of the Commission's rules and regulations, Docket No. 20189; RM-1735.

In the "Report and Order" in the above-entitled proceeding, FCC 76-624, Mimeo No. 41243, released July 12, 1976, (41 FR 29681; July 19, 1976) in the table of authorized bandwidth and emissions following § 74.462(b) on page 29692, the figure "450.95" in the ninth line under the column for frequencies should read "450.05".

Released: July 28, 1976.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.76-22425 Filed 8-2-76;8:45 am]

PART 76—CABLE TELEVISION SERVICES

PART 78—CABLE TELEVISION RELAY SERVICES

Miscellaneous Amendments

Order regarding Editorial amendment of Parts 76 and 78 of the Commission's rules and regulations.

1. Preparatory to the edition of a new Volume XI of the Commission's rules and regulations, numerous editorial changes were made in Part 76 Cable Television Service, and Part 78 Cable Television Relay Service.

2. Adoption of these changes is desirable in order to clarify the rules, make them uniform as to usage and terminology, delete obsolete material, and otherwise improve them from an editorial standpoint. Since the changes are editorial in nature, the prior notice and effective date provisions of section 4 of the Administrative Procedure Act (5 U.S.C. 553) are not applicable. The changes below will be included in the new edition of Volume XI which will be available from the Superintendent of Documents, U.S. Government Printing Office, in the near future.

3. *Accordingly, it is ordered,* Pursuant to authority contained in sections 4(i), 5(d), and 303(r) of the Communications Act of 1934, as amended, and §0.231(d) of the Commission's rules and regulations, That effective August 18, 1976, Parts 76 and 78 are amended as set forth below.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; (47 U.S.C. 154, 155, 303).)

Adopted: July 26, 1976.

Released: July 28, 1976.

FEDERAL COMMUNICATIONS COMMISSION,
R. D. LICHTWARDT,
Executive Director.

§ 76.13 [Amended]

1. In § 76.13(a)(1) amend the reference, 76.61(b)(2)(ii), appearing twice to read: § 76.61(b)(2).

§ 76.54 [Amended]

2. In § 76.54(b), in the first sentence, delete "On or after March 31, 1973, and begin paragraph (b): Significant viewing * * *; and delete note at end of paragraph (d).

§ 76.311 [Amended]

3. In § 76.311(c)(1)(i) delete "not later than June 30, 1972," and insert comma after the word "program".

4. Section 78.3 is revised to read as follows:

§ 78.3 Other pertinent rules.

Other pertinent provisions of the Commission's rules and regulations relating to the Cable Television Relay Service (CARS) are included in the following parts of this chapter:

Part 0—Commission organization.
Part 1—Practice and procedure.
Part 2—Frequency allocations and radio treaty matters; general rules and regulations.
Part 17—Construction marking and lighting of antenna structures.
Part 76—Cable television service.

§ 78.15 [Amended]

5. In § 78.15(b) "CAR" is amended to read: "CARS".

§ 78.18 [Amended]

6. In § 78.18(a)(4) "cable television relay" is deleted and "CARS" inserted; in paragraph (g) "cable television relay (CAR)" is deleted and CARS inserted.

[FR Doc.76-22426 Filed 8-2-76;8:45 a.m.]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[R.S.O.N. 1210, Corrected Amdt. 3]

PART 1033—CAR SERVICE

Providence and Worcester Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 7th day of April, 1976.

Upon further consideration of 'Revised Service Order No. 1210, (40 FR 7452, 19478 and 41 FR 4929), and good cause appearing therefor:

It is ordered, That: § 1033.1210 *Revised Service Order No. 1210* Providence and Worcester Company authorized to operate over tracks of Penn Central Transportation Company, Robert W. Blanch-

ette, Richard C. Bond and John H. McArthur, trustees; Penn Central Transportation Company, Robert W. Blanchette, Richard C. Bond and John H. McArthur trustees, authorized to operate over tracks of Providence and Worcester Company. (Revised Service Order No. 1210) be, and it is hereby, amended by changing the name Penn Central Transportation Company, Robert W. Blanchette, Richard C. Bond and John H. McArthur, Trustees, wherever it appears in this order, to Consolidated Rail Corporation (ConRail).[1]

Effective date: This amendment shall become effective at 12:01 a.m., April 8, 1976.

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

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

By the Commission, Railroad Service Board, members Lewis R. Teeple, Thomas J. Byrne, and William J. Love.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76–22479 Filed 8–2–76;8:45 am]

[Rev. S.O. No. 1210, Amdt. 4]

PART 1033—CAR SERVICE

Providence and Worcester Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 28th day of July, 1976.

Upon further consideration of Revised Service Order No. 1210, (40 FR 7452, 19478, 41 FR 4929 and 15414), and good cause appearing therefor:

It is ordered, That: § 1033.1210 *Revised Service Order No. 1210* Providence and Worcester Company authorized to operate over tracks of Penn Central Transportation Company, Robert W. Blanchette, Richard C. Bond and John H. McArthur, trustees; Penn Central Transportation Company, Robert W. Blanchette, Richard C. Bond and John H. McArthur, trustees, authorized to operate over tracks of Providence and Worcester Company (Revised Service Order No. 1210) be, and it is hereby, amended by substituting the following paragraph (h) for paragraph (h) thereof:

(h) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., January 31, 1977, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date: This amendment shall become effective 11:59 pm, July 31, 1976.

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

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

By the Commission, Railroad Service Board, members Lewis R. Teeple, Thomas J. Byrne and William J. Love.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76–22478 Filed 8–2–76;8:45 am]

[1] Correction of order designation.

Title 50—Wildlife and Fisheries

CHAPTER I—U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 32—HUNTING

Browns Park National Wildlife Refuge, Colo.

The following special regulation is issued and is effective on August 3, 1976.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

COLORADO

BROWNS PARK NATIONAL WILDLIFE REFUGE

Public hunting of deer is permitted on the Browns Park National Wildlife Refuge, Colorado, for the 1976 seasons except in those areas designated by signs as closed to hunting. Archery deer season is August 21 through September 24, 1976, inclusive. Muzzle loading deer season is September 11 through September 19, 1976, inclusive. General deer season is October 30 through November 5, 1976, inclusive.

Hunting will be in accordance with all applicable State regulations covering the hunting of deer.

The provisions of this special regulation supplement the regulations which govern hunting of wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through November 5, 1976.

HERBERT G. TROESTER,
Refuge Manager, Browns Park National Wildlife Refuge, Vernal, Utah.

JULY 21, 1976.

[FR Doc.76–22420 Filed 8–2–76;8:45 am]

PART 32—HUNTING

J. Clark Salyer National Wildlife Refuge, North Dakota

The following special regulation is issued and is effective August 3, 1976.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

NORTH DAKOTA

J. CLARK SALYER NATIONAL WILDLIFE REFUGE

Public hunting of deer with bow and arrow on the J. Clark Salyer National Wildlife Refuge, North Dakota, is permitted from August 27 through November 7 and November 22 through December 12, 1976, only on the area designated by signs as open to hunting. This open area, comprising 31,542 acres, is delineated on a map available at the refuge headquarters, Upham, North Dakota 58789 and from the office of the Area Manager, U.S. Fish and Wildlife Service, P. O. Box 1897, Bismarck, North Dakota 58501. Hunting shall be in accordance with all applicable State regulations covering the hunting of deer with bow and arrow, subject to the following conditions:

Hunting is by foot only. Vehicles are to remain on established refuge roads only.

All hunters must exhibit their hunting licenses, game and vehicle contents to Federal and State officers upon request.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32 and are effective through December 12, 1976.

JON M. MALCOLM,
Refuge Manager, J. Clark Salyer National Wildlife Refuge.

JULY 20, 1976.

[FR Doc.76–22389 Filed 8–2–76;8:45 am]

PART 32—HUNTING

J. Clark Salyer National Wildlife Refuge, North Dakota

The following special regulation is issued and is effective August 2, 1976.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

NORTH DAKOTA

J. CLARK SALYER NATIONAL WILDLIFE REFUGE

Public hunting of deer on portions of the J. Clark Salyer National Wildlife Refuge, North Dakota, is permitted from 12:00 noon to sunset November 12, 1976, and from sunrise to sunset November 13, 1976 through November 21, 1976, on the entire refuge except the headquarters area posted as closed to hunting. This open area is delineated on a map available at the refuge headquarters, Upham, North Dakota 58789, and from the Area Office, U.S. Fish and Wildlife Service, P.O. Box 1897, Bismarck, North Dakota 58501. Hunting shall be in accordance with all applicable State regulations cov-

ering the hunting of deer subject to the following conditions:

(1) A Special Federal Refuge permit is required and may be obtained by applying to the North Dakota Game and Fish Department, 2121 Lovett Avenue, Bismarck, North Dakota 58505.

(2) All hunters must exhibit their Special Federal Refuge permit, hunting license, deer tag, game and vehicle contents to Federal and State officers upon request.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through November 21, 1976.

JON M. MALCOM,
Refuge Manager, J. Clark Salyer National Wildlife Refuge.

JULY 27, 1976.

[FR Doc.76-22390 Filed 8-2-76;8:45 am]

PART 32—HUNTING

Ouray National Wildlife Refuge, Utah

The following special regulation is issued and is effective on August 3, 1976.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

UTAH

OURAY NATIONAL WILDLIFE REFUGE

Public hunting of deer is permitted on the Ouray National Wildlife Refuge, Utah, for the 1976 archery and rifle seasons except in those areas designated by signs as closed to hunting. This open area, comprising 9,500 acres, is delineated on maps available at refuge headquarters, Vernal, Utah, and from the Area Manager, U.S. Fish and Wildlife Service, Federal Building, Room 2215, 125 South State Street, Salt Lake City, Utah 84111. Archery deer season is August 21 through September 6, 1976, inclusive. Rifle deer season is October 23 through November 2, 1976, inclusive.

Hunting shall be in accordance with all applicable State regulations covering the hunting of deer subject to the following special conditions:

(1) Hunting on Indian lands east of Green River, as posted, requires the possession of a Ute Tribal Permit.

(2) Every deer killed must be checked out at refuge headquarters before hunters leave the area.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through November 2, 1976.

HERBERT G. TROESTER,
Refuge Manager, Browns Park National Wildlife Refuge, Vernal, Utah.

JULY 21, 1976.

[FR Doc.76-22421 Filed 8-2-76;8:45 am]

PART 32—HUNTING

Valentine National Wildlife Refuge, Nebraska

The following special regulation is issued and is effective August 3, 1976.

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

NEBRASKA

VALENTINE NATIONAL WILDLIFE REFUGE

The public hunting of prairie grouse and pheasants on the Valentine National Wildlife Refuge, Nebraska, shall be permitted only on areas designated by signs as open to hunting. The open areas are delineated on maps available at refuge headquarters, Valentine, Nebraska 69201, and from the office of the Area Manager, U.S. Fish and Wildlife Service, P.O. Box 250, Pierre, South Dakota 57501.

Hunting shall be in accordance with all applicable State regulations governing the hunting of prairie grouse and pheasants, subject to the following special conditions:

(1) The refuge will be open to prairie grouse during the regular State prairie grouse season. The open area shall include 40,765 acres or 57 percent of the refuge.

(2) The open season for hunting pheasants on the refuge will be the same as the regular State pheasant season. The open areas shall include 70,085 acres or 98 percent of the refuge. If the State pheasant and prairie grouse season run concurrently at any time, pheasant hunting will be prohibited east of Highway 83 until the grouse season closes.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through the close of the regular State 1976–77 pheasant and prairie grouse hunting season.

ROBERT E. NAGEL,
Acting Refuge Manager, Fort Niobrara-Valentine Complex.

JULY 21, 1976.

[FR Doc.76-22388 Filed 8-2-76;8:45 am]

PART 32—HUNTING

Valentine National Wildlife Refuge, Nebraska

The following special regulation is issued and is effective August 3, 1976.

§ 32.32 Special regulations; big game, for individual wildlife refuge areas.

NEBRASKA

VALENTINE NATIONAL WILDLIFE REFUGE

Public hunting of deer on the Valentine National Wildlife Refuge, Nebraska, is permitted only on the area designated by signs as open to hunting. This open area, comprising 70,085 acres, is delineated on maps available at refuge headquarters, Valentine, Nebraska and from the office of the Area Manager, U.S. Fish and Wildlife Service, P.O. Box 250, Pierre, South Dakota 57501.

Hunting shall be in accordance with all applicable state regulations governing the hunting of deer.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32 and are effective through December 31, 1976.

ROBERT E. NAGEL,
Acting Refuge Manager, Fort Niobrara—Valentine Complex.

JULY 21, 1976.

[FR Doc.76-22387 Filed 8-2-76;8:45 am]

PART 33—SPORT FISHING

Valentine National Wildlife Refuge, Nebraska

The following special regulations is issued and is effective August 3, 1976.

§ 33.5 Special regulations; sport fishing for individual refuge areas.

NEBRASKA

VALENTINE NATIONAL WILDLIFE REFUGE

Sport fishing on the Valentine National Wildlife Refuge, Nebraska is permitted only on the areas designated by signs as open to fishing. These open areas comprising 2,392 acres of water on the refuge, are delineated on maps available at the refuge headquarters and from the office of the Area Manager, U.S. Fish and Wildlife Service, P.O. Box 250, Pierre, South Dakota 57501.

Sport fishing shall be in accordance with all applicable State regulations subject to the following special regulations:

(1) The open season for sport fishing on the refuge during daylight hours only, will be from January 1, 1977 through December 31, 1977.

(2) Hook and line, bow and arrow, and hand spear fishing only are permitted.

(3) Boats with or without electric-type outboard motors are permitted on lakes open to sport fishing in accordance with State boating regulations. Internal combustion type motors are prohibited.

(4) The use or possession of live or dead minnows or whole fish for bait, or the possession of any seine or net for capturing live minnows is prohibited. Parts of dead fish or minnows may be used as bait.

The provisions of this special regulation supplement the regulations which govern sport fishing on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1977.

ROBERT E. NAGEL,
Acting Refuge Manager, Fort Niobrara-Valentine Complex.

JULY 21, 1976.

[FR Doc.76-22386 Filed 8-2-76;8:45 am]

Title 9—Animals and Animal Products

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

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

PART 83—SCREWWORMS

Entire State of Texas Designated Area of Recurring Infestation

• Purpose. The purpose of this amendment is to designate the entire State of Texas as an area of recurring infestation. •

Statement of considerations. During the present calendar year, screwworm infestations have occurred in more than one-half of the 254 counties in Texas. Historically, screwworm infestations in that State, as in other States, have been heaviest from August through November of each year. Recent heavy rainfall in Texas has provided an ideal environment for a rapid increase in the screwworm population and for the resulting spread of screwworms throughout that State. Under existing regulations, the large number of livestock moving interstate from those Texas counties which are not currently included in the designated areas of recurring infestation, are not required to undergo inspection and treatment for screwworms as a prerequisite for such movement. However, many of the animals, from the Texas counties not included, have wounds or disease conditions which may harbor screwworms, and are, when moved interstate without any restrictions, the primary means of spreading this disease interstate.

Because of these conditions, the unrestricted movement of livestock from the entire State of Texas, without compliance with the inspection and certification requirements, and treatment when found necessary, constitutes a threat to the livestock of the United States. In order to prevent this threat, the entire State of Texas is being designated as an area of recurring infestation because of screwworms. As is the case with all other regulations which are in effect to prevent the interstate spread of livestock diseases, the additional restrictions imposed by this amendment will remain under continuing review, and will be revoked upon a determination that they are no longer deemed necessary to prevent the interstate spread of screwworms.

Accordingly, Part 83, Title 9, Code of Federal Regulations, is amended by revising § 83.2 as follows:

§ 83.2 Notice relating to existence of screwworms.

Notice is hereby given that screwworm infestations exist, usually from April 15 through November 30 of each year, in the entire State of Texas and in portions of the States of Arizona, California, and New Mexico, as designated in paragraphs (a), (b), (c), and (d) of this section. Therefore, the following areas are hereby designated as areas of recurring infestation.

(a) *Arizona.* Cochise, Gila, Graham, Greenlee, Maricopa, Pima, Pinal, Santa Cruz, Yavapai, and Yuma Counties.

(b) *California.* Imperial, Orange, Riverside, and San Diego Counties

(c) *New Mexico.* Dona Ana, Grant, Hidalgo, Luna, and Otero Counties.

(d) *Texas.* The entire State.

(Sec. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; (21 U.S.C. 111, 112, 115, 117, 120, 121); 37 FR 28464, 28477; 38 FR 19141.)

Effective date. The foregoing amendment shall become effective August 3, 1976.

The amendment imposes certain further restrictions necessary to prevent the spread of screwworms, and must be made effective immediately to accomplish its purpose in the public interest. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 30th day of July 1976.

J. M. HEJL,
Deputy Administrator,
Veterinary Services.

[FR Doc.76–22666 Filed 8–2–76;8:45 am]

proposed rules

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

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 26]

PUBLIC ENTRY AND USE

Johnston Atoll National Wildlife Refuge

The Fish and Wildlife Service proposes to issue Special Regulations for the protection and conservation of the natural resources and fish and wildlife of Johnston Atoll National Wildlife Refuge. These regulations were promulgated by the Commander, Field Command, Defense Nuclear Agency, the Defense Nuclear Agency, and the Department of Defense in accordance with a Memorandum of Understanding dated May 27, 1976 between the United States Fish and Wildlife Service and the Defense Nuclear Agency. The Fish and Wildlife Service proposes to adopt these regulations by the issuance of Special Regulations under 50 CFR 26.

Johnston Atoll, consisting of Johnston, Sand, North, and East Islands, together with the surrounding reefs is a strategic military installation under the administration of the Department of Defense. Johnston Atoll is also designated as a National Wildlife Refuge, administered for that purpose by the United States Fish and Wildlife Service of the Department of the Interior.

It is the policy of the Department of Defense and the Department of the Interior to act responsibly and effectively in conservation management, including the duty to restore, improve, develop, and conserve, through wise use, the renewable natural resources of the lands and waters under military control. It has been determined that the following regulations will permit both agencies to discharge their responsibilities on Johnston Atoll in accordance with the Internal Security Act of 1950 (64 Stat. 1005, 50 U.S.C. 1005), the National Wildlife Refuge System Administration Act of 1966 (80 Stat. 927, 16 U.S.C. 668dd) and the Endangered Species Act of 1973 (87 Stat. 884, 16 U.S.C. 1531).

It is the policy of the Department of the Interior whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections, with respect to the proposed rulemaking, to the Regional Director, Fish and Wildlife Service, Box 3737, Portland, Oregon 97208 by September 1, 1976.

In consideration of the foregoing, the following special regulation is proposed:

§ 26.34 Special regulations concerning public access, use and recreation for individual national wildlife refuges.

JOHNSTON ATOLL NATIONAL WILDLIFE REFUGE

a. General Restrictions for Entire Atoll Area.

(1) It is prohibited for any person to hunt, trap, capture, willfully disturb, or kill any bird of any kind whatever, or take the eggs of such bird, except as specifically authorized by the Manager.

(2) It is prohibited for any person to hunt, trap, capture, or kill any member of a species which has been designated as threatened or endangered pursuant to the Endangered Species Act of 1973 (P.L. 93–205, 87 Stat. 884, 16 U.S.C. 1531).

(3) No molesting or harvesting of turtles or seals is permitted.

b. Additional Restrictions for Certain Areas.

(1) Sand Island: No animals of any kind are permitted upon this Island, except for a reasonable number of domesticated dogs which personnel may keep as pets; however, any such domesticated dogs must be restricted from entering the nesting areas on the Island.

(2) East Island:

(a) No animals of any kind are permitted on this Island.

(b) There shall also be no human visitation to the nesting areas during the nesting season (February 1–September 1), except for:

(1) Purposes of maintenance and repair of facilities on this Island; and

(2) Reasonable use of the unvegetated beach and dock areas shall also be permitted during the nesting season incident to recreational fishing and diving activities.

(3) Lagoon areas within the reef:

(a) Fishing is limited to sport fishing for recreational purposes and for authorized scientific purposes only.

(b) Diving and shell and coral collecting are limited to recreational and scientific purposes only. No commercial activity is permitted.

(c) Harvesting of mature lobsters is permitted for personal consumption only and on a noncommercial basis. The lobster season shall be closed during the period June 1 to August 31, and no lobster harvesting shall be permitted during such closed season. Harvesting of lobsters of less than mature age (approximately one pound) is not permitted at any time.

(d) The use of nets within the lagoon area is prohibited, except for throw nets with a minimum mesh size of one and one-half inches stretched diagonal measure.

The provisions of this special regulation supplement the regulations which govern public entry and use on natural wildlife refuges generally, which are set forth in Title 50 Code of Federal Regulations, Part 26, and are effective until revoked or amended.

DONALD HANKLA,
Acting Regional Director.

[FR Doc.76-22385 Filed 8-2-76;8:45 am]

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

[7 CFR Part 1701]

RURAL TELEPHONE PROGRAM

Proposed Revision in REA Specification PE–60 for Trunk Carrier Equipment

Notice is hereby given that, pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to revise REA Bulletin 345–50 to announce the addition of new requirements in REA Specification PE–60 for trunk carrier equipment. On issuance of REA Bulletin 345–50, Appendix A to Part 1701 will be modified accordingly.

Persons interested in the revision to the specification may submit written data, views or comments to the Director, Telephone Operations and Standards Division, Rural Electrification Administration, Room 1355, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, on or before September 2, 1976. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Director, Telephone Operations and Standards Division during regular business hours.

A copy of the revised page 14 of REA Specification PE–60 may be secured in person or by written request from the Director, Telephone Operations and Standards Division.

The text of revised REA Bulletin 345–50 announcing the revision of the specification is as follows:

REA BULLETIN 345–50

REA SPECIFICATION PE–60 FOR TRUNK CARRIER EQUIPMENT

I. *Purpose.* To announce issuance of revised page 14 of REA Specification PE–60 for Trunk Carrier Equipment.

II. *General.* There has been a definite need for a trunk carrier system which would be especially useful in low density areas of the United States and which would be fully com-

patible with station carrier in the same cable. The new requirements reflected in the enclosed sheet are intended to cover low density trunk carrier equipment. Page 14 of REA Specification PE–60 dated April 1975 should be removed and replaced by the enclosed page dated July 1976. This change becomes effective upon its issuance.

III. *Availability of specifications.* Copies of the revised page 14 of PE–60 will be furnished by REA upon request. Questions concerning the revised page may be referred to the Chief, Transmission Branch, Telephone Operations and Standards Division, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250, telephone number 202 447–3917.

Dated: July 28, 1976.

C. R. BALLARD,
Assistant Administrator, Telephone.

[FR Doc.76–22471 Filed 8–2–76;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 500]

[Docket No. 75N–0372]

ANIMAL DRUGS

Hexachlorophene

Correction

In FR Doc. 76–18206 appearing on page 25911 in the issue for Wednesday, June 23, 1976, make the following correction:

In the third column of page 25911, in the 5th line of the second full paragraph, the words "same and effective" should have read "safe and effective".

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 2, 13, 81, 83]

[Docket No. 20813]

RADIOTELEGRAPHY USE IN MARITIME SERVICES

Frequencies, Operating Procedures, Technical Standards and Other Criteria; Extension of Comment Period

Order. In the matter of amendment of Parts 2, 13, 81 and 83 to implement changes in frequencies, operating procedures, technical standards and other criteria relating to the use of radiotelegraphy in the maritime services adopted at the ITU World Maritime Administrative Radio Conference, Geneva, 1974,[1] Docket No. 20813.

1. The American Institute of Merchant Shipping (AIMS) has requested that the time for filing comments and reply comments in this docket be extended from July 26 and August 10, 1976, respectively, to August 6 and August 23, 1976, respectively.

2. AIMS states that its Director of Telecommunications, who is responsible for soliciting and coordinating industry comments regarding the subject docket, will be attending the Inter-Governmental Martime Consultative Organization's (IMCO) Subcommittee on Radiocommunications meeting in London from July 19 to July 23, 1976, and will not return to the United States until July 25, 1976. In that this leaves but one day to finalize an industry submission prior to the comment deadline, an extension of the filing period is requested.

3. For good cause shown, we find the public interest will be served by an extension of the comment and reply comment filing periods as requested by AIMS.

4. Accordingly, pursuant to the authority contained in §§ 0.331 and 1.46 of the Commission's rules, the request of AIMS is granted and the dates for filing comments and reply comments in this proceeding are extended to August 6 and August 23, 1976, respectively.

Adopted: July 26, 1976.

Released: July 27, 1976.

FEDERAL COMMUNICATIONS COMMISSION,
CHARLES A. HIGGINBOTHAM,
Chief, Safety and Special Radio Services Bureau.

[FR Doc.76–22427 Filed 8–2–76;8:45 am]

[1] See 41 FR 24155, Tuesday, June 15, 1976.

[47 CFR Part 73]

[Docket No. 20834]

FM BROADCAST STATIONS IN MUNCIE, INDIANA

Table of Assignments; Order Extending Time for Filing Comments and Reply Comments

In the matter of Amendment of § 73.202(b), FM Broadcast Stations (Muncie, Indiana), Docket No. 20834, RM–2413.

1. On June 1, 1976, the Commission adopted a notice of proposed rulemaking and order to show cause in the above-entitled proceeding (41 FR 24186). The date for filing comments has expired (July 15) and the date for filing reply comments is presently July 26, 1976.

2. On July 20, 1976, Twin Cities Broadcasting, Inc., licensee of Radio Station WXUS(FM), Lafayette, Ind. (WXUS), by counsel, filed a petition for extension of time for filing comments and reply comments to July 30 and August 10, 1976, respectively. WXUS was also requested to file comments by July 15, showing cause why its license should not be modified. A petition for acceptance of the late-filed request for extension was also filed. Counsel states that Donald R. Walters, Vice-President of Twin Cities Broadcasting, Inc., with no prior legal training, attempted to research, prepare and file comments on behalf of WXUS. WXUS, counsel adds, chose to forego the assistance of Washington counsel because the marginal financial condition of the station left it with an inadequate source of funding for professional services. He states that Mr. Walters was unable to file timely comments, since as a layman he admitted he was overwhelmed by the procedures involved. Counsel notes also that on June 30, the Station Manager of WXUS resigned, requiring Mr. Walters to devote a substantial amount of his time to the day-to-day internal operation of the station. On July 19, WXUS requested Bilger and Blair, its counsel, to provide legal assistance on this matter.

3. Pursuant to the provisions of § 1.46 of the rules, motions for extension of time are to be filed seven days prior to the filing date to afford the Commission sufficient time to act on the request and give timely notice of the action to interested persons. Late-filed requests will be considered in cases of last minute emergencies which could not have been anticipated by the party requesting the extension. Since the Commission has ordered Station WXUS to show cause why its license should not be modified, and since we would be hesitant to imply WXUS's consent to the proposed modification, an extension of time should be granted in our opinion.

4. *Accordingly, it is ordered,* That the dates for filing comments and reply comments in Docket No. 20834, are extended to and including July 30, and August 10, 1976, respectively.

5. This action is taken pursuant to authority found in sections 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules.

Adopted: July 23, 1976.

Released: July 28, 1976.

FEDERAL COMMUNICATIONS COMMISSION,
NEAL K. MCNAUGHTEN,
Acting Chief, Broadcast Bureau.

[FR Doc.76–22428 Filed 8–2–76;8:45 am]

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1109]

[Ex Parte No. 327]

RATE INCENTIVES FOR CAPITAL INVESTMENT

Proposed Rulemaking and Order

JULY 27, 1976.

Congress has declared as its purpose in enactment of the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 94–210, (4 R Act) "to provide the means to rehabilitate and maintain the physical facilities, improve the operations and structure, and restore the financial stability of the railway system of the United States, and to promote the revitalization of such railway system, so that this mode of transportation will remain viable in the private sector of the economy and will be able to provide energy-efficient, ecologically compatible transportation services with greater efficiency, effectiveness, and economy." In order to encourage capital investment and thus assist in the rehabilitation and revitalization of the railway system, Congress has enacted section 206 of the 4 R Act. This new section governs the publication of railroad rates based on a capital investment of $1,000,000 or more, individually or collectively, by a carrier, or by a shipper, receiver, agent thereof, or an interested third party. The full text of section 206, amending the Interstate Commerce Act

by adding a new provision, section 15 (19), is set forth below.

To promote the filing of rates based on capital investment of $1,000,000 or more, it appears preferable to adopt regulations under the new section 15(19) of the Act rather than permit uncertainty to exist for an extended period of time while rules, standards and procedures are developed on a case by case basis. Accordingly, the regulations here proposed for adoption are designed to encourage the filing of capital incentive rates by facilitating publication and by establishing expedited procedures to resolve controversies associated with the filing of rates based on a capital investment of a $1,000,000 or more.

DISCUSSION OF THE PROPOSED REGULATIONS

The provisions of section 15(19) of the Act have limited applicability. New railroad rate filings that do not involve a capital investment of a million dollars or more are subject to other sections of the Act. Only those railroad tariff proposals based on a capital investment of a million dollars or more are subject to the special requirements of section 15(19) of the Act. For this reason, the first regulation proposed for adoption § 1109.20(a), limits the application of the remainder of the regulations here proposed for adoption to rates based on a capital investment of a million dollars or more. A finding under section 15(19) and the proposed procedures is optional; a carrier may elect to take advantage of the new statutory provision or it may file a capital incentive rate under section 15 (8), subject to normal investigation and suspension procedures.

Although Congress could have provided that capital incentive rates might be filed with the Commisison 30 days in advance of their effective dates, as is the usual procedure for rate changes pursuant to section 6 of the Act, Congress instead provided that the actual filing of a capital incentive rate must be preceded by the filing of a "notice of intention to file a schedule stating a new rate * * *" This notice must be filed so as to allow the Commission a "180-day period following the filing of such notice of intention" to determine whether "the proposed schedule, or any part thereof, would be unlawful." To assure that a decision on the merits, in the event of protest, can be rendered in the 180-day period the proposed regulation §1109.20 (b) provides:

(1) That two copies of the proposed tariff be submitted with the notice of intention to file, one copy of which will be placed on file and remain available for public inspection in the Public Tariff File, Room 6217, of the Interstate Commerce Commission, Washington, D.C.;

(2) That a sworn affidavit setting forth in detail the anticipated capital investment accompany the notice; and

(3) That the carrier prepare and submit a summary, suitable for publication in the FEDERAL REGISTER, containing relevant data upon which a concerned person can form an informed judgment on whether to protest the proposal.

Proposed regulation § 1109.20(c) provides that notice of a carrier's proposal to file a capital incentive rate shall be given to concerned persons by publication of a summary of the proposal in the FEDERAL REGISTER.

Protests, if any, must be filed 25 days after the date of publication of the summary in the FEDERAL REGISTER [proposed regulation §1109.20(d)]. Section 15(19) directs that, if a protest is filed, the Commission must conduct a hearing. This requirement of a mandatory hearing, in the event of protest, is implemented by proposed regulation § 1109.20(e).

Proposed regulation § 1109.20(e)(2) places the burden of proof on protestant. Section 15(19) states, "[u]nless * * * the Commission determines * * * that the proposed schedule, or any part thereof, would be unlawful, such carrier may file the schedule * * *" Thus, a capital incentive rate cannot be prevented from being filed unless the Commission makes a definite finding of unlawfulness based on substantial evidence on the record as a whole.

Section 556 of the Administrative Procedure Act (5 U.S.C. 556), establishes the general rule that the proponent of a rule or order has the burden of proof. Since a proposed captal incentive rate will become effective automatically absent a prior Commission finding of unlawfulness, it must be the protestant which is seeking an order from the Commission. Consequently, the protestant must have the burden of proof.

The remaining proposed regulations provide that, with respect to all filings under section 15(19), the Commission will enter an order either authorizing or prohibiting the publication of capital incentive rates, [proposed regulation § 1109.20(f)] and for the reopening to consider going concern value [§ 1109.20 (h)(1)] and to consider violations of sections 2, 3 or 4 of the Act after the incentive rate has been in effect for a 5 year period, [proposed regulations § 1109.20(h)(2).]

The regulations [proposed regulation § 1109.20(g)] require that a tariff provision implementing a capital incentive rate must indicate that the rate has been established in accord with these special procedures [proposed regulations 49 CFR 1109.20(a) et seq.] and make reference to the Commission order authorizing the publication of that capital incentive rate.

Wherefore, in order to provide opportunity for full consideration of the proposed rules previously discussed and set forth in Appendix B hereto, and any related matters:

It is ordered, That a proceeding be, and it is hereby, instituted under the authority of section 206 of the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94-210), the Interstate Commerce Act (49 USC 15(19)), and the Administrative Procedure Act (5 USC 553 and 559) with the objective of encouraging capital investment in railroad facilities by facilitating the publication of new rates based on capital investment of a million dollars or more, individually or collectively, by a carrier, shipper, receiver, agent, or interested third party.

It is further ordered, That all common carriers by railroad subject to Part I of the Interstate Commerce Act, be, and they are hereby, made respondents in this proceeding.

It is further ordered, That any person interested in this proceeding shall notify this Commission by filing with the Office of Proceedings, Interstate Commerce Commission, Room 5342, Washington, D.C. 20423, on or before August 23, 1976, the original and one copy of a statement of intent to actively participate. The Commission shall then prepare and make available to all such persons a list containing the names and addresses of all parties desiring to participate in this proceeding and upon whom copies of all statements must be filed. No oral hearing will be scheduled for the receiving of testimony unless a need therefor should later appear.

It is further ordered, That following the preparation of the service list, a procedural order will be entered designating due dates for submission of evidence and arguments.

And it is further ordered, That a copy of this notice be served on each respondent, that a copy be deposited in the office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection, and that statutory notice of the institution of this proceeding, be given to the general public by delivery of a copy thereof to the Director, Office of the Federal Register for publication therein.

By the Commission.[1]

ROBERT L. OSWALD,
Secretary.

Section 15 of the Interstate Commerce Act is amended by adding at the end thereof the following new paragraph:

RATE INCENTIVES FOR CAPITAL INVESTMENT

(19) Notwithstanding any other provision of law, a common carrier by railroad subject to this part may file with the Commission a notice of intention to file a schedule stating a new rate, fare, charge, classification, regulation, or practice whenever the implementation of the proposed schedule would require a total capital investment of $1,000,000 or more, individually or collectively, by such carrier, or by a shipper, receiver, or agent thereof, or an interested third party. The filing shall be accompanied by a sworn affidavit setting forth in detail the anticipated capital investment upon which such filing is based. Any interested person may request the Commission to investigate the schedule proposed to be filed, and upon such request the Commission shall hold a hearing with respect to such schedule. Such hearing may be conducted without answer or other formal pleading, but reasonable notice shall be provided to interested parties. Unless, prior to the 180-day period following the filing of such notice of intention, the Commission determines, after a hearing, that the proposed schedule, or any part thereof, would be unlawful, such carrier may file the

[1] (Commissioner MacFarland did not participate.)

schedule at any time within 180 days thereafter to become effective after 30 days' notice. Such a schedule may not, for a period of 5 years after its effective date, be suspended or set aside as unlawful under section 2, 3, or 4 of this part, except that the Commission may at any time order such schedule to be revised to a level equaling the variable costs of providing the service, if the rate stated therein is found to reduce the going concern value of the carrier.

It is proposed to amend 49 CFR 1109 by adding § 1109.20 as set forth below:

§ 1109.20 Requirements and special procedures relating to rate incentives for capital investment.

(a) *Applicability.* The provisions of this part apply to railroad proposals for a new rate, fare, charge, classification, regulation, or practice that requires a total capital investment of $1,000,000 or more, individually or collectively, by such carrier, or by a shipper, receiver, or agent thereof, or an interested third party. These proposed rates are hereinafter referred to as capital incentive rates.

(b) *Notice of intention.* A notice of intention to file a schedule containing a capital incentive rate must be filed in advance of the filing of the actual tariff by the carrier (or its agent) electing to use the special procedures adopted pursuant to section 15(19). This notification, an original and 7 copies, shall make reference to Ex Parte No. 327, and shall be accompanied by the following documents:

(1) Two copies of the proposed tariff, one copy of which will be received and remain available for public inspection in the Public Tariff File, Room 6217, of the Interstate Commerce Commission, Washington, D.C.

(2) A sworn affidavit setting forth in detail the anticipated capital investment upon which such filing is based.

(3) *A summary suitable for publication in the* FEDERAL REGISTER. The summary shall include the name of the entity proposing to make the capital investment, the anticipated amount of the capital investment, the nature of the railroad facility to be augmented, improved or constructed, the commodity or commodities to be transported, the proposed duration of the capital incentive rate, the name and address of the responsible carrier official or representative to whom inquiries and request for documents relating to the proposal should be addressed, and a statement that a copy of the proposed tariff is available for public inspection in the Public Tariff File, Room 6217, of the Interstate Commerce Commission, Washington, D.C.

(c) FEDERAL REGISTER *publication.* The Commission will, as soon as practicable cause a summary of the proposal to be published in the FEDERAL REGISTER.

(d) *Protest.* Within 25 days from date of publication in the FEDERAL REGISTER, any interested person, herein referred to as protestant seeking a hearing on the proposed capital incentive rate must so inform the Commission and the carrier official or representative identified in the FEDERAL REGISTER. An original and 7 copies of this notification, hereinafter referred to as a protest, must be filed with the Commission and shall make reference to Ex Parte No. 327, the date of publication of the summary in the FEDERAL REGISTER, and the grounds for the requested investigation.

(e) *Hearing.* Upon the receipt of a protest, the Commission by order will immediately schedule a hearing to commence 30 days from service of the order.

(1) *Burden of proof.* In any hearing pertaining to a capital incentive rate the burden of proof shall be upon the protestant.

(2) *Procedural dates.* Protestant's initial presentation, in written form under modified procedure (unless oral hearing is directed), shall be due 30 days from service of the Commission order instituting the proceeding. The reply statement of the carrier (respondent) or any interested party shall be due 20 days thereafter. Complainant's rebuttal statement shall be due 20 days after the filing of the reply statement.

(3) *Postponement of procedural dates.* In view of the statutory requirement that hearings be concluded within a 180-day period following the notice of intention to file a capital incentive rate, postponement of the procedural dates established by these regulations is not contemplated. Request for postponement, if received later than 10 days before the due date, will not be accepted for filing.

(f) *Orders authorizing or prohibiting the publication of capital incentive rates.* With respect to every capital incentive rate proposal, the Commission shall enter an order either authorizing the publication of the actual tariff on 30 days' notice or prohibiting the publication of such rate.

(1) *Non-investigated proposals.* An order shall be entered 35 days after publication of the summary in the FEDERAL REGISTER authorizing the tariff publication on 30 days' notice of the non-investigated capital incentive rate. This authorization order shall be valid for a 180-day period and, if not exercised within that period, the order shall be of no further force or effect.

(2) *Investigated proposals.* (i) If, after hearing, the Commission finds that the capital incentive rate proposal is lawful, it will enter an order or report and order giving reasons for its conclusion and authorizing the filing on 30 days' notice of a tariff incorporating the proposal. This authorization, if not exercised, shall expire 180 days after service of the order.

(ii) If, after hearing, the Commission finds that the capital incentive rate proposal is unlawful, it will enter an order or report and order giving reasons for its conclusions prohibiting the publication of a tariff implementing the proposal.

(g) *Notation in tariffs or schedules.* Tariff provisions implementing capital incentive rates shall contain the following notation:

Provisions named herein authorized by Commission order served _____, 19__, and in conformity with 49 CFR 1109.20.

(h) *Reopening.* (1) The Commission shall retain jurisdiction to order that the capital incentive rate be increased to a variable cost level in the event the capital incentive rate is found to reduce the going concern value of the carrier.

(2) For a period of 5 years following the date a capital incentive rate becomes effective, the proceeding shall not be reopened for consideration of alleged violations of sections 2, 3, or 4 of the Act. Similarly, the schedules may not be set aside in a complaint proceeding as unlawful under sections 2, 3, or 4 within 5 years after the effective date of the incentive rate publication.

[FR Doc.76-22480 Filed 8-2-76;8:45 am]

notices

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

DEPARTMENT OF THE TREASURY

Fiscal Service

ADVISORY COMMITTEE ON FEDERAL CONSOLIDATED FINANCIAL STATEMENTS

Meeting

The second meeting of the Advisory Committee on Federal Consolidated Financial Statements is scheduled for Wednesday September 8, 1976, at 10:00 a.m. in Room 4121, Department of the Treasury, 15th & Pennsylvania Avenue, NW., Washington, D.C.

As announced in the Federal Register on February 20, 1976, the Secretary of the Treasury has approved a plan which calls for development and publication of consolidated financial statements for the Government on an accrual basis. There are major conceptual issues which need to be studied and resolved before a useful and reasonably reliable set of consolidated financial statements can be prepared in accordance with generally accepted accounting principles applicable to the Federal Government. Accordingly, the Advisory Committee on Federal Consolidated Financial Statements was formed to advise, recommend and lend vital staff assistance to the Secretary in the development of consolidated financial statements for the Federal Government.

For this second meeting, the members will be requested to formulate recommendations on the following conceptual issues:

Objectives of the Statements
Format of the Statements
Pension Fund Liabilities
Contingencies (Commitments)

Due to time constraints, no oral presentations by the public will be allowed at this meeting. However, anyone desiring to comment on the above issues should submit a written statement not later than September 1, 1976. All written statements received by this date will be considered by the Committee in determining its recommendations.

The meeting will be open to the public. It is to be held in a room accommodating 39 people in addition to members of the Committee and Treasury officials. Since the meeting is in a restricted admittance area, persons interested in attending are asked to call Mr. Michael Smokovich on (202) 964-8543 not later than 5 p.m. September 7, so that confirmation of space and access procedures can be provided.

Persons who want to submit written statements or desire further information should write to Mr. Michael Smokovich, Bureau of Government Financial Operations, Government Accounting Systems Staff, Treasury Annex No. 1, Room 412, Pennsylvania Avenue and Madison Place, NW., Washington, D.C. 20226. The minutes of the meeting will be available for public inspection. Copies may be obtained upon written request to Mr. Smokovich.

Dated: July 29, 1976.

DAVID MOSSO,
Fiscal Assistant Secretary.

[FR Doc.76-22415 Filed 8-2-76;8:45 am]

Office of the Secretary

[Public Debt Series No. 20-76]

TREASURY BONDS OF 1996-2001

Invitation To Bid

JULY 29, 1976.

I. INVITATION FOR TENDERS

1. The Secretary of the Treasury, pursuant to the authority of the Second Liberty Bond Act, as amended, invites tenders on a yield basis for $1,000,000,000, or thereabouts, of bonds of the United States, designated Treasury Bonds of 1996-2001 (CUSIP No. 912810 BW 7). The interest rate for the bonds will be determined as set forth in Section III, paragraph 3, hereof. Additional amounts of these bonds may be issued at the average price of accepted tenders to Government accounts and to Federal Reserve Banks for themselves in exchange for maturing Treasury securities held by them and as agents of foreign and international monetary authorities for new cash only. Tenders will be received up to 1:30 p.m., eastern daylight saving time, Friday, August 6, 1976, under competitive and noncompetitive bidding, as set forth in Section III hereof. The 7½ percent Treasury Notes of Series C-1976 and 6½ percent Treasury Notes of Series G-1976 maturing August 15, 1976, will be accepted at par in payment, in whole or in part, to the extent tenders are allotted by the Treasury.

II. DESCRIPTION OF BONDS

1. The bonds will be dated August 16, 1976, and will bear interest from that date, payable on a semiannual basis on February 15 and August 15, 1977, and thereafter on February 15 and August 15 in each year until the principal amount becomes payable. They will mature August 15, 2001, but may be redeemed at the option of the United States on and after August 15, 1996, in whole or in part, at par and accrued interest on any interest day or days, on 4 months' notice of redemption given in such manner as the Secretary of the Treasury shall prescribe. In case of partial redemption, the bonds to be redeemed will be determined by such method as may be prescribed by the Secretary of the Treasury. From the date of redemption designated in any such notice, interest on the bonds called for redemption shall cease.

2. The income derived from the bonds is subject to all taxes imposed under the Internal Revenue Code of 1954. The bonds are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, or any of the possessions of the United States, or by any local taxing authority.

3. The bonds will be acceptable to secure deposits of public moneys. They will not be acceptable in payment of taxes.

4. Bearer bonds with interest coupons attached, and bonds registered as to principal and interest, will be issued in denominations of $1,000, $5,000, $10,000, $100,000 and $1,000,000. Book-entry bonds will be available to eligible bidders in multiples of those amounts. Interchanges of bonds of different denominations and of coupon and registered bonds, and the transfer of registered bonds will be permitted.

5. The bonds will be subject to the general regulations of the Department of the Treasury, now or hereafter prescribed, governing United States bonds.

III. TENDERS AND ALLOTMENTS

1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to the closing hour, 1:30 p.m., Eastern Daylight Saving time, Friday, August 6, 1976. Each tender must state the face amount of bonds bid for, which must be $1,000 or a multiple thereof, and the yield desired, except that in the case of noncompetitive tenders the term "noncompetitive" should be used in lieu of a yield. In the case of competitive tenders, the yield must be expressed in terms of an annual yield with two decimals, e.g., 7.11. Fractions may not be used. Noncompetitive tenders from any one bidder may not exceed $500,000.

2. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions with respect to Government securities and borrowings thereon, may submit tenders for account of customers provided the names of the customers are set forth in such tenders. Others will not be permitted to submit tenders except for their own account. Tenders will be received without deposit from banking institutions for their own account, Federally-insured savings and loan associations, States, political subdivisions or instrumentalities thereof, public pension

and retirement and other public funds, international organizations in which the United States holds membership, foreign central banks and foreign States, dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions with respect to Government securities and borrowings thereon, and Government accounts. Tenders from others must be accompanied by payment (in cash or the notes referred to in Section I which will be accepted at par) of 5 percent of the face amount of bonds applied for.

3. Immediately after the closing hour tenders will be opened, following which public announcement will be made by the Department of the Treasury of the amount and yield range of accepted bids. Those submitting competitive tenders will be advised of the acceptance or rejection thereof. In considering the acceptance of tenders, those with the lowest yields will be accepted to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted a coupon rate will be determined at a ⅛ of one percent increment that translates into an average accepted price close to 100.000 and a lowest accepted price above 94.000. That rates of interest will be paid on all of the bonds. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price corresponding to the yield bid. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders, in whole or in part, including the right to accept tenders for more or less than the $1,000,000,000 of bonds offered to the public, and his action in any such respect shall be final. Subject to these reservations, noncompetitive tenders for $500,000 or less without stated yield from any one bidder will be accepted in full at the average price [1] (in three decimals) of accepted competitive tenders.

IV. Payment for and Delivery of Bonds

1. Settlement for accepted tenders in accordance with the bids must be made or completed on or before August 16, 1976, at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt. Payment must be in cash, notes referred to in Section I (interest coupons dated August 15, 1976, should be detached), in other funds immediately available to the Treasury by August 16, 1976, or by check drawn to the order of the Federal Reserve Bank to which the tender is submitted, or the United States Treasury if the tender is submitted to it, which must be received at such Bank or at the Treausry no later than: (1) Wednesday, August 11, 1976, if the check is drawn on a bank in the Federal Reserve District of the Bank to which the check is submitted, or the Fifth Federal Reserve District in the case of the Treasury, or (2) Monday, August 9, 1976, if the check is drawn on a bank in another district. Checks received after the dates set forth in the preceding sentence will not be accepted unless they are payable at a Federal Reserve Bank. Payment will not be deemed to have been completed where registered bonds are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. In every case where full payment is not completed the payment with the tender up to 5 percent of the amount of bonds allotted shall, upon declaration made by the Secretary of the Treasury in his discretion, be forfeited to the United States. When payment is made with notes, a cash adjustment will be made to or required of the bidder for any difference between the face amount of notes submitted and the amount payable on the bonds allotted.

2. Delivery of bonds in bearer form will be made on or about August 19, 1976. Purchasers of bearer bonds may elect to receive interim certificates on August 16, 1976, which will be exchangeable for the bonds when available at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

V. Assignment of Registered Notes

1. Registered notes tendered as deposits and in payment for bonds allotted hereunder are not required to be assigned if the bonds are to be registered in the same names and forms as appear in the registrations or assignments of the notes surrendered. Specific instructions for the issuance and delivery of the bonds, signed by the owner or his authorized representative, must accompany the notes presented. Otherwise, the notes should be assigned by the registered payees or assignees thereof in accordance with the general regulations governing United States securities, as hereinafter set forth. Bonds to be registered in names and forms different from those in the inscriptions or assignments of the notes presented should be assigned to "The Secretary of the Treasury for Treasury Bonds of 1996–2001 in the name of (name and taxpayer identifying number)." If bonds in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon Treasury Bonds of 1996–2001 to be delivered to _____." Notes tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The notes must be delivered at the expense and risk of the holder.

VI. General Provisions

1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make such allotments as may be prescribed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of bonds on full-paid tenders allotted, and they may issue interim receipts pending delivery of the definitive bonds.

2. The Secretary of the Treasury may at any time, or from time to time, prescribe supplemental or amendatory rules and regulations governing the offering, which will be communicated promptly to the Federal Reserve Banks.

George H. Dixon,
Acting Secretary of the Treasury.

[FR Doc.76–22636 Filed 7–30–76;3:53 pm]

[1] Average price may be at, or more or less than 100.000.

[Public Debt Series No. 18–76]

TREASURY NOTES OF SERIES J–1979

Invitation To Bid

July 29, 1976.

I. Invitation For Tenders

1. The Secretary of the Treasury, pursuant to the authority of the Second Liberty Bond Act, as amended, invites tenders on a yield basis for $2,000,000,000, or thereabouts, of notes of the United States, designated Treasury Notes of Series J–1979 (CUSIP No. 912827 FV 9). The interest rate for the notes will be determined as set forth in Section III, paragraph 3, hereof. Additional amounts of these notes may be issued at the average price of accepted tenders to Government accounts and to Federal Reserve Banks for themselves in exchange for maturing Treasury securities held by them and as agents of foreign and international monetary authorities for new cash only. Tenders will be received up to 1:30 p.m., eastern daylight saving time, Tuesday, August 3, 1976, under competitive and noncompetitive bidding, as set forth in Section III hereof. The 7½ percent Treasury Notes of Series C–1976 and the 6½ percent Treasury Notes of Series G–1976, maturing August 15, 1976, will be accepted at par in payment, in whole or in part, to the extent tenders are allotted by the Treasury.

II. Description of Notes

1. The notes will be dated August 16, 1976, and will bear interest from that date, payable on a semiannual basis on February 15 and August 15, 1977, and thereafter on February 15 and August 15 in each year until the principal amount becomes payable. They will mature August 15, 1979, and will not be subject to call for redemption prior to maturity.

2. The income derived from the notes is subject to all taxes imposed under the Internal Revenue Code of 1954. The notes are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, or any of the possessions of the United States, or by any local taxing authority.

3. The notes will be acceptable to secure deposits of public moneys. They will not be acceptable in payment of taxes.

4. Bearer notes with interest coupons attached, and notes registered as to principal and interest, will be issued in denominations of $5,000, $10,000, $100,000 and $1,000,000. Book-entry notes will be available to eligible bidders in multiples of those amounts. Interchanges of notes of different denominations and of coupon and registered notes, and the transfer of registered notes will be permitted.

5. The notes will be subject to the general regulations of the Department of the Treasury, now or hereafter prescribed, governing United States notes.

III. TENDERS AND ALLOTMENTS

1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to the closing hour, 1:30 p.m., eastern daylight saving time, Tuesday, August 3, 1976. Each tender must state the face amount of notes bid for, which must be $5,000 or a multiple thereof, and the yield desired, except that in the case of noncompetitive tenders the term "noncompetitive" should be used in lieu of a yield. In the case of competitive tenders, the yield must be expressed in terms of an annual yield, with two decimals, e.g., 7.11. Fractions may not be used. Noncompetitive tenders from any one bidder may not exceed $500,000.

2. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions with respect to Government securities and borrowings thereon, may submit tenders for account of customers provided the names of the customers are set forth in such tenders. Others will not be permitted to submit tenders except for their own account. Tenders will be received without deposit from banking institutions for their own account, Federally-insured savings and loan associations, States, political subdivisions or instrumentalities thereof, public pension and retirement and other public funds, international organizations in which the United States holds membership, foreign central banks and foreign States, dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions with respect to Government securities and borrowings thereon, and Government accounts. Tenders from others must be accompanied by payment (in cash or the notes referred to in Section I, which will be accepted at par) of 5 percent of the face amount of notes applied for.

3. Immediately after the closing hour tenders will be opened, following which public announcement will be made by the Department of the Treasury of the amount and yield range of accepted bids. Those submitting competitve tenders will be advised of the acceptance or rejection thereof. In considering the acceptance of tends, those with the lowest yields will be accepted to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be determined at a ⅛ of one percent increment that translates into an average accepted price close to 100.000 and a lowest accepted price above 99.500. That rate of interest will be paid on all of the notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price corresponding to the yield bid. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders, in whole or in part, including the right to accept tenders for more or less than the $2,000,000,000 of notes offered, and his action in any such respect shall be final. Subject to these reservations, noncompetitive tenders for $500,000 or less without stated yield from any one bidder will be accepted in full at the average price [1] (in three decimals) of accepted competitive tenders.

IV. PAYMENT

1. Settlement for accepted tenders in accordance with the bids must be made or completed on or before Monday, August 16, 1976, at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt. Payment must be in cash, notes referred to in Section I (interest coupons dated August 15, 1976, should be detached), in other funds immediately available to the Treasury by August 16, 1976, or by check drawn to the order of the Federal Reserve Bank to which the tender is submitted, or the United States Treasury if the tender is submitted to it, which must be received at such Bank or at the Treasury no later than: (1) Wednesday, August 11, 1976, if the check is drawn on a bank in the Federal Reserve District of the Bank to which the check is submitted, or the Fifth Federal Reserve District in case of the Treasury, or (2) Monday, August 9, 1976, if the check is drawn on a bank in another district. Checks received after the dates set forth in the preceding sentence will not be accepted unless they are payable at a Federal Reserve Bank. Payment will not be deemed to have been completed where registered notes are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. In every case where full payment is not completed, the payment with the tender up to 5 percent of the amount of notes alloted shall, upon declaration made by the Secretary of the Treasury in his discretion, be forfeited to the United States. When payment is made with notes, a cash adjustment will be made to or required of the bidder for any difference between the face amount of notes submitted and the amount payable on the notes allotted.

[1] Average price may be at, or more or less than 100.000.

V. ASSIGNMENT OF REGISTERED NOTES

1. Registered notes tendered as deposits and in payment for notes allotted hereunder are not required to be assigned if the new notes are to be registered in the same names and forms as appear in the registrations or assignments of the notes surrendered. Specific instructions for the issuance and delivery of the new notes, signed by the owner or his authorized representative, must accompany the notes presented. Otherwise, the notes should be assigned by the registered payees or assignees thereof in accordance with the general regulations governing United States securities, as hereinafter set forth. When the new notes are to be registered in names and forms different from those in the inscriptions or assignments of the notes presented the assignment should be to "The Secretary of the Treasury for Treasury Notes of Series J–1979 in the name of (name and taxpayer identifying number)." If notes in coupon form are desired, the assignment should be to "The Secretary of the Treasury for Coupon Treasury Notes of Series J–1979 to be delivered to _____." Notes tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The notes must be delivered at the expense and risk of the holder.

VI. GENERAL PROVISIONS

1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make such allotments as may be prescribed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of notes on full-paid tenders allotted, and they may issue interim receipts pending delivery of the definitive notes.

2. The Secretary of the Treasury may at any time, or from to time, prescribe supplemental or amendatory rules and regulations governing the offering, which will be communicated promptly to the Federal Reserve Banks.

GEORGE H. DIXON,
Acting Secretary of the Treasury.

[FR Doc.76-22634 Filed 7-30-76;3:53 pm]

[Public Debt Series No. 19-76]

8 PERCENT TREASURY NOTES OF SERIES B–1986

Offering of Notes

I. OFFERING OF NOTES

JULY 29, 1976.

1. The Secretary of the Treasury pursuant to the authority of the Second Liberty Bond Act, as amended, offers $4,000,000,000, of notes of the United States, designated 8 percent Treasury Notes of Series B–1986 (CUSIP No.

912827 FW 7), at par. On the basis primarily of the level of subscriptions received accompanied by the 20 percent deposit, as hereinafter provided in Section III, paragraph 4, the Secretary of the Treasury expressly reserves the right to increase the amount of the offering. It is not expected that the amount of the increase would be substantially in excess of $2,000,000,000. Additional amounts of these notes may be issued to Government accounts and to Federal Reserve Banks in exchange for maturing Treasury securities held by them. The 7½ percent Treasury Notes of Series C–1976 and 6½ percent Treasury Notes of Series G–1976, maturing August 15, 1976, will be accepted at par in payment, in whole or in part, to the extent subscriptions are allotted by the Treasury. The books will be open through Wednesday, August 4, 1976, for the receipt of subscriptions.

II. Description of Notes

1. The notes will be dated August 16, 1976, and will bear interest from that date, payable on a semiannual basis on February 15 and August 15, 1977, and thereafter on February 15 and August 15 in each year until the principal amount becomes payable. They will mature August 15, 1986, and will not be subject to call for redemption prior to maturity.

2. The income derived from the notes is subject to all taxes imposed under the Internal Revenue Code of 1954. The notes are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, or any of the possessions of the United States, or by any local taxing authority.

3. The notes will be acceptable to secure deposits of public moneys. They will not be acceptable in payment of taxes.

4. Bearer notes with interest coupons attached, and notes registered as to principal and interest, will be issued in denominations of $1,000, $5,000, $10,000, $100,000 and $1,000,000. Book-entry notes will be available to eligible subscribers in multiples of these amounts. Interchanges of notes of different denominations and of coupon and registered notes, and the transfer of registered notes will be permitted.

5. The notes will be subject to the general regulations of the Department of the Treasury, now or hereafter prescribed, governing United States notes.

III. Subscriptions and Allotments

1. Subscriptions accepting the offer made by this circular will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, through Wednesday, August 4, 1976. Each subscription must state the face amount of notes subscribed for, which must be $1,000 or a multiple thereof.

2. All subscribers are required to agree not to purchase or to sell, or to make any agreements with respect to the purchase or sale or other disposition of any notes of this issue at a specific rate or price, until after midnight August 4, 1976.

3. Commercial banks, which for this purpose are defined as banks accepting demand deposits and dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions with respect to Government securities and borrowings thereon, may submit subscriptions for account of customers provided the names of the customers are set forth in such subscriptions, and accompanied by the deposits prescribed below. Others will not be permitted to submit subscriptions except for their own account.

4. Under the Second Liberty Bond Act, as amended, the Secretary of the Treasury has the authority to reject or reduce any subscription, to allot more or less than the amount of notes applied for, and to make different percentage allotments to various classes of subscribers when he deems it to be in the public interest; and any action he may take in these respects shall be final. Subject to the exercise of that authority, subscriptions for $500,000, or less, will be allotted in full provided that 20 percent of the face value of the notes for each subscriber is submitted as a deposit (in cash or the notes referred to in Section I which will be accepted at par). Such deposits must be submitted to the Federal Reserve Bank or Branch, or to the Bureau of the Public Debt, with the subscriptions, including those submitted for the account of customers. Guarantees in lieu of deposits will not be accepted. Allotment notices will not be sent to subscribers submitting subscriptions in accordance with this paragraph.

5. Subscriptions not accompanied by the deposit, as set forth in the preceding paragraph, will be received subject to a percentage allotment. Subscriptions will be received without deposit from commercial and other banks for their own account, Federally-insured savings and loan associations, States, political subdivisions or instrumentalities thereof, public pension and retirement and other public funds, international organizations in which the United States holds membership, foreign central banks and foreign States, dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions with respect to Government securities and borrowings thereon, Federal Reserve Banks and Government accounts. Subscriptions from others must be accompanied by a deposit of 5 percent of the face amount of notes applied for, or by a guarantee of such deposit by a commercial bank or dealer as described in paragraph 3 above. Allotment notices will be sent out promptly upon allotment to subscribers submitting subscriptions in accordance with this paragraph. Following allotment, any portion of the 5 percent payment in excess of 5 percent of the amount of notes allotted may be released upon the request of the subscriber.

6. Subscribers may submit subscriptions under the provisions of paragraph 4 with a 20 percent deposit, and paragraph 5 with a 5 percent deposit. Each subscription will be treated as a separate subscription.

IV. Payment for and Delivery of Notes

1. Payment at par for notes allotted hereunder must be made or completed on or before August 16, 1976, at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt. Payment must be in cash, notes referred to in Section I (interest coupons dated August 15, 1976, should be detached), in other funds immediately available to the Treasury by August 16, 1976, or by check drawn to the order of the Federal Reserve Bank to which the subscription is submitted, or the United States Treasury if the subscription is submitted to it, which must be received at such Bank or at the Treasury no later than: (1) Wednesday, August 11, 1976, if the check is drawn on a bank in the Federal Reserve District of the Bank to which the check is submitted, or the Fifth Federal Reserve District in case of the Treasury, or (2) Monday, August 9, 1976, if the check is drawn on a bank in another district. Checks received after the dates set forth in the preceding sentence will not be accepted unless they are payable at a Federal Reserve Bank. Payment will not be deemed to have been completed where registered notes are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. In every case where full payment is not completed, the payment with the subscription up to 5 percent of the amount of notes alloted shall, upon declaration made by the Secretary of the Treasury in his discretion, be forfeited to the United States.

2. Delivery of notes in bearer form will be made on August 16, 1976, except that if adeqaute stocks of the notes are not available on that date, the Department of the Treasury reserves the right to issue interim certificates on that date which will be exchangeable for the notes when available at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. If a subscriber elects to receive an interim certificate, the certificate must be returned at his own risk and expense.

V. Assignment of Registered Notes

1. Registered notes tendered as deposits and in payment for notes allotted hereunder are not required to be assigned if the new notes are to be registered in the same names and forms as appear in the registrations or assignments of the notes surrendered. Specific instructions for the issuance and delivery of the new notes, signed by the owner or his authorized representative, must accompany the notes presented. Otherwise, the notes should be assigned by the registered payees or assignees thereof in accordance with the geneeral regulations

governing United States securities, as hereinafter set forth. When the new notes are to be registered in names and forms different from those in the inscriptions or assignments of the notes presented the assignment should be to "The Secretary of the Treasury for 8 percent Treasury Notes of Series B–1986 in the name of (name and taxpayer identifying number)." If notes in coupon form are desired, the assignment should be to "The Secretary of the Treasury for 8 percent coupon Treasury Notes of Series B–1986 to be delivered to ------." Notes tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Dept, Washington, D.C. 20226. The notes must be delivered at the expense and risk of the holder.

VI. GENERAL PROVISIONS

1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive subscriptions, to make allotments as may be prescribed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of notes on full-paid subscriptions allotted, and they may issue interim receipts pending delivery of the definitive notes.

2. The Secretary of the Treasury may at any time, or from time to time, prescribe supplemental or amendatory rules and regulations governing the offering, which will be communicated promptly to the Federal Reserve Banks.

GEORGE H. DIXON,
Acting Secretary of the Treasury.

[FR Doc.76-22635 Filed 7-30-76;3:53 pm]

DEPARTMENT OF DEFENSE

Office of the Secretary

DEFENSE SCIENCE BOARD TASK FORCE ON "ELECTRONIC TEST EQUIPMENT"

Advisory Committee Meeting

Pursuant to the provision of Pub. L. 92–463, notice is hereby given that the Defense Science Board Task Force on Electronic Test Equipment will meet in open session on 5 and 6 October 1976 in Room 9W67, National Center Building No. 1, 2511 Jefferson Davis Highway, Arlington, Virginia. Each session will commence at 9 a.m. The meeting on the second day will adjourn at noon.

The mission of the Defense Science Board is to advise the Secretary of Defense and Director of Defense Research and Engineering on overall research and engineering and to provide long-range guidance in these areas to the Department of Defense.

The primary responsibility of the Task Force is to examine the greater use by the Department of Defense of privately developed, commercially available off-the-shelf electronic test equipment, including modifications thereof, with the goal of achieving economy and reliability benefits for the several armed services to recommend policies and procedures which will maximize these benefits.

This will be the first meeting of the Task Force to review implementation of the Task Force recommendations.

Telephone inquiries should be directed to Mr. Rudolph J. Sgro, Task Force Executive Secretary at (202) 695–7915.

MAURICE W. ROCHE,
Director, Correspondence and Directives, OASD (Comptroller).

JULY 28, 1976.

[FR Doc.76-22381 Filed 8-2-76;8:45 am]

DEFENSE SCIENCE BOARD TASK FORCE ON SPECIFICATIONS AND STANDARDS IMPROVEMENT

Advisory Committee Meeting

Pursuant to the provisions of Pub. L. 92–463, effective January 5, 1973, notice is hereby given that the Defense Science Board Task Force on Specifications and Standards Improvement will meet in open session at 0900 hours, Thursday and Friday, September 16 and 17, 1976, in Room 1 E801 #2, the Pentagon, Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and Director of Defense Research and Engineering on overall research and engineering and to provide long-range guidance in these areas to the Department of Defense.

The primary responsibility of the Task Force is to provide an evaluation of current DoD Specifications and Standards and the related DoD organization, system and procedures to serve as a basis for DoD policy decisions to reduce costs in systems/equipment design and application.

At this meeting, the Task Force will discuss its findings to date; summarize actions taken and projected; relate specifications and standards impact on weapon system design, production; consider cost impact on systems and equipment of specifications and standards governing reliability, maintainability, quality, configuration control and the like; identify specifications and standards application problems and initiatives required for solution and consider related subjects that may come before the group.

Attendees outside of Task Force membership will be admitted as observers to the proceedings. With time permitting and at the discretion of the Chairman, a specified but limited time will be allotted so as to permit observers to comment, make recommendations, take issue, or otherwise speak with respect to the subjects.

Due to the limited time and space availability, it is requested that persons interested in attending the DSB Task Force meeting provide written notice to the address listed below by September 9, 1976. Notice should include information with respect to interest and degree of participation.

Mr. Lester Fox, Director, Defense Materiel Specifications and Standards Office, Cameron Station, Alexandria, Virginia 22314.

Telephone inquiries may also be made to Mr. Fox at (202) 274–7061.

MAURICE W. ROCHE,
Director, Correspondence and Directives OASD (Comptroller).

JULY 28, 1976.

[FR Doc.76-22382 Filed 8-2-76;8:45 am]

DEPARTMENT OF JUSTICE

Antitrust Division

UNITED STATES V. N. V. NEDERLANDSCHE COMBINATIE VOR CHEMISCHE INDUSTRIE ET AL.

Proposed Consent Judgment; Comments

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, the following written comments on the proposed judgment filed with the United States District Court for the Southern District of New York in Civil Action No. 70 Civ. 2079 (D.N.E.), United States of America v. N. V. Nederlandsche Combinatie Voor Chemische Industrie, et al., were received by the Department of Justice and are published herewith, together with Justice's response to the comments.

Dated: July 28, 1976.

CHARLES F. B. MCALEER,
Assistant Chief, Judgments and Judgment Enforcement Section, Antitrust Division.

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

United States of America, Plaintiff, against N. V. Nederlandsche Combinatie Voor Chemische Industrie, et al., Defendants. (D.N.E.) Civil No. 70 Civ. 2079).

PLAINTIFF'S SECOND RESPONSE TO COMMENTS UPON THE PROPOSED CONSENT JUDGMENT BETWEEN THE UNITED STATES AND DEFENDANTS BOEHRINGER MANNHEIM GMBH AND VEREINIGTE CHININFABRIKEN ZIMMER & CO. GMBH

This response is directed to the second group of comments upon the proposed consent judgment between the United States and defendants Boehringer Mannheim GmbH and Vereinigte Chininfabriken Zimmer & Co. GmbH ("consenting defendants"), which was received following May 29, 1976 and prior to June 30, 1976 (attached hereto as Exhibit A). This response is made and filed in accordance with the provisions of the Antitrust Procedures and Penalties Act (15 U.S.C. 16 (b) and (d)). The proposed consent judgment and a Competitive Impact Statement were filed with the Court on April 30, 1976 and published in the FEDERAL REGISTER on May 3, 1976 (41 Fed. Reg. 18328–34 (1976)). Comments received as of May 29th and the response of the United States thereto ("First Response to Comments," attached hereto as Exhibit B), dated June 18, 1976, were published in the FEDERAL REGISTER on July 1, 1976 (41 F.R. 27090–95 (1976)). This response and the comments to which it is directed will also be published together in the FEDERAL REGISTER.

During this second comment period the Department of Justice received ten comments upon the proposed consent judgment. Most of these comments either were limited to a request for copies of the settlement papers or were addressed to the issues to which the

plaintiff responded in the First Response to Comments. Two comments were received which raise additional issues to which plaintiff responds below.

I. *This proceeding is not intended to be punitive.* M. Ehrenberg has suggested that the proposed consent judgment provides for insufficient punishment for the acts alleged in the complaint and believes that some financial sanction should be charged against these defendants, including rebates to persons who use quinine and quinidine products. Plaintiff brought this proceeding for the purpose of enjoining and restraining the violations of the Sherman Act alleged in the complaint. Consenting defendants and others were charged with fixing prices, allocating markets, rigging bids, establishing quotas and allocating supplies. Relief in civil injunctive proceedings brought by the Government under the Sherman Act is directed to restoring competition by terminating the illegal practices alleged in the complaint and by preventing their recurrence in the future rather than by punishment for past acts. Persons can be punished for violations of the antitrust laws by fine and imprisonment if they are charged with criminal violations of the Sherman Act in a criminal proceeding. Such a proceeding was brought by the United States in this Court on October 25, 1968 (*U.S. v. Nederlandsche Combinatie Voor Chemische Industrie, et al.*, 68 Cr. 870 (S.D.N.Y.)). On July 3, 1969, defendant Boehringer entered a plea of nolo contendere to these charges and was fined $80,000. Boehringer's subsidiary, Zimmer, was dismissed from the case at that time.

In addition, the United States sued these defendants for civil damages it suffered as a result of the same violations alleged in the complaint in this action. That suit, *United States v. Nederlandsche Combinatie Voor Industrie, et al.*, 70 Civ. 2080 (S.D.N.Y.), was filed simultaneously with this action. Defendant Boehringer paid $100,000 to the United States in settlement of that suit.

These defendants were also sued in two class actions, one brought by retail druggists and the other by individual consumers of quinine, quinidine and other cinchona products. These actions, which provided for "rebates" to those members of the class included as plaintiffs in such actions, are discussed at Section 2 of the First Response to Comments which is attached hereto as Exhibit B.

Thus, while this proceeding is not directed at criminal punishment of defendants for the violations of the Sherman Act that were alleged, defendants have been punished in a criminal proceeding and have paid damages in three civil proceedings, one action brought by the United States and two class actions brought by private persons.

It also should be noted that the proposed consent judgment represents a settlement rather than a judicial determination that defendants have violated the antitrust laws. The proposed consent judgment specifically recites that there has been no testimony taken and no trial or adjudication of any issue of fact or law in the case. (See page 2 of the proposed consent judgment)

II. *The Availability of Intervention in this Proceeding.* Glen N. W. McNaughton, an attorney representing Peter Marmion, inquires as to the procedures available for intervention in this proceeding and for obtaining damages against defendants for the activities alleged in the complaint. He states that his client attempted to enter the quinine and quinidine manufacturing industry in the early 1960's.

Initially, it must be stated that this proceeding offers no opportunity for the redress of private damage claims against defendants. The purpose of this proceeding is to determine whether the proposed consent judgment agreed to between the United States and consenting defendants is in the public interest and should be entered. Persons wishing to intervene in this lawsuit for the purpose of participating in this decision may be authorized to intervene by the Court pursuant to and in accordance with the requirements of Section 2(f) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16 (f)(3)). Parties seeking to participate in that manner should make their application directly to the Court and serve notice of such an application upon plaintiff and consenting defendants.

The recourse available to persons claiming to have been damaged by the actions of the defendants alleged in the complaint has been discussed at Section 4 of the Competitive Impact Statement filed in this case and referred to above. Further discussion appears at Section 2 of the First Response to Comments. It can be noted, however, that since it does not appear that Mr. McNaughton's client was either claiming damage as a consumer or as a retail pharmacist, the two class actions discussed in the Competitive Impact Statement and the First Response to Comments do not affect any potential action he may have against consenting defendants.

Dated: July 26, 1976.

Respectfully submitted,

DONALD A. KAPLAN.
JULIE BROOKS MURRAY.

EXHIBIT A

NEW YORK, N.Y.
May 20, 1976.

Hon. DAVID N. EDELSTEIN,
Chief Judge United States District Court, Southern District of New York.

YOUR HONOR: I do not understand the legal language of the public notice in the New York Times, regarding "Proposed Quinine Settlement".

I was awarded some money and I am inquiring if some additional amount is due me.

I would appreciate an early reply and remain.

Sincerely yours,

WALTER BLUM.

BOSTON, MASS.
May 25, 1976.

Ref. Proposed Quinine Settlement Public Notice—Boston Globe, May 24, 1976.

Mr. JOEL DAVIDSON,
Chief Foreign Commerce Section, Antitrust Division, Department of Justice, Washington, D.C.

DEAR SIR: On page five of the Boston Globe for Monday, May 24, 1976, there is a public notice requesting comments from the public.

Does "Quinine, quindine and cinchona" refer to the illegal importation of drugs into the United States?

Does "U.S. v. N.V." mean United States versus New York, New Hampshire or Nevada?

Does the prevalence of German-Dutch in the names of the companies involved indicate a monopoly?

Does "Chininfabriken" indicate manufacture in Red China or Nationalist China? Or does it indicate another product? Opium or Poppy seeds?

Does "consenting defendants" mean that the defendants were aware they were involved in an illegal operation before the operation got off the ground? Did these companies (mentioned above) propose to import the raw material (cinchona) refine it, manufacture it and distribute it to the public in markets of their own choosing?

Does "sales quotas" and "fix prices" mean that sales have been, are or will be confined to certain segments of the public under prices which make the product available to any person having the wherewithal to buy? Do our antitrust laws concern themselves with only material considerations or may a person denied just recognition sue for grievance under those laws?

Preceding the public notice on page five (ref above) there is a news release continued from page one which occupied the public media for some days. Were all the passengers, hostages?

Is "I3" made to appear as "I8"?

Do you believe either of the explanations offered res. the method by which the hijackers smuggled the guns and grenades into the plane?

Having read the news release, are you inclined to believe that the "ten bodies" found in the "gutted fuselage" are probably the ten hi-jackers alive and well and the "captured three" under-cover agents working for the United States?

The news release ends with a government statement.

I would like a copy of the information offered in the public notice and any information I may need in order to secure said copy.

Sincerely Yours,

AMELIA ANNA WILSON.

NEW YORK, N.Y.,
May 28, 1976.

Re: Proposed Quinine Settlement.

Mr. JOEL DAVIDOW,
Chief, Foreign Commerce Section, Antitrust Division, Department of Justice, Washington, D.C.

DEAR MR. DAVIDOW: I refer to a notice that has been published in the New York Times of May 7, under above-captioned heading.

I would appreciate it if you could kindly send me the text of the proposed settlement. I would also appreciate being appraised of my rights under this settlement given the fact that I have been, due to my health condition, a heavy user of quinine products since 1954 up until today.

Any information and assistance in this matter will be very highly appreciated.

Looking forward to your reply, I remain

Very sincerely,

MARC BREUER.

GENNEVILLIERS,
May 31, 1976.

Mr. JOEL DAVIDOW,
Chief, Foreign Commerce Section, Antitrust Division, Department of Justice, Washington, D.C.

DEAR MR. DAVIDOW: Our Company started on March 1974 in the field of fine chemicals production. We are now entering the quinine and quinidine market, starting from Cinchona bark purchased in Africa and South America.

We have read in the "Chemical Marketing Reporter" about the proposed quinine settlement, and we would be grateful to receive copies of the proposal and the CIS, if available.

We thank you for your much valued comments.

Sincerely yours,

DIDIER WIRTH,
Président Directeur Général, Isochem S. A.

BROOKLYN, N.Y.
June 1, 1976.

DEAR MR. DAVIDOW: I am very much interested in the Proposed Quinine Settlement case now before Hon. Chief Judge David N. Edelstein. In particular Item No. 4 of the competitive impact statement. As I am still using quinidine for heart irregularities.

Sincerely Yours,

HARRY SCHLOSSBERG.

BROOKLYN, N.Y.
June 1, 1976.

Hon. DAVID N. EDELSTEIN

I am interested in Item No. 4 of the competitive impact statement, of the proposed Quinine settlement case now before you. I am still taking their pills for my heart irregularities, and I am thankful someone is riding check on these drug manufacturers.

Sincerely yours,

HARRY SCHLOSSBERG.

2 JUNE 1976.

Mr. JOEL DAVIDOW,
Chief, Foreign Commerce Section, Antitrust Division, Department of Justice, Washington, D.C.

DEAR MR. DAVIDOW: In pursuance of the advertisement in the New York Times of the "Proposed Quinine Settlement", would you please send me a copy of the proposed judgment itself.

I want to intervene in this matter on behalf of Caribe Pharmaceutical Corporation.

In the early sixties, my client, Peter Marmion, incorporated a company under the name of Caribe Pharmaceutical Corporation and expended a huge amount of money in securing sources of Cinchona Park and in arranging for a supply of same, he also erected a plant in Puerto Rico for the manufacture of quinine and quinidine.

He installed machinery and acquired the necessary help, and started the manufacture of quinine and quinidine in Puerto Rico in the early 1960s.

When he commenced the operation, it seemed financially viable considering the price at that time of quinine and quinidine on the market. However, because of the cartel and its ramifications, the defendants in the above case, in order to drive my client out of business and make it impossible for him to manufacture and sell quinine and quinidine at a profit, reduced the price of quinine and quinidine to such a price that my client could not compete and was forced to discontinue his operation, disband his business, dispose of his plant, all to his detriment, to the extent of over two million dollars.

We would like to intervene and set forth more at length the details of my client's loss caused by the cartel. What is our next step?

Yours faithfully,

GLEN N. W. MCNAUGHTON.

JAMAICA, N.Y., *June 4, 1976.*

DEAR SIR: As per the article in the New York Times, "Proposed Quinine Settlement," I have been a large user of Quinidine for the past 20 years. Would I be entitled to any settlement in the above litigation?

I would appreciate a reply from your office.

Sincerely yours,

ROSE ZACKIN.

NEW ROCHELLE, N.Y., *June 7, 1976.*

JOEL DAVIDOW,
Chief, Foreign Commerce Section, Antitrust, Division, Dept. of Justice, Washington, D.C.

DEAR MR. DAVIDOW: I recently heard of a proposed Quinine settlement entitled Civil Action No. 70 Civ. 2079 filed May 21, 1970 U.S. v. N.V. Nederlandsche Combinatie Voor Chemische Industries et al. regarding Quinine products between the years 1958 to 1966. Since my now deceased father had such products prescribed to him in great quantity during those years does this action mean that I may recover overcharges for which I paid? If so, how may I go about recovering same?

Yours truly,

SEYMOUR KURTZMAN.

COLONIA, N.J.

In Re: Civil Action 70, Civ. 2079.

Judge EDELSTEIN,
U.S. District Court,
New York, N.Y.

SIR: We are one of the families victimized by the companies that controlled the import prices of the Cinchona products.

My mother has been living on the Quinidine medication for approximately 20 years. During that time we have spent a small fortune, literally, on the drug. It is not fair to allow the Co's. to go unpunished with a mere verbal slap on the wrists and no more. Some financial sanctions should be charged against them and perhaps some rebates made to those people who used the medications continuously, and of course, suffered the greatest financial damage. The U.S. Govt. is far too lenient in this matter.

Respectfully,

M. EHRENBERG.

EXHIBIT B

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

United States of America, Plaintiff, against N. V. Nederlandsche Combinatie Voor Chemische Industrie, et al., Defendants. ((D.N.E.) Civil No. 70 Civ. 2079.)

PLAINTIFF'S RESPONSE TO COMMENTS UPON THE PROPOSED CONSENT JUDGEMENT BETWEEN THE UNITED STATES AND DEFENDANTS BOEHRINGER MANNHEIM GMBH AND VEREINIGTE CHININFABRIKEN ZIMMER & CO. GMBH

This response to comments upon the proposed consent judgment between the United States and defendants Boehringer Mannheim Gmbh and Vereinigte Chininfabriken Zimmer & Co. Gmbh ("Consenting Defendants") is made and filed in accordance with the provisions of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16 (a) and (d)). The proposed consent judgment and a Competitive Impact Statement were filed with the Court on April 30, 1976 and published in the FEDERAL REGISTER on May 3, 1976 (41 Fed. Reg. 18328–18334 (1976)). Comments received as of May 29, 1976 will be published simultaneously with this response and typewritten copies of the comments are attached hereto as Exhibit A.

As of May 29, 1976 the Department of Justice has received 32 comments upon the proposed consent judgment. Other than simple requests for copies of the settlement papers, these comments with one exception (discussed below) are concerned with three topics: (1) the sharp increase in price for quinidine-based drugs in the post 1966 period; (2) the availability of private remedies for supposed overcharges for quinidine-based drugs related to these price increases; and (3) the effect of the proposed consent judgment on the present prices to the consumer of quinine and quinidine-based products. One additional comment raises a number of different questions which will be discussed separately below.

I. The Extreme Price Increase for Quinidine-based Products in the Post 1966 Period. Almost all of the comments upon the proposed consent judgment are directed at the substantial increase in retail prices for quinidine-based drugs which has occurred mainly in the early 1970's. While the complaint in this action, which was filed on May 21, 1970, alleges a conspiracy beginning in 1958 and ending in 1966, the proposed judgment is designed to prevent these consenting defendants from engaging in any illegal price fixing, customer or market allocation or bid rigging in the future. Unfortunately, factors not within control of these consenting defendants and, thus, beyond the power of this consent judgment to remedy, have undoubtedly contributed to the recent price increases.

In order to determine reasons for recent price increases, the Department of Justice conducted interviews with leading United States pharmaceutical manufacturers, importers and government officials of nations which produce the raw material (cinchona bark). These inquiries indicate several factors other than illegal private collusion may, in part, explain the price increases.

A significant factor affecting current prices is the involvement of governments in the production, pricing and export of raw cinchona bark. For instance, Indonesia, the largest producer of cinchona bark, has nationalized almost all of the cinchona plantations and controls the export of cinchona products through a government-owned company. In addition, Indonesian law forbids the export of the raw bark, requiring that it be processed initially in Indonesia. One result is that prices charged for quinine sulphate by the Indonesian government-owned company to United States importers rose from approximately $70 per kilogram (2.2 pounds) to approximately $190 per kilogram between June 1974 and June 1975. Another example of government involvement is found in Zaire, the only other major producer of cinchona bark. Although both public and private ownership of cinchona planations exists in Zaire, the export price of cinchona bark is controlled by the government. Price increases that are a result of regulation by foreign governments within their borders may be beyond the reach of the antitrust laws of the United States.

According to all sources interviewed, another major factor contributing to the price increases is an unprecedented and unanticipated increase in the demand for quinidine heart medicine and for quinidine anti-malarial agents. The problem of increased demand is compounded by the fact that it takes at least seven years, and more often 14 years, before cinchona trees mature enough to be commercially useful. Even then, the bark may be stripped only at seven-year intervals. Therefore, it would normally take nearly a decade for the supply of raw material to respond to a dramatic increase in demand as is presently occurring.

Adding to the problem are international currency fluctuations and the devaluation of the United States dollar that have occurred in the past several years, which put United States purchasers of West German and Dutch products (whose currencies are among the strongest) at a disadavntage. As most cinchona products are processed by West German and Dutch businesses (consenting defendants are West German corporations), these currency fluctuations and devaluations are probably reflected in quinine prices. Still another factor contributing to the price increases is the pervasive world-wide inflation, which has pushed up cost at every stage of production of the product. This inflation has generally been more pronounced outside the United States; thus, products imported into the United States such as quinine and quinidine reflect these higher rates of inflation.

In summary, many significant factors, other than conduct by consenting defendants and other private persons and firms subject to attack under our antitrust laws, may be among the causes for the recent price increases for guinidine based drugs. Nonetheless, the Department of Justice will continue to monitor the situation for evidence of illegal practices, not only as part of its continuing

specific responsibility for supervision under the proposed consent judgment, but also pursuant to its general responsibility to protect the American consumer against violations of the antitrust laws.

II. Private remedies available to users of quinidine-based drugs related to recent price increases. If users of quinidine-based drugs believe that the recent price increases are the result of violations of the antitrust laws, they retain their full rights to bring antitrust civil damage actions against consenting defendants or any of the original defendants in the above entitled action. Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages such person has suffered. The entry of the proposed final judgment will not have any effect on the right of any potential private plaintiffs claiming they have been damaged as a result of post 1966 conduct to sue for monetary damages or any other legal or equitable remedies.

However, with respect to persons believing they have been overcharged for quinidine products or otherwise damaged as a result of the activities during the 1958 to 1966 period which were the subject of the complaint in this action, their rights to sue under Section 4 of the Clayton Act may be foreclosed as a result of two antitrust class actions brought on behalf of consumers of cinchona bark derivative products and wholesalers and retailers of these same products in the United States District Court for the Eastern District of Pennsylvania. A class action entitled *Mary Cusick, Executrix of the Estate of Richard J. Cusick, Deceased, et al.* v. *N. V. Nederlandsche Combinatie Voor Chemische Industrie, et al.*, Civil Action No. 68-2457 (the "Cusick action"), was filed on November 6, 1968 on behalf of individual consumers of quinine, quinidine, other cinchona products and any other related products or substances, who would have suffered as a result of the same violations alleged in the complaint in this action. A second class action entitled *Sol S. Turnoff Drug Distributors, Inc., et al.* v. *N. V. Nederlandsche Combinatie Voor Chemische Industrie, et al.*, Civil Action 69-1883 (the "Turnoff action"), was brought on August 14, 1969 on behalf of wholesalers and retailers of the same products, suffering as a result of the same alleged violations. Boehringer was named as a defendant in both actions and contributed $180,000 to a joint settlement pool, which totaled $1,300,000. The plaintiff makes no comment with respect to the effect of these settlements on Boehringer's wholly-owned subsidiary, Zimmer, which was named in the complaints but not in the settlements.

Against the total settlement pool all injured members of the two classes were entitled to file claims. An order establishing the classes for settlement purposes and providing for notice to class members was signed by the United States District Court for the Eastern District of Pennsylvania on April 10, 1973. The terms of the settlement and notices of opportunity to file claims or to request exclusion from the settlement pursuant to Rule 23(c)(2) of the Federal Rules of Civil Procedure were printed in English or Spanish newspapers throughout the United States. The individual druggists and wholesalers each received a similar notice by direct mail. Approximately 750 consumer claims and 750 wholesaler and retailer claims were filed. A final order approving the settlement was signed by the same court on June 25, 1973.

As a consequence of these settlements, all potential users, retailers or wholesalers of cinchona bark products, except for those requesting exclusion from the two classes, had an opportunity to receive relief based upon the same antitrust violations by consenting defendant Boehringer alleged in the complaint in this action. All other potential private plaintiffs who might have been damaged by the alleged violations retain their rights to sue for monetary damages and any other legal and equitable relief based on the 1958–1966 period. However, this proposed consent judgment, when approved by the Court, may not be used as prima facie evidence in private litigation pursuant to Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)).

III. Effect of the Proposed Consent Judgment on the Present Prices to the Consumer of Quinine and Quinidine-based Products. The effects of the proposed consent judgment are described in detail beginning at Section 3 of the Competitive Impact Statement, entitled "The Proposed Consent Judgment And Its Anticipated Effects On Competition." The comments, however, are generally addressed to what effect the proposed consent judgment will have upon persons who are paying present prices for quinidine-based drugs. To the extent these prices are the result of the factors described under Section I above, the proposed consent judgment will have little effect on such prices, and will offer little opportunity for redress to consumers. However, the proposed consent judgment will prevent and restrain consenting defendants from taking any action of a nature similar to that alleged in the complaint, such as fixing prices, allocating markets, rigging bids, establishing quotas and allocating supplies, which might have contributed to the recent sharp price increase. The goal of this final judgment is a more diverse and competitive industry in quinine and quinidine drugs at both the manufacturing and the refining stage (at least with respect to private persons and firms).

IV. Response to Additional Questions and Comments Raised by James Morgan Scott, Jr. In addition to inquiries similar to those raised by other persons commenting upon the proposed judgment, Mr. James Morgan Scott, Jr. raises several additional questions and puts forward several additional comments which are dealt with below.

Mr. Scott inquires as to the total damage to the United States public caused by the known and suspected illegal practices of consenting defendants. There has been no determination of the total damage to the United States public resulting from the practices alleged to have been committed by consenting defendants during the period of the conspiracy, 1958 to 1966. However, to the extent that damages to the United States as a quinine purchaser and seller and damages to members of the quinine-product consuming public or to sellers of these products make up part of the total damage to the United States public, some figures are available. Defendant Boehringer has paid $100,000 in settlement of a damage suit brought by the United States based upon the allegations similar to those in this action, *United States* v. *N. V. Nederlandsche Combinatie Voor Chemische Industrie, et al.*, 70 Civ. 2080 (S.D.N.Y., filed May 21, 1970). Defendant Boehringer also contributed $180,000 to the settlement of the two private treble damage class actions referred to in Section II above. Of course, these amounts do not necessarily represent the total damage to the United States Government or to the members of the private treble damage class allegedly sustained at the hands of consenting defendants for their actions during the period 1958 to 1966 any more than does any other settlement of a damage action.

Mr. Scott next poses three questions as to the wisdom and propriety of the settlement and why no damages were recovered. The United States does not, by this proposed consent judgment, concede the innocence of consenting defendants, nor do consenting defendants concede any wrongdoing under the antitrust laws. The essence of a consent judgment is that the parties have seen fit to avoid the cost and uncertainties of full litigation in favor of this proposed consent judgment which, as stated in the Competitive Impact Statement, provides for relief which fully prohibits and corrects the violations alleged in the complaint.

In Section 4 of the Competitive Impact Statement, the Government's position with respect to the alternative of full trial on the merits is stated fully. Furthermore, the sole purpose of this action was to enjoin and restrain consenting defendants from continuing or renewing any of the violations of the antitrust laws alleged in the complaint. No damages were sought in this action. A separate damage action brought on behalf of the United States (described in Section 3 of the Competitive Impact Statement) was settled for $100,000.

Mr. Scott inquired as to the cost to United States taxpayers of this lawsuit thus far. This action was filed on May 21, 1970 and was part of a larger investigation by the Department of Justice that began in 1966 with Grand Jury hearings. During the early Grand Jury stages of the investigation, two or three attorneys from the Antitrust Division were devoting nearly full time to the investigation. This lasted approximately one and one half to two years. Subsequent to indictments by the Grand Jury in 1968, a much smaller amount of time was expended, since most of the activity in the case was related to the settlement agreements reached with various defendants. Thus, in total, approximately three to five person-years in attorneys' time have been spent in the investigation, litigation and settlement of all aspects of the criminal, civil injunctive and civil damage cases involving the quinine cartel of the 1958 to 1966 period. Mr. Scott also inquired as to the number of active cases in the Antitrust Division and how many cases have been filed. As of April 30, 1976, there were 150 pending cases in which the Antitrust Division of the Department of Justice presently has responsibility. Since July 1, 1969, the Antitrust Division has initiated 464 civil and criminal cases.

Mr. Scott also inquired as to the percentage of complaints to the Antitrust Division which result in the filing of a case and what portion of filed cases result in settlements. There is no way to determine what percentage of complaints by members of the public result in the filing of cases by the Antitrust Division. Very often investigations are commenced before any complaint is received. On the other hand, many complaints do not involve violations of the antitrust laws. The great majority of all cases filed by the Antitrust Division result in settlement, either by a consent judgment in civil cases or by pleas of nolo contendere or guilty in criminal cases.

Mr. Scott requests further explanation of the statement, following Section 6 of the Competitive Impact Statement, that no materials and documents of the type described in Section (b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)) were considered determinative in formulating this proposed consent judgment. Such statement simply means that no one particular document or group of documents alone convinced the Department of Justice to enter into the proposed consent judgment presented to the Court for its approval. The Department was, of course, aware of the numerous documents produced in this action and the testimony of witnesses before the Grand Jury. It was the totality of this evidence rather than any particular part of it or any document subsequently furnished to the Department of Justice which was determinative in formulating the proposed consent judgment. Consequently, Mr. Scott's next comment, where he suggested that it would be more truthful to say that several hundred pounds of material were considered determinative in reaching the settlement, is not entirely incorrect. Within the meaning of the statutory requirements, however, no such documents in and of themselves were "determinative", but it is correct to assume that the substantial evidence upon which the original lawsuit was based was considered by attorneys for the Department of Justice in connection with this proposed consent judgment.

Mr. Scott's final inquiry concerns the volume of the pleadings and transcripts in this case. With respect to consenting defendants, the only documents filed are the complaint, proposed consent judgment, Competitive Impact Statement, two orders by the Court related to the procedures under the Antitrust Procedures and Penalties Act and a statement pursuant to section 2(g) of the Act (15 U.S.C. § 16(g)) filed by consenting defendants. There was one hearing in court related to the settlement, on December 9, 1974. The transcript of that proceeding contains 42 pages.

Dated: June 18, 1976.

Respectfully submitted,
DONALD A. KAPLAN.
JULIE BROOKS MURRAY.

[FR Doc.76-22395 Filed 8-2-76;8:45 am]

UNITED STATES V. UNITED ARTISTS THEATRE CIRCUIT, INC. ET AL.

Proposed Consent Judgment and Competitive Impact Statement Thereon

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 that a proposed consent judgment and a competitive impact statement as set out below have been filed with the United States District Court for the Eastern District of New York in Civil Action No. 71 C609, *United States of America* v. *United Artists Theatre Circuit, Inc.* and *United Artists Eastern Theatres, Inc.* The complaint in the case alleges that the acquisition of the Prudential Theatres Co., Inc., by the United Artists Theatre Circuit (UATC) substantially lessened competition in the purchase of licenses to exhibit feature motion pictures in Suffolk, Nassau and Queens counties and throughout the New York Metropolitan Area. The proposed judgment requires UATC to divest certain theatres which it acquired from Prudential. It also enjoins UATC, for 10 years, from acquiring any operating motion picture theatre in Suffolk, Nassau or Queens counties without the approval of the Government or the Court and requires UATC to give the Government 60 days prior nottice of its intention to acquire any operating motion picture theatre elsewhere in the New York Metropolitan Area. Public comment is invited on or before October 8, 1976. Such comments and responses thereto will be published in the FEDERAL REGISTER and filed with the Court. Comments should be directed to Bernard Wehrmann, Chief, New York Office, Antitrust Division, Department of Justice, 26 Federal Plaza, New York, New York 10007.

Dated: July 27, 1976.

CHARLES F. B. MCALEER,
Assistant Chief, Judgments and Judgment Enforcement Section.

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

United States of America, Plaintiff, v. United Artists Theatre Circuit, Inc., and United Artists Eastern Theatres, Inc., Defendants. 71 Civ. 609, stipulation; Filed: July 26, 1976.

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. A Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this stipulation, this stipulation shall be of no effect whatever and the making of this stipulation shall be without prejudice to plaintiff and defendants in this way and any other proceeding.

Dated: July 26, 1976.

For Plaintiff: Thomas E. Kauper, Assistant Attorney General; William E .Swope, Charles F. B. McAleer, Bernard Wehrmann, Ralph T. Giordano, Erwin L. Atkins, Charles W. Brooks, Attorneys, Department of Justice.

For defendants: Wachtell, Lipton, Rosen & Katz, Attorneys for United Artists Theater Circuit, Inc., and United Artists Eastern Theatres, Inc.

By HERBERT M. WACHTELL,
A Member of the Firm.

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, plaintiff, v. UNITED ARTISTS THEATRE CIRCUIT, INC. and UNITED ARTISTS EASTERN THEATRES, INC., Defendants. 71 Civ. 609 *final Judgment*, Filed: July 26, 1976.

Plaintiff, United States of America, having filed its complaint herein on May 20, 1971, and the defendants United Artists Theatre Circuit, Inc. and United Artists Eastern Theatres, Inc., having appeared and filed their answer to the complaint denying the material allegations thereof and raising certain affirmative defenses, and the plaintiff and the defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence or admission by any party with respect to any such issue;

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence or admission by any party with respect to any such issue and upon the consent of the parties, it is hereby

Ordered, Adjudged and Decreed as follows:

I. This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Act of Congress of October 15, 1914 (15 U.S.C. § 18), commonly known as the Clayton Act, as amended.

II. As used in this Final Judgment:

(A) "UATC" means defendants United Artists Theatre Circuit, Inc. and United Artists Eastern Theatres, Inc., and each of their subsidiaries.

(B) "Eligible Purchaser" means any person or persons, proposing to purchase, lease or sublease any theatre for theatre purposes, to which the plaintiff, after notice, does not object, or if the plaintiff does object, of which the Court approves.

(C) "person" means any individual, partnership, corporation or other business or legal entity other than UATC or its subsidiaries.

(D) "Non-theatre purpose" means that the proposed use of a theatre will be for other than the exhibition of feature motion pictures except on a possible temporary interim basis.

(E) "New York Metropolitan Area" means the five Counties of the City of New York, the Counties of Westchester, Rockland, Nassau and Suffolk in the State of New York, the Counties of Bergen, Essex, Hudson, Passaic and Union in the State of New Jersey and the County of Fairfield in the State of Connecticut.

III. The provisions of this Final Judgment shall apply to UATC, its subsidiaries, successors and assigns, to each of their respective officers, directors, agents and employees, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise. Any Eligible Purchaser who acquires any assets by means of a divestiture pursuant to this Final Judgment shall not be considered a successor or assign of UATC.

IV. (A) UATC is ordered and directed to divest to Eligible Purchasers, within 60 months from the date of entry of this Final Judgment, each of the theatres listed in Appendix A to this Final Judgment.

(B) Divestiture of the theatres listed in Appendix A shall be accomplished in the following ways:

(1) UATC may sell or, subject to the provisions of Section IV(C) of this Final Judgment, lease any such theatre owned by it in fee;

(2) UATC may assign the lease of any such theatre of which it is the lessee or, subject to the provisions of Section IV(E) of this Final Judgment, sublease such theatre.

(C) With respect to any theatre which is divested by lease (hereinafter "Lease"):

(1) The term of the Lease shall be not less than 20 years for any theatre listed in Group 1 of Appendix A, except that the Lease shall grant the lessee the right to terminate the Lease effective as of the end of the tenth year of the term; not less than 10 years for any theatre listed in Group 2; and not less than 5 years for any theatre listed in Group 3. (Such periods of 20, 10 and 5 years are

referred to hereinafter as the "Minimum Lease Term".)

(2) UATC may, during the Minimum Lease Term, sell, lease, or otherwise dispose of its fee in any such theatre to any person for any use, provided that such sale, lease or other disposition is made subject to the Lease and the rights of the lessee under the Lease continue until the termination of the Lease.

(3) The Lease for any theatre listed in Group 1 or Group 2 of Appendix A, which is entered into prior to the appointment of a trustee pursuant to Section V of this Final Judgment, may provide that if the fee is purchased by an Eligible Purchaser during the Minimum Lease Term, such Lease may be terminated at the option of the Eligible Purchaser. No such provision, however, may be contained in any Lease negotiated by a trustee pursuant to Section V of this Final Judgment.

(4) The Lease for any theatre listed in Group 3 of Appendix A, which is entered into prior to the appointment of a trustee pursuant to Section V of this Final Judgment, may provide that UATC may terminate the Lease during the Minimum Lease Term if UATC accepts a bona fide offer by a third person to purchase the fee for non-theatre purposes or to lease the fee for non-theatre purposes for a term of not less than 20 years and such a sale or lease is consummated. UATC may, however, exercise its right of termination under such a provision only to the extent permitted by paragraph D of this Section IV. No such provision may be contained in any Lease negotiated by a trustee pursuant to Section V of this Final Judgment.

(5) The Lease shall grant the lessee an option as provided for in the Lease to purchase the fee at any time during the term of the Lease, provided that such option shall terminate if the lessee, within 60 days after written notice to it by UATC of receipt of a bona fide offer by a third person to purchase the fee, including any offer contemplated by subparagraphs (2), (3), or (4) of this Section IV(C), shall refuse to purchase the fee upon the same economic terms offered by the third person. Such option, however, shall be reinstated if the sale to the third person is not consummated.

(D) As to not more than 2 of the theatres listed in Group 3 of Appendix A, UATC, at any time after the entry of this Final Judgment and whether before or after the making of a Lease as to such theatre, shall have the right to accept a bona fide offer to purchase the fee for non-theatre purposes or to lease the fee for non-theatre purposes for a term of not less than 20 years, and UATC may terminate the Lease of any such theatre upon the consummation of such sale or lease if the Lease was entered into prior to the appointment of a trustee pursuant to Section V of this Final Judgment. In no event may UATC, pursuant to the provisions of this paragraph D, sell or lease for non-theatre purposes, the fee of more than 2 of the theatres listed in Group 3 of Appendix A, but nothing herein shall be construed to abrogate any rights of UATC to dispose of its fee ownership in any such theatre pursuant to the provisions of subparagraph (2) of Section IV(C), and subparagraphs (2) and (3) of Section VII(C) of this Final Judgment.

(E) With respect to any theatre which is divested by sublease (hereinafter "Sublease"), such Sublease shall be for the entire remaining present term of the master lease less one day provided that if the remaining term of the master lease is in excess of 10 years the Eligible Purchaser may, at its option, enter into a Sublease for a period of not less than 10 years, with a right effective as of the end of the Sublease term to renew for the remaining term of the master lease less one day, or any portion thereof (such periods are hereinafter referred to as the "Minimum Sublease Term").

(F) UATC shall make known the availability of the theatres listed in Appendix A by customary and usual means, including appropriate advertising. UATC shall furnish, on an equal and nondiscriminatory basis, to all bona fide prospective purchasers who so request, all necessary information regarding said theatres and shall permit them to make such inspection of the facilities and operations of the theatres as is reasonably necessary for a prospective purchaser to advise itself properly.

(G) Ninety days after the date of entry of this Final Judgment and every 90 days thereafter until UATC has divested each of the theatres listed in Appendix A, UATC shall submit written reports to the plaintiff, describing the steps which have been taken to comply with this Section IV. Each report shall include the name and address of each person who, during the preceding 90 days, had made an offer, expressed a desire, or entered into negotiations to purchase, lease or sublease any theatre, together with full details of same. Each report shall also include the name and address of each person who, during the preceding 90 days, UATC has sought to interest in the purchase, lease or sublease of any theatre, together with full details of same.

(H) At least 60 days before the consummation, pursuant to this Section IV, of a divestiture to a proposed Eligible Purchaser of any theatre listed in Appendix A, UATC shall furnish in writing to the plaintiff the name and address of the proposed Eligible Purchaser, together with the terms and conditions of the proposed divestiture. At the same time, UATC shall list the name and address of each person not previously reported who offered or expressed a desire to purchase, lease or sublease such theatre, together with full details of same. Within 20 days of the receipt of this information, the plaintiff may request in writing additional information concerning the transaction and parties thereto. If no request is made for additional information, the plaintiff shall advise UATC in writing no later than 20 days prior to the scheduled consummation date whether it has any objections to the proposed divestiture. If a request for additional information is made, the plaintiff shall advise UATC in writing within 30 days after receipt of all such information or within 30 days after receipt of a statement in writing from UATC that it does not have the requested information, whether it has any objections to the proposed divestiture. If the plaintiff does not object within the periods specified, then the divestiture may be consummated. If the plaintiff does so object, the proposed divestiture shall not be consummated unless UATC obtains approval from the Court or the plaintiff's objection is withdrawn.

V. If UATC does not divest itself, in accordance with the provisions of this Final Judgment, of each of the theatres listed in Appendix A within 60 months from the date of entry of this Final Judgment, the Court shall on application of the Plaintiff appoint a trustee for the purpose of divesting the remaining theatres in accordance with the provisions of this Final Judgment. The trustee shall dispose of each of the remaining threatres by sale, assignment, Lease or Sublease. Any such Lease or Sublease shall be for the applicable Minimum Lease or Sublease Term. The trustee shall act with all deliberate speed to dispose of each of the remaining threatres. Each divestiture by the trustee shall be in accordance with the provisions of this Final Judgment and subject to prior approval of the Court after the parties have had an opportunity to be heard with respect to each such proposed divestiture and the price and terms thereof. The trustee shall serve, at the cost and expense of UATC, on such terms and conditions as the Court sees fit. The appointment of a trustee by the Court shall not preclude UATC itself from divesting any of the remaining theatres in accordance with the provisions of this Final Judgment.

VI. (A) Any contract of sale, assignment, Lease, or Sublease to an Eligible Purchaser of a theatre listed in Appendix A shall require the Eligible Purchaser to file with this Court its representation that it proposes to operate the theatre for the exhibition of feature motion pictures.

(B) No Lease or Sublease shall contain any rental provisions based upon a share of the profits of the theatre covered by the Lease or Sublease or of any other theatre, provided, however, that rental provisions may be based upon a percentage of the gross receipts of the leased or subleased theatre.

VII. (A) UATC shall be in full control of the operations and management of each theatre listed in Appendix A until the theatre has been divested in accordance with the provisions of this Final Judgment. Pending initial divestiture, UATC shall continue to operate each theatre for the exhibition of feature motion pictures and shall not close or curtail its operations without the prior written consent of the plaintiff or, if such consent is refused, upon the approval of the Court.

(B) UATC shall not participate in any way, directly or indirectly, in the management, operation or control of any theatre listed in Appendix A after it has been divested pursuant to this Final Judgment, nor shall UATC book or buy feature motion pictures for any such theatre after it has been divested. Where a theatre has been divested by Lease or Sublease, these prohibitions shall be expressly set forth in the Lease or Sublease.

(C) Notwithstanding the provisions of paragraph (B) of this Section VII:

(1) UATC may accept and enforce a bona fide lien, mortgage or other form of security received by it to secure full payment of any unpaid portion of the purchase price. UATC may also enforce the terms and conditions of any Lease or Sublease in accordance with its provisions or as provided by law, and may exercise the rights of a lessor or sublessor in the event of a default. If two or more theatres are divested to a single Eligible Purchaser, such Lease, Sublease, lien, mortgage, or other form of security may not provide that a default by the lessee or mortgagor with respect to one such theatre shall constitute a default with respect to all such theatres, provided, however, that such provision may be contained in any such Lease, Sublease, lien, mortgage, or other form of security, if reasonably necessary to the security of UATC.

(2) If UATC, by enforcement of any bona fide lien, mortgage or any other form of security interest reacquires ownership, possession or control of any divested theatre or in the event of reacquisition or repossession by UATC prior to the expiration of the Minimum Lease or Sublease Term of a leased or subleased theatre divested hereunder, UATC shall promptly notify the plaintiff in writing and shall divest such theatre by sale, assignment, Lease or Sublease to an Eligible Purchaser within 12 months of reacquisition or repossession in accordance with the provisions of this Final Judgment. The minimum duration of any such subsequent Lease or Sublease shall be the applicable Minimum Lease or Sublease Term less the period of time such theatre was operated by an Eligible Purchaser prior to reacquisition or repossession by UATC. If UATC is unable to

divest any such theatre to an Eligible Purchaser within 12 months of reacquisition or repossession, UATC may, with the prior written consent of the plaintiff, or, if such consent is refused, upon approval of the Court, sell, lease or otherwise dispose of such theatre to any person for non-theatre purposes. In no event may UATC, directly or indirectly, operate such theatre for more than 18 months after reacquisition or repossession by UATC without the prior written consent of the plaintiff or, if such consent is refused, upon approval of the Court.

(3) If UATC reacquires or repossesses any divested theatre after the expiration of the applicable Minimum Lease or Sublease Term, or if it reacquires or repossesses any theatre disposed of by sale or lease pursuant to Section IV(D) of this Final Judgment, UATC may sell, lease or otherwise dispose of any such theatre to any person for any purpose, but in no event may UATC, directly or indirectly, operate such theatre for more than 18 months after such reacquisition or repossession without the prior written consent of the plaintiff or, if such consent is refused, upon approval of the Court.

VIII. (A) UATC is enjoined and restrained for a period of 10 years from the date of entry of this Final Judgment from acquiring any part of the assets or stock of any operating motion picture theatre in the Counties of Queens, Nassau and Suffolk in the State of New York, other than the Whitman Theatre located in Huntington, New York, except with the prior written consent of the plaintiff, or if such consent is refused, then upon the approval by this Court after a determination by this Court that the effect of any such acquisition of assets or stock will not be to substantially lessen competition or tend to create a monopoly in the exhibition of feature motion pictures in any section of the country.

(B) For a period of 10 years from the date of entry of this Final Judgment, UATC is ordered and directed to give the plaintiff written notice of its intention to acquire any part of the assets or stock of any operating motion picture theatre in any of the Counties of the New York Metropolitan Area, other than the Counties of Queens, Nassau and Suffolk, at least 60 days before the closing of any such acquisition.

IX. (A) For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, UATC shall permit duly authorized representatives of the Department of Justice on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice, subject to any legally recognized privilege:

(1) Access during the business hours of UATC, who may have counsel present, to those books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession, custody or under the control of UATC which relate to any matters contained in this Final Judgment;

(2) Subject to the reasonable convenience of UATC and without restraint or interference from it, to interview officers or employees of UATC, any of whom may have counsel present, regarding such matters.

(B) UATC shall submit such reports in writing, with respect to the matters contained in this Final Judgment, as may from time to time be requested in writing by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division.

(C) No information obtained by the means provided in this Section IX of this Final Judgment shall be divulged by a representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff except in the course of legal proceedings to which the United States is a party for the purpose of determining or securing compliance with this Final Judgment or as otherwise required by law.

X. Jurisdiction of this action is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

XI. Entry of this Final Judgment is in the public interest.

Dated: ----------

United States District Judge.

APPENDIX A

Amityville, 221 Broadway, Amityville, NY.
Bedford, Route 22, Bedford Village, NY.
Brookhaven, Patchogue Rd., Port Jefferson, NY.
Commack Drive-In, Veterans Hway., Commack, NY.
Farmingdale, 356 Main St., Farmingdale, NY.
Flanders Drive-In, Flanders Rd., Riverhead, NY.
Gables, 173 E. Merrick Rd., Merrick, NY.
Hampton Drive-In, Montauk Hway., Bridgehampton, NY.
Islip, Main and South Streets, Islip, NY.
Johnny All-Weather Drive-In, Sunrise Hway. & Bayview Ave., Copiague, NY.
*Oakdale, Montauk Hway, Oakdale, NY.
Rialto, 104 South Ocean, Patchogue, NY.
Rocky Point Drive-In, Rt. 25A, Rocky Point, NY.
Sag Harbor, Main St., Sag Harbor, NY.
Sayville, 107 Railroad Ave., Sayville, NY.
Southampton, 3743 Hill St., Southampton, NY.
Suffolk, 118 E. Main St., Riverhead, NY.
One of *Centereach, 1970 Middle Country Rd., Centereach, NY, Smithtown, 2 E. Main St., Smithtown, NY, or *Brentwood, Avenue P and Brentwood Rd., Brentwood, NY.
One of Patchogue, 69 E. Main St., Patchogue, NY, or Plaza, 393 E. Main St.. Patchogue, NY.
One of Babylon, 34 W. Main St., Babylon, NY, or *North Babylon, 1130 Deer Park Ave., N. Babylon, NY.
One of Bayshore, 200 W. Main St., Bayshore, NY, or Bayshore Cinema, 1881 Sunrise Hway., Bayshore, NY.
One of *Mid-Island, Hempstead Tpke. & Rt. 107, Bethpage, NY, or Pequa, Sunrise Hway. & Ocean Ave., Massapequa, NY.
One of Casino, 113–18 Liberty Ave., Richmond Hill, NY, or Lefferts, 122–02 Liberty Ave., Richmond Hill, NY.
All alternatives to be at UATC's election.
*The theatres designated with an asterisk (*) are leased by UATC and are not owned by it in fee.

Group 1

Amityville
Babylon
Bayshore Cinema
Islip
Patchogue
Plaza
Rialto
Sag Harbor
Sayville
Smithtown
Southampton
Suffolk

Group 2

Bayshore
Bedford
Brookhaven
Casino
Farmingdale
Gables
Lefferts
Pequa

Group 3

Commack Drive-In
Flanders Drive-In
Hampton Drive-In
Johnny All-Weather Drive-In
Rocky Point Drive-In

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK

United States of America, Plaintiff, v. United Artists Theatre Circuit, Inc., and United Artists Eastern Theatres, Inc., Defendants. 71 Civ. 609. Competitive impact statement relating to proposed consent judgment, filed: July 26, 1976.

This Competitive Impact Statement is filed by the Government pursuant to the requirements of Section 2 of the Act of Congress of December 21, 1974 (15 U.S.C. § 16), commonly known as the Antitrust Procedures and Penalties Act. It relates to the proposed consent judgment submitted for entry against the defendants in this civil antitrust suit.

NATURE AND PURPOSE OF THE PROCEEDING

On May 20, 1971, the Government filed a civil antitrust suit against United Artists Theatre Circuit, Inc., New York, New York, charging that its acquisition in July 1963 of the assets of Prudential Theatres Co., Inc. (Prudential), Long Island, New York, might substantially lessen competition or tend to create a monopoly in the purchase of licenses to exhibit feature motion pictures in the New York Metropolitan Area, in violation of Section 7 of the Clayton Act. In November 1971 United Artists Eastern Theatres, Inc., Long Island, New York, a wholly-owned subsidiary of United Artists Theatre Circuit, Inc., was added as a defendant in the action. (Both are referred to collectively herein as UATC.)

In its complaint, the Government asked the Court to declare the acquisition to be violative of Section 7 of the Clayton Act and to order UATC to divest itself of all of the assets acquired from Prudential.

EVENTS GIVING RISE TO THE ALLEGED VIOLATION

This suit concerns the purchase of licenses to exhibit feature motion pictures. Such licenses are purchased from distributors by exhibitors or operators of motion picture theatres, in competition with other exhibitors in the same area.

At the time of the acquisition, Prudential and UATC were among the four largest exhibitors of feature motion pictures in the New York Metropolitan Area, which includes the 5 counties of New York City, the counties of Westchester, Rockland, Suffolk and Nassau in the State of New York, the counties of Bergen, Essex, Hudson, Passaic and Union in the State of New Jersey and the county of Fairfield in the State of Connecticut. Prudential operated 56 theatres in this area, including 40 theatres in Suffolk county, 7 in Nassau county and 2 in Queens county. UATC operated 60 theatres in the New York Metropolitan Area, including 11 in Nassau county and 8 in Queens county. At the time of the acquisition, UATC did not operate any theatres in Suffolk county.[1]

[1] At the time of the acquisition, Prudential also operated 21 theatres in Wisconsin and 1 theatre in western New Jersey. UATC was (and remains) one of the largest exhibitors in the nation, operating several hundred theatres throughout the United States.

The Government's principal theory of illegality is that the acquisition of Prudential's theatres in the New York Metropolitan Area has significantly increased UATC's bargaining power with distributors to the detriment of smaller theatre circuits and independent exhibitors in the area. That is, UATC may now offer distributors substantially greater and more extensive theatre coverage in the New York Metropolitan Area thereby enhancing its bargaining power, especially for licenses to the more desirable films. This increased bargaining power is derived primarily from Prudential's block of 40 theatres in Suffolk county which, at the time of the acquisition, accounted for approximately 60% of all of the theatres located there. Smaller theatre circuits and independent exhibitors, unable to offer such broad and extensive coverage to distributors, are placed at a competitive disadvantage in negotiating for film licenses.

The Government also claims, as secondary theories of illegality, that the acquisition eliminated actual competition for film licenses between Prudential and UATC in Nassau and Queens counties, and potential competition between them in Suffolk county. Although UATC did not operate any theatres in Suffolk county prior to the acquisition, it most likely would have expanded its operations into that area had it not acquired Prudential.

THE PROPOSED CONSENT JUDGEMENT AND ITS ANTICIPATED EFFECTS ON COMPETITION

Under the proposed consent judgment UTAC must divest 23 designated theatres located (with some alternates) in the New York Metropolitan Area, including 18 in Suffolk county, 3 in Nassau county, 1 in Queens county and 1 in Westchester county. Together with 7 former Prudential theatres already voluntarily divested by UATC during the pendency of this suit (5 in Suffolk county and 1 each in Nassau and Fairfield counties), this will represent a total divestiture of 30 of 56 or over 53% of all of the former Prudential theatres in the New York Metropolitan Area and 23 of 40 or over 57% of those in Suffolk county. The proposed judgment will, thus, significantly reduce the number of former Prudential theatres in the New York Metropolitan Area which UATC may make available to distributors, especially in Suffolk county. This, in turn, will substantially lessen the additional bargaining power which UATC obtained as a result of the acquisition. The divestitures in Suffolk, Nassau and Queens counties will also increase competition in these areas.

The proposed judgment requires UATC to divest each of the designated theatres by sale, lease, sublease or assignment to persons and under terms and conditions approved by the Government or the Court. Where divestiture is by lease, the minimum lease periods range from 5 to 20 years depending on the potential of the underlying real estate for more useful non-theatre development. For similar reasons, UATC would have the option of divesting any 2 of the 5 designated drive-in theatres for non-theatre purposes. All other theatres, however, must be divested for theatre purposes. The proposed judgment protects against UATC ever reacquiring permanent operating control of any of the theatres which it divests.

Under the proposed judgment UATC would be obliged to make reports to the Government every 90 days setting forth the steps taken to accomplish the divestitures. In order to assure to the extent possible that the designated theatres will be successfully divested, the proposed judgment provides for the appointment of a trustee by the Court if UATC has not divested all of the theatres within 60 months. The trustee would be appointed to divest the remaining theatres and would serve at the cost and expense of UATC.

The proposed judgment prohibits UATC, for 10 years, from acquiring any operating theatre in Suffolk, Nassau and Queens counties except with the approval of the Government or the Court.[2] This provision protects against acquisitions by UATC in these areas which would be detrimental to competition. The proposed judgment also requires UATC, for 10 years, to give the Government 60 days prior written notice of its intention to acquire any operating theatre in any other part of the New York Metropolitan Area. In addition, the Government would have visitation rights to inspect documents and interview officers and employees of UATC in order to determine and secure compliance with the judgment.

REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

Any potential private plaintiffs who might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal and equitable remedies that they would have had were the proposed consent judgment not entered. However, pursuant to Section 5(a) of the Clayton Act (15 U.S.C. Section 16(a)), as amended, this judgment may not be used as prima facie evidence in private litigation.

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED CONSENT JUDGMENT

The proposed consent judgment is subject to a stipulation between the Government and UATC which provides that the Government may withdraw its consent to the proposed judgment any time before the Court has found that entry of the proposed judgment is in the public interest. By its terms, the proposed judgment provides for the Court's retention of jurisdiction of this action in order, among other reasons, to permit any of the parties to apply to the Court for such orders as may be necessary or appropriate for the modification of the final judgment.

As provided by Section 2 of the Antitrust Procedures and Penalties Act (15 U.S.C. Section 16), any person wishing to comment upon the proposed judgment may, for a 60-day period prior to the effective date, submit written comments to the United States Department of Justice, Attention Bernard Wehrmann, Chief, New York Office, Antitrust Division, 26 Federal Plaza, New York, New York 10007. Such comments and the Government's response to them will be filed with the Court and published in the FEDERAL REGISTER. The Government will evaluate all such comments to determine whether there is any reason for withdrawal of its consent to the proposed judgment.

DETERMINATIVE DOCUMENTS

There are no materials or documents which the Government considered determinative in formulating the proposed consent judgment. Therefore, none is being filed with this competitive impact statement.

[2] The Whitman Theatre in Huntington, New York, which is owned jointly by UATC and another exhibitor, is excluded from this prohibition to allow the joint ownership arrangement to be dissolved.

ALTERNATIVES TO THE PROPOSED JUDGMENT ACTUALLY CONSIDERED BY THE GOVERNMENT

An alternative to the proposed consent judgment considered by the Government was a full trial on the merits in order to obtain full divestiture by UATC of all of the theatres acquired from Prudential. The Government determined that the additional relief which might be obtained at trial did not justify the commitment of manpower and resources. The divestitures required by the proposed judgment will substantially reduce UATC's additional bargaining power, thereby dissipating the primary anticompetitive consequence of the acquisition. Therefore, there is a real possibility that the Court would order relief no greater than that provided for in the proposed judgment.

The Government also considered various alternative provisions in negotiating the proposed judgment with counsel and officials of UATC. Thus, a number of different groupings of theatres was considered in determining which theatres would be divested. The theatres finally chosen represent a balanced cross-section of the former Prudential theatres in the New York Metropolitan Area, having been selected on the basis of film runs, performance, location and neighborhood competitive conditions. After some consideration, none of the former Prudential theatres in Wisconsin were included in the divestitures. These theatres do not relate to the Government's theories of illegality and form no real part of its case.

After considering various methods of divestiture, the Government determined that the proposed judgment should provide for divestiture by sale, lease, sublease or assignment in order to interest as many potential purchasers as possible and increase the likelihood of successful divestiture. Similarly, in recognition that 23 separate theatres must be divested, the proposed judgment allows UATC 60 months within which to complete the divestitures.

The Government considered extending the prohibition against future theatre acquisitions by UATC to include the entire New York Metropolitan Area. It determined, however, that a prohibition limited to Suffolk, Nassau and Queens counties would be sufficient since these are the counties most central to the theories of the case. In addition, the provision in the judgment requiring UATC to give 60 days notice of any theatre acquisition in the remainder of the New York Metropolitan Area will enable the Government to move, in a separate suit, to enjoin and restrain any such acquisition which it believes to be significantly anticompetitive.

Dated: July 26, 1976.

RALPH T. GIORDANO,
JUDITH S. ZISS,
ERWIN L. ATKINS,
Attorneys, Department of Justice.

[FR Doc.76-22394 Filed 8-2-76;8:45 am]

Office of the Attorney General

[Order No. 658-76]

PRIVACY ACT OF 1974

System of Records

On June 9, 1976 the Department of Justice published in the FEDERAL REGISTER (41 FR 23215), in accordance with 5 U.S.C. 552a(e)(4) and (11), a notice of a proposed new system of records to be maintained by the Criminal Division of the Department of Justice. Interested persons were invited to submit written

comments on those portions of the notice which described the routine uses of the proposed system of records, not later than July 9, 1976. No comments were received and the proposed routine uses are hereby adopted.

Dated: July 23, 1976.

EDWARD H. LEVI,
Attorney General.

JUSTICE/CRM–024

System name: Freedom of Information/Privacy Act Records.

System location: U.S. Department of Justice, Criminal Division, 10th & Constitution Avenue, N.W., Washington, D.C. 20530.

Categories of individuals covered by the system: Persons who request disclosure of records pursuant to the Freedom of Information Act; persons who request access to or correction of records pertaining to themselves contained in Criminal Division systems of records pursuant to the Privacy Act; and, where applicable, persons about whom records have been requested or about whom information is contained in requested records.

Categories of records in the system: The system contains copies of all correspondence and internal memorandums related to Freedom of Information and Privacy Act requests, and related records necessary to the processing of such requests received on or after January 1, 1975.

Authority for maintenance of the system: This system is established and maintained pursuant to 44 U.S.C. 3101 and is maintained to implement the provisions of 5 U.S.C. 552 and 552a and the provisions of 28 CFR 16.1 et seq. and 28 CFR 16.40 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: A record maintained in this system may be disseminated as a routine use of such record as follows: (1) a record may be disseminated to a Federal agency which furnished the record for the purpose of permitting a decision as to access or correction to be made by that agency, or for the purpose of consulting with that agency as to the propriety of access or correction; (2) a record may be disseminated to any appropriate Federal, State, local, or foreign agency for the purpose of verifying the accuracy of information submitted by an individual who has requested amendment or correction of records contained in systems of records maintained by the Criminal Division.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: A record contained in this system is stored manually in alphabetical order in file cabinets.

Retrievability: A record is retrieved by the name of the individual or person making a request for access or correction of records.

Safeguards: Access to physical records is limited to personnel of the Freedom of Information/Privacy Act Unit of the Criminal Division and known Department of Justice personnel who have a need for the record in the performance of their duties. The records are safeguarded and protected in accordance with applicable Departmental rules.

Retention and Disposal: Currently there are no provisions for disposal of records contained in this system.

System manager and address: Assistant Attorney General, Criminal Division, U.S. Department of Justice, 10th and Constitution Avenue, N.W., Washington, D.C. 20530.

Notification procedures: A part of this system is exempted from this requirement under 5 U.S.C. 552a(j)(2), (k)(1), or (k)(2). Inquiry concerning this system should be directed to the system manager listed above.

Record access procedures: A part of this system is exempted from this requirement under 5 U.S.C. 552a(j)(2), (k)(1), or (k)(2), to the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record contained in this system shall be made at the time a request for access is received. A request for access to a record contained in this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Requests". Include in the request the name of the individual involved, his birth date and place, or any other identifying number or information which may be of assistance in locating the record, the name of the case or matter involved, if known, and the name of the judicial district involved, if known. The requester shall also provide a return address for transmitting the information. Access requests shall be directed to the system manager listed above.

Contesting record procedures: Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager listed above, stating clearly and concisely what information is being contested, the reason for contesting it, and the proposed amendment to the information sought.

Record source categories: Sources of information contained in this system are the individuals and persons making requests, the systems of records searched in the process of responding to requests, and other agencies referring requests for access to or correction of records originating in the Criminal Division.

Systems exempted from certain provisions of the Act: Records secured from other systems of records have been exempted from the provisions of the Privacy Act to the same extent as the systems of records from which they were obtained. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(c), and (e) and have been published in the FEDERAL REGISTER.

[FR Doc.76-22403 Filed 8-2-76;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Utah—U-33700]

UTAH

Application

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corporation has applied for a 4½-inch natural gas pipeline right-of-way across the following lands:

SALT LAKE MERIDIAN, UTAH

T. 17 S., R. 24 E.,
Sec. 6, SW¼SE¼.

The right-of-way needed is for a portion of applicant's gas gathering system located in Grand County, Utah.

The purpose of this notice is to inform the public that the Bureau 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.

Interested persons should express their interest and views to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532.

PAUL L. HOWARD,
State Director.

JULY 26, 1976.

[FR Doc.76-22417 Filed 8-2-76;8:45 am]

[Utah—U-34063]

UTAH

Application

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corporation has applied for a 4½-inch natural gas pipeline right-of-way across the following lands:

SALT LAKE MERIDAN, UTAH

T. 20 S., R. 24 E.,
Sec. 31, SW¼NE¼NE¼, SE¼NW¼NE¼.

The right-of-way needed is for a portion of applicant's gas gathering system located in Grand County, Utah.

The purpose of this notice is to inform the public that the Bureau 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.

Interested persons should express their interest and views to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532.

PAUL L. HOWARD,
State Director.

JULY 26, 1976.

[FR Doc.76-22418 Filed 8-2-76;8:45 am]

UTAH

Order Providing for Opening of Public Lands

U–087819 National Park Service Application for withdrawal of lands for Canyonlands National Park.

By letter dated March 20, 1973, to the Utah State Director, Bureau of Land Management, the National Park Service requested that this application be canceled as the majority of the lands described in the application have been included in the Canyonlands National Park or the Glen Canyon National Recreation area.

The purpose of this order is to restore to the operation of applicable public land laws the unreserved national resource land.

Under the authority delegated by Bureau of Land Management Order No. 701 dated July 23, 1964 (29 FR 10526), as amended, it is ordered as follows:

The following described national resource lands are hereby restored to disposition under applicable public land laws, subject to valid existing rights:

SALT LAKE MERIDIAN, UTAH

T. 26 S., R. 18 E.,
Sec. 31, all South of Lat. 38°30' excluding Canyonlands Nat'l. Park;
Sec. 32, SW¼SW¼ excluding Canyonlands Nat'l. Park;
Secs. 33, 34, and 35, all South of Lat. 38°30' excluding Canyonlands Nat'l. Park.
T. 27 S., R. 18 E.,
Sec. 1, N½ excluding Canyonlands Nat'l. Park;
Sec. 2, lots 3, 5, and 6, S½NE¼ excluding Canyonlands Nat'l. Park;
Sec. 3, lots 7 and 8, S½ excluding Canyonlands Nat'l. Park;
Sec. 4, all excluding Canyonlands Nat'l. Park;
Sec. 5, all excluding Canyonlands Nat'l. Park.
T. 31 S., R. 18 E.,
Secs. 25–31, and 33–35, all.
T. 26 S., R. 19 E.,
Secs. 31, 33, 34, and 35, South of Lat. 38°30' excluding Canyonlands Nat'l. Park;
Sec. 36, W½NW¼ excluding Canyonlands Nat'l. Park.
T. 27 S., R. 19 E.,
Sec. 5, NW¼NE¼, N½NW¼, SW¼NW¼ excluding Canyonlands Nat'l. Park;
Sec. 6, N½ excluding Canyonlands Nat'l. Park.
T. 31 S., R. 19 E.,
Secs. 27, 28, 29, 30, 31, 33, and 34, all.
T. 27 S., R. 20 E.,
Sec. 7, lots 3 and 4, E½SW¼, SE¼;
Sec. 8, S½;
Sec. 9, SW¼;
Sec. 16, lots 1, 2, 7, 8, 9, and 10, SE¼SW¼;
Sec. 17, all;
Sec. 18, all;
Sec. 19, lots 1 and 6, NE¼NE¼;
Sec. 20, lots 1–10, inclusive, 13 and 14, SE¼NE¼, N½SE¼;
Sec. 21, W½;
Sec. 28, lots 1, 3, 4, 5, and 7, E½NW¼, SE¼SW¼;
Sec. 29, lots 1 and 7.

Containing approximately 23,180 acres in San Juan County.

JULY 26, 1976.

PAUL L. HOWARD,
State Director.

[FR Doc.76-22419 Filed 8-2-76;8:45 am]

National Park Service

NATIONAL REGISTER OF HISTORIC PLACES

Additions, Deletions, and Corrections

By notice in the FEDERAL REGISTER of February 10, 1976, Part II, there was published a list of the properties included in the National Register of Historic Places. Further notice is hereby given that certain amendments or revisions in the nature of additions, deletions, or corrections to the previously published list are adopted as set out below.

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

REX L. WILSON,
Acting Director, Office of Archeology and Historic Preservation.

The following properties have been added to the National Register since July 6, 1976. National Historic Landmarks are designated by NHL; properties recorded by the Historic American Buildings Survey are designated by HABS; and properties recorded by the Historic American Engineering Record are designated by HAER.

ALABAMA

Cleburne County

Heflin, *Cleburne County Courthouse*, Vickory St. (6–22–76).

Jefferson County

Birmingham, *Vulcan*, Vulcan Park, U.S. 31 (7–6–76).

ARIZONA

Apache County

Adamana vicinity, *Flattop Site*, S of Adamana off U.S. 180 on Petrified Forest National Park (7–12–76).

Adamana vicinity, *Newspaper Rock Petroglyphs Archeological District*, SE of Adamana on Petrified Forest National Park (7–12–76).

Adamana vicinity, *Puerco Ruin and Petroglyphs*, E of Adamana on Petrified Forest National Park (7–12–76).

Adamana vicinity, *Twin Buttes Archeological District*, S of Adamana on Petrified Forest National Park (7–12–76).

Navajo County

Holbrook vicinity, *Painted Desert Petroglyphs and Ruins Archeological District*, NE of Holbrook off I40 (6–24–76).

Yuma County

Yuma, *Southern Pacific Railroad Depot*, Gila St. (6–22–76).

ARKANSAS

Cleburne County

Heber Springs, *Cleburne County Courthouse*, Courthouse Sq. (7–12–76).

Desha County

Arkansas City, *Desha County Courthouse*, Robert S. Moore Ave. (7–12–76).

Lincoln County

Star City vicinity, *Crow House*, 7 mi. SE of of Star City (6–29–76).

Lonoke County

Scott vicinity, *Ashley-Alexander House*, N of Scott (6–18–76).

Madison County

Alabam vicinity, *Alabam School*, S of Alabam at jct. of AR 68 and AR 127 (7–14–76).

Perry County

Perryville, *Perry County Courthouse*, Main and Pine Sts. (7–6–76).

Poinsett County

Harrisburg, *Modern News Building*, 216 N. Main St. (6–18–76).

Searcy County

Silver Hill vicinity, *Calf Creek Site, (3SE33)*, about 2 mi. NW of Silver Hill (6–29–76).

Van Buren County

Chactaw vicinity, *Stobaugh House*, 0.5 mi. SW of Choctaw on AR 9 (7–6–76).

CALIFORNIA

San Francisco County

San Francisco, *Alcatraz*, Alcatraz Island (6–23–76) HABS.

COLORADO

Denver County

Denver, *Ford, Barney L., Building*, 1514 Blake St. (6–24–76).

Montrose County

Cimarron vicinity, *D&RG Narrow Gauge Trestle*, NE of Cimarron (6–18–76).

Otero County

LaJunta, *U.S. Post Office*, 4th and Colorado Ave. (7–12–76).

Pueblo County

Pueblo, *Orman-Adams House*, 102 W. Orman Ave. (7–13–76).

CONNECTICUT

Hartford County

Collinsville, *Collinsville Historic District*, CT 179 (6–23–76).

New Haven County

Guilford, *Guilford Historic Town Center*, bounded by West River, I–95, East Creek and Long Island Sound (7–6–76) HABS.

New Haven County

North Stonington vicinity, *Miner, Samuel, House*, N of North Stonington off CT 2 on Hewitt Rd. (6–18–76).

DELAWARE

Kent County

Sandtown vicinity, *Cow Marsh Old School Baptist Church*, NE of Sandtown on DE 10 (6–24–76).

New Castle County

Wilmington, *Rockwood*, 610 Shipley Rd. (7–12–76).

Sussex County

Clarksville vicinity, *Blackwater Presbyterian Church*, W of Clarksville on DE 54 (7–9–76).

FLORIDA

Duval County

Jacksonville, *La Villa Boarding Houses*, 830 832, 836 Houston St. (6–21–76) HABS.

Leon County

Tallahassee, *Walker, David S., Library*, 200 E. Park Ave. (6–22–76).

Manatee County

Bradenton, *Manatee County Courthouse (original)*, Manatee Ave. and 15th St. (6–29–76).

Monroe County

Key West, *West Martello Tower*, Monroe County Beach between Reynolds and White Sts. (6–24–76).

GEORGIA

Atkinson County

Willacoochee vicinity, *McCranie's Turpentine Still*, W of Willacoochee on U.S. 82 (6–28–76).

Fulton County

Atlanta, *Atlanta University Center District*, roughly bounded by transit right-of-way, Northside Dr., Walnut, Fair, Roach, W. End Dr., Euralee and Chestnut Sts. (7–12–76).
Atlanta, *Techwood Homes Historic District*, roughly bounded by North Ave., Parker, Williams, and Lovejoy Sts. (6–29–76).

Glynn County

Brunswick vicinity, *Hofwyl-Broadfield Plantation*, N of Brunswick on U.S. 17 (7–12–76).

Ware County

Waycross, *Waycross Historic District*, roughly bounded by Plant Ave., Williams, Lee, Chandler, and Stephens Sts. (6–29–76).

IDAHO

Ada County

Murphy vicinity, *Swan Falls Dam and Power Plant*, E of Murphy at Snake River (7–6–76) (also in Owyhee County).

Lewis County

Culdesac vicinity, *St. Joseph's Mission*, S of Culdesac off U.S. 95 (6–24–76).

Owyhee County

Swan Falls Dam and Power Plant. Reference—see Ada County.

ILLINOIS

Cook County

Chicago, *Lakeside Press Building*, 731 S. Plymouth Court (6–23–76) HABS.

LaSalle County

Streator, *Willisms, Silas, House*, 702 E. Broadway (6–23–76).

Peoria County

Peoria, *Grand Army of the Republic Memorial Hall*, 416 Hamilton Blvd. (7–13–76).

INDIANA

Lawrence County

Bedford, *Norton, C. S., Mansion*, 1415 15th St. (6–22–76).

Porter County

Valparaiso, *Heritage Hall*, Campus Mall, S. College Ave. (7–12–76).
Valparaiso, *Porter County Jail and Sheriff's House*, 153 Franklin St. (6–23–76).

IOWA

Cedar County

Downey, *Downey Savings Bank, Front St.* (7–12–76).

Clayton County

Elkader, *Davis, Timothy, House*, 405 1st St., NW (6–22–76).

Davis County

Troy, *Troy Academy*, off IA 2 (6–23–76).

Worth County

Grafton, *Chicago, Milwaukee, St. Paul and Pacific Railroad Depot*, IA 337 (6–23–76).

KANSAS

Greeley County

Tribune, *Greeley County Courthouse*, Harper and 3rd Sts. (7–12–76).

Lincoln County

Lincoln, *Lincoln County Courthouse*, 3rd and Lincoln Ave. (7–13–76).

Marshall County

Oketo, *Moore, Z. H., Store*, State and Center Sts. (6–24–76).

KENTUCKY

Breckinridge County

Addison vicinity, *Holt, Joseph, House and Chapel*, SE of Addison on KY 144 (7–12–76).

Fayette County

Lexington, *Episcopal Burying Ground and Chapel*, 251 E. 3rd St. (6–24–76).
Lexington, *Lexington Cemetery and Henry Clay Monument*, 833 W. Main St. (7–12–76).

Hancock County

Hawesville vicinity, *Beauchamp, Robert C., House*, NW of Hawesville on U.S. 60 (7–6–76).

Jefferson County

Louisville, *Cherokee Triangle Area Residential District*, roughly bounded by Bardstown Rd., Sherwood Rd., Broadway, E to jct of Grinstead Dr. and Cherokee Pkwy. (6–30–76).
Louisville, *Oxmoor*, 7500 Shelbyville Rd. (7–13–76).
Louisville, *University of Louisville Belknap Campus*, 2301 S. 3rd St. (6–25–76).

Logan County

Russellville, *Russellville Historic District*, roughly bounded by 2nd, 9th, Caldwell, and Nashville Sts. (7–14–76).

Mercer County

Salvisa vicinity, *Millwood (Lambert Brewer House)*, S of Salvisa off U.S. 127 (7–6–76).

Nelson County

Bardstown vicinity, *St. Thomas Roman Catholic Church and Howard-Flaget House*, 3 mi. S of Bardstown off U.S. 31E (7–12–76).

Powell County

Clay City, *Clay City National Bank Building*, 6th Ave. (7–13–76).

LOUISIANA

Caddo Parish

Shreveport, *Tally's Bank*, 525 Spring St. (7–14–76).

Natchitoches Parish

Natchitoches vicinity, *Narcisse Prudhomme Plantation*, SE of Natchitoches on Cane River Rd. (7–13–76).

Ouachita Parish

Monroe, *Garrett, Isaiah, Law Office*, 520 S. Grand St. (7–12–76).

Rapides Parish

Alexandria, *Bailey's Dam Site*, Red River S of U.S. 71/165/167 (6–29–76).

Sabine Parish

Many vicinity, *Stoker House*, NE of Many (6–23–76).

St. John the Baptist Parish

LaPlace vicinity, *Bayou Jasmine Archeological Site*, N of LaPlace (7–12–76).

MAINE

Washington County

Eastport, *Central Congregational Church*, Middle St. (6–23–76).
Machiasport vicinity, *Libby Island Light Station*, S of Machiasport on Libby Island (6–18–76).

MARYLAND

Somerset County

Princess Anne vicinity, *Manokin Historic District*, SW of Princess Anne at Manokin River (6–29–76) HABS.

Washington County

Hagerstown vicinity, *Ditto Knolls*, E of Hagerstown on Landis Rd. (7–12–76).
Hagerstown vicinity, *McCauley, Henry, Farm*, E of Hagerstown on Mt. Eatna Rd. (6–29–76).

MASSACHUSETTS

Bristol County

Norton, *Clarke, Pitt, House*, 42 Mansfield Ave. (7–13–76) HABS.

Essex County

Peabody, *Foster, Gen. Gideon, House*, 35 Washington St. (6–23–76).

Hampden County

Chicopee, *Kendall Block*, 6–20 Springfield St. (6–26–76).

Middlesex County

Concord, *Thoreau-Alcott House*, 255 Main St. (7–12–76).
Lowell, *Bowers, Jonathan, House (Round House)*, 58 Wannalancit St. (6–18–76).
Sudbury, *Sudbury Center Historic District*, Concord and Old Sudbury Rds. (7–14–76).
Weston, *Harrington House*, 555 Wellesley St. (6–22–76).

Plymouth County

Hull, *Telegraph Hill*. (7–12–76).

Worcester County

Lancaster, *Thayer, Nathaniel, Estate*, 438 S. Main St. (7–6–76).

MICHIGAN

St. Clair County

Port Huron, *Huron* (lightship), Pine Grove Park on St. Clair River (7–12–76).

MINNESOTA

Ramsey County

St. Paul, *Spangenberg, Frederick, House*, 375 Mt. Curve Blvd. (6–22–76).

MISSOURI

Jackson County

Kansas City, *Mineral Hall (Roland E. Bruner House)*, 4340 Oak St. (7–12–76).

St. Louis County

Florissant, *Casa Alverez*, 289 rue St. Denis (6–18–76).

NEBRASKA

Gage County

Beatrice, *Beatrice City Library*, 220 N. 5th St. (7–12–76).

Otoe County

Nebraska City, *Otoe County Courthouse*, 10th St. and Central Ave. (6–18–76) HABS.

NEW JERSEY

Atlantic County

Brigantine City vicinity, *U.S. Coast Guard Station*, about 3 mi. NNE of Brigantine City (6–23–76).

Mercer County

Trenton vicinity, *Abbott-DeCou House*, 58 Soloff Dr. (7–1–76).

Middlesex County

New Brunswick, *Bishop, James, House*, College Ave. near Bishop St. (7–12–76). HABS.

Monmouth County

Allentown vicinity, *Walnford*, S of Allentown off CR 539 (6–29–76).
Red bank vicinity, *Union Schoolhouse*, W of Red Bank on Middletown Rd. (6–23–76).

Passaic County

Newfoundland vicinity, *Clinton Furnace*, off NJ 23 at Clinton Reservoir (6–18–76).

NEW MEXICO

Taos County

Taos vicinity, *La Morada de Nuestra Senora de Guadalupe*, E of Taos off U.S. 64 (6–29–76).

NEW YORK

Albany County

Albany, *Albany Institute of History and Art*, 135 Washington Ave. (7–12–76).

Bronx County

Bronx, *Fort Schuyler*, Throgs Neck at East River and Long Island Sound (6–29–76).

Montgomery County

Fonda vicinity, *Butler, Walter, Homestead*, NE of Fonda on Old Trail Rd. (6–23–76).

New York County

New York, *American Museum of Natural History*, Central Park West and 77th St. (6–24–76).
New York, *Harlem Fire Watchtower*, Marcus Garvey Park at E. 122nd St. (6–21–76) HAER.

Onondaga County

Syracuse, *Hanover Square Historic District*, 101–203 E. Water, 120–200 E. Genesee, 113 Salina, 109–114 S. Warren Sts. (6–22–76).

Saratoga County

Gansevoort, *Gansevoort Mansion*, off NY 32 (6–23–76).

NORTH CAROLINA

Buncombe County

Asheville, *First Baptist Church*, Oak and Woodfin Sts. (7–13–76).

Franklin County

Youngsville vicinity, *Jeffreys, William A., House*, SE of Youngsville on SR 1101 (6–23–76).

NORTH DAKOTA

Burleigh County

Bismarck, *U.S. Post Office and Courthouse*, 304 E. Broadway (6–23–76).

OHIO

Belmont County

Bellaire, *B & O Railroad Viaduct (Bellaire Viaduct)*, 31st St. (6–22–76) HAER.

Brown County

Fayetteville vicinity, *Ursuline Center*, NE of Fayetteville off OH 251 (6–29–76).

Butler County

Oxford, *Langstroth cottage*, 303 Patterson Ave. (6–22–76).

Clark County

Springfield, *St. Raphael Church*, 225 E. High St. (6–22–76).

Clermont County

Bethel vicinity, *Salt House*, SW of Bethel on OH 222 (6–22–76).

Cuyahoga County

Cleveland, *St. Stanislaus Church*, Forman and E. 65th Sts. (6–22–76).
Cleveland, *Shaker Square*, Shaker Blvd. and Moreland Blvd. (7–1–76).
Independence vicinity, *South Park Site*, E of Independence (6–22–76).

Knox County

Fredericktown, *Tuttle House*, 33 E. College St. (7–12–76).

Lake County

Perry, *Green, Lucius, House*, 4160 Main St. (7–12–76).

Lorain County

Columbia Center, *Columbia Baptist Church*, 25514 Royalton Rd. (7–12–76).
Vermilion vicinity, *Mill Hollow House*, SE of Vermilion on N. Ridge Rd. (6–29–76).

Medina County

Lester, *Cook, Zimri, House*, 6994 Spieth Rd. (6–22–76).

Stark County

Uniontown vicinity, *Lake Township School*, E of Uniontown at 1101 Lake Center St. (6–22–76).
Wilmot, *Wilmot United Brethren Church*, Massillon St. (6–22–76).

OKLAHOMA

Cherokee County

Tahlequah, *Indian University at Tahlequah*, 320 Academy (7–6–76).

Cleveland County

Norman, *President's House, University of Oklahoma*, 401 W. Boyd St. (7–6–76).

Okmulgee County

Beggs vicinity, *Isparhecher House and Grave*, about 4 mi. W of Beggs off OK 16 (7–12–76).

OREGON

Yamhill County

Dayton, *Smith, Andrew, House*, 306 5th St. (6–23–76).

PENNSYLVANIA

Allegheny County

Pittsburgh, *Dollar Savings Bank*, 4th Ave. and Smithfield St. (7–14–76).

Franklin County

Chambersburg, *Masonic Temple*, 74 S. 2nd St. (6–18–76).

Philadelphia County

Philadelphia, *Marine Barracks*, Building 100, Naval Base, Broad St. (7–13–76).

RHODE ISLAND

Bristol County

Barrington, *Belton Court*, Middle Highway (6–30–76).

Kent County

West Warwick, *Phenix Baptist Church*, 10 Fairview Ave. (6–30–76).

Providence County

Central Falls, *Central Falls Congregational Church*, 376 High St. (7–12–76).
Pawtucket, *Pitcher-Goff House*, 56 Walcott St. (6–24–76).
Pawtucket, *Slater Park*, Armistice Blvd. (6–30–76).
Providence, *Christ Episcopal Church*, 909 Eddy St. (6–30–76).
Woonsocket, *Stadium Building*, 329 Main St. (6–30–76).

Washington County

Narragansett, *Greene Inn*, 175 Ocean Rd. (6–24–76).
Narragansett, *Narragansett Pier Life Saving Station*, 40 Ocean Rd. (6–30–76).

SOUTH CAROLINA

Aiken County

Aiken vicinity, *Dawson-Vanderhorst House*, NE of Aiken at jct. of Wire and New Bridge Rd. (6–29–76).

Bamberg County

Bamberg, *Bamberg, Gen. Francis Marion, House*, N. Railroad Ave. and N. Carlisle St. (6–29–76).

Calhoun County

Fort Motte vicinity, *Zante Plantation*, SE of Ft. Motte off SC 601 (6–29–76).

Darlington County

Hartsville, *Hartsville Passenger Station*, 114 S. 4th St. (6–29–76).

Hampton County

Brunson vicinity, *Oak Grove*, SW of Brunson (7–12–76).

McCormick County

McCormick, *Dorn's Flour and Grist Mill*, SC 28 (7–12–76).

Orangeburg County

Eutawville vicinity, *Rocks Plantation*, 7 mi. E of Eutawville off SC 6 (7–13–76).

Spartanburg County

Spartanburg, *Bon Haven*, 728 N. Church St. (6–29–76).
Spartanburg, *Duncan, Bishop William Wallace, House*, 249 N. Church St. (7–12–76).

Union County

Union, *Meng House*, 117 Academy St 12–76).

SOUTH DAKOTA

Codington County

Watertown, *Carnegie Free Public Library*, 25 1st Ave. SE (6–18–76).

TENNESSEE

Bradley County

Charleston, *Henegar House*, Market St. (7–6–76).

TEXAS

Bexar County

San Antonio, *San Antonio Loan and Trust Building*, 235 E. Commerce St. (7–12–76) HABS.

Bowie County

Texarkana, *Draughn-Moore House*, 420 Pine St. (6–29–76).
Texarkana vicinity, *Roseborough Lake Site (41BW5)*, NW of Texarkana (7–6–76).

Brazoria County

East Comumbia, *Underwood, Ammon, House*, Main St. (6–24–76).

Colorado County

Columbus, *Colorado County Courthouse*, bounded by Milam, Spring, Travis, and Walnut (7–12–76).

DeWitt County

Yorktown, *Eckhardt Stores*, Eckhardt and Main Sts. (6–29–76).

El Paso County

El Paso, *Trost, Henry C., House*, 1013 W. Yandell Dr. (7–12–76).

Fayette County

La Grange, *St. James Episcopal Church*, Monroe and Colorado Sts. (6–18–76).

Galveston County

Texas City, *Davison, Frank B., House*, 109 3rd Ave. N. (6–29–76).

Goliad County

Goliad, *Goliad County Courthouse Historic District*, roughly bounded by E. Franklin, S. Washington, E. Fannin and S. Chilton Sts. (6–29–76).

Grayson County

Denison, *Kohl, Ernst Martin, Building*, 300 E. Main St. (7–12–76).

Kendall County

Boerne, *Kendall Inn*, off U.S. 87 (6–19–76).

Medina County

D'Hanis, *D'Hanis Historic District*, 7 mi. W of Hondo on U.S. 90 (6–24–76) HABS.

Nueces County

Corpus Christi, *Nueces County Courthouse*, Mesquite and Belden (6–24–76).

Panola County

Carthage, *Panola County Jail*, 110 N. Shelby St. (6–29–76).

Runnels County

Miles, *Thiele, J., Building*, Robinson and 2nd Sts. (6–29–76).

Rusk County

Tatum vicinity, *Musgano Site*, SW of Tatum (6–24–76).

Tarrant County

Fort Worth, *Fort Worth Stockyards Historic District*, roughly bounded by 23, Houston, 28th Sts., and RR tracks (6–29–76).

Taylor County

Abilene, *Sayles, Henry, House*, 642 Sayles Blvd. (6–24–76).

Travis County

Austin, *Austin Moonlight Towers* (7–12–76).
Austin, *Clarksville Historic District*, bounded by W. Lynn, Waterston, W. 10th and Mo-Pac Expressway (7–12–76).
Austin, *Paramount Theatre*, 713 Congress Ave. (6–23–76).
Austin, *Sheeks-Robertson House*, 610 W. Lynn (6–24–76).

Washington County

Brenham, *Giddings-Stone Mansion*, 204 E. Stone St. (6–24–76) HABS.
Independence vicinity, *Hoxey, Asa, House*, W. of Independence (6–29–76).

UTAH

Salt Lake County

Salt Lake City, *Oregon Shortline Railroad Company Building*, 126–140 Pierpont Ave. (6–23–76).

VERMONT

Windsor County

Bridgewater, *Bridgewater Woolen Mill*, U.S. 4 (7–6–76).

VIRGIN ISLANDS

St. Croix Island

Christiansted vicinity, *Diamond School*, W of Christiansted on Centerline Rd. (7–1–76) HABS.
Christiansted vicinity, *Friendenfeld, Midlands Moravian Church and Manse*, W of Christiansted (7–1–76) HABS.
Christiansted vicinity, *Great Pond Archeological Site*, E of Christiansted (7–12–76).
Christiansted vicinity, *La Grande Princesse School*, NE of Christiansted (7–12–76) HABS.
Christiansted vicinity, *Lower Granard Archeological District*, S of Christiansted (7–1–76).
Frederiksted vicinity, *Aklis Archeological Site*, S of Frederiksted (7–1–76).
Frederiksted vicinity, *Prosperity Archeological Site*, N of Frederikstead (7–12–76).
Frederiksted vicinity, *River Archeological Site*, NE of Frederiksted (7–1–76).

St. John Island

Cruz Bay, *Enighed*, Cruz Bay Quarter (7–1–76).
Curz Bay, *Keating's Inn*, (7–6–76).

St. Thomas Island

Charlotte Amalie vicinity, *Botany Bay Archeological District*, W of Charlotte Amalie (7–1–76).
Charlotte Amalie vicinity, *Tutu Plantation House*, 3 mi. NE of Charlotte Amalie (7–12–76).

VIRGINIA

Alexandria (independent city)

Lloyd House, 220 N. Washington St. (7–12–76) HABS.

Fairfax County

Fairfax Station, *St. Mary's Church*, 5605 Vogue Rd. (7–1–76).

Page County

Hamburg, *Mauck's Meetinghouse*, off U.S. 211 (6–18–76).

WASHINGTON

King County

Seattle, *Ballard Avenue Historic District*, Ballard Ave. from NW Market to NW Dock Sts. (7–1–76).
Seattle, *Storey, Ellsworth, Cottages Historic District*, 1706–1816 S. Lake Washington Blvd. and 1725–1729 S. 36th Ave. (7–6–76).

Pierce County

Sumner, *Ryan House*, 1228 Main St. (6–30–76).

Snohomish County

Everett, *U.S. Post Office and Customshouse*, 3006 Colby Ave. (6–22–76).

Spokane County

Spokane, *Finch House*, W. 2340 1st Ave. S. 104 Poplar (7–12–76).

WISCONSIN

Ozaukee County

Cedarburg, *Hamilton Historic District*, Hamilton and Green Bay Rds. (7–1–76).

WYOMING

Laramie County

Cheyenne, Nagle-Warren Mansion, 222 E. 17th St. (7–12–76).

Lincoln County

Kemmerer, *Penney, J. C., House*, Railroad Park (6–18–76).

The following is a list of corrections to properties previously listed in the Federal Register:

IOWA

Cerro Gordo County

Mason City, *City National Bank Building*, 4 S. Federal Ave. (9–14–72).

UTAH

Salt Lake County

Salt Lake City, *Council Hall (Old City Hall)*, Capitol Hill at head of State St. (5–14–71) NHL.

The following properties have been either demolished or removed from the National Register of Historic Places.

NEW JERSEY

Passaic County

Mountain View, *Van Duyne House*, 636 Fairfield Rd.

PENNSYLVANIA

Crawford County

Little's Corners, *Mosier, Dr. J. R., Office*, PA 198.

The following property was omitted from the February 10, 1976, listing of properties in the "Federal Register."

DISTRICT OF COLUMBIA

Washington

Meridian Hill Park, bounded by 16th, Euclid, 15th, and W Sts., N.W. (10–25–74).

The following properties have been determined to be eligible for inclusion in the National Register. All determinations of eligibility are made at the request of the concerned Federal Agency under the authorities in section 2(b) and 1(3) of Executive Order 11593 as implemented by the Advisory Council on Historic Preservation, 36 CFR Part 800. This listing is not complete. Pursuant to the authorities discussed herein, an Agency Official shall refer any questionable actions to the Director, Office of Archeology and Historic Preservation, National Park Service, Department of the Interior, for an opinion respecting a property's eligibility for inclusion in the National Register.

Historical properties which are determined to be eligible for inclusion in the National Register of Historic Places are entitled to protection pursuant to the procedures of the Advisory Council on Historic Preservation, 36 CFR Part 800. Agencies are advised that in accord with the procedures of the Advisory Council on Historic Preservation, before an agency of the Federal Government may undertake any project which may have an effect on such a property, the Advisory Council on Historic Preservation shall be given an opportunity to comment on the proposal.

ALABAMA

Green County

Gainesville vicinity, *Archeological Sites in Gainesville Project*, Tombigbee Waterway (also in Pickens and Sumter counties).

Jefferson County

Site 1Je36, Project I-459-4(4).

Madison County

Huntsville, *Lee House*, Red Stone Arsenal.

Maricopa County

Site U:1:30 (ASU).
Site U:1:31 (ASU).

Washington County

Sunflower vicinity, *Dr. Williams Home*, AL project RF-98(7).

ALASKA

Northwestern District

Little Diomede Island, *Iyapana, John, House.*

ARIZONA

Apache County

Grand Canyon National Park, *Old Post Office.*

Coconino County

House Rock Springs, Upper Houserock Valley *Paria Plateau Archeological District*

Graham County

Foote Wash—No Name Wash Archeological District.

Mohave County

Colorado City vicinity, *Short Creek Reservoir Sites NA 13,257*, and *NA 13,258.*

Maricopa County

Cave Creek Archeological District.
New River Dams Archeological District.
Site T:4:6.
Site U:1:30(A.S.U.)
Site U:1:31(A.S.U.)
Skunk Creek Archeological District.

Navajo County

Polacca vicinity, *Walpi Hopi Village*, adjacent to Polacca.

Pima County

Tucson, *Armory Park Historic District.*
Tucson, *Convento Site.*
Tucson vicinity, *Old Santan*, NW of Tucson.

Yavapai County

Copper Basin Archeological District, Prescott National Forest.

Yuma County

Eagle Tail Mountains Archeological Site.
Yuma, *Southern Pacific Depot.*

ARKANSAS

Archeological Sites, Black River Watershed.

Clay County

Site 3CY34, Little Black River Watershed.

Faulkner County

Site 3WH145, E fork of Cadron Creek Watershed (also in White county).
Sites *3VB49-3VB51*, N fork Cadron Creek Watershed.

Hempstead County

Archeological Sites in Ozan Creeks Watershed

Ouachita County

Camden, *Old Post Office*, Washington St.

CALIFORNIA

Point Lobos Archeological Sites, Golden Gate National Recreation Area.

Benito County

Chalone Creek Archeological Sites, Pinnacles National Monument.

Calaveras County

New Melones Historical District, New Melones Lake Project area, Stanislaus River (also in Tuolumne County).

Colusa County

Stoney ford vicinity, *Upper and Lower Letts Valley Historical District*, 12 mi. SW of Stoneyford.

Del Norte County

Chimney Rock, Six Rivers National Forest.
Doctor Rock, Six Rivers National Forest.
Peak No. 8, Six Rivers National Forest.

El Dorado County

Site Eld-58.
Giebenhahn House and Mountain Brewery Complex.

Fresno County

Gamlin Cabin, King's Canyon National Park.
Helms Pumped Storage Archeological Sites, Sierra National Forest.
Muir Hut, Kings Canyon National Park.

Glenn County

Willows vicinity, *White Hawk Top Site*, Twin Rocks Ridge Road Reconstruction project.

Imperial County

Glamis vicinity, *Chocolate Mountain Archeological District.*
Lake Cahuilla, *Lot 1.*
Lake Cahuilla, *Lot 5.*

Inyo County

Scotty's Castle, Death Valley National Monument.
Scotty's Ranch, Death Valley National Monument.

Lassen County

Archeological Site HJ-1 and HJ-5.

Los Angeles County

Big Tujunga Prehistoric Archeological Site, I 210 Project.
Los Angeles, *Fire Station No. 26*, 2475 W. Washington Blvd.
Van Norman Reservoir, Site CA-LAN 646, CA-LAN 643, Site CA-LAN 490, and a cluster made up of Sites CA-LAN, 475, 491, 492, and 493.

Madera County

Bass Lake Archeological Sites.
CA-MAD 176-185.
Lower China Crossing.
New Site.

Marin County

Point Reyes, *Olema Lime Kilns*, Point Reyes National Sea Shore.
Point Reyes, *Point Reyes Light Station.*

Modoc County

Alturas vicinity, *Rail Spring*, about 30 mi. N of Alturas in Modoc National Forest.
Tulelake vicinity, *Lava Bed National Monument Archeological District*, S of Tulelake (also in Siskiyou County).

Mono County

Archeological Site CA-MNO-584.

Monterey County

Big Sur, *Point Sur Light Station.*
Pacific Grove, *Point Pinos Light Station.*

Napa County

Archeological Sites 4-Nap-14, 4-Nap-261, Napa River Flood Control Project.

Riverside County

Twentynine Palms, *Cottonwood Oasis (Cottonwood Springs)*, Joshua Tree National Monument.
Twentynine Palms, *Lost Horse Mine*, Joshua Tree National Monument.

Sacramento County

Sacramento River Bank Protection Project, Site 1, Sacramento River.
Sacramento, *Tower Bridge*, M St. over Sacramento River (also in Yolo County).

San Bernardino County

Twentynine Palms, *Keys, Bill, Ranch*, Joshua Tree National Monument.
Twentynine Palms, *Twentynine Palms Oasis*, Joshua Tree National Monument.

San Diego County

North Island, *Camp Howard, U.S. Marine Corps*, Naval Air Station.
North Island, *Rockwell Field*, Naval Air Station.
San Diego, *Marine Corps Recruit Depot*, Barnett Ave.

San Francisco County

San Francisco, *Fire Department High Pressure Pumping Station, No. 2*, Golden Gate National Recreation Area.

San Luis Obispo County

New Cuyana vicinity, *Caliente Mountain Aircraft Lookout Tower*, 13 mi. NW of New Cuyana off Rte. 166.
San Luis Obispo, *San Luis Obispo Light Station.*

San Mateo County

Ano Nuevo vicinity, *Pigeon Point Light Station.*
Hillsborough, *Point Montara Light Station.*

Santa Barbara County

Santa Barbara, *Site SBa-1330*, Santa Monica Creek.

Santa Clara County

Sunnyvale, *Theuerkauf House*, Naval Air Station, Moffett Field.

Shasta County

Redding vicinity, *Squaw Creek Archeological Site*, NE of Redding.
Whiskeytown, *Irrigation System (165 and 166)*, Whiskeytown National Recreation Area.

Sierra County

Archeological Site HJ-5 (Border Site 26WA-1676).
Properties in Bass Lake Sewer Project.

Siskiyou County

Thomas-Wright Battle Site, Lava Beds National Monument.

Sonoma County

Dry Creek-Warm Springs Valley Archeological District.
Petaluma, *Farrell Home*, 500 E. Washington St.
Santa Rosa, *Santa Rosa Post Office.*

Tehama County

Los Molinos vicinity, *Ishi Site (Yahi Camp)*, E of Los Molinos in Deer Creek Canyon.

Tulare County

Atwell's Mill, Sequoia National Park.
Cattle Cabin, Sequoia National Park.
Quinn River Station.
Tharp's Log.
Smithsonian Institution Shelters.
Squatter's Cabin.

COLORADO

Denver County

Denver, *Eisenhower Memorial Chapel*, Building No. 27, Reeves St., on Lowry AFB.

Douglas County

Keystone Railroad Bridge, Pike National Forest.

El Paso County

Colorado Springs, *Alamo Hotel*, corner of Tejon and Cucharras Sts.
Colorado Springs, *Old El Paso County Jail*, corner of Vermijo and Cascade Ave.

Larimer County

Sites 5–LR–257 and 5–LR–263, Boxelder Watershed Project.

Moffat County

White Indian Contact Site.

CONNECTICUT

Fairfield County

Norwalk, *Washington Street—S. Main Street Area.*

Hartford County

Hartford, *Houses on Charter Oak Place.*
Hartford, *Houses on Wethersfield Avenue*, between Morris and Wyllys Sts., particularly Nos. 97–81, 65.
Southington, *Lewis, Sally, House*, 500 N. Main St.

New London County

New London, *Williams Memorial Institute Building*, 110 Broad St.

DELAWARE

Sussex County

Lewes, Delaware Breakwater. Harbor of Refuge Breakwater.

DISTRICT OF COLUMBIA

Auditors' Building, 201 14th St. SW.
Brick Sentry Tower and Wall, along M St. SW, between 4th and 6th Sts. SW.
Central Heating Plant, 13th and C Sts. SW.
1700 Block Q Street NW, 1700–1744, 1746, 1748 Que St. NW.; 1536, 1538, 1540, 1602, 1604, 1606, 1608, 17th St. NW.

FLORIDA

Broward County

Hillsboro Inlet, *Coast Guard Light Station.*

Collier County

Marco Island, *Archeological Sites on Marco Island.*

Monroe County

Knights Key Moser Channel—Packet Channel Bridge (Seven Mile Bridge)
Long Key Bridge
Old Bahia Honda Bridge

Pinellas County

Bay Pines, *VA Center*, Sections 2, 3, and 11 TWP 31–S, R–15E.

GEORGIA

Bibb County

Macon, *Vineville Avenue Area*, both sides of Vineville Ave. from Forsyth and Hardman Sts. to Pio Nono Ave.

Chatham County

Archeological Site, end of Skidway Island.
Savannah, *516 Ott Street.*
Savannah, *908 Wheaton Street.*
Savannah, *914 Wheaton Street.*
Savannah, *920 Wheaton Street.*
Savannah, *828 Wheaton Street.*
Savannah, *930 Wheaton Street.*

Chatooga County

Archeological Sites in area of Structure 1–M, and Trion Dikes 1 and 2, headwaters of Chatooga Watershed (also in Walker County).

Clay County

Archeological Site WGC–73, downstream from Walter F. George Dam.

De Kalb County

Atlanta, *Atkins Park Subdivision*, St. Augustine, St. Charles, and St. Louis places.
Decatur, *Sycamore Street Area.*

Fulton County

Atlanta, *Downtown Atlanta Historic District*, beginning at jct. Atlanta St. and Central Ave.

Gordon County

Haynes, Cleo, House and Frame Structure, University of Georgia.
Moss—Kelly House, Sallacoa Creek area.

Gwinnett County

Duluth, *Hudgins, Scott, Home (Charles W. Summerour House)*, McClure Rd.

Heard County

Philpott Homesite and Cemetery, on bluff above Chattahoochee River where Grayson Trail leads into river.

Richmond County

Augusta, *Blanche Mill.*
Augusta, *Enterprise Mill.*
Augusta, *Green Street.*

Stewart County

Rood Mounds, Walter F. George Dam and Reservoir.

Sumter County

Americus, *Aboriginal Chet Quarry*, Souther Field.

HAWAII

Hawaii County

Hawaii Volcanoes National Park, *Mauna Loa Trail.*

Maui County

Hana vicinity, *Kipahulu Historic District*, SW of Hana on Rts. 31.

Oahu County

Moanalua Valley.

IDAHO

Ada County

Boise, *Alexanders*, 826 Main St.
Boise, *Falks Department Store*, 100 N. 8th St.
Boise, *Idaho Building*, 216 N. 8th St.
Boise, *Simplot Building (Boise City National Bank)*, 805 Idaho St.
Boise, *Union Building*, 712½ Idaho St.

Clearwater County

Orofino vicinity, *Canoe Camp—Suite 18*, W. of Orofino on U.S. 12 in Nez Perce National Historical Park.

Gem County

Marsh and Ireton Ranch, Montour Flood project.
Town of Montour, Montour Flood project.

Idaho County

Kamiah vicinity, *East Kamiah—Suite 15*, SE of Kamiah on U.S. 12 in Nez Perce National Historical Park.

Lemhi County

Tendoy, *Lewis and Clark Trail, Pattee Creek Camp.*

Nez Perce County

Lapwai, *Fort Lapwai Officer's Quarters*, Phinney Dr. and C St. in Nez Perce National Park.
Lapwai, *Spalding.*
Lewiston, *Fix Building*, 211–213 Main St.
Lewiston, *Lower Snake River Archeological District*
Lewiston, *Moxley Building*, 215 Main St.
Lewiston, *Scully Building*, 209 Main St.

Power County

Snake River, *Old Island Power Plant*, American Falls Dam project.

ILLINOIS

Carroll County

Savanna vicinity, *Spring Lake Cross Dike Island Archeological Site*, 2 mi. SE of Savanna.

Cook County

Chicago, *Ogden Building*, 180 W. Lake St.
Chicago, *Oliver Building*, 159 N. Dearborn St.
Chicago, *Springer Block (Bay, State, and Kranz Buildings)*, 126–146 N. State St.
Chicago, *Unity Building*, 127 N. Dearborn St.

De Kalb County

De Kalb, *Haish Barbed Wire Factory*, corner of 6th and Lincoln Sts.

Lake County

Fort Sheridan, *Museum Bldg. 33*, Lyster Rd.
Fort Sheridan, *Water Tower*, Bldg. 49, Leonard Wood Ave.

Williamson County

Wolf Creek Aboriginal Mound, Crab Orchard National Wildlife Refuge.

INDIANA

Marion County

Indianapolis, *Lockfield Gardens Public Housing Project*, 900 Indiana Ave.

Monroe County

Bloomington, *Carnegie Library.*

Orange County

Cox Site, Lost River Watershed.
Half Moon Spring, Lost River Watershed.

St. Joseph County

Mishawaka, *100 NW Block*, properties fronting N. Main St. and W. Lincoln Way.

Vermillion County

Houses in SR 63/32 Project, jct. of SR 32 and SR 63 and 1st rd. S. of Jct.

IOWA

Boone County

Saylorville Archeological District (also in Polk and Dallas counties).

Johnson County

Indian Lookout.

Muscatine County

Muscatine, *Clark, Alexander, Property*, 125–123 W. 3rd and 307, 309 Chestnut.

KANSAS

Douglas County

Lawrence, *Curtis Hall (Kiva Hall)*, Haskell Institute.

Pottawatomie County

Coffey Archeological Site, 14 PO 1.

KENTUCKY

Louisa County

Fort Ancient Archeological Site.

Trigg County

Golden Pond, *Center Furnace*, N of Golden Pond on Bugg Spring Rd.

LOUISIANA

East Baton Rouge Parish

Baton Rouge, *Spanish Town*, Baton Rouge.

St. Martins Parish

Site 16, Sm-45, Atchafalaya Basin Floodway.

Washington County

Machiasport, *Libby Island Light Station*.

MARYLAND

Allegany County

Flintstone vicinity, *Martin Gordon Farm*, Breakneck Rd. (Rte. 1).
Flintstone vicinity, *Martins Mountain Farm*, Breakneck Rd. (Rte. 1).

Anne Arundel County

Claiborne, *Bloody Point Bar Light*, on Chesapeake Bay.
Skidmore, *Sandy Point Shoal Light*, on Chesapeake Bay.

Baltimore County

Fort Howard, *Craghill Channel Upper Range Front Light*, on Chesapeake Bay.
New Owings Mills Railroad Station, W of Reisterstown Rd.
Old Owings Mills Railroad Station, Reisterstown Rd.
Sparrows Point, *Craighill Channel Range Front Light*, on Chesapeake Bay.

Carroll County

Bridge No. 1-141 on Hughes Road.

Cecil County

Sassafras Elk Neck, *Turkey Point Light*, at Elk River and Chesapeake Bay.

Dorchester County

Hoppersville, *Hooper Island Light*, Chesapeake Bay-Middle Hooper Island.

St. Marys County

Piney Point, *Piney Point Light Station*.
St. Inigoes, *St. Inigoes Manor House*, Naval Electronic System Test and Evaluation Detachment.
St. Marys City, *Point No Point Light*, on Chesapeake Bay.

Talbot County

Tilghman Island, *Sharps Island Light*, on Chesapeake Bay.

MASSACHUSETTS

Barnstable County

North Eastham, *French Cable Hut*, jct. of Cable Rd. and Ocean View Dr.
Rider, Samuel House, Gull Pond Rd. off Mid-Cape Hwy. 6.
Truro, *Highland Gold Course*, Cape Cod Light area.
Truro, *Highland House*, Cape Code Light (Highland Light) area.
Wellfleet vicinity, *Atwood—Higgins House*, Boundbrook Island.

Berkshire County

Adams, *Quaker Meetinghouse*, Maple Street Cemetery.

Bristol County

New Bedford, *Fire Station No. 4*, 79 S. 6th St.

Hampden County

Holyoke, *Caledonia Building (Crafts Building)*, 185-193 High St.
Holyoke, *Cleary Building (Stiles Building)*, 190-196 High St.

Middlesex County

Wayland, *Old Town Bridge (Four Arch Bridge)*, Rte. 27, 1.5 mi. NW of Rte. 126 Jct.

Worcester County

Leicester, *Shaw Site (Sites 4, 5, and 6)*, Upper Quaboag River Watershed project.
North Brookfield, *Meadow Site No. 11*, Upper Quaboag River Watershed.
Worcester, *Oxford-Crown Streets District*, Chatham, Congress, Crown, Pleasant, Oxford Sts., and Oxford Pl.

MICHIGAN

Little Forks Archeological District.

MINNESOTA

St. Louis County

Duluth, *Morgan Park Historic District.*

Winona County

Winona, *Second Street Commercial Block.*

MISSISSIPPI

Tishomingo County

Tennessee—Tombigbee Waterway

MISSOURI

Buchanan County

St. Joseph, *Hall Street Historic District*, bounded by 4th St. on W. Robidoux on S. 10th on E., and Michel, Corby, and Ridenbaugh on N.

Dent County

Lake Spring, *Hyer, John, House.*

Franklin County

Leslie, *Noser's Mill and adjacent Miller's House*, Rural Rte. 1.

Henry County

La Due, *Batschelett House*, near Harry S. Truman Dam and Reservoir.
Little Black River Watershed (also in Ripley County).

MONTANA

Big Horn County

Fort Smith, *Big Horn Canal Headgate.*

Carbon County

Hardin, *Pretty Creek Site (Hough Creek Site)*, Big Horn Canyon National Recreation Area.

Custer County

"Old Fort" at Fort Keogh.

Fergus County

Lewis & Clark, Campsite, May 23, 1805.
Lewis & Clark, Campsite, May 24, 1805.

Lewis and Clark County

Marysville, *Marysville Historic District.*

NEBRASKA

Cherry County

Valentine vicinity, *Fort Niobrara National Wildlife Refuge.*
Valentine vicinity, *Newman Brothers House.*

NEVADA

Clark County

Indian Springs vicinity, *Tim Springs Petroglyphs*, N of Indian Springs.
Las Vegas vicinity, *Blacksmith Shop*, Desert National Wildlife Range.
Las Vegas vicinity, *Mesquite House*, Desert National Wildlife Range.
Las Vegas vicinity, *Mormon Well Corral*, NE of Las Vegas.

Elko County

Carlin vicinity, *Archeological Sites 26EK1669—26EK1672.*

Nye County

Las Vegas vicinity, *Emigrant's Trail*, about .75 mi. NW of Las Vegas on U.S. 95.

Pershing County

Lovelock vicinity, *Adobe in Ruddell Ranch Complex.*
Lovelock vicinity, *Lovelock Chinese Settlement Site.*

Storey County

Sparks vicinity, *Derby Diversion Dam*, on the Truckee River 19 mi. E of Sparks, along I 80 (also in Washoe County).

NEW HAMPSHIRE

Rockingham County

Portsmouth, *Pulpit Rock Observation Station*, Portsmouth Harbor.

NEW JERSEY

Hudson County

S.S. Newton, midway between Ellis and Liberty islands.

Mercer County

Hamilton and West Windsor Townships, *Assunpink Historic District.*

Middlesex County

New Brunswick, *Delaware and Raritan Canal*, between Albany St. Bridge and Landing Lane Bridge.

Monmouth County

Long Branch, *The Reservation*, 1-9 New Ocean Ave.

Ocean County

Holmes, John, Mill (The Mill Site), SW corner of Mill and Parker Sts. in Ocean County Central Service area.

Sussex County

Old Mine Road Historic District (also in Warren County).

NEW MEXICO

Chaves County

Cites LA11809—LA11822, Cottonwood-Walnut Creek Watershed (also in Eddy County).

Dona Ana County

Placitas Arroyo, *Sites SCSPA 1—8.*

Lea County

Laguna Plata Archeological District.

McKinley County

Zuni Pueblo Watershed, *Oak Wash Sites N.M.G.:13:19—N.M.G.:13:37.*

Otero County

Three Rivers Petroglyphs.

Rio Arriba County

Cerrito Recreation Site Archeological District.

NEW YORK

Albany County

Guilderland, *Nott Prehistoric Site.*
Tetilla Peak Site.

Bronx County

New York, *Bronx Post Office.*
New York, *North Brothers Island Light Station*, in center of East River.

Broome County

Vestal, *Vestal Nursery Site*, Vestal Project (also in Union County).

Chautauqua County

Dunkirk, *Properties in the city of Dunkirk.*
Loomis Archeological Site, South and Central Chautauqua Lake

Greene County

New York, *Hudson City Light Station,* in center of Hudson River.

Nassau County

Greenvale, *Toll Gate House,* Northern Blvd.
Long Island, *Seaford Park Archeological Site.*

New York County

New York, *Harlem Courthouse,* 170 E. 121st St.

Orange County

Port Jervis, *Church Street School,* 55 Church St.
Port Jervis, *Farnum, Samuel, House,* 21 Ulster Pl.

Richmond County

New York, *Romer Shoal Light Station,* located in lower bay area of New York Harbor.

Saratoga County

Schuylerville, *Archeological Site,* Schuylerville Water Pollution Control Facility.

Schoharie County

Breakabeen, *Breakabeen Historic District,* between village of North Blenheim and Breakabeen.

Staten Island

Tottenville, *Ward's Point,* Oakwood Beach Project

Suffolk County

Janesport vicinity, *East End Site.*
Janesport vicinity, *Hallock's Pond Site.*
New York, *Fire Island Light Station,* U.S. Coast Guard Station.
New York, *Little Gull Island Light Station,* off North Point of Orient Point, Long Island.
New York, *Plum Island Light Station,* off Orient Point, Long Island.
New York, *Race Rock Light Station,* S. of Fishers Island, 10 mi. N. of Orient Point.
Northville Historic District, houses along Sound Ave.

Ulster County

Kingston vicinity, *Esopus Meadows Light Station,* middle of Hudson River.
New York, *Rondout North Dike Light,* center of Hudson River at Jct. of Rondout Creek and Hudson River.
New York, *Saugerties Light Station,* Hudson River.

Washington County

Greenwich, *Palmer Mill (Old Mill),* Mill St.

Westchester County

Port Washington vicinity, *Execution Rocks Light Station,* lower SW portion of Long Island Sound.
Yorktown, *Yorktown Railroad Station.*

NORTH CAROLINA

Alamance County

Burlington, *Southern Railway Passenger Depot,* NE corner Main and Webb Sts.

Brunswick County

Southport, *Fort Johnston,* Moore St.

Caswell County

Archeological Sites CS-12, County Line Creek Watershed Project (also in Rockingham County).
Womack's Mill, in County Creek Watershed Project (also in Rockingham County).

Cleveland County

Archeological Resources in Second Brood River Watershed Project (also in Rutherford County).

Cumberland County

Fayetteville, *Veterans Administration Hospital Confederate Breastworks,* 23 Ramsey St.

Dare County

Buxton, *Cape Hatteras Light,* Cape Hatteras National Seashore.

Durham County

Durham, *St. Joseph's A.M.F. Church,* Fayetteville St. at the Durham Expwy.

Hyde County

Ocracoke, *Ocracoke Lighthouse.*

NORTH DAKOTA

Burleigh County

Bismarck, *Fort Lincoln Site.*

OHIO

Clermont County

Neville vicinity, *Maynard House,* 2 mi. E of Neville off U.S. 52.

Pickaway County

Williamsport vicinity, *The Shack (Daugherty, Harry, House),* 5.5 mi. NW of Williamsport.

Seneca County

Tiffin, *Old U.S. Post Office,* 215 S. Washington St.

Warren County

Corwin, *Shafer Mound,* S of New Burlington Rd.
Harveysburg, *E. L. Anderlee Mound,* S of New Burlington Rd. in Caesar Creek Lake Project.

OKLAHOMA

Atoka County

Estep Shelter, Lower Clear Boggy Watershed.
Graham Site, Lower Clear Boggy Watershed.

Comanche County

Fort Sill, *Blockhouse on Signal Mountain* off Mackenzie Hill Rd.
Fort Sill, Camp Comanche Site, E range on Cache Creek.
Fort Sill, *Chiefs Knoll, Post Cemetery,* N of

Haskell County

Keota vicinity, *Otter Creek Archeological Site,* SW of Keota.

Kay County

Newkirk vicinity, *Bryson Archeological Site,* NE of Newkirk.

OREGON

Baker County

Baker vicinity, *Virtue Flat Mining District,* 10 mi. E of Baker off Hwy. 86.

Columbia County

Scappose vicinity, *Portland and Southwestern Railroad Tunnel,* 13 mi. NW of Scappose.

Coos County

Charleston, *Cape Arago Light Station.*

Curry County

Port Orford, *Cape Blanco Light Station.*

Douglas County

Winchester Bay, *Umpqua River Lighthouse.*

Gilliam County

Arlington vicinity, *Four Mile Canyon Area (Oregon Trail),* 10 mi. SE of Arlington.
Crum Gristmill, Ghost Camp Reservoir area.
Old Wagon Road, Ghost Camp Reservoir area.
Olex School, Ghost Camp Reservoir Area.
Steel Truss Bridge, Ghost Camp Reservoir area.

Klamath County

Crater Lake National Park, *Crater Lake Lodge.*

Lane County

Roosevelt Beach, *Heceta Head Lighthouse.*
Roosevelt Beach, *Heceta Head Light Station.*

Lincoln County

Agate Beach, *Yakuina Head Lighthouse.*

Tillamook County

Tillamook, *Cape Meares Lighthouse.*

Wasco County

Memaloose Island, River Mile 177.5 in Columbia River.

Wheeler County

Antone, *Antone Mining Town,* Barite 1901–1906.

PENNSYLVANIA

Adams County

Gettysburg, *Barlow's Knoll,* adjacent to Gettsysburg National Military Park.

Allegheny County

Bruceton, *Experimental Mine,* U.S. Bureau of Mines, off Cochran Mill Rd.

Berks County

Mt. Pleasant, *Berger-Stout Log House,* near jct. of Church Rd. and Tulephocken Creek.
Mt. Pleasant, *Conrad's Warehouse,* near jct. of Rte. 183 and Powder Mill Rd.
Mt. Pleasant, *Heck-Stamm-Unger Farmstead,* Gruber Rd.
Mt. Pleasant, *Miller's House,* jct. of Rte. 183 and Powder Mill Rd.
Mt. Pleasant, *O'Bolds-Billman Hotel and Store,* Gruber Rd. and Rte. 183.
Mt. Pleasant, *Pleasant Valley Roller Mill,* Gruber Rd.
Mt. Pleasant, *Reber's Residence and Barn,* on Tulephocken Creek.
Mt. Pleasant. *Union Canal,* Blue Marsh Lake Project area.

Chester County

Lock Aerie.
Nature Center of Charleston, State Rd. Charleston township.

Clinton County

Lockhaven, *Apsley House,* 302 E. Church St.
Lockhaven, *Harvey Judge, House,* 29 N. Jay St.
Lockhaven, *McCormick, Robert, House,* 234 E. Church St.
Lockhaven, *Mussina, Lyons, House,* 23 N. Jay St.

Dauphin County

Middletown, *Swatara Ferry House (Old Fort),* 400 Swatara, St.

Delaware County

I 476 Historic Sites (20 Historic Sites) Mid-County Expwy. (also in Montgomery County.)

Huntingdon County

Brumbaugh Homestead, Raystown Lake Project.

Lackawanna County

Carbondale, *Miners and Mechanics Bank* Bldg 13N., Main St.

Lehigh County

Colesville vicinity, *Site 1: Farmhouse, barn, and outbuildings*, I–78.
Dorneyville, *King George Inn and two other stone houses*, Hamilton and Cedar Crest Blvds.

Lycoming County

Williamsport, *Faxon Co., Inc.*, Williamsport Beltway.

Northampton County

Lehigh Canal.
Site 3: Farmhouse, barn, and outbuildings, I–78.
Site 4: Farmhouse, barn, and outbuildings, I–78.

Philadelphia County

Philadelphia, *Bridge on "I" Street*, over Tacony Creek.
Philadelphia, *Tremont Mills*, Wingonocking St. and Adams Ave.
U.S. Naval Base, *Quarters "A" Commandant's Quarters.*

Washington County

Charleroi, *Ninth Street School.*
Cross Creek Village, Cross Creek watershed.
Somerset Township, *Wright No. 22 Covered Bridge.*

SOUTH CAROLINA

Beaufort County

Parris Island, *Marine Corps Recruit Depot.*

Charleston County

Charleston, *139 Ashley St.*
Charleston, *69 Barre St.*
Charleston, *69r Barre St.*
Charleston, *316 Calhoun St.*
Charleston, *316r Calhoun St.*
Charleston, *268 Calhoun St.*
Charleston, *274 Calhoun St.*
Charleston, *Old Rice Mill*, off Lockwood Dr.

SOUTH DAKOTA

Pennington County

Rapid City, *Rapid City Historic Commercial District*, portions of 612–632 Main St.

TENNESSEE

Davidson County

Nashville, *Ancient Indian Village and Burial Ground*, section 203(b).

Trousdale County

Dixon Springs, *McGee House.*

TEXAS

Bexar County

Fort Sam Houston, *Eisenhower House*, Artillery Post Rd.

Concho County

Middle Colorado River Watershed, *Prehistoric Archeology in the Southwest Laterals Subwatershed* (also in McCulloch County).

Denton County

Hammons, George, House, between Sangers and Pilot Point.

El Paso County

Castner Range Archeological Sites.

Galveston County

Galveston, *U.S. Customhouse*, bounded by Avenue B, 17th, Water, and 18th Sts.

Hardeman County

Quanah, *Quanah Railroad Station*, Lots 2, 3, and 4 in Block 2.

Uvalde County

Leona River Watershed Archeological Sites.

Webb County

Laredo, *Bertani, Paul Prevost House*, 604 Iturbide St.
Laredo, *De Leal, Viscaya, House*, 620 Zaragoza St.
Laredo, *Garza, Zoila De La, House*, 500 Iturbide St.
Laredo, *Leyendecker/Salinas House*, 702 Iturbide St.
Laredo, *Montemayor, Jose A., House (Carols Vela House)*, 601 Zaragosa St.

UTAH

Emery County

Site ML–2145, Manti-LaSal National Forest.

Salt Lake County

Salt Lake City, *Lollin Block*, 238–240 S. Main St.

VERMONT

Windsor County

Windsor, *Post Office Building.*

WASHINGTON

Benton County

Richland vicinity, *Hanford Island Archeological Site*, 18 mi. N of Richland.
Richland vicinity, *Hanford North Archeological District*, 22 mi. N of Richland.
Richland vicinity, *Paris Archeological Site*, Hanford Works Reservation.
Richland vicinity, *Snively Canyon Archeological District*, 25 mi. NW of Richland.
Richland vicinity, *Wooded Island Archeological District*, N of Richland.

Clallam County

Cape Alava vicinity, *White Rock Village Archeological Site*, S of Cape Alava.
Olympic National Park Archeological District, Olympic National Park (also in Jefferson County).
Segium, *New Dungeness Light Station.*

Franklin County

Richland vicinity, *Savage Island Archeological District*, 15 mi. N of Richland.

Grays Harbor County

West Port, *Grays Harbor Light Station.*

King County

Burton, *Point Robinson Light Station.*
Seattle, *Alki Point Light Station.*
Seattle, *West Point Light Station.*

Kitsap County

Hansville, *Point No Point Light Station.*

Pacific County

Ilwaco, *North Head Light Station.*

Pierce County

Fort Lewis Military Reservation, *Captain Wilkes, July 4, 1841, Celebration Site.*
Longmire, *Longmire Cabin*, Mount Rainier National Park.

San Juan County

San Juan Islands, *Patos Island Light Station.*

Skamania County

North Bonneville, *Site 44SA11*, Bonneville Dam Second Powerhouse Project.

Snohomish County

Mukilteo, *Mukilteo Light Station.*

WEST VIRGINIA

Barbour County

Covered Bridge across Rooting Creek, Elk Creek Watershed (also in Harrison County).

Cabell County

Huntington, *Old Bank Building*, 1208 3rd Ave.

Kanawha County

Charleston, *Kanawha County Courthouse.*
St. Albans, *Chilton House*, 439 B St.

Wood County

Parkersburg, *Wood County Courthouse.*
Parkersburg, *Wood County Jail.*

WISCONSIN

Ashland County

Ashland vicinity, *Madeline Island Site 7302.*

Fond du Lac County

Fond du Lac, *Aetna Station No. 5*, 193 N. Main St.

LaCrosse County

LaCrosse, *LaCrosse Post Office.*

WYOMING

Fremont County

Pilot Butte Powerplant, Wind River Basin.

Natrona County

Casper, *Cantonment Reno.*
Casper, *Castle Rock Archeological Site.*
Casper, *Dull Knife Battlefield.*
Casper, *Middle Fork Pictograph-Petroglyph Panels.*
Casper, *Portuguese Houses.*

Park County

Mammouth, *Chapel at Fort Yellowstone*, Yellowstone National Park.

PUERTO RICO

Mona Island, *Sardinero Site and Ball Courts.*

[FR Doc.76–21965 Filed 8–2–76;8:45 am]

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nomination

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 23, 1976. Pursuant to § 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240. Written comments or a request for additional time to prepare comments should be submitted by August 13, 1976.

JERRY L. ROGERS,
Acting Director, Office of Archeology and Historic Preservation.

ALASKA

Skagway-Yakutat Division

Haines vicinity, *Porcupine District*, W of Haines at Mile 35, Haines Highway.

ARKANSAS

Jackson County

Newport, *Jackson County Courthouse*, U.S. 67.

Pulaski County

Little Rock, *MacArthur Park Historic District*, roughly bounded by Main, E. 16th, McGowan, and E. 5th Sts.

CALIFORNIA

Colusa County

Colusa, *Colusa High School and Grounds*, 745 10th St.

DELAWARE

New Castle County

Greenville, *St. Joseph's On the Brandywine*, 10 Barley Mill Rd.

Wilmington, *Brandywine Park*, roughly bounded by Augustine, 18th, Market Sts., and Lovering Ave.

Wilmington, *Rockford Park*, roughly bounded by Rockford and Red Oak Rds., Church and Rising Sun Lanes, and the Brandywine River.

GEORGIA

Hancock County

Devereux vicinity, *Roe-Harper House*, about 2 mi. W of Devereux off GA 2133.

Jasper County

Monticello vicinity, *Roach House*, W of Monticello off GA 16 at Ocmulgee River.

KENTUCKY

Madison County

Richmond, *Breck, Judge Daniel, House*, 312 Lancaster Avenue.

Mercer County

Harrodsburg, *Doricham (Stagg-Haggin-Stephenson House)*, 409 N. College St.

Spencer County

Taylorsville vicinity, *Bourne-Anderson House and Distillery Site*, 0.5 mi. N of Taylorsville on KY 55.

MARYLAND

Baltimore County

Oella, *Mt. Gilboa Chapel*, Oella and Westchester Aves.

Caroline County

West Denton, *Neck Meetinghouse and Yard*, MD 404.

MASSACHUSETTS

Essex County

Lawrence, *Grace Episcopal Church*, Common and Jackson Sts.

Middlesex County

Woburn, *Woburn Public Library*, Pleasant St.

Plymouth County

Lakeville, *Town Hall*, Bedford St.

Wareham, *Tremont Nail Factory District*, 21 Elm St.

MINNESOTA

Ramsey County

St. Paul, *Historic Hill District*, irregular pattern extending from Pleasant and Grand Aves. on S to Holly and Marshall Aves. on N; from Lexington Pkwy. on W to 4th and Pleasant Ave. on E.

MISSISSIPPI

Adams County

Natchez, *Rosalie*, 100 Orleans St. HABS.

NORTH CAROLINA

Alleghany County

Piney Creek vicinity, *Weaver, William, House*, SW of Piney Creek on SR 1302.

Ashe County

Crumpler vicinity, *Pierce, John M., House*, N of Crumpler on SR 1559.

Crumpler vicinity, *Thompson's Bromine and Arsenic Springs*, W of Crumpler on SR 1542.

Grassy Creek vicinity, *Waddell, William, House*, W of Grassy Creek off NC 16 on SR 1532.

Helton vicinity, *Baptist Chapel Church and Cemetery*, E of Helton on SR 1527.

Scottville vicinity, *Bower-Cox House*, SW of Scottville on SR 1595.

Scottville vicinity, *Cox, Samuel, House*, SW of Scottville off U.S. 221 on SR 1636.

Chowan County

Edenton, *Pembroke Hall*, W. King St.

Gates County

Gatesville, *Gates County Courthouse*, Court St.

NORTH DAKOTA

Billings County

Medora vicinity, *Initial Rock*, SE of Medora on Custer National Forest.

OKLAHOMA

Oklahoma County

Oklahoma City, *Heritage Hills Historic District*, L-shaped district bounded by Robinson Ave., 13th, Western Ave., 16th, Walker Ave., and 27th St.

Tulsa County

Tulsa, *McBirney, James H., House*, 1414 S. Galveston.

TENNESSEE

Loudon County

Loudon vicinity, *Higgs Archeological Site*, 2 mi. W of Loudon.

TEXAS

Bosque County

Mosheim vicinity, *Hog Creek Archeological District*, NW of Mosheim off FM 182 (also in Coryell County).

WYOMING

Converse County

Ross vicinity, *Brown Springs*, about 20 mi. S of Ross.

Fremont County

Atlantic City vicinity, *Miners Delight*, N of Atlantic City.

South Pass City vicinity, *Burnt Ranch (Last Crossing)*, S of South Pass City.

Johnson County

Buffalo, *Carnegie Public Library*, 90 N. Main.

Buffalo, *Johnson County Courthouse*, 76 N. Main.

Buffalo, *St. Luke's Episcopal Church*, 178 S. Main.

Lincoln County

Kemmerer vicinity, *Johnston Scout Rocks*, NE of Kemmerer.

Natrona County

Casper vicinity, *Emigrant Gap*, W. of Casper.

Muddy Gap vicinity, *Split Rock*, NW of Muddy Gap off U.S. 287.

[FR Doc.76-21964 Filed 8-2-76;8:45 am]

Office of the Secretary

LEGAL REVIEW OF PROCUREMENT ACTIONS

Procedures

Pursuant to the Department of the Interior Procurement Regulations, 41 CFR 14-1.352, the Office of Aircraft Services has issued procedures regarding the legal review of procurement actions.

It shall be the policy of the Office of Aircraft Services to obtain a legal review from the local Office of the Field Solicitor for the following procurement instruments:

1. All proposed procurement contracts, and amendments thereto, prior to execution thereof (including supporting documentation) anticipated to exceed $200,000.

2. All procurement contracts regardless of amount which involve the interpretation of contracting authority which has not previously been approved by the Solicitor's Office.

3. Any procurement contract or amendment thereto may be submitted for legal review, if in the judgment of the contracting officer such review is desirable.

4. All determinations and findings to be issued pursuant to the disputes clause of the contract.

5. All proposed cure notices, show cause letters, and notices of termination of procurement contracts, whether for default or convenience.

6. All proposed determinations or recommendations related to bid protests and mistakes in bids.

7. Legal review shall be accomplished within a reasonable time.

The procedures described herein may be modified by written agreement between the Director, OAS, and the Regional Solicitor.

Any communications regarding this notice should be addressed to the Chief, Division of Contracting and General Services, Office of Aircraft Services, Boise, Idaho 83705.

Dated: July 27, 1976.

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

[FR Doc.76-22392 Filed 8-2-76;8:45 am]

DEPARTMENT OF AGRICULTURE

Forest Service

ADMINISTRATIVE ACTION TO DESIGNATE TYPES OF TRAVEL PERMITTED, RESTRICTED OR PROHIBITED ON TRAILS & AREAS OF THE OLYMPIC NATIONAL FOREST

Availability of Final Environmental Statement

Pursuant to section 102 (2)(C) of the National Environmental Policy Act of 1969, the Forest Service; Department of Agriculture, has prepared a final environmental statement for An Administrative Action to Designate Types of Travel Permitted, Restricted or Prohibited on Trails and Areas of the Olympic National Forest, USDA-FS-R6-FES (Adm) 76-4.

The environmental statement concerns a proposed action to prohibit motor vehicle use on approximately 60 miles of trail and prohibit livestock use on 28 miles of trail. Use of motorized vehicles for cross-country (off trail) travel to permit passing and overnight camping are defined.

This final environmental statement was transmitted to CEQ on July 27, 1976.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, South Agriculture Bldg., Room 3210, 12th St. and Independence Ave., S.W., Washington, D.C. 20250.

USDA, Forest Service, Multnomah Bldg., 319 SW Pine St., Portland, Oregon 97208.

Olympic National Forest, Federal Bldg., 801 South Capitol Way, Olympia, Washington 98507.

A limited number of single copies are available upon request to:

Richard D. Beaubien, Forest Supervisor, Olympic National Forest, P.O. Box 2288, Olympia, Washington 98507.

Copies of the environmental statement have been sent to various Federal, state, and local agencies as outlined in the CEQ guidelines.

JULY 27, 1976.

GEORGE E. JANSEN,
Acting Forest Supervisor.

[FR Doc.76-22416 Filed 8-2-76;8:45 am]

GALLINA LAND USE PLAN

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for the Gallina Land Use Plan, USDA-FS-R3-DES-Adm 76-06.

The environmental statement considers a proposed plan of management for 59,780 acres of National Forest in the vicinity of Gallina, New Mexico, Rio Arriba and Sandoval Counties.

The draft environmental statement was transmitted to CEQ on July 27, 1976.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, So. Agriculture Bldg., Rm. 3230, 14th and Independence Ave., SW., Washington, D.C. 20250.

USDA, Forest Service, Southwestern Region, 517 Gold Avenue, SW., Albuquerque, New Mexico 87102.

Santa Fe National Forest, P.O. Box 1689, Santa Fe, New Mexico 87501.

A limited number of single copies are available upon request to the Forest Supervisor, Santa Fe National Forest, P.O. Box 1689, Santa Fe, New Mexico 87501.

Copies of the environmental statement have been sent to various Federal, state, and local agencies as outlined in the CEQ guidelines.

Comments are invited from the public, and from State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to Forest Supervisor, Santa Fe National Forest, P. O. Box 1689, Santa Fe, New Mexico, 87501. Comments must be received by September 27, 1976 in order to be considered in the preparation of the final environmental statement.

W. R. FALLIS,
Acting Regional Forester, Region 3.

JULY 27, 1976.

[FR Doc.76-22383 Filed 8-2-76;8:45 am]

Office of the Secretary

LIVESTOCK FEED

Feed Grain Donations for the Crow Creek and Lower Brule Indian Lands in South Dakota and the Lake Traverse Indian Lands in South Dakota and North Dakota

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949 as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Crow Creek and Lower Brule Indian Lands in South Dakota and the Lake Traverse Indian Lands in South Dakota and North Dakota has been materially increased and become acute because of severe and prolonged drought creating a serious shortage of livestock feeds. These reservations are designated for Indian use and are utilized by members of the Indian tribes for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation for livestock feed for such needy members of the tribes will not displace or interfere with normal marketing of agricutural commodities.

3. Based on the above determinations, I hereby declare the reservations and grazing lands of these tribes to be acute distress areas and authorize the donation of feed grain owned by the Commodity Credit Corporation to livestockmen who are determined by the Bureau of Indian Affairs, Department of the Interior, to be needy members of the tribe utilizing such lands. These donations by the Commodity Credit Corporation may commence upon signature of this notice and shall be made available through the duration of the existing emergency or to such other time as may be stated in a notice issued by the Department of Agricuture.

Signed at Washington, D.C. on July 29, 1976.

EARL L. BUTZ,
Secretary.

[FR Doc.76-22476 Filed 8-2-76;8:45 am]

DEPARTMENT OF COMMERCE

Maritime Administration

PERMANENT CAPITAL CONSTRUCTION FUND AGREEMENT APPLICATIONS

Possible Public Availability Under Freedom of Information Act

In the course of administering the Capital Construction Fund (CCF) program under section 607, Merchant Marine Act, 1936, as amended (46 U.S.C. 1177), the Maritime Administration has received applications and supporting information for permanent agreements. The application form for permanent CCF Agreements has been reviewed, and it is tentatively determined that, unless such submissions (or specific parts thereof) can be shown to come within one of the enumerated exemptions, all information received therein and in the course of administering the program, is subject to disclosure upon request under the Freedom of Information Act (FOIA) (5 U.S.C. 552).

The Maritime Administration recognizes that some applicants may take the position that, because of the nature of the maritime industry, release of such information could cause substantial competitive injury to the applicant submitting such information. If this position is accepted, information could be held to be exempt from public disclosure under the fourth exemption of the FOIA (5 U.S.C. 552(b)(4)). It is noted that a number of applicants have attempted to claim exemption in response to part XI of the application for establishment of a CCF (41 F.R. 4264, Appendix I at 4272). Some applicants requested that all information be exempt, others that some information be exempt and still others stated that part XI was "not applicable" or made no response at all. All of the requests made in the former two instances may be insufficient as to content. Therefore, all applicants who, in one form or another, have already requested exemption under subsection (b)(4) of the FOIA are instructed to submit justification of their claimed exemption, in the manner set forth below, on or before September 7, 1976. Applicants for permanent CCF Agreements, whether or not they had interim CCF agreements are hereby notified that these guidelines are to apply to their applications.

Any justification submitted in response to this notice must: (1) precisely specify item-by-item the information the applicant asserts is within particular parts of subsection (b)(4) of the FOIA (namely, whether trade secret or financial information or commercial information); (2) state whether each such item is treated as confidential by the applicant and the steps taken to assure its confidentiality; and (3) explain how release of each such item would cause substantial competitive injury to the applicant, and the exact nature of that competitive injury. Mere general and unexplained statements that an item is a trade secret or confidential information or financial information will be insufficient justification.

The Maritime Administration is responsible for the determination that an item of information is subject to exemption under the FOIA and that the exemption will be asserted with respect thereto. In the event that it is determined that no exemption is applicable to or will be asserted for an item of information, the applicant will be given a statement of the determination and the reason therefor. If it is determined that an exemption is applicable and will be asserted for an item of information, the applicant will be so notified and every effort will be made to honor that determination within the provisions of the FOIA.

If a claim of exemption is not accepted, the applicant shall have a period of 30 calendar days in which to decide whether to withdraw the item(s) of information from the Maritime Administration's records. If such withdrawal removes critical information from the progam staff, it is possible that the applicant's CCF application would not be granted. Should the applicant decide not to withdraw the item(s) of information, it must be understood that such item(s) of information will be disclosed upon receipt of a proper request under the FOIA. The right to make similar determinations with respect to additional information submitted in the course of administering the CCF program is reserved.

Responses to this notice should be addressed to the Secretary, Maritime Administration, Room 3099–B, U.S. Department of Commerce, Washington, D.C. 20230.

Dated: July 27, 1976.

Authority by order of the Assistant Secretary for Maritime Affairs.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.76-22489 Filed 8-2-76;8:45 am]

RECONSTRUCTION OF FOUR ROLL-ON/ROLL-OFF CONTAINERSHIPS, MA DESIGN C5–S–78a

Computation of Foreign Costs; Intent

Notice is hereby given of the intent of the Maritime Subsidy Board, pursuant to the provisions of section 502(b) of the Merchant Marine Act, 1936, as amended, to compute the estimated foreign cost for the reconstruction of four roll-on/roll-off containerships, MA Design C5–S–78a, to increase capacity from 834 to 1,100 containers by the inserting of a 100 foot midbody, upgrading of deck container lashing/securing system and the addition of a bow thruster.

Any person, firm or corporation having any interest (within the meaning of section 502(b)) in such computations may file written statements by the close of business on August 27, 1976, with the Secretary, Maritime Subsidy Board, Maritime Administration, Room 3099B, Department of Commerce Building, 14th & E Streets NW., Washington, D.C. 20230.

Dated: July 29, 1976.

By order of the Maritime Subsidy Board Maritime Administration.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.76-22490 Filed 8-2-76;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

(Docket No. 75N–0262; DESI 9698 and 12301)

MEPROBAMATE AND CHLORDIAZEPOXIDE

Drugs for Human Use: Drug Efficacy Study Implementation; Amended Notice

Correction

In FR Doc. 76–21307 appearing on page 30376 in the issue for Friday, July 23, 1976 make the following correction:

In column three of page 30376, in the 8th line of the first paragraph under the heading "Usage in Pregnancy and Lactation" the words "also always" should have read "almost always"

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration

NEW YORK

[Docket No. NFD–352 FDAA–515–DR]

Amendment to Notice of Major Disaster

Notice of Major Disaster for the State of New York, dated July 21, 1976, is hereby amended to include the following counties determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 21, 1976:

The Counties of:

Herkimer Washington

Dated: July 27, 1976.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

[FR Doc.76-22406 Filed 8-2-76;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

URBAN SYSTEM STUDY

Meeting

Notice is hereby given that the Federal Highway Administration and the Urban Mass Transportation Administration will hold a meeting on the Urban System Study being conducted pursuant to section 149 of the Federal-Aid Highway Act of 1976, Pub. L. 94–280.

The purpose of the meeting is to receive comments on the study from several national organizations. The study covers the various factors involved in the planning, selection, programing, and implementation of Federal-aid urban system routes.

The meeting will be held on August 12, 1976, beginning at 8:30 a.m. at the Department of Transportation Headquarters Building, Room 4200, 400 7th St., SW., Washington, D.C. 20590.

Further information concerning this meeting may be obtained by contacting the Office of Highway Planning, Federal Highway Administration, 400 7th St., SW., Washington, D.C. 202/426–2961.

WILLIAM A. MERTZ,
Associate Administrator for Planning, Federal Highway Administration.
ROBERT E. GALLAMORE,
Associate Administrator for Transportation Planning, Urban Mass Transportation Administrator.

[FR Doc.76-22387 Filed 8-2-76;8:45 am]

Urban Mass Transportation Administration

URBAN SYSTEMS STUDY

Meeting

CROSS REFERENCE.—For a document issued jointly by the Urban Mass Transportation Administration and the Federal Highway Administration on the subject of a meeting on the Urban Systems Study, see FR Doc. 76–22397 appearing in the notices section of this issue.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

EXECUTED MEMORANDA OF AGREEMENT

Pursuant to § 800.6(a) of the Advisory Council's "Procedures for the Protection of Historic and Cultural Properties" (36 CFR Part 800), notice is hereby given that the following Memoranda of Agreement were executed during the months of June and July, 1976. The Memoranda of Agreement were executed in fulfillment of Federal agencies' responsibilities for protection of properties on or eligible for inclusion in the National Register of Historic Places in accordance with section 106 of the National Historic Preservation Act of 1966 and Executive Order 11593, May 13, 1971.

Carefree Archeological Sites, Tonto National Forest, Arizona, affected by a land exchange between the Forest Service and the Transamerican Corporation which would result in the loss of two archeological sites (6/3/76);

Obolds-Billman Hotel/Pleasant Valley Rolling Mill, Reading, Pennsylvania, affected by demolition as part of the Blue Marsh Lake Project of the Army Corps of Engineers (6/3/76);

Walter F. George Dam Mound, Clay County, Georgia, affected by excavation and data recovery undertaken by the Army Corps of Engineers (6/4/76);

Lovelock Cultural Resources, Lovelock, Nevada, affected by construction and operation of a segment of four-lane highway, a

project of the Nevada State Highway Department assisted by the Federal Highway Administration (6/6/76);

Canyon Lakes, Lubbock, Texas, affected by the Canyon Lakes Project through the Land and Water Conservation Project, an undertaking assisted by the Department of Interior, Bureau of Reclamation (6/8/76);

Santa Fe Depot, San Diego, California, affected by acquisition and renovation as an intermodal transportation center by the City of San Diego, assisted by the Urban Mass Transportation Administration (6/8/76);

East New Market Historic District, Dorchester County, Maryland, affected by the construction of the East New Market Post Office undertaken by the United States Postal Service (6/15/76);

Emigration Canyon, Salt Lake City, Utah, affected by the construction of a metallurgical research facility for use by the Department of Interior, Department of Mines, undertaken by the General Services Administration (6/15/76);

Chambers Creek, Tacoma, Washington, affected by Stage 1 of the Pierce County ULID 70-3 sewerage project, an undertaking assisted by the Environmental Protection Agency (6/16/76);

Napa River Archeological Sites, Napa, California, affected by the construction of the Napa River Flood Control Project, assisted by the Army Corps of Engineers (6/16/76);

San Felipe Cultural Resources, Merced County, California, affected by the construction of a water diversion tunnel as part of the San Felipe Division, Central Valley Project, a project of the Department of the Interior, Bureau of Reclamation (6/16/76);

Hovenweep National Monument, States of Colorado and Utah, affected by an archeological research program undertaken by San Jose State University with the permission of the Department of the Interior, National Park Service (6/28/76);

Old Post Office Building, LaCrosse, Wisconsin, affected by construction of the new Post Office/Federal Building undertaken by the United States Postal Service (6/28/76);

Archeological Sites, Tishomingo County, Mississippi, affected by construction of the northern eight-mile portion of the Divide Section of the Tennessee-Tombigee Waterway from the crossing of Mississippi Highway 25 over the Yellow Creek Arm of Pickwick Reservior Southward, undertaken by the Army Corps of Engineers (7/1/76);

Hancock County Courthouse/Sparta Historic District, Hancock County, Georgia, affected by renovation undertaken by the county with a grant from the Department of Justice, Law Enforcement Assistance Administration (7/1/76);

Lake Wister Locality Archeological District, Latimer and Leflore Counties, Oklahoma, affected by changes in operational procedures at Wister Lake, Leflore County, an undertaking of the Army Corps of Engineers (7/1/76);

Central Heating Plant, District of Columbia, affected by the renovation undertaken by the General Services Administration (7/6/76);

Old Shovel Shop, Cheltenham Township, Pennsylvania, affected by restoration undertaken by Cheltenham Township with 1975-1976 Community Development Funds Grant monies funded by the Department of Housing and Urban Development (7/6/76);

Rood Mound Site, Stewart County, Georgia, affected by the continued operation of the Walter F. George Lake Project of the Army Corps of Engineers (7/6/76);

Archeological Sites, Johnson and Morgan Counties, Kentucky, affected by continued construction of the Paintsville Reservoir undertaken by the Army Corps of Engineers (7/12/76);

Archeological Sites, Imperial County, California, affected by leasing two parcels of land for commercial extraction of sand and gravel, an undertaking of the Department of the Interior, Bureau of Reclamation (7/17/76);

Grand Canyon Railroad Station, Grand Canyon National Park, Arizona, affected by installation of a temporary parking area and requiring an amendment to the Memorandum of Agreement ratified 4/9/74 because of delay in installation (Amended 7/21/76);

Union Street Historic District/Mill Street Historic District/Vassar Home for Aged Men, Poughkeepsie, New York, affected by the Community development Project termed "Elimination of Blight, Lower Main Street," an undertaking of the City of Poughkeepsie, funded by the Department of Housing and Urban Development (7/21/76);

The Memoranda are available for inspection at the Advisory Council offices, Suites 430 and 1030, 1522 K Street, NW., Washington, D.C. 20005. Further information is available from the Director, Office of Review and Compliance, Advisory Council on Historic Preservation, at the above address.

ROBERT R. GARVEY, Jr.,
Executive Director.

[FR Doc.76-22485 Filed 8-2-76;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 29580]

ALLEGHENY AIRLINES, INC.

Application for Amendment of Certificate of Public Convenience and Necessity

JULY 29, 1976.

Notice is hereby given that the Civil Aeronautics Board on July 28, 1976, received an application, Docket 29580, from Allegheny Airlines, Inc. for amendment of its certificate of public convenience and necessity for route 97 to provide Cincinnati-Cleveland nonstop authority.

The applicant requests that its application be processed under the expedited procedures set forth in Subpart M of Part 302 (14 CFR Part 302).

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.76-2441 Filed 8-2-76;8:45 am]

CIVIL SERVICE COMMISSION

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Title Change in NonCareer Executive Assignment

By notice of August 21, 1970, FR Doc. 70-11068 the Civil Service Commission authorized the Department of Health, Education, and Welfare to fill by noncareer executive assignment the position of Associate Administrator for Planning, Research, and Training, Social and Rehabilitation Service. This is notice that the title of this postion is now being changed to Associate Administrator for Planning, Research, and Evaluation, Social and Rehabilitation Service.

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

[FR Doc.76-22238 Filed 8-2-76;8:45 am]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

CONTROLLING COTTON TEXTILES AND COTTON TEXTILE PRODUCTS IMPORTED FROM INDIA

Limitation

JULY 29, 1976.

On August 6, 1974, the Government of the United States, in furtherance of the objectives of, and under the terms of, the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973, concluded a comprehensive bilateral cotton textile agreement with the Government of India, concerning exports of cotton textiles and cotton textile products from India to the United States over a four-year period beginning on October 1, 1973. The agreement was amended by an exchange of notes between the two governments, dated January 22, 1976, to provide, inter alia, for an aggregate ceiling of 138,182,000 square yards equivalent for the agreement year which began on October 1, 1975. As provided under paragraph 7 of the bilateral agreement, the aggregate ceiling has been adjusted to a level of 152,000,200 square yards equivalent by the addition of 13,818,200 square yards equivalent, representing the carryover of shortfalls from the previous agreement year. The U.S. Government will control imports at 152,000,200 square yards equivalent for the remainder of the agreement year.

Accordingly, there is published below a letter of July 29, 1976, from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs directing that for the twelve-month period beginning on October 1, 1975 and extending through September 30, 1976, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textiles and cotton textile products in Categories 1 through 64 be limited to a total of 152,000,200 square yards equivalent, adjusted to account for: (1) Imports amounting to 98,089,987 square yards equivalent charged during the period, October 1, 1975 through May 31, 1976, to the group ceiling which includes Categories 1-27; and (2) imports charged to the group limits established for Categories 28-38 and 64 and 39-63, amounting, respectively, to 12,000,000 square yards equivalent and 19,670,561 square yards equivalent for the period, October 1, 1975 through July 15, 1976, leaving a balance of 22,239,652 square yards equivalent for the remainder of the year. When the data are available, this level will be further adjusted to account for imports entered from June 1, 1976 or

July 16, 1976, as applicable, through the effective date of this action.

Effective date: August 2, 1976.

ALAN POLANSKY,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance U.S. Department of Commerce.

JULY 29, 1976.

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229.

DEAR MR. COMMISSIONER: Under the terms of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973, pursuant to the Bilateral Cotton Textile Agreement of August 6, 1974 as amended, between the Governments of the United States and India, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, you are directed, effective on August 2, 1976, and for the twelve-month period beginning on October 1, 1975 and extending through September 30, 1976, to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textiles and cotton textile products in Categories 1 through 64 in excess of an adjusted twelve-month level of restraint of 22,239,652 square yards equivalent.[1] Apparel products of cotton textiles covered by the elephant-shaped certification shall not be subject to this directive. The directive of October 1, 1975 and the amended directive of March 16, 1976 shall remain in effect until further notice.

Cotton textiles and cotton textile products in Categories 1 through 27, produced or manufactured in India, and which have been exported prior to October 1, 1975, shall not be subject to this directive.

Cotton textiles and cotton textile products in Categories 1 through 27 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of the categories in terms of T.S.U.S.A. numbers and factors for converting category units into equivalent square yards was published in the FEDERAL REGISTER on February 1, 1975 (40 FR 5010), as amended on December 30, 1975 (40 FR 60220).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of India and with respect to imports of cotton textiles and cotton textile products from India have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ALAN POLANSKY,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance, U.S. Department of Commerce.

[FR Doc.76-22414 Filed 8-2-76;8:45 am]

[1] The level of restraint has been adjusted to include carryover of shortfalls from the previous agreement year and to reflect entries in Categories 1 through 27 for the period October 1, 1975 through May 31, 1976. Entries in Categories 28 through 64 have been included for the period October 1, 1975 through July 15, 1976.

CERTAIN COTTON TEXTILES AND COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN EL SALVADOR

Termination of Agreement

JULY 30, 1976.

On April 22, 1976, there was published in the FEDERAL REGISTER (41 FR 16861) a letter dated April 19, 1976 from the Chairman, Committee for the Implementation of Textile Agreements, to the Commissioner of Customs, establishing levels of restraint applicable to certain specified categories of cotton textiles and cotton textile products produced or manufactured in El Salvador and exported to the United States during the twelve-month period beginning on April 1, 1976, pursuant to the Bilateral Cotton Textile Agreement of April 19, 1972, as amended, and extended, between the Governments of the United States and El Salvador. The purpose of this notice is to announce that the two governments have agreed to terminate this agreement, effective on July 15, 1976.

Accordingly, there is published below a letter of July 30, 1976 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs cancelling the directive of April 19, 1976.

ALAN POLANSKY,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

JULY 30, 1976.

DEAR MR. COMMISSIONER: This directive cancels and supersedes, effective on July 15, 1976, the directive of April 19, 1976 from the Chairman of the Committee for the Implementation of Textile Agreements which directed you to prohibit, effective on April 1, 1976 and for the twelve-month period extending through March 31, 1977, entry into the United States for consumption and withdrawal from warehouse for consumption of certain cotton textiles and cotton textile products, produced or manufactured in El Salvador, in excess of certain specified levels of restraint.

The actions taken with respect to the Government of El Salvador and with respect to imports of cotton textiles and cotton textile products from El Salvador have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ALAN POLANSKY,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance, U.S. Department of Commerce.

[FR Doc.76-22677 Filed 8-2-76;8:45 am]

COMMODITY FUTURES TRADING COMMISSION

REGISTRATION AS ASSOCIATED PERSON

Adoption of Changes to Form 4–R

On July 27, 1976, the Commodity Futures Trading Commission amended an existing instruction to, added information to, and made certain minor changes in the language and format of, the registration form for associated persons under section 4k(2) of the Commodity Exchange Act, as amended.

The amended instruction, which prefaces page two of Form 4–R, provides the new address of the Commission's Chicago regional office, to which the completed application must be sent. The added language is in the form of a legend contained in item 1A. and states that the submission of the applicant's Social Security number is voluntary.

Certain alterations in the format of Form 4–R were made in order to allow for computer preprinting of information in registration renewals. Minor language changes include corrections to the title of the Commission, repagination, and other such modifications.

Copies of the amended Form 4–R, for use beginning August 2, 1976, are available from the Commodity Futures Trading Commission, 233 South Wacker Drive, Chicago, Illinois 60606.

Issued in Washington, D.C., on July 27, 1976.

For the Commission,

WILLIAM T. BAGLEY,
Chairman, Commodity Futures Trading Commission.

[FR Doc.76-22408 Filed 8-2-76;8:45 am]

COUNCIL ON WAGE AND PRICE STABILITY

INFLATION IMPACT STATEMENT PROGRAM

Intention To Appraise

This notice is intended to announce that the Council on Wage and Price Stability (CWPS) and the Office of Management and Budget (OMB) are jointly undertaking an appraisal of the Inflation Impact Statement (IIS) program initiated in November 1974 by Executive Order 11821. As explained in greater detail below, interested individuals and organizations are requested by August 30, 1976

to provide information called for in this notice and to submit additional comments on the IIS program to CWPS.

In an address to Congress on October 8, 1974, President Ford announced that Executive-branch agencies would be required to consider the possible inflationary implications of their major actions. To this end, the President issued Executive Order 11821 on November 27, 1974, directing Executive-branch agencies to prepare IIS's before proposing major legislation and before issuing proposals for major rules and regulations. The Executive Order also empowered the Director of OMB to develop criteria and procedures for implementing this directive. Accordingly, OMB issued Circular A-107 on January 28, 1975, specifying in more detail guidelines for the development of criteria and the procedures agencies were to follow. The Circular also delegated certain responsibilities for the IIS program with respect to rules and regulations to CWPS.

A major objective of the IIS program is to improve the quality of agency regulatory and legislative decisions. While the IIS requirement applies to major legislative and regulatory proposals, it does not apply to existing rules, regulations, and legislation, nor does it apply to proposals with minor consequences. Moreover, the independent regulatory agencies have interpreted the Executive Order as not applying to them.

Responsibility for developing and implementing the requirements of Executive Order 11821 was delegated to department and agency heads in order to allow each agency to adopt procedures that would match the nature of its mission and its organization. According to the OMB Circular, agency heads were made responsible for developing criteria to determine when a proposal is major. These criteria were to take into account: (1) Cost impact on consumers, businesses, markets, or Federal, State, or local government; (2) effect on productivity of wage-earners, businesses, or government; (3) effect on competition; (4) effect on supplies of important materials, products, or services; (5) effect on employment; (6) effect on energy supply or demand. Each agency's criteria were submitted to OMB for approval. Agencies that do not propose major rules, regulations, or legislation were exempted from the program.

According to the OMB Circular, if a proposal is identified as major under the approved criteria, the agency is responsible for preparing an IIS which includes: (1) An analysis of the principal cost and, where practical, secondary cost and price effects; (2) a comparison of the anticipated benefits and estimated costs; and (3) a review of alternatives to the proposed action. When major legislative proposals are submitted to OMB for review and clearance, agencies, upon OMB request, are required to furnish the appropriate IIS data and analysis. When major proposals for rules and regulations are announced in the FEDERAL REGISTER, agencies are required to submit to CWPS a brief summary of the possible inflationary impact.

Recently implemented modifications in the IIS program require agencies to: (1) State in the FEDERAL REGISTER announcement that proposals which are minor have been reviewed and do not require an IIS; (2) provide upon request from CWPS, a brief justification for determining a proposal to be minor; and (3) upon announcement of major proposals for rules or regulations, submit to CWPS a complete IIS analysis rather than a summary.

Because the IIS is an attempt to improve agency decision-making with a new, previously untried mechanism, an expiration date of December 31, 1976, was included in the Executive Order. Thus, opportunity was provided for appraisal of the effectivness of the IIS program, and provision was made for its termination unless a specific decision were made to extend or modify the Executive Order.

The Council and OMB are evaluating the IIS program and will submit recommendations based on this evaluation to the President. This joint CWPS-OMB evaluation, to be completed this fall, will include an examination of the following issues, among others:

1. Quality of IIS analyses. (For example, do analyses compare costs with anticipated benefits, and are alternatives appropriately analyzed? Has the quality of the analyses improved over time?)

2. Are all important legislative and regulatory proposals being analyzed? (For example, are the criteria thresholds established at levels which permit identification of all proposals with major economic impacts, are the criteria being used effectively, and are agencies preparing the analyses?)

3. Should IIS analyses be made available for public inspection, to what degree have they been, to what use have they been put by the general public, and what effect, if any, has their being made public (or not being made public) had on the quality of agency decisions?

4. What impact, if any, has the IIS program had on the process of drafting legislation and of developing and implementing new regulations? (For example, has it generated significant delays?)

5. What impact, if any, has the IIS program had on the quality of agency legislative proposals and regulatory decision-making?

6. What are the direct costs of the IIS program over and above those expenses government agencies would have incurred otherwise?

7. What alternatives to the IIS program exist for improving the quality of legislative proposals and regulatory decision-making, and how do they compare with the IIS program? (Alternatives might include, for example, a legislative mandate for agencies to review costs and benefits.)

8. Should the IIS program be: (1) Terminated, (2) extended in its present form, or (3) modified (and if so, how)?

Interested individuals and organizations are requested to provide information on the effectiveness of the IIS program by responding specifically to the above questions and by submitting any additional comments on the program they may care to make. Such communications should be addressed by August 30, 1976 to:

Thomas D. Hopkins, Deputy Assistant Director for Government Operations and Research, Council on Wage and Price Stability, Room 4005, 726 Jackson Place, NW., Washington, D.C. 20506. Telephone: 202-456-6510.

WILLIAM LILLEY III,
Acting Director.

[FR Doc.76-22486 Filed 8-2-76;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 592-7; OPP-00025]

PESTICIDE PROGRAMS

Nominations to the Scientific Advisory Panel Under the Federal Insecticide, Fungicide, and Rodenticide Act

This notice provides the names, addresses, professional affiliations, and selected biographical data of persons nominated to serve on the Scientific Advisory Panel established under Section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, [86 Stat. 973 and 89 Stat. 751; 7 U.S.C. 136 et seq.]. Public comment on the nominations is invited.

BACKGROUND

FIFRA amendments enacted November 28, 1975, added, among other things, a requirement set forth in section 25(d) that notices of intent to cancel or reclassify pesticide registrations pursuant to section 6(b)(1) and notices of intent to hold hearings to determine whether to cancel or reclassify registrations pursuant to section 6(b)(2), as well as proposed and final forms of rulemaking pursuant to section 25(a), be submitted to a Scientific Advisory Panel prior to being made public or issued to a registrant. In accordance with section 25(d), the Scientific Advisory Panel is to have an opportunity to comment on the health and environmental impacts of such actions.

As to the membership of the Scientific Advisory Panel, Section 25(d) provides that it shall consist of seven members appointed by the Administrator from a list of 12 nominees, six nominated by the National Institutes of Health and six by the National Science Foundation. Publication of the name, addresses, and professional affiliation of each member is required. FIFRA does not require that an opportunity be provided for public comment on the nominations, but the Environmental Protection Agency (EPA) believes that public participation in the selection process is desirable. Accordingly, public comment is invited; see below for instructions on submitting comments.

CHARTER

A charter for the FIFRA Scientific Advisory Panel has been issued in accordance with the requirements of section 9 (c) of the Federal Advisory Committee Act, Pub. L. 92–463, 86 Stat. 770 (5 U.S.C. App. I). A copy of the Charter is provided as an appendix to this notice to aid interested parties in commenting.

With respect to the requirement of section 25(d) that the Administrator promulgate regulations regarding conflicts of interest, the charter provides that EPA's existing regulations applicable to special governmental employees (which include advisory committee members) will apply to the members of the Scientific Advisory Panel. These regulations appear at 40 CFR Part 3, Subpart F. In addition, the charter provides for open meetings with opportunities for public participation.

NOMINEES

The following are the names, addresses, professional affiliations, and selected biographical data on nominees to the FIFRA Scientific Advisory Panel:

NATIONAL INSTITUTES OF HEALTH

John E. Davies, M.D., M.P.H., Department of Epidemiology and Public Health, School of Medicine, University of Miami, P.O. Box 520875, Biscayne Annex, Miami, Florida 33152. *Born:* February 1921. *Educational Background* (Epidemiology and Microbiology): Radley College, United Kingdom, 1939 (premedical education); M.B.B.S. University of London, 1944; M.R.C.S., L.R.C.P., Royal College of Physicians and Surgeons, University of London, 1944; M.D. University of London, 1957; M.P.H. Harvard School of Public Health, 1961. *Employment History:* Private practice in South Wales, 1948–1957; Assistant Health Officer, Winnipeg, Canada, 1958–1962; Consultant Epidemiologist, Winnipeg Children's Hospital, 1959–1962; Director, Division of Research and Epidemiology, Dade County Department of Public Health, Miami, Florida, 1963–1965; Director, Community Studies on Pesticides of Dade County, Miami, Florida, 1965 to present; Associate Professor, Department of Medicine, University of Miami School of Medicine, 1967 to present; Chairman, Department of Epidemiology and Public Health, 1972 to present. *Societies:* Dade County Medical Association; Florida Medical Association; American Public Health Association, Florida Public Health Association; Research Committee—Society of Teachers of Family Medicine. *Research Interests:* Broad studies on all aspects of the effects of pesticides on man; environmental studies with special reference to human health; total health effects on migrant workers; heroin addiction.

John Doull, M.D., Ph.D. Department of Pharmacology, University of Kansas Medical Center, College of Health Sciences and Hospital, Rainbow Boulevard at 39th, Kansas City, Kansas 66103. *Born:* September 1923. *Educational Background* (Pharmacology and Medicine): B.S. Montana State College, 1944; Ph.D., University of Chicago, 1950; M.D., University of Chicago, 1953. *Employment History:* University of Chicago, 1946–1967: Research Assistant, Toxicity Laboratory, 1946–1951; Research Associate (instructor), Toxicity Laboratory, 1951–1953; Research Associate (Assistant Professor) Department of Pharmacology and U.S. Air Force (USAF) Radiation Laboratory, 1953–1956; Assistant Director, USAF Radiation Laboratory, 1954–1967; Assistant Professor, Department of Pharmacology, 1956–1957; Research Associate (Associate Professor), Department of Pharmacology, 1957–1967; University of Kansas Medical School, 1967 to present: Professor of Pharmacology and Toxicology; Co-Director, Pharmacology-Toxicology Center. *Societies:* American Association for the Advancement of Science (A.A.A.S.); Society of Experimental Biology and Medicine; American Society of Pharmacology and Experimental Therapeutics; American Chemical Society; Radiation Research Society; American Industrial Hygiene Association; Sigma Xi. *Research Interests:* Hibernation; biological aspects of ionizing radiation; toxicology.

Robert A. Neal, Ph.D., Department of Biochemistry, Center in Toxicology, Vanderbilt University School of Medicine, Nashville, Tennessee 37232. *Born:* April 1928. *Educational Background* (Toxicology and Biochemistry): B.S. University of Denver 1949; Ph.D. Vanderbilt University 1963. *Employment History:* National Institutes of Health Research Fellow, Toxicology, University of Chicago 1963–1964; Assistant Professor of Biochemistry, School of Medicine, Vanderbilt University 1964–1967; Associate Professor, Biochemistry, School of Medicine, Vanderbilt University 1967–1974; Director, Center in Environmental Toxicology, Vanderbilt University School of Medicine 1973 to present; Professor of Biochemistry, Vanderbilt University, School of Medicine 1975 to present. *Societies:* Sigma Xi; A.A.A.S.; Society of Toxicology; American Institute of Nutrition; American Society of Biological Chemists, American Society for Pharmacology and Experimental Therapeutics. *Research Interests:* Natural product chemistry; isolation and identification of natural products; detoxification mechanisms.

Robert W. Risebrough, Ph.D., Bodega Marine Laboratory, University of California, Bodega Bay 94923. *Born:* February 1935. *Educational Background* (Zoology and Molecular Biology: A.B., Cornell University, 1956; Ph.D., Harvard University, 1962. *Employment History:* International Geophysical Year Expedition to the Indian Ocean and Red Sea, *R. V.* Atlantis, Woods Hole Oceanographic Institution, 1958; International Indian Ocean Expedition, *R. V.* Atlantis II, Woods Hole Oceanographic Institution, 1963–1965; Associate Specialist, Institute of Marine Resources, University of California, Berkeley and Davis, 1965–1971; President, Bodega Bay Institute of Pollution Ecology, 1971 to present; Research Scientist, Department of the Environment, Canadian Wildlife Service, Ottawa, 1972–1975; Consultant, Department of the Environment, Canadian Wildlife Service, Ottawa, 1975 to present; Associate Research Ecologist, Bodega Marine Laboratory, University of California, 1971 to present. *Research Interests:* Pesticides as environmental pollutants, bioaccumulation of chlorinated hydrocarbons, pollution biology.

Carl M. Shy, M.D., M.P.H., D.P.H., Department of Epidemiology, Institute for Environmental Studies, School of Public Health, University of North Carolina, Chapel Hill, North Carolina 27514. *Born:* October 1931. *Educational Background* (Medicine and Epidemiology): A.B., St. Louis University, 1956; M.D. Marquette University, 1962; M.P.H. and D.P.H., University of Michigan School of Public Health, 1965 and 1967, respectively. *Employment History:* Chief Epidemiology Branch, Division of Health Effects Research, National Air Pollution Control Administration, Research Triangle Park, N.C., 1967–1971; Adjunct Assistant Clinical Professor of Epidemiology, Duke University, 1969 to present; Deputy Director, Division of Health Effects Research, U.S. Environmental Protection Agency, Research Triangle Park, N.C., 1971–1972; Director, Human Studies Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, N.C., 1972–1973; Director, Institute for Environmental Studies and Research Professor, Department of Epidemiology, University of North Carolina, 1973 to present. *Societies:* A.A.A.S., Society of Epidemiological Research, International Epidemiological Association, Society of Occupational and Environmental Health, American Public Health Association, American Thoracic Society, Alpha Omega Alpha, Delta Omega. *Research Interests:* Epidemiologic studies of the consequences of environmental pollution on human health.

Edward A. Smuckler, M.D., Ph. D. Department of Pathology, School of Medicine, University of Washington, Seattle, Washington 98185. *Born:* February 1931. *Educational Background* (Experimental Pathology and Biochemistry): A.B. Dartmouth College, 1952; M.D., Tufts University, School of Medicine, 1956; Ph. D. University of Washington, 1963. *Employment History:* Assistant Pathologist, U.S. Naval Hospital, Bremerton, Washington, 1957; Senior Medical Officer, U.S. Naval Ship (U.S.N.S.) Frederick Funston and U.S.N.S. M.M. Patrick, 1958; Assistant to Senior Medical Officer, Naval Dispensary, Seattle, Washington, 1959; Postdoctoral Trainee, U.S. Public Health Service, Department of Pathology, University of Washington, 1959–1961; Attending Physician, University Hospital, University of Washington, 1961 to present; Associate Professor, Department of Pathology, University of Washington, School of Medicine, 1966–1969; Professor of Pathology, Department of Pathology, University of Washington School of Medicine, 1969 to present. *Societies:* American Chemical Society; A.A.A.S.; American Society for Cell Biology; American Society for Experimental Pathology; Histochemical Society; American Association of Pathologists and Bacteriologists; Biochemical Society (London); Sigma XI; Swedish Biochemical Society; American Society for Cancer Research; American Association for Study of Liver Disease; American Association of University Professors of Pathology; American Society of Biological Chemists; American Society for Microbiology; Society of Toxicology. *Research Interests:* Cellular alteration in disease; biology of cancer.

NATIONAL SCIENCE FOUNDATION

David E. Davis, Ph.D. Professor Emeritus, Former Head Department of Zoology, North Carolina State University, 366 El Cielito Road, Santa Barbara, California 93105. *Born:* July 1913. *Educational Background (Zoology):* B.A., Swarthmore, 1935; M.S. Harvard, 1936; Ph.D., Harvard, 1939. *Employment History:* Harvard Travelling Fellowship (Argentina), 1940; University of Chicago (postdoctoral), 1941; Rockefeller Foundation (Brazil), 1942–1943; U.S. Public Health Service, 1943–1945; Associate Professor, Johns Hopkins University, 1946–1949; Professor of Zoology, Pennsylvania State University, 1959–1967; Head Department of Zoology, North Carolina State University, 1967–1975; Consultant on Starling Control, University of California (Davis), 1976 to present. *Societies:* A.A.A.S.;

American Institute of Biological Sciences; American Society of Zoologists; American Society of Mammalogists; America Ornithologists Union; Ecological Society of America; Wildlife Society; Wildlife Disease Association (Distinguished Service Award 1975). *Research Interests:* Management of vertebrate populations; nesting habits of birds; endocrine basis of behavior; mammals and insects in relation to disease.

Robert Lee Metcalf, Ph.D. Department of Entomology, University of Illinois, Urbana, Illinois 61801. *Born:* November 1916. *Educational Background* (Entomology, Biochemistry): B.A. University of Illinois, 1939; M.A. University of Illinois, 1940; Ph.D., Cornell University, 1943. *Employment History:* Associate Entomologist, Division of Health and Safety, U.S. Tennessee Valley Authority, 1943–1946; Faculty, University of California, Riverside, 1946–1968: Professor of Entomology 1952–1968; Chairman, Department of Entomology, 1951–1963; Faculty Research Lecturer, 1959; Vice Chancellor, 1963–1966; Professor of Entomology, Biology, Environmental Studies, Agricultural Entomology, and Veterinary Pharmacology, University of Illinois, 1968 to present. *Societies:* Member, U.S. National Academy of Sciences; American Chemical Society; Entomological Society of America; Fellow, American Academy of Arts and Sciences; A.A.A.S.; American Mosquito Control Association; Phi Beta Kappa; Sigma Xi. *Research Interests:* Investigations of organic compounds as insecticides; development of model ecosystem technology for early warning in environmental toxicology; use of radioisotopes for study of fate and toxicology of insecticides; insect nervous system and its susceptibilities to action of insecticides.

John M. Neuhold, Ph.D. Utah State University Ecology Center, Utah State University, Logan, Utah 81322. *Born:* May 1928. *Educational Background* (Wildlife Management, Ecology): University of Utah: B.S., 1952; M.S. 1954; Ph.D., 1959. Radioecology, Oakridge Institute of Nuclear Studies, 1963. *Employment History:* Faculty, University of Utah 1958 to present; Assistant Professor, 1958; Associate Professor, 1963; Professor, 1966; Chairman-elect, Interdepartmental Curriculum in Toxicology, 1967 to 1970; Acting Head, Department of Wildlife Resources, 1966 to 1968; Acting Director, Utah State Ecology Center, 1966 to 1968; Director, Utah State Ecology Center, 1968 to present; Director, the Institute of Ecology, 1974 to present. *Societies:* A.A.A.S.; American Fisheries Society; American Society of Limnology and Oceanography; Ecological Society of America; American Association of University Professors; Utah Academy of Arts and Sciences; Bonneville Chapter of American Fisheries Society; American Institute of Biological Sciences; Sigma Xi; Fellow, American Institute of Fishery Research Biologists; Xi Sigma Pi; Fellow A.A.A.S. *Research Interests:* Aquatic physiological ecology; effects of pollution on fish and wildlife; metabolism of ecosystems; pesticides and ecology.

Hugh D. Sisler, Ph. D. Department of Botany, University of Maryland, College Park, Maryland 20742. *Born:* November 1922. *Educational Background* (Plant Pathology): University of Maryland: B.S., 1949; M.S., 1951; Ph. D., 1953. National Institutes of Health Fellow, University of Utrecht (6 months), 1966. *Employment History:* University of Maryland 1953 to present: Research Associate 1953 to 1955; Assistant Professor, 1955–1960; Associate Professor, 1960–1964; Professor, 1964 to present; Chairman Department of Botany, 1973 to present. *Societies:* American Phytopathological Society; A.A.A.S.; Sigma Xi; Phi Kappa Phi; Alpha Zeta. *Research Interests:* Fungicidal mode of action; fungus physiology; viruses; pesticide monitoring.

Ray F. Smith, Ph.D. Department of Entomological Sciences, University of California, Berkeley, California 94720. *Born:* January 1919. *Educational Background* (Entomology): University of California, Berkeley: B.S., 1940; M.S., 1941; Ph.D., 1946. D. Agr. Sc. (h.c.), College van DeKanen, Wageningen, The Netherlands, 1976. *Employment History:* Field Entomologist, Balfour-Guthrie Investment Company, 1940; Department of Entomology and Parasitology, University of California, Berkeley, 1940 to present: Field and Lab. Assistant, 1940–1942; Senior and Principal Lab Technician, 1943–1946; Instructor in Entomology and Junior Entomologist, 1946–1948; Assistant Professor of Entomology and Assistant Entomologist in Experiment Station, 1948–1954; Associate Professor and Associate Entomologist in Experiment Station, 1954–1959; Professor of Entomology and Entomologist in Experiment Station, 1960 to present; Chairman, Department of Entomology and Parasitology, Berkeley—Davis, 1959–1963; Chairman, Department of Entomology and Parasitology (name changed in 1972 to Department of Entomological Sciences), Berkeley, 1959–1973; Project Director for University of California/AID Pest Management and Related Environmental Project, 1973 to present. *Societies:* Entomological Society of America; A.A.A.S.; California Academy of Science; Entomological Society of Canada; Ecology Society. *Research Interests:* Integrated pest management; insect ecology.

Dewayne C. Torgeson, Ph.D. Boyce Thompson Institute for Plant Research, Inc., 1086 North Broadway, Yonkers, N.Y. 10701. *Born:* October 1925. *Educational Background* (Plant Pathology, Chemistry): B.S., Iowa State University, 1949; Ph.D., Oregon State University, 1953. *Employment History:* U.S. Army 1945–1946; Graduate Research Fellow, Oregon State Agricultural Experiment Station, 1949–1952; Boyce Thompson Institute, 1952 to present: Plant Pathologist, 1952–1963; Program Director, Bioregulant Chemicals, 1963–1973; 1975 to present; Corporate Secretary 1973 to present. *Societies:* American Institute of Biological Sciences; A.A.A.S.; Torrey Botanical Club; American Phytopathological Society; Sigma Xi; Phi Kappa Phi; Phi Sigma. *Research Interests:* Biodegradation of pesticides in the soil; development of new agricultural pesticides; bark beetle pheromone research.

Public comment regarding the qualifications of the nominees relative to the charter of the Scientific Advisory Panel is invited. Comments will be used to assist the Agency in selecting seven of the twelve nominees to comprise the Panel and should be so oriented. To be assured of consideration, such comments should reach EPA on or before August 18, 1976. All comments should bear the identifying notation OPP–00025 and be addressed to the Federal Register Section, Office of Pesticide Programs, Environmental Protection Agency, room 401, East Tower, 401 M Street, S.W., Washington, D.C. 20460. All written comments will be available for public inspection in Room 401 from 8:30 a.m. to 4 p.m. Monday through Friday.

Dated: July 28, 1976.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

APPENDIX

[ENVIRONMENTAL PROTECTION AGENCY ORDER No. 1130.43]

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT SCIENTIFIC ADVISORY PANEL

1. *Purpose.* This Order dated March 23, 1976, provides a charter for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel in accordance with the requirements of Section 9 (c) of the Federal Advisory Committee Act, Public Law 92–463, 86 Stat. 770 (5 U.S.C. App. I).

2. *Authority.* The Panel was created November 28, 1975, pursuant to Section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended by Public Law 94–140.

3. *Objectives and Scope of Activity.* In accordance with Section 25(d) of FIFRA, the Panel will comment as to the impact on health and the environment of the following regulatory actions:

a. Notices of intent to cancel or reclassify registrations under Section 6(b)(1) of FIFRA;

b. Notices of intent to hold a hearing to determine whether or not to cancel or reclassify registrations under Section 6(b)(2) of FIFRA; and

c. Regulations to be issued under Section 25(a) of FIFRA.

4. *Functions.* The fundamental purpose of FIFRA is to ensure that pesticides do not generally cause "unreasonable adverse effects on the environment." This phrase is defined in Section 2(bb) of FIFRA as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide." Within the context of these provisions of FIFRA and the regulations promulgated thereunder (40 CFR Part 162), the Panel will be expected to comment as to the impact on health and the environment of matters arising under Sections 6(b) and 25(a) of FIFRA. Analyses prepared by staff of the Environmental Protection Agency will be provided for the Panel's consideration.

The Deputy Assistant Administrator for Pesticide Programs will initiate all requests for comment by the Panel. Section 25(d) of FIFRA requires that consultation with the Panel take place in accordance with the following timetable: Notices of intent under Section 6(b) of FIFRA and regulations in the form of proposed rulemaking under Section 25(a) of FIFRA will be forwarded to the Panel at least 60 days prior to their issuance to a registrant for publication in the FEDERAL REGISTER; regulations in the form of final rulemaking will be forwarded to the Panel at least 30 days in advance of publication. The Panel's comments, if any, will be submitted in writing to the Deputy Assistant Administrator for Pesticide Programs. If comments on notices of intent under Section 6(b) of FIFRA and proposed rulemaking under Section 25(a) of FIFRA are submitted within 30 days after the Panel's receipt of the request for comment, or if comments on final rulemaking are submitted within 15 days after the Panel's receipt of the request, such comments will be published in the FEDERAL REGISTER, together with the Environmental Protection Agency's response, at the time that such notices of intent or proposed or final rulemaking are published in the FEDERAL REGISTER. The foregoing timetable will be followed unless the Panel and the Deputy Assistant Administrator for Pesticide Programs agree on a different timetable. In any particular case, the Panel may waive comment.

5. *Composition.* In accordance with Section 25(d) of FIFRA, the Panel will be com-

posed of seven members, including the Chairman, selected and appointed by the Administrator from twelve nominees—six nominated by the National Institutes of Health and six by the National Science Foundation. Members will be scientists who have had sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under Sections 6(b) and 25(a) of FIFRA. No person shall be ineligible to serve on the Panel by reason of his membership on any other advisory committee to a Federal department or agency or his employment by a Federal department or agency (except the Environmental Protection Agency).

Panel members will be subject to the provisions of Title 40 CFR, Part 3, Subpart F—*Standards of Conduct for Special Government Employees*, which include rules regarding conflicts-of-interest. An officer and/or employee of an organization producing, selling, or distributing pesticides and any other person having a substantial financial interest (as determined by the Administrator) in such an organization, as well as an officer or employee of an organization representing pesticide users shall be excluded from consideration as a nominee for membership on the Panel. Each nominee selected by the Administrator shall be required to submit a Confidential Statement of Employment and Financial Interests, EPA Form 3120-2, which shall fully disclose the nominee's sources of research support, if any, before being formally appointed.

In accordance with Section 25(d) of FIFRA, the Administrator shall require all nominees to the Panel to furnish information concerning their professional qualifications, including information on their educational background, employment history, and scientific publications. Section 25(d) of FIFRA requires the Administrator to publish in the FEDERAL REGISTER the name, address, and professional affiliations of each nominee.

Each member of the Panel will serve for one year and may be reappointed for additional one-year terms. In the event that a member resigns or is otherwise unable to serve, a successor will be selected and appointed by the Administrator with the advice of the National Institutes of Health, and the National Science Foundation. The Administrator has the right to remove a member of the Panel at any time for good cause, as set forth in writing to such Panel member.

The estimated annual operating cost of the Panel during its first two years of operation is $100,000 which includes an allowance for 1.0 man-year of staff support. The Office of Pesticide Programs will provide the necessary staff and support for the Panel.

6. *Meetings.* The Panel will meet either at the request of the Deputy Assistant Administrator for Pesticide Programs or at the request of the Chairman with the concurrence of the Deputy Assistant Administrator for Pesticide Programs. It is anticipated that the Panel will meet for a minimum of two days each month until October 1977, and less often thereafter. Panel meetings will be called, announced, and held in accordance with the Environmental Protection Agency's Manual on Committee Management, which, among other things, provides for open meetings of advisory committees; requires that interested persons be permitted to file written statements before or after meetings; and provides for oral statements by interested persons to the extent that time permits. Any such written or oral statements will be taken into consideration by the Panel in formulating its comments or in deciding whether to waive comment. Each meeting will be conducted in accordance with an agenda approved in advance of the meeting by the Executive Secretary. The Deputy Assistant Administrator for Pesticide Programs or his designee will serve as Executive Secretary and will attend all meetings.

7. *Subcommittees.* The Panel may form subcommittees composed entirely of Panel members for any purpose consistent with this charter. No subcommittee will be authorized to submit comments on behalf of the Panel unless all members of the Panel have had an opportunity to review such comments and append their own views. In all other respects, all activities of subcommittees shall be conducted in accordance with this charter.

8. *Duration.* Section 25(d) sets no termination date for the Panel; moreover, the actions which the Panel is required to review will continue indefinitely. Nevertheless, in accordance with Section 14 of the Federal Advisory Committee Act, the Panel will terminate on November 27, 1977, unless extension beyond that date is authorized; it is anticipated that such extension will be authorized.

[FR Doc.76-22491 Filed 8-2-76;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 816]

COMMON CARRIER SERVICES INFORMATION

Applications Accepted for Filing

JULY 26, 1976.

By the Chief, Common Carrier Bureau.

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 section 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 section 1.227(b)(3) and 21.30(b) of the Commission's Rules.]

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

21748-CD-P-76, Metrotec, Inc. (KTS283), Resubmitted, C.P. for additional facilities to operate on 35.22 MHz at a new Loc. No. 4: 1 Levis Square Fiberglass Building, Toledo, Ohio.

22195-CD-P-(4)-76, Southwestern Bell Telephone Company (KAA819), C.P. for additional facilities to operate on 152.69, 454.475 and 454.650 MHz, Base located at 1425 Oak Street, Kansas City; and 459.475, 459.650 and 157.95 MHz Test facilities located at 6213 Holmes Street, Kansas City, Missouri.

22457-CD-P-76, Ray Andrew Fields d/b/a Autofone Co. (KOP257) C.P. to relocate facilities operating on 152.21 MHz at Loc. No. 4: 1109 North Baker Street, McMinnville, Oregon.

22458-CD-TC-(2)-76, Pattersonville Telephone Co. Consent to Transfer of Control from Pearl A. Dowling, Transferor, to Robert A. Dowling, Transferee. Stations: KED351 and KTS207, Rotterdam Junction, New York.

22459-CD-TC(2)-76, Kankakee Telephone Answering Service, Inc. Consent to Transfer of Control from Jack N. Syfert, Transferor, to Doris R. Syfert and First Trust & Savings of Kankakee, Co-Executors of Estate of Jack N. Syfert, Deceased, Transferee. Stations: KSJ750 and KWH301, Kankakee, Illinois.

22460-CD-TC-(4)-76, Radio & Electronic Service Company, Inc. d/b/a Mobilfone. Consent to Transfer of Control from Flora D. Mead, Executrix of the Last Will and Testament of George E. Mead, Deceased, Transferor, to Flora D. Mead, Transferee. Stations: KIF649 and KLF640, Pensacola, Florida; KIY593 and KLF639, Fort Walton Beach, Florida.

22461-CD-TC-(2)-76, Business Service Center, Inc. Consent to Transfer of Control from Robert L. Stevens, Transferor, to June E. Stevens, Transferee. Stations: KTS230, Mosinee Hill; and KTS 231, Rothschild, Wisconsin.

22462-CD-P-76, Grants Pass Answering Service (New), C.P. a new station to operate on 454.225 MHz located at The Alberts Ranch, 1188 Ausland Drive, Grants Pass, Oregon.

22463-CD-P-76, ATS Mobile Telephone, Inc. (New), C.P. for a new 1-way station to operate on 35.58 MHz located at Woodmen Tower Building, 1700 Farnam Street, Omaha, Nebraska.

22464-CD-P-76, Answering, Inc. (New), C.P. for a new 1-way station to operate on 35.22 MHz located at 100 Broadway, Oklahoma City, Oklahoma.

22465-CD-P-76, RCC of Virginia, Inc. (KUO622) C.P. to relocate facilities and change antenna system operating on 72.04 MHz, Control at Loc. No. 3: Monticello Avenue, Williamsburg Virginia.

22466-CD-P-76, RCC of Virginia, Inc. (KLF629 (C.P. to relocate facilities operating on 158.70 MHz to new Loc. No. 2: SE side of Old Bon Air Road, 1.5 miles SW of Bon Air, Virginia.

22467-CD-P-(5)-76, ATS Mobile Telephone, Inc. (KBM512) C.P. for additional facilities to operate on 152.15, 454.075, 454.200, 454.225 and 454.125 MHz. at Loc. No. 2: Woodmen Tower Building, 1700 Farnam Street, Omaha, Nebraska.

22468–CD–MP–76, Rogers Radio Communication Service, Inc. (KTS204) C.P. to relocate facilities and change antenna system operating on 152.24 MHz. at Loc. No. 7: 3.1 miles NNE of Lake Zurich, Illinois.

22469–CD–P–76, Electronic Engineering Co. (KLF554) C.P. for additional facilities to operate on 454.275 MHz. located 1.25 miles west of Napier, Iowa.

22470–CD–P–(3)–76, Associated Telephone Answering Services (NeW), C.P. for a new station to operate on 152.12 MHz, Base and 459.125 MHz, Repeater at Loc. No. 1: Tesuque Peak, 11.5 mi NE of Santa Fe; and 454.125 MHz, Control at Loc. No. 2: 915 Cerrillos Road, Santa Fe, New Mexico.

22471–CD–P–76, RCC of Virginia, Inc. (NeW), C.P. for a new station to operate on 152.21 MHz located Rt. 47, approximately 600 feet East of the western city limits, South Hill, Virginia.

22472–CD–P/L–76, Adams Telephone Cooperative (KSJ820) C.P. to reinstate expired facilities operating on 152.72 MHz. located 0.5 Mile West of Golden, Illinois.

22473–CD–P–(4)–76, Mobilfone Service, Inc. (KKA341) C.P. to relocate facilities and change antenna system operating on 454.175, 454.225, 454.275 and 454.350 MHz. at Loc. No. 4: 4111 South Darlington, Tulsa, Oklahoma.

22474–CD–P–76, Telephone Answering Service of Fayetteville, Inc. (KUC909) C.P. to change antenna system operating on 152.24 MHz located at 727 McGilvary Street, Fayetteville, North Carolina.

22475–CD–P–76, The Mountain States Telephone and Telegraph Company (KOH275) C.P. to change antenna system operating on 152.69 MHz. located 4.6 miles East of Cheyenne, Wyoming.

22476–CD–P/L–(2)–76, Southwestern Bell Telephone Company (KKC267) C.P. for additional facilities to operate on 152.81 MHz. located 11 miles South of Abilene, Texas and additional Test facilities operating on 158.07 MHz located at 366 Cypress Street, Abilene, Texas.

22477–CD–P–(2)–76, Telephone Answering Service of Fayetteville, Inc. (KIY778) C.P. to change antenna system operating on 152.06 MHz; and to consolidate facilities operating on 152.03 MHz of KIE363 with KIY778, to be located at 727 McGilvary Street, Fayetteville, North Carolina.

Major Amendment

Gabriel Communications Corp. d/b/a Boca Mobilphone, File No. 1262–C2–P–73, C.P. for additional channel for Station KFQ941 on base frequency 454.025 MHz. Amended to change transmitter location to 351 S.W. First Avenue, Boca Raton, Florida. All other particulars remain unchanged.

Commercial Communications, Inc. (New), FN: 22116–CD–P–76. Amend to change the base station frequency to 158.75 MHz. All other particulars are to remain as reported on PN No. 808 dated June 1, 1976.

Corrections

File No. 22426–CD–TC–76, Evans Telephone Company Correct to show Transferor as John H. Evans, Sr., Deceased. All other particulars are to remain as reported on PN No. 815, dated July 19, 1976.

File No. 22419–CD–MP–76, Answerphone of Lake Worth, Inc. Correct Call Sign to read KWU206 instead of KWO206. All other particulars are to remain as reported on PN No. 815, dated July 19, 1976.

File No. 22417–CD–AL–76, Aircall New York Corporation (KWU253) New York, New York; Correct location to read Houston, Texas instead of New York and read as an Assignment of Construction Permit instead of License. All other particulars are to remain as reported on PN No. 815, Dated July 19, 1976.

Point to Point Microwave Radio Service

4519–CF–P–76, RCA Alaska Communications, Inc. (WBP70) Point Lena Loop Road, Lena Point, Alaska. Lat. 58°23'29" N. Long 134° 46'00" W. C.P. to change frequencies 4050V/4130V MHz to 2124.8V MHz toward Hoonah AFS, Alaska, on azimuth 233.3°; replace transmitters and antennas.

4520–CF–P–76, Same (WAH457 pending), Hoonah AFS, 1.9 Km NNE of Hoonah, Alaska. Lat. 58°07'40" N., Long. 135°25'49" W. C.P. to change frequencies 3810H 3730V MHz to 2174.8V MHz toward Lena Point, Alaska, on azimuth 52.7°, and replace transmitters and antennas; add 2168.4V MHz toward Adolphus, Alaska, on azimuth 303.6°, and 2162.0V MHz toward Sisters Island, Alaska, on azimuth 63.1°.

4521–CF–P–76, Same (New), Adolphus, 17 Km South of Gustavus, Alaska. Lat. 58° 15'42" N. Long. 135°48'49" W. C.P. for a new station on frequencies 2118.4V MHz toward Hoonah AFS, Alaska, on azimuth 123.3°, 2128.0V toward Cape Spencer, Alaska, on azimuth 262.1°, and 2112.0V MHz toward Gustavus, Alaska, on azimuth 19.7°.

4522–CF–P–76, Same (New), Coast Guard Lighthouse, Cape Spencer, Alaska. Lat. 58°11'56" N. Long. 136°38'16" W. C.P. for a new station on frequency 2178.0V MHz toward Adolphus, Alaska, on azimuth 81.4°.

4523–CF–P–76, Same (New), 2.4 Miles NE of Gustavus, Alaska. Lat. 58°25'09" N. Long. 135°42'22" W. C.P. for a new station on frequency 2162.0V MHz toward Adolphus, Alaska, on azimuth 199.8°.

4524–CF–P–76, Same (New), Center of Sisters Island, Alaska. Lat. 58°10'28" N. Long. 136°15'23" W. C.P. for a new station on frequency 2112.0V MHz toward Hoonah AFS, Alaska, on azimuth 243.2°.

4573–CF–P–76, Same (WAT986), Warm Springs, 1.2 Miles East of Baranof, Alaska. Lat. 57°07'16" N. Long. 134°48'07" W. C.P. to increase height of Baranof Passive Reflector.

4578–CF–R–76, Illinois Bell Telephone Company (WAN84). Location: Within the State of Illinois. Application for Renewal of Radio Station License (Developmental) expiring 26, 1976. Term: August 26, 1976 to August 26, 1977.

4592–CF–AL–(12)–76, The Norfolk and Carolina Telephone and Telegraph Company. Application for Consent to Assignment of Radio Station Licenses from The Norfolk and Carolina Telephone and Telegraph Company, Assignor, to Norfolk Carolina Telephone Company, Assignee, for the following stations:

KJG96—Elizabeth City, North Carolina
KJG97—Coinjock, North Carolina
KJG98—Mamie, North Carolina
KJG99—Kill Devil Hills, North Carolina
KJH20—Manteo, North Carolina
KSV95—Edenton, North Carolina
KSV96—Hertford, North Carolina
KVI24—Buxton, North Carolina
KVI25—Waves, North Carolina
WGH94—Carolla, North Carolina
WGI41—Welch, North Carolina
WBB369—Nags Head, North Carolina

"Pro Forma 14 Day Notice."

4512–CF–P–76, Southwestern Bell Telephone Company (KKB53), Spring RS, 2.2 Miles SSW of Spring, Texas. Lat. 30°02'54" N. Long. 95°25'54" W. C.P. to add frequency 6404.8V MHz toward Willis RS, Texas, on azimuth 359.6°.

4513–CF–P–76, Same (WJL75), Willis RS, 3 Miles ENE of Willis, Texas. Lat. 30°26'39" N. Long. 95°26'11" W. C.P. to add frequencies 6152.8H MHz toward Spring RS, Texas, on azimuth 179.4°, and 6152.8V MHz toward Huntsville, Texas, on azimuth 340.3°.

4514–CF–P–76 Same (WJL74), Huntsville RS, south edge of Huntsville, Texas. Lat. 30° 41'55" N. Long. 95°32'30" W. C.P. to add frequency 6404.8H MHz toward Willis RS, Texas, on azimuth 160.3°.

4515–CF–P/ML–76, Southern Bell Telephone and Telegraph Company (KIU56), 45 North Magnolia Street, Orlando, Florida. Lat. 28° 32'34" N. Long. 81°22'38" W. C.P. and Mod. of License to change polarization from Horizontal to Vertical on frequency 11405 MHz toward WSWB–TV, Florida on azimuth, 81.1°.

4545–CF–P–76, The Mountain States Telephone and Telegraph Company (KLC49), 120 4th Street NW., Albuquerque, New Mexico. Lat. 35°05'06" N. Long. 106°39' 03" W. C.P. to replace frequencies 3830V 3990V MHz with 10935V 11095V 11095H MHz toward Sandia Crest, New Mexico, on azimuth 51.5°; replace transmitters and antennas.

4546–CF–P–76, Same (KLS35), Sandia Crest, 5.8 Miles NW of Sandia Park, New Mexico. Lat. 35°12'56" N. Long. 106°27'03" W. C.P. to change frequencies 3790V 3950V MHz to 1154V 11305V 11305H MHz toward Albuquerque, New Mexico, on azimuth 231.6° and replace transmitters; add 11545V 11305V 11305H MHz toward Stanley, New Mexico, on azimuth 85.8°, and delete Rowe, New Mexico as a point of communication.

4547–CF–P–76, Same (New), 6.5 Miles North of Stanley, New Mexico. Lat. 35°14'37" N. Long. 105°58'02" W. CV.P. for a new station on frequencies 10935V 11095V 11095H MHz toward Sandia Crest, New Mexico, on azimuth 266.1°, and 10935V 11095V 11095H MHz toward Rowe, New Mexico, on azimuth 49.5°.

4548–CF–P–76, Same (KLS36), 2.4 Miles SSE of Rowe, New Mexico. Lat. 35°27'43" N. Long. 105°38'16" W. C.P. to correct coordinates; change frequencies 11545V 11305V 11305 MHz toward Stanley, New Mexico, on azimuth 229.7°; change 3830V 3990V MHz to 11545V 11305V 11305H MHz toward Apache Springs, New Mexico, on azimuth 99.1°, and replace transmitters; delete Sandia Crest, New Mexico, as a point of communication.

4549–CF–P–76, Same (KLS37), 4.5 Miles NNW of Apache Springs, New Mexico. Lat. 35°24'01" N. Long. 105°11'21" W. C.P. to change frequenices 3790V 3950V MHz to 10935V 11035V 11095H MHz toward Rowe, New Mexico, on azimuth 279.3°, and replace transmitters; change 3790V 3950V 10755V 10995V to 10935V 11095V MHz toward Las Vegas, New Mexico, on azimuth 353.3°, and replace transmitters; add frequencies 10795V 11115V MHz toward Santa Rosa, New Mexico, on azimuth 149.9°, delete Colonias, New Mexico as a point of communication.

4550–CF–P–76, The Mountain States Telephone and Telegraph Company (KLS38). 715 7th Street, Las Vegas, New Mexico. Lat. 35°35'45" N., Long. 105°13'02" W. C.P. to correct coordinates; change frequencies 3830V 3930V 11445V 11685H MHz to 11305V 11545V MHz toward Apache Springs, New Mexico, on azimuth 173.3°, and replace transmitters.

4552-CF-P-76, Same (New), 16 Miles NW of Santa Rosa, New Mexico. Lat. 35°03'04" N., Long. 104°56'34" W. C.P. for a new station on frequencies 11245V 11565V MHz toward Apache Springs, New Mexico, on azimuth 330.0°, and 11245V 11565V MHz toward Alcor, New Mexico, on azimuth 96.6°.

4553-CF-P-76, Same (KLU41), Alcor, 4.3 Miles WSW of Cuervo, New Mexico. Lat. 35°00'25" N., Long. 104°29'13" W. C.P. to correct coordinates, replace antennas and increase structure height; add frequencies 10795V 11115V MHz toward Santa Rosa, New Mexico, on azimuth 276.9°; change 10705V 10955H MHz to 10795V 11115 MHz toward Montoya, New Mexico, on azimuth 54.3°; change receive location data for Montoya, and delete Colonias, New Mexico as a point of communication.

4554-CF-P-76, Same (KLU42), 9.6 Miles NW of Montoya, New Mexico. Lat 35°12'05" N., Long. 104°09'25" W. C.P, to correct coordinates, replace antennas and increase structure height; change frequencies 11405H 11645V MHz to 11245V 11565V MHz toward Alcor, New Mexico, on azimuth 234.5°; and 11445V 11685H MHz to 11245V 11565V MHz toward Tucumcari, New Mexico, on azimuth 94.4°; replace transmitters.

4555-CF-P-76, Same (KLU43), 610 South First Street, Tucumcari, New Mexico. Lat. 35°10'24" N., Long. 103°43'27" W. C.P. to correct coordinates, replace antennas and decrease structure height; change frequencies 10755H 10995V MHz to 10795V 11115V MHz toward Montoya, New Mexico, on azimuth 274.6°, and replace transmitters.

4556-CF-P-76, United Telephone Company of the Northwest (New), south edge of town, adjacent to Hwy 395, Seneca, Oreg. Lat. 44°08'00" N., Long. 118°58'16" W. C.P. for a new station on frequency 2112.4V MHz toward Fall Mountain, Oregon, on azimuth 342.7°.

4557-CF-P-76, Same (KPJ93) Fall Mountain, Oregon. Lat. 44°17'39" N., Long. 119°02'28" W. C.P. to add a point of communication on frequency 2152.4V MHz toward Seneca, Oregon, on azimuth 162.6°.

4579-CF-TC-(102)-76, United Video, Inc. Application for transfer of control of United Cable Television Corporation, Transferor, to Lawrence Flinn, Jr., Transferee, for the following stations in the Point to Point Microwave Radio Service.

KEZ 51—Schram City, Illinois
KSI 55—Norway, Illinois
KSP 97—Vandalia, Illinois
KSV 40—Streator, Illinois
KSV 42—Amboy, Illinois
KXQ 33—Dallas City, Illinois
KXQ 46—Monmouth, Illinois
KYO 25—Olney, Illinois
WAH 446—Minier, Illinois
WAH 571—Springfield, Illinois
WAH 611—Moline, Illinois
WPX 22—Gridley, Illinois
KFL 76—Mt. Pleasant, Iowa
WAH 573—Ottumwa, Iowa
WAH 575—Chariton, Iowa
WAH 542—Donaldsonville, Louisiana
WAU 270—Vacherie, Louisiana
WDE 80—Port Neches, Texas
WIV 66—Jennings, Louisiana
WIV 71—Crowley, Louisiana
WQR 28—Bayou Sorrel, Louisiana
WAH 543—Lafayette, Louisiana
WAH 437—Jackson, Missouri
WAH 440—New Madrid, Missouri
WAH 443—Blytheville, Arkansas
WAH 581—Blytheville, Arkansas
WAH 583—Ramsey, Tennessee
KGC 21—Waynesville, Missouri
WAD 73—Belle, Missouri
WAN 80—Marshfield, Missouri
WAN 82—Phelps, Missouri
WCZ 32—Urbana, Missouri
WCZ 35—Sedalia, Missouri
WAS 405—Labadie, Missouri
WPG 23—Warrensburg, Missouri
WSL 50—High Ridge, Missouri
WAH 442—Mulhall, Oklahoma
WAH 577—Ardmore, Oklahoma
KEZ 53—Taylorville, Illinois
KSJ 62—Plainfield, Illinois
KSP 98—Effingham, Illinois
KSV 41—Peru, Illinois
KXQ 32—Princeton, Illinois
KXQ 36—Kewanee, Illinois
KXQ 54—Galesburg, Illinois
WAH 445—Bloomington, Illinois
WAH 570—Lincoln, Illinois
WAH 572—Mt. Olive, Illinois
WOJ 38—Osco, Illinois
WAH 545—Gibson City, Illinois
KFL 98—Fairfield, Iowa
WAH 574—Albia, Iowa
WAH 576—Leslie, Iowa
WAU 217—West Winnie, Texas
WDD 97—LaBelle, Texas
WDE 81—Cameron Falls, Louisiana
WIV 68—Lake Charles, Louisiana
WPE 94—Lacassine, Louisiana
WQR 29—Catahoula, Louisiana
WAH 436—Perryville, Missouri
WAH 439—Sikeston, Missouri
WAH 441—Caruthersville, Missouri
WAH 444—Lakeview, Arkansas
WAH 582—Grider, Arkansas
KGB 96—Rolla, Missouri
WAD 72—Union, Missouri
WAN 79—Lebanon, Missouri
WAN 81—Springfield, Missouri
WAY 25—Joplin, Missouri
WCZ 33—Warsaw, Missouri
WAS 399—Ionia, Missouri
WBP 59—Odessa, Missouri
WPG 33—Raytown, Missouri
KYO 89—McKiddyville, Oklahoma
WAH 577—Mulhall, Oklahoma
WAH 578—Loco, Oklahoma
WAH 579—Duncan, Oklahoma
WAS 472—Tulsa, Oklahoma
WBO 89—Mt. Springs, Texas
WKS 22—Muskogee, Oklahoma
WOE 67—Mannsville, Oklahoma
WOE 69—Henryetta, Oklahoma
WOE 83—Ada, Oklahoma
WOF 38—Woods, Oklahoma
WQO 52—Bold Hill, Oklahoma
WAS 400—Miami, Oklahoma
WAS 402—Nowata, Oklahoma
WAH 448—Niota, Tennessee
WAH 548—Waleska, Georgia
WAH 580—Lawton, Oklahoma
WBA 773—Sand Springs, Oklahoma
WBO 90—Thackerville, Oklahoma
WKS 23—Marble City, Oklahoma
WOE 68—Scullin, Oklahoma
WOE 70—Holdenville, Oklahoma
WOF 37—Byars, Oklahoma
WOF 39—Britton, Oklahoma
WAS 473—Avant, Oklahoma
WAS 401—Centralia, Oklahoma
WAS 403—Avant, Oklahoma
WAH 449—Dixie Lee Junction, Tennessee
WAH 550—Snow Hill, Tennessee
WBP 46—Temporary fixed

4590-CF-TC-(16)-76, United Wehco, Inc. Application for transfer of control of United Cable Television Corporation, Transferor, to Lawrence Flinn, Jr., Transferee, for the following stations in the Point to Point Microwave Radio Service.

KEX 58—Goodman Mtn., Texas
KEX 75—Walkers Mill, Texas
KFA 44—Marshall, Texas
KEV 51—Trees, Texas
KEV 52—Black Diamond, Arkansas
WPE 60—Moore Lake, Arkansas
WPE 61—Hope, Arkansas
WPE 62—Gurdon, Arkansas
WPE 63—Manning, Arkansas
WPE 64—Leola, Arkansas
WPE 65—Malvern, Arkansas
KEW 40—Bruce, Arkansas
KEW 55—England, Arkansas
KEV 59—Camden, Arkansas
WAT 948—El Dorado, Arkansas
WAT 949—Farmerville, Louisiana

4516-CF-P-76, General Telephone Co., of Florida (KI0 65), Pine Place and Bamboo' Lane, Sarasota, Florida. (Lat. 27°20''06' N. Long. 82°32'10" W.): Construction permit to add 6286.2H MHz toward Nokomis, Florida, on azimuth 154.3°.

4517-CF-P-76, General Telephone Co. of Florida. (KPP 64), 1.8 mile east of Laurel, Nokomis, Florida. (Lat. 27°08'15" N. Long. 82°25'45" W.): Construction permit to add 6034.2V MHz toward Port Charlotte, Florida, on azimuth 117.8°.

4525-CF-P-76, Sierra Microwave, Inc. (KPY 35), 12 miles NW of Carson City, Nevada. (Lat. 39°18'49" N. Long. 119°53'00" W.): Construction permit to add 11405.V and 11645.V MHz toward Al Tahoe, via passive repeater, in Nevada, on azimuth 185.6°.

4526-CF-P-76, American Television Relay, Inc. (KNK 38), 2.1 miles SE of Wrightwood, California. (Lat. 34°21'09" N. Long. 117° 40'26" W.): Construction permit to add 5960.OH MHz toward Victorville, and Barstow, both in California, on azimuths 60.2 and 43.8°, respectively.

4527-CF-P-76, United Video, Inc. (WOE 70), 1 mile NE of Holdenville, Oklahoma (lat. 35°06'27" N. Long. 92°23'54" W.): Construction permit to add 6226.9V and 6286.2V MHz toward Wewoka, Oklahoma, on azimuth 304.5°.

4585-CF-P-76, Western Tele-Communications, Inc. (New), 1.95 mile South of Issoquah, Washington. (Lat. 47°30'09" N. Long. 122°01'37" W.): Construction permit to add 10815.H and 11055.H MHz toward Seattle RIS, Washington via passive reflecttor, on azimuth 72.2°.

4540-CF-P-76, United States Transmission Systems, Inc. (WAH 497), 5.0 miles N. of West Chester, Pennsylvania. (Lat. 40°02'-50" N. Long. 75°35'11" W.): Construction permit to add 6226.9V MHz toward Gap Hill, Pennsylvania, on azimuth 259.3°.

4541-CF-P-76, United States Transmission Systems, Inc. (New), 1.7 mile North of Christiana, Pennsylvania. (Lat. 39°59'17" N. Long. 75°59'22" W.): Construction permit for new station—5945.2H MHz toward Lancaster and 5945.2V MHz toward West Chester, both in Pennsylvania, on azimuths 281.7° and 79.1°, respectively.

4542-CF-P-76, United States Transmission Systems, Inc. (New). W. King and N. Queen Streets, Lancaster, Pennsylvania. (Lat. 40°-02'17" N. Long. 76°18'23" W.): Construction permit for new station—6226.9H toward Deodate and Gap Hill, both in Pennsylvania, on azimuths 308.0° and 101.5°, respectively.

4543-CF-P-76, United States Transmission Systems, Inc. (New), 3.4 miles SSE of Hershey, Pennsylvania. (Lat. 40°14'00" N.—76°37'59" W.): Construction permit for new station—6063.8V toward Harrisburg and 5945.2H MHz toward Lancaster, both in Pennsylvania, on azimuths 278.1 and 127.8°.

4544-CF-P-76, United States Transmission Systems, Inc. (New), 3d and Chestnut Street, Harrisburg, Pennsylvania. (Lat. 40°-15'36" N. Long. 76°52'45" W.): Construction permit for new station—6315.9H MHz toward Deodate, Pennsylvania, on azimuth 98.0°.

Corrections

4462-CF-MP-76, RCA Global Communications, Inc., as Trustee (WBB 390), 5 miles NW of Huffman, Texas. (Lat. 30°06'01" N. Long. 95°07'48" W.). This entry appearing in Public Notice of July 19, 1976 is corrected to show 6271.4V MHz toward Houston, Texas. All other particulars remain the same.

Major Amendments

3350–CF–P–76, Bib Bend Telephone Company (New, Alpine CO, 808 N. 5th Street, Alpine, Texas. Amend application to change Latitude to 30°21'52" N., azimuth toward Alpine Passive Reflector to 223.5°, passive reflector coordinates to Lat. 30°18'31" N., Long. 103°42'27" W., azimuth from passive toward Elephant Mtn. to 150.6°.

3351–CF–P–76, Same (New), Elephant Mountain, 25 miles South of Alpine, Texas. Amend application to change azimuth toward Nine Point to 170.5°, azimuth toward Alpine passive reflector to 330.7° and azimuth from passive toward Alpine CO to 43.5°.

3352–CF–P–76, Same (New), Cienega Mountain, 20 Miles NNE of Presidio, Texas. Amend application to change coordinates to Lat. 29°46'02" N. Long. 104°09'46" W., azimuth toward Presidio Passive Reflector to 224.5°, from passive to Presidio to 127.0°, azimuth toward Redford CO to 186.7°; delete Alamito Passive Reflector and add frequency 2162.0V MHz to Alamito, Texas, on azimuth 14.7°.

3353–CF–P–76, Same (New), Alamito, 11 Miles SSW of Marfa, Texas. Amend application to change coordinates to Lat. 30°09'26" N. Long. 104°02'43" W.; delete Passive Reflector and add 2112.0V MHz toward Cienega Mountain, Texas on azimuth 194.7°.

3354–CF–P–76, Same (New), 102 5th Street, Presidio, Texas. Amend application to change coordinates to Lat. 29°33'35" N. Long. 104°23'13" W., azimuth toward Presidio Passive Reflector to 307.0°, passive reflector coordinttes to Lat. 29°33'47" N. Long. 104°23'13" W., azimuth from passive toward Cienega Mountain to 44.4°.

3355–CF–P–76, Same (New), ¼ Mile West of Redford, Texas. Amend application to change coordinates to Lat. 29°27'39" N. Long 104°12'15" W., azimuth toward Cienega Mountain to 6.7°.

3356–CF–P–76, Same (New), Nine Point, 50 Miles South of Alpine, Texas. Amend application to change coordinates to Lat. 29°39'16" N. Long. 103°27'46" W., azimuth toward Elephant Mountain to 350.5°, azimuth toward Calamity Creek to 346.2°, and azimuth toward Big Bend Park to 146.1°.

3357–CF–P–76, Same (New), Calamity Creek, 23 Miles South of Alpine, Texas. Amend application to change Longitude to 103°34'37" W.

3358–CF–P–76, Same (New), Big Bend Park, 72 Miles South of Marathon, Texas. Amend application to change Latitude to 29°19'20" N.

3361–CF–P–76, Same (New), Wolf Camp, 10 Miles NNE of Marathon, Texas. Amend application to change azimuth toward Big Canon Repeater to 101.8°.

Major Amendments

3362–CF–P–76, Big Bend Telephone Company (New), Big Canyon Repeater, 7 Miles North of Sanderson, Texas. Amend application to change coordinates to Lat. 30°14'28" N. Long. 102°25'04" W., azimuth toward Wolf Camp to 282.2°; reroute frequency 2115.2H MHz toward Big Canyon Passive Reflector, on azimuth 71.5°, and from passive reflector toward Big Canyon, Texas, on azimuth 11.8°.

3363–CF–P–76, Same (New), Big Canyon, 18 Miles NNE of Sanderson, Texas. Amend application to change Longitude to 102°16'46" N.; reroute frequency 2165.2H MHz toward Big Canyon Passive Reflector, on azimuth 191.8°, and from passive reflector toward Big Canyon Repeater, on azimuth 251.6°.

[FR Doc.76–22429 Filed 8–2–76;8:45 am]

FEDERAL MARITIME COMMISSION

[No. 76–39]

CATERPILLAR OVERSEAS, S.A. V. SOUTH AFRICAN MARINE CORPORATION (N.Y.)

Filing of Complaint

JULY 29, 1976.

Notice is hereby given that a complaint filed by Caterpillar Overseas, S.A. against South African Marine Corporation was served July 29, 1976. The complaint alleges that complainant has been subjected to the payment of rates and charges for transportation in excess of those lawfully applicable in violation of section 18(b)(3) of the Shipping Act, 1916.

Hearing in this matter shall commence on or before January 29, 1977.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76–22443 Filed 8–2–76;8:45 am]

PACIFIC COAST EUROPEAN CONFERENCE

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, NW., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y. New Orleans, 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, on or before August 23, 1976. 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.

MODIFICATION OF AGREEMENT

Notice of agreement filed by:

David C. Nolan, Esq., Graham & James, One Maritime Plaza, San Francisco, California 94111.

Agreement No. 5200–31, among the member lines of the above-named conference, (1) extends the present scope to include port area points in Alaska, Washington, Oregon and California, (2) specifies that the application of the agreement is to cargo moving by both intermodal and direct all-water routes, and (3) provides that a member can maintain a regular service as required for membership by either providing a sailing every three months or by carrying a minimum of 1500 tons of cargo during a three month period.

Dated: July 29, 1976.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76–22442 Filed 8–2–76;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. ER76–659]

ALABAMA POWER CO.

Order Denying Motion for Summary Disposition and Denying in Part and Granting in Part Motion To Reject

JULY 27, 1976.

On May 28, 1976, the Commission issued an order which accepted for filing and suspended until October 1, 1976, certain changes in rates charged by Alabama Power Company (Alabama) to 26 municipal and electric cooperative customers served under its FPC Electric Tariff, Original Volume No. 1, and to the Utilities Board of the City of Foley, and changes in its Interconnection Agreement with Alabama Electric Cooperative, Inc., FPC Rate Schedule No. 133. In the May 28 order the Commission deferred action on certain issues raised by Intervenors concerning, inter alia, the use of comprehensive interperiod tax allocation and the validity of the filing under the rule of "Mobile-Sierra."[1] For the reasons stated hereinafter the Commission will deny Intervenors' motion for summary disposition to eliminate comprehensive interperiod tax allocation and will grant in part and deny in part Intervenors' motion to reject Alabama's filing for violation of "Mobile-Sierra."

The petition to intervene filed May 19, 1976, by 12 municipalities and municipal utilities boards[2] and by Municipal Electric Utility Association of the State of Alabama (collectively, Municipalities) alleges, inter alia, that section 5 of the General Terms and Conditions proposed by Alabama, which permits the Company to terminate the service agreement if the bill for service supplied thereunder is not paid within a certain time, provides for unlawful abandonment of service in vio-

[1] United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956); FPC v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

[2] City of Alexander City, City of Dothan, City of Fairhope, The Utilities Board of the City of Foley, City of LaFayette, City of Lanett, City of Luverne, City of Opelika, City of Piedmont, The Utilities Board of the City of Sylacauga, City of Troy, Utilities Board of the City of Tuskegee.

lation of § 35.15 of the Commission's regulations under the Act. Municipalities further allege that Alabama's proposed rates are predicated on comprehensive interperiod tax allocation, but that the Company has not made the requisite showing of a tax deferral as required by Order No. 530–A, nor even supplied evidentiary support for its "net of taxes" method for developing an AFUDC (Allowance for Funds Used During Construction) rate.

The petition to intervene filed May 20, 1976, by eight distribution cooperatives [3] and Alabama Electric Cooperative, Inc. (AEC) (collectively, Cooperatives) raises a number of objections, including the issue of interperiod tax allocation. In addition, Cooperatives allege that Alabama's tendered filing must be rejected, because Alabama has unilaterally changed the reserve requirement provisions of the Interconnection Agreement with AEC (FPC Rate Schedule No. 133), in violation of the "Mobile-Sierra" rule.

Alabama on May 24, 1976, responded to the allegations of Municipalities and Cooperatives. The Company notes that the language of section 5 of the general terms and conditions of the Company's tariff is unchanged from the language which was allowed to become effective by the Administrative Law Judge's Initial Decision, issued May 25, 1973, in Docket No. E–7674, "Alabama Power Company," 50 FPC 1882 (1973) "rehearing granted," 51 FPC 1315 (1974). Alabama further asserts that it has met the requirements established by Order No. 530–A and has presented evidence (in the testimony of Richard W. Walker) that the deferred tax accounting practiced by the Company constitutes a tax deferral and not a permanent tax saving. Alabama also states that its use of a "net of tax" AFUDC rate is self-evident, and that discussion of such use is more appropriate in a full-fledged evidentiary hearing.

In response to Cooperatives' allegation of violation of the "Mobile-Sierra' rule, Alabama asserts that the terms of the Interconnection Agreement with AEC give Alabama the right to change unilaterally the reserve levels required to be maintained by AEC, subject to the Commission's approval. The Company also responds to the remaining allegations by the intervenors, and concludes that a resolution of the issues thus raised should be pursued in the context of a full evidentiary hearing.

Review of the filing indicates that Alabama's proposed rate is based, in part, on the utilization of comprehensive interperiod tax allocation, in support of which the Company has provided testimony. On March 18, 1976, the Commission issued an order which accorded a "Petition * * * For Rehearing of Order No. 530–A" filed by sixteen (16) public utilities the status of a motion for reconsideration of Order No. 530–A, granted such motion solely for purposes of further consideration, and provided for the filing of responses to said motion. On July 6, 1976, the Commission issued Order No. 530–B, in which the original decision in Order No. 530 was readopted. Pursuant to Order No. 530–B, normalization will be permitted where the difference in the recognition of an item for tax and book purposes is only a timing difference and not a permanent difference. Accordingly, we shall deny the motions for summary disposition as to this issue.

Regarding Municipals' allegation that section 5 of the General Terms and Conditions of Alabama's tariff constitutes an unlawful abandonment of service, the Commission notes that, regardless of the language of section 5, the parties are required to act in accordance with § 35.15 of the Commission's Regulations, which states:

> Section 35.15 *Notices of cancellation or termination.* When a rate schedule or part thereof required to be on file with the Commission is proposed to be cancelled or is to terminate by its own terms and no new rate schedule or part thereof is to be filed in its place, each party required to file the schedule shall notify the Commission of the proposed cancellation or termination on the form indicated in § 131.53 of this chapter at least thirty days but not more than ninety days prior to the date such cancellation or termination is proposed to take effect. A copy of such notice to the Commission shall be duly posted. With such notice each filing party shall submit a statement giving the reasons for the proposed cancellation or termination, and a list of the affected purhasers to whom the notice has been mailed. For good cause shown, the Commission may by order provide that the notice of cancellation or termination shall be effective as of a date priore to the date of filing or prior to the date the filing would become effective in accordance with these rules.

Cooperatives contend that Alabama violates the "Mobile-Sierra" doctrine by filing unilaterally a proposed revision in the minimum reserve generation capacity AEC is obligated to provide under the Interconnection Agreement and by proposing to eliminate § 5.06 of the Agreement, which provides for sale to AEC of Protective Capacity. Section 1.01 (Term) of the Agreement states in pertinent part: "This Agreement shall continue in effect for the initial term ending May 31, 1982, subject to the provisions for adjustments in rates and charges provided for in § 2.01." Section 2.01 (Regulation of Rates and Charges) states in pertinent part:

> Notwithstanding the rates and charges specified herein for the various services to be provided pursuant to this Agreement, Company and Cooperative shall have the right (except for the limitations of such right contained in §§ 5.06 and 6.02) at any time to initiate proceedings through appropriate regulatory filings to change the rates and charges for such services.

Section 5.06 (Protective Capacity), which Alabama proposes to eliminate, provides that the "Company shall not make any effort to put into effect an increase in" the $4/kilowatt per year rate specified for protective capacity "except upon fifteen months prior written notice to Cooperative." Section 6.02 (Purchase Capacity) provides that the initial rate for purchase capacity "shall remain in effect for the term of this Agreement unless such rate is changed in accordance with the provisions of § 2.01 hereof, provided however, such rate may not be changed by either party until May 31, 1976."

Section 5.04 (Generating Capacity Reserve Requirements) provides in pertinent part:

> Cooperative shall provide as part of its reserve generating capacity for each Contract Year an amount equal to no less than fifteen percent (15 percent) of its maximum estimated integrated peak-hour demand for the Contract Year.
>
> * * * * *
>
> Such requirement of fifteen percent (15%) shall be adjusted from time to time as determined to be appropriate by the Operating Committee to reflect changes in practice in the industry.

The function of the Operating Committee, comprised of one representative each from the Company and the Cooperative, is set forth in Article IV of the Agreement.

Both the caption and content of § 2.01 make clear that this clause provides for unilateral changes in rates and charges only. Consonant therewith, the limitations of such right contained in §§ 5.06 and 6.02 also refer only to rates and charges. Nowhere in § 2.01 or in any other section of the Agreement is there a provision specifying the right to terminate unilaterally the service terms in question of the Agreement. Therefore, the sale of Protective Capacity provided for in § 5.06 shall continue in effect until May 31, 1982, and thereafter, subject to five years' prior notice of termination, as provided in § 1.01. However, upon fifteen months' prior written notice to AEC, Alabama can file an increase in the rate for this service.

Section 5.04 gives the Operating Committee established in Article IV the authority to adjust periodically the Cooperative's required reserve generating capacity. Section 4.02 provides that, "should the Operating Committee fail to reach agreement upon any matter for which it is responsible, such matter shall be referred to the respective managements of the parties for disposition." In their petition the Cooperatives and AEC state that AEC's management does not support the reserve generating capacity which Alabama proposes shall be required of AEC.

The Commission need not at this point explore the merits of various methods of calculating required reserve capacity in light of current industry practice. It is sufficient to note that the parties to the Interconnection Agreement do not agree on the proposed revised reserve generating capacity and that the Agreement does not provide for unilateral change of this item. The Commission rejects Ala-

[3] Baldwin County Electric Membership Corporation, Clarke-Washington Electric Membership Corporation, Coosa Valley Electric Cooperative, Inc., Dixie Electric Cooperative, Inc., Pea River Electric Cooperative, Inc., Pioneer Electric Cooperative, Inc., Tallapoosa River Electric Cooperative, Inc., and Wiregrass Electric Cooperative, Inc.

bama's reasoning (pp. 4–7) that, since the Company has the right to file unilateral changes for rates and charges incorporated in the Interconnection Agreement, it therefore follows that Alabama can file unilateral changes in the terms of the reserve provisions to which those rates and charges apply. This reasoning controverts the clear language of the Agreement.

Therefore, for the reasons stated above, the Commission finds that Alabama's proposed revised AEC reserve generating capacity requirement under § 5.04 and proposed elimination of § 5.06 providing for Protective Capacity sales are filed in violation of the "Mobile-Sierra" rule. Accordingly, the Commission shall require Alabama to file revised tariff sheets reflecting the elimination of these two proposed changes in the terms of the Interconnection Agreement.

As regards Intervenors' remaining objections to the instant filing, the Commission believes that these issues may be developed as necessary at the proceedings provided for by the Commission's Order issued May 28, 1976, in this docket.

In light of the Commission's disposition of the questions herein, the various pleadings of the parties which request relief inconsistent with the present disposition are hereby denied.

The Commission finds. (1) Motion of Municipal and Cooperative Intervenors for summary disposition excluding comprehensive interperiod tax allocation from the jurisdictional rate increase should be denied.

(2) Motion of Cooperative Intervenors to reject Alabama's entire filing should be denied. However, Alabama's proposed revised AEC reserve generating capacity under § 5.04 and proposed elimination of § 5.06 of the Interconnection Agreement providing for protective capacity sales should be rejected as violative of the "Mobile-Sierra" rule.

The Commission orders. (A) Motion of Municipal and Cooperative Intervenors for summary disposition to exclude comprehensive interperiod tax allocation is hereby denied.

(B) Cooperatives' motion to reject Alabama's entire filing is denied. However, that part of Alabama's filing which purports to revise AEC's reserve requirement under § 5.04 of the Interconnection Agreement and to eliminate § 5.06 of the Agreement is rejected. Alabama shall file within thirty days a revised rate schedule reflecting elimination of these portions of its filing.

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

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-22433 Filed 8-2-76;8:45 am]

[Docket No. RP71-122]

ARKANSAS LOUISIANA GAS CO.

Petition for Special Relief

JULY 27, 1976.

Take notice that on July 15, 1976, Arkansas Louisiana Gas Company (Arkla) filed in Docket No. RP71-122 a petition for special relief seeking to defer until June 2, 1977 (a nine month grace period) the implementation of that portion of the June 2, 1976 Commission order in the instant docket as requires elimination of the distinction that formerly existed between firm and interruptible service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Arkla requests authorization to continue to firm and interruptible distinctions as they previously existed for one more winter. Arkla states this is necessary in order to give those direct industrial customers in the middle priorities enough time to complete conversion efforts to enable them to absorb the level of curtailment which is going to be necessitated by the elimination of the firm and interruptible distinction. Arkla further states the only customer who will get more gas under the Arkla curtailment plan as the result of the elimination of the firm-interruptible distinction is Cities Service Gas Company (Cities), a large sale for resale customer. Practically all of Arkla's other sales are sales for consumption, so the additional gas going to Cities will have to be diverted from many other Arkla direct sales customers. This will mean that curtailments to certain classes of customers on the Arkla system will be significantly deeper than had been projected for next winter. Arkla also states that the grant of its special relief petition will avoid a large number of petitions for extraordinary relief by the customers.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 13, 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-22434 Filed 8-2-76;8:45 am]

[Docket Nos. E-9521, E-9522]

GEORGIA POWER CO.

Further Extension of Time

JULY 27, 1976.

On May 13, 1976, Staff Counsel filed a motion to extend the procedural dates fixed by order issued October 29, 1975 as most recently modified by notice issued February 18, 1976, in the above-designated proceeding. The motion states that no party objects to the proposed schedule.

Upon consideration, notice is hereby given that the procedural dates in the above matter are modified as follows:

Service of Staff Testimony, July 30, 1976.
Service of Intervenor Testimony, August 27, 1976.
Service of Company Rebuttal, September 30, 1976.
Hearing, October 19, 1976 (10:00 a.m., e.d.t.)

By direction of the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-22435 Filed 8-2-76;8:45 am]

[Docket No. RP72-140, (PGA76-3)]

GREAT LAKES GAS TRANSMISSION CO.

Proposed Changes in Gas Tariff Under Purchased Gas Adjustment Clause Provisions

JULY 27, 1976.

Take notice that Great Lakes Gas Transmission Company (Great Lakes), on July 14, 1976, tendered for filing the following tariff sheets to its FPC Gas Tariff, proposed to be effective September 10, 1976:

First Revised Volume No. 1

Second Revised Sheet No. 54
Eighteenth Revised Sheet No. 57

Original Volume No. 2

Third Revised Sheet No. 53-B
First Revised Sheet No. 53-C

Great Lakes states that its sole supplier of natural gas, TransCanada Pipeline Limited (TransCanada), will increase the rates for gas purchased by Great Lakes effective September 10, 1976. The increase is the result of the National Energy Board of Canada's orders issued June 24, 1976, amending TransCanada's licenses for the export of natural gas to Great Lakes by establishing that the price to be received for the gas to be exported shall be not greater than and not less than $1.80 in Canadian currency per Mcf of one thousand British Thermal Units per cubic foot equivalent gas at a temperature of 60 degrees Fahrenheit and a pressure of 14.73 pounds per square inch absolute adjusted on the ratio of the actual BTU content per cubic foot to 1000 BTU per cubic foot.

Great Lakes proposes in this filing to change the factors which allocate the purchased gas cost change between the resale and the T-4 rate schedule customers. The proposed change would replace specific factors, presently included in Great Lakes' FPC Gas Tariff, with a formula which would reflect actual operating conditions within the Determination Period. The proposed allocation formula complies with the provisions of Article V of a Stipulation and Agreement of Rate Proceedings in Docket Nos. RP75-94 and RP72-140 (PGA75-5) filed by Great Lakes with the Commission on June 17, 1976.

Great Lakes is also providing for adjustments in the current PGA rate reflecting the effect of currency conversion based on $1.0376 United States equivalent to $1.00 Canadian and a BTU adjustment reflecting an average content of 1004 BTU per Mcf of gas purchased during the Determination Period.

Great Lakes also states that copies of this filing have been served upon its customers, the Public Service Commissions of Minnesota, Wisconsin and Michigan and other parties who have intervened in Docket No. RP75–94.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 12, 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.76–22436 Filed 8–2–76;8:45 am]

[Docket No. RM74–8]

NATIONWIDE FUEL EMERGENCY

Order Prescribing Revision to Order No. 498

JULY 27, 1976.

On December 21, 1973 the Commission issued Order No. 498 imposing certain reporting requirements on all Class A and Class B natural gas pipeline companies. Provision A of Order No. 498 provides:

> All Class A and B natural gas pipeline companies shall report to the Commission on January 1 and July 1 of each year beginning with 1974 what actions have been taken by them and their customers to conserve natural gas; the quantities of natural gas; estimated to be conserved by such actions during twelve months following the report date; and an estimate of the volume of gas actually conserved during the twelve months prior to the report date.

In addition, Provision B of Order No. 498 provided that all Class A and Class B natural gas pipeline companies were to report to the Commission by February 1 and March 1, 1974 what actions had been taken by them and their customers to conserve natural gas in order to reduce the impact of the Nation's energy emergency for the 1973–1974 winter.

The Commission has determined, after considering the data which have been collected under Order No. 498, that the requirement for periodic reports from all Class A and Class B natural gas pipeline companies should be terminated. The benefits from the reporting requirement are no longer commensurate with the burden on those required to file the reports.

The Commission finds: (1) Modifying the rulemaking in Docket No. RM74–8 is appropriate and necessary for carrying out the provisions of the Natural Gas Act.

(2) Compliance with the notice, public procedure and effective date provisions of Section 553 of Title 5, United States Code is unnecessary.

(3) Good cause exists that the revision adopted herein become effective upon issuance of this order.

The Commission, acting pursuant to authority granted by the Natural Gas Act, as amended, particularly by sections 8, 10, and 16 thereof, (52 Stat. 825, 826, 830; 15 U.S.C. 717g, 717i, 717o) orders:

(A) Effective upon the issuance of this order, Provision A of Order No. 498 is hereby repealed.

(B) Effective upon the issuance of this order, Provision B of Order No. 498 is hereby repealed.

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

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76–22431 Filed 8–2–76;8:45 am]

[Docket No. RP76–52, etc.]

NORTHERN NATURAL GAS CO.

Order Permitting Withdrawal of Tariff Sheets, Accepting for Filing Revised Tariff Sheets, Suspending Revised Tariff Sheets, Denying Motion To Reject and Granting Intervention

JULY 28, 1976.

On December 31, 1975, Northern Natural Gas Company (Northern) filed with the Commission the following revised tariff sheets to its F.P.C. Gas Tariff, Third Revised Volume No. 1.

Fourth Revised Sheet Nos. 59, 59a and 59b
Second Revised Sheet Nos. 59c, 59d, 59e, and 59f
First Revised Sheet Nos. 59g, 59h, 59i and 59j

Northern requested that the tariff sheets, which proposed a revision of Northern's presently effective curtailment plan, be effective on September 26, 1976. By order issued March 10, 1976, in the above-referenced docket, the Commission accepted the proposed tariff sheets for filing and suspended them for one day until September 27, 1976. The Commission also consolidated the curtailment filing with an order to show cause issued to Northern on July 7, 1975 in Docket No. RP74–102 (volumetric limitations) with regard to the imposition of volumetric limitations. Hearings on the consolidated proceeding commenced on May 3, 1976.

On March 18, 1976, Northern filed with the Commission a motion to withdraw the tariff sheets submitted on December 31, 1975 and accepted on March 10, 1976 and to substitute, as part of its F.P.C. Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Substitute Fourth Revised Sheet Nos. 59, 59a and 59b
Substitute Second Revised Sheet Nos. 59c, 59d, 59e and 59f
Substitute First Revised Sheet Nos. 59g, 59h, 59i and 59j
Original Sheet No. 59K

Northern requests that these tariff sheets be suspended for one day to become effective on September 27, 1976, in conformance with the Commission's order of March 10, 1976.

Northern's March 18 revisions concern two separate changes in its curtailment filing. First, proposed Paragraph 9.2 of the December 31, 1975 filing provided that all deliveries of gas to those gas utilities purchasing gas pursuant to Rate Schedule PL–1 (Pipe Line Service) would be placed in Priority Category 2 for purposes of curtailment. Northern states that the placement of deliveries to pipe line customers in Category 2 was predicated on the assumption that an annual volumetric limitation would have been put in effect prior to September 27, 1976. Northern states that since no volumetric limitation will be put into effect prior to September 27, 1976, the pipe line customers would not experience any curtailment during the 1976–1977 heating season or during the summer of 1977. Northern, therefore, proposes to curtail the pipeline customers on an annual basis in accordance with the provisions of a new Paragraph 9.4.

Second, in the December 31, 1975 filing Northern stated that it would propose for Commission approval the termination of all firm deliveries for electric generation use. Northern now states that this proposal can best be effectuated by inclusion of firm deliveries for electric generation in the curtailment plan. Northern proposes to place "EG Plant Sales" made on a firm basis in a new Priority (11A) of Paragraph 9.2.

On May 7, 1976, the Flambeau Paper Company (Flambeau) filed a petition for leave to intervene and a motion to reject the revised tariff sheets submitted by Northern on March 18, 1976.[1] Flambeau states that under § 145.66(a) and (b) of the Commission's regulations, Northern cannot file any substitution or change of suspended tariff sheets without "special permission of the Commission upon application therefor and for good cause shown." Flambeau states that Northern has not established good cause for "a major and radical substantive change of the December 31, 1975 tariff sheet filing" with respect to the treatment of firm "E.G. Plant Sales." Flambeau further states that the relegation of firm "E.G. Plant Sales" to a low curtailment priority would permit Northern to effectively terminate such sales without the necessity of a section 7(b) application which would have been required under the December 31, 1975 filing.

Flambeau next argues that although section 4(e) of the Natural Gas Act may be an appropriate procedural mechanism to enable a natural gas company to effect a change in a presently effective

[1] Flambeau Paper Company is the successor in interest to the Kansas City Star-Flambeau Paper Division, which had previously been granted intervention in this proceeding.

curtailment plan, the portion of section 4(e) which permits a natural gas company to effect the proposed change subject to refund, after the suspension period, was not intended to apply to changes in curtailment provisions. Flambeau alleges that the refund provisions of section 4(e) only apply in instances where the change in "rate, charge, classification or service" is measurable in dollars and cents and the "amounts received by reason of such increase" and the amounts "paid" may be determined with precision.

Flambeau, therefore, argues that the law precludes any superseding change in an effective curtailment plan which the Commission had found to be just and reasonable without specific findings and conclusions supported by and based on substantial evidence that (1) the presently effective curtailment plan is not just and reasonable, or is unreasonably or unduly preferential, unduly disadvantageous or prejudicial and (2) the curtailment plan to be made effective and to supersede the currently effective curtailment plan is just and reasonable, not unreasonably or unduly preferential and not unreasonably prejudicial or disadvantageous. Flambeau states that the requisite findings and conclusions cannot be made without an evidentary hearing. Flambeau concludes that until the Commission's final order prescribing a new curtailment plan, the presently effective just and reasonable interim plan must continue in effect.

On May 3, 1976, Lake Superior District Power Company (Lake Superior) filed comments on the revised tariff sheet.[2] Lake Superior states that it objects to the waiver of § 154.66 of the Commission's regulations for the following reasons:

(a) There is no compelling reason why a new curtailment plan must be made effective after a one day suspension when the presently effective interim plan was found to be just and reasonable and in the public interest,

(b) The provisions of section 4(e) of the Natural Gas Act can apply only to rate increases,

(c) The proposed tariff revisions which place firm electric generation use in the lowest use categories are arbitrary and involve unreasonable discrimination,

(d) The changes to Northern's proposed curtailment plan which were filed on March 18, 1976, were not minor but were major changes in the curtailment plan as originally filed on December 31, 1975.

(e) Northern has not established the standard of "good cause" required for a waiver of § 154.66 of the Commission's regulations.

On May 10, 1976, the Public Service Commission of Wisconsin (Wisconsin) filed comments on the revised tariff sheets. Wisconsin states that the effect of March 18, 1976 filing would be to place the Flambeau Steam and Electric Generating Station of the Lake Superior District Power Company in the general overall category of electric generation. Wisconsin states that the Federal Power Commission should not grant the request for waiver of Section 154.66 and should not permit the revised tariff sheets to become effective on an interim basis prior to completion of this proceeding.

On May 3, 1976, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) filed a protest to the tariff sheets filed by Northern on March 18, 1976. Michigan Wisconsin states that the revised tariff sheets constitute an unjustifiable and discriminatory method of curtailing Northern's pipeline customers. Michigan Wisconsin states that pipe line customers would have deliveries reduced in proportion to the percentage decline in total system sales since 1973, whereas Northern's distribution customers would be curtailed from the level of contract demand in accordance with proposed end-use priorities. Michigan Wisconsin states that all of Northern's customers should be curtailed on the basis of end-use requirements which reflect the volumes of gas received during a fixed, historical base period.

On May 26, 1976, Northern filed its response to the objections and the motion to reject. Northern states that it has established good cause to permit the substitution of the March 18 tariff sheets. Northern argues that the pipeline customers will receive no curtailment during the 1976–1977 heating season unless the March 18, 1976 filing is accepted. With regard to the classification of firm electric generation volumes, Northern states that that issue is more properly put in the content of a curtailment proceeding rather than an abandonment proceeding. Northern further argues that, technically, Section 154.66 of the Commission's Regulations would not have to be waived since the tariff sheets filed on December 31, 1975 are not presently under suspension. Finally, Northern states that the Supreme Court's decision in "FPC v. Louisiana Power and Light Company," 406 U.S. 621 (1972) wholly rejects the contention that the Commission should await full hearing and decision prior to implementing changes to Northern's currently-effective curtailment plan.

On May 26, 1976, the Northern Distributor Group[3] filed an answer to the motions to reject. The Northern Distributor Group states that the decision in "FPC v. Louisiana Power and Light Company," 406 U.S. 621 at 645 (1972) does not require that the curtailment plan filed by a pipeline be held in abeyance pending conclusion of the hearing process. The Northern Distributor Group further states that the decision of the D.C. Circuit in "Consolidated Edison Company v. FPC," 512 F. 2d 1332 at 1338 n16 prohibits the Commission from rejecting a proposed filing. The Northern Distributor Group also concludes that § 154.66 is inapplicable since the December 31, 1975 tariff sheets are not under suspension. Finally the Northern Distributor Group states that Flambeau will have full opportunity to present its case in the pending curtailment proceeding and/or in a petition for extraordinary relief under § 2.78(b).

We turn first to the arguments that the Commission should not permit any new curtailment plan to go into effect until a determination has been made that the existing interim plan is unjust and unreasonable.[4] We addressed the specific issue of the justness and reasonableness of Northern's interim curtailment plan in our June 17, 1975 order in Docket No. RP74-102. In that order we stated that:

> We confess that we are not particularly pleased with the hybrid nature of the Northern curtailment plan. Yet, while we do not condone it as a plan for the future, we believe that, with the changes described in the proposal as modified herein, the resulting interim plan provides a just and reasonable approach to the need for curtailment on the Northern System through September 1976.

We conditioned our approval of the settlement in Docket No. RP74-102 upon a termination date of September 26, 1976, noting that Northern had imposed upon itself a deadline of December 31, 1975 for the filing of proposed tariff revisions.

As Northern and the Northern Distributor Group state in their responses to the motions to reject, the Supreme Court in "FPC v. Louisiana Power & Light Company," 406 U.S. 621 (1972) held that the Commission could and should process curtailment plans under sections 4(c), (d) and (e). The Court in "Louisiana Power and Light" stated that:

> Under these provisions (§§ 4(c), (d) and (e)) a pipeline's tariff amendments filed with the FPC go into effect in 30 days unless suspended by the Commission. If a filing is challenged or the FPC of its own motion deems it appropriate, it may suspend the amended tariff for up to five months, at the end of which time the amended tariff becomes effective pending the completion of the hearings. In these hearings, the pipeline has the burden of proving that its plan is reasonable and fair.

The Supreme Court in "Louisiana Power and Light" further noted that a curtailment plan placed into effect by the pipeline could serve as a "working guideline while hearings continue". Furthermore, the Supreme Court recog-

---

[2] Lake Superior's filing also contains a supplemental petition for leave to intervene. Since the March 10, 1976 order stated that all parties to the interim curtailment plan were deemed parties to the consolidated proceeding, we deem the supplemental petition moot.

[3] The Northern Distributor Group consists of Interstate Power Company, Iowa Electric Light and Power Company, Iowa Illinois Gas and Electric Company, Iowa Power and Light Company, Iowa Public Service Company, Iowa Southern Utilities Company, Metropolitan Utilities District of Omaha, Minnesota Gas Company, North Central Public Service Co., and Northern States Power Company.

[4] Technically, this issue should have been initially raised by a petition for rehearing of the March 10, 1976 order, which gave Northern the option of filing a motion to effect the December 31, 1975 filing on or after September 27, 1976.

nized "each pipeline's unique knowledge of its customers' needs, ability to substitute other fuel sources, and other relevant considerations."

It is, therefore, obvious that it is not only permitted but mandatory that the Commission allow a pipeline company the option of implementing its proposed curtailment plan at any time, commencing upon either the date of the acceptance of the tariff filing or upon the conclusion of the designated suspension period, whichere is applicable. Given the fact that our June 17, 1975 order in Docket No. RP74–102 found that Northern's interim plan was just and reasonable through September, 1976, it was necessary and appropriate that we suspend the filing for only one day rather than the full five months. This one day suspension will thus give Northern the option of implementing its new curtailment plan during the 1976–1977 heating season.

We do note, however, that Flambeau and Lake Superior are correct in their conclusion that the suspended tariff sheets are not subject to refund under section 4(e). In our May 28, 1976 order in United Gas Pipe Line Company, Docket No. RP71–29 et al. (Phase II), we stated that:

> Finally, several of the Movants have requested that United be allowed to implement its filing only upon the condition that it be subject to a refund obligation sufficient to protect their customers from the unlawful preferences of that plan. While the imposition of a refund obligation is left to the Commission discretion by section 4(e) of the Natural Gas Act, such imposition here is problematic. First, section 4(e) envisions the imposition of a refund obligation in cases where increased rates or charges are thus made effective. This raises a question of the propriety of a refund in connection with the filing of a curtailment plan, wherein the main concern is a change in the rules governing allocation of gas among its customers during periods of shortage. Secondly, the quantification of the allegedly illegal preferences is a difficult matter due to the lack of a base from which to measure the extent of the preferences. In view of these difficulties, it is our conclusion that United's filing should be accepted without condition as to the payment of a money refund.

During the interim between possible implementation of the proposed curtailment plan by Northern and a final Commission determination on the appropriate plan for the system, Flambeau or any other consumer may, through an application filed by its distributor and/or state commission, seek extraordinary relief from curtailment. Such an application, filed in conformity with § 2.78(b) of the Commission's rules of practice and procedure, would determine whether a given consumer is entitled to an assured volume of natural gas. Furthermore, we not that by following the procedure we set down in the June 17, 1975 order in Docket No. RP74–102, Northern has cut the time lag significantly between possible implementation of the proposed plan and final Commission determination. Thus, Northern and its customers have the advantage of making significant progress in the proceeding prior to September 26, 1976, while at the same time being able to evaluate the effects of the proopsed plan before the close of the record, should Northern elect to implement the plan.

Thus, having established that Northern must be given the option of implementing its curtailment filing at the close of the appropriate suspension period, we are left with the question of whether Northetrn should be permitted to substitute the tariff sheets filed on March 18, 1976 for the tariff sheets filed on December 31, 1975, accepted on March 10, 1976 and suspended for one day, until September 27, 1976.

We would agree that Northern and the Northenr Distibutor Group are correct in their argument that a waiver of § 154.66 of the Commission's regulations is not technically required. Section 154.66 contemplates a proposed change to a tariff under suspension. In the instant proceeding, the tariff sheets accepted for filing on March 10, 1976 are not presently under suspension. Despite the fact that § 154.66 of the regulations is not technically applicable, we do believe that Northern should be required to meet the standard of good cause prior to acceptance of the March 18, 1976 filing.

It was Northern's position in its March 18, 1976 filing and in its May 26, 1976 response to the motion to reject that the inclusion of pipeline deliveries in priority 2 was predicated upon the imposition of volumetric limitations prior to September 26, 1976. Northern now states that since no limitations will exist on September 26, 1976,[5] the pipeline customers must be subject to annual pro-rata curtailment. While we leave the issue of the ultimate propriety of pro-rata curtailment to the curtailment proceeding itself, we note that to permit the pipelines to remain in Priority 2 would be tantamount to exempting the pipelines from curtailment. We conclude, therefore, that Northern has established good cause to permit the substitution of tariff sheets relating to the annual curtailment of pipeline deliveries.

With regard to the classification of firm sales for electric generation, we note that Northern, in its December 31, 1975 filing, voiced an intention to seek abandonment of these sales. The March 18, 1976 filing would seek to classify such deliveries in Priority 11A, the second lowest priority, thus permitting service when gas is available. The only distinction between the December 31, 1975 filing and the March 18, 1976 filing is that the issue of firm sales for electric generation will be litigated in the course of a curtailment proceeding rather than an abandonment proceeding. We would agree with Northern that the issue is more properly litigated in a curtailment case. Therefore, good cause exists to permit Northern to file substitute tariff sheets relating to classification of sales for electric generation.

The Commission finds: (1) Good cause exists to permit Northern to withdraw the tariff sheets accepted for filing on March 10, 1976 in Docket No. RP76–52.

(2) Good cause exists to accept for filing the proposed tariff sheets tendered by Northern on March 18, 1976 in Docket No. RP76–52.

(3) Good cause exists to suspend the tariff sheets tendered by Northern on March 18, 1976 in Docket No. RP76–52, for one day, until September 27, 1976 as hereinafter ordered.

(4) The motion to reject filed by Flambeau should be denied.

(5) The petition to intervene filed by Flambeau, as successor in interest to The Kansas City Star, Flambeau Paper Division, may be in the public interest.

The Commission orders: (A) Northern is herein permitted to withdraw the tariff sheets tendered, on December 31, 1975 by Northern in Docket No. RP76–52 and accepted for filing on March 10, 1976.

(B) The tariff sheets tendered by Northern in Docket No. RP76–52 on March 18, 1976 are herein accepted for filing.

(C) The tariff sheets tendered by Northern in Docket No. RP76–52 on March 18, 1976 are herein suspended for one day until September 27, 1976. The presently effective interim plan approved in Docket No. RP74–102 shall be extended until the curtailment plan proposed by Northern in this proceeding is placed into effect by appropriate filing.

(D) The motion to reject is herein denied.

(E) Flambeau is permitted to intervene subject to the rules and regulations of the Commission: *Provided, however,* That the participation of such intervener shall be limited to matters affecting asserted rights and interests as specifically set forth in said petition to intervene: *And provided, further,* That the admission of such intervener shall not be construed as recognition by the Commission that it might be aggrieved because of any order or orders of the Commission entered in this proceeding.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76–22439 Filed 8–2–76;8:45 am]

[5] The March 10, 1976 order consolidated the volumetric limitations issue in Docket No. RP74–102 (volumetric limitations) with the instant curtailment proceeding.

[Docket No. CP76–428]

SEA ROBIN PIPELINE CO.

Application

JULY 27, 1976.

Take notice that on July 7, 1976, Sea Robin Pipeline Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP76–428 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public con-

venience and necessity authorizing the construction and operation of facilities offshore Louisiana and the transportation of natural gas in interstate commerce, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant proposes to construct and operate the following facilities offshore Louisiana:

1. 14.4 miles of 24-inch pipeline from Platform "A", Block 128, South Marsh Island Area, to Platform "A", Block 330, Eugene Island Area.
2. 0.75 mile of 12-inch pipeline from Platform "A", Block 333, South Marsh Island Area, to the 24-inch pipeline described above.
3. A 6-inch dual turbine meter station on Platform "A", Block 333, Eugene Island Area, and a 10-inch dual line orifice meter station on Platform "A", Block 128, South Marsh Island Area.
4. 21.0 miles of 30-inch pipeline from Block 265, East Cameron Area, to Platform "B", Block 334, East Cameron Area.
5. 1.75 miles of 20-inch pipeline from Platform "B", Block 334, East Cameron Area, to Platform "A", Block 335 East Cameron Area.
6. A 10-inch dual orifice meter station on Platform "B", Block 884, East Cameron Area.
7. A 12-inch dual orifice meter station on Platform "A", Block 335, East Cameron Area.

The facilities are estimated to cost $37,045,200, which would be financed with cash on hand and generated through operations, and, as required, by interim bank borrowings.

Applicant states that the expansion of its system as proposed in the instant application is required in order to connect new gas supplies which are anticipated to be purchased by Applicant and to provide pipeline capacity for the transportation of gas for others. Applicant estimates that it would add 241,000,000 Mcf of gas to its system reserves by the implementation of the proposed expansion and states that in all likelihood an equal amount of reserves would be added to this proposed expansion on account of future Applicant purchases and/or existing and potential transportation arrangements.

The application states that Applicant has acquired the right to purchase all gas attributable to Pennzoil Offshore Gas Operator's (POGO) interest in Block 334, East Cameron Area, and gas attributable to 50 percent of POGO's 70 percent interest in Block 335, East Cameron Area. It is also stated that Applicant has acquired through an advance payment agreement the right to purchase gas attributable to Exxon Corporation's (Exxon) interest in Block 334, East Cameron Area. Further, it is stated, Applicant is negotiating with POGO and Pennzoil Louisiana and Texas Offshore (PLATO) for the contractual commitment of gas attributable to POGO's 6.67 percent interests and PLATO's 26.67 percent interests in each of Block 128, South Marsh Island Area, and Block 333, Eugene Island Area.

Applicant requests authorization to transport natural gas for United Gas Pipe Line Company (United). It is stated that United has acquired from POGO the right to purchase one-half of the gas attributable to POGO's 70 percent interest in Block 335, East Cameron Area and that Applicant has agreed to transport up to 56,200 Mcf of gas per day from said block for delivery to United onshore at a point near Erath, Vermilion Parish, Louisiana. Applicant would transport the gas for a monthly demand charge of $1.27 per Mcf of contract demand and a commodity charge of 20.51 cents per Mcf of gas actually transported.

Applicant requests authorization to transport natural gas for Mid Louisiana Gas Company (Mid Louisiana). It is stated that Mid Louisiana has acquired the right to purchase 20 percent of the gas attributable to Exxon's 30 percent interest in the gas produced in Block 335, East Cameron Area, and that Applicant has agreed to transport up to 10,000 Mcf of gas per day from said block for Mid Louisiana for delivery to United for the account of Mid Louisiana onshore at Erath. Applicant would transport the gas for a monthly demand charge of $1.27 per Mcf of contract demand and a commodity charge of 20.51 cents per Mcf of gas actually transported.

Applicant requests authorization to transport natural gas for Columbia Gas Transmission Corporation (Columbia). It is stated that Columbia has acquired the right to purchase 40 percent of the gas attributable to Exxon's 30 percent interest in Block 335, East Cameron Area, Texaco's interest in Block 313, Eugene Island Area, and Columbia Gas Development Company's, Forest Oil Company's, Felmont Oil Corporation's, and Case Pomeroy Oil Corporation's interests in Blocks 142 and 143, South Marsh Island Area, and that Applicant and Columbia have entered into a memorandum of understanding for Applicant to transport such gas onshore to Erath. Applicant states that Columbia has advised that it would require 34,300 Mcf of contract demand.

Applicant requests authorization to transport natural gas for Northern Natural Gas Company (Northern). It is stated that Northern has acquired the right to purchase 40 percent of the gas attributable to Exxon's 30 percent interest in the gas produced in Block 335, East Cameron Area, and has requested Applicant to transport such gas onshore to Erath. Applicant states that Northern has advised that it would require 19,300 Mcf of contract demand.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 18, 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 in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-22437 Filed 8-2-76;8:45 am]

[Project No. 199]

SOUTH CAROLINA PUBLIC AUTHORITY

Application for Use of Project Lands and Waters

JULY 27, 1976.

Public notice is hereby given that an application was filed on March 4, 1976, under the Federal Power Act (16 U.S.C. 791a–825r) by South Carolina Public Service Authority (Correspondence to: Mr. J. B. Thomason, General Manager, South Carolina Public Service Authority, 223 North Live Oak Drive, Moncks Corner, South Carolina 29461; and Mr. Benjamin Harrison, Rt. 2, Box 514, West Columbia, South Carolina 29169), for Commission approval to excavate a slough at the Calhoun subdivision in Lake Marion, South Carolina.

The proposed excavation is intended to improve the appearance and usage of an existing slough at the Calhoun Subdivision. Approximately 1000 cubic yards of material would be excavated from a channel approximately 30 feet wide, 2 feet deep, and 450 feet long. This excavation would permit boat access to 5 subdivision plots now without boat access to the lake.

Any person desiring to be heard or to make any protest with reference to said application should, on or before September 20, 1976, file with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure, 18 CFR 1.8 or 1.10 (1975). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties

to 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.

Take further notice that, pursuant to the authority contained in and conferred upon the Federal Power Commission by sections 308 and 309 of the Federal Power Act, 16 U.S.C. 825g and 825h, and the Commission's rules of practice and procedure, specifically § 1.32(b), a hearing on this application may be held before the Commission without further notice if no issue of substance is raised by any request to be heard, protest, or petition filed subsequent to this notice within the time required herein. If an issue of substance is so raised, further notice of hearing will be given.

Under the shortened procedure herein provided for, unless otherwise advised, it will not be necessary for Applicant to appear or be represented at the hearing before the Commission.

The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-22438 Filed 8-2-76;8:45 am]

NATIONAL CREDIT UNION ADMINISTRATION

NATIONAL CREDIT UNION BOARD

Meeting and Agenda

Pursuant to the provisions of the Federal Advisory Committee Act, Pub. L. 92-463, 86 Stat. 770, notice is hereby given that the National Credit Union Board will hold a special meeting on August 12-13, 1976, at the offices of the National Credit Union Administration, 2025 M Street, NW., Washington, D.C. 20456. The meetings will commence at 9 a.m. daily in Room 4210.

The agenda for this meeting will consist of a discussion of reassignment of responsibilities among members of the Board and matters incidental thereto.

This meeting of the National Credit Union Board will be open to the public. Members of the public may file written statements with the Board either before or after the meeting. To the extent that time permits, interested persons may be permitted to present oral statements to the Board only on items listed in the aforementioned agenda. Requests to present such oral statements must be approved in advance by the Chairman of the Board. Such requests should be directed to the Chairman, National Credit Union Board, National Credit Union Administration, Washington, D.C. 20456.

C. AUSTIN MONTGOMERY,
Administrator.

JULY 22, 1976.

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on July 26, 1976 (44 USC 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the clearance office, Office of Management and Budget, Washington, D.C. 20503, (202-395-4529), or from the reviewer listed.

NEW FORMS

U.S. CIVIL SERVICE COMMISSION

Survey of Compensation Practices for Unusual Work Conditions, single-time, different types of industries, Caywood, D.P., 395-3443.

REVISIONS

VETERANS ADMINISTRATION

Application and Enrollment Certification Individualized Tutorial Assistance, VA22-1990T, on occasion, veterans, Caywood, 395-3443.

DEPARTMENT OF COMMERCE

Bureau of Census, Survey of Residential Alterations and Repairs, initial and subsequent forms, QHS 730, QHS 731, quarterly, owners or managers of rental properties in QHS, Sunderhauf, M.B., 395-6140.

DEPARTMENT, OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development, Annual Financial Report for Vocational Rehabilitation SRS-RSA-2, annually, state agencies, Caywood, D.P., 395-3443.

EXTENSIONS

UNITED STATES INFORMATION AGENCY

Participation Agreement (U.S. National Exhibits), IAP-12, on occasion, individuals, Warren Topelius, 395-5872.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Community Planning and Development, Community Development Funding Survey, HUD 4709, single-time, Community and Veterans Affairs Division, 395-3532.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.76-22637 Filed 8-2-76;8:45 am]

CLLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on July 28, 1976 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the clearance office, Office of Management and Budget, Washington, D.C. 20503 (202-395-4529), or from the reviewer listed.

NEW FORMS

DEPARTMENT OF LABOR

Bureau of International Labor Affairs, Questionnaire for Producers of Plant Hangers, ILAB-78, single-time, producers of plant hangers, Laverne V. Collins, 395-5867.

REVISIONS

GENERAL SERVICES ADMINISTRATION

Contract Delivery Status Record, GSA 1678, monthly, Federal supply contractors, Warren Topelius, 395-5872.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service, application for permit, VS 16-3, on occasion, research scientists, Warren Topelius, 395-5872.

Food and Nutrition Service, Food Stamp Program, on occasion, State agencies, Human Resources Division, C. Louis Kincannon, 395-3532.

Agricultural Marketing Service, Regulations Governing the Inspection of Eggs and Egg Products, on occasion, egg products processors shell egg handlers, Warren Topelius, 395-5872.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Production and Mortgage Credit Allocation of Mortgage Receipts and Disbursements, FHA2744A, on occasion, Mortgagee, Community and Veterans Affairs Division, 395-3532.

EXTENSIONS

FOOD AND NUTRITION SERVICE

Civil Rights Compliance Review Institutions and Nonprofit Private Schools, FNS-86, on occasion, institutions, C. Louis Kincannon, 395-3211.

FEDERAL AVIATION ADMINISTRATION

Airport Operating Certificates, FAA-528-2, on occasion, airport owners, Caywood, D. P., 395-3443.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service, Supplemental Application for Label Approval—Poultry Processing, MP-132-1, on occasion, meat and poultry establishments, Warren Topelius, 395-5872.

Agricultural Marketing Service, Financial Statement (Warehousemans Report of Assets Requirements), TW-51, Semiannually,

public, commercial warehouseman, Warren Topelius, 395-5872.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.76-22638 Filed 8-2-76;8:45 am]

POSTAL SERVICE

PRIVACY ACT OF 1974

Transfer of System of Records

The purpose of this document is to announce the transfer of a system of records previously maintained by the Postal Service to the General Services Administration.

Effective April 15, 1976, the responsibility of the Postal Service for monitoring the compliance of contractors with Equal Employment Opportunity requirements has been transferred to the General Services Administration, which will perform this function through its regional offices. All case files and records of contract compliance investigations have been transferred to the General Services Administration, which will be responsible for maintaining these records in accordance with its own regulations and procedures implementing the Privacy Act of 1974.

Accordingly, Postal Service maintenance of records concerning employee discrimination complaints and investigations involving contractors is no longer relevant and necessary to the accomplishment of a purpose of the Postal Service. The Postal Service has therefore determined under 5 U.S.C. 552a(e)(1), effective immediately, to delete from its original list of systems of records published on August 28, 1975 (40 FR 39810), as amended on January 15, 1976 (41 FR 2287), and on January 29, 1976 (41 FR 4504), system USPS 030.005, Equal Employment Opportunity—Contract Employee Discrimination Complaints/Investigation. This document constitutes final notice of this deletion.

ROGER P. CRAIG,
Deputy General Counsel.

[FR Doc.76-22422 Filed 8-2-76;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-12656; File No. SR-Amex-76-17]

AMERICAN STOCK EXCHANGE, INC.

Self-Regulatory Organizations

In the matter of proposed rule change by American Stock Exchange, Inc.

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 July 20, 1976, American Stock Exchange, Inc. (the "Amex") filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The Amex proposes to amend its Constitution by deleting the following provisions:

ARTICLE V, SECTION 4(g)

Dealings on another exchange:

(g) Whenever it is adjudged in a proceeding under this Article that a member or member organization is connected, either through a partner or otherwise, with another exchange or similar organization in the City of New York which permits dealings in any securities dealt in on this Exchange, or deals directly or indirectly upon such other exchange or organization in securities listed or admitted to unlisted trading on this Exchange, such member or member organization may be suspended or expelled from membership.

ARTICLE XI, SECTION 2

Securities admitted by New York Stock Exchange:

Sec. 2. Whenever any security listed or admitted to unlisted trading upon this Exchange is admitted to dealings upon the New York Stock Exchange, dealings therein upon the Floor or this Exchange shall cease.

In addition, the Amex proposes to adopt a policy pursuant to which (a) a security admitted to trading on the Amex and which becomes registered and listed on another national securities exchange in New York City would continue to be traded on the Amex where the issuer thereof elects to retain its Amex listing, (b) the Amex will not oppose an application to the Commission by an issuer to withdraw its securities from listing and registration on the Amex where such issuer has made application to be registered and listed on another national securities exchange in New York City and such delisting from the Amex is to become effective simultaneously with the registration and listing on such other exchange, and (c) the Amex will not for the present apply for unlisted trading privileges in any security.

AMEX'S STATEMENT OF BASIS AND PURPOSE

The purpose of the proposed rule changes is to permit the Amex to continue the trading of securities listed on the Amex when such securities also become registered and listed on another exchange in New York City.

Pursuant to the proposed policy, an Amex listed company which becomes registered and listed on another exchange in New York City will have a choice as to whether its securities continue to be traded on the Amex. If it elects to retain its Amex listing, such trading will be continued. However, if it applies to the Commission to have its securities withdrawn from registration and listing on the Amex simultaneously with its registration and listing on such other exchange, the Amex will not interpose any opposition. The determination by the Amex not to apply for unlisted trading privileges in any security for the present is aimed at protecting its source of revenues from listing fees and to assure appropriate regulatory controls over issuers whose securities are traded on the Amex.

The proposed rule changes are designed to conform the rules of the Amex with the provisions of the Securities Exchange Act of 1934, as amended by the Securities Act Amendments of 1975, specifically Section 6(b)(8) thereof, which provides that the rules of an exchange may not "impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title."

No comments were solicited or received with respect to the proposed rules changes.

The Amex has determined that the proposed rule changes will not impose any burden on competition. To the contrary, the Amex believes that the proposed rule changes will enhance competition by permitting its members to continue making markets on the Amex in securities which become listed on another exchange in New York City.

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, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number referenced in the caption above and should be submitted within on or before September 2, 1976.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JULY 26, 1976.

[FR Doc.76-22412 Filed 8-2-76;8:45 am]

BOSTON STOCK EXCHANGE

Application for Unlisted Trading Privileges and of Opportunity for Hearing

JULY 27, 1976.

In the matter of Application of the Boston Stock Exchange for unlisted trading privileges in a certain security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the security of the company as set forth below, which security

is listed and registered on one or more other national securities exchanges:

Bankamerica Corporation, File No. 7-4847

Upon receipt of a request, on or before August 12, 1976 from any interested person, the Commission will determine whether the application with respect to the company named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no one requests a hearing with respect to the application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-22409 Filed 8-2-76;8:45 am]

[Release No. 19625; 70-5879]

GULF POWER CO.

Proposed Agreement With County for Construction of Pollution Control Equipment Financed by Sale of Revenue Bonds; Sale to Counties of Existing Pollution Control Facilities

JULY 23, 1976.

Notice is hereby given that Gulf Power Company ("Gulf"), 75 North Pace Boulevard, P.O. Box 1151, Pensacola, Florida 32520, an electric utility subsidiary company of The Southern Company, a registered holding company, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(a), 7, 9(a), and 12(d) of the Act and Rules 44(b)(3) and 50(a)(5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to said application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Gulf owns an electric generating plant located in Bay County, Florida ("County"). In order to comply with environmental control standards with respect to air and water quality, Gulf has and will undertake to construct certain facilities ("Project") at this plant solely for this purpose. The total cost of the Project is presently estimated not to exceed $15 million.

To finance the Project, Gulf proposes to enter into an Installment Sales Agreement ("Agreement") with the County which will provide for the acquisition, construction and equipping of the Project by the County, and the issuance by the County, pursuant to an indenture ("Indenture") to be entered into between the County and an indenture trustee ("Trustee"), of its pollution control revenue bonds ("Pollution Bonds"), in an amount not to exceed $15 million. The proceeds of the sale of Pollution Bonds will be deposited by the County with the Trustee and will be applied to the payment of the cost of construction (as defined in the Agreement) of the Project.

It is further proposed, and the Agreement provides, that the Project will be sold to Gulf, the purchase price to be paid in semi-annual installments over a term of years. The purchase price shall be in an amount sufficient to pay the principal and interest on the Pollution Bonds as such amounts become due and payable. Gulf may prepay the purchase price (a) in whole or in part, at Gulf's option, at any time on or after ten years from the date of issuance of the Pollution Bonds, subject to payment of a premium equal initially to 3 percent of the principal amount and declining thereafter by ½ of 1 percent per year, and (b) in whole, at Gulf's option in certain other specified instances, without premium. It is proposed that the Pollution Bonds will mature 30 years from the first day of the month in which they are initially issued and that the Pollution Bonds will be entitled to the benefit of serial maturities and/or a mandatory redemption sinking fund calculated to retire not less than 25 percent of the aggregate principal amount of the issue prior to maturity.

In order to obtain the benefit of a rating for the Pollution Bonds equivalent to the rating enjoyed by the first mortgage bonds outstanding under Gulf's bond indenture ("Mortgage"), Gulf proposes to obtain the authentication of a series of such first mortgage bonds ("Collateral Bonds") under the Mortgage, pursuant to a supplemental indenture ("Supplemental Mortgage") dated as of October 1, 1976. The Collateral Bonds, to be delivered in a principal amount equal to the principal amount of the Pollution Bonds, will be deposited with the Trustee as security for Gulf's obligations under the Agreement. The Collateral Bonds will have a stated interest rate equal to the interest rate per annum to be borne by the Pollution Bonds, will mature on the maturity date of such Pollution Bonds, and will be nontransferable. The Supplemental Mortgage will provide, however, that until the Trustee shall have demanded mandatory redemption of the Collateral Bonds, no interest in respect of the Collateral Bonds shall be payable; and that upon acceleration of Pollution Bonds then outstanding by the Trustee, he may demand the mandatory redemption of the Collateral Bonds at a price equal to the principal amount thereof plus accrued interest, if any, to the date fixed for redemption.

The Supplemental Mortgage will also provide that upon the optional redemption of the Pollution Bonds, in whole or in part, at any time after they have been outstanding for ten years, an equal principal amount of the Collateral Bonds will be redeemed at an initial premium of 3 percent declining by ½ percent every year.

The Indenture will provide that, upon deposit of funds with or direction to the Trustee by Gulf to apply available funds, or upon delivery of outstanding Pollution Bonds sufficient to pay or redeem all or any part of the Pollution Bonds, the Trustee will be obligated to deliver to Gulf Collateral Bonds in an aggregate principal amount equal to that amount of Pollution Bonds for the payment or redemption of which such funds have been deposited or applied or which shall have been so delivered.

It is stated that the Pollution Bonds are expected to be marketed pursuant to an arrangement between the County and a group of underwriters represented by an underwriter whose name will be supplied by amendment. In accordance with the laws of the State of Florida, the interest rate thereon will be fixed by the County, and the terms and sale of the Pollution Bonds must be satisfactory to Gulf, although Gulf will not be a party to the underwriting arrangement. Gulf further states that it is expected that the interest payable on the Pollution Bonds will be exempt, by ruling of the Internal Revenue Service, from federal income taxation. It is not possible to ascertain in advance precisely the interest rate which may be obtained in connection with the issuance of the Pollution Bonds, but Gulf is advised that tax-exempt bonds of like quality and tenor have historically carried an annual interest rate approximately one and one-half to two and one-half percent lower than comparable taxable long-term corporate bonds.

In order to comply with provisions of Florida law authorizing the County to issue its revenue bonds for the purposes heretofore described, Gulf will be obligated to convey to the County such existing pollution control facilities as are now owned by Gulf, subject to the Mortgage. The Agreements provide that Gulf will receive, out of the proceeds of the Pollution Bonds, an amount equal to Gulf's original cost for such existing facilities, which, upon conveyance to the County, will become a part of the Project which Gulf proposes to purchase as provided in the Agreement.

For financial and accounting reporting purposes, the indebtedness of Gulf under the Collateral Bonds will be capitalized. A statement of the fees, commissions and expenses paid or incurred, or to be paid or incurred, in connection with the proposed transaction will be supplied by amendment. It is stated that the Florida Public Service Commission has jurisdiction over the issuance of Gulf's Collateral Bonds and the assumption by Gulf of its obligations under the Agreement. No other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Gulf submits that the issuance and delivery of its Collateral Bonds to the County should be exempted from the competitive bidding requirements of Rule

50 by reason of clause (a)(5) thereof inasmuch as they are to be issued and delivered solely to secure Gulf's obligations to the County and no public offering by Gulf is to be made.

Notice is further given that any interested person may, not later than August 17 1976, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20 (a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-22410 Filed 8-2-76;8:45 am]

[Rel No. 9365; 812-3971]

NATIONAL MUNICIPAL TRUST, FIRST COMBINED INTERMEDIATE/DISCOUNT SERIES AND SUBSEQUENT AND SIMILAR SERIES

Application for Order Granting Exemption

JULY 23, 1976.

In the matter of National Municipal Trust, Special Trusts, First Combined Intermediate/Discount Series and Subsequent and Similar Series. c/o Thomson & McKinnon Auchincloss, Kohlmeyer Inc., One New York Plaza, New York, New York 10004.

Notice is hereby given that National Municipal Trust, Special Trusts, First Combined Intermediate/Discount Series and Subsequent and Similar Series ("Applicant"), a unit investment trust registered under the Investment Company Act of 1940 ("Act"), filed an application on June 22, 1976, pursuant to section 6(c) of the Act for exemption from the provisions of sections 14(a) and 22(d) of the Act and Rules 19b-1 and 22c-1 under the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations therein, which are summarized below.

Applicant is a registered unit investment trust, to be organized under the laws of the State of New York. It is presently intended that the United States Trust Company of New York will act as Trustee of Applicant ("Trustee") pursuant to a trust agreement ("Trust Agreement") between the Trustee and Thomson & McKinnon Auchincloss Kohlmeyer Inc. and Piper, Jaffray & Hopwood Incorporated as Sponsors, or with additional or succeeding Sponsors ("Sponsors"), and that Standard & Poor's Corporation will serve as Evaluator with respect to each Series of Applicant (all of which Series are hereinafter sometimes collectively referred to as the "Funds" or individually as a "Fund").

Pursuant to the Trust Agreement for each Series of Applicant, the Sponsors will deposit with the Trustee not less than $3,000,000 principal amount of tax-free municipal bonds ("Bonds"), which the Sponsors shal have accumulated for such purpose. The Bonds will be depsoited in one or more trusts (the "Trusts") created under the Trust Agreement, units of beneficial interests of which Trusts will be offered to the public pursuant to the prospectus. Simultaneously with such deposit the Sponsors will receive from the Trustee registered certificates representing not less than 3,000 Units allocated among the Trusts in propostion to the aggregate principal amount of Bonds in each, which wil represent the entire ownership of the Trusts and the Series.

Each Trust in each Fund will consist of Bonds, such bonds as may continue to be held from time to time in exchange or substitution for any of the Bonds upon certain refundings, accrued and undistributed interest and undistributed cash. Certain of the Bonds may from time to time be sold under the special circumstances set forth in the Trust Agreement or may be redeemed or may mature in accordance with their terms. The proceeds from such dispositions will be distributed to Unit holders and not reinvested. There is no provision in the Trust Agreement for the Fund or any of the Trusts created thereunder, and there will be no provision in the Trust Agreement for any future Series, for the sale and reinvestment of the Bonds, and such activity will not take place. Reference is made to the Trust Agreement and to the Prospectus for the Fund for a full explanation of the operation of the Fund.

Each Unit for a particular Trust of any Fund will represent a fractional undivided interest in that Trust of that Fund. Units will be redeemable. In the event that any Units shall be redeemed, the denominator of the fraction will be reduced and the fractional undivided interest represented by each Unit increased. Units will remain outstanding until redeemed or until the termination of the Trust Agreement. The Trust Agreement may be terminated with respect to any Trust by agreement of a specified percentage of the holders of Units of the Trust, or, in the event that the value of the Bonds in a Trust shall fall below a specified amount, either upon direction of the Sponsors to the Trustee or by the Trustee without such direction, respectively. There is no provision in the Trust Agreement for the Fund, and there will be no provision in the Trust Agreements for future Funds, for the issuance of any Units of any Trust after the initial offering of Units (except to the extent that the secondary trading by the Sponsors in the Units is deemed the issuance of Units under the Act) and such activity will not take place.

Following the deposit of Bonds for each Fund by the Sponsors with the Trustee, and following the declaration of effectiveness of that Fund's registration statement under the Securities Act of 1933 and clearance by the securities authorities of various States, the Sponsors will offer the Units of the Trusts comprising that Fund to the public at the public offering prices set forth in the prospectus. The public offering prices are based upon the aggregate offering side evaluation of the underlying Bonds in the Trust porfolio, plus a sales charge. The amount of the sales charge will vary from Trust to Trust.

Combined Units (composed of equal portions of Units from each Trust) will be offered during the initial offering period at a Combined Units Public Offering Price which is computed by adding to the sum of the per unit offering side evaluation of the Bonds in the portfolios of each Trust a sales charge which is slightly less than the average of the sales charges applicable to the Units of the Trusts if purchased separately. Combined Units will not be offered beyond the initial offering period.

It is the purpose of each Fund to provide a diversified investment. The Applicant alleges that the multiple trust concept is utilized to permit investors to select different maturities and portfolios and/or diversify among maturities and portfolios. In the opinion of counsel, none of the Trusts of the Funds will be associations taxable as corporations under the Internaal Revenue Code and to the extent that income of any Fund consists of interest excludable from gross income under the Internal Revenue Code such income is excludable from the gross income of the Unit holders when distributed to them.

All of the Bonds will be tax-free municipal Bonds. For the First Combined Intermediate/Discount Series, Applicant will purchase Bonds for the Discount Trust portion at prices which will result in the portfolio for the Discount Trust as a whole being purchased at a deep "market" discount. Applicant intends in the future to offer Units of a Series for sale to the public separately or, at reduced sales charges, on an underwritten basis in conjunction with shares of American Mutual Fund, Inc., a registered open-end management company. For these purposes, an application for exemption from the provisions of Section 22(d) of the Investment Company Act of 1940 was previously filed and an order granting the exemption was

issued on December 30, 1975 (IC Rel. No. 9105).

While the Sponsors are not obligated to do so, it is their present intention to maintain a secondary market for Units of the Applicant and continuously to offer to purchase such Units at prices in excess of the redemption prices as set forth in the Trust Agreement. In the absence of such a market, investors may be able to dispose of their Units only by redemption.

Section 14(a). Section 14(a) of the Act, in substance, provides that no registered investment company and no principal underwriter for such a company shall make a public offering of securities of which such company is the issuer unless (1) the company has a net worth of at least $100,000; (2) at the time of a previous public offering it had a net worth of $100,000; or (3) provision is made that a net worth of $100,000 will be obtained from not more than twenty-five responsible persons within ninety days, or the entire proceeds received, including sales charge, will be refunded.

Applicant asserts that section 14(a) of the Act is intended to limit the formation of undercapitalized investment companies. Applicant states that it is intended that each Series, at the date of deposit and before any unit is offered to the public, will have a net worth far in excess of $100,000, that the Sponsors intend to sell all Units to the public at offering prices disclosed in the prospectus for such Series, that it is intended that a secondary market for the Units be maintained, and that interest rates and other applicable information concerning the underlying Bonds will be disclosed in the prospectus.

The Sponsors have agreed to the requested exemption being subject to the condition that they will refund, on demand and without deduction, all sales charges paid by purchasers of Units in the initial public offering of a Series if, within 90 days from the time that the Registration Statement relating to such Series becomes effective, either (i) the net worth of such Series shall be reduced to less than $100,000, or (ii) such Fund shall have been terminated. The Sponsors have further agreed to instruct the Trustee on the date of deposit of each Series that in the event that redemption by the Sponsors of Units constituting a part of the unsold Units of a Trust of any Series shall result in that Trust having a net worth of less than $500,000, the Trustee shall terminate such Trust in the manner provided in the Trust Agreement and distribute any municipal bonds or other assets deposited with the Trustee in connection with such Trust pursuant to the Trust Agreement as provided therein.

Section 22(d). Section 22(d), in pertinent part, prohibits registered investment companies, underwriters and dealers from selling redeemable securities other than at a current public offering price described in the prospectus. Applicant seeks an exemption from the provisions of section 22(d) to the extent that the offering price for Combined Units of Units of the Trust of a Fund during the initial offering period as described above and in the prospectus may be in conflict with such section.

Applicant asserts that the reduction in net sales charge applicable to the purchaser of Combined Units results in a savings to such purchaser over the cost of such Units purchased separately, is fully disclosed and available to all purchasers of Units during the initial offering period, and represents sound business practice on the part of the Sponsors. Applicant represents that the granting of the aforesaid exemption is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Rule 19b–1. Rule 19b–1(b) provides, in part, that no registered investment company which is not a "regulated investment company" as defined in section 851 of the Internal Revenue Code shall make more than one distribution of long-term capital gains in any one taxable year of such investment company.

Applicant proposes to make monthly distributions of principal and interest to Unit holders of a Series. Distributions of principal constituting capital gains to Unit holders may arise in two instances: (1) if an issuing authority calls or redeems an issue held in the portfolio, the sums received by Applicant will be distributed to Unit holders on the next distribution date; and (2) if bonds are sold in order to provide funds necessary to meet redemptions.

Applicant states that the dangers against which Rule 19b–1 is intended to guard will not exist in connection with any Series of Applicant, because neither Applicant nor the Sponsors has control over the events which could trigger capital gains. Applicant seeks to make a combined distribution of principal, including capital gains, and interest each month, and states that any capital gains in such distribution will be clearly indicated as such in accompanying reports to Unit holders. In addition, it is alleged that the amounts involved in a normal distribution of principal will be relatively small in comparison to the normal interest distribution.

Paragraph (b) of Rule 19b–1 provides that a unit investment trust may distribute capital gain dividends received from a "regulated investment company" within a reasonable time after receipt. Applicant states that the purpose behind such provision is to avoid forcing unit investment trusts to accumulate valid distributions received throughout the year and distribute them only at year end. Applicant further alleges that its situation places it squarely within the purpose of such provision. In order to comply with the literal requirements of the Rule, however, Applicant would be forced to hold any monies which would constitute capital gains upon distribution until the end of its taxable year. Applicant contends that such a practice would cleary be to the detriment of the Unit holders.

Rule 22c–1. Rule 22c–1 provides, in part, that redeemable securities of registered investment companies may be sold, redeemed, or repurchased at a price based on the current net asset value (computed on each day during which the New York Stock Exchange is open for trading not less frequently than once daily as of the time of the close of trading on such Exchange) which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

Applicant states that the Rule has two purposes: (1) To eliminate or to reduce any dilution of the value of outstanding redeemable securities of registered investment companies which would occur through the redemption or repurchase of such securities at a price above their net asset value or the sale of such securities at a price based on a previously established net asset value which would permit a potential investor to take advantage of an upswing in the market and the accompanying increase in the net asset value of the securities; and (2) to minimize speculative trading practices in the securities of registered investment companies.

Applicant represents that the Sponsors, while not obligated to do so, intend to maintain a market for the Units and continuously to offer to purchase Units at prices in excess of redemption prices. For purposes of the secondary market transactions, an evaluation will only be made once each week.

Applicant asserts that the sale and repurchase of Units of the Applicant in the secondary market cannot dilute the value of outstanding securities. Such sales and repurchases will be made only by the Sponsors and not the Trustee and in no way involve the assets of any Fund. Applicant also asserts that, because of the nature of the bonds in the portfolios, price changes are limited. Thus, the movement in the municipal bond market is not sufficient to make speculation in an interest in a group of bonds ordinarily profitable.

Applicant claims that public Unit holders benefit from the Sponsors' pricing procedure in the secondary market, because they receive a normally higher repurchase price for their units without the cost burden of daily evaluations of the Unit redemption value. Moreover, the application states that the Sponsors have undertaken to adopt a procedure whereby the Evaluator, without a formal evaluation, will provide the Sponsors with estimated evaluations on trading days.

Section 6(c) of the Act provides, in part, that the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provisions of the Act or of any rule or regulation under the Act, if and to the extent such ex-

emption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than August 17, 1976, at 5:30 p.m., submit to the Commission in writing a request for hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-22411 Filed 8-2-76;8:45 am]

[Release No. 34-12655; File No. SR-PSE-76-25]

PACIFIC STOCK EXCHANGE INC.

Self-Regulatory Organizations

In the matter of proposed rule change by Pacific Stock Exchange Incorporated.

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 July 21, 1976, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

A. STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

Pacific Stock Exchange Incorporated ("PSE") hereby requests to amend Section 4 of Rule XIII of the Rules of its Board of Governors by adding the word "dually" to subparagraph (xii) as follows:

(xii) Any purchase or sale of a dually listed security by a member or member organization with a professional non-member customer (i.e., broker-dealer in securities or commodities, insurance company, investment company, investment advisor, investment manager, bank, trust company, foundation, professional trustee, or one engaged in any closely allied activity) provided the member or member organization is a market maker in the security involved;

B. STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the proposed rule change is to clarify that the exemption to PSE's off-board trading rule contained in subpargaraph (xii) of section 4 of Rule XIII applies only to dually listed securities. This language is a carry-over from PSE's prior Rule XIII, but the word "dually" was inadvertently omitted at the time PSE revised the Rule to comply with Rule 19c-1 of the Commission.

The proposed rule change is consistent with Securities and Exchange Commission Rule 19c-1.

Comments have not been solicited from members on the proposed rule change.

Any burden which the proposed rule change will impose on competition would be minimal and is consistent with the provisions of Commission Rule 19c-1.

* * * * *

Within thirty-five (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 ninety (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 in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection 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 on or before September 2, 1976 after the date of this publication. For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JULY 26, 1976.

[FR Doc.76-22413 Filed 8-2-76;8:45 am]

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

NEW FORMAT FOR FEDERAL EQUAL EMPLOYMENT OPPORTUNITY BID CONDITIONS FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

Contracts and Subcontracts in Selected Areas

On April 3, 1975, there was published in the FEDERAL REGISTER (40 FR 14953) a notice and opportunity for comment concerning the intention of the Department of Labor to adopt New Model Federal EEO Bid Conditions for inclusion in Federal and federally assisted construction contracts and subcontracts in selected areas.

The following Model Federal EEO Bid Conditions are issued to carry out the purposes of Executive Order 11246, as amended. The Model Federal EEO Bid Conditions reflect changes which were made as a result of comments received on the proposed Model Federal EEO Bid Conditions. The comments received were equally distributed between those favorable and unfavorable. In general those favorable felt that deletion of the Bidder's Certification will eliminate undue and costly delays resulting from contractors and subcontractors being declared nonresponsive because of their failure to fill in a form correctly. Those opposed to the elimination of the Bidders' Certification felt that a pre-award certification is essential in establishing the contractors' and subcontractors' commitment to affirmative action.

The Department has carefully considered all the comments and has determined that the format developed in the new Model Federal EEO Bid Conditions adequately apprises prospective contractors and subcontractors, prior to bid opening, of the importance of the Federal affirmative action requirements and is compatible with procurement principles. Under Comptroller General opinions and the decisions in Northeast Construction Company v. Romney, 485 F. 2d 752 (D.C. Cir. 1973) and Rossetti Contracting Co. v. Brennan, 508 F. 2d 1039 (7th Cir. 1975), the failure of a bidder to specify its goals for minority employment as required by imposed plans or the failure of a bidder to complete and submit a Bidders' Certification form as required by the Bid Conditions in hometown plan areas requires the contracting agency to declare the bid nonresponsive. This has caused the loss of hundreds of thousands of dollars because defective low bids were discarded in favor of the new low bid.

The original reason for requiring the submission of a properly executed Bidder's Certification was that it was thought to be helpful in informing contractors of their obligations and eliminated inattentive bidders. However it is now an opinion that contractors are reasonably aware of their EEO obligations so as to obviate the need for the

certification. Therefore, the amendment of the Bid Conditions would eliminate the signature and fill-in-the-blank requirements. Instead, the Federal EEO Bid Conditions clearly notify prospective bidders that they will be committed to the goals contained therein by submitting a properly signed bid. This amendment does not diminish the government's enforcement ability or applicable EEO requirements yet permits contracting agencies to award contracts to the lowest responsive and responsible bidder.

It is for this reason that the new Model Federal EEO Bid Conditions make the affirmative action requirements binding on all bidders who submit signed bids.

Accordingly, effective September 1, 1976, all contracting and administering agencies are directed to adopt the new Model Federal EEO Bid Conditions for inclusion in all future invitations for bids on all non-exempt Federal and federally assisted construction contracts and subcontracts awarded in areas covered by hometown plans (Part I) and Part II EEO requirements. Further, all other forms of Federal EEO bid conditions containing hometown plans and Part II EEO bid condition requirements now in use for such areas are not to be included in Invitations for Bid after adoption of the new Model Federal EEO Bid Conditions.

This new format has been coordinated through the Office of Federal Procurement Policy of the Office of Management and Budget in accordance with Pub. L. 93-400, the Office of Federal Procurement Policy Act.

Set forth below are the new Model Federal EEO Bid Conditions:

BID CONDITIONS; AFFIRMATIVE ACTION REQUIREMENTS; EQUAL EMPLOYMENT OPPORTUNITY

For all Non-Exempt Federal and Federally-Assisted Construction Contracts to be Awarded in [ ].

NOTICE

EACH BIDDER, CONTRACTOR OR SUBCONTRACTOR (HEREINAFTER THE CONTRACTOR) MUST FULLY COMPLY WITH EITHER PART I OR PART II, AS APPLICABLE, OF THESE BID CONDITIONS AS TO EACH CONSTRUCTION TRADE IT INTENDS TO USE ON THIS CONSRUCTION CONTRACT AND ALL OTHER CONSTRUCTION WORK (BOTH FEDERAL AND NON-FEDERAL IN THE [ ] AREA DURING THE PERFORMANCE OF THIS CONTRACT OR SUBCONTRACT. THE CONTRACTOR COMMITS ITSELF TO THE GOALS FOR MINORITY MANPOWER UTILIZATION IN EITHER PART I OR PART II, AS APPLICABLE, AND ALL OTHER REQUIREMENTS, TERMS AND CONDITIONS OF THESE BID CONDITIONS BY SUBMITTING A PROPERLY SIGNED BID.

THE CONTRACTOR SHALL APPOINT A COMPANY EXECUTIVE TO ASSUME THE RESPONSIBILITY FOR THE IMPLEMENTATION OF THE REQUIREMENTS, TERMS AND CONDITIONS OF THESE BID CONDITIONS.

Part I: The provisions of this Part I apply to contractors which are party to collective bargaining agreements with labor organizations which together have agreed to the [ ] Area Construction Program (hereinafter the [ ] Plan) for equal opportunity and have jointly made a commitment to specific goals of minority and, where applicable, female utilization. The [ ] Plan is a tripartite voluntary agreement between [ ]. The [ ] Plan, together with all implementing agreements that have been and may hereafter be developed pursuant thereto, are incorporated herein by reference.

Any contractor using one or more trades of construction employees must comply with either Part I or Part II of these Bid Conditions as to each such trade. A contractor may therefore be in compliance with Part I of these Bid Conditions by its participation with the labor organization which represent its employees in the [ ] Plan as to one trade provided there is set forth in the [ ] Plan a specific commitment by both the contractor and the labor organization to a goal of minority utilization for that trade. Contractors using trades which are not covered by Part I (See Part II, Section A) must comply with the commitments contained in Part II including goals for minorities and female utilization set forth in Part II.

If a contractor does not comply with the requirements of these Bid Conditions, it shall be subject to the provisions of Part II.

Part II: A. Coverage. The provisions of this Part II shall be applicable to those contractors who:

1. Are not or hereafter cease to be signatories to the [ ] Plan incorporated by reference in Part I hereof;

2. Are signatories to the [ ] Plan but are not parties to collective bargaining agreements;

3. Are signatories to the [ ] Plan but are parties to collective bargaining agreements with labor organizations which are not or hereafter cease to be signatories to the [ ] Plan;

4. Are signatories to the [ ] Plan and are parties to collective bargaining agreements with labor organizations but the two have not jointly executed a specific commitment to goals for minority utilization and incorporated the commitment in the [ ] Plan; or

5. Are participating in an affirmative action plan which is no longer acceptable to the Director, OFCCP, including the [ ] Plan.

6. Are signatories to the [ ] Plan but are parties to collective bargaining agreements with labor organizations which together have failed to make a good faith effort to comply with their obligations under the [ ] Plan and, as a result, have been placed under Part II of the Bid Conditions by the Office of Federal Contract Compliance Programs.

B. *Requirement—An Affirmative Action Plan.* Contractors described in paragraphs 1 through 6 above shall be subject to the provisions and requirements of Part II of these Bid Conditions including the goals and timetables for minority[1] utilization, and specific affirmative action steps set forth in Sections B.1 and 2 of this Part II. The contractor's commitment to the goals for minority utilization as required by this Part II constitutes a commitment that it will make every good faith effort to meet such goals.

1. *Goals and Timetables.* The goals of minority utilization required of the contrator are applicable to each trade used by the contractor in the [ ] Plan area and which is not otherwise bound by the provisions of Part I.

For all such trades the following goals and timetables shall be applicable.

Until [ ]	[ ]
From [ ] to [ ]	[ ]
From [ ] to [ ]	[ ]
From [ ] to [ ]	[ ]
From [ ] to [ ]	[ ]*

* In the event that any work which is subject to these Bid Conditions is performed in a year later than the latest year for which goals of minority utilization have been established, the goals for the last year of the Bid Conditions will be applicable to such work.

The goals of minority and female utilization above are expressed in terms of hours of training and employment as a proportion of the total number of hours to be worked by the contractor's aggregate work force, which includes all supervisory personnel, in each trade on all projects (both Federal and non-Federal) in the [ ] Plan area during the performance of its contract (i.e., the period beginning with the first day of work on the Federal or federally assisted construction contract and ending with the last day of work.)

The hours of minority employment and training must be substantially uniform throughout the length of the contract in each trade and minorities must be employed evenly on each of a contractor's projects. Therefore, the transfer of minority employees or trainees from contractor to contractor or from project-to-project for the purpose of meeting the contractor's goals shall be a violation of Part II of these Bid Conditions.

If the contractor counts the nonworking hours of trainees and apprentices in meeting the contractor's goals, such trainees and apprentices must be employed by the contractor during the training period; the contractor must have made a commitment to employ the trainees and apprentices at the comple-

[1] "Minority" is defined as including Blacks, Spanish Surnamed Americans, Orientals and American Indians, and includes both minority men and minority women.

tion of their training subject to the availability of employment opportunities; and the trainees must be trained pursuant to training programs approved by the Bureau of Apprenticeship and Training for "Federal Purposes" or approved as supplementing the ( ) Plan.

2. *Specific Affirmative Action Steps.* No contractor shall be found to be in noncompliance with Executive Order 11246, as amended, solely on account of its failure to meet its goals, but shall be given an opportunity to demonstrate that the contractor has instituted all the specific affirmaive action steps specified in this Part II and has made every good faith effort to make these steps work toward the attainment of its goals within the timetables, all to the purpose of expanding minority utilization in its aggregate work force in the ( ) Plan area. A contractor subject to Part I which fails to comply with its obligations under the Equal Opportunity clause of its contract (including failure to meet its fair share obligation if provided in the ( ) Plan) or subject to Part II which fails to achieve its commitments to the goals for minority utilization has the burden of proving that it has engaged in an affirmative action program directed at increasing minority utilization and that such efforts were at least as extensive and as specific as the following:

a. The contractor should have notified minority organizations when employment opportunities were available and should have maintained records of the organizations' response.

b. The contractor should have maintained a file of the names and addresses of each minority referred to it by any individual or organization and what action was taken with respect to each such referred individual, and if the individual was not employed by the contractor, the reasons therefor. If such individual was sent to the union hiring hall for referral and not referred back by the union or if referred, not employed by the contractor, the file should have documented this and the reasons therefor.

c. The contractor should have promptly notified the contracting or administering agency and the Office of Federal Contract Compliance Programs when the union or unions with which the contractor has collective bargaining agreements did not refer to the contractor a minority sent by the contractor, or when the contractor had other information that the union referral process has impeded efforts to meet its goals.

d. The contractor should have disseminated its EEO policy within its organization by including it in any employee handbook or policy manual; by publiciizng it in company newspapers and annual reports, and by advertising such policy at reasonable intervals in union publications. The EEO policy should be further disseminated by conducting staff meetings to explain and discuss the policy; by posting of the policy; and by review of the policy with minority employees.

e. The contractor should have disseminated its EEO policy externally by informing and discussing it with all recruitment sources; by advertising in news media, specifically including minority news media; and by notifying and discussing it with all subcontractors.

f. The contractor should have made both specific and reasonably recurrent written and oral recruitment efforts. Such efforts should have been directed at minority, organizations, schools with substantial minority enrollment, and minority recruitment and training organizations within the contractor's recruitment area.

g. The contractor should have evidence available for inspection that all tests and other selection techniques used to select from among candidates for hire, transfer, promotion, training or retention are being used in a manner that does not violate the OFCCP Testing Guidelines in 41 CFR Part 60–3.

h. The contractor where reasonable should have developed on-the-job training opportunities and participated and assisted in all Department of Labor funded and/or approved training programs relevant to the contractor's employee needs consistent with its obligations under this Part II.

i. The contractor should have made sure that seniority practices and job classifications do not have a discriminatory effect.

j. The contractor should have made certain that all facilities were not segregated by race.

k. The contractor should have continually monitored all personnel activities to ensure that its EEO policy was being carried out including the evaluation of minority employees for promotional opportunities on a quarterly basis and the encouragement of such employees to seek those opportunities.

l. The contractor should have solicited bids for subcontracts from available minority subcontracts engaged in the trades covered by these Bid Conditions, including circulation of minority contractor associations.

NOTE—The Assistant Regional Administrator of the Office of Federal Contract Compliance Programs and the compliance agency staff will provide technical assistance on questions pertaining to minority recruitment sources, minority community organizations and minority news media upon receipt of a request for assistance from a contractor.

3. *Subsequent Signatory to the [ ] Plan.* Contractors that are subject to the requirements of Part II at the time of the submission of their bids which, together with labor organizations with which they have collective bargaining agreements, subsequently become signatory to the [ ] Plan, either individually or through an association, will be deemed bound to their commitments to the [ ] Plan from that time until and unless they once again become subject to the requirements of Part II pursuant to Section A.1–6.

4. *Non-discrimination.* In no event may a contractor utilize the goals and affirmative action steps required by this Part II in such a manner as to cause or result in discrimination against any person on account of race, color, religion, sex or national origin.

Part III: *Compliance and Enforcement.* In all cases, the compliance of a contractor will be determined in accordance with its obligations under the terms of these Bid Conditions. Therefore, contractors who are governed by the provisions of either Part I or Part II shall be subject to the requirements of that Part regardless of the obligations of its prime contractor or lower tier subcontractors.

All contractors performing or to perform work on projects subject to these Bid Conditions hereby agree to inform their subcontractors in writing of their respective obligations under the terms and requirements of these Bid Conditions, including the provisions relating to goals of minority employment and training.

A. *Contractors Subject to Part I.* 1. A contractor covered by Part I of these Bid Conditions shall be in compliance with Executive Order 11246, as amended, the implementing regulations and its obligations under Part I, provided the contractor together with the labor organization or organizations with which it has a collective bargaining agreement meet the goals for minority utilization to which they committed themselves in the [ ] Plan, or can demonstrate that every good faith effort has been made to meet the goal. In that event, no formal sanctions or proceedings leading toward sanctions shall be instituted unless the Office of Federal Contract Compliance Programs determines that the contractor has violated a substantial requirement in the [ ] Plan or Executive Order 11246, as amended, and its implementing regulations, including the failure of such contractor to make a good faith effort to meet its fair share obligation if provided in the [ ] Plan or has engaged in unlawful discrimination. Such violations shall be deemed to be noncompliance with the Equal Opportunity clause of the contract, and shall be grounds for imposition of the sanctions and penalties provided for in Executive Order 11246, as amended.

2. The OFCCP shall review Part I contractors' employment practices during the performance of the contract. Further, OFCCP shall be solely responsible for any final determination that the [ ] Plan is no longer an acceptable affirmative action program and the consequences thereof. The OFCCP may, upon review and notice to the contractor and any affected labor organization, determine that the [ ] Plan no longer represents effective affirmative action. In the event it shall be solely responsible for any final determination of that question and the consequences thereof.

3. Where OFCCP finds that a contractor has failed to comply with the requirements of the [ ] Plan and its obligation under Part I of these Bid Conditions, it shall take such action and/or impose such sanctions as may be appropriate under the Executive Order and its regulations. When the OFCCP proceeds with such formal action it has the burden of proving that the contractor has not met the requirements of these Bid Conditions. The failure of the contractor to comply with its obligations under the Equal Opportunity clause shall shift to it the requirement to come forward with evidence to show that it has met the good faith requirements of these Bid Conditions by instituting at least the specific affirmative action steps listed in Part II, Section 2. The contractor must also provide evidence of its steps toward the attainment of its trade's goals within the timetables set forth in the [ ] Plan. The pendency of such formal proceedings shall be taken into consideration by Federal agencies in determining whether such contractor can comply with the requirements of Executive Order 11246, as amended, and is therefore a "responsible prospective contractor" within the meaning of basic principles of Federal procurement law.

B. *Contractors Subject to Part II.* In regard to Part II of these Bid Conditions, if the contractor meets the goals set forth therein or can demonstrate that it has made every good faith effort to meet these goals, the contractor shall be presumed to be in compliance with Executive Order 11246, as amended, the implementing regulations and its obligations under Part II of these Bid Conditions. In that event, no formal sanctions or proceedings leading toward sanctions shall be instituted unless the contracting or administering agency otherwise determines that the contractor is violating the Equal Opportunity clause.

Where the agency finds that the contractor failed to comply with the requirements of Executive Order 11246, as amended, the implementing requlations and the obligations under Part II of these Bid Conditions, the agency shall take such action and impose such sanctions, which include suspension, termination, cancellation, and debarment, as may be appropriate under the Executive Order and its regulations. When the agency proceeds with such formal action it has the burden of proving that the contractor has not met the goals contained in Part II of these Bid Conditions. The contractor's failure to meet its goals shall shift to it the requirement to come forward with evidence to show that it has met the good faith requirements of these Bid Conditions by instituting at least the specific affirmative action steps listed in Part II, Section 2. The pendency of such proceedings shall be taken into consideration by Federal agencies in determining whether such contractor can comply with the requirements of Executive Order 11246, as amended, and is therefore, a "responsible prospective contractor" within the meaning of the basic principles of Federal procurement law.

C. *Obligations Applicable to Contractors Subject to Either Part I or Part II.* It shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees. Discrimination in referral for employment, even if pursuant to provisions of a collective bargaining agreement, is prohibited by the National Labor Relations Act, as amended, and Title VII of the Civil Rights Act of 1964, as amended. It is the policy of the Office of Federal Contract Compliance Programs that contractors have a responsibility to provide equal employment opportunity if they wish to participate in federally involved contracts. To the extent they have delegated the responsibility for some of their employment practices to a labor organization and, as a result, are prevented from meeting their obligations pursuant to Executive Order 11246, as amended, such contractors cannot be considered to be in compliance with Executive Order 11246, as amended, its implementing rules and regulations.

Part IV: *General Requirements.* 1. Contractors are responsible for informing their subcontractors in writing regardless of tier, as to their respective obligations under Parts I and II hereof, as applicable. Whenever a contractor subcontracts a portion of the work in any trade covered by these Bid Conditions, it shall include these Bid Conditions in such subcontracts and each subcontractor shall be bound by these Bid Conditions to the full extent as if it were the prime contractor. The contractor shall not, however, be held accountable for the failure of its subcontractors to fulfill their obligations under these Bid Conditions. However, the prime contractor shall give notice to the Assistant Regional Administrator of the Office of Federal Contract Compliance Programs of the Department of Labor and to the contracting or administering agency of any refusal or failure of any subcontractor to fulfill its obligations under these Bid Conditions. A subcontractor's failure to comply will be treated in the same manner as such failure by a prime contractor.

2. Contractors hereby agree to refrain from entering into any contract or contract modification subject to Executive Order 11246, as amended, with a contractor debarred from, or who is determined not to be a "responsible" bidder for Government contracts and federally-assisted construction contracts pursuant to the Executive Order.

3. The Contractor shall carry out such sanctions and penalties for violation of these Bid Conditions and the Equal Opportunity clause including suspension, termination and cancellation of existing subcontracts and debarment from future contracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations by the contracting or administering agency and the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall also be deemed to be in noncompliance with these Bid Conditions and Executive Order 11246, as amended.

4. Nothing herein is intended to relieve any contractor during the term of its contract from compliance with Executive Order 11246, as amended, and the Equal Opportunity clause of its contract with respect to matters not covered in the [ ] Plan or in Part II of these Bid Conditions.

5. The procedures set forth in these Bid Conditions shall not apply to any contract which the head of the contracting or administering agency determines is essential to the national security and its award without following such procedures is necessary to the national security. Upon making such a determination, the agency head will notify, in writing, the Director of the Office of Federal Contract Compliance Programs within thirty days.

6. Requests for exemptions from these Bid Conditions must be made in writing, with justification, to the Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, Washington, D.C. 20210, and shall be forwarded through and with the endorsement of the head of the contracting or administering agency.

7. Contractors must keep such records and file such reports relating to the provisions of these Bid Conditions as shall be required by the contracting or administering agency or the Office of Federal Contract Compliance Programs.

For the information of bidders, a copy of the [ ] Plan may be obtained from the contracting officer.

A list of trades which are currently participating in the [ ] Plan may be obtained from OFCCP, or the contracting or administering agency.

Signed this 28th day of July, 1976.

W. J. USERY, Jr.,
Secretary of Labor.

JOHN C. READ,
Assistant Secretary for Employment Standards.

LAWRENCE LORBER,
Director, Office of Federal Contract Compliance Programs.

[FR Doc.76-22369 Filed 8-2-76;8:45 am]

DEPARTMENT OF LABOR

Office of the Secretary

[TA-W-988]

APECO CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On July 16, 1976 the Department of Labor received a petition dated July 12, 1976 which was filed under section 221 (a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of APECO Corporation, Evanston, Illinois (TA-W-988). Accordingly, the Director, Office of Trade Adjustment

Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with photocopying machines produced by APECO Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 13, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 13, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 3rd Street and Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 16th day of July 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-22445 Filed 8-2-76;8:45 am]

[TA-W-866]

BRAINARD RIVET CO.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents results of TA-W-866; investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on April 30, 1976 in response to a worker petition received on that date which was filed by the United Steelworkers of America on behalf of workers and former workers producing cold-headed solid fasteners at the Brainard Rivet Company, Girard, Ohio, a subsidiary of Textron, Inc., Providence, Rhode Island.

The notice of investigation was published in the FEDERAL REGISTER on May 21, 1976 (41 FR 20969). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Brainard Rivet Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that although the first two criteria have been met, the third and fourth criteria have not been met.

Significant total or partial separations. Employment of production workers of the Brainard Rivet Company declined 28 percent from 1974 to 1975 and decreased 6 percent in the first quarter of 1976 compared to the first quarter of 1975.

Sales or production, or both, have decreased absolutely. Production by the Brainard Rivet Company decreased in quantity by 33 percent in 1975 compared to 1974. Production increased 13 percent in the first quarter of 1976 compared to the first quarter of 1975. Sales by the company also decreased from 1974 to 1975 and increased in the first quarter of 1976 compared to the same period in 1975.

Production of standard and specialty rivets comprises approximately 83 percent of total production at the Brainard Company. The remainder of production consists of standard and specialty clevis pins, screws, and miscellaneous specialty fasteners.

Increased imports. Imports of rivets declined in value absolutely and relative to U.S. production from 1974 to 1975. Imports of rivets fell from $4.1 million in 1974 to $2.7 million in 1975. Throughout the entire 1971–1975 period the value of imported rivets at no time amounted to more than 3.3 percent of the value of domestic production of rivets.

Contributed importantly. Customers who reduced purchases from the Brainard Rivet Company in 1975 did not increase purchases of imported fasteners. The customers attributed the reduction in their purchases to unfavorable economic conditions.

Product areas such as the automotive industry were affected to a great extent by poor economic conditions. This resulted in reduced demand for Brainard's products as component parts for their finished goods.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with cold-headed solid fasteners produced at the Brainard Rivet Company did not contribute importantly to the total or partial separation of the workers of that firm.

Signed at Washington, D.C. this 23rd day of July 1976.

JAMES F. TAYLOR,
Director, Planning and Evaluation Staff.

[FR Doc.76-22446 Filed 8-2-76;8:45 am]

[TA-W-791]

C. F. HATHAWAY COMPANY, INC.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-791: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on April 9, 1976 in response to a worker petition received on April 9, 1976 which was filed by the Amalgamated Clothing Workers of America on behalf of workers and former workers engaged in the production of men's dress shirts at the C. F. Hathaway Company, Incorporated, Lowell, Massachusetts.

The notice of investigation was published in the FEDERAL REGISTER on April 23, 1976 (41 FR 17029). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the C. F. Hathaway Company, its customers, the Amalgamated Clothing Workers of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially sepa-

rated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all four of the above critreia have been met.

Significant total or partial separations. Employment of production workers declined 67.7 percent in 1975 compared to 1974 and declined 40.3 percent in the first six months of 1975 compared to the like period in 1974. The plant closed in August 1975.

Sales or production, or both, have decreased absolutely. Company sales declined 10.8 percent in 1974 compared to 1973 and declined 54.7 percent in the first six months of 1975 compared to the like period of 1974.

Increased imports. Imports of men's knit and woven dress, business and sport shirts increased absolutely from 90,516,000 units in 1974 to 97,004,000 units in 1975.

Contributed importantly. The evidence developed during the Department's investigation reveals that imports of men's shirts have increased in recent years. Only a small portion of Hathaway's customers have increased purchases of imported dress shirts in recent years. However, a majority of Hathaway's customers have stated that due to a shift in consumer preferences, they have increased their purchases of imported sport shirts and have reduced their purchases of dress shirts from Hathaway. A sport shirt is competitive with a dress shirt in that their construction is basically identical and the materials used in the construction of the respective styles are identical.

Conclusion. After careful review of facts obtained in the investigation I conclude that imports like or directly competitive with men's dress shirts have contributed importantly to the total or partial separation of workers at the C. F. Hathaway Company, Inc., Lowell, Massachusetts. In accordance with the provisions of the Act, I make the following certification.

All employees at the C. F. Hathaway Company, Inc., Lowell, Massachusetts, who have become totally or partially separated from employment on or after April 1, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 23rd day of July 1976.

JAMES F. TAYLOR,
Director, Planning and Evaluation Staff.

[FR Doc.76-22447 Filed 8-2-76;8:45 am]

[TA-W-674]

CHICO SPORTSWEAR INC.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade of 1974 the Department of Labor herein presents the results of TA-W-674: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on March 19, 1976 in response to a worker petition received on March 19, 1976 which was filed by the Amalgamated Clothing Workers Union on behalf of workers and former workers producing men's outerwear at Chico Sportswear Inc., Elizabeth, New Jersey.

The notice of investigation was published in the FEDERAL REGISTER on April 2, 1976 (41 FR 14229). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Chico Sportswear Inc. its customers, the U.S. International Trade Commission, the U.S. Department of Commerce, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all the above criteria have been met.

Significant total or partial separations. The average number of production workers declined 6.2 percent in 1974 compared to 1973, and 27 percent in 1975 compared to 1974. From the fourth quarter of 1974 through the first quarter of 1976, employment fell compared to the same quarter of the previous year. Average weekly hours for production workers fell .9 percent from 1973 to 1974 and 16 percent from 1974 to 1975. Hours worked fell 32.7 percent in the first quarter of 1976 from the first quarter of 1975.

Sales or production, or both, have decreased absolutely. Sales of leisure jackets declined 7.0 percent in 1974 compared to 1973. In the first three quarters of 1975, sales fell 65.6 percent from the same period in 1974. Chico ceased production of leisure jackets in the third quarter of 1975. Chico commenced production of men's outercoats and jackets in the second quarter of 1975. Sales of men's outercoats and jackets declined 10.2 percent from the third quarter of 1975 to the fourth quarter of 1975, and 93.2 percent from the fourth quarter of 1975 to the first quarter of 1976.

Since production is based on orders received, production is equivalent to sales.

Increased imports. Imports of men's and boys' tailored dress coats and sportcoats increased both absolutely and relatively in each year from 1971 to 1973. Imports increased relatively from 1973 to 1974 and then increased absolutely and relatively from 1974 to 1975. The ratio of imports to domestic production and consumption increased from 21.2 percent and 17.5 percent, respectively, in 1974 to 28.2 percent and 22.0 percent, respectively, in 1975.

Imports of men's and boys' outercoats and jackets increased absolutely and relative to domestic production from 1971 to 1973. Imports decreased absolutely and relatively from 1973 to 1974 and then increased relatively from 1974 to 1975. The ratio of imports to domestic production and consumption increased from 29.8 percent and 22.9 percent, respectively, in 1974 to 30.6 percent and 23.4 percent, respectively, in 1975.

Contributed importantly. The Department's investigation indicated that retail customers of the manufacturers for whom Chico did contract work decreased purchases of domestically produced men's leisure jackets and outerwear and increased purchases of lower priced imports.

Additionally, an OTAA survey of the retail clothing industry showed that imports of leisure jackets, and men's and boys' overcoats increased 1011.7 percent and 183.7 percent, respectively, in the first six months of 1975 compared to the first six months of 1974. The ratio of imports to domestic production of leisure jackets increased from 4.0 percent in the first six months of 1974, to 21.1 percent in the first six months of 1975. The ratio of imports to domestic production of men's and boys' overcoats decreased from 17.0 percent in the first six months of 1974, to 16.5 percent in the first six months of 1975.

Conclusion. After careful review of the facts obtained in the investigation I conclude that increases of imports like or directly competitive with men's leisure jackets and outerwear produced at the Elizabeth, New Jersey plant of Chico Sportswear contributed importantly to the total or partial separations of the workers at that plant. In accordance with the provisions of the Trade Act of 1974, I make the following certification:

All workers engaged in employment related to the production of men's leisure jackets and outerwear at the Elizabeth, New Jersey plant of Chico Sportswear Incorporated who became totally or partially separated from employment on or after February 17, 1975 be certified as eligible to apply

for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 21st day of July 1976.

JAMES D. HOOVER,
Acting Executive Assistant to the Deputy Under Secretary.

[FR Doc.76-22448 Filed 8-2-76;8:45 am]

[TA-W-899]

ENFLO CORP.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-899: investigation regarding certification of eligibility to apply for adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 27, 1976 in response to a worker petition received on that date which was filed by the Teamsters Union Local 115 on behalf of former workers producing TFE basic shapes at Enflo Corporation, Maple Shade, New Jersey.

The notice of investigation was published in the FEDERAL REGISTER on June 18, 1976 (41 FR 24799). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Enflo Corporation, the Department of Commerce, the International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion (3) has not been met.

Although TFE basic shapes are not separately identified in the Tariff Schedules of the United States Annotated, they are included in the data that have been compiled for the basket category of plastic and rubber basic (profile) shapes. The value of the imports of plastic and rubber basic (profile) shapes increased from 1971 through 1974 and declined 25 percent from 1974 to 1975. The ratio of imports to domestic production for plastic and rubber basic (profile) shapes declined from 4.6 percent in 1974 to 4.2 percent in 1975.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that articles like or directly competitive with those produced by the Enflo Corporation plant located in Maple Shade, New Jersey are not being imported in increased quantities, either actual or relative to domestic production, and therefore workers at that plant are not eligible to apply for adjustment assistance under the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of July 1976.

HERBERT N. BLACKMAN,
Associate Deputy Under Secretary for International Affairs.

[FR Doc.76-22449 Filed 8-2-76;8:45 am]

[TA-W-896]

ENGELHARD MINERAL AND CHEMICALS CORP.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-896; investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 27, 1976 in response to a worker petition received on May 27, 1976 which was filed on behalf of workers formerly producing precious metal contacts at the H.A. Wilson Department of the Engelhard Industries Division of Engelhard Mineral and Chemicals Corporation, Union, New Jersey.

The notice of investigation was published in the FEDERAL REGISTER on June 18, 1976 (41 FR 24799). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Engelhard Industries Division of Engelhard Mineral and Chemicals Corporation, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities; either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion (3) has not been met. The evidence developed in the Department's investigation revealed that importation of electrical contacts is negligible. The H. A. Wilson Department of the Engelhard Industries Division of the Engelhard Mineral and Chemical Corporation in Union, New Jersey was closed in November 1975. H. A. Wilson's parent company, Engelhard Industries Division, produces metal contacts outside the United States. The Department's investigation found that none of the foreign produced metal contacts are imported into the United States.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that articles like or directly competitive with precious metal contacts produced at Engelhard Mineral and Chemical Corporation, Engelhard Industries Division, H. A. Wilson Department are not being imported in increased quantities, either actual or relative to domestic production, as required in section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 21st day of July 1976.

JAMES D. HOOVER,
Acting Executive Assistant to the Deputy Under Secretary.

[FR Doc.76-22450 Filed 8-2-76;8:45 am]

[TA-W-703]

FOREST HILLS SPORTSWEAR

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-703: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on March 19, 1976 in response to a worker petition received on March 19, 1976 which was filed by the Amalgamated Clothing Workers of America on behalf of workers and former workers producing men's suit slacks and dress slacks at the Lawrenceburg, Tennessee plant of Forest Hills Sportswear, a subsidiary of the Chromalloy American Corporation, Clayton, Missouri.

The notice of investigation was published in the FEDERAL REGISTER on April 2, 1976 (41 FR 14230). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Forest Hills Sportswear, the Chromalloy Clothing Group, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that although criteria one, two and three have been met, criterion four has not been met.

Significant total or partial separations. The average number of workers increased 11.5 percent from 1973 to 1974 and then declined 15.2 percent from 1974 to 1975.

Average weekly hours increased 2.1 percent from 1973 to 1974 and then declined 11.6 percent from 1974 to 1975.

Sales or production, or both, have decreased absolutely. Forest Hills manufactures men's suit and dress slacks. The quantity of pants produced by Forest Hills increased 14.7 percent from 1973 to 1974 and then declined 27.2 percent from 1974 to 1975. In each quarter of 1975, production declined when compared to the same quarter of 1974.

Increased imports. Imports of men's and boys' tailored suits increased each year from 1971 through 1975. Imports increased 26.9 percent from 1974 to 1975. Domestic production of men's and boys' tailored suits declined 9.3 percent during the same period. The ratios of imports to domestic production and consumption increased from 12.2 percent and 10.9 percent, respectively, in 1974 to 17.2 percent and 14.6 percent, respectively, in 1975.

Imports of men's and boys' trousers increased from 39.8 million pairs in 1971 to 55.3 million pairs in 1972. Imports then declined in 1973 and 1974. Imports increased 39.4 percent from 1974 to 1975. Domestic production of men's and boys' trousers declined 18.9 percent during the same period. The ratios of imports to domestic production and consumption increased from 18.2 percent and 15.4 percent, respectively, in 1974 to 31.4 percent and 23.8 percent, respectively, in 1975.

Contributed importantly. The Department's investigation indicated that changing consumer tastes and declining consumer demand resulted in reduced purchases from the Chromalloy Clothing Group. Customers who reduced purchases of men's suits and slacks from Chromalloy did not switch to imports.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with suit slacks and dress slacks produced at the Lawrenceburg, Tennessee plant of Forest Hills Sportswear, did not contribute to the total or partial separation of workers of that plant.

Signed at Washington, D.C. this 21st day of July 1976.

JAMES D. HOOVER,
Acting Executive Assistant to the Deputy Under Secretary.

[FR Doc.76-22451 Filed 8-2-76;8:45 am]

[TA-W-695]

GROSS GALESBURG CO.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-695: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on March 19, 1976 in response to a worker petition received on March 19, 1976 which was filed on behalf of workers formerly producing work garments and grass catchers at the Galesburg, Illinois, plant of Gross Galesburg Company.

The notice of investigation was published in the FEDERAL REGISTER on April 2, 1976 (41 FR 14230). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Gross Galesburg Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that although criteria one and two have been met for all products, criterion three has not been met for grass catchers and criterion four has not been met for work clothing and grass catchers.

Significant total or partial separations. The average number of work clothing production workers increased 14.3 percent from 1973 to 1974 and then decreased 31.8 percent from 1974 to 1975. Employment declined in each quarter of 1975 from the same quarter of 1974. Average hours worked increased 2.0 percent in 1974 compared to 1973 and then declined 15.7 percent in 1975 compared to 1974.

Employment of grass catcher production workers declined 16.7 percent from 1973 to 1974 and 16.7 percent in the first two quarters of 1975 compared to the same two quarters of the previous year.

Average hours worked increased 2.6 percent from 1973 to 1974 and then declined 35.5 percent in the first two quarters of 1974 compared to the same two quarters of 1974. All employment related to grass catcher production was terminated in June 1975.

Sales or production, or both, have decreased absolutely. Sales of work jackets declined 20.8 percent from 1973 to 1974 and 51.2 percent from 1974 to 1975. Quarterly sales declined in each quarter of 1975 from the same quarter of the previous year.

Sales of overalls began in June 1973. Sales increased 193.6 percent in the period June 1974 through December 1974 compared to the same time period of the previous year and then declined 78.4 percent from 1974 to 1975. Quarterly sales declined in each quarter of 1975 from the same quarter of the previous year.

Gross Galesburg began selling vests in July 1974. Sales of vests increased 26.9 percent during the last two quarters of 1975 compared to the same two quarters of the previous year.

Sales of grass catchers declined by 13.1 percent from 1973 to 1974 and by 54.2 percent from 1974 to 1975. Quarterly sales declined in each quarter of 1975 compared to the same quarter of the previous year.

Production of work jackets increased 21.0 percent from 1973 to 1974 and then declined 25.5 percent from 1974 to 1975.

Production of overalls began in June 1973. Production increased 298.6 percent in the period June 1973 through Decem-

ber 1973 compared to the same time period of the previous year and then declined 89.4 percent in 1975 compared to 1974. Quarterly production declined in each quarter of 1975 compared to the same quarter of 1974.

Production of vests began in June 1974. Production declined 37.5 percent in the period June 1975 through December 1975 compared to the same time period of the previous year.

Production of grass catchers declined 13.1 percent from 1973 to 1974 and 45.6 percent in the first two quarters of 1975 compared to the same two quarters of the previous year. Production of grass catchers was discontinued in June 1975.

Increased imports. Imports of men's and boys' nontailored outer jackets including work jackets declined relatively from 1971 to 1972 and then increased both absolutely and relatively from 1972 to 1973. Imports decreased both absolutely and relatively from 1973 to 1974. Imports decreased absolutely by 14.1 percent from 1974 to 1975. The ratios of imports to domestic production and consumption increased from 48.4 percent and 32.6 percent, respectively, in 1974 to 58.9 percent and 37.1 percent, respectively, in 1975.

Imports of men's and boys' woven cotton and man-made fiber trousers and one-piece suits including overalls and work vests, increased absolutely from 1971 to 1972 and then decreased absolutely from 1972 to 1973. Imports increased absolutely and relatively from 1973 to 1974 and from 1974 to 1975. The ratio of imports to domestic production and consumption increased from 2.3 percent and 2.2 percent, respectively, in 1974 to 3.5 percent and 3.4 percent, respectively, in 1975.

A survey conducted by Department of Labor analysts found no imports of grass catchers.

Contributed importantly. Evidence developed during the Department's investigation indicated that customers accounting for 100 percent of sales in 1975 of Gross Galesburg work clothing do not carry imports. Customers who reduced purchases cited the shift in consumers' preferences from work clothes to jeans and jean jackets, which can be worn for both work and leisure. Such substitute products were not purchased from offshore manufacturers.

Gross Galesburg's only customer for grass catchers indicated that they did not buy imports.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with work clothing or grass catchers produced at Gross Galesburg Company, Galesburg, Illinois did not contribute importantly to the total or partial separation of the workers at such plant.

Signed at Washington, D.C. this 26th day of July 1976.

JAMES F. TAYLOR,
Director, Planning and Evaluation Staff.

[FR Doc.76-22452 Filed 8-2-76;8:45 am]

[TA-W-636]

GTE SYLVANIA, INC.

Revised Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a notice of negative determination regarding eligibility to apply for adjustment assistance on May 13, 1976 applicable to former workers producing color picture tubes at GTE Sylvania, Inc., Seneca Falls, New York. The Notice of Negative Determination was published in the FEDERAL REGISTER on May 28, 1976 (41 FR 21866).

At the request of an official of the United Steelworkers of America, a further investigation was instituted by the Director of the Office of Trade Adjustment Assistance. The further investigation revealed that imports of color television sets were more indicative of the influence of imports on employment and production at the Seneca Falls plant than were imports of color picture tubes. A substantial portion of the GTE Sylvania, Inc., Seneca Falls plant's production of color television picture tubes was sent to the GTE Sylvania television assembly plants where they were incorporated into television sets which carry the Sylvania label. The GTE Sylvania, Inc., Seneca Falls plant is an integral part of the production of color television sets at GTE Sylvania's television assembly plants.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales of production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all of the above criteria have been met.

Significant total or partial separations. The average annual employment of production workers declined 20.9 percent in 1975 compared to 1974 and declined 32.5 percent in the first quater of 1975 compared to the first quater of 1974.

Sales or production, or both, have decreased absolutely. Company production of color television picture tubes declined 39.2 percent in 1975 compared to 1974 and declined 60.2 percent in the first quarter of 1975 compared to the first quarter of 1974.

Company production of color television sets declined 43.6 percent in 1975 compared to 1974.

Increased imports. The ratio of imports of color television sets to domestic production and consumption increased in quantity in each year from 18.8 percent and 16.1 percent, respectively, in 1972 to 23.4 percent and 19.5 percent, respectively, in 1975.

Contributed importantly. The evidence developed during the Department's investigation indicates that imports of color television sets have increased in recent years and that the imports of color television sets are responsible for the production and employment declines of color television picture tubes at the Seneca Falls plant. GTE Sylvania was the major purchaser of color picture tubes from the Seneca Falls plant. The Seneca Falls plant is an integral part of the production of color television sets at GTE Sylvania's Inc., television assembly plants. The color picture tubes purchased by GTE Sylvania Inc., from the Seneca Falls plant are incorporated into finished sets which carry the Sylvania label.

Imported television picture tubes are not interchangeable with tubes produced by GTE Sylvania without modification. Picture tubes are imported as replacement parts for imported television sets. For the above reason and due to the fact that the Seneca Falls plant participates in an integrated production process where the end product is a color television set, imports of color television sets are considered to be more indicative of the influence of imports upon the production and employment at the Seneca Falls plant.

Customers of GTE Sylvania's color televisions have increased purchases of imported color television sets and have reduced purchases from GTE Sylvania.

The revised determination applicable to TA-W-636 is hereby issued as follows:

All workers at the Seneca Falls, New York plant of GTE Sylvania, Inc., who became totally or partially separated from employment on or after February 4, 1975 are eligible to apply for adjustment assistance benefits under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 21st day of July 1976.

JAMES D. HOOVER,
Acting Executive Assistant to the Deputy Under Secretary.

[FR Doc.76-22453 Filed 8-2-76;8:45 am]

[TA-W-882]

HOOVER-SENG CO.

Notice of Negative Determination Regarding Eligibility To Apply for Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-882: investigation regarding certification of eligibility to apply for worker ad-

justment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 19, 1976, in response to a worker petition received on May 19, 1976, which was filed on behalf of workers and former workers assembling metal frames for sofa beds at the Hoover Seng Company, Los Angeles, California, a subsidiary of Hoover Ball & Bearing Co., Saline, Michigan.

The notice of investigation was published in the FEDERAL REGISTER on July 6, 1976 (41 FR 27802). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Hoover-Seng Company, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or direcly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion three (3) has not been met.

The evidence developed during the Department's investigation reveals that imports of convertible sofas have declined absolutely, in value in each year from 371,900 dollars in 1972 to 267,000 dollars in 1975. The import category referred to above, i.e. convertible sofas, is a basket category and includes convertible sofas, mattresses for convertible sofas and convertible sofa frames. The above described import category therefore overstates the actual level of imports of metal frames for convertible sofas. Furthermore, imports of convertible sofas are negligible in that the ratios of imports of convertible sofas to domestic production and consumption were 0.11 percent and 0.11 percent, respectively, in 1975.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increased imports of metal frames for convertible sofas have not contributed importantly to the total or partial separation of workers at the Hoover-Seng Company, Los Angeles, California as required in section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 23rd day of July 1976.

JAMES F. TAYLOR,
Director, Planning and Evaluation Staff.

[FR Doc.76-22454 Filed 8-2-76;8:45 am]

[TA-W-902]

LEWIS WEINER INDUSTRIES, INC.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-902: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 27, 1976 in response to a worker petition received on that date which was filed on behalf of workers and former workers producing metal and plastic zipper chain and complete zippers at Lewis Weiner Industries, Inc., Long Island City, New York.

The notice of investigation was published in the FEDERAL REGISTER on June 18, 1976 (41 FR 24801). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Lewis Weiner Industries, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separation, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that although the first two criteria have been met, the third and fourth criteria have not been met.

Significant total or partial separations. The average number of production workers at Lewis Weiner Industries declined 13 percent in 1974 from 1973 and declined 25 percent in 1975 from 1974. All production related employment was terminated February 1976.

Sales or production, or both, have decreased absolutely. Sales declined 5 percent in 1974 compared to 1973 and declined 13 percent in 1975 compared to 1974. Inventories declined 8 percent in 1974 from 1973 and declined 36 percent in 1975 from 1974.

Increased imports. Imports of slide fasteners and parts increased from 98.2 million units in 1971 to 147.7 million units in 1972, and then remained nearly unchanged annually through 1974. Imports declined 29 percent in 1975 compared to 1974.

The single firm which had been responsible for over 75 percent of all imported slide fasteners prior to 1974 became a major domestic producer in early 1974.

Contributed importantly. The evidence developed in the Department's investigation indicates that the decline in sales by Lewis Weiner Industries was due to factors other than increased import competition. Customers of Lewis Weiner Industries do not purchase imported zipper chain or complete zippers; the customers indicated that reduced purchases from Lewis Weiner resulted primarily from increased competition from other domestic manufacturers.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with metal and plastic zipper chain and complete zippers produced at Lewis Weiner Industries, Inc., did not contribute importantly to the total or partial separations of the workers at that firm.

Signed at Washington, D.C. this 27th day of July 1976.

JAMES D. HOOVER,
Acting Executive Assistant to the Deputy Under Secretary.

[FR Doc.76-22455 Filed 8-2-76;8:45 am]

[TA-W-720]

MAYFLOWER COAT MANUFACTURING COMPANY, INC.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-720; investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on March 26, 1976 in response to a worker petition received on March 26, 1976 which was filed by the Amalgamated Clothing Workers of America on behalf of workers and former workers producing men's all-weather coats and liners at the Brock-

ton, Massachusetts plant of the Mayflower Coat Manufacturing Company, Inc.

The notice of investigation was published in the FEDERAL REGISTER on April 13, 1976 (41 FR 15491). No public hearing has been requested to date.

The information upon which the determination was made was obtained principally from officials of Mayflower Coat Manufacturing Company, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have beetn met, criterion (3) has not been met.

Imports of men's raincoats declined relatively from 1971 to 1972, then increased absolutely and relatively from 1972 to 1973. Imports decreased both absolutely and relatively in each year from 1973 to 1975. The ratio of imports to domestic production declined from 11.5 percent and 10.4 percent, respectively, in 1974 to 8.1 percent and 7.5 percent respectively in 1975.

The evidence developed during the Department's investigation indicated that the decline in sales and production at Mayflower is attributable to the general downturn in the economy.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with men's all-weather coats produced by the Brockton, Massachusetts plant of Mayflower Coat Manufacturing Company Inc. did not contribute importantly to the total or partial separations of the workers at such plant.

Signed at Washington, D.C. this 26th day of July 1976.

JAMES F. TAYLOR,
Director, Planning and Evaluation Staff.

[FR Doc.76-22456 Filed 8-2-76;8:45 am]

[TA-W-673]

MODERN SLACK CREATIONS, INC.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-673: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on March 19, 1976 in response to a worker petition received on March 19, 1976 which was filed by the Amalgamated Clothing Workers of America on behalf of workers and former workers producing men's trousers at the Northampton plant of Modern Slack Creations, Inc., Allentown, Pennsylvania.

The notice of investigation was published in the FEDERAL REGISTER on April 2, 1976 (41 FR 14223). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Modern Slack Creations, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely; and

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation reveals that all of the above criteria have been met.

Significant total or partial separations. The average number of production workers declined 4 percent from 1973 to 1974 and declined 30 percent from 1974 to 1975. In each quarter of 1975, employment declined compared to the like quarter in 1974.

Sales or production, or both, have decreased absolutely. Production of men's trousers at the Northampton plant declined 11 percent from 1973 to 1974 and 19 percent from 1974 to 1975. In each quarter of 1975, production declined when compared to the same quarter of 1974.

Increased imports. Imports of men's and boys' trousers increased absolutely and relatively from 1971 to 1972 and then fell absolutely and relatively in each year from 1972 to 1974. Imports increased 39.4 percent from 1974 to 1975. U.S. production of men's and boys' trousers declined 18.9 percent during the same period. The ratios of imports to domestic production and consumption increased from 18.2 percent and 15.4 percent, respectively, in 1974 to 31.4 percent and 23.8 percent, respectively, in 1975.

Contributed importantly. The Department's investigation revealed that one of the manufacturers for whom the Northampton plant produced trousers switched to a foreign manufacturer. Additionally, customers of the manufacturers reduced purchases of men's trousers produced at the Northampton plant from 1974 to 1975 and increased purchases of lower-priced imports.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with men's trousers produced at Northampton, Pa. plant of Modern Slack Creations, Inc. contributed importantly to the total or partial separation of the workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers engaged in employment related to the production of men's trousers at the Northampton plant of Modern Slack Creations, Inc., Allentown, Pennsylvania who became totally or partially separated from employment on or after March 9, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Trade Act of 1974.

Signed at Washington, D.C. this 21st day of July 1976.

JAMES D. HOOVER,
Acting Executive Assistant to the Deputy Under Secretary.

[FR Doc.76-22457 Filed 8-2-76;8:45 am]

[TA-W-858]

NYANZA, INC.

Revised Notice of Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 221(a) of the Trade Act of 1974 the Department of Labor published a Notice of Investigation Regarding Certification of Eligibility to Apply for Worker Adjustment Assistance relating to Nyanza, Incorporated, Ashland, Massachusetts (TA-W-858). The Notice of Investigation was published in the FEDERAL REGISTER on May 21, 1976 (41 FR 20956).

The Notice of Investigation is hereby corrected to read:

On February 16, 1976 the Department of Labor received a petition dated January 16, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Nyanza, Incorporated, Ashland, Massachusetts (TA-W-858).

Signed at Washington, D.C. this 22 day of July 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-22458 Filed 8-2-76;8:45 am]

[TA-W-859]

SCOVILL MANUFACTURING COMPANY, INC.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-859: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on April 30, 1976 in response to a worker petition received on that date which was filed by the International Union of Electrical, Radio and Machine Workers on behalf of former workers producing slide fasteners and parts at the Newark, New Jersey plant of Scovill Manufacturing Co., Inc., Waterbury, Connecticut.

The notice of investigation was published in the FEDERAL REGISTER on May 21, 1976 (41 FR 20964). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Scovill Manufacturing Co., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that although the first two criteria have been met, the third and fourth criteria have not been met.

Significant total or partial separations. The average number of production workers at the Newark plant declined 19 percent in 1974 compared to 1973, and declined 58 percent in the first nine months of 1975 compared to the same period of 1974. All employment at the Newark plant was terminated by the end of October 1975.

Sales or production, or both, have decreased absolutely. Sales of slide fasteners and parts at the Newark, New Jersey plant declined 12 percent in 1974 compared to 1973 and declined 37 percent in the first nine months of 1975 compared to the same period of 1974.

Production of slide fasteners and parts at the Newark plant declined 12 percent in 1974 compared to 1973 and declined 39 percent in the first nine months of 1975 compared to the same period of 1974. All production at the Newark plant ceased in September 1975.

Increased imports. Imports of slide fasteners and parts increased from 98.2 million units in 1971 to 147.7 million units in 1972, and then declined annually to 104.0 million units in 1975. The ratio of imports to domestic production decreased from 8.5 percent in 1974 to 6.5 percent in 1975.

Contributed importantly. Customers of Scovill indicated that purchases of imported slide fasteners were not a factor in their decisions to reduce purchases from the Newark plant. Customers of Scovill indicated that they do not purchase imported slide fasteners. Those customers who decreased purchases did so primarily due to lower prices offered by another domestic manufacturer.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with slide fasteners and parts produced at the Newark, New Jersey plant of Scovill Manufacturing Company, Incorporated, Waterbury, Connecticut did not contribute importantly to the total or partial separation of workers at that plant.

Signed at Washington, D.C., this 26th day of July 1976.

JAMES F. TAYLOR,
Director Planning and Evaluation Staff.

[FR Doc.76-22459 Filed 8-2-76;8:45 am]

[TA-W-826]

SOUTHERN SCREW CO.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-826: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on April 30, 1976 in response to a worker petition received on April 30, 1976 which was filed by the United Steelworkers of America, AFL-CIO, on behalf of workers and former workers producing screws at the Statesville, North Carolina plant of the Southern Screw Company.

The notice of investigation was published in the FEDERAL REGISTER on May 21, 1976 (41 FR 20964). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Southern Screw Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all of the above criteria have been met.

Significant total or partial separations. Employment of production workers declined 34.6 percent in 1975 compared to 1974 and declined 5.3 percent in the second quarter of 1975 compared to the same quarter in 1974.

Sales or production or both, have decreased absolutely. Plant sales (in quantity) of screws declined 54.3 percent in 1975 compared to 1974. Plant sales (in quantity) declined 55.5 percent in the second quarter of 1975 compared to the same quarter in 1974.

Plant production (in quantity) declined 41.8 percent in 1975 compared to 1974 and declined 27.6 percent in the second quarter of 1975 compared to the same quarter in 1974.

Increased imports. U.S. imports increased in each year from 1971, when imports totaled 169,772 thousand pounds, through 1974, when U.S. imports were 332,795 thousand pounds. U.S. imports declined in 1975 when the total was 250,589 thousand pounds.

While imports decreased in absolute terms in 1975 compared to 1974, the ratio of imports to domestic production and consumption increased to its highest level of the five year period. The ratio of imports (in quantity) of screws (iron or steel) to domestic production increased in each year from 1971, when the ratio was 19.6 percent, through 1975 when the ratio was 38.2 percent. The ratio of imports (in quantity) to domestic consump-

tion increased in each year from 1971, when the ratio was 17.1 percent, through 1975 when the ratio was 29.9 percent.

Contributed importantly. The Department's investigation indicated that customers of screws manufactured by the Southern Screw Company, have increased their purchases of screws from foreign sources due to price competition.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with screws produced at the Southern Screw Company contributed importantly to the total or partial separation of the workers of the Statesville, North Carolina plant. In accordance with the provisions of the Act, I make the following certification:

All employees at the Southern Screw Company, Statesville North Carolina who became totally or partially separated from employment on or after April 15, 1975, are eligible to apply for adjustment assistance benefits under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 26th day of July 1976.

JAMES F. TAYLOR,
Director, Planning and Evaluation Staff.

[FR Doc.76-22460 Filed 8-2-76;8:45 am]

[TA-W-797]

SPERRY UNIVAC

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-797: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on April 16, 1976 in response to a worker petition received on that date which was filed by three workers on behalf of workers and former workers of the Utica, New York plant of Sperry Univac.

The notice of investigation was published in the FEDERAL REGISTER (41 FR 20047) on May 14, 1976.

The information upon which the determination was made was obtained from officials of Sperry Univac, the U.S. Department of Commerce, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that although the first criterion has been met, the second, third and fourth criteria have not been met.

Significant total or partial separations. Employment of production workers declined 19.1 percent in 1975 compared to 1974.

Sales or production, or both, have decreased absolutely. Production increased 1.2 percent in 1975 compared to 1974.

Increased imports. Sperry Univac is the sole source of equipment compatible with its electronic data processing systems. Imports by Sperry Univac, Utica of electronic data processing equipment and parts, excluding power supplies, decreased 44.1 percent in 1975 compared to 1974. The ratio of imports to plant production decreased from 4.8 percent in 1974 to 2.3 percent in 1975.

Contributed importantly. The investigation revealed that the decline in employment is attributable to reduced order input, product transfers to other domestic Univac manufacturing operations and technological changes that have increased the capital intensity of the industry.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that sales or production, or both, of Sperry Univac, Utica, New York have not decreased absolutely; that articles like or directly competitive with those produced by the firm are not being imported in increased quantities, either actual or relative to domestic production; and that such imports have not contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

Signed at Washington, D.C. this 14th day of July 1976.

JAMES D. HOOVER,
Acting Executive Assistant to the Deputy Under Secretary.

[FR Doc.76-22461 Filed 8-2-76;8:45 am]

[TA-W-853]

STANDARD LOCKNUT AND LOCKWASHER INC.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-853; investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on April 30, 1976 in response to a worker petition received on April 30, 1976 which was filed by the United Steelworkers of America on behalf of workers and former workers producing locknuts, lockwashers and bearings at the Carmel, Indiana plant of Standard Locknut and Lockwasher, Incorporated.

The notice of investigation was published in the FEDERAL REGISTER (41 FR 20965) on May 21, 1976. No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Standard Locknut and Lockwasher, the Employment Security Division of the Indiana Department of Labor, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard as to whether or not the second, third and fourth criteria have been met, the first criterion has not been met.

Significant total or partial separations. Standard Locknut and Lockwasher did not layoff or reduce the number of working hours of any of its employees during the period January 1, 1974 to the present nor has it announced plans to do so.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with locknuts, lockwashers, and bearings produced at the Carmel, Indiana plant of Standard Locknut and Lockwasher Incorporated did not contribute importantly to the total or partial separations of the workers at that plant.

Signed at Washington, D.C. this 23rd day of July 1976.

JAMES F. TAYLOR,
Director, Planning and Evaluation Staff.

[FR Doc.76-22462 Filed 8-2-76;8:45 am]

[TA-W-694]

STAR SPORTSWEAR MANUFACTURING CORP.

Certification Regarding Eligibiliey To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the result of TA-W-694; investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 22[illegible] of the Act.

The investigation was initiated on March 19, 1976 in response to a worker petition received on March 19, 1976 which was filed by the Amalgamated Clothing Workers Union on behalf of workers and former workers producing men's leather coats at the Star Sportswear Manufacturing Corporation, Lynn, Massachusetts.

The notice of investigation was published in the FEDERAL REGISTER on April 2, 1976 (41 FR 14223). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Star Sportswear Manufacturing Corporation, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with articles produced by such workers' firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all of the above criteria have been met.

Significant total or partial separations. Employment at the Lynn, Massachusetts plant of Star Sportswear decreased 9.2 percent from 1973 to 1974, and then increased 9.5 percent from 1974 to 1975. Average quarterly employment fell in the third and fourth quarters of 1975, from the previous quarter. Labor turnover data indicated that approximately 27 percent of the work force was laid off in the fourth quarter of 1975. Average number of weekly hours worked rose 1.9 percent from 1973 to 1974, and then fell 2.7 percent from 1974 to 1975.

Sales or production or both have decreased absolutely. Sales of men's leather coats declined 11.4 percent in quantity from 1973 to 1974 and declined 3.8 percent from 1974 to 1975. Production of men's leather coats declined 1.7 percent in value from 1973 to 1974 and then increased 4.2 percent from 1974 to 1975.

Increased imports. Imports of men's and boys' leather coats and jackets increased absolutely in every year from 1971 to 1975. Imports declined relatively from 1971 to 1972, and then increased relatively every year from 1973 to 1975. The ratios of imports to domestic production and consumption increased 58.6 percent and 37.2 percent, respectively, in 1974 to 67.1 percent and 40.4 percent, respectively, in 1975.

Contributed importantly. Evidence developed during the Department's investigation indicated that customers surveyed reduced purchases from Star Sportswear from 1974 to 1975 and increased purchases of lower priced imports.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with men's leather coats produced at the Lynn, Massachusetts plant of the Star Sportswear Manufacturing Corporation contributed importantly to the total or partial separations of the workers at the plant. In accordance with the provisions of the Act, I make the following certification:

All workers engaged in employment related to the production of men's leather coats at the Lynn, Massachusetts plant of the Star Sportswear Manufacturing Corporation who became totally or partially separated from employment on or after September 30, 1975 be certified as eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 21st day of July 1976.

JAMES D. HOOVER,
Acting Executive Assistant to the Deputy Under Secretary.

[FR Doc.76-22463 Filed 8-2-76;8:45 am]

[TA-W-916]

TOWN AND COUNTRY SHOES, INC.

Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 7, 1976 in response to a worker petition received on that date which was filed by the workers and former workers producing women's footwear at Town and Country Shoes, Incorporated, St. Louis, Missouri.

Notice of the investigation was published in the FEDERAL REGISTER on June 25, 1976 (41 FR 26299). No public hearing was requested and none was held.

During the course of the investigation, it was established that all workers at the St. Louis office of Town and Country Shoes, Inc. were previously certified eligible to apply for adjustment assistance on December 10, 1975 (See TA-W-224).

A new investigation would serve no purpose. Therefore, the investigation has been terminated.

Signed at Washington, D.C. this 13th day of July 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-22464 Filed 8-2-76;8:45 am]

[TA-W-814]

TRACEY FASHIONS

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-814: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on April 26, 1976 in response to a worker petition received on that date which was filed by the International Ladies Garment Workers Union on behalf of workers and former workers engaged in the production of pantsuits, dresses, skirts and jumpsuits at Tracey Fashions, Chamberburg, Pennsylvania.

The notice of investigation was published in the FEDERAL REGISTER on May 14, 1976 (41 FR 20047). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Jonathon Logan, Inc., the parent firm of Tracey Fashions, the National Cotton Council of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that although the first and third criteria have been met, the second and fourth criteria have not been met.

Significant total or partial separations. The average number of workers decreased 2 percent in the fiscal year 1976 (March 1, 1975 to February 29, 1976), compared to the previous year.

Sales or production, or both, have decreased absolutely. Production increased 1 percent in the fiscal year 1976, (March 1, 1975 to February 29, 1976) compared to the previous fiscal year.

Increased imports. Import data on women's misses' and juniors' pantsuits including jumpsuits are unavailable for the years 1971 thru 1973 because at that time the Department of Commerce did not specifically identify these products. Imports of women's, misses' and juniors' pantsuits including jumpsuits increased 3 percent in 1975 compared to 1974. The ratio of imports to domestic production increased from 16.1 percent in 1974 to 18.8 percent in 1975.

Imports of women's, misses', children's and infants' knit and woven dresses decreased every year from 1971 thru 1974, but increased 2 percent in 1975 compared to 1974. The ratio of imports to domestic production rose from 6.5 percent in 1974 to 7.4 percent in 1975.

Imports of women's, girls' and infants' knit and woven skirts decreased every year from 1971 thru 1974, but increased 112 percent in 1975 compared to 1974. The ratio of imports to domestic production increased from 5.0 percent in 1974 to 9.3 percent in 1975.

Contributed importantly. The parent corporation receives the entire production of Tracey Fashions and therefore may be regarded as Tracey Fashions' only customer. The parent corporation does not import any women's pantsuits, dresses, skirts and jumpsuits, the products produced at Tracey Fashions.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with pantsuits, dresses, skirts and jumpsuits produced at Tracey Fashions, Chambersburg, Pa. did not contribute importantly to the total or partial separation of the workers of that plant.

Signed at Washington, D.C. this 27th day of July 1976.

JAMES D. HOOVER,
Acting Executive Assistant to the Deputy Under Secretary.

[FR Doc.76-22465 Filed 8-2-76;8:45 am]

[TA-W-941]

UNIVERSAL CYCLOPS SPECIALTY STEEL CO.

Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 16, 1976 in response to a worker petition received on that date which was filed by the plant's Manager of Industrial Relations on behalf of workers and former workers producing stainless steel strip at Universal Cyclops Specialty Steel Company, Coshocton, Ohio.

Notice of the investigation was published in the FEDERAL REGISTER on July 6, 1976 (41 FR 27805). No public hearing was requested and none was held.

During the course of the investigation it was established that the most recent involuntary separations at the Coshocton plant occurred prior to June 1975. Section 223(b) of the Trade Act of 1974 provides, in substance, that a certification shall not apply for any worker whose last total or partial separation from the firm or an appropriate subdivision of the firm occurred more than one year before the date of the petition on which such certification is granted.

The date of the petition in this case is June 8, 1976 and, thus, workers laid off prior to June 8, 1975 could not be eligible for program benefits under Title II, Chapter 2, Subchapter B of the Trade Act of 1974. Therefore, this investigation has been terminated.

Signed at Washington, D.C. this 15th day of July 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-22466 Filed 8-2-76;8:45 am]

[TA-W-700]

WEAR WELL TROUSER CO.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-700: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on March 19, 1976 in response to a worker petition received on the same date which was filed by the Amalgamated Clothing Workers of America on behalf of workers and former workers producing men's and boys' dress slacks at the Wear Well Trouser Company, Worcester, Massachusetts.

The notice of investigation was published in the FEDERAL REGISTER on April 2, 1976 (41 FR 14224). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Wear Well Trouser Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that although the first three criteria have been met, the fourth criterion has not been met.

Significant total or partial separations. The average number of production workers decreased 22 percent from 1973 to 1974 and 31 percent from 1974 to 1975. Average weekly hours worked by production workers fell 14 percent from 1973 to 1974 and 6 percent from 1974 to 1975.

Sales or production, or both, have decreased absolutely. Total sales at the Wear Well Trouser Company declined 12 percent in value from 1973 to 1974 and 31 percent from 1974 to 1975.

Production of dress slacks fell 26 percent from 1973 to 1974 and 39 percent from 1974 to 1975.

Increased Imports. Imports of men's and boys' trousers increased both absolutely and relatively from 1971 to 1972. Imports declined absolutely and relatively from 1972 to 1973 and from 1973 to 1974. From 1974 to 1975, imports increased from 39,816 thousand units to 55,508 thousand units. The ratio of imports to domestic production and consumption increased from 18.2 percent and 15.4 percent, respectively, in 1974 to 31.4 percent and 23.8 percent, respectively, in 1975.

Contributed importantly. The evidence developed during the Department's investigation indicated that customers of the Wear Well Trouser Company surveyed by OTAA do not carry imported dress slacks. The decrease in sales of dress slacks by Wear Well is attributable to the recessionary period and the trend from conservative style slacks to more casual styles.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with men's dress trousers produced at the Worcester, Massachusetts plant of the Wear Well Trouser Company did not contribute importantly to the total or partial separation of the workers of that plant.

Signed at Washington, D.C. this 23rd day of July 1976.

JAMES F. TAYLOR,
Director, Planning and Evaluation Staff.

[FR Doc.76-22467 Filed 8-2-76;8:45 am]

[TA-W-837]

WILLIAM H. HASKELL MANUFACTURING CO.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-837: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on April 30, 1976 in response to a worker petition received on April 30, 1976 which was filed by the United Steelworkers of America on behalf of workers and former workers producing stainless and heat resistant standard and special fasteners at the William H. Haskell Manufacturing Company, in Pawtucket, Rhole Island, a subsidiary of Easco Corporation, Baltimore, Maryland.

The notice of investigation was published in the FEDERAL REGISTER on May 21, 1976 (41 FR 20971). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the William H. Haskell Manufacturing Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all four of the above criteria have been met.

Significant total or partial separations. Average weekly employment of production workers at William H. Haskell increased 5.6 percent in 1974 compared to 1973. Employment declined 12.0 percent from 1974 to 1975.

Sales or production, or both, have decreased absolutely. Annual production of stainless steel fasteners by the William H. Haskell Manufacturing Company increased 34.3 percent in quantity from 1973 to 1974. Production declined 28.6 percent from 1974 to 1975.

Annual production of alloy fasteners increased 4.0 percent in quantity from 1973 to 1974. Production declined 21.4 percent from 1974 to 1975.

Increased imports. Imports of stainless steel fasteners declined 13.0 percent from 1971 to 1972. Imports increased 47.5 percent from 1972 to 1973 and further increased 11.9 percent from 1973 to 1974. Imports declined 28.8 percent from 1974 to 1975. The ratio of imports to domestic production and consumption increased from 36.3 percent and 28.3 percent, respectively, in 1974 to 41.6 percent and 32.8 percent, respectively, in 1975.

Contributed importantly. The Department's investigation revealed that customers of William H. Haskell have indicated that they have reduced purchases from Haskell and increased purchases of imported stainless steel fasteners. The price differential between domestic and imported fasteners was the factor cited most frequently as the reason that customers switched from domestic to foreign suppliers.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with stainless steel fasteners produced by the William H. Haskell Manufacturing Company contributed importantly to the total or partial separations of the workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at the William H. Haskell Manufacturing Company in Pawtucket, Rhode Island who became totally or partially separated from employment on or after April 15, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 23rd day of July 1976.

JAMES F. TAYLOR,
Director, Planning and Evaluation Staff.

[FR Doc.76-22468 Filed 8-2-76;8:45 am]

[TA-W-869]

WROUGHT WASHER MFG., INC.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-869; investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on April 30, 1976 in response to a worker petition received on April 30, 1976 which was filed by the United Steelworkers of America, AFL-CIO on behalf of workers and former workers producing steel washers at the Milwaukee, Wisconsin plants of Wrought Washer Mfg., Inc., Milwaukee, Wisconsin.

The notice of investigation was published at the FEDERAL REGISTER on May 21, 1976 (41 FR 20971). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Wrought Washer Mfg., Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that although criteria one, two and three have been met, criterion four has not.

Significant total or partial separations. The average number of production workers declined 35.5 percent in 1975 compared to 1974. The average number of salaried workers declined 15.7 percent in 1975 compared to 1974.

Sales or production, or both, have decreased absolutely. Production (in quantity) declined 29.5 percent in 1975 compared to 1974. Sales (in quantity) declined 36.9 percent in 1975 compared to 1974.

Increased imports. Imports of steel washers declined from 22 million pounds in 1974 to 21 million pounds in 1975. The ratios of imports to domestic production and consumption increased from 5.9 and 5.7 percent, respectively, in 1974 to 7.3 and 6.9 percent, respectively, in 1975.

Contributed importantly. The Department's investigation revealed that customers of Wrought Washer Manufacturing surveyed who purchase imported steel washers either purchased only minor amounts of imported washers or else decreased purchases of imported washers in 1975.

Conclusion. After careful review of the facts, I conclude that increases of imports like or directly competitive with washers produced at the Milwaukee, Wisconsin plant of Wrought Washer Mfg., Inc. did not contribute importantly to the total or partial separation of the workers at the above mentioned location.

Signed at Washington, D.C. this 21st day of July 1976.

JAMES D. HOOVER,
Acting Executive Assistant to the Deputy Under Secretary.

[FR Doc.76-22470 Filed 8-2-76;8:45 am]

[TA-W-828]

WROUGHT WASHER MFG., INC.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-828: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on April 30, 1976 in response to a worker petition received on April 30, 1976 which was filed by the United Steelworkers of America on behalf of workers and former workers producing steel washers at the Wheatland, Pennsylvania plant of Wrought Washer Mfg., Inc. Milwaukee, Wisconsin.

The notice of investigation was published in the FEDERAL REGISTER on May 21, 1976 (41 FR 20971). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Wrought Washer Mfg., Inc. its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that although criteria one, two and three have been met, criterion four has not.

Significant total or partial separations. The average number of production workers declined 42.9 percent in 1975 compared to 1974. The average number of salaried workers declined 18.8 percent in 1975 compared to 1974.

Sales or production, or both, have decreased absolutely. Production, in quantity, declined 51.0 percent in 1975 compared to 1974. Sales (in quantity) declined 36.9 percent in 1975 compared to 1974.

Increased imports. Imports of steel washers rose from 14 million pounds in 1971 to 21 million pounds in 1972. Imports declined in 1973 to 16 million pounds. Imports increased to 22 million pounds in 1974 then declined to 21 million pounds in 1975.

The ratio of imports to domestic production increased from 4.8 percent in 1971 to 6.6 percent in 1972. In 1973, the ratio of imports to production declined to 4.4 percent. The ratio of imports to production increased to 5.9 percent and 7.3 percents, respectively, in 1974 and 1975.

Contributed importantly. The Department's investigation indicated that the customers surveyed who purchased steel washers manufactured at the Wheatland, Pennsylvania plant of Wrought Washer Mfg., Inc. have not shifted purchases of washers to foreign sources.

The investigation has also revealed that declines in purchases of the high carbon washers produced at the Pennsylvania plant were attributed to the sharp decline in housing starts.

Conclusion. After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with washers produced at the Wheatland, Pennsylvania plant of Wrought Washer Mfg., Inc. did not contribute importantly to the total or partial separation of the workers at the above mentioned location.

Signed at Washington, D.C. this 23rd day of July 1976.

JAMES D. HOOVER,
Acting Executive Assistant to the Deputy Under Secretary.

[FR Doc.76-22469 Filed 8-2-76;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 106]

ASSIGNMENT OF HEARINGS

JULY 29, 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.

AB 109, Quanah, Acme and Pacific Railway Company Abandonment Between Acme and Floydada, in Hardeman, Cottle, Motley, and Floyd Counties, Texas, now being assigned November 8, 1976 (1 week), at Paducah, Texas, in a hearing room to be later designated.

MC 83835 (Sub 130), Wales Transportation, Inc., now being assigned November 4, 1976 (2 days), at Dallas, Texas, in a hearing room to be later designated.

MC 119988 (Sub 91), Great Western Trucking Co., Inc., now being assigned November 3, 1976 (1 day), at Dallas, Texas, in a hearing room to be later designated.

MC 105934 (Sub 16), John B. Barbour Trucking Company and MC 43837 (Sub 28), A. Leander McAlister Trucking Company now being assigned November 2, 1976 (1 day), at Dallas, Texas, in a hearing room to be later designated.

MC-F-10795, International Utilities of the U.S. Inc.—Control—Pacific Intermountain Express Co., now being assigned November 1, 1976, at Washington, D.C., will be held in the Office of the Interstate Commerce Commission.

MC-F-12780, Gross Common Carrier, Inc.—Purchase—Willard Graese Transport Service, Inc., now being assigned October 27, 1976 (3 days), at Milwaukee, Wis., in a hearing room to be later designated.

MC 105269 Sub 61, Graff Trucking Company, Inc., now being assigned November 1, 1976 (1 Wk), at Chicago, Ill., in a hearing room to be later designated.

MC 64832 (Sub-No. 6), Magnolia Truck Line, Inc., now assigned September 27, 1976, at Baton Rouge, La., is canceled and reassigned for September 27, 1976, at the Ramada Inn, 2211 MacArthur Drive, Alexandria, Louisiana.

MC 127303 (Sub 19), Henry Zellmer, dba Zellmer Truck Lines, now assigned September 23, 1976 (2 days), at Chicago, Illinois, and will be held in Room 417, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 51146 (Sub 441), Schneider Transport, Inc., now assigned September 8, 1976 (3 days), at Chicago, Illinois, and will be held in Room 1319, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 123407 (Sub 277), Sawyer Transport, Inc., now assigned September 13, 1976 (1 day), at Chicago, Illinois, and will be held in Room 1319, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 128030 (Sub 96), The Stout Trucking Co., Inc., now assigned September 14, 1976 (2 days), at Chicago, Illinois, and will be held in Room 1319, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 141703, Byko Motor Service, Inc., now assigned September 16, 1976 (2 days), at Chicago, Illinois, and will be held in Room 1319, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC-C-9027, Valdez Transfer, All-State Moving & Storage, Inc., and Colonial Moving & Storage, Inc.—Investigation of Operation and Practices—now assigned September 16, 1976 (2 days), at Phoenix, Arizona, and will be held in Room 235, Federal Building and Post Office, 522 North Central Avenue.

MC 128273 (Sub-No. 203), Midwestern Distribution, Inc., now assigned September 14, 1976, at Chicago, Ill., will be held in Room 417, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC-F-12650, General Transportation, Inc.—Control and Merger—FOPA Transport, Inc. and MC 116457 (Sub-No. 15), General Transportation, Inc., now assigned September 20, 1976, at Phoenix, Ariz., will be held in Room 235, Federal Building & Post Office, 522 N. Central Avenue.

MC 126276 (Sub-No. 139), Fast Motor Service, Inc., now assigned September 16, 1976, at Chicago, Ill., will be held in Room 417, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 126276 (Sub-No. 127), Fast Motor Service, Inc., now assigned September 16, 1976, at Chicago, Ill., will be held in Room 417, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 123407 (Sub-No. 271), Sawyer Transport, Inc., now assigned September 20, 1976, at Chicago, Ill., will be held in Room 417, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 114028 (Sub-No. 20), Rowley Interstate Transportation Company, Inc., and MC 114028 (Sub-No. 23), Rowley Interstate Transportation Company, Inc., now assigned Chicago, Ill., will be held in Room 417, Everett McKinley Dirksen Building, 219 South Dearborn Street.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-22483 Filed 8-2-76;8:45 am]

[AB 43 (Sub-No. 16)]

ILLINOIS CENTRAL GULF RAILROAD CO.

Abandonment of Lines

JULY 26, 1976.

The Interstate Commerce Commission hereby gives notice that its Environmental Affairs Staff has concluded that the proposed abandonment of the Illinois Central Gulf Railroad Company of its line between Elco and Murphysboro, a distance of 36 miles, all in Alexander, Union, and Jackson Counties, Illinois, if approved by the Commission, does 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 the NEPA.

It was concluded, among other things, there will be negligible changes in the ambient environmental conditions of the affected corridor as a result of the diversion of the annual 3 to 8 cars of rail traffic to motor carrier. Additionally, there are no community economic, or industrial development plans for the general area of the proposed action. An adverse effect on community or rural development is thus not expected.

It has been noted that the right-of-way is suitable for public use and the Shawnee National Forest has expressed an interest in its acquisition. With this in mind, a condition has been suggested giving public agencies first right of purchase for 120 days following actual abandonment.

This conclusion is contained in a staff-prepared environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-275-7011.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423, on or before September 8, 1976.

It should be emphasized that the environmental threshold assessment survey represents an evaluation of the environmental issues in the proceeding and does not purport to resolve the issue of whether the present or future public convenience and necessity permit discontinuance of the line proposed for abandonment. Consequently, comments on the environmental study should be limited to discussion of the presence or absence of environmental impacts and reasonable alternatives.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-22484 Filed 8-2-76;8:45 am]

[Notice No. 96]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JULY 28, 1976.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the I.C.C. Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 2226 (Sub-No. 110TA), filed July 20, 1976. Applicant: RED ARROW FREIGHT LINES, INC., P.O. Box 1897, San Antonio, Tex. 78297. Applicant's representative: Phillip Robinson, P.O. Box 2207, Austin, Tex. 78768. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, household goods as defined by the Commission, commodities in bulk and commodities requiring special equipment), from Victoria, Tex., over U.S. Highway 59 to Fannin, Tex., and thence over F.M. Road 2987 to the site of the Coleta Creek Power Station of Central Power and Light Company and return, serving no intermediate points. Applicant intends to tack its existing authority with MC 2226 and subs. Applicant also intends to interline at Dallas, Fort Worth, Houston, and San Antonio, Tex., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: R. I. Ross, Jr., Traffic Manager, Central Power and Light Company, P.O. Box 2121, Corpus Christi, Tex. 78403. Send protests to: Richard H. Dawkins, District Supervisor, Interstate Commerce Commission, Room B-400 Federal Bldg., San Antonio, Tex. 78206.

No. MC 4943 (Sub-No. 34TA), filed July 19, 1976. Applicant: CENTRAL EXPRESS INC., 5601 West Waco Drive, P.O. Box 238, Waco, Tex. 76703. Applicant's representative: Phillip Robinson, 1806 Rio Grande, P.O. Box 2207, Austin, Tex. 78768. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, household goods as defined by the Commission, commodities in bulk and commodities requiring special equipment), from Victoria, Tex., over U.S. Highway 59 to Fannin, Tex., and thence over F.M. Road 2987 to the site of the Coleta Creek Power Station of Central Power and Light Company and return, serving no intermediate points. Applicant intends to tack its existing authority with MC 4943. Applicant also intends to interline at Houston and San Antonio, Tex., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Central Power & Light Company, R. I. Ross, Jr., Traffic Manager, P.O. Box 2121, Corpus Christi, Tex. 78403. Send protests to: H.C. Morrison, Sr., District Supervisor, Interstate Commerce Commission, Room 9A27, Federal Bldg., 819 Taylor St., Fort Worth, Tex. 76102.

No. MC 8535 (Sub-No. 57TA), filed July 21, 1976. Applicant: GEORGE TRANSFER AND RIGGING COMPANY, INCORPORATED, P.O., Box 500, Parkton, Md. 21120. Applicant's representative: Charles J. McLaughlin (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper, paper articles, paperboard and paperboard articles* (except commodities in bulk), from Lynchburg, Va., to points in Connecticut, Delaware, Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia, and the District of Columbia, for 180 days. Supporting shippers: Joseph D. Sharpe, Asst. G.T.M., Weyerhaeuser Company, 201 Dexter St., West, Chesapeake, Va. 23324. R. R.

Groves, Traffic Manager-Motor, The Mead Corporation, 118 W. First St., Dayton, Ohio 45402. Send protests to: William L. Hughes, District Supervisor, Interstate Commerce Commission, 814–B Federal Bldg., Baltimore, Md. 21201.

No. MC 107487 (Sub-No. 7TA), filed July 20, 1976. Applicant: COLUMBIA CITY FREIGHT LINES, INC., P.O. Box 328, Columbia City, Ind. 46725. Applicant's representative: Donald W. Smith, Suite 2465, One Indiana Square, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and commodities requiring special equipment), serving Bristol, Ind., as an off-route point in connection with carrier's otherwise authorized operations between Middlebury, Ind., and Fort Wayne, Ind. Applicant intends to tack. Applicant also intends to interline at Fort Wayne, Ind., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Bristol Products Co., Bristol, Ind. Eastern Express, Inc., Ft. Wayne, Ind. Windsor Mobile Homes, Inc., Bristol, Ind. Marksill Specialties, Inc., Bristol, Ind. Send protests to: J. H. Gray, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 345 West Wayne St., Room 204, Fort Wayne, Ind. 46802.

No. MC 107727 (Sub-No. 26TA), filed July 20, 1976. Applicant: ALMO EXPRESS, INC., 51 Essex St., Hackberry Station, San Antonio, Tex. 78218. Applicant's representative: Phillip Robinson, P.O. Box 2207, Austin, Tex. 78768. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, household goods as defined by the Commission, commodities in bulk and commodities requiring special equipment), from Victoria, Tex., over U.S. Highway 59 to Fannin, Tex., and thence over F.M. Road 2987 to the site of the Coleta Creek Power Station of Central Power and Light Company and return, serving no intermediate points. Applicant intends to tack its existing authority with MC 107727 and subs. Applicant also intends to interline at Houston and San Antonio, Tex., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: R. I. Ross, Jr., Traffic Manager, Central Power and Light Company, P.O. Box 2121, Corpus Christi, Tex. 78403. Send protests to: Richard H. Dawkins, District Supervisor, Interstate Commerce Commission, Room B–400, Federal Bldg., San Antonio, Tex. 78206.

No. MC 107934 (Sub-No. 26TA), filed July 19, 1976. Applicant: BYRD MOTOR LINE, INC., P.O. Box 787, Lexington, N.C. 27292. Applicant's representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th St., N.W., Washington, D.C. 20004. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *New furniture and returned furniture*, from Lawrenceville, Ga., to points in Arkansas, Louisiana, Mississippi, Missouri, Oklahoma, Ohio, North Carolina, South Carolina, and Wisconsin and returned furniture, from the above destinations to Lawrenceville, Ga. Applicant intends to interline at points in North Carolina to the destination states of Arizona, Colorado, New Mexico, Oklahoma, Pennsylvania, Texas, West Virginia, and Minnesota, for 180 days. Supporting shipper: American Charms, Incorporated, P.O. Box 46, Lawrenceville, Ga. 50245. Send protests to: Terrell Price, District Supervisor, 800 Briar Creek Road, Room CC516, Charlotte, N.C. 28205.

No. MC 114281TA, filed July 16, 1976. Applicant: OCCIDENTAL COATING CO., 14533 Keswick St., Van Nuys, Calif. 91405. Applicant's representative: William J. Monheim, 15942 Whittier Blvd., P.O. Box 1756, Whittier, Calif. 90609. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Plastic coated metal conduit and fittings*, from Van Nuys, Calif., to points in the United States; (2) *Returned shipments* of the commodities described in (1) above, from points in the United States to Van Nuys, Calif.; and (3) Materials, equipment, and supplies used in the manufacture, sales and distribution of the commodities described in (1) above, from points in the United States to Van Nuys, Calif. Restriction: The operations authorized are to be restricted to a transportation service to be performed under a continuing contract with Occidental Coating Company of Van Nuys, Calif., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Occidental Coating Co., 14533 Keswick St., Van Nuys, Calif. 91405. Send protests to: Mary A. Francy, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, Room 1321 Federal Bldg., 300 North Los Angeles St., Los Angeles, Calif. 90012.

No. MC 118038 (Sub-No. 14TA), filed July 15, 1976. Applicant: EASLEY HAULING SERVICE, INC., P.O. Box 1261, Gun Club Road, Yakima, Wash. 98907. Applicant's representative: Charles C. Flower, Suite 2, 303 East D St., Yakima, Wash. 98901. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Empty cans, can ends, can manufacturing materials and supplies*, from Salem and Astoria, Oreg., to Bellingham, Cashmere, Chelan Falls, Dayton, Everson, Ferndale, Grandview, Kennewick, La Connor, Moses Lake, Prosser, Seattle, Selah, Sunnyside, Spokane, Tacoma, Tukwila, Walla Walla, Waitsburg, Wapato, Wenatchee, Yakima and Mount Vernon, Wash.; from Walla Walla, Wash., to American Falls, Buhl, Burley, Caldwell, Nampa, Pocatello, Weiser, Idaho and Albany, Eugene, Hood River, Junction City, Milton-Freewater, Portland, and Salem, Oreg.; from Pocatello, Idaho to Walla Walla, Moses Lake, and Yakima, Wash., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Continental Can Co., P.O. Box 03220, Portland, Oreg. 97203. Send protests to: W. J. Huetig, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 114 Pioneer Courthouse, Portland, Oreg. 97204.

No. MC 129032 (Sub-No. 22TA), filed July 19, 1976. Applicant: TOM INMAN TRUCKING, INC., 6015 40th West, P.O. Box 9667, Tulsa, Okla. 74107. Applicant's representative: Martin J. Rosen, 256 Montgomery St., 5th Floor, San Francisco, Calif. 94104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Newsprint paper and groundwood paper* (except in bulk), from the plantsite of Bowater Southern Paper Corporation, at Calhoun, Tenn., to points in Arkansas, Arizona, Illinois, Iowa, Kansas, Michigan, Missouri, Minnesota, Nebraska, New Mexico, Oklahoma, and Wisconsin, for 180 days. Supporting shipper: Bowater Southern Paper Corporation, Calhoun, Tenn. 37309. Send protests to: Joe Green, District Supervisor, Room 240 Old Post Office Bldg., 215 Northwest Third St., Oklahoma City, Okla. 73102.

No. MC 135379 (Sub-No. 8TA), filed July 22, 1976. Applicant: EASTERN TRANSPORT, INC., 320 Stiles Ave., Linden, N.J. 07036. Applicant's representative: George A. Olsen, 69 Tonnele Ave., Jersey City, N.J. 07306. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by wholesale, retail, chain grocery, department stores, and food business houses (except commodities in bulk), and in connection with *equipment, materials and supplies* used in the conduct of such business (except commodities in bulk), between points in Alabama, Connecticult, Delaware, Florida, Georgia, Louisiana, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia. Restriction: Limited to a transportation service to be performed under a continuing contract with Food Fair Stores, Inc., J. M. Fields, Inc., and Ideal Shoe Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Food Fair Stores, Inc., 3175 J. F. Kennedy Blvd., Philadelphia, Pa. 19101, and subsidiaries: J. M. Fields, Inc., Ideal Shoe Co. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, 9 Clinton St., Newark, N.J. 07102.

No. MC 136275 (Sub-No. 20TA), filed July 19, 1976. Applicant: WHITFIELD ASSOCIATED TRANSPORT, INC., 28 San Marcos Drive, El Paso, Tex. 79922. Applicant's representative: H. B. Dudley

(same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Brick*, on flat-bed semi trailers which requires special unloading equipment, from Sunland Park, N. Mex., and El Paso, Tex., between points in Texas, New Mexico, Arizona, and Nevada, for 180 days. Supporting shippers: Del Norte Masonry Products, 4560 Ripley, El Paso, Tex. 79922. El Paso Brick Company, P.O. Box 12336, El Paso, Tex. 79912. Send protests to: Haskell E. Ballard, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Box H–4395 Herring Plaza, Amarillo, Tex. 79101.

No. MC 138003 (Sub-No. 11TA), filed July 19, 1976. Applicant: ROBERT F. KAZIMOUR, 1200 Norwood Drive, SE., P.O. Box 2011, Cedar Rapids, Iowa 52403. Applicant's representative: A. J. Swanson, P.O. Box 81849, Lincoln, Neb. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Appliances and air conditioners*, (1) from Louisville, Ky., to points in California, Nevada, Utah, Washington, Oregon and Idaho; (2) from Louisville, Ky., to Clearfield, Utah; and (3) from Clearfield, Utah, to points California, Nevada, Utah, Washington, Oregon, and Idaho, restricted to the transportation of traffic moving to or from the Regional Warehouse facilities at Clearfield, Utah, under a continuing contract with The General Electric Company, for 180 days. Supporting shipper: The General Electric Company, Building 10, Appliance Park, Louisville, Ky. 40225. Send protests to: Herbert W. Allen, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 518 Federal Bldg., Des Moines, Iowa 50309.

No. MC 138496 (Sub-No. 26TA), filed July 19, 1976. Applicant: DONCO CARRIERS, INC., 641 North Meridian, P.O. Box 75345, Oklahoma City, Okla. 73107. Applicant's representative: Jack H. Blanshan, Suite 200, 205 W. Touhy Ave., Park Ridge, Ill. 60068. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Toilet preparations, household and industrial cleaning products, brooms, mops, insect repellents, grooming aids, clothes hangers, medicated sprays and promotional materials* (except commodities in bulk), from Great Bend, Kans., to Riverside, Calif.; Worcester, Mass.; Missoula, Mont.; Tyrone, Pa.; and New York City, N.Y.; and (2) *Cleaning compounds* (except commodities in bulk), from Joliet, Ill., to Great Bend, Kans., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Fuller Brush Company, 7400 North Caldwell Ave., Niles, Ill. 60648. Send protests to: Joe Green, District Supervisor, Room 240 Old Post Office Bldg., 215 Northwest Third St., Oklahoma City, Okla. 73102.

No. MC 139182 (Sub-No. 2TA), filed July 15, 1976. Applicant: ATLAS DELIVERY CO., INC., 340 Cole Ave., Dallas, Tex. 75207. Applicant's representative: E. Larry Wells, 4645 N. Central Expressway, Dallas, Tex. 75205. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Appliances and ventilating hoods*, from Nashville, Tenn., to points in California, Arizona, New Mexico, Texas, Oklahoma, Arkansas, Louisiana, and Mississippi, under a continuing contract with The Tappan Company, for 180 days. Supporting shipper: The Tappan Company, Tappan Park, Mansfield, Ohio 44901. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce St., Room 13C12, Dallas, Tex. 75242.

No. MC 139579 (Sub-No. 2TA), filed July 6, 1976. Applicant: GEORGE H. GOLDING, INC., 5879 Marion Drive, Lockport, N.Y. 14094. Applicant's representative: William J. Hirsch, Suite 1125, 43 Court St., Buffalo, N.Y. 14202. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Salad dressing and sauce* (except in bulk) for the account of Pfeiffer's Foods, Inc., from Wilson, N.Y., to points in Alabama and Indiana; *materials, supplies and equipment* used in the manufacture or distribution of salad dressing and sauce (except in bulk), for the account of Pfeiffer's Foods, Inc., from points in Alabama and Indiana, to Wilson, N.Y., under a continuing contract with Pfeiffer's Foods, Inc., for 90 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Pfeiffer's Foods, Inc., 683 Lake St., Wilson, N.Y. 14172. Send protests to: George M. Parker, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 910 Federal Bldg., 111 West Huron St., Buffalo, N.Y. 14202.

No. MC 140421 (Sub-No. 5TA), filed July 14, 1976. Applicant: ACTION MOTOR EXPRESS, INC., P.O. Box 29102, New Orleans, La. 70189. Applicant's representative: Harold R. Ainsworth, 2307 American Bank Bldg., New Orleans, La. 70130. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Sugar*, in bags, packages and condiments, in individual servings, from New Orleans, La.; Arabi, La.; and consignment warehouse, Kenner, La., to points in Arkansas, Alabama, Mississippi and Tennessee, under a continuing contract with Amstar Corporation, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Amstar Corporation, 7417 North Peters St., Arabi, La. 70032. Send protests to: Ray C. Armstrong, District Supervisor, 701 Loyola Ave., 9038 Federal Bldg., New Orleans, La. 70113.

No. MC 142274TA, filed July 19, 1976. Applicant: ADMIRAL DELIVERY SYSTEM, Inc., 2436 Hamilton Ave., Cleveland Ohio 44114. Applicant's representative: Robert E. McFarland, 999 West Big Beaver Road, Suite 1002, Troy, Mich. 48084. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, limited to individual articles, not exceeding 100 pounds in weight, moving in shipments not exceeding 500 pounds in weight, from one consignor to one consignee in a single day, on bills of lading of surface, interstate freight forwarders, between points in Ohio; Beaver and Allegheny Counties, Pa.; Campbell, Boone and Benton Counties, Ky.; Allen and Wayne Counties, Ind.; and Monroe County, Mich., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: American Delivery Systems, Inc., 300 East Seven Mile Road, Detroit, Mich. 48203. Send protests to: James Johnson, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 181 Federal Office Bldg., 1240 East Ninth St., Cleveland, Ohio 44199.

No. MC 142282TA, filed July 20, 1976. Applicant: FLEET SERVICE CORP., P.O. Box 4112, Whittier, Calif. 90607. Applicant's representative: William J. Lippman, Suite 550, 1819 H St., NW., Washington, D.C. 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Lumber* intended for use in the manufacture of furniture, from points in Washington and Umatilla County, Oreg., to points in California; and (2) Metal folding mechanisms for furniture and bedding, bed springs, bed frames and bed rails, from Whittier, Calif., to points in Washington, Oregon, Idaho, Montana, Utah, Nevada, and Arizona, under a continuing contract with Bedline Mfg. Co., and Maher Forest Products, Ltd., for 180 days. Supporting Shippers: Bedline Mfg. Co., P.O. Box 4956, Whittier, Calif. 90607. Maher Forest Products, Ltd., P.O. Box 387, Medina, Wash. 98039. Send protests to: Mary A. Francy, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, Room 1321 Federal Bldg., 300 North Los Angeles St., Los Angeles, Calif. 90012.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76–22481 Filed 8–2–76;8:45 am]

TRANSPORTATION OF "WASTE" PRODUCTS FOR REUSE OR RECYCLING

Special Certificate Letter Notice(s)

The following letter notices request participation in a Special Certificate of Public Convenience and Necessity for the transportation of "waste" products for reuse or recycling in furtherance of a recognized pollution control program under the Commission's regulations (49 CFR 1062) promulgated in "Waste" Products, Ex Parte No. MC–85, 124 MCC 583 (1976).

An original and one copy of protests against applicant's participation may be filed with the Interstate Commerce Commission within 20 days from the date of this publication. A copy must also be served upon applicant or its representative. Protests against the applicant's participation will not operate to stay commencement of the proposed operation.

If the applicant is not otherwise informed by the Commission, operations may commence within 30 days of the date of its notice in the FEDERAL REGISTER, subject to its tariff publication effective date.

P–3–76 (Special Certificate—Waste Products), filed July 23, 1976. Applicant: INDUSTRIAL HEAVY TRANSPORT, 12636 Los Nietros Road, Santa Fe Springs, Calif. 90603. Applicant's representative: John P. Fudgen, Esq., 700 South Third Street, Las Vegas, Nev. 89101. Authority sought to operate pursuant to a certificate of public convenience and necessity authorizing operations in interstate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, in the transportation of *scrap automobiles, scrap metal, ferrous and non-ferrous waste*, between points in the United States (except Alaska and Hawaii), in furtherance of a recognized pollution control program sponsored by City Towing, Inc., and Nevada Recycling Corporation of Las Vegas, Nev., for the purpose of recovery of scrap automobiles, scrap metal, ferrous and non-ferrous waste.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76–22482 Filed 8–2–76;8:45 am]

federal register

TUESDAY, AUGUST 3, 1976



PART II:

DEPARTMENT OF LABOR

Office of Employee Benefits Security

EMPLOYEE RETIREMENT INCOME SECURITY

Annual Reporting Requirements

Title 29—Labor

CHAPTER XXV—OFFICE OF EMPLOYEE BENEFITS SECURITY, DEPARTMENT OF LABOR

SUBCHAPTER C—REPORTING AND DISCLOSURE UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

Annual Reporting Requirements

The purpose of these amendments to Chapter XXV of the Department of Labor regulations is to provide guidance in the preparation of Annual Return/Report Forms and attachments thereto which must be filed with the Department of Labor and summary annual reports which must be furnished to plan participants and beneficiaries by employee benefit plans under the Employee Retirement Income Security Act of 1974 (hereinafter "the Act"), to defer the annual report requirements and to establish certain exemptions or alternative methods of compliance for annual reporting requirements provided under section 103 of the Act.

On September 30, 1975, notice was published in the FEDERAL REGISTER (40 FR 45134) of proposed Annual Return/Report Forms to be filed by an employer or plan administrator of a pension or welfare benefit plan as required by section 104 of the Act. On November 19, 1975, notice was published in the FEDERAL REGISTER (40 FR 53710) of proposed regulations concerning the preparation of the annual return/report forms and the summary annual report.

Because of the confusion and duplication of requirements prescribed under the statutory annual reporting provisions of section 103 of the Act, the Department has developed a limited exemption for welfare plans and alternative method of compliance for pension plans for annual reporting by all plans as well as group insurance arrangements. Many of the regulations contained herein are a part of the limited exemption and alternative method of compliance prescribed to ease the burden and expense to plans which would result from the application of the statutory annual reporting provisions. Specifically, §§ 2520.103–1(b) and 2520.103–2(b) detail the contents of an annual report for plans electing the limited exemption or alternative method of compliance and for certain trusts or other entities involved in group insurance arrangements, respectively. Other regulations, including §§ 2520.103–6 and 2520.103–7(c)(1), are applicable only to plans electing the exemption/alternative method of compliance.

The regulations contained in this document are both temporary regulations effective immediately and proposed regulations for final adoption. The primary reason for making these regulations effective immediately on a temporary basis is that plans are required to file their initial annual report within 11½ months after the close of the plan year which begins in 1975, or December 15, 1976, whichever is later. Consequently, many plans must complete the preparation of their annual reports as soon as possible in order to meet this filing requirement. These regulations establish the guidelines and exemptions or alternative methods of compliance which these plans may follow in complying with the annual reporting requirements. Plans which must start preparing their annual reports and summary annual reports immediately must be given the assistance and certainty of regulations on which they may rely in complying with the Act.

For the foregoing reasons, the undersigned finds that good cause exists for making these regulations temporarily effective without advance publication as specified in the Administrative Procedure Act (5 U.S.C. 553(d)(3)).

These regulations are temporary and shall be in effect for plan years beginning in 1975. Interested persons have been afforded an opportunity to participate in the making of many of these regulations by the notice of proposed rulemaking published on November 19, 1975 (40 FR 53710). Due consideration has been given to all comments received in response to the notice insofar as they relate to matters within the scope of the notice and this final rulemaking. As a consequence of these comments, many significant changes have been made in these regulations, and a number of new sections have been added, so that it is appropriate to offer another opportunity for public comment. Therefore, the regulations in this document are also proposed, and comments concerning these regulations will be received for consideration in the preparation of final annual report regulations. Interested persons are invited to submit written data, views, or arguments concerning any or all of the proposed regulations contained in this document on or before December 31, 1976. Such data, views, and arguments should be submitted to the "Annual Report Regs., Division of Regulatory Standards and Exceptions, Office of Employee Benefits Security, U.S. Department of Labor, Washington, D.C. 20216." All comments should be clearly referenced to the numbers of the sections to which the comments are directed.

Section 2520.103–1

Section 2520.103–1, a new regulation not published in the November 1975 proposed annual reporting regulations, prescribes the content of the annual report. A limited exemption for welfare plans and an alternative method of compliance for pension plans has been promulgated in response to numerous comments received by the Department which requested that the Department provide relief from the voluminous and duplicative annual reporting requirements of section 103 of the Act.

This regulation permits employee benefit plans with 100 or more participants to file an annual report in accordance with the provisions of section 103 of the Act, or in accordance with a limited exemption or alternative method of compliance authorized under sections 104(a)(3) and 110, respectively, of the Act. The content of the annual report for plans electing the limited exemption or alternative method of compliance is described in paragraph (b) of the regulation. Under the authority of section 104(a)(2)(A) of the Act, the regulation provides that plans with fewer than 100 participants must file only an annual report consisting of a Form 5500–C or 5500–K and any schedules required by the instructions to the forms, in accordance with § 2520.104–41.

The limited exemption or alternative method of compliance for plans with 100 or more participants permits such plans to fulfill their annual reporting obligation under section 103 of the Act by filing an annual report containing the following: A form 5500 and any schedules of insurance or actuarial information required by the instructions to Form 5500, financial statements and accompanying notes with all valuations at current value (except as provided in § 2520.103–7), separate financial schedules described in Item 24(b) of Form 5500 and § 2520.103–10, and an accountant's report.

Plans electing the exemption/alternative must engage an accountant to prepare a report on the financial statements and schedules required to be included in the annual report in accordance with §§ 2520.103–1(b) and 2520.103–10. The accountant's report must state whether the audit was made in accordance with generally accepted auditing standards, and must designate any auditing procedures deemed necessary by the accountant which have been omitted and the reasons for their omission. In addition, the accountant's report must contain the opinion of the accountant in respect to the financial statements and schedules covered by the report and the accounting principles and practices reflected therein, as well as the opinion of the accountant as to the consistency of the application of the accounting principles, or as to any changes in such principles which have a material effect on the financial statements. Lastly, the accountant's report must identify any matters to which the accountant takes exception, and to the extent practicable, the effect of each such exception on the financial statements. The exception must further indicate whether the exceptions are the result of Department of Labor rules and regulations.

The following findings are made with respect to the promulgation of § 2520.103–1 as an alternative method of compliance under section 110 of the Act:

1. The alternative method of compliance is consistent with the purposes of Title I of the Act, and provides adequate disclosure to plan participants and beneficiaries and adequate reporting to the Secretary. The essential information required by section 103 of the Act is reported and disclosed under the alternative method of compliance, while duplicative requirements are merged to provide a clearer portrayal of the financial activity and status of employee benefit plans.

2. The alternative method of compliance relieves plans subject to the annual reporting requirements from increased

costs and unreasonable administrative burdens. The alternative frees plans which elect it from duplicative auditing requirements and simplifies the content of the annual report in general.

3. Finally, the alternative method of compliance is not adverse to the interests of participants and beneficiaries in the aggregate, because the alternative preserves all of the basic financial reporting features of section 103 of the Act, while at the same time restructuring the content to produce a more efficient and understandable report.

In accordance with the authority to promulgate a limited exemption for employee welfare benefit plans under section 104(a)(3) of the Act, the Secretary has found that the reporting and disclosure requirements of section 103 of the Act are inappropriate as applied to welfare benefits plans.

Section 2520.103–2

Under § 2520.104–43, plans participating in a group insurance arrangement may be exempted from filing an annual report provided that the trust, trade association or other entity which owns the insurance contracts and acts as a conduit for the insurance premiums files an annual report for the entire arrangement. Section 2520.103–2, a new regulation which was not published as a proposal in the November 1975 annual reporting regulations, prescribes the contents of the annual report to be filed by the trust, trade association or other entity in order for a plan to be eligible for the exemption described in § 2520.104–43.

The limited exemption requires such entities to fulfill the annual reporting conditions imposed under § 2520.104–43 by filing an annual report containing the following: A Form 5500 and any schedules required by the instructions to Form 5500, financial statements and accompanying notes with all valuations at current value (except as provided in § 2520.-103–7), separate financial schedules described in item 24(b) of Form 5500, and an accountant's report. The § 2520.103–2 content requirements parallel the limited exemption or alternative method of compliance prescribed for plans with 100 or more participants in § 2520.103–1.

Reporting entities described in § 2520.-104–43 preparing an annual report under this section must engage an accountant to prepare a report on the financial statements and schedules required to be included in the annual report in accordance with §§ 2520.103–2(b) and 2520.103–10. The accountant's report must state whether the audit was made in accordance with generally accepted auditing standards, and must designate any auditing procedures deemed necessary by the accountant which have been omitted and the reasons for their omission. In addition, the accountant's report must contain the opinion of the accountant in respect to the financial statements and schedules covered by the report and the accounting principles and practices reflected therein, as well as the opinion of the accountant as to the consistency of the application of the accounting principles, or as to any changes in such principles which have a material effect on the financial statements. Lastly, the accountant's report must identify any matters to which the accountant takes exception, and to the extent practicable, the effect of each such exception on the financial statements. The exception must further indicate whether the exceptions are the result of Department of Labor rules and regulations.

Sections 2520.103–3 and 2520.103–4

Sections 2520.103–3 and 2520.103–4 (formerly, proposed §§ 2520.103–1 and 2) provide an exemption from certain annual reporting requirements relating to plan assets held in either a common or collective trust maintained by a bank or a pooled separate account maintained by an insurance carrier. Under these regulations, plans with assets in such trusts or accounts need only include the following financial information with respect to those assets in the annual report: the value of the plan's units of participation in the trust or account, transactions involving the acquisition and disposition by the plan of units of participation in the trust or account, if otherwise required to be reported, and the most recent annual statement of the assets and liabilities of the trust or account. A plan administrator is not required to report any information with respect to transactions engaged in by the bank or insurance carrier involving the assets of the trust or account.

Proposed § 2520.103–1 adopted certain portions of the regulations of the Comptroller of the Currency at 12 CFR 9.18 for purposes, inter alia, of defining "common or collective trust". However, comments pointed out that certain of these rules are inappropriate as applied to State banks and would require a restructuring of their operations in order for the exemption to apply. Therefore, the regulation has been modified to delete these provisions. A broad definition of the terms "common or collective trust" has been provided. Section 2520.-103–3 also specifies that a controlled group of corporations, as defined in section 1563(a) of the Internal Revenue Code of 1954, shall be considered a single participant in a common or collective trust. As a result, a common or collective trust consisting solely of the assets of a plan or plans of a controlled group of corporations would not qualify for the exemption provided in § 2520.103–3.

Numerous comments stated that it would be burdensome and duplicative to require each plan participating in a pooled fund to file the statement of assets and liabilities of the pooled fund. Plans can be relieved of the requirement to file duplicative statements of assets and liabilities if one financial statement of a common or commingled trust or a pooled separate account is filed for all participating plans. Therefore, the regulation has been modified to exempt a plan from filing the statement of assets and liabilities required under section 103(b)(3)(G) of the Act and §§ 2520.103–3 and 103–4 if the bank or insurance carrier which maintains the common or collective trust or pooled separate account files the required statement of assets and liabilities. (See § 2520.103–9).

It should be noted that paragraph (c)(2) of both sections has been changed. In the proposed regulation, these paragraphs established specific rules for the content of the statement of assets and liabilities of the pooled funds. Because many banks and insurance companies may not be currently in compliance with these content requirements for the most recent annual statement of assets and liabilities, these specifications have been deleted.

The final regulations have also been changed from the proposed to include in the information required for the annual report the value of a plan's assets held in the common or collective trust fund or pooled separate account.

Section 2520.103–5

Section 2520.103–5 implements section 103(a)(2) of the Act. Section 103(a)(2) of the Act requires an insurance carrier or other organization which provides some or all of the benefits under a plan or holds plan assets, a bank or similar institution which holds plan assets, or a plan sponsor, to transmit and certify to the accuracy and completeness of such information as is needed by the plan administrator to comply with the requirements of Title I of the Act. This regulation modifies the November 1975 proposed regulations to make it clear that its requirements apply only to certification of information for purposes of preparing the annual report.

Under section 103(a)(2) of the Act, such information must be transmitted within 120 days of the close of the plan year or within such other period of time as may be prescribed by the Secretary. However, because the Department of Labor is extending the initial annual report filing period from 210 days to 11½ months (see § 2520.104a–5), the time permitted for the transmittal of annual report information by an insurance carrier, bank or similar institution or plan sponsor to a plan administrator is extended from 120 days to 9 months for the annual report filed for the 1975 plan year.

The proposed regulation has been modified to remove any limitation on the information which must be transmitted and certified to the plan administrator by banks and insurance carriers. Except in the case of loans and leases in default, the proposed regulation did not require banks and insurance carriers to identify any of the specific transactions required to be included in the separate financial schedules of the annual report. However, this section now requires that banks and insurance carriers provide any information they may have regarding the transactions required to be listed in the schedules including party-in-interest transactions with persons known by the bank or insurance company to be a party-in-interest to the plan.

One comment stated that the certification by the bank or insurance company required upon transmittal of the information may be too broad in scope to en-

able compliance. It suggests that more flexible language be permitted by the regulation. However, the language suggested in the regulation for the certification is only an example. Any other signed statement which assures the accuracy and completeness of the facts transmitted may be used. The certification need not be sworn to or notarized.

Section 2520.103–6

The substance of § 2520.103–6 was originally issued in proposed form as § 2520.103–4 and was applicable to all plans required to prepare a schedule of 3 percent reportable transactions. This section is now limited in application to the schedule of reportable transactions required by item 24(b) of Form 5500 as described in § 2520.103–10(b)(5). However, plans which use the alternative method of compliance or limited exemption prescribed in §§ 2520.103–1(b) or 2520.103–2(b) must use the definitions in this section for purposes of preparing the schedule required by §§ 2520.103–1(b)(4) or 2520.103–2(b)(4).

Reportable transactions as defined in this regulation consist of four separate categories of transactions: first, a single transaction in excess of 3 percent of the current value of plan assets; second, a series of transactions with or in conjunction with the same person, involving property other than securities, which amount in the aggregate to more than 3 percent of the current value of plan assets; third, a series of transactions with respect to securities of the same issue which amount in the aggregate to more than 3 percent of the current value of total plan assets; and fourth, any transaction with respect to securities with or in conjunction with a person if a prior or subsequent single transaction has occurred with respect to securities with or in conjunction with that same person in an amount in excess of 3 percent of the current value of plan assets.

The proposed regulation included a definition of current value for valuation of plan assets as of the beginning of the plan year. Comments directed at this definition of current value stated that the definition was ambiguous because the term "current value" was used in two different contexts: the current value of plan assets at the beginning of the plan year and the current value of an asset acquired or disposed of during the plan year. The regulation has been clarified by distinguishing between the current value at time of acquisition or disposition of an asset and the current value of all plan assets at the beginning of the year. Also, new § 2520.103–7 exempts plans using the alternative/exemption provided in §§ 2520.103–1(b) or 2520.103–2(b) for the 1975 plan year from the requirement to display at current value the statement of assets and liabilities of the plan, trust or other entity as of the end of the previous plan year. Therefore, a new paragraph (b)(ii) has been added to this section providing that for such plans the "current value" as of the beginning of the plan year shall be the amount shown on line 13 (h) or (i) of the Form 5500, as appropriate.

This section also previously defined "transaction with respect to securities" in terms of the execution of a buy or sell order. Comments received pointed out the practical difficulties of defining a transaction on this basis and suggested use of the trade date or settlement date for purposes of determining when a transaction involving securities has occurred. The plan administrator may use either the trade date or settlement date to report 3 percent transactions provided that either date is applied consistently throughout the plan year.

This section previously required aggregation of transactions in a series involving securities on the basis of the issuer of such securities. Comments received indicated that the aggregation for purposes of reporting assets held for investment and for determining 3 percent series transactions involving securities should be based on issue rather than issuer, because banks and other financial institutions maintain their records on the basis of issue rather than issuer. Furthermore, the comments pointed out that differing investment considerations among the various securities of the same issuer would make aggregation on the basis of issuer less informative and useful than aggregation on the basis of the issue. Because the aggregation of this securities transaction information on the basis of issue would be more useful to the Department of Labor for purposes of monitoring plan activity under the Act, as well as less burdensome to plans and investment institutions, the regulation has been amended to require aggregation on the basis of issue.

The regulation also contains other changes in the method of aggregation of securities transactions for purposes of a 3 percent series. The proposed regulation prescribed a method of aggregating securities transactions on the basis of a 3 percent difference in the holdings of the same security at any time during the plan year, as compared to any other point in time within the plan year. Comments on this proposed method of aggregation indicated that the requirement was too complex and difficult to apply. The regulation changes the method of aggregation of securities to require aggregation of all sales and purchases of securities of the same issue at any time throughout the plan year for purposes of determining when a series of transactions involving securities exceeds 3 percent of the current value of plan assets.

For example, Plan ABC acquires XYZ common stock in an amount equal to 2 percent of the value of the plan assets; later, the plan sells 1 percent worth of XYZ common, and still later buys another 3 percent worth of XYZ common. This section requires that all the percentage changes—acquisitions and dispositions—be aggregated, and if the total figure exceeds 3 percent, all transactions involving XYZ common are reportable as part of a series. Thus, 2 percent plus 1 percent plus 3 percent aggregates to 6 percent and the whole series, including both purchases and the sale, is reportable as a series of transactions with respect to securities in excess of 3 percent of plan assets.

The information required to be reported regarding a series of transactions involving securities has been modified. The proposed regulation required each transaction in the series to be listed and identified in the same manner as other types of reportable transactions in this section. However, the final regulation now requires only certain aggregate information relevant to the series of securities transactions to be included in the separate schedule to the annual report. The specific information to be provided includes the total number of purchases of a security made by the plan within the plan year, total number of sales, total dollar value of purchases, total value of sales, and the net gain or loss as a result of these transactions. This approach is simpler and less burdensome while providing information which is specifically relevant.

Finally, many comments received stated that short-term money market instruments (e.g., short-term certificates of deposit, Treasury Bills, "weekend" notes) should be exempted from 3 percent transactions, or lumped together and treated as a single category of securities rather than as individual transactions. Many plans engage in numerous short-term transactions throughout a plan year so that plan assets will be invested for the benefit of participants and beneficiaries at all times. The comments stated that the reporting of each of these transactions would be burdensome and would produce voluminous amounts of information that could obscure other plan transactions of greater importance. However, changing the definition of a transaction in securities to mean an individual purchase or sale, narrowing the aggregation rule from issuer to issue, and requiring the information on 3 percent series transactions to be reported on a summary basis will radically reduce, if not nearly eliminate, the problems raised by the comments. For these reasons, the regulation accords no special treatment to short-term money market instruments.

Section 2520.103–7

Section 2520.103–7, establishing special accounting rules for certain plans filing an annual report under the Act for the first time, substantially amends the proposed regulation. The special accounting rules prescribed by the regulation vary according to the type of plan. Plans with 100 or more participants and trusts filing an annual report for a group insurance arrangement in accordance with §§ 2520.104–43 and 2520.104a–6 which are filing an annual report for the plan year beginning in 1975, may only use the special accounting rules described in this regulation if the plan has adopted the limited exemption/alternative method of compliance of § 2520.103–1(b) or § 2520.103–2(b). Such plans are not required to: (1) Display at current value plan assets and liabilities in comparative form

as of the end of the previous plan year or the beginning of the plan year subject to the initial annual report, (2) engage an accountant to examine the plan's financial statements for the preceding plan year, or (3) provide an accountant's opinion regarding the consistency of the initial plan year's financial statements with the preceding plan year's financial statements.

All plans with fewer than 100 participants which are filing an annual report for the plan year beginning in 1975, are not required to display at current value plan assets and liabilities in comparative form as of the end of the previous plan year or the beginning of the plan year subject to the initial annual report. (Plans with fewer than 100 participants are exempt under § 2520.104–46 from the requirement to engage an accountant to examine the plan's financial statements and prepare an accountant's report.)

The following findings are made with respect to the promulgation of § 2520.-103–7 as an alternative method of compliance under section 110 of the Act for pension plans which cover fewer than 100 participants at the beginning of the plan year:

1. The special accounting rules are consistent with the purposes of Title I of the Act, and provide adequate disclosure to plan participants and beneficiaries and adequate reporting to the Secretary. Because plans filing an initial annual report for the plan year beginning in 1975 may not have previously maintained their financial books and records on the basis of current value, a requirement to include a statement of assets at current value as of the beginning of the plan year would be unduly burdensome.

2. Requiring small plans to obtain a current valuation of all plan assets for the beginning of the 1975 plan year would result in increased costs for appraisal. These increased costs and the administrative burden of preparing beginning of the year balances at current value would be adverse to the interests of participants and beneficiaries in the aggregate.

The final regulation, unlike the proposed, does not apply to plans now in existence, but not currently covered by ERISA, which may become covered in the future.

The special accounting rules exempt plans from the requirement of including beginning of the year balances at current value in the annual report. Beginning of the year balances may be stated on the basis of the valuation method used at the beginning of the year rather than at current value. However, because participants could be confused by attempting to compare end of year balances stated at current value to beginning of year balances stated on a different basis, §§ 2520.104b–10 and 2520.104b–11 do not require that plans include the beginning of year balances for the 1975 plan year in the initial summary annual report.

The second special accounting rule relieves plans from having an audit performed for the prior year in addition to the audit required for the initial reporting year. In most cases, an audit of the financial information for the previous plan year would be burdensome and expensive for plans, particularly in the case of plans which were not previously audited. Therefore, under the authority of section 104(a) (3) and 110 of the Act, § 2520.103–7 establishes a special rule relieving plans from this requirement.

The third special accounting rule, regarding the accountant's opinion, maintains consistency with the second rule. Because no audit of the plan's financial statement for the previous plan year is required for plans with 100 or more participants which elect the alternative/exemption, no opinion can be provided regarding the consistency with the accounting principles and practices used in the previous year.

Section 2520.103–8

Section 2520.103–8, which interprets section 103(a)(3)(C) of the Act, is a new regulation which was not included in the proposed regulations published on November 19, 1975.

Under this rule, the examination and report of the independent qualified public accountant need not address any statement or information regarding plan assets held by a bank or insurance carrier, which is regulated and supervised and subject to periodic examination by a State or Federal agency, provided that the statement or information is transmitted and certified to the plan administrator in accordance with § 2520.103–5 of these regulations. Plan assets held in any type of bank or insurance carrier trust or account, including separate trusts, common or collective trusts, custodial accounts and pooled or individual separate accounts, are included.

Section 2520.103–9

Section 2520.103–9 implements section 103(b)(4) of the Act, which authorizes the Secretary to relieve plans with assets held in whole or in part in a common or collective trust fund or a pooled separate account from filing a statement of assets and liabilities of such trust or account as required under section 103(b)(3)(G) of the Act if the bank or insurance carrier files a statement of assets and liabilities of the trust or pooled separate account directly with the Secretary.

Comments pointed out the needless burden on plans and the duplication of statements of assets and liabilities which would be filed if each plan participating in a common or collective trust fund or pooled separate account were required to file such a statement with the Secretary of Labor. For this reason, § 2520.103–9 establishes a procedure for banks, trust companies and similar institutions, and insurance carriers to file with the Secretary one statement of assets and liabilities on behalf of all plans participating in such pooled funds or accounts.

The direct filing procedure established by the regulation requires that the bank or insurance carrier filing the statement identify the trust or account with the employer identification number (EIN) of the trust or account. In addition, if the bank or insurance carrier has assigned the same EIN to more than one trust or account, the trusts or accounts shall also be sequentially numbered to specifically identify the common or collective trust or pooled separate account in which the plan is participating. The bank or insurance carrier must file with the Secretary the statement of assets and liabilities of the trust or account, and a list of the EIN's and names of plan sponsors of participating plans. The bank or insurance carrier must send to each participating plan a copy of the statement of assets and liabilities, the EIN and any additional identification number of the trust or account, and a certification that the statement of assets and liabilities has been filed with the Secretary on or before the date upon which the annual report of the plan is required to be filed in accordance with §§ 2520.104a–5 or 2520.104a–6.

Each plan choosing to take advantage of the direct filing procedure must include in its annual report the EIN and any additional identification number of the trust or account in which it is a participant and a certification that it has received a copy of the statement of assets and liabilities.

Section 2520.103–10

Section 2520.103–10 details the format and content of the schedules which are required by Item 24(b) of Form 5500, and required to be included with the annual report pursuant to the limited exemption and alternative method of compliance prescribed in §§ 2520.103–1(b) and 2520.103–2(b). The format and content of the schedules are prescribed in § 2520.103–10 pursuant to the authority of section 109(c) of the Act. The format has been standardized in tabular form to permit easier processing and filing by the Department.

Although not noted in the instructions to the form, the party-in-interest schedule of transactions is not required to include any transactions for which there is an applicable statutory or administrative exemption. Therefore plans are relieved of the potential burden of listing large numbers of transactions, such as securities transactions, for which an exemption has been granted.

Section 2520.104–41

Section 2520.104–41 provides for simplified annual reporting for plans with fewer than 100 participants. The proposed version of this regulation limited simplified annual reporting to only Keogh plans, but numerous comments indicated the desirability of extending simplified annual reporting to all small employee benefit plans with fewer than 100 participants.

EMPLOYEE BENEFIT PLANS WITH FEWER THAN 100 PARTICIPANTS

Simplified annual reporting is prescribed for employee benefit plans that have fewer than 100 participants at the

beginning of the plan year, none of whom is an owner-employee as defined in section 401(c)(3) of the Internal Revenue Code of 1954. Such a plan must file a Form 5500–C "Annual Return/Report of Employee Benefit Plan (with fewer than 100 participants, none of whom is an owner-employee)" in the manner prescribed in § 2520.104a–5. Although the instructions to the annual report forms prescribe simplified forms only for plans covering fewer than 100 participants at all times during the plan year, this requirement could be overly burdensome for plans unable to maintain records of the number of participants at all times during the year. Therefore, this regulation supersedes the instructions to the forms and prescribes simplified reporting for plans covering fewer than 100 participants as of a fixed date, the beginning of the plan year.

KEOGH PLANS

Simplified annual reporting is prescribed for certain Keogh pension plans required to file an annual report under section 104(a)(1)(A) of the Act. This method of simplified annual reporting is available only to Keogh plans with fewer than 100 participants at the beginning of the plan year, at least one of whom is an owner-employee as defined in section 401(c)(3) of the Internal Revenue Code of 1954. Such a pension plan must file a Form 5500–K "Annual Return/Report of Employee Pension Benefit Plans" in the manner prescribed in § 2520.104a–5.

Neither a Keogh plan which covers more than 100 participants nor a plan which covers only shareholder-employees (Subchapter S plan) is eligible for this simplified annual reporting method. Instructions to the annual report forms indicate that both shareholder-employee plans and Keogh plans with more than 100 participants must file the full Form 5500 "Annual Return/Report" which provides for more complete and detailed financial information.

Section 2520.104–42

Under the authority of section 104(a)(2)(A) of the Act, the Secretary of Labor may waive the requirement that actuarial information on the annual report include the present value of the plan's liabilities for nonforfeitable pension benefits allocated by termination priority category, as set forth in section 4044 of Title IV of the Act, and the actuarial assumptions used in these computations. In order to waive this requirement, however, the Secretary must make findings as required under section 104(a)(2)(A) as to first, whether the interests of plan participants are not harmed thereby, and second, whether the expense of compliance with the specific requirements of section 103(d)(6) is not justified by the needs of the participants, the Pension Benefit Guaranty Corporation (PBGC) and the Department of Labor.

Section 2520.104–42 provides that the plan administrator of an employee pension benefit plan, required under section 103(d) of the Act to include actuarial information as part of the annual report, is not required to include in the annual report for the 1975 plan year a statement of the present value of all the plan's liabilities for nonforfeitable pension benefits as set forth in § 4044 of Title IV of the Act is not required to provide the actuarial assumptions used in these computations. The waiver is based upon preliminary findings that the requirements of section 103(d)(6) are overly burdensome and would add considerable expense and time to the preparation of the actuarial statement of the annual report. In addition, the information required under section 103(d)(6) is primarily important to a plan which is terminating and would be of little relevance to participants or the Secretary in the case of an ongoing plan. PBGC has expressed no need for such information on an annual basis.

Comments received on the proposed regulation generally supported the waiver. The strongest argument in favor of the waiver is cost, especially in the case of small plans. However, comments opposed to the waiver point to the unsettled nature of reporting for plans. In addition, section 103(b)(2) of the Act provides that disclosure concerning "a general description of priorities upon termination of the plan" is to be considered by the accountant with respect to the notes to the financial statements. From the participant's point of view, the termination priority information would be of little use unless the participant knows how his own accrued benefits are allocated among the various section 4044 priority categories.

Therefore, the final regulation provides only a temporary waiver. The waiver of termination priorities information is effective only for those plan years beginning after December 31, 1974, and before January 1, 1976 (i.e., primarily 1975 plan years). If PBGC develops a need for such annual information, or if the Department determines that this information should be made available to participants and beneficiaries, the waiver will not be extended.

The waived information is solicited on an optional basis, however. Those plans that have developed the requisite data covering the termination priority categories are requested to submit this information to the Department of Labor, though there is no requirement that they do so. This data will assist the Department in making a final determination as to the usefulness of this information to the PBGC and participants and beneficiaries.

Section 2520.104–43

Under § 2520.104–43, a welfare plan participating in a trade association or other group insurance arrangement which meets all the requirements of § 2520.104–21 except the limitation to fewer than 100 participants is exempt from the requirements to file an annual report with the Secretary of Labor if the trust or trade association that acts as an intermediary between the plan and the insurance company files a report containing the information specified in § 2520.103–2. This section is designed to obtain annual financial information from the central trust or trade association, which may hold plan assets for a period of time before transmitting them to the insurance company. A participating plan, regardless of the number of participants, does not have the financial data relevant to the group insurance arrangement.

It is the trust or trade association rather than the plan which is able to provide the most relevant financial information regarding a group insurance arrangement, because it is only at the trust or trade association level that any plan assets are held in a form other than premium payments or insurance contracts. The trust or trade association may, for example, maintain a contingency or reserve fund which is a proper object of financial reporting in the case of group insurance arrangements.

Section 2520.104–43 provides an exemption which makes it possible to avoid multiple filings, one for each participating plan, if one annual report is filed on behalf of the entire group insurance arrangement or trade association.

This section is not substantively changed from its proposed form. Comments on the proposed regulation supported extension of the regulation to include certain multiple employer plans as well as plans of controlled groups, pointing out that the filing instructions D, 4 and D, 5 of the Form 5500 "Annual Return/Report" could be construed to include these types of plans. This regulation does not extend the exemption, but exempts only a category of group insurance arrangement plans, i.e., plan which meet the requirements of § 2520.104–21, other than the requirement that such plans have fewer than 100 participants—insured welfare, group insurance or trade association arrangements.

Section 2520.104–44

Section 2520.104–44, which is a consolidation of proposed §§ 2520.104–44 and 2520.104–45 published on November 19, 1975, exempts unfunded and insured plans from completing the financial information items of the annual report. Under the authority of section 104(a)(3) of the Act, the Secretary may exempt welfare plans from any or all of the reporting and disclosure requirements of Title I. Under section 110 of the Act, the Secretary may prescribe an alternative method of compliance for pension plans subject to Part I, Title I of the Act.

The financial statements and schedules required to be included in the annual report are in large measure irrelevant for an unfunded plan or an insured plan. Unfunded and insured plans exempt from completing certain financial portions of the annual report are not exempt from completing other annual report items such as the listing of plan fiduciaries and parties receiving compensation from the plan.

One comment requested an extension of the exemption to plans which invest funds solely in the savings accounts of certain financial institutions. However,

because such a plan has assets subject to the annual reporting requirements, the exemption does not apply to such a plan.

Another comment pointed out that the exemption should apply to employee benefit plans which are partly unfunded and partly insured with assets held in the general account so that part of the plan would meet the exemption proposed in § 2520.104–44 and part would meet the exemption proposed in § 2520.104–45. Welfare plans with fewer than 100 participants which combine these two financial arrangements are presently exempted from certain other reporting and disclosure regulations under § 2520.104–20. The exemption has been revised to include such a combined financial arrangement. In doing so, the two proposed regulations, §§ 2520.104–44 and 2520.104–45, are combined into one regulation.

Because of the limited exemptions of §§ 2520.104–20, 104–23, 104–24, and 104–25, many employee benefit plans are already exempt from the annual reporting requirements. Many more plans will be affected by § 2520.104–44. Unfunded or insured (or combination) welfare plans which cover fewer than 100 participants are exempt from the annual reporting requirements under § 2520.104–20. Unfunded or insured pension and welfare plans maintained by an employer for a select group of management or highly compensated employees ("top hat" plans) are also exempt under §§ 2520.-104–23 and 104–24. Welfare plans which are established only to provide for day care centers are exempt from all reporting and disclosure requirements, including the annual reporting requirements under § 2520.104–25. In effect, the only plans which are affected by the exemption under § 2520.104–44 are unfunded or insured (or combination) welfare plans covering 100 or more participants and insured pension plans of any size.

The following findings are made with respect to the promulgation of § 2520.-104–44 as an alternative method of compliance under section 110 of the Act:

1. The use of the alternative method of compliance set forth below is consistent with the purposes of Title I of the Act, and provides adequate reporting to the Secretary and adequate disclosure to plan participants and beneficiaries. The Act requires an employee benefit plan to include certain financial information which is inapplicable to insured and unfunded plans. Because a wholly insured or unfunded plan, or a partly insured-partly unfunded plan, has no assets or liabilities other than insurance contracts or past due insurance premiums in the case of an insured plan, the provisions of the Act requiring financial statements are irrelevant. Consequently, the alternative method of compliance does not exempt insured or unfunded plans from reporting and disclosing any information which they would otherwise be able to report and disclose.

2. If an insured or unfunded plan were not clearly exempt from including certain financial information in the annual report, such plan would incur the needless expense of hiring an independent qualified public accountant. The regulation makes it clear that an insured or unfunded plan is not required to hire an independent qualified public accountant.

3. The unnecessary expense of an audit and the preparation of irrelevant financial statements would be adverse to the interests of plan participants in the aggregate.

With respect to the promulgation of § 2520.104–44 as an exemption under section 104(a)(3) of the Act the annual reporting provisions requiring insured or unfunded plans to include certain financial information are found inappropriate for the reasons listed above.

Section 2520.104–45

Section 2520.104–45, a new section not included in the November 19, 1975 proposed regulations, exempts insured plans with fewer than 100 participants as of the beginning of the plan year from reporting, in the initial annual report filed for the 1975 plan year, the names and addresses of the brokers, agents, or other persons to whom commissions or fees were paid by the plan, the amount paid to each, and the purpose of the payment, otherwise required by sections 103 (c) and (e) of the Act.

Comments received by the Department of Labor on the proposed annual reporting regulations stated that insurance commission information is not presently maintained by insurance carriers on a plan-by-plan basis in some cases, but is instead retained on the basis of the agent handling the insurance contract. Under the Welfare and Pension Plans Disclosure Act (29 U.S.C. 301), plans with fewer than 100 participants were not subject to the reporting requirements, and for the relatively few individual policy plans with over 100 participants, insurance carriers produced the data manually.

Under ERISA, insurance carriers must establish systems for retrieving this information for under-100 plans on a plan-by-plan basis. Because this process is both expensive and time-consuming, insurance carriers will require another year's lead time, and have requested a one year exemption from the requirement that insurance fees and commissions be included in the annual report for these small plans.

Therefore, the following findings are made with respect to the promulgation of § 2520.104–45 as an alternative method of compliance under section 110 of the Act:

1. The alternative method of compliance is consistent with the purposes of Title I of the Act, and provides adequate disclosure to plan participants and beneficiaries and adequate reporting to the Secretary. The information regarding the insurance fees and commissions paid by insurance carriers of small insured pension plans will be reported to the Secretary and disclosed to the participants and beneficiaries for plan years beginning in 1976.

2. Requiring small insured plans to report and disclose insurance fees and commissions information in the initial annual report under ERISA would increase the costs to plans and would impose unreasonable administrative burdens with respect to the operation of the plan. Small insured plans cannot obtain commission information from insurance carriers, until data systems which compile this information on a plan-by-plan basis have been established. To require these plans to report and disclose this information for the initial annual report would impose an unreasonable and potentially impossible burden of retrieving and collecting this data manually.

3. Requiring small insured plans to report and disclose insurance fees and commissions information would be adverse to the interests of plan participants in the aggregate. Such requirement would have the consequence of greatly increasing the insurance carriers costs and thereby resulting in possibly increased premium or administration charges.

Therefore, the inclusion in the annual report of information regarding insurance fees and commissions for plans with fewer than 100 participants is deferred for one year by this regulation, pursuant to the authority of sections 104(a)(3) and 110 of the Act.

Section 2520.104–46

Section 2520.104–46 waives the requirement to engage an independent qualified public accountant for both pension and welfare plans with fewer than 100 participants as of the beginning of the plan year. The waiver for pension plans is based on the statutory authority of sections 103(a)(3)(A) and 104(a)(2) of the Act, while the waiver for welfare plans is based on the broad exemption authority of section 104(a)(3) of the Act. Both sections 103(a)(3)(A) and 104(a)(2) evidence a specific intent to provide small plans with relief from burdensome and expensive reporting requirements.

Although the proposed annual reporting regulations issued in November 1975, contained no proposed waiver, a great many comments have been submitted in support of a waiver of the audit requirement for small plans. The overwhelming majority of the comments pointed out the excessive burden to small plans of the requirement of hiring an independent qualified public accountant, asserting that in many cases such a cost would effectively double the administrative costs of a small plan or possibly result in termination of many such small plans.

Section 2520.104a–5

Proposed § 2520.104a–5 has been amended to provide a deferral for the filing of the first annual report, as authorized by section 104(a)(1)(A) of the Act. The deferral will allow the first annual report filing to be eleven and one-half months after the end of the plan year beginning in 1975.

By a press release dated March 2, 1976, the Department announced that the due date of the annual report for the 1975 plan year would be extended to nine and one half months after the end of the plan year. This regulation therefore adds two months to the previously announced extension.

Applying this rule, plans which changed their plan years during 1975 would have had to file an initial annual report prior to December 15, 1976. Because this would not allow such plans sufficient time to prepare their annual reports, the rule provides that no plan is required to file the initial annual report earlier than December 15, 1976.

Section 2520.104a–6

Section 2520.104a–6 prescribes the annual report filing date requirements to be met by trusts, trade associations or other entities filing under the provisions of §§ 2520.103–2 and 2520.104–43. The trust or trade association which files the annual report described in § 2520.103–2 within eleven and one half months after the end of the fiscal year of the trust, trade association, or other entity which begins in 1975 satisfies the requirements of the exemption. Because the trust or trade association, rather than the participating employers, is the primary source of financial information for the plan, it is appropriate to link the annual reporting date to the fiscal year of the trust or trade association, rather than a participating employer's taxable year or the plan year. No comments were received on this or any other feature of this section. To insure that all trusts or trade associations have sufficient time to prepare their annual reports for the initial annual filing, the rule provides that no annual report is required to be filed prior to December 15, 1976.

Section 2520.104b–10

Section 2520.104b–10 prescribes the content, style and format of the summary annual report which must be furnished to participants and beneficiaries of a plan under section 104(b)(3) of the Act.

Numerous comments indicated that the requirements for the summary annual report were burdensome, counterproductive, and not in the best interests of the participants. Therefore, this final regulation simplifies the summary annual reporting requirements while apprising plan participants of the most significant aspects of the plan's financial status.

Except for unfunded plans with over 100 participants (which are exempted), the requirements for the contents of the summary annual report for plans filing annual report Form 5500 are determined by either the statutory provisions of section 104(b)(3) or the limited exemption alternative method of compliance of § 2520.103–1(a)(2).

The contents of the summary annual report for plans filing Form 5500 and using the limited exemption or alternate method of compliance under § 2520.103–1(b) must include:

(1) A statement of assets and liabilities, presented at current value (with the exception stated in § 2520.103–7), (2) separate or combined statements of income and expenses, and changes in net assets, (3) notes to the financial statements, and (4) a notice that the complete annual report is available upon request for a reasonable charge and available for examination at the plan administrator's office and certain employer establishments and union offices or meeting halls, as prescribed in § 2520.104b–1. The notice is not required to include a complete listing of addresses where documents must be made available for examination in accordance with § 2520.104b–1; however, reasonable guidance should be provided, identifying locations where the full annual report may be examined and supplying other pertinent information such as hours during which documents will be available.

Plans filing Form 5500–C or Form 5500–K are required to include in the summary annual report a copy of the appropriate Form (5500 –C or –K) and a notice of availability of the complete annual report including the schedule of party-in-interest transactions. The statement of assets and liabilities which must be included in the summary annual report is the statement in items 13 of Form 5500–C and 12 of Form 5500–K, with the exception stated in § 2520.104 b–10.

Because unfunded plans with over 100 participants are exempt from filing any financial information on Form 5500, totally unfunded plans are exempt from the summary annual report requirement.

Several comments took the position that the accountant's opinion called for in the proposed regulations was unnecessary for the summary because the opinion was, in effect, only a verification of the accuracy and completeness of the financial information which did not specifically contribute to the summary annual report. The provisions of the proposed regulations which would have required a copy of the accountant's opinion on the full annual report to be included in the summary annual report have been deleted.

In addition, there is no requirement to provide certain actuarial information in the summary as was required under the proposed regulation. Such information, while relevant to defined benefit plans, is not essential to a summary of the financial status of the plan.

The final regulation also changes the requirements contained in the proposed regulation for insured plans, so that all the information required by Schedule A—"Insurance Information" need not be included in the summary. Only insurance information relevant to the particular type of plan and contract is required.

The foreign language provision of the regulation requires that oral assistance in understanding the summary be offered to participants who are literate only in a language other than English. The proposal would have required a plan which covers 500 or more participants all of whom are literate only in the same foreign language, or which covers any employer establishment in which 50 percent or more of the participants are literate only in the same foreign language, to include the offer of assistance. The provision in this regulation requires oral assistance in the case of a plan which covers fewer than 100 participants as of the beginning of the plan year, where 25 percent or more are literate only in the same non-English language, and, in the case of a plan which covers 100 or more participants, where 500 or more, or 10 percent or more of all plan participants (whichever is less), are literate only in the same non-English language.

Although plans are not required to include any information in the summary annual report which is not specified in the regulation, the plan administrator may choose to add further relevant information or explanatory material. However, the items required to be included in the summary annual report must not be presented in a manner which will have the effect of misleading or misinforming the participant and any supplementary information must be written in a manner calculated to be understood by the average participant. Thus a summary annual report should not highlight a narrative explanation of the plan's financial status, while presenting the financial statements and schedules in fine print at the end of the summary.

The regulation requires, as a general rule, that a summary annual report be furnished to plan participants and beneficiaries within 9 months after the close of the plan year, which is 2 months after the date upon which the annual report must be filed with the Secretary. Because the annual report for the 1975 plan year is not required to be filed until 11½ months after the close of the plan year, the initial summary annual report disclosure requirement has been similarly deferred until 13½ months after the close of the 1975 plan year.

Pursuant to section 110 of the Act, the following findings are made with respect to the application of the deferral to pension plans:

1. The deferral is consistent with the purposes of Title I of the Act, and provides adequate disclosure to plan participants and beneficiaries and adequate reporting to the Secretary. The deferral will allow sufficient time after filing the annual report so that plan administrators may select and prepare for distribution the documents required for distribution to plan participants and beneficiaries in a manner calculated to give a clear and understandable report for these purposes.

2. Application of the statutory requirement of 7 months to distribute the summary annual report (or the 11½ month deferred filing date for 1975 plan year reporting) would impose unreasonable administrative burdens with respect to the operation of pension plans. If the distribution period were not extended 2 months beyond the annual report filing date, administrators of pension plans would be faced with the difficult task of presenting appropriate data and distributing the summary annual report in an unreasonably short period of time. The deferral will facilitate preparation of the summary annual report.

3. The unreasonable burden which would be placed on administrators of pension plans by the application of the statutory 7 month period (or the 11½

month deferred filing date for 1975 plan year reporting) would be adverse to the interests of pension plan participants in the aggregate. Failure to defer the summary annual report requirement could result in hastily prepared disclosure documents which might be incomplete, difficult to understand or factually inaccurate or misleading.

Pursuant to section 110 of the Act, the following findings are made with respect to the alternative method of compliance for the contents of summary annual reports by pension plans:

1. Use of the alternative method of compliance set forth in § 2520.104b–10 is consistent with the purposes of Title I of the Act and provides adequate disclosure to plan participants and beneficiaries and adequate reporting to the Secretary. Section 104(b)(3) of the Act specifies two statements which must be included in the summary annual report: the statement of assets and liabilities and the statement of receipts and disbursements. The alternative method of compliance requires that a statement of assets and liabilities and income and expenses be included in the summary annual report. The alternative provides plan participants and beneficiaries with sufficient financial information upon which an initial appraisal of the plan's performance can be based, while the notice of the availability of other plan documents alerts participants to their right to obtain more detailed information about the plan's financial status if an individual desires clarification or a more detailed analysis of the plan's financial status.

2. If the statutory requirements for the contents of the summary annual report were maintained many pension plans would be subject to increased costs and to unreasonable administrative burdens with respect to their operation. In addition, requiring a plan which does not list assets and liabilities at the beginning of the year at current value would in many instances require an audit of the previous year's books and records as well as possibly costly appraisal procedures. Requiring such plans to include current value information in the summary annual report would subject the plan to substantial administrative burdens and costs.

3. Imposition of the summary annual report statutory requirements would be adverse to the interests of participants and beneficiaries in the aggregate. Requiring plans to include different information in the summary annual report than is included in the annual report would provide no assurance to participants and beneficiaries that the financial information contained in the summary is the same information filed with the Secretary in the full annual report. In addition, the inclusion of beginning of the year balances of assets and liabilities at a valuation other than current value, such as cost, could mislead and confuse participants as to any actual appreciation or depreciation in the value of plan assets and liabilities.

Section 2520.104b–11

Section 2520.104b–11 prescribes the contents of the summary annual report for group insurance arrangements. The prescribed disclosure date is 9 months after the close of the fiscal year of the trust, trade association, or other entity, except for fiscal years beginning in 1975, in which case the disclosure date is 13½ months after the close of the fiscal year or February 15, 1977, whichever is later.

The requirements for the content of the summary annual report for group insurance arrangements have been changed from the requirements of the proposed regulation.

A group insurance arrangement complying with the limited exemption of § 2520.104–43 for the filing of the annual report must also follow the requirements of this section relating to summary annual report. The summary annual report must include: (1) A statement of assets and liabilities at current value (except as provided in § 2520.103–7), and (2) separate or combined statements of income and expenses, and changes in net assets, (3) notes to the financial statements, and (4) a notice that the complete annual report and accompanying statements and schedules are available upon request for a reasonable charge and available for examination at the plan administrator's office and certain employer establishments and union offices or meeting halls, as prescribed in § 2520.104b–1.

The content and format of the statements and notes are prescribed in § 2520.103–2(b) (2) and (3). A trust that does not list assets and liabilities at current value at the beginning of the year as permitted by § 2520.103–7(c)(1) shall not include the value of assets and liabilities of the trust as of the beginning of the plan year.

Several comments objected to the inclusion of the accountant's opinion in the summary annual report. This requirement has been removed for all summary annual reports.

Other comments addressed the disclosure burden placed on small plans participating in group insurance arrangements. Although responsibility lies with the plan administrator to furnish the summary annual report to plan participants and beneficiaries in accordance with § 2520.104b–1, all the financial information required to be included in the summary is the same information that must be filed by the trust, trade association or other entity in the annual report.

Accordingly, 29 CFR Part 2520 is amended by adding §§ 2520.103–1 through 2520.103–10, 2520.104–41 through 2520.104–46, 2520.104a–5, 2520.104a–6, 2520.104b–10, and 2520.104b–11 to read as follows:

Subpart C

Sec.
2520.103–1 Content of annual report.
2520.103–2 Content of annual report for a group insurance arrangement.
2520.103–3 Exemption from certain annual reporting requirements for assets held in a common or commingled trust fund.
2520.103–4 Exemption from certain annual reporting requirements for assets held in an insurance company pooled separate account.
2520.103–5 Transmittal and certification of information to plan administrator for annual reporting purposes.
2520.103–6 Definition of reportable transaction for purposes of annual return/report.
2520.103–7 Special accounting rules for plans filing the initial annual report.
2520.103–8 Limitation on scope of accountant's examination.
2520.103–9 Direct filing rules for bank common and commingled trusts and insurance carrier pooled separate accounts.
2520.103–10 Format and contents of annual report/return financial schedules.

Subpart D

2520.104–41 Simplified annual reporting requirements for plans with fewer than 100 participants.
2520.104–42 Waiver of certain actuarial information in the annual report.
2520.104–43 Exemption from annual reporting requirement for certain group insurance arrangements.
2520.104–44 Limited exemption and alternative method of compliance for annual reporting by unfunded or insured welfare and pension plans.
2520.104–45 Temporary exemption from reporting insurance fees and commissions for insured plans with fewer than 100 participants.
2520.104–46 Waiver of examination and report of an independent qualified public accountant for employee benefit plans with fewer than 100 participants.

Subpart E

2520.104a–5 Annual report filing requirements.
2520.104a–6 Annual reporting for plans which are part of a group insurance arrangement.

Subpart F

2520.104b–10 Summary annual report.
2520.104b–11 Summary annual report for plans which are part of a group insurance arrangement.

AUTHORITY: Secs. 101, 102, 103, 104, 109, 110, 111(b)(2), 111(c), 505, Pub. L. 93–406, 88 Stat. 840–52, 894 (29 U.S.C. 1021–24, 1029–31, 1135); Secretary of Labor's Order No. 13–76.

Subpart C

§ 2520.103–1 Contents of the annual report.

(a) *General.* The administrator of a plan required to file an annual report in accordance with section 104(a)(1)(A) of the Act shall include with the annual report the information prescribed in paragraph (a)(1) of this section or in the limited exemption or alternative method of compliance described in paragraph (a)(2) of this section.

(1) The annual report shall contain the information prescribed in section 103 of the Act.

(2) Under the authority of sections 104(a)(3) and 110 of the Act, a limited exemption or alternative method of compliance is prescribed for employee welfare and pension benefit plans, respectively, which cover 100 or more participants at any time during the plan year. A plan electing the limited exemption or alternative method of compliance shall file an annual report containing the information prescribed in paragraph (b) and shall furnish a summary annual report as prescribed in § 2520.104b-10(c)(1)(v) or § 2520.104b-11.

(b) *Contents of the annual report for plans with 100 or more participants electing the limited exemption or alternative method of compliance.* Except as provided in §§ 2520.104-44 and 2520.103-2, the annual report of an employee benefit plan covering 100 or more participants at any time during the plan year which elects the limited exemption or alternative method of compliance described in paragraph (a)(2) shall include:

(1) A DOL/IRS Form 5500 "Annual Return/Report of Employee Benefit Plan" and any schedules (Schedule A "Insurance Information" or Schedule B "Actuarial Information") required to be attached according to the instructions to the form.

(2) The following financial statements:

(i) Except as provided in § 2520.103-7, a statement of assets and liabilities at current value presented in comparative form for beginning and end of year. The statement of plan assets and liabilities shall include the assets and liabiliti s listed in columns *a* and *d* of item 13 of Form 5500; however, the assets and liabilities may be aggregated into categories in a manner other than that used on the Form 5500.

(ii) Separate or combined statements of all plan income and expenses and of changes in net assets which include the categories of income, expense, and changes in assets shown in item 14 of Form 5500; however the income, expense, and changes in net assets may be aggregated into categories in a manner other than that used on the Form 5500.

(iii) The financial statements required by this paragraph may be presented in a format which may include the following:

(iv) Separate typewritten or printed statements as described in paragraphs (b)(2)(i) and (ii) of this section, typewritten or printed statements which are reproductions of items 13 and 14 of Form 5500 or a statement incorporating by reference items 13 and 14 of Form 5500.

(3) Notes to the financial statements described in paragraph (b)(2) of this section which contain a description of the accounting principles and practices reflected in the financial statements, and, if applicable, variances from generally accepted accounting principles; a description of the plan including any significant changes in the plan made during the period and the impact of such changes on benefits; the funding policy (including policy with respect to prior service cost), and any changes in such policies during the year; a description of material lease commitments, other commitments, and contingent liabilities; a description of agreements and transactions with persons known to be parties in interest; a general description of priorities upon termination of the plan; information concerning whether or not a tax ruling or determination letter has been obtained; and any other matters necessary to fully and fairly present the financial statements of the plan.

(4) The separate financial schedules listed in Item 24(b) of Form 5500 and described in § 2520.103-10.

(5) *Information regarding common or collective trusts or pooled separate accounts.* In the case of a plan some or all of the assets of which are held in a pooled separate account maintained by an insurance carrier, or a common or collective trust maintained by a bank or similar institution, the annual report shall include a copy of the most recent annual statement of assets and liabilities of such separate account or trust as required under § 2520.103-3 or § 2520.103-4. See § 2520.103-9 for direct filing with the Secretary of such statements by banks or insurance companies.

(6) *Report of an independent qualified public accountant.* (i) *Technical requirements.* The accountant's report—

(A) Shall be dated;

(B) Shall be signed manually;

(C) Shall indicate the city and state where issued; and

(D) Shall identify without detailed enumeration the financial statements and schedules covered by the report.

(ii) *Representations as to the audit.* The accountant's report—

(A) Shall state whether the audit was made in accordance with generally accepted auditing stndards; and

(B) Shall designate any auditing procedures deemed necessary by the accountant under the circumstances of the particular case which have been omitted, and the reasons for their omission. Authority for the omission of procedures which independent accountants might ordinarily employ in the course of an audit made for the purpose of expressing the opinions required by paragraph (iii) is contained in § 2520.103-8.

(iii) *Opinion to be expressed.* The accountant's report shall state clearly:

(A) The opinion of the accountant in respect of the financial statements and schedules covered by the report and the accounting principles and practices reflected therein; and

(B) The opinion of the accountant as to the consistency of the application of the accounting principles, or as to any changes in such principles which have a material effect on the financial statements. Authority for changes in accounting principles is contained in § 2520.103-7.

(iv) *Exceptions.* Any matters to which the accountant takes exception shall be clearly identified, the exception thereto specifically and clearly stated, and, to the extent practicable, the effect of each such exception on the related financial statements given. The exception shall be further identified as a (A) those that are the result of DOL rules and regulations, and (B) all others.

(c) *Contents of the annual report for plans with fewer than 100 participants.* (1) Except as provided in §§ 2520.104-43 and 2520.104a-6, the annual report of an employee benefit plan which covers fewer than 100 participants at the beginning of the plan year shall be DOL/IRS Form 5500-C "Annual Return/Report of Employee Benefit Plan (with fewer than 100 participants none of whom is an owner-employee)" or 5500-K "Annual Return/Report of Employee Pension Benefit Plan for Sole Proprietorships and Partnerships (with fewer than 100 participants and at least one owner-employee)".

§ 2520.103-2 Contents of the annual report for a group insurance arrangement.

(a) *General.* (1) A trust or other entity described in § 2520.104-43(b) that files an annual report for purposes of § 2520.104-43 shall include in such report the items set forth in paragraph (b) of this section.

(b) *Contents.* (1) A DOL/IRS Form 5500 "Annual Return/Report of Employee Benefit Plan" and any Schedule A "Insurance Information" required to be attached according to the instructions to the form.

(2) The following financial statements:

(i) Except as provided in § 2520.103-7, a statement of all trust assets and liabilities at current value presented in comparative form for the beginning and end of year. The statement of trust assets and liabilities shall include the assets and liabilities listed in Columns *a* and *d* of item 13 of Form 5500; however, the assets and liabilities may be aggregated into categories in a manner other than that used on the Form 5500.

(ii) Separate or combined statements of all trust income and expenses and changes in net assets which includes the categories of income, expense, and changes in assets shown in item 14 of Form 5500; however, the income, expense, and changes in assets may be aggregated into categories in a manner other than that used on the Form 5500. The financial statements required by this paragraph may be presented in a format which may include, the following—Separate typewritten or printed statements as described in paragraph (b)(2)(i) and (ii) of this section, typewritten or printed statements which are reproductions of items 13 and 14 of Form 5500 or a statement incorporating by reference items 13 and 14 of Form 5500.

(3) Notes to the financial statements described in paragraph (b)(2) of this section which contain a description of the accounting principles and practices reflected in the financial statements, and, if applicable, variances from generally accepted accounting principles; a description of the group insurance arrangement including any significant changes in the group insurance arrangement made during the period and the impact

of such changes on benefits; a description of material lease commitments, other commitments, and contingent liabilities; a description of agreements and transactions with persons known to be parties in interest; a general description of priorities upon termination of the plan; and any other matters necessary to fully and fairly present the financial statements of the plan.

(4) The separate financial schedules listed in Item 24(b) of Form 5500 and described in § 2520.103–10.

(5) Information regarding common or collective trusts or pooled separate accounts. In the case of a group insurance arrangement some or all of the assets of which are held in a pooled separate account maintained by an insurance carrier, or a common or collective trust maintained by a bank, the annual report shall include a copy of the most recent annual statement of assets and liabilities of such separate account or trust as required under § 2520.103–3 or § 2520.103–4. See also § 2520.103–9 for direct filing with the Secretary of Labor such statements by banks or insurance companies.

(6) Report of an independent qualified public accountant. (i) *Technical requirements.* The accountant's report—

(A) Shall be dated;

(B) Shall be signed manually;

(C) Shall indicate the city and state where issued; and

(D) Shall identify without detailed enumeration the financial statements and schedules covered by the report.

(ii) *Representations as to the audit.* The accountant's report—

(A) Shall state whether the audit was made in accordance with generally accepted auditing standards; and

(B) Shall designate any auditing procedures deemed necessary by the accountant under the circumstances of the particular case, which have been omitted, and the reasons for their omission. Authority for the omission of procedures which independent accountants might ordinarily employ in the course of an audit made for the purpose of expressing the opinions required by paragraph (b)(6)(iii) of this section is contained in § 2520.103–8.

(iii) *Opinion to be expressed.* The accountant's report shall state clearly:

(A) The opinion of the accountant in respect of the financial statements and schedules covered by the report and the accounting principles and practices reflected therein; and

(B) the opinion of the accountant as to the consistency of the application of the accounting principles, or as to any changes in such principles which have a material effect on the financial statements. Authority for changes in accounting principles is contained in § 2520.-103–7.

(iv) *Exceptions.* Any matters to which the accountant takes exception shall be clearly identified, the exception thereto specifically and clearly stated, and, to the extent practicable, the effect of each such exception on the related financial statements given. The exception shall be further identified as to (A) those that are the result of DOL rules and regulations and (B) all others.

§ 2520.103–3 Exemption from certain annual reporting requirements for assets held in a common or collective trust fund.

(a) *General.* Under the authority of section 103(b)(3)(G) of the Act, a plan whose assets are held in whole or in part in a common or collective trust maintained by a bank, trust company, or similar institution which meets the requirements of paragraph (b) of this section shall include as part of the annual report required to be filed under § 2520.104a–5 or § 2520.104a–6 the most recent annual statement of assets and liabilities of the common or collective trust and other information as described in paragraph (c) of this section. Such plan is not required to include in the annual report any information concerning the individual transactions of the common or collective trust. This exemption has no application to assets not held in such trusts.

(b) *Application.* This provision applies only to a plan some or all of the assets of which are held in a common or collective trust maintained by a bank, trust company, or similar institution regulated and supervised and subject to periodic examination by a State or Federal agency. For purposes of this section, a common or collective trust is a trust which consists of the assets of two or more participating entities and is maintained for the collective investment and reinvestment of assets contributed thereto by the bank in its capacity as trustee, executor, administrator, or guardian. For purposes of this section, a controlled group of corporations, as defined in section 1563 (a) of the Internal Revenue Code of 1954, shall be deemed to be a single participant in a common or collective trust.

(c) *Contents.* (1) A plan which meets the requirements of paragraph (b) of this section shall include in the Form 5500 Annual Return/Report and in the separate statements and schedules of the annual report prescribed in § 2520.103–1 or § 2520.103–2, information regarding the value of the units of participation in the common or collective trust held by the plan and transactions involving the acquisition and disposition by the plan of units of participation in the common or collective trust. However, the annual report is not required to include any information regarding the individual transactions of the common or collective trust.

(2) The annual report of such plan shall also include the most recent annual statement by the bank, trust company, or similar institution of the assets and liabilities of the common or collective trust.

(3) The statement of assets and liabilities of the common or collective trust is not required to be attached to the annual report filed by the administrator pursuant to § 2520.104a–5 or § 2520.104a–6 if the administrator meets the requirements of § 2520.103–9 regarding direct filing of the statement of assets and liabilities of the common or collective trust by the bank, trust company or similar institution.

§ 2520.103–4 Exemption from certain annual reporting requirements for assets held in an insurance company pooled separate account.

(a) *General.* Under the authority of section 103(b)(3)(G) of the Act, a plan whose assets are held in whole or in part in a pooled separate account of an insurance carrier which meets the requirements of paragraph (b) of this section shall include as part of the annual report required to be filed under § 2520.104a–5 or § 2520.104a–6 the most recent annual statement of assets and liabilities of the pooled separate account and other information as described in paragraph (c) of this section. Such plan is not required to include in the annual report any information concerning the individual transactions of the pooled separate account. This exemption has no application to assets not held in such pooled separate account.

(b) *Application.* This provision applies only to a plan some or all of the assets of which are held in a pooled separate account of an insurance carrier regulated and supervised and subject to periodic examination by a State agency.

(c) *Contents.* (1) A plan which meets the requirements of paragraph (b) of this section shall include in the Form 5500 Annual Return/Report and in the separate statements and schedules of the annual report, prescribed in § 2520.103–1 or § 2520.103–2, information regarding the value of the units of participation in the pooled separate account held by the plan and transactions involving the acquisition and disposition by the plan of units of participation in the pooled separate account. However, the annual report is not required to include any information regarding the individual transactions of the pooled separate account.

(2) The annual report of such plan shall also include the most recent annual statement by the insurance carrier of the assets and liabilities of the pooled separate account.

(3) The statement of assets and liabilities of the pooled separate account is not required to be attached to the annual report filed by the administrator pursuant to § 2520.104a–5 or § 2520.104 a–6 if the administrator meets the requirements of § 2520.103–9, regarding direct filing of the statement of assets and liabilities of the pooled separate account by an insurance carrier.

§ 2520.103–5 Transmittal and certification of information to plan administrator for annual reporting purposes.

(a) *General.* In accordance with section 103(a)(2) of the Act, an insurance carrier or other organization which provides benefits under the plan or holds plan assets, a bank or similar institution which holds plan assets, or a plan sponsor, as described in paragraph (b)(3) of this section, shall transmit and certify such information as needed by the ad-

ministrator to file the annual report under section 104(a)(1)(A) of the Act and § 2520.104a–5:

(1) Within 9 months after the close of the plan year which begins in 1975 or September 30, 1976, whichever is later, and

(2) Within 120 days after the close of any plan year which begins after December 31, 1975.

(b) *Application.* This requirement applies with respect to—

(1) An insurance carrier or other organization which:

(i) Provides benefits under a plan, or

(ii) Holds assets of a plan in a separate account;

(2) A bank, trust company, or similar institution which holds assets of a plan in a common or collective trust, separate trust, or custodial account; and

(3) A plan sponsor as defined in section 3(16)(B) of the Act.

(c) *Contents.* The information required to be provided to the administrator shall include—

(1) In the case of an insurance carrier or other organization which—

(i) Provides benefits under a plan, upon request of the plan administrator, such information as is contained within the ordinary business records of the insurance carrier or other organization and is needed by the plan administrator to comply with the requirements of section 104(a)(1)(A) of the Act and § 2520.104a–5;

(ii) Holds assets of a plan in a pooled separate account which is exempted from certain reporting requirements under § 2520.103–4, a copy of the most recent annual statement of assets and liabilities of the separate account and a statement of the value of the plan's units of participation in the separate account; and

(iii) Holds assets of a plan in an individual separate account,

A listing of all transactions of the separate account, and, upon request of the plan administrator, such information as is contained within the ordinary business records of the insurance carrier and is needed by the plan administrator to comply with the requirements of section 104(a)(1)(A) of the Act and § 2520.104a–5.

(2) In the case of a bank, trust company, or similar institution holding assets of a plan—

(i) In a common or collective trust which is exempted from certain reporting requirements under § 2520.103–3, a copy of the most recent annual statement of assets and liabilities of the common or collective trust, and a statement of the value of the plan's units of participation in the common or collective trust.

(ii) In a separate trust, a listing of all transactions of the separate trust and, upon request of the plan administrator, such information as is contained within the ordinary business records of the bank, trust company, or similar institution and is needed by the plan administrator to comply with the requirements of section 104(a)(1)(A) of the Act and § 2520.104a–5.

(iii) In a custodial account, upon request of the plan administrator, such information as is contained within the ordinary business records of the bank, trust company, or similar institution and is needed by the plan administrator to comply with the requirements of section 104(a)(1)(A) of the Act and § 2520.104a–5.

(3) In the case of a plan sponsor, a listing of all transactions directly or indirectly involving plan assets engaged in by the plan sponsor and such information as is needed by the plan administrator to comply with the requirements of section 104(a)(1)(A) of the Act and § 2520.104a–5.

(d) *Certification.* (1) An insurance carrier or other organization, a bank, trust company, or similar institution, or plan sponsor, as described in paragraph (b) of this section, shall certify to the accuracy and completeness of the information described in paragraph (c) of this section by a written declaration which is signed by a person authorized to represent the insurance carrier, bank, or plan sponsor. Such certification will serve as a written assurance of the truth of the facts stated therein.

(2) Example. The XYZ Bank (Insurance Carrier) hereby certifies that the foregoing statement is complete and accurate.

(S) _____

§ 2520.103–6 Definition of reportable transaction for Annual Return/Report.

(a) *General.* For purposes of preparing the schedule of reportable transactions described in § 2520.103–10(b)(5), a reportable transaction includes any transaction or series of transactions described in paragraph (c) of this section.

(b) *Definitions.* (1)(i) Except as provided in paragraph (b)(1)(ii) and in paragraphs (c)(2) and (d)(1)(vi) of this section (relating to assets acquired or disposed of during the plan year), "current value" shall mean the current value, as defined in section 3(26) of the Act, of plan assets as of the beginning of the plan year, or the end of the previous plan year.

(ii) With respect to schedules of reportable transactions for plan years beginning in 1975, the current value of plan assets for the beginning of the plan year, or the end of the previous plan year, shall be the amount shown on line 13(h) of Form 5500 Annual Return/Report.

(2) A "transaction with respect to securities" is any purchase, sale, or exchange of securities. A transaction with respect to securities for purposes of this section occurs on either the trade date or settlement date of a purchase, sale, or exchange of securities, provided that either the trade date or settlement date is used consistently during the plan year for purposes of this section. For purposes of this section, "security" includes a unit of participation in a common or commingled trust or a pooled separate account.

(3) A transaction is "with or in conjunction with a person" for purposes of this section if that person benefits from, executes, facilitates, participates in, promotes, or solicits a transaction or part of a transaction involving plan assets.

(c) *Application.* (1) This provision applies to—

(i) A transaction within the plan year, with respect to any plan asset, involving an amount in excess of 3 percent of the current value of plan assets;

(ii) Any series of transactions (other than transactions with respect to securities) within the plan year with or in conjunction with the same person which, when aggregated, regardless of the category of asset and the gain or loss on any transaction, involves an amount in excess of 3 percent of the current value of plan assets;

(iii) Any transaction within the plan year involving securities of the same issue if within the plan year any series of transactions with respect to such securities, when aggregated, involves an amount in excess of 3 percent of the current value of plan assets; and

(iv) Any transaction within the plan year with respect to securities with or in conjunction with a person if any prior or subsequent single transaction within the plan year with such person with respect to securities exceeds 3 percent of the current value of plan assets.

(2) For purposes of determining whether any 3 percent transactions occur, the "current value" of an asset acquired or disposed of during the plan year is the current value, as defined in section 3(26) of the Act, at the time of acquisition or disposition of such asset.

(d) *Contents.* (1) The schedule of transactions shall include the following information as to each transaction or series of transactions:

(i) The name of each party, except that in the case of a transaction or series of transactions involving a purchase or sale of a security on the market, the schedule need not include the person from whom it was purchased or to whom it was sold. A purchase or sale on the market is a purchase or sale of a security through a registered broker-dealer acting as a broker under the Securities Exchange Act of 1934;

(ii) A brief description of each asset;

(iii) The purchase or selling price in the case of a purchase or sale, the rental in the case of a lease, and the amount of principal, interest rate, payment schedule (e.g., fully amortized, partly amortized with balloon) and maturity date in the case of a loan;

(iv) Expenses incurred, including, but not limited to, any fees or commissions;

(v) The cost of any asset;

(vi) The current value of any asset acquired or disposed of at the time of acquisition or disposition; and

(vii) The net gain or loss.

(2) The schedule of transactions with respect to a series of transactions described in subparagraph (c)(1)(iii) may include the following information for each issue in lieu of the information prescribed in paragraphs (d)(1)(i)–(vii):

(i) The total number of purchases of such securities made by the plan within the plan year;

(ii) The total number of sales of such securities made by the plan within the plan year;

(iii) The total dollar value of such purchases;

(iv) The total dollar value of such sales;

(v) The net gain or loss as a result of these transactions.

(e) *Examples.* (1) At the beginning of the plan year, XYZ plan has 10 percent of the current value of its plan assets invested in ABC common stock. Halfway through the plan year, XYZ purchases ABC common stock in a single transaction in an amount equal to 5 percent of the current value of plan assets. At about this time, XYZ plan also purchases a commercial development property in an amount equal to 4 percent of the current value of plan assets. Under paragraph (c)(1)(i) of this section, the 5 percent stock transaction is a reportable transaction for the plan year because it exceeds 3 percent of the current value of plan assets. The 4 percent land transaction is also reportable under paragraph (c)(1)(i) because it exceeds 3 percent of current value of plan assets.

(2) During the plan year, AAA plan purchases a commercial lot from ZZZ corporation at a cost equal to 2 percent of the current value of plan assets. Two months later, AAA plan loans ZZZ corporation an amount of money equal to 1.5 percent of the current value of plan assets. Under the provisions of paragraph (c)(1)(ii), the plan has engaged in a reportable series of transactions with or in conjunction with the same person, ZZZ corporation, which, when aggregated, involves 3.5 percent of plan assets.

(3) At the beginning of the plan year, ABC plan has 10 percent of the current value of plan assets invested equally in a combination of XYZ Corporation common stock and XYZ preferred stock. One month into the plan year, ABC sells some of its XYZ common in an amount equal to 2 percent of the current value of plan assets.

(i) Six weeks later the plan sells XYZ preferred stock in an amount equal to 2 percent of the current value of plan assets. A reportable series of transactions has not occurred because only transactions involving securities of the same issue are to be aggregated under paragraph (c)(1)(iii) of this section.

(ii) Two weeks later when the ABC plan purchases XYZ common stock in an amount equal to 2.5 percent of the current value of plan assets, a reportable series of transactions under paragraph (c)(1)(iii) of this section has occurred. The sale of XYZ common stock worth 2 percent of plan assets and the purchase of XYZ common stock worth 2.5 percent of plan assets aggregate to exceed 3 percent of the total value of plan assets. Purchases and sales should be aggregated; a net calculation should not be made. Both the purchase and sale of XYZ common stock are part of the reportable series under paragraph (c)(1)(iii) of this section.

(4) At the beginning of the plan year, Plan X purchases from broker-dealer Y common stock of Able Industries in an amount equal to 4 percent of the current value of plan assets. This purchase is a reportable transaction under paragraph (c)(1)(i) of this section. Six months later, Plan X sells broker-dealer Y, the same broker-dealer involved in the previous 4 percent transaction, preferred stock of the Baker Corporation in an amount equal to 0.5 percent of the current value of plan assets. This sale is a reportable transaction under the provisions of paragraph (c)(1)(iv) of this section. Three months later, Plan X purchases from the same broker-dealer Y certain short term debt obligations of Charley Company in the amount of 0.2 percent of the current value of plan assets. This purchase is also a reportable transaction under the provisions of paragraph (c)(1)(iv) of this section.

§ 2520.103–7 Special accounting rules for plans filing the initial annual report.

(a) *General.* (1) The administrator of an employee benefit plan which meets the requirements described in paragraph (b)(1) of this section and elects to file an annual report containing the items prescribed in § 2520.103–1(b) or § 2520.103–2(b) is not required to comply with the accounting requirements described in paragraph (c)(1) of this section.

(2) Under the authority of sections 110 and 104(a)(3) of the Act, the administrator of any employee benefit plan which meets the requirements described in paragraph (b)(2) is not required to comply with the accounting requirements described in paragraph (c)(2) of this section.

(b) *Application.* With respect to the annual report described in § 2520.103–1 or § 2520.103–2, filed in accordance with § 2520.104a–5 or § 2520.104a–6 for the plan year beginning in 1975,

(1) The administrator of a plan which covers 100 or more participants or the trust or other entity which files an annual report in accordance with § 2520.104–43 is not required to comply with the accounting requirements described in paragraph (c)(1) of this section; and

(2) The administrator of a plan which covers fewer than 100 participants is not required to comply with the accounting requirements described in paragraph (c)(2) of this section.

(c) *Excepted requirements.* (1) In the case of a plan which covers 100 or more participants as of the beginning of the plan year,

(i) To display at current value the statement of the assets and liabilities of the plan, as of the end of the previous plan year;

(ii) To engage an independent qualified public accountant to conduct an examination of the plan's financial statements for the plan year immediately preceding the plan year or trust year covered by the initial annual report; and

(iii) To include within the initial annual report the opinion of an independent qualified public accountant as to whether the financial statements for the close of the initial plan year are presented on a basis consistent with that of the preceding year.

(2) In the case of a plan which covers fewer than 100 participants at the beginning of the plan year, to display at current value the statement of the assets and liabilities of the plan displayed in Item 13 of Form 5500–C or Item 12 of Form 5500–K as of the end of the previous plan year or as of the beginning of the plan year subject to the initial annual report.

§ 2520.103–8 Limitation on scope of accountant's examination.

(a) *General.* Under the authority of section 103(a)(3)(C) of the Act, the examination and report of an independent qualified public accountant need not extend to any statement or information prepared and certified by a bank or similar institution or insurance carrier. A plan, trust or other entity which meets the requirements of paragraph (b) of this section is not required to have covered by the accountant's examination or report any of the information described in paragraph (c) of this section.

(b) *Application.* This section applies to any plan, trust or other entity some or all of the assets of which are held by a bank or similar institution or insurance carrier which is regulated and supervised and subject to periodic examination by a State or Federal agency.

(c) *Excluded information.* Any statements or information certified to by a bank or similar institution or insurance carrier described in paragraph (b) of this section, provided that the statements or information regarding assets so held are prepared and certified to by the bank or insurance carrier in accordance with § 2520.103–5.

§ 2520.103–9 Direct filing for bank or insurance carrier trusts and accounts.

(a) *General.* Under the authority of section 103(b)(4) of the Act, the Secretary may relieve any employee benefit plan whose assets are held in whole or in part in a common or collective trust or a pooled separate account described in section 103(b)(3)(G) of the Act and §§ 2520.103–3 and 2520.103–4 from including in the annual report the statement of assets and liabilities of the common or collective trust or pooled separate account in accordance with section 103(b)(3)(G) of the Act and § 2520.103–1 or § 2520.103–2 if the bank or insurance carrier which maintains such trust or account files such statement of assets and liabilities directly with the Secretary. An employee benefit plan which meets the requirements of paragraph (b)(1) is relieved from including a statement of assets and liabilities of the common or collective trust or pooled separate account, provided that the bank or insurance carrier which holds the plan's assets meets the requirements of paragraph (b)(2) of this section.

(b) *Application.* A plan required to include a statement of assets and liabilities of a common or collective trust or pooled separate account in the annual report in accordance with section 103(b)(3)(G) of the Act and §§ 2520.103–3 and 2520.-103–4 is relieved from including such statement in the annual report if the plan administrator files with the annual report the information described in paragraph (1) and the bank or insurance carrier files the information described in paragraph (b)(2) of this section in the manner described therein.

(1) The plan administrator shall include in the annual report:

(i) A certification that the plan has received from the bank or insurance carrier a copy of the most recent annual statement of assets and liabilities of any common or collective trust or pooled separate account in which any plan assets are held and

(ii) The Employer Identification Number (EIN) of such common or collective trust or pooled separate account and any additional identification number assigned to the trust or account for purposes of this section pursuant to paragraph (b)(2)(i)(C) of this section.

(2) The bank or insurance carrier which maintains the common or collective trust or pooled separate account in which assets of the plan are held—

(i) Shall file the following information with the Secretary:

(A) The most recent annual statement of the assets and liabilities of the common or collective trust fund or pooled separate account in which assets of the plan are held,

(B) A list of all plans, assets of which are held in the common or collective trust or pooled separate account identified by the Plan number as on the Annual Return/Report Form, name and EIN of the plan sponsor, and

(C) The EIN of the common or collective trust or pooled separate account; if the same EIN designates more than one trust or account, the bank or insurance carrier shall sequentially number the trusts or accounts for purposes of this section and report the sequential numbers together with the EIN; and

(ii) Shall furnish the following items to the plan administrator:

(A) The most recent annual statement of assets and liabilities of the common or collective trust or pooled separate account in which the plan is a participant (See § 2520.103–5);

(B) The EIN of the common or collective trust or separate account and any other identification number assigned to the trust for purposes of this section; and

(C) A certification that a copy of the most recent annual statement of assets and liabilities of the trust or account has been filed with the Secretary on or before the date upon which the annual report of the plan is required to be filed in accordance with § 2520.104a–5 or 2520.-104a–6.

(c) *Filing address.* See § 2520.104a–5(b).

§ 2520.103–10 Format and contents of annual report financial schedules.

(a) *General.* Under the authority of section 103(c)(5) of the Act, the separate financial schedules required by item 24(b) of Form 5500 Annual Return/Report shall include the information presented in the formats prescribed in paragraph (b) of this section.

(b) *Format and Content of schedules.* (1) *Assets held for investment.* A schedule of all assets held for investment purposes aggregated and identified by issue, maturity date, rate of interest, collateral, par or maturity value, cost, and current value and in the case of a loan, the payment schedule (e.g. fully amortized, partly amortized with balloon) in the format set forth below:

a.	b. Identity of issue, borrower, lessor or similar party	c. Description of investment including maturity date, rate of interest, collateral, par or maturity value	d. Cost	e. Current value

(2) *Party-in-interest transactions.* Except in the case of a transaction to which a statutory exemption under Part 4 of Title I or an administrative exemption under section 408(a) of the Act is applicable, a schedule of each transaction involving a person known to be a party in interest, the identity of such party in interest and his relationship or that of any other party in interest to the plan or trust, a description of each asset to which the transaction relates, the purchase or selling price (in case of a sale or purchase) or the rental (in case of a lease) or the interest rate and maturity date (in the case of a loan), the expenses incurred by the plan or trust in connection with the transaction, the cost of the asset, the current value of the asset, and the net gain (or loss) on each transaction; in the format set forth below:

a. Identity of party involved	b. Relationship to plan, employer or other party-in-interest	c. Description of transactions including maturity date, rate of interest, collateral, par or maturity value	d. Purchase price	e. Selling price	f. Lease rental	g. Expenses incurred in connection with transaction	h. Cost of asset	i. Current value of asset	j. Net gain or (loss) on each transaction

(3) *Obligations in default.* A schedule of all loans or fixed income obligations which were in default as of the close of the plan or trust fiscal year or were classified during the year as uncollectable, and the following information with respect to each loan on such schedule (including a notation as to whether parties involved are known to be parties in interest): the original principal amount of the loan, the amount of principal and interest received during the reporting year, the unpaid balance, the identity and address of the obligor, a detailed description of the loan (including date of making and maturity, interest rate, the type and value of collateral, and other material terms), the amount of principal and interest overdue (if any) and an explanation thereof; in the format set forth below:

a.	b. Identity of party involved	c. Original amount of loan	Amount received during reporting year		f. Unpaid balance at end of year	g. Detailed description of loan including dates of making and maturity, interest rate, the type and value of collateral, any renegotiation of the loan and the terms of the renegotiation and other material terms	Amount overdue	
			d. Principal	e. Interest			h. Principal	i. Interest

(4) *Leases in default.* A schedule of all leases which were in default or were classified during the year as uncollectable and the following information with respect to each lease on such schedule (including a notation as to whether parties involved are known to be parties in interest): The type of property leased and, in the case of fixed assets such as land, buildings, leasehold, and so forth, the location of the property, the identity of the lessor or lessee from or to whom the plan is leasing, the relationship of such lessors and lessees (if any) to the trust, the employer, employee organization, or any other party in interest, the terms of the lease regarding rent, taxes, insurance, repair, expenses, and renewal options, the date the leased property was purchased and its cost, the date the property was leased and its approximate value at such date, the gross rental receipts during the reporting period, expenses paid for the leased property during the reporting period, the net receipts from the lease, the amount in arrears, and a statement as to what steps have been taken to collect amounts due or otherwise remedy the default; in the format set forth below:

a.	b. Identity of lessor/lessee	c. Relationship to plan, employer, employee organization or other party-in-interest	d. Terms and description (type of property, location and date it was purchased, terms regarding rent, taxes, insurance, repairs, expenses, renewal options, date property was leased)	e. Original cost	f. Current value at time of lease	g. Gross rental receipts during the plan year	h. Expenses paid during the plan year	i. Net receipts	j. Amount in arrears

(5) *Reportable transactions.* A schedule of any reportable transactions as defined in § 2520.103–6, in the format set forth below:

a. Identity of party involved	b. Description of asset (include interest rate and maturity in case of a loan)	c. Purchase price	d. Selling price	e. Lease rental	f. Expense incurred with transaction	g. Cost of asset	h. Current value of asset	i. Net gain or (loss)

Subpart D

§ 2520.104–41 Simplified annual reporting requirements for plans with fewer than 100 participants.

(a) *General.* (1) Under the authority of section 104(a)(2)(A), the Secretary of Labor may prescribe simplified annual reporting for employee pension benefit plans with fewer than 100 participants.

(2) Under the authority of section 104(a)(3), the Secretary of Labor may provide a limited exemption for any employee welfare benefit plan with respect to certain annual reporting requirements.

(b) *Application.* The administrator of an employee pension or welfare benefit plan which covers fewer than 100 participants at the beginning of the plan year and is required to file an annual report under section 104(a)(1)(A) of the Act and § 2520.104a–5 shall file the simplified annual report described in paragraph (c) of this section.

(c) *Contents.* (1) The administrator of an employee benefit plan which covers fewer than 100 participants none of whom is an owner-employee, as defined in section 401(c)(3) of the Internal Revenue Code of 1954, shall file a Form 5500–C "Annual Return/Report of Employee Benefit Plan (with fewer than 100 participants, none of whom is an owner employee)" in the manner prescribed in § 2520.104a–5.

(2) The administrator of an employee pension Keogh plan which covers fewer than 100 participants, at least one of whom is an owner-employee, as defined in section 401(c)(3) of the Internal Revenue Code of 1954, shall file a Form 5500–K "Annual Return/Report of Employee Pension Benefit Plan for Sole Proprietorships and Partnerships (with fewer than 100 participants one of whom is an owner-employee)" in the manner prescribed in § 2520.104a–5.

§ 2520.104–42 Waiver of certain actuarial information in the annual report.

(a) *Scope and application.* Under the authority of 104(a)(2)(A) of the Act, the Secretary of Labor may waive the requirement that the annual report include as part of the actuarial statement (Schedule B) the present value of all of the plan's liabilities for nonforfeitable pension benefits allocated by the termination priority categories, as set forth in section 4044 of Title IV of the Act, and the actuarial assumptions used in these computations. In accordance with this authority, the plan administrator of any employee pension benefit plan required under sections 103(c)(5) and 103(d) of the Act to include actuarial information as part of the annual report is not required to include a statement of the present value of all of the plan's liabilities for nonforfeitable pension benefits allocated by termination priority categories, as set forth in section 4044 of Title IV of the Act, and the actuarial assumptions used in these computations.

(b) *Limitation.* This section applies only to the annual report required to be filed for plan years beginning in 1975.

§ 2520.104–43 Exemption from annual reporting requirement for certain group insurance arrangements.

(a) *General.* Under the authority of section 104(a)(3) of the Act, the administrator of an employee welfare benefit plan which meets the requirements of paragraph (b) of this section is not required to file an annual report with the Secretary of Labor as required by section 104(a)(1)(A) of the Act.

(b) *Application.* (1) This exemption applies only to a welfare plan for a plan year in which (i) such plan meets the requirements of § 2520.104–21, except the requirement that the plan have fewer than 100 participants, and (ii) an annual report containing the items set forth in § 2520.103–2 has been filed with the Secretary of Labor in accordance with § 2520.104a–6 by the trust or other entity which is the legal owner of the insurance contracts by which plan benefits are provided and the conduit for payment of premiums for such policies.

(2) For purposes of this section, the term "trust or other entity" shall be used in place of the term "plan" or "plan administrator" as applicable, in §§ 2520.103–3, 2520.103–4, 2520.103–6, 2520.103–7(b)(1), 2520.103–8, 2520.103–9, 2520.103–10, and 2520.104–45.

(c) *Limitation.* This provision does not exempt the administrator of an employee benefit plan which meets the requirements of paragraph (b) from furnishing a copy of a summary annual report to participants and beneficiaries of the plan, as required by section 104(b)(3) of the Act.

§ 2520.104–44 Limited exemption and alternative method of compliance for annual reporting by unfunded and insured plans.

(a) *General.* (1) Under the authority of section 104(a)(3) of the Act, the Secretary of Labor may exempt an employee welfare benefit plan from any or all of the reporting and disclosure requirements of Title I. An employee welfare benefit plan which meets the requirements of paragraph (b)(1) of this section is not required to comply with the annual reporting requirements described in paragraph (c) of this section.

(2) Under the authority of section 110 of the Act, an alternative method of compliance is prescribed for certain employee pension benefit plans subject to Part 1, Title I of the Act. An employee pension benefit plan which meets the requirements of paragraph (b)(2) of this section is not required to comply with the annual reporting requirements described in paragraph (c) of this section.

(b) *Application.* This section applies only to:

(1) An employee welfare benefit plan under the terms of which benefits are to be paid—

(i) Solely from the general assets of the employer or employee organization maintaining the plan,

(ii) The benefits of which are provided exclusively through insurance contracts or policies issued by an insurance company or similar organization which is qualified to do business in any State, the premiums for which are paid directly by the employer or employee organization from its general assets or partly from its general assets and partly from contributions by its employees or members, provided that any plan assets held by the insurance company are held solely in the general account of such company, contributions by participants are forwarded by the employer or employee organization within three months of receipt and, in the case of a plan that provides for the return of refunds to contributing participants, such refunds are returned to them within three months of receipt by the employer or employee organization, or

(iii) Partly in the manner specified in (b)(1)(i) and partly in the manner specified in (b)(1)(ii) of this section; and

(2) A pension benefit plan the benefits of which are provided exclusively through insurance contracts or policies issued by an insurance company or similar organization which is qualified to do business in any State, the premiums for which are paid directly by the employer or employee organization from its general assets or partly from its general assets and partly from contributions by its employees or members, provided that any plan assets held by the insurance company are held solely in the general account of such company, contributions by participants are forwarded by the employer or employee organization within three months of receipt and, in the case of a plan that provides for the return or refunds to contributing participants, such refunds are returned to them within three months of receipt by the employer or employee organization.

(c) *Contents.* An employee benefit plan described in paragraph (b) of this section is exempt from complying with the following annual reporting requirements:

(1) Competing items 13, 14, and 24 of Form 5500 in the case of a plan required to file Form 5500 pursuant to § 2520.104a–5; items 13, 14, and 16 in the case of a plan required to file Form 5500–C in accordance with § 2520.104–41, or items 12 and 14 in the case of a plan required to file Form 5500–K in accordance with § 2520.104–41;

(2) Including in the annual report the financial statements and schedules described in section 103(b) of the Act and § 2520.103–1 or § 2520.103–2;

(3) Engaging an independent qualified public accountant pursuant to section 103(a)(3)(A) of the Act and § 2520.103–1(b) to conduct an examination of the financial statements and schedules of the plan; and

(4) Including in the annual report a report of an independent qualified public accountant concerning the financial statements and schedules required to be a part of the annual report pursuant to section 103(b) of the Act and § 2520.103–1(b).

(d) *Limitation.* This section does not exempt any plan from filing an annual report form with the Secretary in accordance with section 104(a)(1)(A) of the Act and § 2520.104a–5.

(e) *Example.* An insured welfare plan which meets all the requirements for coverage under § 2520.104–20 except that it covers 100 or more participants is not exempt from the annual reporting requirements under § 2520.104–20. Under this section, such a welfare plan should file Form 5500, including Schedule A "Insurance Information." However, the plan is not required to engage an independent qualified public accountant and items 13, 14, and 24 of Form 5500 need not be completed.

§ 2520.104–45 Temporary exemption from reporting insurance fees and commissions for insured plans with fewer than 100 participants.

(a) *General.* (1) Under the authority of section 104(a)(3) of the Act, the Secretary of Labor may exempt an employee welfare benefit plan from any or all of the reporting and disclosure requirements of Title I. The administrator of an employee welfare benefit plan which meets the requirements of paragraph (b) is exempt from complying with the annual reporting requirements described in paragraph (c) of this section.

(2) Under the authority of section 110 of the Act, the Secretary of Labor may prescribe an alternative method of compliance for employee pension benefit plans subject to Part 1, Title I, of the Act. The administrator of an employee pension benefit plan which meets the requirements of paragraph (b) of this section is not required to comply with the annual reporting requirements described in paragraph (c) of this section.

(b) *Application.* (1) The provisions of this section apply only to welfare and pension plans which cover fewer than 100 participants at the beginning of the plan year and which provide benefits in whole or in part through insurance contracts or policies issued by an insurance company or similar organization which is qualified to do business in any State.

(c) *Contents.* A plan which meets the requirements of paragraph (b) of this section is not required to include in the annual report filed in accordance with section 104(a)(1)(A) of the Act and § 2520.104a–5 or § 2520.104a–6 the following information described under sections 103(c) and (e) of the Act:

(1) The name and address of any insurance agent, broker or other person to whom insurance commissions, salaries or fees are paid;

(2) The amount paid to each; and

(3) The purpose for which such payment is made.

(d) *Limitation.* The provisions of this section apply only to the annual report required to be filed for the plan year beginning in 1975.

§ 2520.104–46 Waiver of examination and report of an independent qualified public accountant for employee benefit plans with fewer than 100 participants.

(a) *General.* (1) Under the authority of section 103(a)(3)(A) of the Act, the Secretary may waive the requirements of section 103(a)(3)(A) in the case of a

plan for which simplified annual reporting has been prescribed in accordance with section 104(a)(2) of the Act.

(2) Under the authority of section 104(a)(3) of the Act the Secretary may exempt any employee welfare benefit plan from certain annual reporting requirements.

(b) *Application.* (1) The administrator of an employee pension plan for which simplified annual reporting has been prescribed in accordance with section 104(a)(2)(A) of the Act and § 2520.104–41 is not required to comply with the annual reporting requirements described in paragraph (c).

(2) The administrator of an employee welfare benefit plan that covers fewer than 100 participants at the beginning of the plan year is not required to comply with annual reporting requirements described in paragraph (c).

(c) *Waiver.* The administrator of a plan described in paragraph (b) (1) or (2) of this section is not required to:

(1) Engage an independent qualified public accountant to conduct an examination of the financial statements of the plan;

(2) Include within the annual report the financial statements and schedules prescribed in section 103(b) of the Act and §§ 2520.103–1, 2520.103–2, and 2520.103–10 and

(3) Include within the annual report a report of an independent qualified public accountant as prescribed in section 103(a)(3)(A) of the Act and § 2520.103–1.

(d) *Limitation.* The waiver described in this section does not affect the obligation of a plan described in paragraph (b) (1) or (2) of this section to file a Form 5500 –C or –K and all schedules called for therein. See § 2520.104–41.

Subpart E

§ 2520.104a–5 Annual report filing requirements.

(a) *Filing obligation.* Except as provided in § 2520.104a–6, the administrator of an employee benefit plan required to file an annual report pursuant to section 104(a)(1)(A) of the Act shall file an annual report containing the items prescribed in § 2520.103–1 within:

(1) Eleven and one half months after the close of the plan year which begins in 1975, or December 15, 1976, whichever is later; and

(2) Seven months after the close of any plan year which begins after December 31, 1975.

(b) *Filing address.* The annual report prescribed in § 2520.103–1 shall be filed with the Secretary of Labor by mailing it to OEBS Annual Report, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, or by delivering it during normal working hours to Room N–4635, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C.

§ 2520.104a–6 Annual reporting for plans which are part of a group insurance arrangement.

(a) *General.* A trust or other entity described in § 2520.104–43(b) that files an annual report in accordance with the terms of paragraphs (b) and (c) of this section shall be deemed to have filed such report in accordance with § 2520.104a–6 for purposes of § 2520.104–43.

(b) *Date of filing.* The annual report shall be filed within:

(1) Eleven and one half months after the close of the fiscal year of the trust or other entity described in § 2520.104–43 which begins in 1975 or December 15, 1976, whichever is later; and

(2) Seven months after the close of any trust year which begins after December 31, 1975.

(c) *Filing address.* The annual report prescribed in § 2520.103–2 shall be filed with the Secretary of Labor by mailing it to OEBS Annual Report, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, or by delivering it during normal working hours to Room N–4635, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C.

Subpart F

§ 2520.104b–10 Summary annual report.

(a) *Obligation to furnish.* Under the authority of sections 104(a)(3) and 110 of the Act, the administrator of an employee benefit plan subject to Part 1, Title I of the Act shall furnish a summary annual report containing the information prescribed in paragraph (c) of this section to plan participants and beneficiaries within 9 months after the close of the plan year or the date prescribed in paragraph (b), in accordance with § 2520.104b–1.

(b) *Deferral of initial disclosure requirements.* (1) Under the authority of section 104(a)(3) of the Act, the Administrator of an employee welfare benefit plan required to furnish a summary annual report for the plan year beginning in 1975 to plan participants and beneficiaries may defer compliance with the requirement to furnish a summary annual report in accordance with section 104(b)(3) of the Act within 13½ months after the close of the plan year which begins in 1975 or February 15, 1977, whichever is later.

(2) Under the authority of section 110 of the Act, an alternative method of compliance is prescribed for employee pension benefit plans required to furnish a summary annual report for the plan year beginning in 1975 to plan participants and beneficiaries. Such a pension plan may defer compliance with the requirement to furnish a summary annual report in accordance with section 104(b)(3) of the Act within 13½ months after the close of the plan year which begins in 1975 or February 15, 1977, whichever is later.

(c) *Contents.* Except as provided in paragraph (d) of this section and § 2520.104b–11, the summary annual report furnished to participants and beneficiaries shall contain the items listed below. Statements, schedules, and other items of information included in these items which are a part of the annual report form and attachments required to be filed with the Secretary of Labor in accordance with §§ 2520.104a–5 and 2520.103–1 shall be reproduced accurately and in full. The summary annual report shall include:

(1) *Requirements for plans filing Form 5500.* (i) The name of the plan and, if different, the name by which the plan is commonly known to its participants and beneficiaries;

(ii) (A) The name and address of any employer having employees covered by the plan, (B) the name and address of any labor organization maintaining the plan, or (C) in the case of a plan established or maintained by two or more employers or by one or more employers and one or more employee organizations, the name and address of the association, committee, joint board of trustees, parent, or most significant employer of a group of employers contributing to the same plan;

(iii) The name, business address, and business telephone number of the plan administrator; and

(iv) The items prescribed in section 104(b)(3) of the Act; or

(v) For a plan which elects the limited exemption or alternative method of compliance described in § 2520.103–1(b):

(A) The financial statements and accompanying notes prescribed under § 2520.103–1(b), except that a plan which does not list assets and liabilities at the beginning of the year at current value, as permitted by § 2520.103–7(c)(1), shall not include the beginning-of-the-year value of assets and liabilities of the plan as prescribed in § 2520.103–1(b)(2)(i), and

(B) A notice which reads as follows: "Plan participants and beneficiaries may obtain copies of the following more detailed annual report information for a reasonable charge, or inspect it without charge: The latest full annual report, or any of parts of the report including a list of any assets held for investment; a list of certain party-in-interest transactions, a list of any loans or obligations in default; a list of any leases in default; and a list of transactions involving more than 3 percent of plan assets. To obtain a copy of any documents listed, write to the administrator asking for what you want. The administrator will state the charge for specific documents on request, so that you can find out the cost before ordering. All the documents listed can be examined at [state locations where documents may be examined]."

(2) *Requirements for plans filing Form 5500–C.* Under the authority of sections 104(a)(3) and 110 of the Act, a plan filing Form 5500–C, as prescribed in § 2520.104–41, shall include the following items in the summary annual report:

(i) A copy of Form 5500–C, except that a plan which does not list assets and liabilities at the beginning of the year at current value, as permitted by § 2520.103–7(c)(2), shall not include the value of assets and liabilities of the plan as prescribed in item 13 of Form 5500–C; and

(ii) A notice which reads as follows: "Plan participants and beneficiaries may obtain copies of the following more detailed annual report information for a reasonable charge or inspect without charge: the latest, full annual report, including a list of certain party-in-interest transactions. To obtain a copy of any documents listed, write to the administrator asking for exactly what you want. The administrator will state the charge for specific documents on request, so that you can find out the cost before ordering. All documents listed can be examined at [state locations where documents may be examined]."

(3) *Requirements for plans filing Form 5500–K.* Under the authority of section 110 of the Act, a pension plan filing Form 5500–K, as prescribed in § 2520.104–41, shall include the following items in the summary annual report:

(i) A copy of Form 5500–K, except that a plan which does not state net assets at current value at the beginning of the plan year, as permitted by § 2520.103–7(c)(2), shall not include an amount for net assets at the beginning of the plan year in item 12 of Form 5500–K and

(ii) A notice which reads as follows: "Plan participants and beneficiaries may obtain copies of the following more detailed annual report information for a reasonable charge or inspect without charge: the latest full annual report, including a list of certain party-in-interest transactions. To obtain a copy of any documents listed, write to the administrator asking for what you want. The administrator will state the charge for specific documents on request, so that you can find out the cost before ordering. All the documents listed can be examined at [state locations where documents may be examined]."

(4) *Additional requirements for insured plans described in paragraphs (1), (2), or (3).* (i) In the case of a pension plan funded in part or in whole through insurance contracts, the summary annual report shall also include items 5, 6, and 7 of Schedule A (Insurance Information) of the Annual Return/Report Form.

(ii) In the case of a welfare plan funded in part or in whole through an insurance contract, the summary annual report shall also include items 9 and 10 of Schedule A (Insurance Information) of Annual Return/Report Form.

(5) *Unfunded plans.* Under the authority of sections 104(a)(3) and 110 of the Act, a totally unfunded plan described in § 2520.104–44 is exempt from the requirement to furnish a summary annual report under section 104(b)(3) of the Act.

(d) *Style and format.* (1) The plan administrator may add explanatory text and other relevant information to the list of items described in paragraph (c) of this section. However, the format of the summary annual report shall not have the effect of misleading, misinforming, or failing to inform participants and beneficiaries of the plan. For example, a summary annual report which prominently displays information other than that prescribed in paragraph (c) of this section and prints the information prescribed in paragraph (c) of this section in small, inconspicuous print will not satisfy the requirements of this section. Any additional or explanatory information shall be written in a manner calculated to be understood by the average plan participant, taking into account factors such as the level of comprehension and education of typical participants in the plan and the complexity of the items required under this section to be included in the summary annual report. Inaccurate or misleading explanatory material will fail to meet the requirements of this section.

(2) Foreign languages. In the case of either—

(i) A plan which covers fewer than 100 participants at the beginning of a plan year in which 25 percent or more of all plan participants are literate only in the same non-English language, or

(ii) A plan which covers 100 or more participants in which 500 or more participants or 10 percent or more of all plan participants, whichever is less, are literate only in the same non-English language, so that a summary annual report in English would fail to inform these participants of the financial status of the plan the plan administrator for such plan shall provide these participants with an English-language summary annual report which prominently displays a notice, in the non-English language common to these participants, offering them assistance. The assistance provided need not involve written materials, but shall be given in the non-English language common to these participants. The notice offering assistance shall clearly set forth the procedures participants must follow to obtain such assistance.

§ 2520.104b–11 Summary annual report for plans which are part of a group insurance arrangement.

(a) *Obligation to furnish.* In accordance with section 104(b)(3) of the Act, the administrator of an employee welfare benefit plan which is part of a group insurance arrangement described in § 2520.104–43 shall furnish a summary annual report containing the information prescribed in paragraph (b) of this section for fiscal years beginning after December 31, 1974 in accordance with the requirements of § 2520.104b–1 within nine months after the close of the fiscal year of the trust or other entity which is filing the annual report with the Secretary pursuant to § 2520.104a–6, except that for fiscal years beginning in 1975, the administrator shall furnish the summary annual report within thirteen and one half months after the close of the fiscal year or February 15, 1977, whichever is later.

(b) *Contents.* The summary annual report furnished to participants and beneficiaries in accordance with paragraph (a) of this section shall include:

(1) The name of the plan and, if different, the name by which the plan is commonly known to its participants and beneficiaries;

(2)(i) The name and address of any employer having employees covered by the plan, (ii) the name and address of any labor organization maintaining the plan, or (iii) in the case of a plan established or maintained by two or more employers or by one or more employers and one or more employee organizations, the name and address of the association, committee, joint board of trustees, parent, or most significant employer of a group of employers contributing to the same plan;

(3) The name, business address, and business telephone number of the plan administrator; and

(4) The financial statements and accompanying notes prescribed under § 2520.103–2(b). A trust which does not list assets and liabilities at current value at the beginning of the year, as permitted by § 2520.103–7(c)(1), shall not include the value of assets and liabilities of the trust as prescribed in the first column of item 13 of Form 5500.

(5) A notice which reads as follows: "Plan participants and beneficiaries may obtain copies of the following more detailed annual report information for a reasonable charge, or inspect it without charge: The latest full annual report, or any of parts of the report including a list of any assets held for investment; a list of certain party-in-interest transactions; a list of any loans or obligations in default; a list of any leases in default; and a list of transactions involving more than 3% of trust assets. To obtain a copy of any documents listed, write to the administrator asking for what you want. The administrator will state the charge for specific documents on request, so that you can find out the cost before ordering. All the documents listed can be examined at [state locations where documents may be examined]."

(c) *Style and format.* See § 2520.104b–10(h).

Signed at Washington, D.C., this 29th day of July, 1976.

JAMES D. HUTCHINSON,
Administrator of Pension and Welfare Benefit Plans.

[FR Doc.76–22440 Filed 7–30–76;3:33 pm]

federal register

TUESDAY, AUGUST 3, 1976



PART III:

SECURITIES AND EXCHANGE COMMISSION

■

FORMS FOR REGISTRATION STATEMENTS

Proposed Amendments and Rescission

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 239]

[Release Nos. 33-5728 and 34-12654; File No. S7-646]

FORMS FOR REGISTRATION STATEMENTS

Proposed Amendments and Rescission

The Securities and Exchange Commission today published for comment proposed amendments to Form S-7 (17 CFR 239.26) and Form S-16 (17 CFR 239.27), which would make these forms available to a larger number of issuers, and a proposal to rescind Form S-9 (17 CFR 239.22), under the Securities Act of 1933 ("Securities Act") (15 U.S.C. 77a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)). The proposed amendments to Form S-7 also would expand the availability of that form to issuers presently registering securities on Form S-9, making the latter form unnecessary.

This release contains a general discussion of the background, purpose and effect of the proposed amendments and a brief description of certain significant aspects of the proposals. Attention is directed to the attached text of the proposals for a more complete understanding.

BACKGROUND AND PURPOSE

In Securities Act Release No. 5613 (September 11, 1975) (40 FR 44584), the Commission published for comment proposed amendments to Form S-7 which would substantially relax the conditions to use of that form, as well as Form S-16.[1] At that time, the Commission announced that Forms S-7 and S-16 would be available to issuers which met the then-proposed amended conditions to use of the forms while the proposals were pending. Comments received on those proposals, as well as experience with the use of Forms S-7 and S-16 pursuant to the proposed amendments, have been favorable. Accordingly, the Commission is republishing those proposals for comment, together with additional proposals which would further relax the conditions to use of Forms S-7 and S-16, thus making these short registration forms available to a larger number of issuers and making Form S-7 available for the registration of securities to be offered in exchange for other securities, as well as for cash. In developing the present proposals, the Commission has carefully considered the comments received on the earlier proposals.

Issuers eligible to use Forms S-7 and S-16 for the registration of securities are permitted to omit from the Form S-7 prospectus, or to incorporate by reference in the Form S-16 prospectus, substantial information already provided to security holders or available to investors in reports filed with the Commission pursuant to the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)). As a result, a Form S-7 or S-16 prospectus generally is much simpler and shorter than one prepared pursuant to other available forms and the burden and expense to registrants of preparing the registration statement is reduced.

The present proposals would make Forms S-7 and S-16 available to a larger number of those issuers which are subject to the reporting requirements of the Exchange Act, thus reflecting recent improvements in the nature and extent of the information required to be included in reports filed with the Commission and provided to security holders under the proxy requirements of that Act and the increased availability of such information to the investing public.

The Commission also proposes, if the amendments to Form S-7 are adopted substantially as proposed, to rescind Form S-9, a form presently available for registration under the Securities Act of non-convertible, fixed interest debt securities by issuers subject to the reporting requirements of section 13 or 15(d) of the Exchange Act and which meet certain other conditions. In recent years, Form S-9 has been used by a continually decreasing number of issuers, and a survey of registration statements on Form S-9 filed during the past three years indicates that almost all issuers who have used the form during this period would be eligible to use Form S-7, as proposed to be amended, for the registration of debt securities.

These proposals are a part of the Commission's continuing efforts to further integrate the corporate disclosure requirements under the federal securities laws by permitting information provided to investors pursuant to the continuous disclosure requirements of the Exchange Act to be relied upon in lieu of disclosures which otherwise would be required in registration statements under the Securities Act.

PROPOSAL TO MODIFY REQUIREMENT THAT ISSUER HAVE A CLASS OF SECURITIES REG-

USE OF PROPOSED REVISED FORMS S-7 AND S-16 PRIOR TO ADOPTION OF AMENDMENTS

Since the proposed amendments represent a relaxation of present requirements or are consistent with existing staff interpretative positions, the Commission will permit registrants to use Forms S-7 and S-16 as proposed to be amended while the proposals are pending. Form S-9 would continue to be available to persons wishing to use that form until such time as the Commission decides whether to rescind it.

PROPOSED REVISIONS IN THE RULE AS TO USE OF FORM S-7 (AND FORM S-16)

The amendments proposed today would make Form S-7 and Form S-16 available for the registration of debt or equity securities by any issuer with a class of securities listed on a national securities exchange or any domestic issuer with a class of equity securities registered pursuant to section 12(g) of the Exchange Act, provided that the issuer has been subject to the requirements of sections 13 and 14 of the Exchange Act for three years prior to the filing of the registration statement, has timely filed all reports required thereunder for the past twelve months, and meets certain other conditions. A detailed discussion of the conditions to use of Forms S-7 and S-16, as proposed to be amended, is set forth below.

PROPOSAL TO MODIFY REQUIREMENT THAT ISSUER HAVE A CLASS OF SECURITIES REGISTERED UNDER SECTIONS 12(b) OR 12(g) OF THE EXCHANGE ACT

The Rule as to Use of Form S-7 presently requires that an issuer have a class of equity securities registered pursuant to section 12(b) of the Exchange Act or be a domestic issuer with a class of equity securities registered pursuant to section 12(g) of that Act. The amendments proposed today would make the form available to any issuer with a class of securities (debt or equity) registered pursuant to section 12(b) of the Exchange Act, as well as to any domestic issuer with a class of equity securities registered under section 12(g) of that Act.[2] This proposed amendment is intended to reflect the fact that through reports filed with the Commission pursuant to section 13 of the Exchange Act the information available to the investing public concerning issuers with a class of debt securities listed on a national securities exchange is substantially simliar to the information available concerning issuers with a class of equity securities listed on an exchange.[3]

PROPOSAL TO MODIFY REQUIREMENT RELATING TO COMPLIANCE WITH SECTIONS 13 AND 14 OF THE EXCHANGE ACT

In order to meet the present conditions to use of Forms S-7 and S-16, an issuer must have complied in all respects, including timeliness, with the requirements of sections 13 and 14 of the Exchange Act for three fiscal years prior to the filing of the registration statement.

The amendments proposed today would modify this provision to require that the issuer have been subject to Sections 13 and 14 of that Act and have filed all reports required thereunder for at least three calendar years prior to the filing of the registration statement. This

[1] The Rule as to Use of Form S-16 provides that the form is available for registration under the Securities Act of certain securities of issuers which meet the requirements for the use of Fom S-7 at the time the registration statement is filed. Thus, the present proposals to amend the Rule as to Use of Form S-7 automatically would amend the Rule as to Use of Form S-16. See General Instruction A to Form S-16 (17 CFR 239.27 (a)].

[2] It should be noted that issuers who wish to do so may voluntarily register any class of equity security pursuant to section 12(g)(1) of the Exchange Act by filing an appropriate registration statement pursuant to the provisions of that section.

[3] This is particularly so in light of the information concerning the management and principal shareholders of an issuer required to be included in Part II of reports on Form 10-K [17 CFR 249.310] which have not filed proxy or information statements pursuant to Regulation 14A [17 CFR 240.14a-1 to 2340.-14a-103] or 14C. [17 CFR 240.14c-1 to 240.-14c-101].

proposal would make Forms S–7 and S–16 available to a wider range of issuers and, at the same time, should assure that sufficient information about issuers using the forms is available to the investing public through the Exchange Act reporting system.

In addition, the period during which all such reports must have been timely filed would be reduced from three fiscal years to twelve calendar months.[4] This is intended to reduce the hardship (that is, the loss of the right to use Forms S–7 and S–16 for a period of time) which may result from an issuer's failure to meet the timeliness requirement and, at the same time, to provide sufficient incentive to issuers to timely file all required reports. Generally, the staff will strictly enforce this condition to use of Forms S–7 and S–16, since the timely filing of required reports under the Exchange Act is essential to maintain the availability to the public of current and adequate information concerning registrants.[5]

PROPOSAL TO ELIMINATE CONTINUITY OF MANAGEMENT REQUIREMENT

The Commission proposes to eliminate as a condition to the use of Form S–7 or S–16 the requirement that a majority of the existing board of directors of the issuer has held that office for the last three fiscal years.

In recent years, the staff has received and granted numerous requests for waivers of this condition in circumstances where issuers have been unable to meet this requirement because, for example, of recent increases in the size of the board of directors or because of turnover on the board due to the death or retirement of directors. In light of this experience, the Commission believes that the requirement is unnecessarily restrictive and that issuers should not be precluded from using Form S–7 or S–16 simply because there has been a change in the majority of the board of directors.

Nevertheless, where there has been a recent change in control of the issuer within the meaning of Securities Act Rule 405(f) (17 CFR 230.405(f)), the Commission believes that current information concerning the issuer's management and the principal holders of its securities, including their remuneration and interests in transactions with the issuer, may not be publicly available and should be included in the Form S–7 or S–16 prospectus. Accordingly, as described below, the Commission also is proposing to add a new Item 10 to Form S–7 and to amend Item 9 of Form S–16 to require disclosure of such information where there has been a change of control.

PROPOSAL TO MODIFY REQUIREMENT RELATING TO DEFAULTS

The proposals published for comment today would reduce from ten years to three years the period during which the issuer and its subsidiaries may not have defaulted in the payment of any dividend or sinking fund installment on preferred stock, or in the payment of any principal, interest or sinking fund installment on any indebtedness or borrowed money, or in the payment of rentals under long term leases, as a condition to use of these forms. In addition, the Rule as to Use of Form S–7 would be amended to make clear that this condition relates to defaults on any indebtedness, whether for borrowed money or for any other purpose.[6] It also should be noted that the term "default" as used herein has been, and will continue to be, interpreted to include the failure to pay a dividend on preferred stock. Such a "default" cannot be remedied for purposes of this requirement by a subsequent payment of the missed dividend.

PROPOSAL TO MODIFY MINIMUM EARNINGS REQUIREMENT

The present Rule as to Use of Form S–7 requires that the issuer and its subsidiaries have had a net income, after taxes but before extraordinary items, of at least $500,000 for each of the last five fiscal years. The amendments proposed today would reduce the minimum earnings required to $250,000 for three of the last four fiscal years, including the most recent fiscal year.[7] In response to public comments received concerning the September, 1975 proposal to amend Form S–7, the amendments provide that the cumulative effect of a change in accounting principle shall be excluded in determining net income.

PROPOSAL TO ELIMINATE REQUIREMENT RELATING TO EARNED DIVIDENDS

The Rule as to Use of Form S–7 presently requires that if the securities to be registered are common stock or are convertible into common stock, the registrant shall have earned, in each of the 1st five fiscal years, any dividends paid in such years. The Commission is proposing to eliminate this requirement as a condition to the use of Forms S–7 and S–16.[8]

The above-outlined proposals would increase the number of issuers eligible to use Forms S–7 and S–16. The Commission believes that it is appropriate in the public interest and for the protection of investors to expand the availability of these forms, which are shorter and less expensive to use than other forms for the registration of securities under the Securities Act, to more of those issuers which are providing current and adequate information to investors through the continuous disclosure system under the Exchange Act.

PROPOSAL TO PERMIT THE USE OF FORMS S–7 AND S–16 BY A SUCCESSOR TO AN INSURER

The amendments proposed today would provide that an issuer shall be deemed to have met the conditions to use of Forms S–7 and S–16 relating to Exchange Act reports, defaults and net income if its predecessor and it, taken together, do so and if (1) the succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company and (2) the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor. This proposal would codify existing staff interpretative positions.

PROPOSAL TO MAKE FORM S–7 AVAILABLE FOR USE IN CONNECTION WITH EXCHANGE OFFERS

Presently, Form S–7 may be used only to register securities to be offered for cash. The Commission is proposing, however, to make the form available for the registration of securities to be offered in exchange for other securities of the issuer or securities of any other person.[9] A new Instruction G is proposed to be added to Form S–7 which would require additional information to be included in the prospectus covering securities of the issuer to be offered in exchange for securities of any other person. This additional information would relate to the management of the issuer and its principal security holders, their transactions with the issuer, their interest in the other person, and the issuer's interest in such other person. Public comments are specifically requested with respect to the necessity and materiality of such additional disclosure.

Proposed new Instruction G also would require that the prospectus include information concerning the person whose securities are the subject of the exchange offer identical to that required by Items 6 to 10 and 12 to 15 of Form S–1 (17 CFR 239.11), except in cases where such other person also is eligible to use Form S–7. If such other person is eligible to use Form S–7, the prospectus would include the information concerning it called for by Items 5 to 10 and 12 of Form S–7.

In addition, proposed new Instruction G refers to Item 11(d) of Form S–7, which requires financial statements concerning the other person identical to those which would be required in a regis-

[4] A report filed within the time granted pursuant to a request for an extension of time under Exchange Act Rule 12b–25 [17 CFR 240.12b–25] shall be considered timely filed.

[5] In this connection, the Commission wishes to remind issuers that Exchange Act Rule 0–3 [17 CFR 240.0–3] provides that the "date on which papers are actually received by the Commission shall be the date of filing * * *" The Commission recognizes, however, that, on rare occasions, a document sent to the Commission in a timely fashion may arrive shortly after the required filing date because of circumstances beyond the control of the issuer. In such cases, the staff may, in its discretion, grant an exception to this requirement where to do so is consistent with the public interest and the protection of investors. Cf., Securities Act Rule 401 [17 CFR 230.401].

[6] This proposal was previously published for comment in Securities Act Release No. 5613 (September 11, 1975) (40 FR 44584).

[7] In Securities Act Release No. 5613 (September 11, 1975) (40 FR 44584), the Commission proposed to reduce the net income requirement to $250,000 for each of the last three fiscal years.

[8] Elimination of this requirement was previously proposed in Securities Act Release No. 5613 (September 11, 1975) (40 FR 44584).

[9] This proposal would implement one of the recommendations of the Commission's Industrial Issuers Advisory Committee. See "Report of the Industrial Issuers Advisory Committee to the Securities and Exchange Commission" 19–20 (1972).

tration statement on Form S–1. However, if such other person also meets the conditions as to use of Form S–7, only those financial statements called for by Form S–7 would be required for such other person. Language presently contained in the Instructions as to Financial Statements of Form S–1 relating to future successions to other businesses is proposed to be added to Items 11(d) (2) and (3) of Form S–7 since the latter would be available for use in exchange offers under the present proposals.

PROPOSED AMENDMENTS TO DISCLOSURE REQUIREMENTS OF FORMS S–7 AND S–16

PROPOSED AMENDMENT TO ITEM 5 (BUSINESS) OF FORM S–7

Item 5(b) of Form S–7 presently calls for disclosure of information concerning lines of business of the registrant or classes of similar products or services of the registrant for each of the past five fiscal years. In light of the amendments to the Rule as to Use of Form S–7 proposed today, certain issuers eligible to use the form may not have been engaged in business for that period of time. Accordingly, the Commission proposes to amend Item 5(b) to require disclosure of such information for the last five fiscal years or for each fiscal year the registrant and its predecessors have been engaged in business, whichever is less.

PROPOSED AMENDMENT TO ITEM 6 (STATEMENTS OF INCOME) OF FORM S–7

Item 6 of Form S–7 presently calls for audited income statements of the registrant for each of the last five fiscal years. The Commission proposes to amend Item 6 and Instruction 1 to that item to require income statements for each of the last five fiscal years, or for each year the registrant and its predecessors have been in existence, whichever is less, and to require audited income statements only for the three most recent fiscal years and for any subsequent interim period for which an audited balance sheet is included in the prospectus. This proposal would conform the Form S–7 requirements for audited income statements to the requirements of Form S–1.

PROPOSED NEW ITEM 10 (MANAGEMENT AND OTHERS) OF FORM S–7 PROPOSAL TO AMEND ITEM 9 (ADDITIONAL INFORMATION) OF FORM S–16

As was discussed above, the Commission is proposing to eliminate the present continuity of management condition to use of Form S–7 and Form S–16 and to require instead that additional information concerning management of the registrant and its principal security holders be included in the prospectus in the event of a recent change in control of the registrant.

Accordingly, if there has been a change in control of the registrant within the past three years, proposed new Item 10 of Form S–7 would require that the information called for by Items 16 to 20 of Form S–1 be included in the S–7 prospectus. Items 16 to 20 of Form S–1 call for information concerning the registrant's directors and executive officers and their remuneration and options to purchase securities; principal holders of the registrant's securities; and the interest of management and others in certain transactions with the registrant.

Proposed Item 9(b) of Form S–16 would require similar disclosure if the change of control has not been "previously reported," as defined in Exchange Act Rule 12b–2 (17 CFR 240.12b–2).

To reflect these changes, present Items 10 and 11 of Form S–7 would be renumbered as Items 11 and 12, respectively, and present Item 9(b) of Form S–16 would be renumbered as Item 9(c). Also, it is proposed to indicate in renumbered Item 12(b) of Form S–7 and Item 9(c) of Form S–16 that reports, proxy statements and other information filed by the registrant can be inspected and copied at the Commission's Regional Offices in New York, Chicago and Los Angeles as well as at its office in Washington.

PROPOSAL TO RESCIND FORM S–9

Form S–9 is a form for the registration under the Securities Act of non-convertible, fixed interest debt securities by issuers required to file reports pursuant to Section 13 or 15(d) of the Exchange Act and which meet certain other conditions, including minimum fixed charges coverage standards. As indicated above, however, Form S–9 has been used only by a very small number of issuers in recent years, in part because recent increases in interest rates have made it difficult for many issuers to meet the minimum fixed charges coverage standards.[10]

In addition, on the basis of a survey of registration statements filed on Form S–9 during the past three years, it appears that almost all issuers eligible to use Form S–9 would be eligible to use Form S–7 as proposed to be revised. In light of the otherwise limited differences between Forms S–7 and S–9, as well as the present proposals to expand the availability of Form S–7, the Commission is proposing to rescind Form S–9 if amendments to Form S–7 substantially as proposed today are adopted.

STATUTORY AUTHORITY FOR PROPOSED AMENDMENTS

The amendments to Forms S–7 and S–16 and the rescission of Form S–9 are proposed pursuant to the Securities Act of 1933, particularly Sections 6, 7, 10 and 19(a) thereof. All interested persons are invited to submit their written views and comments on these proposals, in triplicate, to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549 on or before September 27, 1976. Such communications should refer to File No. S7–646. All such communications will be available for public inspection.

The text of the proposed amendments to Forms S–7, S–16, and S–9 follows.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JULY 26, 1976.

PROPOSED AMENDMENTS

ATTENTION

The text of the following proposed amendments use ► ◄ arrows to indicate additions and [ ] brackets to indicate deletions.

TEXT OF PROPOSED AMENDMENTS TO FORM S–7

Form S–7 (17 CFR 239.26) is proposed to be amended to read as follows:

§ 239.26 Form S–7, for registration under the Securities Act of 1933 of securities of certain issuers [to be offered for cash].

* * * * *

GENERAL INSTRUCTIONS

A. *Rule as to Use of Form S–7.*

Any registrant which meets the following conditions may use this form for registration under the Securities Act of 1933 of any securities which are offered for cash by or on behalf of the registrant or any other person, in a rights offering or otherwise, ►or which are offered in exchange for any securities◄:

(a) The [registration meets either of the following conditions:] ►registrant◄ (1) has a class of [equity] securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934; or (2) is organized under the laws of the United States or any State or Territory or the District of Columbia, has its principal business operations in the United States or its Territories and has a class of equity securities registered pursuant to Section 12(g) of the above Act.

(b) The registrant has been subject to [and has complied in all respects, including timeliness, with] the requirements of Sections 13 and 14 of the Securities Exchange Act of 1934 ►and has filed all the reports required to be filed thereunder◄ for a period of at least three [fiscal] years immediately preceding the filing of the registration statement on this form ►and has filed in a timely manner all reports required to be filed during the twelve calendar months preceding the filing of the registration statement.◄

[(c) A majority of the existing board of directors of the registrant have been directors of the registrant or a predecessor of the registrant from the beginning of the registrant's last three fiscal years to the date of filing the registration statement on this form.]

[d] ►(c)◄ The registrant and its subsidiaries have not during the past [ten] ►three◄ years defaulted in the payment of any dividend or sinking fund installment on preferred stock, or in the payment of any principal, interest or sinking fund installment on any indebtedness [for] ►or◄ borrowed money, or in the payment of rentals under long term leases.

[e] ►(d)◄ The registrant and its consolidated subsidiaries had a net income, after taxes but before extraordinary items ►and cumulative effect of a change in accounting principle◄ net of tax effect, of at least [$500,000] ►$250,000◄ for [each of the last

[10] In 1972, the Commission's Industrial Issuers Advisory Committee recommended that the Commission reconsider the minimum fixed charges coverage standard required as a condition to use of Form S–9, and determine whether a standard other than fixed charges coverage would be appropriate. "Report of the Industrial Issuers Advisory Committee to the Securities and Exchange Commission" 21 (1972).

five fiscal years] ►three of the last four fiscal years, including the most recent fiscal year.◄

[(f) If the securities to be registered are common stock or securities convertible into common stock, the registrant earned in each of the last five fiscal years any dividends, including the fair market value of any stock dividends, paid in each such year on all classes of securities. If the registrant paid a stock dividend in any of such fiscal years, the aggregate amount transferred from additional capital to capital in respect of each such dividend was charged only to retained earnings account and was equal to the aggregate fair market value of the stock issued as such dividend.]

►(e) A registrant shall be deemed to have met conditions (b), (c) and (d) above if its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the State of incorporation of the predecessor or forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor.◄

B.–F. (No change from the present General Instructions).

G. ►*Exchange Offers.*◄

►(a) If any of the securities being registered are offered in exchange for securities of any other person, the prospectus shall include the information concerning the registrant called for by Items 16 to 20, inclusive, of Form S–1 (17 CFR 239.11). Describe any substantial interest in the other person, direct or indirect, by security holdings or otherwise, held within the past three years by the registrant or by any officer, director or security holder of the registrant named in answer to Item 19(a) of Form S–1 (17 CFR 239.11).◄

►(b) Except as stated below, the prospectus shall also include the information concerning the other person which would be required by Items 6 to 10 and 12 to 15, inclusive, of Form S–1 (17 CFR 239.11) if such securities of such other person were being registered on that form. Reference is made to Item 11(d) of this form for information concerning the necessity of furnishing financial statements of such other person. In the event the other person also meets the conditions set forth in General Instruction A to this form, the prospectus may include, in lieu of the above information concerning such other person, the information which would be required by Items 5 to 10, inclusive, and Item 12 of this form if such securities of such other person were being registered on this form. In this event, Item 11(d) may be complied with by furnishing only those financial statements concerning such other person which would be required if it were registering securities on this form. In connection with this instruction, reference is made to Rules 409 (17 CFR 230.409) and 434B (17 CFR 230.434b).◄

[G.] ►H.◄ (No change from present General Instruction G).

PART I. INFORMATION REQUIRED IN PROSPECTUS

Item 1.–Item 4. (No change from present Items).

Item 5. Business.

(a) (No change from present Item 5(a)).

(b)(1) *Information as to lines of business.* If the registrant and its subsidiaries are engaged in more than one line of business, state, for each of the registrant's last five fiscal years, or for [each fiscal year ending after December 31, 1966] ►each fiscal year the registrant and its predecessors have been engaged in business◄, whichever period is less, the approximate amount or percentage of (i) total sales and revenues, and (ii) income (or loss) before income taxes and extraordinary items, attributable to each line of business which during either of the last two fiscal years accounted for—

(A) 10 percent or more of the total of sales and revenues,

(B) 10 percent or more of income before income taxes and extraordinary items computed without deduction of loss resulting from operations of any line of business, or

(C) a loss which equalled or exceeded 10 percent of the amount of income specified in (B) above; *provided,* That if total sales and revenues did not exceed $50,000,000 during either of the last two fiscal years, the percentages specified in (A), (B) and (C) above shall be 15 percent, instead of 10 percent.

If it is impracticable to state the contribution to income (or loss) before income taxes and extraordinary items for any line of business, state the contribution thereof to the results of operations most closely approaching such income, together with a brief explanation of the reasons why it is not practicable to state the contribution to such income or loss.

(No further change in present Item 5)

Item 6. Statements of Income.

Furnish in comparative columnar form statements of income for the registrant, or for the registrant and its subsidiaries consolidated, or both, as appropriate, for—

(a) each of the last five fiscal years of the registrant ►(or for the life of the registrant and its predecessors, if less)◄, and

(b) any interim period between the end of the most recent fiscal year and the date of the most recent balance sheet being filed pursuant to Item [10(a)] ►11(a)◄ and for the corresponding interim period of the preceding fiscal year, and

(c) any additional fiscal years necessary to keep the statements from being misleading.

Where necessary, include information or explanation of material significance to investors in appraising the results shown, or refer to such information or explanation set forth elsewhere in the prospectus. A statement of source and application of funds shall be furnished for each fiscal year or other period for which a statement of income is required to be furnished.

Instructions. 1. The statements required shall be prepared in compliance with the applicable requirements of Regulation S–X [17 CFR Part 210] and shall be audited [to the date of the respective] ►for each of the three fiscal years and the subsequent interim periods, if any, preceding the date of the most recent◄ audited balance sheet(s) included in the prospectus. Regulation S–X [17 CFR Part 210 [governs the examination and the form and content of such statements, including the basis of consolidation and prescribes the statements of retained earnings and other stockholders' equity and the schedules to be filed.

2.–9. (No change from present Instructions).

10. Statements of income and source and application of funds conforming with the foregoing and statements of retained earnings and other stockholders' equity shall be furnished, here or elsewhere in the prospectus, for each subsidiary or group of subsidiaries or 50 percent or less owned persons for which a balance sheet is furnished in response to Item [10(b).] ►11(b).◄

Item 7.–Item 9. (No change from present Items).

Item 10. ►*Management and Others.*◄

►If there has been a change in control of the registrant within the past three years, provide the information called for by Items 16 to 20, inclusive, of Form S–1 (17 CFR 239.11).◄

[*Item 10.*] ►*Item 11.*◄ *Other Financial Statements and Schedules.*

(a)–(c) (No change from present paragraphs (a) to (c))

(d) *Future Successions to Other Businesses.*

(1) (No change from present (d)(1))

(2) The acquisition of securities shall be deemed to be the acquisition of a business if such securities give control of the business or combined with securities already held give such control. ►In addition, the acquisition of securities which will extend the registrant's control of a business shall be deemed the acquisition of the business if any of the securities being registered hereunder are offered in exchange for the securities to be acquired.◄

(3) No financial statements need be filed, however, for any business acquired or to be acquired, or for any business in which an investment acquired or to be acquired is required to be accounted for by the equity method, from a totally held subsidiary. In addition, the statements of any one or more such businesses may be omitted if the businesess, considered in the aggregate, would not meet the test of a significant subsidiary ►; provided that the statements of any business may not be omitted where any of the securities being registered are offered in exchange for securities representing such business or for assets of such business.◄

(e) (No change from present paragraph (e))

[*Item 11.*] ►*Item 12.*◄ *Statement of Available Information.*

(a) (No change from present Item 11(a))

(b) The statement shall also indicate that such reports, proxy statements and other information can be inspected ►and copied◄ at the [principal office] ►offices◄ of the Commission at [500 North Capitol Street, NW., Washington, D.C.] ►Room 6101, 1100 L Street, NW., Washington, D.C.; Room 1228, Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois; Room 1100, Federal Building, 26 Federal Plaza, New York, New York; and Suite 1710, Tishman Building, 10960 Wilshire Boulevard, Los Angeles, California◄ and that copies of such material can be obtained from the ►principal office of the◄ Commission ►at 500 North Capitol Street, Washington, D.C., 20549◄ at prescribed rates. In addition, any national securities exchange on which the registrant's securities are listed, and where reports, proxy [material] ►statements◄ and other information concerning the registrant can be inspected, shall be named.

TEXT OF PROPOSED AMENDMENTS TO FORM S–16

(NOTE.—The Rule as to Use of Form S–16 incorporates by reference the requirements for use of Form S–7. Accordingly, the proposed amendments to the Rules as to Use of Form S–7 set forth above, if adopted, would be incorporated in the Rule as to Use of Form S–16.)

Form S–16 (17 CFR 239.27) is proposed to be amended to read as follows:

§ 239.27 Form S–16, optional form for registration of certain offerings of outstanding securities and for offerings to holders of certain convertible securities or for offerings to holders of certain outstanding warrants.

* * * * *

GENERAL INSTRUCTIONS

A. *Rule as to Use of Form S–16.*

(a) (No change from present paragraph (a)).

(b)(1)–(b)(2) (No change from present (b)(1) and (b)(2)).

(b)(3) meets the requirements of paragraphs (c) through [(f)] ►(e)◄ of the Rule as to the use of the Form S–7 [17 CFR 239.26].

B.–C. (No change from present General Instructions).

PART I. INFORMATION REQUIRED IN PROSPECTUS

Item 1.–Item 8. (No change from present Items).

Item 9. Additional Information.

(a) (No change from present paragraph (a)).

(b) ►If there has been a change in control of the registrant within the past three years which has not been "previously reported" as defined in Rule 12b–2 (17 CFR 240.12b–2) under the Securities Exchange Act of 1934, provide the information called for by Items 16 to 20, inclusive, of Form S–1 (17 CFR 239.11).◄

[(b)] ►(c)◄ State that reports, proxy statements and other information filed by the registrant can be inspected ►and copied◄ at the [principal office] ►offices◄ of the Commission at [500 North Capitol Street, NW., Washington, D.C., and at the office of any national securities exchange on which securities of the registrant are listed and registered, naming such exchange or exchanges,] ►Room 6101, 1100 L Street, NW., Washington, D.C.; Room 1228, Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois; Room 1100, Federal Building, 26 Federal Plaza, New York, New York; and Suite 1710, Tishman Building, 10960 Wilshire Boulevard, Los Angeles, California◄ and that copies of such material can be obtained from the ►principal office of the◄ Commission ►at 500 North Capitol Street, Washington, D.C., 20549◄ at prescribed rates. ►In addition, any national securities exchange on which the registrant's securities are listed, and where reports, proxy statements and other information concerning the registrant can be inspected, shall be named.◄

PROPOSED RESCISSION OF FORM S–9

Form S–9 (17 CFR 239.22), for the registration of certain debt securities, is proposed to be rescinded in its entirety.

(Secs. 6, 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; 15 U.S.C. 77f, 77g, 77j, 77s(a))

[FR Doc.76–22189 Filed 8–2–76;8:45 am]

federal register

TUESDAY, AUGUST 3, 1976



PART IV:

INTERSTATE COMMERCE COMMISSION

■

STANDARDS FOR DETERMINING COMMUTER RAIL SERVICE CONTINUATION SUBSIDIES AND EMERGENCY OPERATING PAYMENTS

Report and Order

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER B—PRACTICE AND PROCEDURE

[Ex Parte No. 293 (Sub No. 8)]

PART 1127—STANDARDS FOR DETERMINING COMMUTER RAIL SERVICE CONTINUATION SUBSIDIES AND EMERGENCY OPERATING PAYMENTS

Report and Order

The Rail Services Planning Office (the Office) presently has under consideration the above-captioned rulemaking proceeding to develop regulations for the continuation under subsidy of commuter rail service in the Northeast and Midwest Region and for the computation of emergency operating payments for certain commuter services which, under the Final System Plan (FSP) of the United States Railway Association (USRA) dated July 25, 1975, might have been discontinued in the absence of financial assistance.

Congress authorized $125,000,000 in emergency operating assistance to sustain the operations over a 2½ year period (Section 17(f) of the Urban Mass Transportation Act of 1964) and directed the Office to issue regulations containing:

(A) Standards for the computation of subsidies for rail passenger service (except passenger service compensation disputes subject to the jurisdiction of the Commission under section 402(a) of the Rail Passenger Service Act (45 U.S.C. 562 (a)), which are consistent with the compensation principles described in the final system plan and which avoid cross subsidization among commuter, intercity, and freight rail services; and

(B) Standards for the determination of emergency commuter rail passenger service operating payments pursuant to section 17 of the Urban Mass Transportation Act of 1964 [Section 205(d)(5) of the Regional Rail Reorganization Act of 1973, Pub. L. 93-236 (the RRR Act) as amended by the Railroad Revitalization and Regulatory Reform Act of 1976, P.L. 94-210 (the Rail Act)].

The Office published an initial notice of proposed rulemaking on February 20, 1976 (41 FR 7793), a further notice on May 14, 1976 (41 FR 20104), and a second notice on June 30, 1976 (41 FR 26936). Interested parties were invited to express their views on the proposed regulations and in all some 40 comments were received from 21 parties including the Consolidated Rail Corporation (ConRail) and other commuter railroads, the National Railroad Passenger Corporation (AMTRAK), state transportation departments, commuter authorities, local and regional governmental bodies, the United States Department of Transportation (DOT), and the Office of Public Counsel. (The participants are listed at the end of this report.)

The Office has carefully considered the pertinent legislation and legislative history, the views of the parties, the consultants' reports and other filings of record (see 41 FR at 20104). The final standards appended to this report are effective August 3, 1976.

SUMMARY

Legislative mandate. Section 804 of the Rail Act amended section 304 of the RRR Act to assure the continuation of commuter rail service in the 17-State Midwest and Northeast Region upon the offer of a compensatory subsidy equal to the railroad's net avoidable loss and reasonable return on value. Specifically, section 304(e) of the RRR Act directs ConRail (or a profitable railroad) to continue all commuter rail service in the Region, irrespective of FSP designations until September 27, 1976 (180 days after the April 1, 1976, conveyance date) in consideration for the commuter authorities paying at the same level of financial assistance as they paid prior to conveyance. ConRail must further continue to provide commuter service under sections 304(c)(2) and 304(e)(4)(A) after September 27, 1976—

> If a financially responsible person (including a government entity) offers—(A) To provide a rail service continuation payment which is designed to cover the difference between the revenue attributable to [the] rail properties and the avoidable costs of providing rail service on such properties, together with a reasonable return on the value of such properties . . . under regulations issued by the Office pursuant to section 205(d)(5) of this Act. * * *

Congress further directed the Secretary of the Department of Transportation to reimburse ConRail (under regulations issued by the Office) for "any loss" and the commuter authorities for "additional costs" incurred by them in continuing commuter service over the 2½ year period from April 1, 1976, through September 27, 1978 (section 304(e)(5) of the RRR Act). The amount of reimbursement is equal to 100 percent of the "additional costs" the first 360 days (April 1, 1976–March 26, 1977), 90 percent for the next 12 months (March 27, 1977–March 31, 1978) and 50 percent for the last 180 days (April 1, 1978–September 27, 1978). The Secretary may not provide such emergency operating assistance for the last six months unless he receives adequate assurance from the subsidizer that the service will be continued after September 27, 1978. The assistance program will be administered for the Secretary by the Urban Mass Transportation Administration (UMTA).

Notice of intention. Under the regulations, a prospective subsidizer must notify ConRail (or a profitable railroad) no later than August 18, 1976, that it intends to offer financial assistance for the continuation of commuter rail service after September 27, 1976. The notice will contain proposed modifications in the fares to be charged; in the existing level of service, including changes in routes, schedules, train seating capacity, performance standards, equipment units, and such other dimensions of service as the subsidizer may specify; and in the length of the subsidy period.

Subsidy estimate. ConRail must provide the prospective subsidizer with a subsidy estimate within 30 days of receiving the notice but no later than September 17, 1976. The estimate will be based upon the revenues attributable to the commuter service, the avoidable costs of providing such service, and the reasonable value of the avoidable properties used in providing the service, computed in accordance with the standards, for the base period (June 1, 1975–June 30, 1976). The railroad may base its initial estimate on the best data available.

Offer of financial assistance. The prospecive subsidizer must serve a firm offer of subsidy on ConRail no later than September 27, 1976, to avoid discontinuation of service. The offer will contain a subsidy estimate in conformity with the standards; evidence of the offeror's authority to subsidize; an indication of its financial resources; and the first monthly interim subsidy payment.

Negotiation of subsidy agreement. The parties should proceed expeditiously to develop a facilities utilization plan and a manpower utilization plan and to negotiate a subsidy agreement. The facilities utilization plan will identify the road and equipment properties used in providing the commuter service and assign to such properties the percentage devoted to the commuter service. The plan should be "site-specific"; that is, it should be developed in the field in consultation with general and supervisory personnel responsible for utilizing and maintaining the properties. Similarly, the manpower utilization plan will identify the labor forces used in providing the commuter service and the percentage of time devoted to such duties. The parties may agree to provisions which vary from the standards subject to their review by the Office. The variances must be the product of arms-length negotiations and not be designed to disadvantage third parties, e.g., UMTA, AMTRAK, etc. The subsidy agreement must be in place by March 26, 1977. The Office will be available to mediate disputes regarding the facilities utilization plan, the manpower utilization plan, the subsidy agreement and the application of the standards.

Assignment of costs. The facilities and manpower utilization plans will be the primary tools for assigning costs. Other costs may be assigned as the parties agree. They may decide to rely on historical data, conduct special studies, develop apportionment formulae, or adopt a combination of the foregoing. The Office will be available to mediate disputes regarding cost methodology. If mediation proves inconclusive, costs still subject to dispute will be assigned in accordance with the apportionment methodology set forth in the standards, subject, however, to the condition that either the railroad or the subsidizer may request a special study. The party requesting the study will be responsible for its design. The Office will arbitrate disputes regarding the design and conduct of the study. The study results will be binding on the parties unless they agree to disregard them.

Flexible (but fail-safe) guidelines. The commuter subsidy standards are guidelines which permit the subsidized and the

railroad to establish a relationship uniquely suitable to them. The parties are not obliged to adhere inflexibly to RSPO rules. To the contrary the emphasis in the commuter standards, as in the freight standards (49 CFR 1125), is on arm's-length, good faith negotiations. The parties are expected to work together to minimize sources of conflict by developing comprehensive facilities plans and manning tables. The Office believes that time and effort devoted to these cost development techniques will materially reduce the potential for conflict. In remaining cost areas, the parties will be free to apply their own expertise and experience. The Office will assist in resolving cost and other disputes through mediation. It is only when these efforts fail that the apportionment formulae come into play. Even then, the apportionment formulae are subject to a safety-valve—if one party feels the formulae are unjust, it may insist upon a special study, the results of which will be binding unless the parties mutually agree to disregard them.

The Office believes that these flexible (but fail-safe) procedures are more likely to produce reasonable and equitable agreements and practices than would mandatory regulations. Similarly, the Office believes its role as honest broker rather than binding arbitrator is more likely to result in reasonable compromise. (Should experience demonstrate the contrary, the rules may be amended to provide for compulsory arbitration.) Lastly, the Office is striving to minimize Federal intrusion in local transportation affairs by restricting its reviewing function to circumstances where variations from the standards appear unreasonable or patently adverse to the interests of third parties.

Emergency operating assistance. UMTA will reimburse ConRail 100 percent for the losses it incurred in providing commuter service during the 180-day mandatory operation period. UMTA will also reimburse subsidizers for a percentage (100 percent, 90 percent, 50 percent) of the additional costs incurred by them for the succeeding two-year subsidy period. The subsidizers may vary existing service (as distinguished from service on new routes) from pre-conveyance levels and receive full reimbursement so long as UMTA's total obligation is not increased. They may also be reimbursed for additional costs arising from wage and price increases or equipment purchases necessary to sustain service at preconveyance levels, if no party (or predecessor) had agreed to pay for them. The subsidizers may also reduce service below pre-conveyance levels, where UMTA's obligation is decreased proportionately. And they will receive the entire credit for fare increases after the April 1, 1976, conveyance date, provided only that UMTA shall be liable for no more than "additional costs".

Discussion of Issues

Application of the standards

New Jersey Department of Transportation (NJDOT), Metropolitan Transportation Authority (MTA), and New York Department of Transportation (NYDOT) take issue with the Office's tentative views (41 FR at 20105) as to the applicability of the standards to services now being provided under section 303(b)(2) of the RRR Act. They point out that some of the agreements for these services contain clauses which permit termination upon due notice by one or both of the parties. MTA apparently is considering the possibility of exercising its rights to terminate certain agreements and switching to offers of subsidy pursuant to section 304(c)(2)(A) of the RRR Act, should study of the final standards issued in this proceeding indicate that course to be financially advantageous to it. NJDOT is concerned that ConRail may terminate the former Erie Lackawanna agreement, using the threat of service discontinuance as a lever to extract "a level of compensation far in excess of the Office's standards".

DOT is concerned not only with the application of the standards to services covered by section 303(b)(2) agreements, but also with their application to services not conducted pursuant to preexisting agreements. AMTRAK and Chicago Area Commuter Railroads (CACR) also have raised questions concerning the applicability of the standards.

Some of the issues thus posed may become material. The discussion of them involves three considerations: the jurisdiction of the Office to rule upon the issues; the application of the subsidy standards in the circumstances described; and the effects of certain changes on the eligibility of the services for emergency operating assistance.

Jurisdiction. NYDOT takes the position that "RSPO is not authorized herein to make any rule or regulation as to the applicability of the standards; it is merely charged with formulating the standards". Public Counsel urges that issues involving post-mandatory levels of service be left to arbitration under section 304(e)(5)(C) of the RRR Act.

The Office does not concur with the apparent belief of these parties that the proper discharge of its duties under the RRR Act involves the promulgation of regulations without consideration either of the nature, scope, location, and circumstances of the commuter rail services to be affected by them, or of the circumstances to which the standards are not applicable. DOT, as noted above, has requested the Office's views on certain issues affecting the disbursement by it of emergency operating assistance. NJDOT's response to the second notice requests the Office's guidance as to how certain issues should be handled under the standards. Although decision as to some issues may, as Public Counsel infers, be premature, it does not appear that the interests of the parties would be advanced by the Office's preserving silence as to all of them.

CACR, in contrast to the views of NYDOT and Public Counsel, renews its concern that the standards "will serve as a precedent for costing procedures in cases which do involve the railroads outside the Northeast and Midwest Region." CACR urges that the standards be revised to account for conditions in the Chicago area and that the Office "not allow the time constraints imposed upon it to result in regulations containing many improper and impossible rules which would plague the railroad industry for years to come." The suggestions of the six Chicago area railroads are welcome, and have been considered insofar as they contribute to improving the feasibility, fairness, or equity of the standards. The Office does not intend, however, to broaden the standards or the scope of the rulemaking to encompass possible disputes with respect to commuter services not subject to the RRR Act.

Similarly, AMTRAK expresses concern that the Commission may "follow the lead of RSPO" and order AMTRAK to make payments based on the standards to railroads for the operation of its intercity services outside the Northeast Corridor. It requests an acknowledgment that the standards do not measure "incremental costs, at least not in the sense that that phrase is used in section 402(a) of the AMTRAK Act." The commuter standards do not purport to apply to the intercity rail passenger service provided by AMTRAK.

Applicability of the subsidy standards to the extension of section 303(b)(2) services. NJDOT and MTA inquire whether, if a section 303(b)(2) agreement is terminated, either by mutual consent or by exercise by one party of termination rights recited in the agreement, the services must be continued upon the offer of subsidy payments in conformance with the standards. Or could ConRail, as NJDOT intimates, insist upon compensation exceeding the levels called for in the standards?

The legislative history does not indicate that, in enacting section 17 of the UMT Act, Congress contemplated the eventuality that section 303(b)(2) agreements might be terminated. The House Report No. 94-729 of December 15, 1975, accompanying H.R. 10731, at p. 4, lists the services which could be curtailed or discontinued if no contracts were entered into with ConRail or other railroads. This list does not include the Erie Lackawanna services in New York and New Jersey or the Penn Central services provided in New York for MTA. The report (p. 5) does state that "the Committee does not intend to furnish assistance for those services ConRail is obligated to provide under section 303(b)(2) of the RRR Act".

ConRail has not intimated an intention on its part to terminate any section 303(b)(2) agreements, which the FSP (Vol. I, p. 45) contemplated it would assume. Actual termination of any such agreement is, thus, conjectural, so that it is not necessary to make a specific ruling; but section 304(e)(4) of the RRR Act appears to require service continuance under terms conforming to the subsidy standards following such termination unless it occurs as a result of failure to make timely payments of

amounts due. That section provides that if a rail service continuation subsidy conforming to the standards is offered and if compensation for operations conducted during the 180-day mandatory period is made, ConRail shall continue to provide the service after the end of such period, "except as otherwise provided in this subsection". The exception is the discontinuance permitted under subsections 304(e)(2) (C) and (D) in the case of non-payment. Moreover, it would seem inconsistent with the purposes of the RRR Act if ConRail were permitted unilaterally to discontinue these services or if, to insure continuance, the commuter authorities were compelled to provide a higher level of financial assistance than is required under the subsidy standards for the continuance of services not subject to section 303(b)(2) agreements.

Eligibility for emergency operating assistance. As noted above, the legislative history of section 17 of the UMT Act suggests that Congress did not contemplate furnishing assistance for those services ConRail is obligated to provide under section 303(b)(2) of the RRR Act, and that the appropriation authorization of section 17(f) does not include any amounts for such services.

As a practical matter, under the notice requirements of the Erie Lakawanna agreement with NJDOT, apparently ConRail could not unilaterally terminate the agreement before June 30, 1978, when only three months of the 50 percent emergency operating assistance program would then remain. The MTA agreements could, it is understood, be unilaterally terminated early in 1978; and of course earlier termination could be mutually agreed upon. Nevertheless, the question of MTA's eligibility for emergency operating assistance would not arise unless it agreed to terms more costly than under the existing agreement.

Consequently, the Office does not presently perceive a material question involving the eligibility for emergency operating assistance of service presently conducted under section 303(b)(2) of the RRR Act. Should such a question arise in the future, the parties may, if they desire, request a ruling in the light of the applicable facts and circumstances.

Termination of service. In the Second Notice (41 FR at 26939), the Office alluded to the possibility of ConRail's incurring losses should it be obliged to continue service for 60 days beyond the 180-day mandatory period for which no continuing subsidy is offered and expressed the view that ConRail should be compensated for losses substained as a result of enforced service continuance. The commuter authorities could mitigate such losses by agreeing to waive the 60-day extension requirement as to services for which it is known that a continuation subsidy will not be offered, and if they do not do so, could be expected to continue their assistance payments for the duration of any extension required for an orderly service termination. The standards have been revised to provide that the railroad will be compensated by UMTA for losses reasonably and necessarily incurred through extension of the mandatory period beyond 180 days, less any payments the subsidizer would have been obligated to make had it tendered an offer of subsidy. In its comments on the Second Notice, DOT has acknowledged that the railroad should be compensated for the losses incurred in the operation of commuter service during the 60-day termination period; however, it "wish[ed] to make clear that DOT can bear only that portion of such losses which DOT would be obligated to pay if the service was not being discontinued."

In some instances, the commuter authorities and ConRail may agree to terminate or reduce service before the close of the 180-day mandatory period. In such circumstances, the standards contemplate that both the payments by the subsidizer and the emergency operating assistance would be correspondingly reduced.

Reduction in service. In the second notice (41 FR 26939), the Office also discussed the effect on subsidy payments of reductions in service on one or more routes not wholly offset by increased services on other routes subsidized by the same authority. Under the final standards, the financial assistance provided by the subsidizer and UMTA's reimbursement of additional costs would be reduced in proportion to their respective contributions to the total of the rail service continuation payment as computed prior to such reduction in service level.

The following illustrative example applies to a service which is reduced during a subsidy period ending March 31, 1978 (when 90 percent of additional costs are reimbursable). Had the service not been reduced, attributable revenues would have been $10 million and avoidable costs plus return on the value would have been $12 million, resulting in a rail service continuation payment of $2 million. The financial assistance the subsidizer was obligated to provide under section 304(e)(2) of the Act was $1.5 million, so that the additional cost to him would have been $500,000, of which UMTA would have reimbursed 90 percent, or $450,000. Thus the contribution of the subsidizer would have been $1.55 million, or 77.5 percent of the $2 million rail service continuation payment; and UMTA's contribution would have been 22.5 percent.

If the service reduction in this example causes attributable revenues to decline to $9 million and avoidable cost plus return on the value to $10 million, the required rail service continuation payment would be $1 million. In this instance, the subsidizer's financial assistance would be reduced to $775,000 (77.5 percent of the total) and the emergency operating assistance to $225,000 (22.5 percent of the total).

Negotiated Service Continuances. DOT agrees that the standards should not override an agreement between the parties on the total level of subsidy. However, it urges the Office to clarify what the level of UMTA payment will be in the event that the parties agree on a level of subsidy different than that which would be required by the standards. Its position is that if the parties agree to a lower subsidy level than required by the standards, UMTA's payments should also be reduced; but if the parties agree to a higher level, UMTA would not share in any payments over and above the amounts resulting from the standards.

The aim throughout the development of these regulations is to encourage maximum arm's-length bargaining between the parties, with the standards serving as a reference point and a fail-safe procedure in case of impasse. Therefore, the final standards provide that the emergency operating assistance shall be based on the difference between the payments actually required under the subsidy agreements as negotiated and the level of financial assistance required under section 304(e)(2) of the Act.

The Office believes this approach is likely to result in a lower overall burden on the emergency operating assistance funds than would result from encasing the negotiators in the rigidities of iron-clad adherence to the standards. UMTA is to share in the benefits of agreements resulting in lower costs than the standards and it will also share in those which are higher. Variations from the standards will be reviewed by the Office for reasonableness; thus, UMTA may be assured that it will not have to reimburse the parties for unreasonable costs.

AVOIDABLE COSTS-RATIONALE

The terms "incremental costs", "decremental costs", "additional costs", "fixed or constant cost base", "solely related costs", "directly attributable costs", "indirect costs", "overhead costs", "fully-distributed costs", "cross-subsidization", "fair and equitable share of the total costs", "allocated costs", "sunk costs", "out-of-pocket costs", "cash costs", "short-term avoidable costs", and "long-term avoidable costs" recur throughout the parties responses interspersed with discussions of relative use. NJDOT undertakes to provide definitions to clarify the concepts embodied in some of these terms, and suggests that the Office should avoid confusion by a careful selection of terminology. In contrast, MTA believes the legislative mandate is inherently contradictory; that the contradiction is mirrored in the proposed standards; and that the cure is not clarification but remedial legislation.

The Office does not preceive the need for amendatory legislation, although the parties are at liberty to seek such a remedy should that course appear to them desirable. The Office does believe that the final standards fulfill Congressional intent as to the costs to be borne by the commuter services in relation to those borne by other services. The Office has, however, striven to apply essential terminology accurately and will undertake to explain in detail its avoidable cost rationale.

At the outset, it should be recognized that in a joint-cost enterprise such as a railroad the separate costs of performing each element of the service cannot be determined with finite precision; that all

of the users benefit from lower costs than they would obtain if only one service used the facilities; and that, collectively, the payments by all users must cover all of the costs. In the absence of regulation, the charges for each service would tend to be heavily affected by considerations unrelated to cost, particularly demand, the bargaining power of the users, and their ability to pay. Congress has concluded that the charges to be paid for continuation of commuter services should not be left to the naked bargaining power of the parties and has designated the Office to develop standards for determing them.

In fulfilling its mandate, the Office places special reliance on the legislative intent expressed in Senate Report No. 94-499, accompanying S. 2718 (at 114):

> The standards promulgated by the Commission must be consistent with the compensation principles described in the Final System Plan relative to the concept of "dominant user" and "avoidable cost" and must avoid "cross-subsidization." While the Commission would have discretion as to whether long-term avoidable costs or short-term avoidable costs are the appropriate measure in any given situation, [the legislation] does require reference to compensation principles described in the Final System Plan. Therefore, the standards will reflect the relative use of any line by the type of service being provided thereon and will also provide that the costs will be shared equitably by the users of any individual line. For the most part, the services receiving assistance under this section will be continued after the assistance provided herein is ended. Since the compensation principles set forth in the Final System Plan were formulated from the long range cost perspective, they are most appropriately used for determining the level of assistance required to continue service.

(The Senate bill delegated to the Commission the responsibility for developing the standards; the Rail Act assigned this duty to the Office.)

Congress thus recognized the significant difference between the short-term and long-term avoidable costs associated with continuing commuter service. In the short term, avoidable costs approach what are sometimes called "out-of-pocket" costs;[1] in the longer term, they approach fully-distributed costs.[2] This is so because, over a sufficiently long period, all costs may become variable—including those which are considered fixed or constant costs in the near or intermediate term. Experience shows, for example, that current roadway maintenance expenditures, sometimes considered as constant costs in the near and intermediate term, do vary not only with usage, but also with the availability of funds. Capital costs tend, over a sufficiently long period, to be reduced by one means or another to a level supportable by available income.

[1] The AAR Guide referred to by NJDOT states "in its literal sense, the term out-of-pocket costs implies an immediate cash expenditure, a characteristic that is not germane to the incremental cost concept."

[2] NJDOT defines fully distributed costs as "the variable cost plus a statistical apportionment of the constant or fixed costs."

Paradoxically, it may be observed that no costs, once incurred, are truly avoidable in the long term; some parties may be able to evade them, but the costs themselves cannot be completely avoided. Thus, roadway maintenance, though it may be deferred, must eventually be performed if service is to continue. If debt is defaulted, as in the case of the Northeast bankrupts, the costs may appear to have been shifted to investors; but in time investors as a class will seek to recover their losses through higher charges for future railroad financing. If they are unsuccessful, the financing will not be forthcoming, and the costs will have to be assumed by the taxpayers.

Congress obviously intended that the standards apply to a service and costing horizon extending beyond the term of the Federal assistance provided by section 17 of the UMT Act. In developing the standards and the procedures for implementing them, the Office has endeavored to steer a reasonable course between the near-term extremity of out-of-pocket costs and the ultimate of long-range fully-distributed costs. It does not expect either the buyers or the suppliers of commuter rail services to be completely satisfied with the results.

Positions of the parties. AMTRAK would have the standards go further toward the long-term extreme and assign to the commuter services a "significant body of costs (the constant cost base) which do not vary with the level of use, but rather are constant so long as the entity operates at all" (whether with or without commuter service). On the other hand, AMTRAK is concerned that if the principles of the standards were applied to its services outside the Corridor, it might be required to assume a larger portion of the common costs of the railroads over which these services operate.

NJDOT relies upon various handbooks and publications dealing with railroad cost finding procedures, including an article from the University of Chicago "Journal of Business' for October 1962 entitled "The Role of Cost in the Minimum Pricing of Railroad Services". It desires the standards to exclude from consideration certain common costs, which it believes to be fixed, but which the Office believes are variable within the contemplated time period. Other commuter authorities are associated in varying degrees with this view.

Fixed and variable costs. As noted supra, NJDOT evidently considers some costs to be fixed which the standards treat as variable (and thus avoidable) costs, of which the commuter services should be expected to bear their appropriate portion. Apparently it believes that the costing methodology should be approached from the viewpoint of a near-term time horizon and limited increments of change. "Fixed costs", by its definition, are "those costs which, for a given size of plant, do not vary in total with changes in output". It would disallow depreciation charges (discussed in a later section of this report) because "it is not an avoidable *cash* item and does not represent an *out-of-pocket expense*. (Emphasis supplied). The Office's costing approach is based on the belief that substantial changes in the level of commuter services or complete discontinuance would result in changes in the size of the plant.

NJDOT rests its position largely upon reference to "A Guide to Railroad Cost Analysis" published by the Bureau of Economics, Association of American Railroads, in December 1964 (the AAR Guide). That guide ranks certain major categories of expense (maintenance of fixed facilities, including depreciation, retirements, and dismantling; maintenance superintendence; signal and interlocker operations; crossing protection; "associated"; traffic and general; property taxes; capital cost and "return") as largely fixed.

The AAR Guide was designed as a tool for cost analysis related to competitive minimum pricing of particular freight movements or commodities; it does not purport to relate to purposes such as the standards are to accomplish under the RRR Act: The determination of avoidable costs to be borne by a distinct and entire category of passenger services. The Act does not instruct the Office to base the standards on minimum pricing concepts, nor to address them to determining the prices to be paid by individual users of the commuter services. Moreover, NJDOT evidently does not allege that any category of expense is completely and interminably "fixed" (i.e., invariable even if all commuter services were discontinued). For example, it agrees with the adoption of the Speed Factored Gross Tons formula for measuring the avoidable (variable) portion of common track and roadway maintenance costs, including maintenance associated with such fixed facilities as tunnels, bridges, trestles and culverts.

Costs associated with the value of the properties. The standards treat certain inter-related costs associated with the values of properties as variable or avoidable, only to the extent that such facilities or properties are used by the commuter services and could be disposed of upon discontinuance of the services. These costs include the return on the value of the properties, depreciation, retirements, and dismantling costs. The reason for this treatment is that such costs, to the extent that they are associated with properties which could not be disposed of upon the discontinuance of commuter services, are not variable in the near and intermediate term, and could be reduced by the railroad only if it discontinued other services or, alternatively, defaulted on its obligations.

USAGE TERMINOLOGY

NJDOT remarks that although the compensation principles of the FSP identify the conceptual approach for assigning costs to each given type of user, they do not define the terms "dominant", "minority", and "equal". NJDOT itself does not suggest any definitions.

Actually, the first three of the four "principles" which the FSP states (Volume I, p. 41) guided the USRA in its

discussions with AMTRAK and the commuter authorities do not contain any of these terms. The fourth principle contains an additional term: "Exclusive user"; it states that "the exclusive or dominant user of a facility or in some special cases a state or public agency should be its owner." From the four "principles" flow the five "policies" recited and discussed in detail in the further notice (41 FR at 20106) and again in the second notice (41 FR at 26937). The Office concluded, and the standards so provide that the commuter authorities should bear some portion of common costs, where commuters make significant use of the rail properties. The RRR Act required the Office to issue standards which are consistent with the compensation principles described in the FSP and which avoid cross subsidization among commuter, intercity, and freight rail services. It is believed that this has been done. The Act does not require the Office to define terms employed in the FSP and not defined therein.

CONRAIL-AMTRAK NEGOTIATIONS

AMTRAK objects to the Office's finding in the second notice (41 FR at 26938) that "the assignment of fixed costs (those which AMTRAK would incur irrespective of whether commuter service is operated over its properties) as a direct pass through to the commuter authorities, would result in cross subsidization of intercity service by commuter service." To force one of the three users of the Corridor, it states, to bear the "entire fixed cost base", irrespective of the "magnitude and impact" of its use, would violate both the plain Congressional intent and the language of the statute itself. AMTRAK suggests that unless the Office corrects its "dicta" the unfortunate effect could be prevention of an arm's-length negotiated solution to the Corridor compensation issues, since only a Commission order under section 402(a) of the Rail Passenger Service Act requiring ConRail to pay AMTRAK on a fully-allocated basis can assure ConRail's right to full reimbursement (presumably on a fully-allocated basis) from the commuter authorities.

The standards do not require any of the three users of the Corridor to bear the "entire fixed cost base". They require the commuter services to bear those fixed costs (return on the value, depreciation, retirements, and dismantling) identified with properties used by them and which could be disposed of if the commuter services were discontinued. The reasons for this are discussed elsewhere in this report. As stated in the second notice (41 FR at 26938), the Office believes that the primary measure of the reasonableness of the compensation by commuter authorities for use of the Corridor should be the standards issued herein; it places special reliance on ConRail's assurances that it will represent commuter interests in its negotiations with AMTRAK; and expects that if the parties cannot agree to follow the Office's costing methodology, they will submit the matter to the Commission. The standards admittedly do not embrace fully-allocated costing.

COMMUTER SERVICE COMMON REVENUES AND COSTS

The apportionment of costs or subsidy payments when a commuter service traverses State boundaries or when more than one State is involved in a service area was discussed in both the further notice (41 FR at 20107) and the second notice (41 FR at 26940). Rhode Island Department of Transportation believes it is imperative that there be a "fallback" methodology for dividing the costs (such as the car-miles basis suggested by the Office) "to cover the very likely situations where various commuter agencies could not agree on the allocation of common costs". ConRail also supports passenger car-miles as the basis of apportionment and believes that, except in extraordinary circumstances, the apportionment formula throughout the region should be uniform, so that an operator is not required to develop different information and prepare varied cost apportionments for the several inter-jurisdictional commuter services. SEPTA believes that the only standard necessary for determining the relative costs payable is the avoidable cost method. Pennsylvania Department of Transportation (PennDOT) notes that more SEPTA cars are kept overnight at Wilmington than are required to accommodate the passengers generated in Delaware, and that an apportionment on the basis of car-miles would be unfair to Delaware. It suggests the use of five factors, some of which are collinear.

The Office anticipates that in most instances, as in the case of Pennsylvania and Delaware, the commuter authorities will be able to negotiate equitable sharing of the subsidy burden. However, as a "fallback" requested by Rhode Island and ConRail, the final standards provide that attributable revenues and avoidable costs common to two or more commuter services shall be apportioned between them on the basis of car-miles. The Office reiterates its recommendation that representatives of each State involved in bi-State services begin discussions immediately with their counterparts in adjoining States, to the end that before August 18, a decision will be reached as to whether either or both of them will file a notice of intention and an offer of financial assistance.

VALUE OF THE PROPERTIES

This subject was discussed in the further notice (41 FR at 20108) and in the second notice (41 FR at 26939). However, in light of the responses to the Second Notice, some further consideration appears desirable.

Deficiency judgment adjustment. ConRail and NJDOT observe that the standards should provide for the contingency that in the valuation proceedings the special court may modify the values of the considerations payable by ConRail for the rail properties acquired by it. Section 303(c)(5) of the RRR act protects ConRail against deficiency judgments as to the properties which it transferred to AMTRAK, States, or commuter authorities. Under section 303(c)(2)(C), ConRail is exposed to a possible deficiency judgment as to properties acquired and retained by itself, provided such a judgment "would not endanger the viability or solvency of the Corporation". Considerable time may elapse before the special court's valuation findings become final; and since the deficiency judgment protection is not absolute, some adjustment of ConRail's property accounts may ultimately be required.

Therefore, the final standards provide that if the book values of road or equipment property are adjusted either upward or downward as a result of final orders of the special court, such adjustment shall be reflected in future subsidy payments without retroactive effect. Neither ConRail nor NJDOT expressly urged a retroactive adjustment of the values and the Office believes such an adjustment—downward or upward would be impractical. In either case, the value of the properties used in providing the commuter service would be one ingredient in determining the fares to be charged, and the commuter authorities would have no means of retroactively adjusting such fares, years after the service was provided.

Incremental annual increases of value. ConRail renews its plea that the value of the properties for the purposes of determining the return should be subject to annual escalation at the rates set forth in the FSP (pages 154–155). It asserts that unless this is done the obligation of the United States for redemption of the certificates of value, as well as the interests of ConRail security holders, will be adversely affected.

Were the annual escalation proposed by ConRail to be allowed, and the 7.5 percent return prescribed in the standards applied to the escalated values, the return in the 12th year (when redemption of the certificates is mandatory) would be 28.77 percent on the original base; and the average annual compound return over the 12-year period would be 14.42 percent. This compares with the 8 percent compound rate employed in computing the base value of the certificates at redemption under section 306(c)(4) of the Act. Computation of the certificates' base value also involves subtraction from net liquidation value of the value of other benefits provided by the Act plus the fair market value of the Series B preferred and the common shares and any cash dividends thereon, and addition of any compensable unconstitutional interim erosion. The result of those computations is conjectural until the final determinations of the special court are known, although if the projections of the FSP are realized it will be zero. Moreover, since the certificates are obligations of the United States, the results of the court's determinations in respect to them will have no effect on the property accounts of either ConRail or AMTRAK.

The Office thus does not perceive that the certificates of value have any relevance to the reasonable return on the

value of the properties for the purposes of determining the rail service continuation payments. The adoption of ConRail's position as to annual escalation of the values would impose an unreasonable and unconscionable burden on the commuter services and the concept is rejected.

Additions and betterments. NJDOT urges that the parties should agree as to who will be responsible for making "capital replacements" in each category and treat depreciation accordingly; that commuter authorities should not pay a return on that portion of the value of rail properties which have been built or rehabilitated with funds provided by the commuter authorities or government grants; and that the value of rail properties should be adjusted to exclude those properties where ConRail is bound by agreements entered into between the railroads in reorganization and the commuter authorities, under which a railroad in reorganization was precluded from charging a subsidizer a rate of return on investment financed but not owned by the subsidizer.

The Office believes that these details should be dealt with in the individual subsidy agreements, with the understanding that in the event of impasse between the parties a ruling, if requested, will be issued based on the facts and circumstances of the individual case. Certainly the standards do not purport to supersede or invalidate the terms by which ConRail may be contractually bound. The properties conveyed on April 1, 1976, to AMTRAK and ConRail may well include many which were obtained by predecessor companies through grants or contributions by cities, counties, States, or other governmental entities in the distant past, but for the values of which the transferors must be compensated under the RRR Act. The Act does not appear to authorize a blanket exclusion of the values of such properties from the base on which the return is computed.

Reasonable Return

The return element of the subsidy payment was previously discussed in the further notice (41 FR at 20108) and in the second notice (41 FR 26938). SEPTA agrees that the proper rate of return on ConRail and AMTRAK properties is 7.5 percent. However, it believes that the regulations should permit a system whereby the subsidizer would make penalty deductions from this 7.5 percent for poor operational performance by ConRail. Since the avoidable cost standard provides for the treatment of penalty and incentive payments, there is no need to incorporate such provision in the return element of the compensation.

DOT urges that the Office should make clear in the regulations that the "double return" prohibited by section 304(c)(2) of the RRR Act will not be paid. This is accomplished by excluding from the valuation base in § 1127.6(b) the properties owned by the trustees of debtor estates. These properties were excluded since the estates are being compensated under the regional freight standards (49 CFR 1125).

Other Costs Related to Property Values

NJDOT urges that "depreciation relates to a sunk cost. It is not an avoidable cash item and does not represent an out-of-pocket expense." It considers that "in terms of present service and service in the future, depreciation is relevant only insofar as it provides a means of accumulating funds to replace facilities and equipment as they physically wear out or become technologically obsolete". PennDOT argues that road property depreciation is a sunk cost, and is not affected by the operation of commuter trains.

The Office disagrees; the depreciation allowed under Commission prescribed accounting rules does not purport to provide for the replacement of facilities or equipment, but merely for the recovery, through current charges, of a portion of past capital expenditures. In fact, present accounting practices make no provision for recovery through current charges of any decline in the values of major portions of the roadway investment resulting from obsolescence, leaving this cost to be borne by future users or by investors. Were the present investors in ConRail properties to be denied the opportunity to recover from the users even the sharply written-down acquisition costs of these properties, as NJDOT and PennDOT urge, the effects would be not only unjust to them, but would increase the costs of future capital.

AMTRAK's position is at the opposite extreme. It would assign to the commuter services depreciation (and return on the value) costs "which do not vary with the level of use, but rather are constant so long as the entity operates at all". DOT supports this view to the extent that it believes commuters should share in the return on (and presumably depreciation of) properties which would continue to be required in the absence of commuter service.

For reasons discussed above, the Office believes that assignment to the commuter services of costs which would not diminish with discontinuance of such services, but instead would continue so long as intercity passenger or freight services are operated would result in cross subsidization of those services by the commuters. The same considerations apply to the costs of retirements, dismantling, and property taxes. Sections 1127.5(e)(11)–(13), (f)(5), and (m) provide that there shall be no apportionments of common costs under these subsections, and that the charges to commuter services shall be those identified with properties used in such services which could be disposed of if the services were discontinued, as determined under § 1127.6.

NJDOT also raises a question respecting credits to avoidable costs related to the impact of passenger service eliminations on real estate tax exemptions, although it offers no specific suggestion. Section 402(a)(2) of the RRR Act directs the Secretary, within one year of enactment, to promulgate standards and procedures by which the State share of rail service continuation assistance under that section may be provided through in-kind benefits such as forgiveness of taxes, trackage rights, and facilities which would not otherwise be provided. Section 5(g) of the Department of Transportation Act contains a similar provision as to the local rail service assistance under that section, but there is no such provision in section 17 of the UMT Act. This would indicate that Congress did not intend the State share of commuter service continuation payments to be offset by in-kind benefits. The standards do, however, provide latitude for the parties to negotiate terms of the subsidy agreements, and there is no reason why the value of any tax reduction by the States in consideration of commuter service continuance could not enter into the negotiations.

Emergency Operating Assistance

Level of service. If a valid subsidy offer is made, section 304(e) of the RRR Act obligates the railroad to continue to provide the same level of commuter service after September 27, 1976, as was "provided immediately prior to conveyance." The proposed standards construed the quoted phrase to embrace the first quarter of 1976. Several parties properly observed that such a construction fails to allow for seasonal fluctuations in service. Their point is well taken and the final standards define level of service provided immediately prior to conveyance as embracing the period April 1, 1975, through March 31, 1976. If the subsidy offer is for less than 12 months, e.g., October 1976–March 1977, the level of service should be predicated upon the corresponding months prior to conveyance, e.g., October 1975–March 1976.

Fare increases. The second notice (41 FR at 26939–40) invited the comments of interested parties with respect to four alternative methods of treating revenues from fare increases in the computation of emergency operating assistance. ConRail recommended alternative No. 1—inclusion of all fare increase revenue in attributable revenues for this purpose, believing that this approach creates the greatest likelihood that subsidizing entities will make rational decisions respecting the establishment of fares and the necessity for fare increases. SEPTA and NJDOT express a preference for the second alternative, which was to credit no revenues from fare increases to attributable revenues for this purpose, since this approach provides the commuter authorities with control over policy with respect to fare structure. DOT believes that emergency operating assistance should be unaffected by increases in revenue until those increases result in the Federal share of additional costs to the subsidizers being greater than the rail service continuation payment.

The Office concurs with the views expressed by DOT, which are not dissimilar from those of NJDOT and SEPTA. The

commuter authorities should have diswhether resulting from application of the cretion to meet any additional costs, standards or from other factors, either by adjusting fares or by increased subcreases had the effect of reducing emersidy payments; if revenues from fare ingency operating assistance, the incentive to adjust fares would be diminished. On the other hand, emergency operating assistance should not serve to reduce the financial assistance the commuter authorities are obligated to provide under section 304(e)(2) of the Act. Section 1127.8(e) of the standards therefore provides that separate records shall be maintained segregating the amounts of revenues yielded by fare increases from other passenger revenues; that these segregated amounts shall be excluded from attributable revenues in computing emergency operating assistance; but that the emergency operating assistance shall not thereby be caused to exceed the rail service continuation payment.

Pass riders allowance. CACR objected to the provision in § 1127.4(c) of the proposed standards (41 FR at 20111) that an allowance for pass riders should be credited to the attributable revenues of the commuter service because, in the case of the Chicago commuter railroads, pass riders are required to stand if no seats are available. The Office disagrees, since in many instances fare-paying passengers also are required to stand when seats are not available.

SEPTA urged that the proposed section be revised to provide that the commuter service revenues would be credited with the difference between fares specified by applicable tariffs and fares collected from pass riders and other passengers who receive "employment-related discount fares". The Office does not believe that the allowance should encompass passes or reduced-fare privileges issued by the commuter authorities or by other public bodies. The final standards, therefore, provide for crediting attributable passenger revenues of the commuter service with an allowance for passengers using passes or reduced-fare tickets issued by the railroad or its predecessors, based on the currently applicable fares charged revenue commuter passengers. The parties may, if they wish, continue existing practices for crediting these allowances.

Notice deadline. Under the proposed standards, a commuter authority must serve its initial notice of intention to offer subsidy on the operator by August 18, 1976. The operator in turn must provide the authority with a subsidy estimate within 30 days or no later than September 17, 1976, and the authority must tender to the operator its offer of financial assistance by September 27, 1976, to avoid the discontinuance of service.

SEPTA takes exception to the limited amount of time (ten days) provided to "analyze, comment upon, and approve ConRail's estimate" and requests that ConRail be required to furnish its estimate by September 13, to afford SEPTA an additional four days to respond.

The deadlines recited above are minimum time periods necessitated by statute. SEPTA could alleviate the time pressures by serving its notice of intention in advance of the August 18 deadline. That is, if it were to serve its notice on August 14, ConRail would be obliged to provide its subsidy estimate by September 13.

The parties would also be afforded additional time to complete the notice/subsidy estimate/offer process, were ConRail persuaded to waive the September 27 deadline for making the subsidy offer. Section 304(e)(2)(B) authorizes but does not require ConRail to discontinue service if a subsidy offer is not received by the end of the 180-day mandatory operation period. ConRail might be amenable to extending the September 27 deadline were it to receive appropriate assurances of compensation for continuing service.

Subsidy estimate and financial status report. NJDOT would require the railroad to provide more detail when estimating and reporting on the avoidable costs for maintenance of way and structures, maintenance of equipment, and transportation. SEPTA and NJDOT believe financial status reports should be rendered monthly rather than quarterly. SEPTA says the reports should include information on passengers carried, rides sold and car miles operated, which it deems useful in persuading taxing authorities to provide subsidies.

The Subsidy Estimate (Appendix I) and Financial Status Report (Appendix II) are patterned after the regional freight standards (49 CFR 1125) and are intended to summarize the base period, actual, and projected figures for attributable revenues, avoidable costs and return on value. The appendices have been revised to include traffic and operating data and require the minimum information believed necessary to formulate the offer of financial assistance and to monitor actual performance. Further detail may be obtained by inspecting the railroad's books and records.

The final rules specify quarterly financial reports to minimize the railroads reporting obligations and since ConRail anticipates that it will take more than 30 days to assemble the data. The Office does encourage the railroad to accommodate reasonable requests by the subsidizer for more frequent and detailed status reports.

Best available data. The proposed standards require the railroad to formulate its subsidy estimate on "base period" data, i.e., "a minimum of three months and a maximum of twelve months for which the latest traffic, revenue and cost data are available." ConRail advises that the minimum base period (April, May, June, 1976) expense data cannot be "provided in usable form until the end of July [which] will preclude furnishing the initial subsidy estimate within 30 days" and recommends that it be permitted to use the "best data available". In all likelihood, ConRail will not have to complete its initial subsidy estimate for any commuter service until September 17, 1976, or some 48 days after the April–June data are available. In any event, ConRail's recommendation conforms with the intent of the standards. Its initial estimate should be based upon the best 3–12 months data available for the period July 1, 1975, through June 30, 1976. The estimate should also be adjusted to allow for any actual or projected variations in service, i.e., seasonal fluctuation in traffic or extraordinary events affecting service levels. The final rules so provide.

Management fees and incentive payments. ConRail and AMTRAK advocate while DOT opposes the inclusion of a management fee in the standards. AMTRAK believes such a fee is justified to cover the hidden cost of corporate overhead not ordinarily billed to commuter users. ConRail asserts that incentive payments for superior performance, which the standards do allow, are "inappropriate vehicles for compensating [it] for the elements designed to be reimbursed by the management fee." It argues that the failure of Congress to expressly authorize a management fee does not limit the Office's discretion to provide for a fee or prohibit Federal reimbursement therefor. DOT supports incentives for superior performance but does not believe that Congress intended that a management fee be paid.

The Office continues to endorse the concept of a reasonable management fee to be paid the operator and it encourages commuter authorities to accede to such provisions. However, the Office adheres to its prior conclusion that it would be impermissable for it to require the payment of a management fee or to provide for the reimbursement of voluntary payments out of emergency assistance funds.

Congress expressly provided that railroads be paid a fee for managing freight services on light-density lines [section 304(d) of the RRR Act]. The House similarly called for a fee for managing commuter services, but this provision was deleted by the Committee of Conference (see Conference Report 94–781, on S. 2718, pp. 226–27). Therefore, Congress evidently did not deem it desirable to require commuter authorities to compensate operators for management services.

DOT is concerned that the parties may be reluctant to negotiate incentive and penalty clauses and recommends that "negotiations for [such] clauses consistent with general practices in the industry should, therefore, be made mandatory." Penalty and incentive clauses may not be necessary or appropriate for every commuter service subject to these standards, and particularly in light of the severe time constraints, it does not appear practical to mandate negotiation of such clauses. However, UMTA is establishing eligibility criteria (e.g., compliance with Federal policy regarding non-discrimination, etc.) in its guidelines for making application for emergency operating assistance. We would not deem it inappropriate for UMTA to also require a showing that the applicant made affirmative efforts to negotiate penalty and incentive clauses in its subsidy negotiations.

Speed factored gross ton formula. PennDOT is apparently opposed to the use of a speed factored gross ton formula (SFGT) to allocate maintenance of running track expenses. It advocates that commuter services be charged for track maintenance on the basis of gross-ton miles. NJDOT and SEPTA endorse the SFGT formula proposed by the Office. ConRail is not opposed to the SFGT concept, but prefers an alternative formula based upon DeLeuw Cather methodology. It points out that the formula proposed by the Office is "based on long-term average costs previously incurred, while for the next ten years most of the subsidized railroads will be undergoing an exceptional period of high program maintenance costs of roadway and track which obviates the use of historical cost averages."

The final standards retain the SFGT formula for the reasons stated in the further notice (41 FR at 20108). Appendix III has, however, been revised to indicate that the parties may conduct special studies to update the constants used in the formula without approval of the Office.

Insurance-reserve for liability. The further notice provided (41 FR at 20112–13) that the railroad should determine from its underwriters the difference in the premiums under account 414 if commuter service were discontinued and that a casualty reserve account should be established for costs incurred under Accounts 415–417, 419 and 420. NJDOT comments that the commuter authority should be named as an insured under the railroad's policies; that it should be entitled to obtain its own insurance if it so desires; and that determination of the insurance costs from others than the railroad's underwriters should be permitted.

ConRail responds that insurance and liability expenses are incurred by a railroad directly as a result of providing certain transportation services. These expenses are therefore directly related to commuter services and must be considered as costs which are properly the responsibility of the subsidizer. It is endeavoring to obtain from its underwriters segregations of the premiums resulting from operation of the commuter services, but such segregations may not be possible for all policies. ConRail self-insures against risks of less than $2,000,000, and believes it would be unduly costly to completely eliminate the self-insurance. It suggests that the railroad should determine from its underwriters not only the difference in the premium if all the commuter services were discontinued, but also the additional premium to hold both the railroad and the subsidizer harmless from any liability arising out of the commuter operations. The avoidable premium costs as so determined would then be apportioned among all the subsidizers on the basis of passenger miles operated for each subsidizer.

ConRail further suggests that, to cover liabilities coming within normal deductible amounts, a casualty reserve account be established, into which each subsidizer initially would pay amounts equal to 6 percent of the total costs billed by the railroad. After five years of experience had been accumulated, appropriate adjustments would be made in the percentage rate for payments into the reserve.

The Office agrees that the subsidizers should be responsible for any costs reasonably and necessarily sustained under Accounts 414, 415–417, 419 and 420 arising out of the operation of the commuter services. It believes that it will be possible to obtain from underwriters segregated premiums for the commuter services to the extent that there is any additional premium attributable to the continuance of these services. It agrees also with NJDOT that the subsidizers should be entitled to obtain premium quotations from other sources than the railroad's underwriters, and to furnish the insurance themselves, provided that the railroad is named as an insured and is adequately protected against risks arising from the commuter operations.

Because of the high costs of insuring against all risks with no deductible, the interests of the subsidizers will probably best be served by a common casualty reserve in which all subsidizers participate, along the lines ConRail suggests. The insurance costs also presumably will be lower if insurance is provided under common policies. However, ConRail should provide substantiation for the amounts to be paid by the subsidizers into the reserve. Also, to provide for the contingency that some commuter services may be terminated, it would appear that the payments into the reserve should be reviewed at the close of each subsidy period. The parties of course may agree upon any contractual arrangements which provide the necessary liability protection, but § 1127.5(h) (12) and (13) will apply in the event of disagreement.

Administrative costs. Both the railroad and the commuter authorities will necessarily incur costs in order to comply with the standards adopted herein and with the application procedures issued by UMTA. These costs include the legal, technical and other out-of-pocket expenses incurred in formulating the notice of intention, the subsidy estimate, and the offer of financial assistance; in developing the facilities and manpower utilization plans and negotiating the subsidy agreements; in maintaining, reporting and auditing the actual revenue and cost data; and in making application to UMTA for emergency operating assistance.

The regional standards (49 CFR 1125.5(e)) compensate the railroad .5 percent of total annual revenues attributable to the subsidized light-density line to cover all costs of administering freight subdsidy programs. A similar allowance is not provided in the commuter standards, since unlike the freight standards, the railroad may assign as avoidable costs the actual general expenses, including salaries and legal, that are directly attributable to the commuter service. These accounts may properly include the railroad's actual costs of administering the subsidy program. Similarly, the final standards authorize the subsidizer to seek reimbursement from UMTA for the additional costs incurred by them in participating in the subsidy program.

It should be emphasized that the railroad and subsidizers may not allocate these general expenses on estimates of time expended or arbitrary formulae. Rather these expenses must be predicated on detailed records of time spent by the persons administering the program and on invoices for services performed. Moreover, the cost of participating in this rulemaking should not be considered avoidable under the subsidy standards or for purposes of seeking Federal reimbursement.

Interest. The treatment of working capital and interest on overdue payments was discussed in both the further notice (41 FR at 20108) and the second notice (41 FR at 26939). SEPTA argues that it would unduly restrict local governmental flexibility to require that interest be paid on late payments and questions the Office's statutory authority to mandate payment of interest in such a situation. ConRail states that its experience during its first several months, as well as that of its predecessors, reflects the difficulties encountered by railroads in collecting contractually or statutorily required subsidy payments. It urges that interest on delayed subsidy payments continue to accrue, irrespective of a decision to initiate discontinuance procedures.

The standards contemplate that the railroad will not be compelled to commit its working capital to the commuter services; therefore, no working capital component is included in the investment base on which a reasonable return is allowed. Conversely, the railroad should not be permitted to amass interest-free working capital for its other services by overestimating the amounts of required advance payments from the subsidizers. In view of these considerations, the standards provide that interest shall accrue at 100 basis points over current prime with respect both to delayed subsidy payments and to refunds of interim subsidy payments to the subsidizer.

Accounting periods. Several of the comments addressed problems which may arise because the deadline dates in the standards do not coincide with the termination of normal accounting periods. For the most part, the dates set forth in the standards are dictated by the terms of the statute, which the Office lacks the authority to change. However, the potential for unnecessary expense resulting from rigid application of some dates is recognized, and it is intended that appropriate prorations of revenues, costs, and return be made where necessary to avoid duplicative recordkeeping or inconvenient accounting cut-off dates.

Advertising-notice. The National Newspaper Association (NNA) urges that commuter authorities which notify railroads of their intention to provide financial assistance be required to publish such notice in considerable detail once a week for three consecutive weeks in a

newspaper of general circulation in each county of each State within the Northeast Corridor, "or similarly, future areas affected by such changes". NNA urges also that opportunity be provided for the public to respond to proposed payment plans promulgated by transportation officials.

The statute provides for public notice of proposed abandonment of rail properties and discontinuance of rail service (Section 1a of the Interstate Commerce Act). It does not provide for public notice regarding the continuance under subsidy of commuter service. The Office would, however, expect the commuter authorities, ConRail, and AMTRAK to furnish the press and other communications media with timely releases to keep the interested public informed of all developments affecting the continuance of commuter rail services.

PARTICIPANTS

Government

FEDERAL

Congressman James J. Florio
Congressman James J. Howard
Office of Public Counsel
Senator Harrison A. Williams, Jr.
U.S. Department of Transportation
Urban Mass Transportation Administration

STATE

Maryland Department of Transportation
New Jersey Department of Transportation
New York State Department of Transportation
Pennsylvania Department of Transportation
Rhode Island Department of Transportation

REGIONAL

Delaware Transportation Authority
Massachusetts Bay Transportation Authority
Metropolitan Transportation Authority, New York
Northwestern Indiana Regional Planning Commission
Southeastern Pennsylvania Transportation Authority

CITY

Philadelphia, Pennsylvania

Association

National Newspaper Association

Railroad

Chicago Area Commuter Railroads:
- Burlington Northern, Inc.
- Chicago & North Western Transportation Company
- Chicago, Milwaukee, St. Paul & Pacific Railroad Company
- Chicago, Rock Island and Pacific Railroad Company
- Chicago, South Shore & South Bend Railroad Company
- Illinois Central Gulf Railroad Company

Consolidated Rail Corporation
National Railroad Passenger Corporation

Accordingly, *it is ordered*, That Part 1127 of Chapter X of Title 49 of the Code of Federal Regulations appended to this report is hereby adopted effective August 3, 1976.

Issued July 29, 1976, by Alan M. Fitzwater, Director, Rail Services Planning Office.

By the Commission.

ROBERT L. OSWALD,
Secretary.

Part 1127 is added to 49 CFR Ch. X to read as follows:

Sec.
1127.1 Definitions.
1127.2 Purpose and scope.
1127.3 Subsidy agreement.
1127.4 Revenues attributable to commuter rail service.
1127.5 Avoidable costs of providing service.
1127.6 Valuation of rail properties.
1127.7 Reasonable return on the value of the properties.
1127.8 Emergency operating assistance.
1127.9 Access to records, audit and inspection.
Appendix I—Subsidy estimate.
Appendix II—Financial status report.
Appendix III—Speed factored gross tons formula.

AUTHORITY: Sec. 205(d) (5) and (6) of the Regional Rail Reorganization Act of 1973, Pub. L. 93-236, 87 Stat. 985, 994, as amended by Section 309 of the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 94-210, 90 Stat. 31, 57.

§ 1127.1 Definitions.

Unless otherwise required by the context, the following definitions apply in this Part:

"Account" means an account in the Commission's Uniform System of Accounts for Railroad Companies (49 CFR Part 1201).

"Act" means the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) as amended by the Rail Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94-210 (90 Stat. 31 et seq.)).

"Base period" means a minimum of three months and a maximum of twelve months for which the latest traffic, revenue and cost data are available.

"Common costs" means charges in the railroad's accounts for facilities, properties and services in the designated area which are incurred by the subsidizer and other users and which are not solely for the benefit of a particular service.

"Commuter service" means the specific service for which the subsidizer has offered or agreed to make continuation payments.

"Corporation" means the Consolidated Rail Corporation.

"Designated area" means a portion of the railroad's facilities, such as track segments, buildings and yards, for which costs are collected and apportioned between commuter and other services.

"Facilities Utilization Plan" means a document identifying and itemizing the road and equipment properties used in providing commuter passenger service.

"Form R-1" means the railroad's annual report filed with the Commission in accordance with the requirements of section 20 of the Interstate Commerce Act.

"Manpower Utilization Plan" means a document identifying the railroad forces used in providing commuter passenger service.

"Office" means the Rail Services Planning Office established by section 205 of the Act.

"Rail Act" means the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 94-210 (90 Stat. 31).

"Railroad" means a common carrier by railroad, as defined in section 1(3) of the Interstate Commerce Act (49 U.S.C. 1(3)), including the Consolidated Rail Corporation and the National Railroad Passenger Corporation.

"Secretary" means the Secretary of Transportation or his designated representative.

"Subsidizer" means a State or a local or regional transportation authority which offers to make or makes a payment to continue commuter rail service pursuant to sections 304(c) and 304(e) of the Act.

"Subsidy period" means the term for which a subsidy agreement has been negotiated and is in operation.

"UMT Act" means the Urban Mass Transportation Act of 1964, as amended (90 Stat. 143).

§ 1127.2 Purpose and scope.

(a) Section 304(e)(1) of the Act requires the Corporation (or a profitable railroad) to provide commuter rail service for a period of 180 days commencing April 1, 1976, on all rail properties over which a railroad in reorganization in the Northeast and Midwest Region, or a person leased, operated, or controlled by such a railroad, was providing service as of the date regardless of whether or not the properties were designated in the Final System Plan of the United States Railway Association as rail properties over which rail service is required to be operated.

(b) Section 304(c)(2)(A) and section 304(e)(4) of the Act provide that no commuter rail service may be discontinued, and no rail properties may be abandoned, if a subsidizer offers financial assistance in the form of a rail service continuation payment which is designed to cover the difference between the avoidable costs of providing commuter rail service on the rail properties and the revenues attributable to such properties, together with a reasonable return on the value of the properties. If such an offer is made on or before September 27, 1976, the Corporation (or profitable railroad) shall continue to provide such service thereafter.

(c) Section 205(d)(6) of the Act authorizes the Office to determine and publish standards for defining (1) the "revenue attributable to the rail properties", (2) the "avoidable cost of providing service", and (3) a "reasonable return on value", as those phrases are used in section 304 of the Act.

(d) Section 205(d)(5) of the Act directs the Office to determine and publish standards for the computation of subsidies for commuter rail service (except passenger service compensation disputes subject to the jurisdiction of the Commission) which are consistent with the compensation principles described in the Final System Plan and which avoid cross subsidization among commuter, intercity, and freight rail services.

(e) This part sets forth a method for establishing an estimated subsidy payment, which will enable a prospective subsidizer to formulate a subsidy offer within the context of section 304 of the Act and provide a basis for subsidy payment pending the negotiation of a sub-

sidy agreement. When an agreement is concluded, subsequent payments shall be based on the negotiated subsidy. The final payment shall be adjusted to reflect the actual revenues derived, avoidable costs incurred and value of the properties used in the subsidy period.

(f) Section 304(e)(5)(A) of the Act and section 17(a)(1) of the UMT Act direct the Secretary to reimburse the Corporation, the National Railroad Passenger Corporation, other railroads, and, if applicable, the trustee or trustees of a railroad in reorganization in the Midwest and Northeast region for 100 percent of the losses incurred in the 180-day mandatory operation period not otherwise paid by subsidizers which would have been payable had these standards been in effect on April 1, 1976.

(g) Section 304(e)(5)(B) of the Act and section 17(a)(2) of the UMT Act direct the Secretary to reimburse subsidizers for the additional costs incurred by them for commuter operation during the 180-day mandatory operation period and for commuter rail service continuation payments made by them after September 27, 1976. The amount of reimbursement shall be 100 percent for the period April 1, 1976, through March 26, 1977; 90 percent for the period March 27, 1977, through March 31, 1978; and 50 percent for the period April 1, 1978, through September 27, 1978. The Secretary may not provide emergency operating assistance after March 31, 1978, unless the prospective subsidizer provides adequate assurances to the Secretary that the commuter service for which such assistance is sought will be continued after September 27, 1978.

(h) Section 205(d)(5)(B) of the Act directs the Office to determine the standards under which the Secretary will provide the emergency operating assistance authorized in section 17(a) of the UMT Act.

(i) This part also establishes the criteria which will govern the reimbursement by the Secreary of: (1) The losses incurred by the Corporation, other railroads or trustees for continuing commuter service during the mandatory operation period; and (2) the additional costs incurred by subsidizers for subsidizing commuter service from April 1, 1976, through September 27, 1978.

§ 1127.3 Subsidy agreement.

(a) *Notice of intention.* A prospective subsidizer shall notify the railroad of its intention to offer financial assistance for the continuation of commuter service no later than 40 days before the offer is to be tendered. The Notice shall specify:

(1) All modifications in the fares to be charged and in the existing level of service, including changes in routes, schedules, train seating capacity, performance standards, equipment units, and such other dimensions of service as the subsidizer may specify;

(2) The length of the subsidy period; and

(3) The name and address of the prospective subsidizer.

A copy of the Notice shall be served concurrently on the Office and the Secretary.

(b) *Subsidy estimate.* The railroad shall compute a subsidy estimate predicated on the information contained in the Notice and the revenues attributable, avoidable costs of providing service, and reasonable return on value for the base period in accordance with the methodology prescribed in §§ 1127.4–7 and in the form called for in Appendix I. The estimate shall be adjusted as necessary to allow for any actual or projected variations in service, e.g., seasonal fluctuations in traffic or extraordinary events affecting service levels. The bases of any adjustments shall be stated with particularity. The railroad's estimate and the general terms it proposes for an agreement shall be served on the prospective subsidizer (with copies to the Office and the Secretary) as soon as possible but no later than 30 days after the Notice is received. The railroad's initial estimate (which must be served 30 days after the notice is received but no later than September 17, 1976) may be based on the best data available.

(c) *Offer of financial assistance.* The prospective subsidizer must formulate an offer of subsidy predicated on the railroad's estimate, but may propose modifications which are consistent with these standards. The initial offer of subsidy must be served on the railroad (with copies to the Office and the Secretary) no later than September 27, 1976, to avoid the discontinuance of service. Subsequent offers of subsidy must be served not less than 60 days before the end of the subsidy period. The offer shall contain:

(1) A subsidy estimate in the form prescribed in Appendix I;

(2) A resolution, authorization or other evidence that the prospective subsidizer has, or within a reasonable time will have, the authority to execute and fulfill an agreement to subsidize the service;

(3) Information demonstrating that the prospective subsidizer has or will have the financial resources to subsidize the service and otherwise fulfill its contractual obligations; and

(4) A subsidy payment for the first month of service.

(d) *Negotiations.* (1) *General.* The railroad and the prospective subsidizer shall negotiate an initial subsidy agreement as soon as possible after September 27, 1976, but in no event later than March 26, 1977. The parties may agree in arm's-length negotiations to provisions which modify the standards, subject to review of such modifications by the Office. The Office would not expect to disapprove variations from the standards which are the product of arms-length negotiations and which are shown to be reasonable in the light of the pertinent facts and circumstances. When an agreement has been reached, a copy shall be promptly filed with the Office for its review.

(2) *Significant use.* Unless the parties agree otherwise, the subsidizer shall be deemed a significant user of the rail properties in the areas designated on the facilities utilization plan, and shall be assigned the directly identifiable and common costs of providing the commuter passenger service.

(3) *Insignificant use.* A subsidizer proposing incidental use of rail properties in the designated area may be assigned the directly identifiable costs incurred in providing the commuter passenger services, plus an allowance for overhead as negotiated by the parties. If the parties are unable to agree on an overhead allowance, the methodology for apportioning common costs specified in § 1127.5 shall apply.

(4) *Mediation.* Upon request of either party, the Office will mediate disagreements concerning the facilities utilization plan, the manpower utilization plan, the subsidy agreement, and the application of these standards.

(e) *Subsidy payments.* The subsidizer shall make subsidy payments monthly in advance, based either upon the negotiated estimate or, in the absence of a subsidy agreement, upon the subsidizer's offer of financial assistance. The payment shall be determined by dividing the total subsidy by the number of months in the subsidy period. Interest on overdue subsidy payments shall accrue, at a rate of 100 basis points (1 percentage point) above the prime rate currently quoted at a principal bank in the commuter service area, for such period as they remain unpaid and the railroad has not terminated the service. The final subsidy payment shall be adjusted retroactively within 60 days of the filing of the final Financial Status Report required by subsection (f) to reflect the actual revenues derived, avoidable costs incurred and value of the properties used in providing rail commuter service during the subsidy period. The railroad shall establish a system to collect the data necessary to make the adjustment. If the subsidizer is entitled to a refund, the railroad shall pay interest on the overpayment, at a rate of 100 basis points (1 percentage point) above the prime rate currently quoted at a principal bank in the commuter service area, accruing from the end of the subsidy period until the refund is made.

(f) *Financial status report.* The railroad shall submit to the subsidizer and the Office a Financial Status Report in the form prescribed in Appendix II to this Part within 60 days after the end of each three months of the subsidy period. Significant deviations from the subsidy estimate must be explained. Unless the parties otherwise agree, the second-to-last report will be the basis for negotiating the subsequent subsidy agreement. The final report will be the basis of the subsidy payment adjustment.

§ 1127.4 Revenues attributable to commuter rail service.

The revenues attributable to commuter rail service shall be the total of the revenues, rentals and allowances assigned in accordance with this section. Where a third party controls revenues or

rents attributable to the commuter service, the railroad shall credit the commuter service with the amounts of such revenues or rents credited to it by the third party, and shall use its best efforts to negotiate equitable apportionments. Revenues attributable to two or more commuter services shall be apportioned between them on the basis of car-miles operated under the respective offers of financial assistance or subsidy agreements. The revenues, rentals and allowances assigned shall be derived from the following accounts.

(a) *Revenue accounts.* (1) *Account 101—Freight (mail portion only); Account 102—Passenger; Account 103—Baggage; Account 105—Parlor and chair car; Account 108—Other passenger train; Account 131—Dining and buffet.* The revenues assigned to these accounts shall be the actual revenues attributable to commuter service that are directly identified with the operation of commuter trains, excluding rail service continuation payments [Account 108(d)].

(2) *Account 132—Hotel and restaurant; Account 133—Station, train, and boat privileges; Account 142—Rents of buildings and other property; Account 143—Miscellaneous.* The revenues assigned to these accounts earned on commuter trains shall be credited directly to the commuter service. The commuter service portion of revenues generated at fixed facilities used in common with other services shall be determined from the relative passenger on-off counts (including pass riders) at those facilities. Special studies of on-off counts may be substituted for continuous records of such counts where desired.

(3) *Account 151—Joint facility—Cr.; Account 152—Joint facility—Dr.* To the extent that the terms of joint facility agreements yield apportionments of revenues to commuter services, the amounts so yielded shall be credited or debited directly to the commuter service. If the terms of the agreements do not yield such apportionments, passenger on-off counts (including pass riders) shall be the basis of apportionment at joint facilities where passengers are boarded or discharged; and at other facilities counts of cars handled as developed from special studies or continuous records shall be the basis of apportionment.

(b) *Rentals.* (1) *Account 508—Joint facility rent income; Account 541—Joint facility rents.* Rentals in these accounts shall be credited or debited to commuter services on the same bases specified in § 1127.4(a)(3).

(2) *Account 504—Rent from locomotives–Cr.; Account 537—Rent for locomotives–Dr.; Account 505—Rent from passenger-train cars–Cr.; Account 538—Rent for pasenger-train cars–Dr.; Account 150—Miscellaneous rent income.* The rentals credited or debited to these accounts to the commuter services shall be the actual amounts derived from the rental of commuter service equipment or other property.

(c) *Pass rider allowance.* Attributable revenues of the commuter service shall be credited with an allowance for passengers using passes or reduced fare tickets issued by the railroad (or predecessor companies). The parties may continue existing practices for crediting such allowances. In the absence of an agreement, the amount of such credit shall be determined on the basis of currently applicable fares charged revenue commuter passengers.

§ 1127.5 Avoidable costs of providing service.

(a) *Assignment of costs.* To the maximum extent practicable, the directly identifiable and common costs assigned to the commuter service shall be developed from a faciilties utilization plan and a manpower utilization plan, with the assistance of available and appropriate cost and accounting records such as time sheets, material requisitions, charge cards, vouchers, and the like. [All accounts shall be separated between labor and material (non-labor) charges.] Otherwise, costs may be assigned to the commuter service in a manner agreed to by the parties. The parties may rely on historical data; conduct special studies; develop their own apportionment formulae based on use; or agree on a combination of the foregoing. Upon request of either party, the Office will mediate disputes concerning the proper methodology for assigning costs. Any costs which are not assigned under the foregoing procedures shall be assigned in accordance with the methodology prescribed in subsections (e)–(n) below, subject to the condition that either party may request a special study. The requesting party will be responsible for designing the study and obtaining the other party's approval of the design. The results of the study will be binding on both parties unless they mutually agree to disregard them. Avoidable costs common to two or more commuter services shall be apportioned between them on the basis of car-miles operated under the respective offers of financial assistance or subsidy agreements.

(b) *Facilities utilization plan.* The parties shall develop a facilities utilization plan which identifies and itemizes the road and equipment properties of the railroad used in providing the commuter service and assigns to each property or group of properties the agreed percentage of use devoted to the commuter service. The plan shall also identify those road properties which are avoidable upon discontinuance of the commuter service for the purposes of determining road depreciation, retirement and dismantling charges [§§ 1125.7(e)(11)–(13)] and value of road properties [§ 1127.6(b)]. The roadway properties and facilities should be divided into areas or segments consisting of stretches of property where operations or use remain fairly constant and pinpointing those places where the operations or use change (e.g., number of tracks change, branch lines enter or diverge, and other similar changes). Properties and equipment normally covered in a facilities utilization plan include: trackage; signal system; electrification system; interlocking plants; bridges and drawbridges; stations and platforms; rail-highway crossings; yards; power plants; shops, enginehouses, and servicing facilities; storehouses; land; rolling stock; and other facilities or equipment. Source data normally includes equipment rosters, track diagrams or maps of the properties in the above categories, and usage measures for each class of facility and equipment by specific facility or segment (e.g., track density charts, train sheets, timetables, blocking records, yarding programs, station workloads, etc.) to determine the percentage of use of facilities or equipment in providing the commuter service.

(c) *Manpower utilization plan.* The parties shall also develop a manpower utilization plan which identifies the railroad forces used in providing the commuter service by listing the persons employed according to job title, work location, account and percentage of time devoted to commuter service duties.

(d) *Special studies.* All special studies shall be conducted jointly by the railroad and the subsidizer. The length and frequency of the studies and the standardized measurement procedures utilized in the studies shall be negotiated by the parties. In the event of impasse, either party may submit the dispute to the Office for resolution and its decision will be final. The cost of studies which are prescribed by these standards or which the parties voluntarily agree to perform shall be attributed to the commuter service. The cost of studies performed at the request of only one party shall be borne exclusively by that party and shall not be attributed to the commuter service.

(e) *Maintenance of way and structures.* (1) Yard and way switching tracks—*Account 202—Roadway maintenance; Account 206—Tunnels and subways; Account 208—Bridges, trestles and culverts; Account 210—Elevated structures; Account 212—Ties; Account 214—Rails; Account 216—Other track material; Account 218—Ballast; Account 220—Track laying and surfacing.* The common costs assigned to these accounts shall be apportioned on the ratio of the commuter service cars dispatched in the designated area to the total cars dispatched in the designated area.

(2) Running tracks—*Account 202—Roadway maintenance; Account 206—Tunnels and subways; Account 208—Bridges, trestles and culverts; Account 210—Elevated structures; Account 212—Ties; Account 214—Rails; Account 216—Other track material; Account 218—Ballast; Account 220—Track laying and surfacing; Account 507—Rent from work equipment-CR.; Account 540—Rent from work equipment-Dr.* The common costs assigned to these accounts shall be apportioned on the ratio of the commuter service Speed Factored Gross Tons (SFGT) for the designated area to the total SFGT for all traffic in the designated area. The commuter service SFGT shall be derived by subtracing the SFGT for freight and/or intercity passenger from the total SFGT for all traffic. The SFGT shall be calculated in accordance

with the formula set forth in Appendix III.

(3) *Account 227—Station and office buildings.* The common costs assigned to these accounts shall be first apportioned on the ratio of total square feet devoted to passenger service to the total used square feet in the facility. The passenger portion shall then be apportioned on the ratio of the commuter service on-off passenger count (including pass riders) in the designated area to the total on-off passenger count (including pass riders) in the designated area.

(4) *Account 221—Fences, snowsheds and signs; Account 229—Roadway buildings; Account 265—Miscellaneous structures; Account 269—Roadway machines; Account 271—Small tools and supplies; Account 272—Removing snow, ice and sand; Account 273—Public improvements-maintenance; Account 281—Right-of-way expense.* The common costs assigned to these accounts shall be apportioned on the ratio of the amounts in Accounts 202–220 assigned to commuter service to the railroad's total in Accounts 202–220 for the designated area.

(5) *Account 231—Water stations.* The common costs assigned to this account shall be apportioned on the ratio of the locomotive unit miles (diesel and electric) generated from commuter service using these facilities in the designated area to the railroad's total locomotive unit miles in the designated area (diesel and electric) for all service.

(6) *Account 233—Fuel stations.* The common costs assigned to this account shall be apportioned on the ratio of the amount of fuel dispensed in commuter service to the total amount of fuel dispensed for all services using these facilities.

(7) *Account 235—Shops and engine houses.* The common costs assigned to this account shall be apportioned on the ratio of the labor charges expended servicing commuter service equipment in the designated area to the railroad's total labor charges expended servicing all equipment in the designated area.

(8) *Account 249—Signals and interlockers.* The common costs assigned to this account shall be apportioned on the ratio of the number of commuter service train movements through these facilities to the total of all train movements through these facilities.

(9) *Account 253—Power plants.* The common costs assigned to this account shall be apportioned on the ratio of the commuter service amounts in Accounts 227 and 235 in the designated area to the railroad's total of these accounts in the designated area.

(10) *Account 257—Power-transmission systems.* The common costs assigned to this account shall be apportioned on the ratio of the kilowatt hours consumed by the commuter service to the total kilowatt hours consumed by all services in the designated area.

(11) *Account 266—Road property-depreciation.* There shall be no apportionment of common costs under this account. Road property depreciation charges to commuter service shall be computed by applying the railroad's composite rates of depreciation reported in Schedule 211B of Form R–1 to the undepreciated book values of the road properties determined in accordance with § 1127.6(b).

(12) *Account 267—Retirements-Road.* There shall be no apportionment of common costs under this account. The charges to commuter service in the designated area shall be the actual amounts reported in Schedule 324 of Form R–1, which are identified with the retirement of road properties the value of which is assigned to commuter service under § 1127.6(b).

(13) *Account 270—Dismantling retired road property.* There shall be no apportionment of common costs under this account. The charges to commuter service in the designated area shall be actual costs of dismantling the road property identified in § 1127.5(e)(12).

(14) *Account 278—Maintaining joint tracks, yards and other facilities-Dr.; Account 279—Maintaining joint tracks, yards and other facilities-Cr.* The charges or credits to commuter service costs assigned to these accounts shall be determined on the same basis specified in § 1127.4(a)(3).

(15). *Account 201—Superintendence; Account 274—Injuries to persons; Account 275—Insurance; Account 276—Stationery and printing; Account 282—Other expenses.* The common costs assigned to these accounts shall be apportioned on the ratio of the commuter service amounts in Accounts 202–265, 269–273, 278, 279 and 281 in the designated area to the railroad's total for these accounts in the designated area.

(16) *Account 247—Communication Systems.* The common costs assigned to this account shall be apportioned on the ratio of the commuter service amounts in Accounts 201, 301, 351, 371, 372 and 377 in the designated area to the railroad's total for these accounts in the designated area.

(f) *Maintenance of equipment.* (1) *Account 311—Locomotive-Repairs.* This account shall be separated between yard and other (road) with a further separation between diesel and other (electric). The common costs assigned to this account for yard locomotives shall be based on the results of the special study described in § 1127.5(h)(4). The costs assigned to this account for other locomotives (road) shall be the actual costs that are directly attributable to the commuter service.

(2) *Account 317—Passenger train car-Repairs.* The costs assigned to this account shall be the actual costs of repairs to commuter service equipment.

(3) *Account 326—Work equipment-Repairs.* The common costs assigned to this account shall be apportioned on the ratio of the commuter service amounts in Accounts 202–220 to the railroad's total for these accounts in the designated area.

(4) *Account 328—Miscellaneous equipment-Repairs.* The common costs assigned to this account shall be apportioned on the ratio of the hours devoted to commuter service in the designated area to the total hours used in the designated area. A special study may be conducted to develop the hours of use of such equipment.

(5) *Account 329—Dismantling retired equipment; Account 330—Retirements-Equipment; Account 331—Equipment-Depreciation.* There shall be no apportionment of common costs under these accounts. The charges to commuter service shall be amounts directly identified with the equipment, the values of which are assigned to commuter services under § 1127.6(a).

(6) *Account 336—Joint maintenance of equipment expenses-Dr.; Account 337—Joint maintenance of equipment expenses-Cr.* The charges or credits to commuter service shall be the amounts which can be directly identified with commuter service equipment under the terms of the related joint facility agreements.

(7) *Account 301—Superintendence; Account 302—Shop machinery; Account 304—Power-plant machinery; Account 305—Shop and power-plant machinery-Depreciation; Account 306—Dismantling retired shop and power-plant machinery; Account 332—Injuries to persons; Account 333—Insurance; Account 334—Stationery and printing; Account 339—Other expenses.* The common costs assigned to these accounts shall be apportioned on the ratio of the commuter service amounts in Accounts 311–329, 336, 337 to the railroad's total for these accounts in the designated area.

(g) *Traffic. Account 351—Superintendence; Account 352—Outside agencies; Account 353—Advertising; Account 354—Traffic associations; Account 357—Insurance; Account 358—Stationery and printing; Account 360—Other expenses.* There shall be no apportionment of common costs under these accounts. The costs assigned to commuter service shall be those amounts directly identified with such services.

(h) *Transportation.* (1) *Account 372—Dispatching trains.* The common costs assigned to this account shall be apportioned on the ratio of the commuter train hours in the designated area to total train hours in the designated area.

(2) *Account 373—Station employees.* The common costs assigned to this account shall be subdivided into 4 categories: (i) Ticket sales and service; (ii) other station costs; (iii) station master; and (iv) mail and baggage. The common costs in these subaccounts shall be apportioned on the ratio of commuter service units in the designated area to the total units in the designated area for the respective units: (v) Weighted ticket sales; (vi) passenger on-off count (including pass riders); (vii) trains stopping at stations in the designated area; and (viii) units of mail and baggage handled.

(3) *Account 376—Station supplies and expenses.* The common costs assigned to this account shall be apportioned on the ratio of the commuter service amounts in Account 373 to the railroad's total for this account in the designated area.

(4) *Account 377—Yardmasters and yard clerks; Account 378—Yard conductors and brakemen; Account 379—Yard switch and signal tenders; Account 380—Yard enginemen; Account 382—Yard switching fuel; Account 383—Yard switching power produced; Account 384—Yard switching power purchased; Account 388—Servicing yard locomotives; Account 389—Yard supplies and expenses.* A special study shall be conducted to determine the ratio of the commuter service (diesel, electric) yard locomotive unit hours in the designated area to the railroad's total (diesel, electric) yard locomotive unit hours in the designated area. The common costs assigned to these accounts shall be amounts in the railroad's accounts for the designated area multiplied by the ratio determined from the study. For this purpose, the term "locomotive" shall include motor cars. In conducting such a study, the railroad should recognize the variances of: (i) weekend versus weekday demand, (ii) required yard crew manning to perform the switching services for various users, and (iii) the effect of peak service on yard manning.

(5) *Account 390—Operating joint yards and terminals-Dr.; Account 391—Operating joint yards and teminals-Cr.; Account 412—Operating joint tracks and facilities-Dr.; Account 413—Operating joint tracks and facilities-Cr.* The charges or credits to commuter service under these accounts shall be determined on the basis specified in § 1127.4(a)(3).

(6) *Account 392—Train enginemen; Account 394—Train fuel; Account 401—Trainmen.* There shall be no apportionment of common costs under these accounts. The costs assigned to these accounts shall be the actual costs that are directly attributable to commuter service.

(7) *Account 395—Train power produced; Account 396—Train power purchased.* There shall be no apportionment of common costs under these accounts. The costs assigned to these accounts shall be the actual costs of the kilowatt hours (KWH) consumed for commuter service in the designated area. These KWH shall be weighted to reflect the peak period power demands, i.e., time of day and volume of power demanded.

(8) *Account 400—Servicing train locomotives.* The common costs assigned to this account shall be apportioned on the ratio of the total locomotive units (road) serviced in commuter service in the designated area to the railroad's total locomotive units (road) serviced in the designated area.

(9) *Account 402—Train supplies and expenses.* The common costs assigned to this account shall be apportioned on the ratio of commuter cars dispatched in the designated area to the railroad's total cars dispatched in the designated area. Commuter cars shall include passenger cars and motor cars.

(10) *Account 404—Signal and interlocker operation; Account 405—Crossing protection.* The common costs assigned to these accounts shall be apportioned on the ratio of the number of commuter service train movements in the designated area to the total train movements in the designated area.

(11) *Account 411—Other expenses.* There shall be no apportionment of common costs under this account. The costs assigned to this account shall be the actual costs that are directly attributable to commuter service.

(12) *Account 414—Insurance.* The costs assigned to this account for commuter service shall be determined by ascertaining from the railroad's underwriters: (i) The difference in the current premium if commuter service were not operated and (ii) the additional premium required to hold the railroad and the subsidizers harmless from any liability. Such amounts shall be apportioned between the several commuter services operated by the railroad on the basis of the relative numbers of passenger miles (including pass riders).

(13) *Account 415—Clearing wrecks; Account 416—Damage to property; Account 417—Damage to livestock on right-of-way; Account 419—Loss and damage-baggage; Account 420—Injuries to persons.* The subsidizers shall be responsible for any costs incurred under these accounts resulting from the operation of the commuter service. The railroad shall, if the subsidizer agrees, establish a reserve for the purpose of holding the subsidizer harmless from any liabilities under these accounts arising out of the operation of commuter services on its properties, and each commuter service participating in the reserve shall bear a proportion of the costs of the reserve equal to its proportion of the total passenger miles (including non-revenue passenger miles) generated by participating services.

(14) *Account 371—Superintendence; Account 407—Communication system operation; Account 410—Stationery and printing.* The common costs assigned to these accounts shall be apportioned on the ratio of the commuter service amounts in all other transportation accounts except Account 409 to the railroad's total for these accounts in the designated area.

(i) *Miscellaneous operations.* (1) *Account 441—Dining and buffet service; Account 446—Other miscellaneous operations.* There shall be no apportionment of common costs under these accounts. The costs assigned to these accounts shall be the actual costs that are directly attributable to commuter service.

(2) *Account 447—Operating joint miscellaneous facilities-Dr.; Account 448—Operating joint miscellaneous facilities-Cr.* The charges or credits to commuter service under these accounts shall be determined on the same basis specified in § 1127.4(a)(3).

(j) *General.* (1) *Account 451—Salaries and expenses of general officers; Account 452—Salaries and expenses of clerks and attendants; Account 453—General office supplies and expenses; Account 454—Law expenses; Account 455—Insurance; Account 457—Pensions; Account 458—Stationery and printing; Account 460—Other expenses.* There shall be no apportionment of common costs under these accounts. The costs assigned to these accounts shall be the actual costs that are directly attributable to commuter service. These costs may include the actual expenses incurred in administering the subsidy program.

(2) *Account 461—General facilities-Dr.; Account 462—General joint facilities-Cr.* The charges or credits to commuter service under these accounts shall be determined on the same basis specified in § 1127.4(a)(3).

(k) *Fringe benefits.* Fringe benefits shall be assigned on a basis of a percentage of total wages. The percentage shall be developed by using data from the railroad's latest Form R–1. The total of all health and welfare accounts (Accounts 277, 335, 359, 409, 449, and 465) taken from Sch. 320, Col. (b) shall be added to the total of payroll taxes, old-age retirement and unemployment insurance, taken from Sch. 350, and divided by the total employee compensation taken from Sch. 320, Col. (b). The resulting percentage shall be applied to the labor costs in each account chargeable to commuter service.

(l) *Revenue taxes.* There shall be no apportionment of revenue taxes. The commuter service shall be assigned those revenue taxes directly attributable to commuter revenues.

(m) *Property taxes.* There shall be no apportionment of property taxes. The property taxes chargeable to a commuter service shall be those identified with properties used in such service, as determined under § 1127.6(b).

(n) *Performance standards-penalties and incentives.* The subsidy agreements may include reasonable provisions as agreed by the parties for penalties for service inferior to stipulated performance standards and incentive payments for superior performance. Penalties withheld from subsidy payments by the subsidizer under such agreements shall be treated as reductions of avoidable costs and incentive payments shall be treated as additions to avoidable costs.

§ 1127.6 Value of rail properties.

The value of rail properties on which a reasonable return is allowed shall consist of:

(a) The net book value of equipment furnished by the contracting carrier for commuter service, after deduction of accrued depreciation; and

(b) The net book value of those roadway and structures properties which are used in commuter services and which could be disposed of if commuter services were discontinued. Such net book value shall include the net liquidation values of properties acquired April 1, 1976, by the Corporation or National Railroad Passenger Corporation, plus the value of additions and betterments after that date for commuter service, less accrued depreciation. It shall not include the value of properties owned by public bodies or the trustees of debtor estates.

(c) If the book values of road or equipment property are adjusted upward or downward as a result of final orders of

the special court, such adjusted values shall be reflected in future subsidy payments, but without retroactive effect.

§ 1127.7 Reasonable return on the value of the properties.

The reasonable return shall be 7.5 percent per annum on the sum of the two elements of the investment based computed in accordance with § 1127.6.

§ 1127.8 Emergency operating assistance.

(a) *Mandatory period-losses.* The railroad shall be entitled to reimbursement by the Secretary for 100 percent of the losses reasonably and necessarily incurred by it for continuing during the mandatory period (from April 1, 1976, through September 27, 1976, or any extension of such period resulting from the application of Federal law), the same level of commuter rail service as was provided during the 12-month period ended March 31, 1976. The reimbursement shall be an amount equal to the railroad's actual net avoidable loss and reasonable return on the value of properties, as determined in accordance with § 1127.3–7, minus such financial assistance as it received or was entitled to receive (whichever is greater) under section 304(e)(2) of the Act from a subsidizer during the mandatory operation period. Should the service be terminated by agreement of the railroad and the subsidizer prior to the close of the mandatory operation period, the reimbursement under this paragraph shall be proportionately reduced.

(b) *Mandatory period—additional costs.* A subsidizer shall be entitled to reimbursement by the Secretary for 100 percent of the additional costs reasonably and necessarily incurred by it, during the period April 1, 1976, through September 27, 1976, in preparing the offer of financial assistance or negotiating the subsidy agreement. Payments by the Secretary under this subsection shall not be duplicative of amounts disbursed under paragraphs (a) and (c) of this section.

(c) *Post mandatory period—additional costs.* A subsidizer which makes subsidy payments for the continuance of commuter rail service, during the period from September 28, 1976, through September 27, 1978, shall be entitled to be reimbursed by the Secretary for the additional costs reasonably and necessarily incurred by it to sustain the same level of service being provided during the 12-month period ended March 31, 1976. The amount of reimbursement shall be 100 percent of additional costs for the period September 28, 1976, through March 26, 1977; 90 percent of such costs for the period March 27, 1977, through March 31, 1978; and 50 percent of such costs for the period April 1, 1978, through September 27, 1978. The appropriate percentage for each subsidy period shall be applied to the difference between the actual net avoidable losses and reasonable return incurred in continuing the service, as determined in accordance with §§ 1127.3–7, and the financial assistance the subsidizer was obligated to pay under section 304(e)(2) of the Act during the mandatory period, plus the amounts of any additional administrative costs reasonably and necessarily incurred in complying with these standards.

(d) *Level of service.* The same level of service includes the routes, schedules, train seating capacity, performance standards, and equipment units provided during the 12-month period ended March 31, 1976, and any modifications thereof which do not increase the net avoidable loss and reasonable return on the value of the properties as determined in accordance with §§ 1127.3–7 in excess of the amount which would have resulted from the service level provided during the 12-month period ended March 31, 1976. The railroad or subsidizer may be reimbursed for additional costs necessary to sustain the same level of service arising from wage or price increases or equipment purchases to the extent that the railroad (or its predecessor) had not agreed to absorb, nor the subsidizer to pay, such cost increases. The railroad or subsidizer may not be reimbursed for losses incurred in providing service on new routes; but the level of service on existing routes may be adjusted to the extent that the total of the net avoidable losses and the reasonable return, as determined in accordance with §§ 1127.3–7, based on the level of service provided in the 12-month period ended March 31, 1976, is not thereby exceeded.

(e) *Reductions in service.* If a rail continuation payment is decreased because service is reduced below the level provided during the 12-month period ended March 31, 1976, the financial assistance provided by the subsidizer and the reimbursement of additional costs by the Secretary under § 1127.8(c) shall be reduced in proportion to their respective contributions to the total of the rail service continuation payment as computed prior to such reduction in the level of service.

(f) *Fare increases.* The railroad shall maintain records for each subsidy period segregating the amounts of passenger revenues included in Account 102 resulting from fare increases initiated on or after April 1, 1976. For the purpose of determining the reimbursement by the Secretary of additional costs under § 1127.8(c), such amounts shall be deducted from the attributable revenues computed under § 1127.4. Under no circumstances, however, shall the application of this subsection result in reimbursement by the Secretary of an amount exceeding the subsidy payment determined pursuant to §§ 1127.3–7.

(g) *Interest on overdue payments.* The amounts of interest accrued on overdue payments under § 1127.3(e) shall be excluded from avoidable costs determined under § 1127.5 for the purposes of determining the reimbursement by the Secretary of additional costs under § 1127.8(c).

(h) *Advance payments.* To assist the subsidizer in making the monthly interim subsidy payments required under § 1127.3(e), the Secretary shall pay monthly in advance to the subsidizer the estimated amounts for reimbursement of additional costs under § 1127.8(c) as modified by §§ 1127.8(e), (f), and (g). The final payment of such reimbursement shall be adjusted retroactively within 60 days of the filing of the last Financial Status Report for each subsidy period to reflect the actual amounts of attributable revenues, avoidable costs, and return on the value of the properties, and the financial assistance the subsidizer was obligated to provide during that subsidy period. The receipt by the subsidizer of any estimated or final payment for reimbursement of additional costs shall be conditioned upon the furnishing by the recipient of such certification or documentation at such times as the Secretary may by regulation require.

(i) *Arbitration.* Under section 304(e)(5)(c) of the Act, the railroad, the subsidizer, and the Secretary may submit any disputes regarding the application of this section to arbitration by a disinterested third person. If the parties are unable to agree upon an arbitrator, the Chairman of the Interstate Commerce Commission or his designated representatice shall serve in that capacity.

§ 1127.9 Access to records, audit and inspection.

(a) The subsidizer, the Office, and the Secretary shall have reasonable access to the records, accounts, working papers, and other documents and to the properties and equipment of any railroad, which provides commuter passenger service or whose properties and equipment are used in providing commuter passenger service for the following purposes:

(1) To verify the accuracy and completeness of the subsidy estimate, the facilities utilization plan, the manpower utilization plan, and the Financial Status Reports;

(2) To audit the actual revenues derived, costs incurred and service units maintained during the subsidy period;

(3) To inspect the properties and equipment used in providing the commuter passenger service and to measure the performance of the railroad under the offer of financial assistance and the subsidy agreement; or

(4) To confirm facts and representations made or to be made in applications for emergency operating assistance.

(b) The properties and records described in paragraph (a) of this section shall be made available for inspection and examination by the subsidizer, the Office, and the Secretary during regular business hours at a time and place mutually agreeable to the parties. The railroad shall also reproduce such records, provided the requesting party pays the reasonable cost thereof.

APPENDIX I—SUBSIDY ESTIMATE

The following information is required to be furnished under § 1127.3(b) in accordance with the methodology set forth in §§ 1127.3–7. The base period data shall be shown for each item.

	Base period
Revenues attributable for:	
1. Passenger	
2. Dining and buffet	
3. Rentals	
4. All other	
5. Total revenues attributable (lines 1 through 4)	
Avoidable costs for:	
6. Maintenance of way and structures	
7. Maintenance of equipment	
8. Traffic	
9. Transportation	
10. Miscellaneous operations	
11. General	
12. Fringe benefits	
13. Taxes	
14. Casualty reserve account	
15. Performance standards	
16. Total avoidable costs lines 6 through 15)	
Return on value for:	
17. Valuation of property (lines 17a and 17b)	
a. Book value of equipment	
b. Book value of roadway and structures	
18. Rate of return	
19. Total return on value (line 17 times line 18)	
20. Subsidy estimate (line 5 minus lines 16 and 19)	
21. Financial assistance from subsidizer	
22. Estimated emergency operating assistance from the secretary (line 20 minus line 21)	
Traffic and operating data:	
1. Number of passengers carried	
2. Total car miles	

APPENDIX II—FINANCIAL STATUS REPORT

A railroad entering into a subsidy agreement shall compile the information prescribed below in accordance with the standards set forth in §§ 1127.3–7. The actual data for the period to date and a projecttion to the end of the subsidy period shall be shown for each item.

	Actual	Projected
REVENUES ATTRIBUTABLE FOR—		
1. Passenger		
2. Dining and buffet		
3. Rentals		
4. All other		
5. Total revenues attributable (lines 1 through 4)		
AVOIDABLE COSTS FOR—		
6. Maintenance of way and structures		
7. Maintenance of equipment		
8. Traffic		
9. Transportation		
10. Miscellaneous operations		
11. General		
12. Fringe benefits		
13. Taxes		
14. Casualty reserve account		
15. Performance standards		
16. Total avoidable costs (lines 6 through 15)		
RETURN ON VALUE FOR—		
17. Valuation of property (lines 17a and 17b)		
a. Book value of equipment		
b. Book value of roadways and structures		
18. Rate of return		
19. Total return on value (line 17 times line 18)		
SUBSIDY PAYMENT		
20. Subsidy payment (line 5 minus lines 16 and 19)		
21. Financial assistance from subsidizer		
22. Emergency operating assistance from the secretary (line 20 minus 21)		
TRAFFIC AND OPERATING DATA		
1. Number of passengers carried		
2. Total car miles		

APPENDIX III
SPEED FACTORED GROSS TONS FORMULA

The following formula is required to calculate the SFGT to be used under Section 1127.5(e) (2) of this part.

$$SFGT = Y(.4 + .5N)\left[1.088 + .490\sqrt{GT} + .032\ GTF + .016\ GTP + .029\ J\ GT\left(\frac{V}{83} + \frac{V^2}{6{,}250}\right)\right]$$

Where:

GT = Total gross tons of traffic (in millions) per track mile per year
GTF = Gross tons of freight traffic (in millions) per track mile per year
GTP = Gross tons of passenger traffic (in millions) per track mile per year
N = Number of tracks per route mile
V = Speed factor (the larger of freight speed or 0.8 times passenger speed)
J = 1 for welded rail
= 2 for bolted rail
Y = As shown below

FRA class of tracks and type of operation	Value of Y		
	Line main	Line branch	Yard and switch
Class 1, 2, 3; freight only up to 10 MGT per mile per year	1.00	0.51	0.14
Class 1, 2; passenger, or class 1, 2, 3; freight more than 10 MGT per mile per year	1.16	.63	.....
Class 3; passenger, or class 4, 5, 6; all traffic	1.20	.....	.....

The speed factors used shall be governed by the highest authorized speed in the designated area for the respective types of service.

Special studies may be conducted from time to time to update the constants used in the formula.

[FR Doc.76-22477 Filed 8-2-76;8:45 am]

federal register

TUESDAY, AUGUST 3, 1976



PART V:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

■

COMBINATION AND MOBILE HOME LOT LOANS

Insurance of Financial Institutions

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[24 CFR Part 201]

[Docket No. R–76–405]

COMBINATION AND MOBILE HOME LOT LOANS

Insurance of Financial Institutions

The Department of Housing and Urban Development is considering amending subtitle B of Title 24 of the Code of Federal Regulations, Chapter II, subchapter B, Part 201, "Property Improvement and Mobile Home Loans," by adding a new subpart D, "Combination and Mobile Home Lot Loans." The proposed regulations implement sections 309(b) (2) and (d) of the Housing and Community Development Act of 1974, Pub. L. 93–383, which amended Title I of the National Housing Act, 12 U.S.C. 1703, to provide for insurance of financial institutions that make loans to finance the purchase of mobile home lots by present owners of mobile homes, and loans for the purchase of a mobile home lot and a mobile home in combination.

The maximum loan for the purchase of an undeveloped mobile home lot would be $5,000 and the maximum term for repayment would be 10 years and 32 days.

The maximum loan for the purchase of a single-wide mobile home and a developed lot would be $20,000 and the maximum term would be 12 years and 32 days.

The maximum dollar amount that could be allocated for the purchase of a developed mobile home lot is $7,500, and the maximum term for repayment would be 10 years and 32 days.

The maximum loan for the purchase of a mobile home consisting of two or more modules and a developed lot is $27,500. The maximum term would be 15 years and 32 days. Mobile homes acquired pursuant to this subpart will be required to be built in accordance with the standards required by the regulations and procedures implementing the National Mobile Home Construction and Safety Standards Act of 1974, Pub. L. 93–383, 42 U.S.C. 5401 et seq.

Mobile home lots acquired will be appraised by an agent of the Secretary and insured lending institutions will be required to determine that marketable title is vested in the borrower or borrowers.

Insured lenders will be required to obtain a first lien on the mobile home and the mobile home lot where both are secured with proceeds of the loan but only on the mobile home lot where only a mobile home lot is acquired by a present owner of a mobile home. The first lien on the mobile home and the mobile home lot where state law permits may be obtained in a single instrument. Where a chattel security and a real estate mortgage are necessary to obtain the requisite first lien or security interest both instruments will be required. For purposes of these regulations where more than one legal instrument is necessary in order to effect a first lien on a mobile home and a mobile home lot, the transactions will nevertheless be considered to be a single loan transaction. The maximum interest rate that will be permitted may not exceed 10½ percent per annum.

Insurance afforded to lending institutions under the proposed regulations is subject to co-insurance as required by Title I of the National Housing Act. The Secretary's insurance liability is limited to no more than 10% of the original net amount of loans properly reported for insurance and 90% of the insured lender's loss on an individual loan.

Interested persons are invited to participate in the making of the proposed rule by submitting written data, views, or statements. Communications should be addressed to 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 September 6, 1976, will be considered by the Secretary before adoption of a final rule. Copies of comments submitted will be available during business hours, both before and after the specified closing date, at the above address, for examination by interested persons.

The Department has made a determination that the program will not have a substantial environmental impact. A Finding of Inapplicability has been filed with the Rules Docket Clerk, at the above address, and is available for inspection during regular business hours.

The proposed amendments are as follows:

Subpart A—Property Improvement Loans

1. In § 201.12 paragraph (b) is proposed to be amended to read as follows:

§ 201.12 Insurance reserve.

* * * * *

(b) There shall be maintained for each insured a general insurance reserve which shall equal 10 percent of the aggregate amount advanced on all eligible loans originated by such insured pursuant to the provisions of the regulations in Subpart A * * *, D * * * of this part on or after March 1, 1950, and prior to the expiration of the Commissioner's authority to insure under the provisions of this Act, less the amount of all claims approved for payment by the Commissioner in connection with such loans and less the amount of any adjustment made pursuant to paragraph (c) of this section.

* * * * *

2. In Part 201 a new subpart D is proposed to be added to read as follows:

Subpart D—Combination and Mobile Home Lot Loans

Sec.
201.1500 Incorporation by reference.
201.1501 Purpose.
201.1502 Definitions.

LOAN REQUIREMENTS

201.1503 Eligibility requirements.
201.1504 Maximum loan amounts and terms.
201.1505 Combination loans for the purchase of a mobile home and a developed or undeveloped lot.
201.1506 Loans for the purchase or acquisition of a lot.
201.1507 Title and lien requirements.
201.1508 Waived title objections.
201.1509 Fees and charges.
201.1510 Borrower's minimum investment.
201.1511 Financing charges.
201.1512 Mobile home lot certification.

INSURANCE REQUIREMENTS

201.1513 Insurance reserve.
201.1514 Rate of insurance charge.

DEFAULT UNDER MOBILE HOME OBLIGATION

201.1515 Definition of default.
201.1516 Date of default.
201.1517 Notice of default.
201.1518 Acquisition of property.
201.1519 Notice of foreclosure.
201.1520 Deed in lieu of foreclosure.
201.1521 Notice of acquisition of title.
201.1522 Disposition of property.

CLAIMS

201.1525 Claim application.
201.1526 Amount of claim.
201.1527 Incontestability of claim payment.

EXTENSION OF TIME

201.1528 Actions to be taken by insured lender.

AMENDMENTS

201.1530 Effect of amendments.

AUTHORITY: Sec. 7(d), 79 Stat. 670 (42 U.S.C. 3535(d)); sec. 2, 48 Stat. 1246 (12 U.S.C. 1703), as amended by Pub. L. 93–383, and Pub. L. 94–173.

Subpart D—Combination and Mobile Home Lot Loans

§ 201.1500 Incorporation by reference.

All of the provisions of Subpart B of this part concerning insurance of institutions making mobile home loans shall be applicable to insurance of institutions making mobile home lot loans and combination loans pursuant to this subpart except the following provisions:

Sec.
201.501(b) (i) (j) and (l) Definitions.
201.505 Purpose of subpart.
201.525 Mobile home location standards.
201.530 Maximum loan amount.
201.535 Borrower's minimum investment.
201.540 Financing charges.
201.625 Rate of insurance.
201.560 Maturity provisions.
201.585 Refinancing.
201.595(e) Dealer investigation approval and control.
201.665 Claim application.
201.675 Insurance reserve.
201.900 Amendment and effect.

§ 201.1501 Purpose.

The provisions of this subpart contain the requirements under which an approved financial institution may obtain insurance of combination loans (mobile home and lot) and mobile home lot loans.

§ 201.1502 Definitions.

As used in the regulations in this subpart the term—

(a) "Combination loan" means a loan for the purchase of a mobile home and a mobile home lot, in a single transaction.

(b) "Mobile home lot" means a parcel or portion of land acceptable to the Commissioner as a mobile home site. The parcel or portion of land may be unplat-

ted or may be in a mobile home park, a new subdivision or planned unit development but does not include a lot subject to a condominium agreement.

(c) "Repossession" means a lawful foreclosure, recovery or acquisition of title to property (pursuant to provisions of a security agreement or mortgage) such as to enable the insured lender to convey marketable title to a third party.

(d) "Borrower" means a natural person who applies for and receives a loan for the purchase of a mobile home and a developed or undeveloped lot, or only a developed or undeveloped mobile home lot.

(e) "Owner" means a borrower who presently owns a mobile home and a loan is made under this subpart for the purchase of a lot upon which to place that mobile home, or a borrower who is purchasing a mobile home and a lot under the provisions of this subpart.

(f) "Developed lot" means a lot with water and utility connections, sanitary facilities, appropriate driveways, concrete pad, provision for anchoring, and other improvements which are necessary to make the lot suitable as a mobile home site.

(g) "Undeveloped lot" means a lot with water and utility connections, sanitary facilities, ingress and egress to the property.

(h) "Actuarial method" means the method of allocating payments made on a debt between the amount financed and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed.

(i) "Manufacturer's invoice" means a document which is officially issued by the manufacturer stating the true wholesale price of a mobile home and its equipment excluding furniture and furnishings. The document shall be on a form which is in general use in the industry.

(j) "Mobile home" means a transportable structure which is ten body feet or more in width and is forty body feet or more in length, and which is built on a permanent chassis, and designed to be used as a dwelling with or without permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein. Where a mobile home is composed of two or more modules or sections, each module or section shall have a minimum floor space area of at least 400 square feet.

LOAN REQUIREMENTS

§ 201.1503 Eligibility requirements.

(a) Loans shall be made only for financing in combination, the purchase of a mobile home and a developed or undeveloped mobile home lo t or a developed or undeveloped mobile home lot by the owner of a mobile home which mobile home is the principal residence of that owner. Furniture or furnishings may not be included in the loan, or financed with the proceeds of the loan.

§ 201.1504 Maximum loan amounts and terms.

(a) Maximum permissible loan amounts and terms shall not exceed:

(1) $17,500 for 12 years and 32 days in the case of the purchase of a mobile home and an undeveloped lot (but not to exceed $12,500 for the mobile home).

(2) $20,000 for 12 years and 32 days in the case of the purchase of a mobile home and a suitably developed lot (but not to exceed $12,500 for the mobile home).

(3) $25,000 for 15 years and 32 days in the case of a purchase of a mobile home composed of two or more modules and an undeveloped lot (but not to exceed $20,000 for the mobile home).

(4) $27,500 for 15 years and 32 days in the case of a purchase of a mobile home composed of two or more modules and a suitably developed lot (but not to exceed $20,000 for the mobile home).

(b) Maximum permissible loan amounts and terms for a lot purchased or acquired shall not exceed:

(1) $5,000 for 10 years and 32 days for the purchase of an undeveloped lot on which to place a mobile home owned by the borrower.

(2) $7,500 for 10 years and 32 days for the purchase of a suitably developed lot on which to place a mobile home owned by the borrower.

§ 201.1505 Combination loans for the purchase of a mobile home and a developed or undeveloped lot.

(a) A loan to purchase a mobile home and a developed or undeveloped lot on which such mobile home is placed shall be eligible for insurance: *Provided*, That—

(1) The borrower will acquire title to such lot, which shall meet the requirements of § 201.1507 of this subpart;

(2) The loan is secured by a first lien;

(3) The lot is determined by the Commissioner to be an acceptable mobile home site;

(b) Notwithstanding that the borrower's obligation for purchase or acquisition of the lot is evidenced and secured separately from his obligation for the purchase of the mobile home, the instruments evidencing both obligations shall constitute one loan for the purpose of this part.

(c) The cost of the home and lot and the cost of improvements to the home or lot which will not be paid from the proceeds of the loan must be paid by the borrower in cash from his or her own resources.

§ 201.1506 Loans for the purchase or acquisition of a lot.

(a) A loan to finance the purchase or acquistion by the borrower of a lot on which to place a mobile home owned by the borrower shall be eligible, provided, that:

(1) The borrower will acquire title to such lot, which shall meet the requirements of § 201.1507 of this part;

(2) The loan is secured by a first lien;

(3) The cost of the purchase or acquisition of the lot which will not be paid from the proceeds of the loan is paid by the borrower in cash from his or her own resources.

(4) The borrower certifies that he or she owns a mobile home which is the borrower's principal residence.

(5) The borrower certifies that he or she will place his or her mobile home on the lot within six months after the date the loan is made.

(b) For the purposes of this subpart, acquisition or purchase of a mobile home lot includes:

(1) The refinancing of the balance owed by the borrower as purchaser under an existing real estate installment contract; or

(2) The refinancing of existing mortgage loans or other items which are secured of record on a mobile home lot owned by the borrower.

§ 201.1507 Title and lien requirements.

(a) The interest in the realty constituting a mobile home lot purchased or acquired by the borrower wholly or in part with the proceeds of a loan, shall not be less than a fee simple estate;

(b) The title to the realty shall be a marketable title such as is generally acceptable to informed buyers, title companies, and attorneys in the community in which the property is situated.

(c) It shall be the responsibility of the lender to assure that the borrower obtains or has an estate in the land constituting the mobile home lot that meets the requirements of this section and § 201.1508.

§ 201.1508 Waived title objections.

Title shall not be objected to by reason of the following matters:

(a) Violations of a restriction based on race, color or creed, even where such restrictions provide for a penalty of reversion or forfeiture of title or a lien for liquidated damage.

(b)(1) Customary easements for public utilities, party walls, driveways, and other purposes.

(2) Easements for public utilities along one or more of the property lines and extending not more than 10 feet therefrom and for drainage or irrigation ditches along the rear 10 feet of the property, provided the exercise of the rights thereunder do not interfere with any of the buildings or improvements located on the subject property.

(c) Easements for underground conduits which are in place and do not extend under any buildings on the subject property;

(d) Mutual easements for joint driveways constructed partly on the subject property and partly on adjoining property, provided the agreements creating such easements are of record;

(e) Encroachments on the subject property by improvements on adjoining property where such encroachments do not exceed 1 foot, provided such encroachments do not touch any buildings or interfere with the use of any improvements on the subject property;

(f) Encroachments on adjoining property by eaves and overhanging projections attached to improvements on

subject property where such encroachments do not exceed 1 foot.

(g) Encroachments on adjoining property by hedges, wooden or wire fences belonging to the subject property;

(h) Encroachments on the adjoining property by driveways belonging to subject property where such encroachments do not exceed 1 foot, provided there exists a clearance of at least 8 feet between the buildings on the subject property and the property line affected by the encroachment;

(i) Variations between the length of the subject property lines as shown on the application for insurance and as shown by the record or possession lines, provided such variations do not interfere with the use of any of the improvements on the subject property and do not involve a deficiency of more than 2 percent with respect to the length of the front line or more than 5 percent with respect to the length of any other line;

(j) Encroachments by garages or improvements other than those which are attached to a portion of the main dwelling structure over easements for public utilities, provided such encroachment does not interfere with the use of the easement or the exercise of the rights of repair and maintenance in connection therewith;

(k) Violations of cost or set back restrictions which do not provide a penalty of reversion or forfeiture of title, or a lien for liquidated damages which may be superior to the lien of the insured mortgage. Violations of such restrictions which do provide for such penalties, provided such penalty rights have been duly released or subordinated to the lien of the insured mortgage, or provided that the borrower has been furnished with a policy of title insurance expressly insuring the borrower against loss by reason of such penalties.

(l) Customary building and use restrictions which:

(1) Are coupled with a reversionary clause, provided there has been no violation prior to the date of the deed to the borrower; or

(2) Are not coupled with a reversionary clause and have not been violated to a material extent.

(m) Outstanding oil, water or mineral rights (or damage caused by the exercise of such rights) which are customarily waived by prudent lending institutions and leading attorneys in the community.

§ 201.1509 Fees and charges.

(a) Fees and charges incident to the origination of a loan which may be paid by the borrower shall be limited to reasonable and customary amounts for the following:

(1) Appraisal fees.

(2) Recording fees and recording taxes.

(3) Credit report.

(4) That portion of taxes, assessments, and other similar items for the current year chargeable to the borrower and his initial deposit (lump-sum payment) for any tax and insurance account.

(5) Survey, if required, by the lender or borrower.

(6) Title examination and title insurance, if any.

(7) Such other items as may be authorized in advance by the Commissioner as appropriate for inclusion under this paragraph.

(b) Fees and charges specified in this section may not be included in the loan.

§ 201.1510 Borrower's minimum investment.

The borrower shall make a minimum cash downpayment of at least 5 percent of the first $10,000 of purchase price of the mobile home and lot plus 10 percent of any amount in excess of $10,000. Where only a mobile home lot is being financed, the borrower shall make a minimum cash downpayment of at least 10 percent of the purchase price of the mobile home lot.

§ 201.1511 Financing charges.

(a) *Maximum financing charges.* The maximum permissible financing charge which may be directly or indirectly paid to, or collected by, the insured in connection with a combination mobile home and lot loan or mobile home lot loan transaction shall not exceed:

(1) 10½ percent per annum.

(2) No points or discounts of any kind may be assessed or collected in connection with the loan transaction except that a one percent originaion fee calculated on the net proceeds of the loan, may be collected from the borrower. If assessed, this fee must be included in the finance charge. Finance charges on individual loans shall be made in accordance with tables of calculation issued by the Commissioner.

(b) *Prepayment rebate.* If an obligation is paid in full prior to maturity, the insured shall rebate the full unearned charge according to the actuarial method, where such rebate is $1 or more.

§ 201.1512 Mobile home lot certification.

(a) Prior to disbursement of loan proceeds for purchase of a mobile home lot, the insured shall obtain a certificate on a form prescribed by the Commissioner, signed by the seller and borrower, establishing that:

(1) The lot meets the requirements established by the Commissioner, and has been appraised by him;

(2) The borrower has not been paid or offered, as an inducement for consummation of the transaction, any cash payment or rebate, nor has it been represented to the borrower that he or she will receive a cash bonus payment or commission on future sales;

(3) That if the loan is solely for the purchase of a mobile home lot by the present owner of a mobile home, which is the principal residence of the borrower, the borrower shall certify that he will place his mobile home on the lot acquired with such loan within six months after the date of such loan.

(b) If the insured has information to the contrary with regard to the statements in the mobile home lot certification he shall not disburse the loan proceeds. In absence of such contrary information he may disburse the loan proceeds in reliance upon the statements in the certification.

INSURANCE REQUIREMENTS

§ 201.1513 Insurance reserve.

All of the provisions of § 201.12 with respect to the maintenance for each insured lender of a general insurance reserve shall apply with respect to loans reported for insurance under this subpart. The aggregate amount of loans advanced by an insured lender, for the purposes of determining its general insurance reserve, shall include loans reported for insurance under all subparts of this part.

§ 201.1514 Rate of insurance charge.

The insured shall pay to the Commissioner an insurance charge equal to fifty-four one hundredths (0.54) of 1 per cent per annum of the net proceeds of any eligible loan reported and acknowledged for insurance. In computing the insurance charge, no charge shall be made for a period of 14 days or less, and a charge for a month shall be made for a period of more than 14 days.

DEFAULT UNDER MOBILE HOME OBLIGATION

§ 201.1515 Definition of default.

If the mortgagor fails to make any payment, or to perform any other duty under the mobile home security device or mobile home lot mortgage and such failure continues for a period of 30 days, the obligation shall be considered in default for the purposes of this subpart.

§ 201.1516 Date of default.

For the purposes of this subpart, the date of default shall be considered as 30 days after:

(a) The first uncorrected failure to perform any duty under the mobile home obligation or mobile home lot mortgage; or

(b) The first failure to make a monthly payment which is not covered by subsequent payments made by the borrower when such subsequent payments are applied to the overdue monthly payments in the order in which they became due.

(c) If after default and prior to completion of foreclosure or repossession proceedings the borrower shall cure the default, the lender shall reinstate the loan as if a default had not occurred: *Provided,* The borrower pays to the insured lender such expenses as the lender has incurred in connection with the foreclosure or repossession proceedings.

§ 201.1517 Notice of default.

The insured lender shall, within 60 days after the date of default as defined in this part, give written notice thereof to the Commissioner on a form prescribed by him, unless such default has been cured or unless the Commissioner has been notified of a previous default which remains uncured.

§ 201.1518 Acquisition of property.

At any time within one year from the date of default, or such additional period of time as may be approved by the Commissioner, the lender, at its election, shall either:

(a) Commence foreclosure or repossession; or

(b) Acquire possession of, and title to, the mortgaged property by means other than foreclosure.

§ 201.1519 Notice of foreclosure.

The insured lender shall give written notice to the Commissioner on a form prescribed by him within 30 days after the institution of foreclosure or repossession proceedings and shall exercise reasonable diligence in prosecuting such proceedings to completion.

§ 201.1520 Deed in lieu of foreclosure.

(a) In lieu of instituting or completing a foreclosure or repossession, the lender may acquire property by voluntary conveyance from the mortgagor. Conveyance of the property by deed in lieu of foreclosure is approved subject to the following requirements:

(1) The loan is in default at the time the deed is executed and delivered;

(2) The credit instrument is cancelled and surrendered to the mortgagor;

(3) The mortgage and security agreement is satisfied of record as a part of the consideration for such conveyance; and

(4) The deed from the borrower contains a covenant which warrants against the acts of the grantor and all claiming by, through, or under him and conveys good marketable title.

§ 201.1521 Notice of acquisition of title.

The lender shall give written notice to the Commissioner on a form prescribed by him within 15 days of acquisition of good marketable title to the property.

§ 201.1522 Disposition of property.

(a) The insured lender shall take possession of, preserve and repair the property, and within six months after the date of acquisition of marketable title, shall sell the property for the best price obtainable. Repairs shall not exceed those required by local law. No other repairs shall be made without the specific advance approval of the Commissioner.

(b) The insured lender shall not enter into a contract for the preservation, repair or sale of the property with any officer, employee, owner of ten percent or more interest in the insured lender or with any other person or organization having an identity of interest with the insured lender or with any relative of such officer, employee, owner or person.

CLAIM

§ 201.1525 Claim application.

(a) *How to file.* Claim for reimbursement for loss on any eligible loan shall be made on a form provided by the Commissioner and executed by a qualified officer of the insured lender. The claim shall be accompanied by the insured lender's complete file, including copies of appraisals made by appraisers acceptable to the Commissioner, pertaining to the transaction. Where the insured is required by law to keep an original document in its possession, a copy of the original document shall be deemed acceptable.

(b) *When to file.* Claim shall not be filed by the insured lender until after default, repossession, and resale of the mobile home and lot or mobile home lot. Where a mobile home and lot have been financed, the mobile home and lot shall be sold in a single transaction. The mobile home may not be removed from the lot without the prior approval of the Commissioner. Claim shall be filed no later than 12 months and 31 days after the due date of the earliest fully unpaid installment provided for in the obligation, unless an extension is requested and approved by the Commissioner.

§ 201.1526 Amount of claim.

An insured lender may be reimbursed for losses on loans made in accordance with the regulations under this part, up to the amount of its general insurance reserve. The amount of reimbursement is determined by following the computation steps prescribed in paragraphs (a), (b), and (c) of this section.

(a) Deduct from the unpaid amount of the obligation (net unpaid principal and the earned portion of the financing charge, calculated according to the actuarial method), at the time of default:

(1) The actual sales price obtained after lawful repossession and resale of the mobile home and lot, or mobile home lot, or the appraised value, whichever amount is the greater. The appraised value shall be determined by an appraiser acceptable to the Commissioner;

(2) All amounts received by the lender on account of the loan from any source relating to the property on account of rent or other income after deducting reasonable expenses incurred in handling the property;

(3) All cash retained by the lender including amounts held or deposited for the account of the borrower or to which it is entitled under the loan transaction that has not been applied in reduction of the borrower's indebtedness.

(b) Add to 90 percent of the amount determined under paragraph (a) of this section 90 percent of the interest at 7 percent per annum on the amount determined under paragraph (a) of this section computed from the date of default:

(1) To either the date of claim application or for a period of 12 months and 31 days following such default date, whichever period of time is the lesser or:

(2) To the date of certification of the claim for payment in a case where an otherwise eligible claim has been held in suspense by the Commissioner pending a determination of the eligibility for insurance of other claims or loans, or by an investigation of the insured's loan or claim activities.

(c) Add to the amount obtained under paragraph (b) of this section 90 percent of the following allowances for expenditures made by the insured:

(1) Taxes, ground rent and water rates, which are liens prior to the mortgage, prorated to the date of disposition of the property;

(2) Special assessments, which are noted on the application for insurance of which become liens after the insurance of the mortgage, prorated to the date of disposition of the property;

(3) Hazard insurance on the mortgaged property, prorated to the date of disposition of the property;

(4) Taxes imposed upon any deeds or other instruments by which said property was acquired by the mortgagee;

(5) Foreclosure costs or costs of acquiring the property otherwise actually paid by the insured lender and approved by the Commissioner, in an amount not in excess of two-thirds of such costs or $75, whichever is the greater.

(6) Reasonable payments made by the insured lender for:

(i) Preservation and maintenance of the property;

(ii) Repairs required by local law, and such additional repairs as may be specifically approved in advance by the Commissioner;

(iii) Expenses in connection with the sale of the property including a sales commission at the rate customarily paid in the community;

(iv) Appraisal fee not to exceed $45.00.

§ 201.1527 Incontestability of claim payment.

Any payment for loss made to an insured lender shall be final and incontestable after two years from the date the claim was certified for payment in the absence of fraud or misrepresentation on the part of the lender, unless a demand for repurchase of the obligation shall have been made on behalf of the United States prior to the expiration of such two-year period.

EXTENSION OF TIME

§ 201.1528 Actions to be taken by insured lender.

The Commissioner may extend any time period respecting any action required of an insured which is prescribed by this subpart.

AMENDMENTS

§ 201.1530 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the insurance coverage of a lender under its contract of insurance on any loan previously made or in the process of being made.

(It is hereby certified that the economic and inflationary impacts of this proposed rule have been carefully evaluated in accordance with OMB Circular A-107)

Issued at Washington, D.C., July 23, 1976.

JAMES L. YOUNG,
Assistant Secretary for Housing,
Federal Housing Commissioner.

[FR Doc.76-22407 Filed 8-2-76;8:45 am]

federal register

TUESDAY, AUGUST 3, 1976



PART VI:

OFFICE OF MANAGEMENT AND BUDGET

■

LEGAL SERVICES CORPORATION

Proposed Budget Rescission

OFFICE OF MANAGEMENT AND BUDGET

LEGAL SERVICES CORPORATION

Proposed Budget Rescission

To The Congress of The United States:

In accordance with the Impoundment Control Act of 1974, I herewith propose rescission of $45 million in budget authority appropriated for payment to the Legal Services Corporation.

Approval of this rescission proposal will reduce Federal spending by $45 million over 1977 and 1978. The proposed rescission would prevent unneeded expansion of Legal Services Corporation activities and delay greater geographic coverage until program evaluations are completed.

The details of the proposed rescission are contained in the attached report.

Gerald R. Ford

The White House, *July 29, 1976.*

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

Rescission #	Item	Budget Authority
	Other Independent Agencies	
	Legal Services Corporation	
R77-1	Payment to the Legal Services Corporation.....	45,000

* *

Summary of Special Messages
for FY 1977
(Amounts in thousands of dollars)

	Rescissions	Deferrals 1/
First special message.....	45,000	---

1/ Deferrals for fiscal 1977 cannot be proposed until October 1, 1976, in accordance with section 1013 of P.L. 93-344.

Rescission Proposal No: R77-1

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency: Legal Services Corporation	New budget authority (P.L. 94-362): $125,000,000
Bureau:	Other budgetary resources: ----------
Appropriation title & symbol: Payment to the Legal Services Corporation - 8160501	Total budgetary resources: 125,000,000
	Amount proposed for rescission: $45,000,000
OMB identification code: 31-22-0501-0-1-751	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act
Grant program: ☒ Yes ☐ No	☐ Other ----------
Type of account or fund: ☒ Annual; ☐ Multiple-year ---------- (expiration date); ☐ No-year	Type of budget authority: ☒ Appropriation; ☐ Contract authority; ☐ Other ----------

Justification

A rescission of appropriation authority under Section 1012 of the Impoundment Control Act of 1974 (P.L. 93-344) is proposed for $45 million for the Legal Services Corporation (LSC). The funds for LSC were appropriated in the Departments of State, Justice, Commerce, the Judiciary, and Related Agencies Appropriation Act, 1977 (P.L. 94-362).

For fiscal year 1977 LSC requested, independent of the Administration, a $60.3 million budget increase (above the $80 million Administration request) primarily to fund higher grantee attorney salaries and administrative expenses and expand the legal services programs' geographic coverage. The Administration's budget request for LSC was made in the context of other competing priorities within the 1977 Budget.

This rescission for the additional amount appropriated over the Budget reflects the following considerations:

(1) In its first year of existence (1976) the Corporation received a 29% increase in its appropriation level over the previous year's funding for the legal services program. The 1977 add-on represents another 35% increase over the 1976 appropriation. 1/

(2) Factors which should reduce the 1977 funding level below the 1976 appropriated level include:

1/ Prior to 1976, the legal services program was administered by the Community Services Administration.

(a) One-time costs in 1976 which will not need to be incurred in 1977, such as start-up organizational costs, special projects (e.g., back-up center study), and non-recurring supplemental funding for certain grantees.

(b) Savings which should be achieved in 1977 by directly conducting activities formerly handled by back-up centers.

(c) Reduced administrative costs for grantees due to the greater availability of well-qualified lawyers in the labor market.

(3) Administrative overhead costs are projected by LSC to rise by over 80% in only two years at a time when reductions in such costs for regular Federal agencies have been urged by the President and within the Congress.

(4) Consideration by the Congress should be given to other sources of legal services for those who cannot afford private counsel. For example, under authority of Section 308 of Title III of the Older Americans Act of 1965, as amended, $1,125,000 of fiscal year 1977 funds have been reserved for the development of State level legal services activities for the aging. In addition, legal services programs can be sponsored by State and local governments through the Social Services (Title XX) and General Revenue Sharing programs. Private sponsorship of legal services (e.g., State and local legal aid societies, foundations, donated legal assistance, reduced fees for low income clients, etc.) should also be reviewed before major funding increases are approved for LSC.

(5) The Administration has urged that prior to any significant expansion of the legal services program, LSC evaluate its existing legal services grantees. Such evaluations, subject to public comment and review, should use standardized criteria and appraise grantees' quality, determine their needs, and assess the resources available from alternate providers. Furthermore, LSC's mandated studies on the existing staff-attorney program and alternative methods of delivery of legal services should also be completed in fiscal year 1977 before additional programs are funded.

Estimated Effects

This rescission proposal for $45 million will prevent increased grantee staff salaries and an expansion of LSC's administrative staff. Greater geographic coverage for the program will be delayed until evaluations based on standardized criteria are completed by LSC for all of its existing legal services grantees.

Outlay Effect (estimated in millions of dollars)

Comparison with President's 1977 Budget:

1.	Budget outlay estimate for 1977	82.8
2.	Outlay savings, if any, included in the budget outlay estimate	-0-
	Current Outlay Estimates for 1977:	
3.	Without rescission	125.7
4.	With rescission	85.7
5.	Current outlay savings (line 3-line 4)	40.0
	Outlay Savings for 1978	5.0
	Outlay Savings for 1979	-0-

RELATED AGENCIES

Legal Services Corporation

PAYMENT TO THE LEGAL SERVICES CORPORATION

Of the funds appropriated under this head in the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1977, to enable the Department of the Treasury to make payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974 (P.L. 93-355), $45,000,000 are rescinded.

[FR Doc.76-22632 Filed 7-30-76;3:38 pm]

30-year Reference Volumes
Consolidated Indexes and Tables

Presidential Proclamations and Executive Orders

Consolidated subject indexes and tabular finding aids to Presidential proclamations, Executive orders, and certain other Presidential documents promulgated during a 30-year period (1936–1965) are now available in two separately bound volumes, published under Title 3 of the Code of Federal Regulations, priced as follows:

Title 3, 1936–1965 Consolidated Indexes $3.50

Title 3, 1936–1965 Consolidated Tables $5.25

Compiled by Office of the Federal Register, National Archives and Records Service, General Services Administration

Order from Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402