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Monday	Tuesday	Wednesday	Thursday	Friday
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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 program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

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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 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. U; Docket No. R-0026]

PART 221—CREDIT BY BANKS FOR THE PURPOSE OF PURCHASING OR CARRYING MARGIN STOCKS

Adoption of Revised Form; Postponement of Effective Date

Notice postponing effective date of adoption of revised Federal Reserve Form U-1, "Statement of Purpose of a Stock-Secured Extension of Credit by a Bank."

1. Pursuant to the authority of section 7 of the Securities Exchange Act of 1934 (15 U.S.C. 78g), the Board of Governors, on June 11, 1976 (41 FR 23667) published notice of adoption of Federal Reserve Form U-1, "Statement of Purpose of a Stock-Secured Extension of Credit by a Bank," to be effective September 1, 1976.

2. Because some banks have indicated possible operational difficulties in complying with certain requirements of the revised Form U-1, the Board hereby postpones the effective date of such revision to November 1, 1976 in order that these questions may be reviewed.

By order of the Board of Governors, August 18, 1976.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.76-24665 Filed 8-18-76;3:53 pm]

CHAPTER III—FEDERAL DEPOSIT INSURANCE CORPORATION

PART 335—SECURITIES OF INSURED STATE NONMEMBER BANKS

Correction

In FR Docs. 76-18056 and 76-18057 appearing at pages 25887-25889 in the FEDERAL REGISTER of Wednesday, June 23, 1976, the following changes should be made:

1. Page 25888. The portion of the Form F-4 appearing on page 25888 is corrected to read as follows:

§ 335.44 Form for quarterly report of bank (Form F-4).

* * * * *

Stockholders' equity	Shares issued or outstanding	Amount
Preferred stock (list separately convertible and nonconvertible preferred stock)		$
Common stock		
Surplus		
Undivided profits: Balance at beginning of current fiscal year		
Prior period adjustments, if any (show credits (and charges) separately)		
Net income (caption 8 above)		
Dividends (state cash and stock dividends on common stock separately, indicating amount per share—dividends on preferred stocks may be shown in one amount)		
Other credits (charges) (explain nature and amounts)		
Balance at end of interim period		
Reserve for contingencies and other capital reserves		
Treasury stock (Identify class of security, number of shares and basis at which stated)		
Total stockholders' equity		

INSTRUCTIONS

1. The form and content shall conform generally with that in the balance sheet and notes thereto appearing in the annual report filed with the corporation.

2. The number of shares of each class of securities reserved for conversion, warrants, options, and other rights shall be separately disclosed.

Pursuant to the requirements of the Securities Exchange Act of 1934, the bank has duly caused this quarterly report to be signed on its behalf by the undersigned, thereunto duly authorized.

_____
(Name of bank)

Date_____ By_____
(Name and title of signing officer)

GENERAL INSTRUCTIONS

§ 335.71 [Amended].

2. Page 25889. Item 18(f) following the "Balance Sheet" form set forth in § 335.71 is corrected by deleting the word "and" and inserting the word "any" in lieu thereof.

3. Page 25889. The captions of the "Statement of Changes In Capital Accounts" form set forth in § 335.71 are corrected to read as follows:

	Preferred stock $____ par	Common stock $____ par	Surplus	Undivided profits	Reserve for contingencies and other capital reserves
Increase					
(Decrease)					

Dated: August 10, 1976.

SHARON G. ROYAL,
Attorney.

[FR Doc.76-24572 Filed 8-20-76;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Airspace Docket No. 76-NE-30]

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

Proposed Control Zone Revision

The Federal Aviation Administration is amending Section 71.171 of Part 71 of the Federal Aviation Regulations so as to alter the Fort Devens Control Zone.

This action is being taken as the result of a review of the airspace requirements for the Fort Devens, Massachusetts, area, which indicates that the existing Control Zone could be reduced in area without adversely affecting air safety.

Since this amendment restores airspace to the public use and relieves a restriction, notice and public procedure hereon are unnecessary and the amendment may be made effective in less than thirty (30) days.

In view of the foregoing, the Federal Aviation Administration, having completed review of the airspace requirements in the Fort Devens, Massachusetts, area, hereby amends Part 71 of the Federal Aviation Regulations as hereinafter set forth:

§ 71.171 [Amended]

1. Amend Section 71.171 of Part 71 of the Federal Aviation Regulations by deleting the description of the Fort Devens, Massachusetts, Control Zone and inserting in lieu thereof the following description:

Within a 4-mile radius of the center of Devens AAF, Ft. Devens, Mass. (Lat. 42°34'-15" N, Long. 71°36'20" W) excluding that portion within 1-mile radius of the center of Shirley Airport, Shirley, Mass. (Lat. 42°-31'30" N, Long. 71°39'55" W). This control zone is effective from 0700 to 1900 hours, local time, daily.

This amendment becomes effective November 4, 1976.

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

Issued in Burlington, Massachusetts, on August 12, 1976.

QUENTIN S. TAYLOR,
Director, New England Region.

[FR Doc.76-24568 Filed 8-20-76;8:45 am]

[Docket No. 16026; Amdt. No. 1034]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Recent Changes and Additions

This amendment to Part 97 of the Federal Aviation Regulations incorporates by reference therein changes and additions to the Standard Instrument Approach Procedures (SIAPs) that were recently adopted by the Administrator to promote safety at the airports concerned.

The complete SIAPs for the changes and additions covered by this amendment are described in FAA Forms 8260-3, 8260-4, or 8260-5 and made a part of the public rule making dockets of the FAA in accordance with the procedures set forth in Amendment No. 97-696 (35 FR 5609).

SIAPs are available for examination at the Rules Docket and at the National Flight Data Center, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591. Copies of SIAPs adopted in a particular region are also available for examination at the headquarters of that region. Individual copies of SIAPs may be purchased from the FAA Public Information Center, AIS-230, 800 Independence Avenue SW., Washington, D.C. 20591 or from the applicable FAA regional office in accordance with the fee schedule prescribed in 49 CFR 7.85. This fee is payable in advance and may be paid by check, draft, or postal money order payable to the Treasurer of the United States. A weekly transmittal of all SIAP changes and additions may be obtained by subscription at an annual rate of $150.00 per annum from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Additional copies mailed to the same address may be ordered for $30.00 each.

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

In consideration of the foregoing, Part 97 of the Federal Aviation Regulations is amended as follows, effective on the dates specified:

1. Section 97.23 is amended by originating, amending, or canceling the following VOR-VOR/DME SIAPs, effective September 30, 1976:

Atlanta, GA—The William B. Hartsfield Atlanta Int'l Arpt., VOR Rwy 26, Amdt. 10, cancelled.
Atlanta, GA—The William B. Hartsfield Atlanta Int'l Arpt., VOR Rwy 27L, Original.
Atlanta, GA—The William B. Hartsfield Atlanta Int'l Arpt., VOR Rwy 27R, Amdt. 2, cancelled.
Covington, GA—Covington Muni. Arpt., VOR/DME Rwy 9, Original.
Covington, GA—Covington Muni. Arpt., VOR/DME Rwy 27, Amdt. 1, cancelled.
Peachtree City, GA—Falcon Field, VOR/DME-A, Amdt. 1, cancelled.
Peachtree City, GA—Falcon Field, VOR/DME-B, Original.
Lihue, HI—Lihue Arpt., VOR-A(TAC), Amdt. 2.
Augusta, ME—Augusta State Arpt., VOR Rwy 17, Amdt. 11.
Augusta, ME—Augusta State Arpt., VOR/DME-A, Amdt. 6.
Augusta, ME—Augusta State Arpt., VOR/DME Rwy 8, Amdt. 6.
Lorain (Elyria), OH—Lorain County Regional Arpt., VOR Rwy 7, Amdt. 4.
New Castle, PA—New Castle Muni. Arpt., VOR Rwy 4, original, cancelled.
New Castle, PA—New Castle Muni. Arpt., VOR Rwy 22, Original, cancelled.
Elkins, WV—Elkins-Randolph County Arpt., VOR-A, Amdt. 5, cancelled.
Elkins, WV—Elkins-Randolph County-Jennings Randolph Field, VOR/DME-B, Orig.

* * * effective September 9, 1976:

Gallup, NM—Senator Clarke Field, VOR Rwy 6, Amdt. 4.

* * * effective August 26, 1976:

Lewiston, ID—Lewiston-Nez Perce County Arpt., VOR Rwy 26, Amdt. 10.
Olympia, WA—Olympia Arpt., VOR Rwy 17, Amdt. 7.

* * * effective August 11, 1976:

Bentonville, AR—Bentonville Muni. Arpt., VOR-A, Amdt. 2.
Decatur, AR—Crystal Lake Arpt., VORTAC Rwy 13, Amdt. 4.
Fayetteville, AR—Drake Field, VOR-A, Amdt. 16.
Rogers, AR—Rogers Muni.—Carter Field, VOR Rwy 1, Amdt. 6.
Rogers, AR—Rogers Muni.—Carter Field, VOR/DME Rwy 19, Amdt. 2.
Siloam Springs, AR—Smith Field, VOR/DME-A, Amdt. 2.
Springdale, AR—Springdale Muni. Arpt., VOR Rwy 18, Amdt. 6.

2. Section 97.27 is amended by originating, amending, or canceling the following NDB/ADF SIAPs, effective September 30, 1976:

Vidalia, GA—Vidalia Muni. Arpt., NDB Rwy 24, Amdt. 3.
Jacksonville, NC—Albert J. Ellis Arpt., NDB Rwy 5, Amdt. 1.
Wilkesboro, NC—Wilkes County Arpt., NDB-A, Amdt. 1, cancelled.
Wilkesboro, NC—Wilkes County Arpt., NDB Rwy 24, Original.
Elkins, WV—Elkins-Randolph County-Jennings Randolph Field, NDB-A, Amdt. 1.

* * * effective September 9, 1976:

Santa Barbara, CA—Santa Barbara Muni. Arpt., NDB-A, Amdt. 2.

* * * effective September 2, 1976:

Buffalo, NY—Greater Buffalo Int'l Arpt., NDB Rwy 23, Amdt. 12.

* * * effective August 6, 1976:

Summit, AK—Summit Arpt., NDB-A, Amdt. 8.

3. Section 97.29 is amended by originating, amending, or canceling the fol-

lowing ILS SIAPs, effective September 30, 1976:

Jacksonville, NC—Albert J. Ellis Arpt., ILS Rwy 5, Amdt. 1.

* * * effective September 2, 1976:

Buffalo, NY—Greater Buffalo Int'l Arpt., ILS Rwy 23, Amdt. 24.

* * * effective August 26, 1976:

Lewiston, ID—Lewiston-Nez Perce County Arpt., ILS Rwy 26, Amdt. 3.
Olympia, WA—Olympia Arpt., ILS Rwy 17, Amdt. 4.

4. Section 97.31 is amended by originating, amending, or canceling the following RADAR SIAPs, effective September 30, 1976:

Pittsburgh, PA—Greater Pittsburgh Int'l Arpt., RADAR-1, Amdt. 17.

5. Section 97.33 is amended by originating, amending, or canceling the following RNAV SIAPs, effective September 30, 1976:

Peachtree City, GA—Falcon Field, RNAV Rwy 31, Original.
Lorain (Elyria) OH—Lorain County Regional Arpt., RNAV Rwy 7, Original.

Correction: In Docket Number 15960, amendment number 1031, to Part 97 of the Federal Aviation Regulations, published in the FEDERAL REGISTER dated Thursday, July 29, 1976, on page 31525 under § 97.27 * * * change effective date of Petersburg, AK—Petersburg ARPT NDB-A Original and Petersburg, AK—Petersburg ARPT NDB-A AMDT 2 cancelled from September 9, 1976, to November 4, 1976.

In Docket Number 15967, Amendment number 1032, to Part 97 of the Federal Aviation Regulations, published in the FEDERAL REGISTER dated Thursday, August 5, 1976, on page 32735 under § 97.23, effective September 23, 1976 * * * change Walnut Ridge, AK to Walnut Ridge, AR in two places.

(Secs. 307, 313, 601, 1110, Federal Aviation Act of 1958; 49 U.S.C. 1438, 1354, 1421, 1510, and sec. 6(c) Department of Transportation Act, 49 U.S.C. 1655(c).)

Issued in Washington, D.C., on August 13, 1976.

JAMES M. VINES,
Chief, Aircraft Programs Division.

NOTE.—Incorporation by reference provisions in §§ 97.10 and 97.20 (35 FR 5610), approved by the Director of the Federal Register on May 12, 1969.

[FR Doc.76-24363 Filed 8-20-76;8:45 am]

CHAPTER V—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

PART 1207—STANDARDS OF CONDUCT

Compensation, Honorariums, Travel Expenses; Correction

In FR Doc. 76-21900 appearing on 31526 of the FEDERAL REGISTER dated July 29, 1976, amendatory sentence (3) should have read as follows: "Paragraph (c) of § 1207.735-305 redesignated (b) (3) and revised as follows:"

ANGELA M. MURPHY,
Chief, Management Issuances and Information Branch.

[FR Doc.76-24573 Filed 8-20-76;8:45 am]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Rel. Nos. 33-5732, 34-12694, 35-19642, AS-195]

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

Minor Amendments to Regulation S-X

The Commission announces herein the adoption of minor amendments to sections 210.2-02, 5-02 and 12-08 of Chapter II of Title 17 of the Code of Federal Regulations (Regulation S-X).

Section 210.2-02 is amended to remove a requirement for accountants to comment in their audit reports accompanying financial statements filed with the Commission on certain changes in accounting practices which affect comparability of financial statements but do not arise from changes in accounting principles. The types of changes affected by this amendment are accounting changes which result from altered conditions, e.g., changes in amounts of depreciation charges resulting from changes in estimates of remaining useful lives of fixed assets, rather than from a change in accounting principles.

Since these changes have long been required to be disclosed in a note to the financial statements under paragraph (a) of § 210.3-07 and more recently have been required to be disclosed in the section of financial reports devoted to management's discussion and analysis of operations, it no longer is considered necessary to require a specific comment on these changes by accountants in their audit reports. This requirement is eliminated by deletion from paragraph (c) of § 210.2-02 of the words "as required to be set forth in § 210.3-07(a)" which heretofore have linked the reporting requirement in paragraph (c) of § 210.2-02 to the changes in accounting practices specified in paragraph (a) of § 210.3-07.

Section 210.5-02 is amended to correct references in paragraph 32(a) thereunder to captions in paragraph 25 of the section to reflect revisions in those captions which were recently adopted in Accounting Series Release No. 184 [40 FR 59340].

Section 210.12-08 is amended to reinstate the last three sentences that were in Instruction 3 of that section prior to the adoption of Accounting Series Release No. 178 [40 FR 48359] wherein the sentences were inadvertently deleted.

Commission action: The Commission hereby revises paragraph (c) of § 210.2-02, paragraph 32(a) of § 210.5-02 and Instruction 3 of § 210.12-08, Chapter II of Title 17 of the Code of Federal Regulation, to read as set forth below:

§ 210.2-02 Accountants' reports.

* * * * *

(c) *Opinion to be expressed.* The accountant's report shall state clearly: (1) The opinion of the accountant in respect of the financial statements covered by the report and the accounting principles and practices reflected therein; and (2) 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.

* * * * *

§ 210.5-02 Balance sheets.

* * * * *

32. *Other long-term debt.* (a) Include under this caption all amounts of long-term debt not provided for under captions 29(a) and 31 above. State separately amounts payable to (1) persons specified in captions 25(a) (1), (2), (3) and (6); and (2) others, specifying any material item. Indicate the extent that the debt is collateralized. Show here, or in a note referred to herein, the information required under caption 29.

* * * * *

§ 210.12-08 Intangible assets, preoperating expenses and similar deferrals.[1, 2, 7]

* * * * *

(Instruction) 3. Show by major classifications in each part, such as franchises, goodwill, etc. If such classification is not present or practicable, each part may be stated in one amount. The additions included in column C shall, however, be segregated in accordance with an appropriate classification. Items of minor importance may be included under a miscellaneous caption in each part.

* * * * *

(Secs. 6, 7, 8, 10 and 19(a) [15 U.S.C. 77f, 77g, 77h, 77j, 77s], Securities Act of 1933; Secs. 12, 13, 15(d) and 23(a) [15 U.S.C. 78l, 78m, 78o(d), 78w], Securities Exchange Act of 1934; Secs. 5(b), 14 and 20(a) [15 U.S.C. 79e, 79n, 79t], Public Utility Holding Company Act of 1935; and Secs. 8, 30, 31(c) and 38(a) [15 U.S.C. 80a-8, 80a-29, 80a-30(c), 80a-37(a)], Investment Company Act of 1940.)

Inasmuch as the amendments reduce the requirements of section 210.2-02 and correct minor errors in other sections the Commission finds that, for good cause, the notice and procedures specified in the Administration Procedures Act of 1946 are unnecessary, and accordingly the foregoing amendments are adopted effective on August 23, 1976.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

AUGUST 6, 1976.

[FR Doc.76-24562 Filed 8-20-76;8:45 am]

Title 21—Food and Drugs

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

[Docket No. 76N-0288]

PART 620—ADDITIONAL STANDARDS FOR BACTERIAL PRODUCTS

Test for Safety of Pertussis Vaccine

The Food and Drug Administration is amending its biologics regulations concerning the safety test for products containing Pertussis Vaccine to require that the test dose in mice shall consist of no less than one-half of the recommended largest individual human dose; effective August 23, 1976.

The Commissioner of Food and Drugs issued an amendment to § 610.11 *General safety* (21 CFR 610.11), published in the FEDERAL REGISTER of March 15, 1976 (41 FR 10888); the general safety test is applicable to all biologics products. The Commissioner also amended § 620.6(a) (21 CFR 620.6(a)), which specifies the general safety test for products containing Pertussis Vaccine. It has come to the Commissioner's attention that the phrase used to identify the test dose, "recommended largest human dose," can be misinterpreted as requiring the recommended total human immunizing dose. The Commissioner advises that the subject phrase is intended to refer to the largest individual human dose rather than the total human dose because this vaccine is normally administered in a series. Accordingly, the Commissioner concludes that § 620.6(a) should be amended to clarify the regulation.

Therefore, under the Public Health Service Act (sec. 351, 58 Stat. 702, as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976) (41 FR 24262)), Part 620 is amended by revising § 620.6(a) to read as follows:

§ 620.6 General requirements.

(a) *Safety.* Each lot of product containing Pertussis Vaccine shall be tested for safety by the procedures prescribed in § 610.11 of this chapter except that the test shall consist of the intraperitoneal injection of no less than one-half of the recommended largest individual human dose into each of the mice, and either the intraperitoneal injection of no less than three times the recommended largest individual human dose, or the subcutaneous injection of 5.0 milliliters into each of the guinea pigs.

* * * * *

Under the Administrative Procedure Act (5 U.S.C. 553 (b) and (d)), the Commissioner finds that notice, public procedure, and delayed effective date are unnecessary for the amendment of § 620.6 (a) because it does not impose an additional duty or burden on any person but rather clarifies the regulation. Nevertheless, interested persons have until September 22, 1976 to submit comments, and comments may justify further modification of these provisions.

(Sec. 351, 58 Stat. 702, as amended (42 U.S.C. 262).)

Effective date: This regulation shall be effective August 23, 1976.

Dated: August 17, 1976.

JOSEPH P. HILE,
Acting Associate Commissioner for Compliance.

[FR Doc.76-24575 Filed 8-20-76;8:45 am]

Title 22—Foreign Relations

CHAPTER V—UNITED STATES INFORMATION AGENCY

PART 503—AVAILABILITY OF RECORDS

Freedom of Information; Schedule of Standard Fees

22 CFR Chapter V Part 503 is amended by revising § 503.6(c)(1)(i) and (ii) to read as follows:

§ 503.6 Availability of Agency records.

* * * * *

(i) Making copies (Xerox or comparable) per page—$0.15. No fee will be charged for a particular request totalling 10 pages or less.

(ii) Searching for records, per hour—$5 for clerical personnel, $9 for supervisory personnel. No fees will be charged for searches of one hour or less.

* * * * *

(c)(1) * * *

AUTHORITY: 22 U.S.C. 2658; 31 U.S.C. 483a; 5 U.S.C. 301; 5 U.S.C. 552, as amended by Public Law 93-502, 88 Stat. 1561; E.O. 10477, as amended, 18 FR 4540, 3 CFR 1949-1953 Comp., page 958, at 22 U.S.C.A. 811a; E.O. 11652, 37 FR 5209, 3 CFR (1974), page 339.

Dated: August 11, 1976.

EUGENE P. KOPP,
Acting Director.

[FR Doc.76-24570 Filed 8-20-76;8:45 am]

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-1000]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the Borough of Mill Hall, Clinton County, Pennsylvania

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (Section 1917.10)), hereby gives notice of his final determinations of flood elevations for the Borough of Mill Hall, Clinton County, Pennsylvania under Section 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas.

In order to continue participation in the National Flood Insurance Program, the Borough must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to Section 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with Section 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at the Borough Building, 20 Pennsylvania Avenue, Mill Hall, Pennsylvania.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one-percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width in feet from bank of stream to 100-yr flood boundary facing downstream.	
			Left	Right
Fishing Creek	Southern Corporate Limit	596	120	(1)
	Upstream of Main St. Bridge	586	20	540
	Upstream of Church St. Bridge	581	10	930
	Upstream of abandoned Penn Central RR. Bridge.	579	520	1,300
	Upstream of Penn Central RR. bridge	576	1,400	(1)
	Northern corporate limit	568	280	(1)

[1] To corporate limit.

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

Issued: August 10, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-24508 Filed 8-20-76;8:45 am]

[Docket No. FI-946]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the Borough of Mountainside, New Jersey

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (P.L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (P.L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (Section 1917.10)), hereby gives notice of the final determinations of flood elevations for the Borough of Mountainside, New Jersey under Section 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the Borough must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to Section 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with Section 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at Borough Hall, Route 22, Mountainside, New Jersey 07092.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing down-stream) to 100-yr flood boundary (feet)	
			Right	Left
Branch 7, Nomahegan Brook.	Force Dr.	174.7	37.5	37.5
Branch 3, Nomahegan Brook.	Stoney Brook Lane	209.0	25.0	37.5
	Hickory Lane	190.0	37.5	35.0
	Indian Trail	179.5	50.0	50.0
	U.S. Route 22	127.1	235.0	125.0
Branch 2, Nomahegan Brook.	Central Ave.	138.7	27.5	37.5
	Cedar Ave.	128.0	25.0	20.0
	Poplar Ave.	124.8	25.0	20.0
	U.S. Route 22	116.2	27.5	50.0
Branch 1, Nomahegan Brook.	Springfield	85.0	35.0	37.5
Nomahegan Brook	Lawrence Ave.	177.6	(1)	(1)
	New Providence Rd.	120.3	15.0	55.0
	Bridge in Echo Lake Park	100.1	(2)	400.0

[1] Less than 25 ft.
[2] Flood boundary outside corporate limits.

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

Issued: August 10, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-24501 Filed 8-20-76;8:45 am]

[Docket No. FI-979]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the Borough of New Cumberland, Cumberland County, Pennsylvania

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (P.L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (P.L. 90-448), 42 U.S.C. 4001-4128, and 24 CRF Part 1917 (Section 1917.10)), hereby gives notice of his final determinations of flood elevations for the Borough of New Cumberland, Cumberland County, Pennsylvania under Section 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the Borough must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to Section 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with Section 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at the Bulletin Board, Town Hall Lobby, 7th and Reno Streets, New Cumberland, Pennsylvania.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one-percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width in feet from bank of stream to 100-yr flood boundary facing downstream	
			Left	Right
Susquehanna River	2d St. (extended)	313	(1)	1,000
	3d St. (extended)	313	(1)	430
	4th St. (extended)	313	(1)	20
	5th St. (extended)	313	(1)	220
	7th St. (extended)	313	(1)	40
	16th St. (extended)	314	(1)	60
	Northern corporate limits (extended)	315	(1)	20
Yellow Breeches Creek.	Penn Central RR	313	1,560	(1)
	Reno St. (extended)	313	490	(1)
	Weir	313	700	(1)
	Woodlawn Ave. (extended)	313	800	(1)
	Wayne St. (extended	314	200	(1)
	Popular St.		120	(1)

[1] Outside corporate limits.

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

Issued: August 10, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-24509 Filed 8-20-76;8:45 am]

[Docket No. FI-1009]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the Borough of Oceanport, New Jersey

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (P.L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (P.L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (Section 1917.-10)), hereby gives notice of the final determinations of flood elevations for the Borough of Oceanport, New Jersey under Section 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the Borough must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to Section 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with Section 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at Borough Hall, Oceanport, New Jersey 07757.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one-percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Turtle Mill Brook	Myrtle Ave. extended	9	(1)	670
	Oceanport Ave	10	(1)	210
	Eatontown Blvd	11	(1)	700
	Monmouth Rd	13	(1)	50
South Shrewsbury River.	Myrtle Ave	9	2,820	(1)
Branchport Creek	Monmouth Blvd	9	(1)	80
	Branchport Ave	9	(1)	410

[1] Outside corporate limits.

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

Issued: August 10, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-24503 Filed 8-20-76;8:45 am]

[Docket No. FI-997]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the Borough of West Fairview, Cumberland County, Pennsylvania

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (P.L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (P.L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (Section 1917.-10)), hereby gives notice of his final determinations of flood elevations for the Borough of West Fairview, Cumberland County, Pennsylvania under Section 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the Borough must adopt flood plain management measures that are consistent with these criteria and reflect the base flood

elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to Section 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with Section 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at the Bulletin Board in the Meeting Room of the Town Hall, 41 Cherry Street, West Fairview, Pennsylvania.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one-percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width in feet from bank of stream to 100-yr flood boundary facing downstream	
			Left	Right
Susquehanna River	North corporate limits	322		90
	South St. extended	321		400
Conodoguinet Creek	West corporate limits	321	180	
	Penn Central RR	321	480	

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

Issued: August 10, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-24510 Filed 8-20-76;8:45 am]

[Docket No. FI-1032]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the City of Delaware City, Delaware

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (P.L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (P.L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (Section 1917.10)), hereby gives notice of the final determinations of flood elevations for City of Delaware City, Delaware under Section 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to Section 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with Section 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at Town Hall, 407 Clinton Street, Delaware City, Delaware 19706.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width—distance in feet NE. from 2d St.
Delaware River	Jefferson St	9.0	650
	Washington St	9.0	575
			Distance in feet NE. from 4th St.
Delaware River	Hamilton St	9.0	950
	5th St	9.0	(1)

[1] Approximate distance in feet from bank of Delaware City Branch Channel to boundary of 100-yr flood.

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

Issued: August 10, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-24498 Filed 8-20-76;8:45 am]

[Docket No. FI-1008]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the City of Paterson, New Jersey

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (P.L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (P.L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (Section 1917.10)), hereby gives notice of the final determinations of flood elevations for the City of Paterson, New Jersey under Section 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to Section 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with Section 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at City Hall, 155 Market Street, Paterson, New Jersey 07505.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one-percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Passaic River	West Broadway St	49	95	40
	6th Ave	45	225	(1)
	Broadway St	37	150	(1)
	Bergen Passaic Expressway	34	140	(1)
Molly Anns Brook	Redwood Ave	135	25	50
	Preakness Ave	127	520	20
	Union Ave	125	35	20
Slippery Rock Brook	Danforth Ave	155	25	100
	Murray Ave	129	25	35

[1] To corporate limits.

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

Issued: August 10, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-24504 Filed 8-20-76;8:45 am]

[Docket No. FI-1027]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the Town of Morehead City, North Carolina

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (P.L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (P.L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (Section 1917.10)), hereby gives notice of the final determinations of flood elevations for the Town of Morehead City, North Carolina under Section 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the Town must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individ-

uals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to Section 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with Section 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at Town Hall, Morehead City, North Carolina 28557.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width—distance in feet north from Bridges St.
Newport River	5th St	7.0	240
	11th St	7.0	1,210
	23d St	7.0	1,400
	17th St	7.0	800
	Country Club Blvd	7.0	1,200
Bogue Sound	Arendel St. North	7.0	[1] 3,030
	6th St	7.0	480
	12th St	7.0	980
	18th St	7.0	1,260
	24th St	7.0	800

[1] Approximate distance in feet from Highway 70 bridge to boundary of 100-yr flood.

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

Issued: August 11, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-24506 Filed 8-20-76;8:45 am]

[Docket No. FI-1108]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the Town of Port Deposit, Cecil County, Maryland

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (P.L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (P.L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (Section 1917.10)), hereby gives notice of his final determinations of flood elevations for the Town of Port Deposit, Cecil County, Maryland under Section 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the Town must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to Section 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with Section 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at the Town Office, Town Hall, Port Deposit, Maryland.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one-percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width in feet from bank of stream to 100-yr flood boundary facing downstream	
			Left	Right
Susquehanna River	NW. corporate limit	15	16	[1]
	Granite Ave. (extended)	14	224	[1]
	River Dr	12	280	[1]
	SE. corporate limit	11	376	[1]
	Alley No. 5	11	312	[1]

[1] Corporate limit.

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

Issued: August 10, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76–24500 Filed 8–20–76;8:45 am]

[Docket No. FI–1032]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the Village of Sea Ranch Lakes, Florida

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (P.L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (P.L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (Section 1917.10)), hereby gives notice of the final determinations of flood elevations for the Village of Sea Ranch Lakes, Florida under Section 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the Village must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to Section 1917.8, no appeals were received from the Community or from individuals within the community. Therefore, publication of this notice is in compliance with Section 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at Village Hall, 1 Gatehouse Road, Sea Ranch Lakes, Florida 33308.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Intercoastal Waterway	Seneca Rd	6	Entire road around lake except the stretch extending 400 ft north of eastern intersection with Gate House Rd.	
	Saranac Rd	6	Section extending 250 ft north of intersection with Minnetonka Rd.	
	Winona Lane	6	Section extending 130 ft from intersection with Cayuga Rd.	
Intercoastal Waterway	Minnetonka Rd	6	Section extending 140 ft south from eastern intersection with Cayuga Rd.	
	Chippewa Lane	6	Section extending 50 ft east from intersection with Cayuga Rd.	

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

Issued: August 10, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76–24499 Filed 8–20–76;8:45 am]

[Docket No. FI–1028]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the Township of Neptune, New Jersey

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (P.L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (P.L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (Section 1917.10)), hereby gives notice of the final determinations of flood elevations for the Township of Neptune, New Jersey under Section 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the Township must adopt flood plain man-

agement measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to Section 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with Section 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at Town Hall, 25 Neptune Boulevard, Neptune, New Jersey 07753.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Jumping Brook	State Highway 66	72	100	100
	West Bangs Ave	53	175	50
	State Highway 33	39	100	150
	Corlies Ave	18	25	50
Wells Brook	Jumping Brook Rd	88	25	150
	State Highway 33	68	10	325
Betty Brook	Green Grove Rd	85	25	60
Shark River	Gully Rd	20	(1)	25
	Remsen Mill Rd	11	(1)	10
	Brighton Ave	10	(1)	300
Musquash Brook	Brighton Ave	23	25	(1)
Hollow Brook	Route 18	53	250	300
	Mall Dr	35	75	25
	State Highway 33	21	125	400

[1] Outside corporate limits.

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

Issued: August 10, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-24502 Filed 8-20-76;8:45 am]

[Docket No. FI-1007]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the Township of Wall, New Jersey

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (P.L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (P.L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (Section 1917.10)), hereby gives notice of the final determinations of flood elevations for the Township of Wall, New Jersey under Section 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the Township must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to Section 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with Section 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at 2500 Municipal Court, Wall, New Jersey 07719.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Shark River	Route 33	57	40	(1)
	Garden State Parkway N.B	35	60	(1)
	Gully Rd	21	60	(1)
	Route 18	10	18	(1)
Shark River Tributary "D".	School House Rd	37	80	40
Shark River Tributary "E".	Route 34	71	90	240
Heroys Pond Creek	Old Mill Rd	33	80	90
Polly Pond Brook	Route 71	18	(1)	340
Wreck Pond Brook	Garden State Parkway N.B	65	120	100
	Allenwood	61	60	400
	Route 38	47	300	300
	18th and Route 30	36	240	100
	Route 35	17	20	30
Wreck Pond Brook, East Branch.	Route 38	58	300	220
Hannibrand Brook	Allaire Rd	60	60	80
	Rte. 35	24	40	20
Roberts Swamp Brook.	Albonkin	26	70	200

[1] Outside corporate limits.

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

Issued: August 10, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76–24505 Filed 8–20–76;8:45 am]

[Docket No. FI–1004]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for the Town of Yaupon Beach, North Carolina

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (P.L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (P.L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (Section 1917.10)), hereby gives notice of the final determinations of flood elevations for the Town of Yaupon Beach, North Carolina under Section 1917.8 of Title 24 of the Code of Federal Regulations.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the Town must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. Pursuant to Section 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with Section 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at Town Hall, 518 Yaupon Drive, Yaupon Beach, North Carolina 28461.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations as set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Atlantic Ocean	Corwell St	14.0	500	(1)
	Barbee Blvd	14.0	360	(1)
	Keziah St	14.0	410	(1)
	Norton St	14.0	155	(1)
	Sellers St	14.0	65	(2)
	McGlamery St	14.0	320	(1)
Elizabeth River Estuary.	N.C. 133	13.0	140	----------
	McGlamery St	13.0	230	----------
	Keziah St	13.0	260	(3)

[1] Distance from intersection of Ocean Dr. to northern boundary of 100-yr flood.
[2] Distance from intersection of Ocean Dr. south, to boundary of 100-yr flood boundary.
[3] Distance from intersection with Elizabeth Dr. to boundary of 100-yr flood.

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

Issued: August 11, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-24507 Filed 8-20-76;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 7429]

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

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

PART 301—PROCEDURE AND ADMINISTRATION

Priority of Lien; Release of Lien or Discharge of Property

PREAMBLE

On January 4, 1973, a notice of proposed rulemaking to conform the Income Tax Regulations (26 CFR Part 1), the Estate Tax Regulations (26 CFR Part 20), the Gift Tax Regulations (26 CFR Part 25), and the Regulations on Procedure and Administration (26 CFR Part 301) under sections 545, 6323, and 6325 of the Internal Revenue Code of 1954 (relating to priority of lien and release of lien or discharge of property) to changes made by section 236 of the Revenue Act of 1964 (78 Stat. 127), section 17(a) of Public Law 89–493 (80 Stat. 263), and sections 101 and 103 of the Federal Tax Lien Act of 1966 (80 Stat. 1125 and 1133) was published in the FEDERAL REGISTER (38 FR 776).

Section 6323 generally relates to the validity and priority of a Federal tax lien against certain persons. Section 301.6323 (b)–1 (d) of the proposed regulations provided that a previously filed notice of tax lien is not valid against a purchaser who buys (for less than $250 and not for resale) household goods, personal effects or certain other tangible personal property in a casual sale, provided the purchaser does not have actual notice or knowledge of (A) the existence of a tax lien, or (B) that the sale is one of a series of sales.

No definitive rule was developed in the proposed regulations to determine, under all circumstances, when a purchaser would be considered to have notice or knowledge that the sale was one of a series of sales. However, example (3) of proposed § 301.6323 (b)–1 (d) illustrated a situation where a purchaser would be considered to have such notice. In this example the seller advertised the sale of substantially all his household property. In response to the advertisement the buyer purchased the seller's dining room furniture for $200. The purchase occurred after a notice of tax lien was filed. The example concluded that because such an advertisement contemplated a series of sales to dispose of substantially all the seller's household articles, the purchaser had notice that the sale was one of a series of sales and, consequently, purchased the dining room furniture subject to the tax lien.

After reconsideration, it was concluded that whether a particular purchaser would be considered to have such actual notice or knowledge would depend upon that purchaser's background and experience. Consequently, example (3) of proposed § 301.6323 (b)–1 (d) is not contained in the final regulations.

Section 301.6323(c)–1 (b) and (d) of the proposed regulations have been revised. Section 301.6323(c)–1(b) contained a definition of the term "commercial transactions financing agreement" for purposes of the priority rules of section 6323(c). In addition to other requirements relating to such agreements, protection of a security interest in "qualified property" against a tax lien is provided only with respect to advances made under such an agreement before the 46th day after the date of tax lien filing or, if earlier, the time when the lender or purchaser has actual notice or knowledge of tax lien filing. Section 6323(c)(2)(B) provides that "qualified property" under a commercial transactions financing agreement includes only property acquired by the debtor-taxpayer before the 46th day after the date of tax lien filing. Thus, there are two 45-day rules relating to commercial transactions financing agreements, i.e., one relating to the period during which advances must be made by the creditor or purchaser and another relating to the period during which the property or collateral must be acquired by the debtor-taxpayer. The acquisition of notice or knowledge of the tax lien by the creditor shortens one of the periods (the one relating to advances) but not the other (the one relating to the acquisition of the collateral). Proposed § 301.6323(c)–1(b) had contained both the 45-day rules. In the interest of clarification, § 301.6323(c)–(1) (b) and (d) have been revised so that the 45-day rule relating to advances appears in § 301.6323(c)–1 (b) of the final regulations (relating to commercial transactions financing agreement) and the 45-day rule relating to the acquisition of the collateral appears in § 301.6323(c)–1(d) of the final regulations (relating to qualified property).

Sections 301.6323(c)–1(d) and 301.6323 (d)–1(a) of the proposed regulations have been revised to reflect a change of position with respect to the acquisition of contract rights.

The proposed regulations provided that contract rights are considered to be "acquired" when, and to the extent that, a right to payment is earned by performance. This position was taken in proposed § 301.6323(c)–1(d), relating to the specific protection provided a security interest in qualified property under a commerical transactions financing agreement, and § 301.6323(d)–1(a), relating to the general protection provided with respect to advances made after tax lien filing under an agreement entered into before such filing. However, after considering comments received from the public, the final regulations have been revised to provide that: for purposes of § 301.6323(c)–1(b), a contract right is acquired by the taxpayer when the contract is made; for purposes of § 301.6323(d)–1(a), a contract right is subject to the lien imposed by section 6321 if the contract has been made by the time of tax lien filing; and that, for purposes of § 301.6323(h)–1(a) (relating to the definition of a security interest) a contract right is in existence when the contract is made.

Section 301.6323 (c)–1 (d) of the proposed regulations has also been revised to reflect changes in local law. In the proposed regulations, § 301.6323 (c)–1 (d) provided that an account receivable is acquired by a taxpayer at the time, and to the extent, a right to payment is earned by performance. Because some jurisdictions have adopted a revised definition of an "account", the regulations have been revised to emphasize that the priority of a security interest over a Federal tax lien does not depend upon local law definitions of the various types of property interests comprising commercial financing security.

Section 301.6323 (g)–1 (b) (2) (ii) of the proposed regulations have been revised to extend a transitional date for sending change of address notices to the Internal Revenue Service. Under the proposed regulations, a change of address notice sent to any office of the Service would be effective, provided such notice was received prior to July 1, 1973. Section 301.6323 (g)–1 (b) (2) (ii) of the final regulations provides that such a notice sent to any office of the Service will be effective, provided that it is received prior to the date this Treasury decision is published in the FEDERAL REGISTER.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

On January 4, 1973, a notice of proposed rule making was published in the FEDERAL REGISTER (38 FR 776) in order to conform the Income Tax Regulations, the Estate Tax Regulations, the Gift Tax Regulations and the Regulations on Procedure and Administration (26 CFR Parts 1, 20, 25, and 301) under sections 545, 6323, and 6325 of the Internal Revenue Code of 1954 to section 236 of the Revenue Act of 1964 (78 Stat. 127), section 17(a) of Public Law 89–493 (80 Stat. 263), and sections 101 and 103 of the Federal Tax Lien Act of 1966 (80 Stat. 1125 and 1133). Section 301.6323 (g)–1 of the regulations hereby adopted supersedes §§ 400.1 and 400.1–1 of this chapter, relating to section 101(a) of the Federal Tax Lien Act of 1966, which were

prescribed by T. D. 6932, approved October 13, 1967 (32 FR 14385). Section 301.6325–1 of the regulations hereby adopted supersedes §§ 400.2 and 400.2–1 of this chapter, relating to section 103 (a) of such Act, which were prescribed by T. D. 6944, approved January 17, 1968 (33 FR 732). After taking into consideration all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of the regulations as proposed is hereby adopted, subject to the changes set forth below:

Paragraph 1. Paragraph (b) of § 301.6323(a)–1, as set forth in paragraph 7 of the appendix to the notice of proposed rule making, is revised by deleting the word "security" from the last sentence thereof.

Par. 2. Example (3) of § 301.6323(b)–1(d)(3), as set forth in paragraph 7 of the appendix to the notice of proposed rule making, is deleted and example (4) of such section is renumbered as example (3).

Par. 3. Paragraph (j)(1) of § 301.6323(b)–1, as set forth in paragraph 7 of the appendix to the notice of proposed rule making, is revised by deleting the reference to paragraph (i)(2) in the first sentence and by inserting a reference to subparagraph (2) in lieu thereof. The third sentence of such paragraph is revised by striking out the phrase "If a passbook loan is made" and inserting in lieu thereof "Even though an original passbook loan is made". As revised, § 301.6323(b)–1(j)(1) reads as follows:

§ 301.6323(b)–1 Protection for certain interests even though notice filed.

* * * * *

(j) *Passbook loans*—(1) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid against an institution described in section 581 or 591 to the extent of any loan made by the institution which is secured by a savings deposit, share, or other account evidenced by a passbook (as defined in subparagraph 2 of this paragraph) if the institution has been continuously in possession of the passbook from the time the loan is made. This paragraph applies only to a loan made without actual notice or knowledge (as defined in paragraph (a) of § 301.6323 (i)–1) of the existence of the lien. Even though an original passbook loan is made without actual notice or knowledge of the existence of the lien, this paragraph does not apply to any additional loan made after knowledge of the lien is acquired by the institution even if it continues to retain the passbook from the time the original passbook loan is made.

* * * * *

Par. 4. Section 301.6323(c)–1, as set forth in paragraph 7 of the appendix to the notice of proposed rule making, is amended by revising paragraphs (b), (c) and (d) of such section. As revised, paragraphs (b), (c) and (d) of § 301.6323(c)–1 read as follows:

§ 301.6323(c)–1 Protection for commercial transactions financing agreements.

* * * * *

(b) *Commercial transactions financing agreement.* For purposes of this section, the term "commercial transactions financing agreement" means a written agreement entered into by a person in the course of his trade or business—

(1) To make loans to the taxpayer (whether or not at the option of the person agreeing to make such loans) to be secured by commercial financing security acquired by the taxpayer in the ordinary course of his trade or business, or

(2) To purchase commercial financing security, other than inventory, acquired by the taxpayer in the ordinary course of his trade or business.

Such an agreement qualifies as a commercial transactions financing agreement only with respect to loans or purchases made under the agreement before (i) the 46th day after the date of tax lien filing or, (ii) the time when the lender or purchaser has actual notice or knowledge (as defined in paragraph (a) of § 301.6323(1)–1) of the tax lien filing, if earlier. For purposes of this paragraph, a loan or purchase is considered to have been made in the course of the lender's or purchaser's trade or business if such person is in the business of financing commercial transactions (such as a bank or commercial factor) or if the agreement is incidental to the conduct of such person's trade or business. For example, if a manufacturer finances the accounts receivable of one of his customers, he is considered to engage in such financing in the course of his trade or business. The extent of the priority of the lender or purchaser over the tax lien is the amount of his disbursements made before the 46th day after the date the notice of tax lien is filed, or made before the date (before such 46th day) on which the lender or purchaser has actual notice or knowledge of the filing of the notice of the tax lien.

(c) *Commercial financing security*—(1) *In general.* The term "commercial financing security" means—

(i) Paper of a kind ordinarily arising in commercial transactions,

(ii) Accounts receivable (as defined in subparagraph (2) of this paragraph),

(iii) Mortgages on real property, and

(iv) Inventory,

For purposes of this subparagraph, the term "paper of a kind ordinarily arising in commercial transactions" in general includes any written document customarily used in commercial transactions. For example, such written documents include paper giving contract rights (as defined in subparagraph (2) of this paragraph), chattel paper, documents of title to personal property, and negotiable instruments or securities. The term "commercial financing security" does not include general intangibles such as patents or copyrights. A mortgage on real estate (including a deed of trust, contract for sale, and similar instrument) may be commercial financing security if the taxpayer has an interest in the mortgage as a mortgagee or assignee. The term "commercial financing security" does not include a mortgage where the taxpayer is the mortgagor of realty owned by him. For purposes of this subparagraph, the term "inventory" includes raw materials and goods in process as well as property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.

(2) *Definitions.* For purposes of §§ 301.6323(d)–1, 301.6323(h)–1 and this section—

(i) A contract right is any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper, and

(ii) An account receivable is any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper.

(d) *Qualified property.* For purposes of paragraph (a) of this section, qualified property consists solely of commercial financing security acquired by the taxpayer-debtor before the 46th day after the date of tax lien filing. Commercial financing security acquired before such day may be qualified property even though it is acquired by the taxpayer after the lender received actual notice or knowledge of the filing of the notice of the tax lien. For example, although the receipt of actual notice or knowledge of the filing of the notice of the tax lien has the effect of ending the period within which protected disbursements may be made to the taxpayer, property which is acquired by the taxpayer after the lender receives actual notice or knowledge of such filing and before such 46th day, which otherwise qualifies as commercial financing security, becomes commercial financing security to which the priority of the lender extends for loans made before he received the actual notice or knowledge. An account receivable (as defined in paragraph (c)(2)(ii) of this section) is acquired by a taxpayer at the time, and to the extent, a right to payment is earned by performance. Chattel paper, documents of title, negotiable instruments, securities, and mortgages on real estate are acquired by a taxpayer when he obtains rights in the paper or mortgage. Inventory is acquired by the taxpayer when title passes to him. A contract right (as defined in paragraph (c)(2)(i) of this section) is acquired by a taxpayer when the contract is made. Identifiable proceeds, which arise from the collection or disposition of qualified property by the taxpayer, are considered to be acquired at the time such qualified property is acquired if the secured party has a continuously perfected security interest in the proceeds under local law. The term "proceeds" includes whatever is received when collateral is sold, exchanged, or collected. For purposes of this paragraph, the term "identifiable proceeds" does not include money, checks and the like which have been commingled with other cash proceeds. Property acquired by the taxpayer after the 45th day following tax lien filing, by the expenditure of proceeds, is not qualified property.

* * * * *

Par. 5. Examples (2) and (3) of § 301.6323(c)–2(d), as set forth in paragraph 7 of the appendix to the notice of proposed rule making, are revised to provide appropriate cross references to other provisions of section 6323 and the regulations thereunder. As revised, examples (2) and (3) of § 301.6323(c)–2(d) read as follows:

§ 301.6323(c)–2 Protection for real property construction or improvement financing agreements.

* * * * *

(d) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

* * * * *

Example (2). (i) C is awarded a contract for the demolition of several buildings. On March 3, 1969, C enters into a written agreement with D which provides that D will make cash disbursements to finance the demolition and also provides that repayment of the disbursements is secured by any sums due C under the contract. On April 1, 1969, in accordance with § 301.6323(f)–1, a notice of lien is filed with respect to C's delinquent tax liability. With actual notice of the tax lien, D makes cash disbursements to C on August 1, September 1, and October 1, 1969. Under local law D's security interest in the proceeds of the contract with respect to the disbursements is entitled to priority over a judgment lien arising on April 1, 1969 (the date of tax lien filing) out of an unsecured obligation.

(ii) Because D's security interest arose by reason of disbursements made pursuant to a writen agreement, entered into before tax lien filing, to make cash disbursements to finance a contract to demolish real property, and because D's security interest is valid under local law against a judgment lien arising as of the time of tax lien filing out of an unsecured obligation, the tax lien is not valid with respect to D's security interest in the proceeds of the demolition contract.

Example (3). Asume the same facts as in example (2) and, in addition, assume that, as further security for the cash disbursements, the March 3, 1969 agreement also provides for a security interest in all of C's demolition equipment. Because the protection of the security interest arising from the disbursements made after tax lien filing under the agreement is limited under section 6323 (c) (3) to the proceeds of the demolition contract and because, under the circumstances, the security interest in the equipment is not otherwise protected under section 6323, the tax lien will have priority over D's security interest in the equipment.

* * * * *

Par. 6. Paragraph (a) of § 301.6323 (d)–1, as set forth in paragraph 7 of the appendix to the notice of proposed rule making, is revised to read as follows:

§ 301.6323(d)–1 45-day period for making disbursements.

(a) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid with respect to a security interest which comes into existence, after tax lien filing, by reason of disbursements made before the 46th day after the date of tax lien filing, or if earlier, before the person making the disbursements has actual notice or knowledge of the tax lien filing, but only if the security interest is—

(1) In property which is subject, at the time of tax lien filing, to the lien imposed by section 6321 and which is covered by the terms of a written agreement entered into before tax lien filing, and

(2) Protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

For purposes of subparagraph (1) of this paragraph, a contract right (as defined in paragraph (c)(2)(i) of § 301.6323 (c)–1) is subject, at the time of tax lien filing, to the lien imposed by section 6321 if the contract has been made by such time. An account receivable (as defined in paragraph (c)(2)(ii) of § 301.6323 (c)–1) is subject, at the time of tax lien filing, to the lien imposed by section 6321 if, and to the extent, a right to payment has been earned by performance at such time. For purposes of subparagraph (2) of this paragraph, a judgment lien is a lien held by a judgment lien creditor as defined in paragraph (g) of § 301.6323 (h)–1. For purposes of this section, it is immaterial that the written agreement provides that the disbursements are to be made at the option of the person making the disbursements. See paragraphs (a) and (e) of § 301.6323 (h)–1 for definitions of the terms "security interest" and "tax lien filing", respectively. See paragraph (a) of § 301.6323 (i)–1 for certain circumstances under which a person is deemed to have actual notice or knowledge of a fact.

* * * * *

Par. 7. Section 301.6323 (f)–1, as set forth in paragraph 7 of the appendix to the notice of proposed rule making, is changed by revising so much of paragraph (a) as precedes subparagraph (1) to read as follows:

§ 301.6323(f)–1 Place for filing notice; form.

(a) *Place for filing.* The notice of lien referred to in § 301.6323 (a)–1 shall be filed as follows:

* * * * *

Par. 8. Subdivisions (i) and (ii) of § 301.6323 (g)–1 (b) (2), as set forth in paragraph 7 of the appendix to the notice of proposed rule making, are revised to read as follows:

§ 301.6323(g)–1 Refiling of notice of tax lien.

* * * * *

(b) *Place for refiling notice of lien* * * *

(2) *Notice of change of taxpayer's residence*—(i) *In general.* Except as provided in subdivision (ii) or (iii) of this subparagraph, for purposes of this section, a notice of change of a taxpayer's residence will be effective only if it (A) is received, in writing, from the taxpayer or his representative by the district director or the service center director having jurisdiction where the original notice of lien was filed, (B) relates to an unpaid tax liability of the taxpayer, and (C) states the taxpayer's name and the address of his new residence. Although it is not necessary that a written notice contain the taxpayer's identifying number authorized by section 6109, it is preferable that it include such number. For purposes of this subdivision, a notice of change of a taxpayer's residence shown on a return or an amended return (including a return of the same tax) will not be effective to notify the Internal Revenue Service.

(ii) *Notice received before August 23, 1976.* For purposes of this section, a notice of a change of a taxpayer's residence will also be effective if it (A) is received, in writing, by any office of the Internal Revenue Service before August 23, 1976, from the taxpayer or his representative, (B) relates to an unpaid tax liability of the taxpayer, and (C) states the taxpayer's name and the address of his new residence.

* * * * *

Par. 9. Paragraph (a)(1) of § 301.6323 (h)–1, as set forth in paragraph 7 of the appendix to the notice of proposed rule making, is revised to read as follows:

§ 301.6323(h)–1 Definitions.

(a) *Security interests*—(1) *In general.* The term "security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time—

(i) If, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien (as provided in subparagraph (2) of this paragraph) arising out of an unsecured obligation; and

(ii) To the extent that, at such time, the holder has parted with money or money's worth (as defined in subparagraph (3) of this paragraph).

For purposes of this subparagraph, a contract right (as defined in paragraph (c)(2)(i) of § 301.6323(c)–1) is in existence when the contract is made. An account receivable (as defined in paragraph (c)(2)(ii) of § 301.6323(c)–1) is in existence when, and to the extent, a right to payment is earned by performance. A security interest must be in existence, within the meaning of this paragraph, at the time as of which its priority against a tax lien is determined. For example, to be afforded priority under the provisions of paragraph (a) of § 301.6323 (a)–1 a security interest must be in existence within the meaning of this paragraph before a notice of lien is filed.

* * * * *

Par. 10. Paragraph (e) of § 301.6323 (h)–1, as set forth in paragraph 7 of the appendix to the notice of proposed rule making, is revised to provide a cross reference. As revised, § 301.6323(h)–1 (e) reads as follows:

§ 301.6323(h)–1 Definitions.

* * * * *

(e) *Tax lien filing.* The term "tax lien filing" means the filing of notice of the lien imposed by section 6321 in accordance with § 301.6323(f)–1.

* * * * *

(This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954. (68A Stat. 917; 26 U.S.C. 7805).)

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: August 16, 1976.

CHARLES M. WALKER,
Assistant Secretary of the Treasury.

In order to conform the Income Tax Regulations, the Estate Tax Regulations, the Gift Tax Regulations and the Regulations on Procedure and Administration (26 CFR Parts 1, 20, 25, and 301) under sections 545, 6323, and 6325 of the Internal Revenue Code of 1954 to section 236 of the Revenue Act of 1964 (78 Stat. 127), section 17(a) of Public Law 89–493 (80 Stat. 263), and sections 101 and 103 of the Federal Tax Lien Act of 1966 (80 Stat. 1125 and 1133), such regulations are amended as set forth hereinafter. Section 301.6323(g)–1 of the regulations hereby adopted supersedes those provisions of §§ 400.1 and 400.1–1 of this chapter relating to section 101(a) of the Federal Tax Lien Act of 1966 which were prescribed by T.D. 6932, approved October 13, 1967 (32 F.R. 14385). Section 301.6325–1 hereby adopted supersedes those provisions of §§ 400.2 and 400.2–1 of this chapter relating to section 103(a) of such Act which were prescribed by T.D. 6944, approved January 17, 1968 (33 F.R. 732).

A. Part 1, Income Tax Regulations, of 26 CFR Chapter I, is amended as follows:

PARAGRAPH 1. Paragraph (i)(1) of § 1.545–2 is amended to read as follows:

§ 1.545–2 Adjustments to taxable income.

* * * * *

(i) *Amount of a lien in favor of the United States.* (1) If notices of lien are filed in the manner provided in section 6323(f), the amount of the liability to the United States outstanding at the close of the taxable year, and secured by such liens which are in effect at that time, shall be allowed as a deduction in computing undistributed personal holding company income. However, the amount

of such deduction which may be allowed for any taxable year shall not exceed the taxable income (as adjusted for purposes of determining the undistributed personal holding company income, but without regard to the deduction under section 545(b)(9)) for such year. The fact that the amount of, or any part of, the outstanding obligation to the United States was deducted for one taxable year does not prevent its deduction for a subsequent taxable year to the extent the obligation is still outstanding at the close of the subsequent taxable year and is secured by a lien, notice of which has been filed.

* * * * *

B. Part 20, Estate Tax Regulations, of 26 CFR Chapter I, is amended as follows:

PAR. 2. Section 20.6323 is amended by revising sections (a) through (e), by adding subsections (f) through (i), and by revising the historical note. These revised and added provisions read as follows:

§ 20.6323 Statutory provisions; validity and priority against certain persons.

SEC. 6323. *Validity and priority against certain persons*—(a) *Purchases, holders of security interests, mechanics's lienors, and judgment lien creditors.* The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary or his delegate.

(b) *Protection for certain interests even though notice filed.* Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid—

(1) *Securities.* With respect to a security (as defined in subsection (h)(4))—

(A) As against a purchaser of such security who at the time of purchase did not have actual notice or knowledge of the existence of such lien; and

(B) As against a holder of a security interest in such security who, at the time such interest came into existence, did not have actual notice or knowledge of the existence of such lien.

(2) *Motor vehicles.* With respect to a motor vehicle (as defined in subsection (h)(3)), as against a purchaser of such motor vehicle, if—

(A) At the time of the purchase such purchaser did not have actual notice or knowledge of the existence of such lien, and

(B) Before the purchaser obtains such notice or knowledge, he has acquired possession of such motor vehicle and has not thereafter relinquished possession of such motor vehicle to the seller or his agent.

(3) *Personal property purchased at retail.* With respect to tangible personal property purchased at retail, as against a purchaser in the ordinary course of the seller's trade or business, unless at the time of such purchase such purchaser intends such purchase to (or knows such purchase will) hinder, evade, or defeat the collection of any tax under this title.

(4) *Personal property purchased in casual sale.* With respect to household goods, personal effects, or other tangible personal property described in section 6334(a) purchased (not for resale) in a casual sale for less than $250, as against the purchaser, but only if such purchaser does not have actual notice or knowledge (A) of the existence of such lien, or (B) that this sale is one of a series of sales.

(5) *Personal property subject to possessory lien.* With respect to tangible personal property subject to a lien under local law securing the reasonable price of the repair or improvement of such property, as against a holder of such a lien, if such holder is, and has been, continuously in possession of such property from the time such lien arose.

(6) *Real property tax and special assessment liens.* With respect to real property, as against a holder of a lien upon such property, if such lien is entitled under local law to priority over security interests in such property which are prior in time, and such lien secures payment of—

(A) A tax of general application levied by any taxing authority based upon the value of such property;

(B) A special assessment imposed directly upon such property by any taxing authority, if such assessment is imposed for the purpose of defraying the cost of any public improvement; or

(C) Charges for utilities or public services furnished to such property by the United States, a State or political subdivision thereof, or an instrumentality of any one or more of the foregoing.

(7) *Residential property subject to a mechanic's lien for certain repairs and improvements.* With respect to real property subject to a lien for repair or improvement of a personal residence (containing not more than four dwelling units) occupied by the owner of such residence, as against a mechanic's lienor, but only if the contract price on the contract with the owner is not more than $1,000.

(8) *Attorneys' liens.* With respect to a judgment or other amount in settlement of a claim or of a cause of action, as against an attorney who, under local law, holds a lien upon or contract enforcible against such judgment or amount, to the extent of his reasonable compensation for obtaining such judgment or procuring such settlement, except that this paragraph shall not apply to any judgment or amount in settlement of a claim or of a cause of action against the United States to the extent that the United States offsets such judgment or amount against any liability of the taxpayer to the United States.

(9) *Certain insurance contracts.* With respect to a life insurance, endowment, or annuity contract, as against the organization which is the insurer under such contract, at any time—

(A) Before such organization had actual notice or knowledge of the existence of such lien;

(B) After such organization had such notice or knowledge, with respect to advances required to be made automatically to maintain such contract in force under an agreement entered into before such organization had such notice or knowledge; or

(C) After satisfaction of a levy pursuant to section 6332(b), unless and until the Secretary or his delegate delivers to such organization a notice, executed after the date of such satisfaction, of the existence of such lien.

(10) *Passbook loans.* With respect to a savings deposit, share, or other account, evidenced by a passbook, with an institution described in section 581 or 591, to the extent of any loan made by such institution without actual notice or knowledge of the existence of such lien, as against such institution, if such loan is secured by such account and if such institution has been continuously in possession of such passbook from the time the loan is made.

(c) *Protection for certain commercial transactions financing agreements, etc.*—(1) *In general.* To the extent provided in this subsection, even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing but which—

(A) Is in qualified property covered by the terms of a written agreement entered into before tax lien filing and constituting—

(i) A commercial transactions financing agreement,

(ii) A real property construction or improvement financing agreement, or

(iii) An obligatory disbursement agreement, and

(B) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

(2) *Commercial transactions financing agreement.* For purposes of this subsection—

(A) *Definition.* The term "commercial transactions financing agreement" means an agreement (entered into by a person in the course of his trade or business)—

(i) To make loans to the taxpayer to be secured by commercial financing security acquired by the taxpayer in the ordinary course of his trade or business, or

(ii) To purchase commercial financing security (other than inventory) acquired by the taxpayer in the ordinary course of his trade or business;

but such an agreement shall be treated as coming within the term only to the extent that such loan or purchase is made before the 46th day after the date of tax lien filing or (if earlier) before the lender or purchaser had actual notice or knowledge of such tax lien filing.

(B) *Limitation on qualified property.* The term "qualified property", when used with respect to a commercial transactions financing agreement, includes only commercial financing security acquired by the taxpayer before the 46th day after the date of tax lien filing.

(C) *Commercial financing security defined.* The term "commercial financing security" means (i) paper of a kind ordinarily arising in commercial transactions, (ii) accounts receivable, (iii) mortgages on real property, and (iv) inventory.

(D) *Purchaser treated as acquiring security interest.* A person who satisfies subparagraph (A) by reason of clause (ii) thereof shall be treated as having acquired a security interest in commercial financing security.

(3) *Real property construction or improvement financing agreement.* For purposes of this subsection—

(A) *Definition.* The term "real property construction or improvement financing agreement" means an agreement to make cash disbursements to finance—

(i) The construction or improvement of real property,

(ii) A contract to construct or improve real property, or

(iii) The raising or harvesting of a farm crop or the raising of livestock or other animals.

For purposes of clause (iii), the furnishing of goods and services shall be treated as the disbursement of cash.

(B) *Limitation on qualified property.* The term "qualified property", when used with respect to a real property construction or improvement financing agreement, includes only—

(i) In the case of subparagraph (A)(i), the real property with respect to which the construction or improvement has been or is to be made,

(ii) In the case of subparagraph (A)(ii), the proceeds of the contract described therein, and

(iii) In the case of subparagraph (A)(iii), property subject to the lien imposed by section 6321 at the time of tax lien filing and

the crop or the livestock or other animals referred to in subparagraph (A)(iii).

(4) *Obligatory disbursement agreement.* For purposes of this subsection—

(A) *Definition.* The term "obligatory disbursement agreement" means an agreement (entered into by a person in the course of his trade or business) to make disbursements, but such an agreement shall be treated as coming within the term only to the extent of disbursements which are required to be made by reason of the intervention of the rights of a person other than the taxpayer.

(B) *Limitation on qualified property.* The term "qualified property", when used with respect to an obligatory disbursement agreement, means property subject to the lien imposed by section 6321 at the time of tax lien filing and (to the extent that the acquisition is directly traceable to the disbursements referred to in subparagraph (A)) property acquired by the taxpayer after tax lien filing.

(C) *Special rules for surety agreements.* Where the obligatory disbursement agreement is an agreement insuring the performance of a contract between the taxpayer and another person—

(i) The term "qualified property" shall be treated as also including the proceeds of the contract the performance of which was insured, and

(ii) If the contract the performance of which was insured was a contract to construct or improve real property, to produce goods, or to furnish services, the term "qualified property" shall be treated as also including any tangible personal property used by the taxpayer in the performance of such insured contract.

(d) *45-day period for making disbursements.* Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing by reason of disbursements made before the 46th day after the date of tax lien filing, or (if earlier) before the person making such disbursements had actual notice or knowledge of tax lien filing, but only if such security interest—

(1) Is in property (A) subject, at the time of tax lien filing, to the lien imposed by section 6321, and (B) covered by the terms of a written agreement entered into before tax lien filing, and

(2) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

(e) *Priority of interest and expenses.* If the lien imposed by section 6321 is not valid as against a lien or security interest, the priority of such lien or security interest shall extend to—

(1) Any interest or carrying charges upon the obligation secured,

(2) The reasonable charges and expenses of an indenture trustee or agent holding the security interest for the benefit of the holder of the security interest,

(3) The reasonable expenses, including reasonable compensation for attorneys, actually incurred in collecting or enforcing the obligation secured,

(4) The reasonable costs of insuring, preserving, or repairing the property to which the lien or security interest relates,

(5) The reasonable costs of insuring payment of the obligation secured, and

(6) Amounts paid to satisfy any lien on the property to which the lien or security interest relates, but only if the lien so satisfied is entitled to priority over the lien imposed by section 6321,

to the extent that, under local law, any such item has the same priority as the lien or security interest to which it relates.

(f) *Place for filing notice; form*—(1) *Place for filing.* The notice referred to in subsection (a) shall be filed—

(A) *Under State laws*—(i) *Real property.* In the case of real property, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; and

(ii) *Personal property.* In the case of personal property, whether tangible or intangible, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; or

(B) *With clerk of district court.* In the office of the clerk of the U.S. district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law designated one office which meets the requirements of subparagraph (A); or

(C) *With recorder of deeds of the District of Columbia.* In the office of the Recorder of Deeds of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(2) *Situs of property subject to lien.* For purposes of paragraph (1), property shall be deemed to be situated—

(A) *Real property.* In the case of real property, at its physical location; or

(B) *Personal property.* In the case of personal property, whether tangible or intangible, at the residence of the taxpayer at the time the notice of lien is filed.

For purposes of paragraph (2)(B), the residence of a corporation or partnership shall be deemed to be the place at which the principal executive office of the business is located, and the residence of a taxpayer whose residence is without the United States shall be deemed to be in the District of Columbia.

(3) *Form.* The form and content of the notice referred to in subsection (a) shall be prescribed by the Secretary or his delegate. Such notice shall be valid notwithstanding any other provision of law regarding the form or content of a notice of lien.

(g) *Refiling of notice.* For purposes of this section—

(1) *General rule.* Unless notice of lien is refiled in the manner prescribed in paragraph (2) during the required refiling period, such notice of lien shall be treated as filed on the date on which it is filed (in accordance with subsection (f)) after the expiration of such refiling period.

(2) *Place for filing.* A notice of lien refiled during the required refiling period shall be effective only—

(A) If such notice of lien is refiled in the office in which the prior notice of lien was filed; and

(B) In any case in which, 90 days or more prior to the date of a refiling of notice of lien under subparagraph (A), the Secretary or his delegate received written information (in the manner prescribed in regulations issued by the Secretary or his delegate) concerning a change in the taxpayer's residence, if a notice of such lien is also filed in accordance with subsection (f) in the State in which such residence is located.

(3) *Required refiling period.* In the case of any notice of lien, the term "required refiling period" means—

(A) The 1-year period ending 30 days after the expiration of 6 years after the date of the assessment of the tax, and

(B) The 1-year period ending with the expiration of 6 years after the close of the preceding required refiling period for such notice of lien.

(4) *Transitional rule.* Notwithstanding paragraph (3), if the assessment of the tax was made before January 1, 1962, the first required refiling period shall be the calendar year 1967.

(h) *Definitions.* For purposes of this section and section 6324—

(1) *Security interest.* The term "security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time (A) if, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien arising out of an unsecured obligation, and (B) to the extent that, at such time, the holder has parted with money or money's worth.

(2) *Mechanic's lienor.* The term "mechanic's lienor" means any person who under local law has a lien on real property (or on the proceeds of a contract relating to real property) for services, labor, or materials furnished in connection with the construction or improvement of such property. For purposes of the preceding sentence, a person has a lien on the earliest date such lien becomes valid under local law against subsequent purchasers without actual notice, but not before he begins to furnish the services, labor, or materials.

(3) *Motor vehicle.* The term "motor vehicle" means a self-propelled vehicle which is registered for highway use under the laws of any State or foreign country.

(4) *Security.* The term "security" means any bond, debenture, note, or certificate, or other evidence of indebtedness, issued by a corporation or a government or political subdivision thereof, with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(5) *Tax lien filing.* The term "tax lien filing" means the filing of notice (referred to in subsection (a)) of the lien imposed by section 6321.

(6) *Purchaser.* The term "purchaser" means a person who, for adequate and full consideration in money or money's worth, acquires an interest (other than a lien or security interest) in property which is valid under local law against subsequent purchasers without actual notice. In applying the preceding sentence for purposes of subsection (a) of this section, and for purposes of section 6324—

(A) A lease of property,

(B) A written executory contract to purchase or lease property,

(C) An option to purchase or lease property or any interest therein, or

(D) An option to renew or extend a lease of property,

which is not a lien or security interest shall be treated as an interest in property.

(i) *Special rules*—(1) *Actual notice or knowledge.* For purposes of this subchapter, an organization shall be deemed for purposes of a particular transaction to have actual notice or knowledge of any fact from the time such fact is brought to the attention of the individual conducting such transaction, and in any event from the time such fact would have been brought to such individual's

attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routine. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(2) *Subrogation.* Where, under local law, one person is subrogated to the rights of another with respect to a lien or interest, such person shall be subrogated to such rights for purposes of any lien imposed by section 6321 or 6324.

(3) *Disclosure of amount of outstanding lien.* If a notice of lien has been filed pursuant to subsection (f), the Secretary or his delegate is authorized to provide by regulations the extent to which, and the conditions under which, information as to the amount of the outstanding obligation secured by the lien may be disclosed.

[Sec. 6323 as amended by sec. 236 (a) and (c)(1), Rev. Act 1964 (78 Stat. 127); sec. 17(a), Act of July 5, 1966 (Public Law 89-493, 80 Stat. 263); sec. 101(a), Federal Tax Lien Act 1966 (80 Stat. 1125)]

PAR. 3. Section 20.6323-1 is amended to read as follows:

§ 20.6323-1 Validity and priority against certain persons.

For regulations concerning the validity of the lien imposed by section 6321 against certain persons, see §§ 301.6323 (a)-1 through 301.6323 (i)-1 of this chapter (Regulations on Procedure and Administration).

PAR. 4. Section 20.6325 is amended by revising subsections (a) through (e), by adding subsections (f) through (h), and by revising the historical note. These revised and added provisions read as follows:

§ 20.6325 Statutory provisions; release of lien or discharge of property.

Sec. 6325. *Release of lien or discharge of property*—(a) *Release of lien.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of release of any lien imposed with respect to any internal revenue tax if—

(1) *Liability satisfied or unenforceable.* The Secretary or his delegate finds that the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied or has become legally unenforceable; or

(2) *Bond accepted.* There is furnished to the Secretary or his delegate and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified by such regulations.

(b) *Discharge of property*—(1) *Property double the amount of the liability.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to any lien imposed under this chapter if the Secretary or his delegate finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the unsatisfied liability secured by such lien and the amount of all other liens upon such property which have priority over such lien.

(2) *Part payment; interest of United States valueless.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if—

(A) There is paid over to the Secretary or his delegate in partial satisfaction of the liability secured by the lien an amount determined by the Secretary or his delegate, which shall not be less than the value, as determined by the Secretary or his delegate, of the interest of the United States in the part to be so discharged, or

(B) The Secretary or his delegate determines at any time that the interest of the United States in the part to be so discharged has no value.

In determining the value of the interest of the United States in the part to be so discharged, the Secretary or his delegate shall give consideration to the value of such part and to such liens thereon as have priority over the lien of the United States.

(3) *Substitution of proceeds of sale.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if such part of the property is sold and, pursuant to an agreement with the Secretary or his delegate, the proceeds of such sale are to be held, as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the discharged property.

(c) *Estate or gift tax.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any or all of the property subject to any lien imposed by section 6324 if the Secretary or his delegate finds that the liability secured by such lien has been fully satisfied or provided for.

(d) *Subordination of lien.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of subordination of any lien imposed by this chapter upon any part of the property subject to such lien if—

(1) There is paid over to the Secretary or his delegate an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the United States, or

(2) The Secretary or his delegate believes that the amount realizable by the United States from the property to which the certificate relates, or from any other property subject to the lien, will ultimately be increased by reason of the issuance of such certificate and that the ultimate collection of the tax liability will be facilitated by such subordination.

(e) *Nonattachment of lien.* If the Secretary or his delegate determines that, because of confusion of names or otherwise, any person (other than the person against whom the tax was assessed) is or may be injured by the appearance that a notice of lien filed under section 6323 refers to such person, the Secretary or his delegate may issue a certificate that the lien does not attach to the property of such person.

(f) *Effect of certificate*—(1) *Conclusiveness.* Except as provided in paragraphs (2) and (3), if a certificate is issued pursuant to this section by the Secretary or his delegate and is filed in the same office as the notice of lien to which it relates (if such notice of lien has been filed) such certificate shall have the following effect:

(A) In the case of a certificate of release, such certificate shall be conclusive that the lien referred to in such certificate is extinguished;

(B) In the case of a certificate of discharge, such certificate shall be conclusive that the property covered by such certificate is discharged from the lien;

(C) In the case of a certificate of subordination, such certificate shall be conclusive that the lien or interest to which the lien of the United States is subordinated is superior to the lien of the United States; and

(D) In the case of a certificate of nonattachment, such certificate shall be conclusive that the lien of the United States does not attach to the property of the person referred to in such certificate.

(2) *Revocation of certificate of release or nonattachment.* If the Secretary or his delegate determines that a certificate of release or nonattachment of a lien imposed by section 6321 was issued erroneously or improvidently, or if a certificate of release of such lien was issued pursuant to a collateral agreement entered into in connection with a compromise under section 7122 which has been breached, and if the period of limitation on collection after assessment has not expired, the Secretary or his delegate may revoke such certificate and reinstate the lien—

(A) By mailing notice of such revocation to the person against whom the tax was assessed at his last known address, and

(B) By filing notice of such revocation in the same office in which the notice of lien to which it relates was filed (if such notice of lien had been filed).

Such reinstated lien (i) shall be effective on the date notice of revocation is mailed to the taxpayer in accordance with the provisions of subparagraph (A), but not earlier than the date on which any required filing of notice of revocation is filed in accordance with the provisions of subparagraph (B), and (ii) shall have the same force and effect (as of such date), until the expiration of the period of limitation on collection after assessment, as a lien imposed by section 6321 (relating to lien for taxes).

(3) *Certificates void under certain conditions.* Notwithstanding any other provision of this subtitle, any lien imposed by this chapter shall attach to any property with respect to which a certificate of discharge has been issued if the person liable for the tax reacquires such property after such certificate has been issued.

(g) *Filing of certificates and notices.* If a certificate or notice issued pursuant to this section may not be filed in the office designated by State law in which the notice of lien imposed by section 6321 is filed, such certificate or notice shall be effective if filed in the office of the clerk of the United States district court for the judicial district in which such office is situated.

(h) *Cross reference.* For provisions relating to bonds, see chapter 73 (sec. 7101 and following).

[Sec. 6325 as amended by sec. 77, Technical Amendments Act 1958 (72 Stat. 1662); sec. 103, Federal Tax Lien Act 1966 (80 Stat. 1133)]

C. Part 25, Gift Tax Regulations, of 26 CFR Chapter I is amended as follows:

PAR. 5. Section 25.6323 is amended by revising subsections (a) through (e), by adding subsections (f) through (i), and by revising the historical note. These re-

vised and amended provisions read as follows:

§ 25.6323 Statutory provisions; validity and priority against certain persons.

SEC. 6323. *Validity and priority against certain persons*—(a) *Purchases, holders of security interests, mechanic's lienors, and judgment lien creditors.* The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary or his delegate.

(b) *Protection for certain interests even though notice filed.* Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid—

(1) *Securities.* With respect to a security (as defined in subsection (h)(4))—

(A) As against a purchaser of such security who at the time of purchase did not have actual notice or knowledge of the existence of such lien; and

(B) As against a holder of a security interest in such security who, at the time such interest came into existence, did not have actual notice or knowledge of the existence of such lien.

(2) *Motor vehicles.* With respect to a motor vehicle (as defined in subsection (h)(3)), as against a purchaser of such motor vehicle, if—

(A) At the time of the purchase such purchaser did not have actual notice or knowledge of the existence of such lien, and

(B) Before the purchaser obtains such notice or knowledge, he has acquired possession of such motor vehicle and has not thereafter relinquished possession of such motor vehicle to the seller or his agent.

(3) *Personal property purchased at retail.* With respect to tangible personal property purchased at retail, as against a purchaser in the ordinary course of the seller's trade or business, unless at the time of such purchase such purchaser intends such purchase to (or knows such purchase will) hinder, evade, or defeat the collection of any tax under this title.

(4) *Personal property purchased in casual sale.* With respect to household goods, personal effects, or other tangible personal property described in section 6334(a) purchased (not for resale) in a casual sale for less than $250, as against the purchaser, but only if such purchaser does not have actual notice or knowledge (A) of the existence of such lien, or (B) that this sale is one of a series of sales.

(5) *Personal property subject to possessory lien.* With respect to tangible personal property subject to a lien under local law securing the reasonable price of the repair or improvement of such property, as against a holder of such a lien, if such holder is, and has been, continuously in possession of such property from the time such lien arose.

(6) *Real property tax and special assessment liens.* With respect to real property, as against a holder of a lien upon such property, if such lien is entitled under local law to priority over security interests in such property which are prior in time, and such lien secures payment of—

(A) A tax of general application levied by any taxing authority based upon the value of such property;

(B) A special assessment imposed directly upon such property by any taxing authority, if such assessment is imposed for the purpose of defraying the cost of any public improvement; or

(C) Charges for utilities or public services furnished to such property by the United States, a State or political subdivision thereof, or an instrumentality of any one or more of the foregoing.

(7) *Residential property subject to a mechanic's lien for certain repairs and improvements.* With respect to real property subject to a lien for repair or improvement of a personal residence (containing not more than four dwelling units) occupied by the owner of such residence, as against a mechanic's lienor, but only if the contract price on the contract with the owner is not more than $1,000.

(8) *Attorneys' liens.* With respect to a judgment or other amount in settlement of a claim or of a cause of action, as against an attorney who, under local law, holds a lien upon or a contract enforcible against such judgment or amount, to the extent of his reasonable compensation for obtaining such judgment or procuring such settlement, except that this paragraph shall not apply to any judgment or amount in settlement of a claim or of a cause of action against the United States to the extent that the United States offsets such judgment or amount against any liability of the taxpayer to the United States.

(9) *Certain insurance contracts.* With respect to a life insurance, endowment, or annuity contract, as against the organization which is the insurer under such contract, at any time—

(A) Before such organization had actual notice or knowledge of the existence of such lien;

(B) After such organization had such notice or knowledge, with respect to advances required to be made automatically to maintain such contract in force under an agreement entered into before such organization had such notice or knowledge; or

(C) After satisfaction of a levy pursuant to section 6332(b), unless and until the Secretary or his delegate delivers to such organization a notice, executed after the date of such satisfaction, of the existence of such lien.

(10) *Passbook loans.* With respect to a savings deposit, share, or other account, evidenced by a passbook, with an institution described in section 581 or 591, to the extent of any loan made by such institution without actual notice or knowledge of the existence of such lien, as against such institution, if such loan is secured by such account and if such institution has been continuously in possession of such passbook from the time the loan is made.

(c) *Protection for certain commercial transactions financing agreements, etc.*—(1) *In general.* To the extent provided in this subsection, even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing but which—

(A) Is in qualified property covered by the terms of a written agreement entered into before tax lien filing and constituting—

(i) A commercial transactions financing agreement,

(ii) A real property construction or improvement financing agreement, or

(iii) An obligatory disbursement agreement, and

(B) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

(2) *Commercial transactions financing agreement.* For purposes of this subsection—

(A) *Definition.* The term "commercial transactions financing agreement" means an agreement (entered into by a person in the course of his trade or business)—

(i) To make loans to the taxpayer to be secured by commercial financing security acquired by the taxpayer in the ordinary course of his trade or business, or

(ii) To purchase commercial financing security (other than inventory) acquired by the taxpayer in the ordinary course of his trade or business;

but such an agreement shall be treated as coming within the term only to the extent that such loan or purchase is made before the 46th day after the date of tax lien filing or (if earlier) before the lender or purchaser had actual notice or knowledge of such tax lien filing.

(B) *Limitation on qualified property.* The term "qualified property," when used with respect to a commercial transactions financing agreement, includes only commercial financing security acquired by the taxpayer before the 46th day after the date of tax lien filing.

(C) *Commercial financing security defined.* The term "commercial financing security" means (i) paper of a kind ordinarily arising in commercial transactions, (ii) accounts receivable, (iii) mortgages on real property, and (iv) inventory.

(D) *Purchaser treated as acquiring security interest.* A person who satisfies subparagraph (A) by reason of clause (ii) thereof shall be treated as having acquired a security interest in commercial financing security.

(3) *Real property construction or improvement financing agreement.* For purposes of this subsection—

(A) *Definition.* The term "real property construction or improvement financing agreement" means an agreement to make cash disbursements to finance—

(i) The construction or improvement of real property,

(ii) A contract to construct or improve real property, or

(iii) The raising or harvesting of a farm crop or the raising of livestock or other animals.

For purposes of clause (iii), the furnishing of goods and services shall be treated as the disbursement of cash.

(B) *Limitation on qualified property.* The term "qualified property," when used with respect to a real property construction or improvement financing agreement, includes only—

(i) In the case of subparagraph (A)(i), the real property with respect to which the construction or improvement has been or is to be made,

(ii) In the case of subparagraph (A)(ii), the proceeds of the contract described therein, and

(iii) In the case of subparagraph (A)(iii), property subject to the lien imposed by section 6321 at the time of tax lien filing and the crop or the livestock or other animals referred to in subparagraph (A)(iii).

(4) *Obligatory disbursement agreement.* For purposes of this subsection—

(A) *Definition.* The term "obligatory disbursement agreement" means an agreement (entered into by a person in the course of his trade or business) to make disbursements, but such an agreement shall be treated as coming within the term only to the extent of disbursements which are required to be made by reason of the intervention of the rights of a person other than the taxpayer.

(B) *Limitation on qualified property.* The term "qualified property," when used with respect to an obligatory disbursement agreement, means property subject to the lien imposed by section 6321 at the time of tax lien filing and (to the extent that the acquisition

is directly traceable to the disbursements referred to in subparagraph (A)) property acquired by the taxpayer after tax lien filing.

(C) *Special rules for surety agreements.* Where the obligatory disbursement agreement is an agreement insuring the performance of a contract between the taxpayer and another person—

(i) The term "qualified property" shall be treated as also including the proceeds of the contract the performance of which was insured, and

(ii) If the contract the performance of which was insured was a contract to construct or improve real property, to produce goods, or to furnish services, the term "qualified property" shall be treated as also including any tangible personal property used by the taxpayer in the performance of such insured contract.

(d) *Forty-five-day period for making disbursements.* Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing by reason of disbursements made before the 46th day after the date of tax lien filing, or (if earlier) before the person making such disbursements had actual notice or knowledge of tax lien filing, but only if such security interest—

(1) Is in property (A) subject, at the time of tax lien filing, to the lien imposed by section 6321, and (B) covered by the terms of a written agreement entered into before tax lien filing, and

(2) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

(e) *Priority of interest and expenses.* If the lien imposed by section 6321 is not valid as against a lien or security interest, the priority of such lien or security interest shall extend to—

(1) Any interest or carrying charges upon the obligation secured,

(2) The reasonable charges and expenses of an indenture trustee or agent holding the security interest for the benefit of the holder of the security interest,

(3) The reasonable expenses, including reasonable compensation for attorneys, actually incurred in collecting or enforcing the obligation secured,

(4) The reasonable costs of insuring, preserving, or repairing the property to which the lien or security interest relates,

(5) The reasonable costs of insuring payment of the obligations secured, and

(6) Amounts paid to satisfy any lien on the property to which the lien or security interest relates, but only if the lien so satisfied is entitled to priority over the lien imposed by section 6321,

to the extent that, under local law, any such item has the same priority as the lien or security interest to which it relates.

(f) *Place for filing notice; form*—(1) *Place for filing.* The notice referred to in subsection (a) shall be filed—

(A) *Under State laws*—(i) *Real property.* In the case of real property, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; and

(ii) *Personal property.* In the case of personal property, whether tangible or intangible, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; or

(B) *With clerk of district court.* In the office of the clerk of the U.S. district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law designated one office which meets the requirements of subparagraph (A); or

(C) *With recorder of deeds of the District of Columbia.* In the office of the Recorder of Deeds of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(2) *Situs of property subject to lien.* For purposes of paragraph (1), property shall be deemed to be situated—

(A) *Real property.* In the case of real property, at its physical location; or

(B) *Personal property.* In the case of personal property, whether tangible or intangible, at the residence of the taxpayer at the time the notice of lien is filed.

For purposes of paragraph (2)(B), the residence of a corporation or partnership shall be deemed to be the place at which the principal executive office of the business is located, and the residence of a taxpayer whose residence is without the United States shall be deemed to be in the District of Columbia.

(3) *Form.* The form and content of the notice referred to in subsection (a) shall be prescribed by the Secretary or his delegate. Such notice shall be valid notwithstanding any other provision of law regarding the form or content of a notice of lien.

(g) *Refiling of notice.* For purposes of this section—

(1) *General rule.* Unless notice of lien is refiled in the manner prescribed in paragraph (2) during the required refiling period, such notice of lien shall be treated as filed on the date on which it is filed (in accordance with subsection (f)) after the expiration of such refiling period.

(2) *Place for filing.* A notice of lien refiled during the required refiling period shall be effective only—

(A) If such notice of lien is refiled in the office in which the prior notice of lien was filed; and

(B) In any case in which, 90 days or more prior to the date of a refiling of notice of lien under subparagraph (A), the Secretary or his delegate received written information (in the manner prescribed in regulations issued by the Secretary or his delegate) concerning a change in the taxpayer's residence, if a notice of such lien is also filed in accordance with subsection (f) in the State in which such residence is located.

(3) *Required refiling period.* In the case of any notice of lien, the term "required refiling period" means—

(A) The 1-year period ending 30 days after the expiration of 6 years after the date of the assessment of the tax, and

(B) The 1-year period ending with the expiration of 6 years after the close of the preceding required refiling period for such notice of lien.

(4) *Transitional rule.* Notwithstanding paragraph (3), if the assessment of the tax was made before January 1, 1962, the first required refiling period shall be the calendar year 1967.

(h) *Definitions.* For purposes of this section and section 6324—

(1) *Security interest.* The term "security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time (A) if, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien arising out of an unsecured obligation, and (B) to the extent that, at such time, the holder has parted with money or money's worth.

(2) *Mechanic's lienor.* The term "mechanic's lienor" means any person who under local law has a lien on real property (or on tl proceeds of a contract relating to real property) for services, labor, or materials furnished in connection with the construction or improvement of such property. For purposes of the preceding sentence, a person has a lien on the earliest date such lien becomes valid under local law against subsequent purchasers without actual notice, but not before he begins to furnish the services, labor, or materials.

(3) *Motor vehicle.* The term "motor vehicle" means a self-propelled vehicle which is registered for highway use under the laws of any State or foreign country.

(4) *Security.* The term "security" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by a corporation or a government or political subdivision thereof, with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(5) *Tax lien filing.* The term "tax lien filing" means the filing of notice (referred to in subsection (a)) of the lien imposed by section 6321.

(6) *Purchaser.* The term "purchaser" means a person who, for adequate and full consideration in money or money's worth, acquires an interest (other than a lien or security interest) in property which is valid under local law against subsequent purchasers without actual notice. In applying the preceding sentence for purposes of subsection (a) of this section, and for purposes of section 6324—

(A) A lease of property,

(B) A written executory contract to purchase or lease property,

(C) An option to purchase or lease property or any interest therein, or

(D) An option to renew or extend a lease of property,

which is not a lien or security interest shall be treated as an interest in property.

(i) *Special rules*—(1) *Actual notice or knowledge.* For purposes of this subchapter, an organization shall be deemed for purposes of a particular transaction to have actual notice or knowledge of any fact from the time such fact is brought to the attention of the individual conducting such transaction, and in any event from the time such fact would have been brought to such individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routine. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(2) *Subrogation.* Where, under local law, one person is subrogated to the rights of another with respect to a lien or interest, such person shall be subrogated to such rights for purposes of any lien imposed by section 6321 or 6324.

(3) *Disclosure of amount of outstanding lien.* If a notice of lien has been filed pursuant to subsection (f), the Secretary or his delegate is authorized to provide by regulations the extent to which, and the conditions under which, information as to the amount of the outstanding obligation secured by the lien may be disclosed.

[Sec. 6323 as amended by sec. 236 (a) and (c)(1), Rev. Act 1964 (78 Stat. 127); sec. 17(a), Act of July 5, 1966 (Public Law 89-493, 80 Stat. 263); sec. 101(a), Federal Tax Lien Act 1966 (80 Stat. 1125)]

PAR. 6. Section 25.6323-1 is amended to read as follows:

§ 25.6323-1 Validity and priority against certain persons.

For regulations concerning the validity of the lien imposed by section 6321 against certain persons, see §§ 301.6323(a)-1 through 301.6323(i)-1 of this chapter (Regulations on Procedure and Administration).

D. Part 301, Regulations on Procedure and Administration, of 26 CFR Chapter I is amended as follows:

PAR 7. Sections 301.6323 and 301.6323-1 are deleted, and immediately following § 301.6322, there are added the following new sections:

§ 301.6323(a) Statutory provisions; validity and priority against certain persons; purchasers, holders of security interests, mechanic's lienors, judgment lien creditors.

SEC. 6323. *Validity and priority against certain persons*—(a) *Purchasers, holders of security interests, mechanic's lienors, and judgment lien creditors.* The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary or his delegate.

[Sec. 6323(a) as amended by sec. 236(c)(1), Rev. Act 1964 (78 Stat. 127); sec. 17(a), Act of July 5, 1966 (Public Law 89-493, 80 Stat. 263); sec. 101(a), Federal Tax Lien Act 1966 (80 Stat. 1125)]

§ 301.6323(a)-1 Purchasers, holders of security interests, mechanic's lienors, and judgment lien creditors.

(a) *Invalidity of lien without notice.* The lien imposed by section 6321 is not valid against any purchaser (as defined in paragraph (f) of § 301.6323(h)-1), holder of a security interest (as defined in paragraph (a) of § 301.6323(h)-1), mechanic's lienor (as defined in paragraph (b) of § 301.6323(h)-1), or judgment lien creditor (as defined in paragraph (g) of § 301.6323(h)-1) until a notice of lien is filed in accordance with § 301.6323(f)-1. Except as provided by section 6323, if a person becomes a purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor after a notice of lien is filed in accordance with § 301.6323(f)-1, the interest acquired by such person is subject to the lien imposed by section 6321.

(b) *Cross references.* For provisions relating to the protection afforded a security interest arising after tax lien filing, which interest is covered by a commercial transactions financing agreement, real property construction or improvement financing agreement, or an obligatory disbursement agreement, see §§ 301.6323(c)-1, 301.6323(c)-2, and 301.6323(c)-3, respectively. For provisions relating to the protection afforded to a security interest coming into existence by virtue of disbursements made before the 46th day after the date of tax lien filing, see § 301.6323(d)-1. For provisions relating to priority afforded to interest and certain other expenses with respect to a lien or security interest having priority over the lien imposed by section 6321, see § 301.6323(e)-1. For provisions relating to certain other interests arising after tax lien filing, see § 301.6323(b)-1.

§ 301.6323(b) Statutory provisions; validity and priority against certain persons; protection for certain interests even though notice filed.

SEC. 6323. *Validity and priority against certain persons.* * * *

(b) *Protection for certain interests even though notice filed.* Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid—

(1) *Securities.* With respect to a security (as defined in subsection (h)(4))—

(A) As against a purchaser of such security who at the time of purchase did not have actual notice or knowledge of the existence of such lien; and

(B) As against a holder of a security interest in such security who, at the time such interest came into existence, did not have actual notice or knowledge of the existence of such lien.

(2) *Motor vehicles.* With respect to a motor vehicle (as defined in subsection (h)(3)), as against a purchaser of such motor vehicle, if—

(A) At the time of the purchase such purchaser did not have actual notice or knowledge of the existence of such lien, and

(B) Before the purchaser obtains such notice or knowledge, he has acquired possession of such motor vehicle and has not thereafter relinquished possession of such motor vehicle to the seller or his agent.

(3) *Personal property purchased at retail.* With respect to tangible personal property purchased at retail, as against a purchaser in the ordinary course of the seller's trade or business, unless at the time of such purchase such purchaser intends such purchase to (or knows such purchase will) hinder, evade, or defeat the collection of any tax under this title.

(4) *Personal property purchased in casual sale.* With respect to household goods, personal effects, or other tangible personal property described in section 6334(a) purchased (not for resale) in a casual sale for less than $250, as against the purchaser, but only if such purchaser does not have actual notice or knowledge (A) of the existence of such lien, or (B) that this sale is one of a series of sales.

(5) *Personal property subject to possessory lien.* With respect to tangible personal property subject to a lien under local law securing the reasonable price of the repair or improvement of such property, as against a holder of such a lien, if such holder is, and has been, continuously in possession of such property from the time such lien arose.

(6) *Real property tax and special assessment liens.* With respect to real property, as against a holder of a lien upon such property, if such lien is entitled under local law to priority over security interests in such property which are prior in time, and such lien secures payment of—

(A) A tax of general application levied by any taxing authority based upon the value of such property;

(B) A special assessment imposed directly upon such property by any taxing authority, if such assessment is imposed for the purpose of defraying the cost of any public improvement; or

(C) Charges for utilities or public services furnished to such property by the United States, a State or political subdivision thereof, or an instrumentality of any one or more of the foregoing.

(7) *Residential property subject to a mechanic's lien for certain repairs and improvements.* With respect to real property subject to a lien for repair or improvement of a personal residence (containing not more than four dwelling units) occupied by the owner of such residence, as against a mechanic's lienor, but only if the contract price on the contract with the owner is not more than $1,000.

(8) *Attorneys' liens.* With respect to a judgment or other amount in settlement of a claim or of a cause of action, as against an attorney who, under local law, holds a lien upon or a contract enforcible against such judgment or amount, to the extent of his reasonable compensation for obtaining such judgment or procuring such settlement, except that this paragraph shall not apply to any judgment or amount in settlement of a claim or of a cause of action against the United States to the extent that the United States offsets such judgment or amount against any liability of the taxpayer to the United States.

(9) *Certain insurance contracts.* With respect to a life insurance, endowment, or annuity contract, as against the organization which is the insurer under such contract, at any time—

(A) Before such organization had actual notice or knowledge of the existence of such lien;

(B) After such organization had such notice or knowledge, with respect to advances required to be made automatically to maintain such contract in force under an agreement entered into before such organization had such notice or knowledge; or

(C) After satisfaction of a levy pursuant to section 6332(b), unless and until the Secretary or his delegate delivers to such organization a notice, executed after the date of such satisfaction, of the existence of such lien.

(10) *Passbook loans.* With respect to a savings deposit, share, or other account, evidenced by a passbook, with an institution described in section 581 or 591, to the extent of any loan made by such institution without actual notice or knowledge of the existence of such lien, as against such institution, if such loan is secured by such account and if such institution has been continuously in possession of such passbook from the time the loan is made.

[Sec. 6323(b) as amended by sec. 101(a), Federal Tax Lien Act 1966 (80 Stat. 1125)]

§ 301.6323(b)-1 Protection for certain interests even though notice filed.

(a) *Securities*—(1) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)-1, the lien is not valid with respect to a security (as defined in paragraph (d) of § 301.6323(h)-1) against—

(i) A purchaser (as defined in paragraph (f) of § 301.6323(h)-1) of the security who at the time of purchase did not have actual notice or knowledge (as defined in paragraph (a) of § 301.6323(i)-1) of the existence of the lien;

(ii) A holder of a security interest (as defined in paragraph (a) of § 301.6323(h)-1) in the security who did not have

actual notice or knowledge (as defined in paragraph (a) of § 301.6323(i)–1) of the existence of the lien at the time the security interest came into existence or at the time such security interest was acquired from a previous holder for a consideration in money or money's worth; or

(iii) A transferee of an interest protected under subdivision (i) or (ii) of this subparagraph to the same extent the lien is invalid against his transferor.

For purposes of subdivision (iii) of this subparagraph, no person can improve his position with respect to the lien by reacquiring the interest from an intervening purchaser or holder of a security interest against whom the lien is invalid.

(2) *Examples.* The application of this paragraph may be illustrated by the following examples:

Example (1). On May 1, 1969, in accordance with § 301.6323(f)–1, a notice of lien is filed with respect to A's delinquent tax liability. On May 20, 1969, A sells 100 shares of common stock in X corporation to B, who, on the date of the sale, does not have actual notice or knowledge of the existence of the lien. Because B purchased the stock without actual notice or knowledge of the lien, under subdivision (i) of subparagraph (1) of this paragraph, the stock purchased by B is not subject to the lien.

Example (2). Assume the same facts as in example (1) except that on May 30, 1969, B sells the 100 shares of common stock in X corporation to C who on May 5, 1969, had actual notice of the existence of the tax lien against A. Because the X stock when purchased by B was not subject to the lien, under subdivision (iii) of subparagraph (1) of this paragraph, the stock purchased by C is not subject to the lien. C succeeds to B's rights, even though C had actual notice of the lien before B's purchase.

Example (3). On June 1, 1970, in accordance with § 301.6323(f)–1, a notice of lien is filed with respect to D's delinquent tax liability. D owns 20 $1,000 bonds issued by the Y company. On June 10, 1970, D obtains a loan from M bank for $5,000 using the Y company bonds as collateral. At the time the loan is made M bank does not have actual notice or knowledge of the existence of the tax lien. Because M bank did not have actual notice or knowledge of the lien when the security interest came into existence, under subdivision (ii) of subparagraph (1) of this paragraph, the tax lien is not valid against M bank to the extent of its security interest.

Example (4). Assume the same facts as in example (3) except that on June 19, 1970, M bank assigns the chose in action and its security interest to N, who had actual notice or knowledge of the existence of the lien on June 1, 1970. Because the security interest was not subject to the lien to the extent of M bank's security interest, the security interest held by N is to the same extent entitled to priority over the tax lien because N succeeds to M bank's rights. See subdivision (iii) of subparagraph (1) of this paragraph.

Example (5). On July 1, 1970, in accordance with § 301.6323(f)–1, a notice of lien is filed with respect to E's delinquent tax liability. E owns ten $1,000 bonds issued by the Y company. On July 5, 1970, E borrows $4,000 from F and delivers the bonds to F as collateral for the loan. At the time the loan is made, F has actual knowledge of the existence of the tax lien and, therefore, holds the security interest subject to the lien on the bonds. On July 10, 1970, F sells the security interest to G for $4,000 and delivers the Y company bonds pledged as collateral. G does not have actual notice or knowledge of the existence of the lien on July 10, 1970. Because G did not have actual notice or knowledge of the lien at the time he purchased the security interest, under subdivision (ii) of subparagraph (1) of this paragraph, the tax lien is not valid against G to the extent of his security interest.

Example (6). Assume the same facts as in example (5) except that, instead of purchasing the security interest from F on July 10, 1970, G lends $4,000 to F and takes a security interest in F's security interest in the bonds on that date. Because G became the holder of a security interest in a security interest after notice of lien was filed and does not directly have a security interest in a security, the security interest held by G is not entitled to a priority over the tax lien under the provisions of subparagraph (1) of this paragraph.

(b) *Motor vehicles*—(1) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid against a purchaser (as defined in paragraph (f) of § 301.6323(h)–1) of a motor vehicle (as defined in paragraph (c) of § 301.6323(h)–1) if—

(i) At the time of the purchase, the purchaser did not have actual notice or knowledge (as defined in paragraph (a) of § 301.6323(i)–1) of the existence of the lien, and

(ii) Before the purchaser obtains such notice or knowledge, he has acquired actual possession of the motor vehicle and has not thereafter relinquished actual possession to the seller or his agent.

(2) *Examples.* The application of this paragraph may be illustrated by the following examples:

Example (1). A, a delinquent taxpayer against whom a notice of tax lien has been filed in accordance with § 301.6323(f)–1, sells his automobile (which qualifies as a motor vehicle under paragraph (c) of § 301.6323(h)–1) to B, an automobile dealer. B takes actual possession of the automobile and does not thereafter relinquish actual possession to the seller or his agent. Subsequent to his purchase, B learns of the existence of the tax lien against A. Even though notice of lien was filed before the purchase, the lien is not valid against B, because B did not know of the existence of the lien before the purchase and before acquiring actual possession of the vehicle.

Example (2). C is a wholesaler of used automobiles. A notice of lien has been filed with respect to C's delinquent tax liability in accordance with § 301.6323(f)–1. Subsequent to such filing, D, a used automobile dealer, purchases and takes actual possession of 20 automobiles (which qualify as motor vehicles under the provisions of paragraph (c) of § 301.6323(h)–1) from C at an auction and places them on his lot for sale. C does not reacquire possession of any of the automobiles. At the time of his purchase, D does not have actual notice or knowledge of the existence of the lien against C. Even though notice of lien was filed before D's purchase, the lien was not valid against D because D did not know of the existence of the lien before the purchase and before acquiring actual possession of the vehicles.

(3) *Cross reference.* For provisions relating to additional circumstances in which the lien imposed by section 6321 may not be valid against the purchaser of tangible personal property (including a motor vehicle) purchased at retail, see paragraph (c) of this section.

(c) *Personal property purchased at retail*—(1) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid against a purchaser (as defined in paragraph (f) of § 301.6323(h)–1) of tangible personal property purchased at a retail sale (as defined in subparagraph (2) of this paragraph) unless at the time of purchase the purchaser intends the purchase to (or knows that the purchase will) hinder, evade, or defeat the collection of any tax imposed by the Internal Revenue Code of 1954.

(2) *Definition of retail sale.* For purposes of this paragraph, the term "retail sale" means a sale, made in the ordinary course of the seller's trade or business, of tangible personal property of which the seller is the owner. Such term includes a sale in customary retail quantities by a seller who is going out of business, but does not include a bulk sale or an auction sale in which goods are offered in quantities substantially greater than are customary in the ordinary course of the seller's trade or business or an auction sale of goods the owner of which is not in the business of selling such goods.

(3) *Example.* The application of this paragraph may be illustrated by the following example:

Example. A purchases a refrigerator from the M company, a retail appliance dealer. Prior to such purchase, a notice of lien was filed with respect to M's delinquent tax liability in accordance with § 301.6323(f)–1. At the time of the purchase A knows of the existence of the lien. However, A does not intend the purchase to hinder, evade, or defeat the collection of any internal revenue tax, and A does not have any reason to believe that the purchase will affect the collection of any internal revenue tax. Even though notice of lien was filed before the purchase, the lien is not valid against A because A in good faith purchased the refrigerator at retail in the ordinary course of the M company's business.

(d) *Personal property purchased in casual sale*—(1) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid against a purchaser (as defined in § 301.6323(h)–1(f)) of household goods, personal effects, or other tangible personal property of a type described in § 301.6334–1 (which includes wearing apparel; school books; fuel, provisions, furniture, arms for personal use, livestock, and poultry (whether or not the seller is the head of a family); and books and tools of a trade, business, or profession (whether or not the trade, business, or profession of the seller)), purchased, other than for resale, in a casual sale for less than $250 (excluding interest and expenses described in § 301.6323(e)–1). For purposes of this paragraph, a casual sale is a sale not made in the ordinary course of the seller's trade or business.

(2) *Limitation.* This paragraph applies only if the purchaser does not have actual notice or knowledge (as defined in paragraph (a) of § 301.6323(i)–1)—

(i) Of the existence of the tax lien, or

(ii) That the sale is one of a series of sales.

For purposes of subdivision (ii) of this subparagraph, a sale is one of a series of sales if the seller plans to dispose of, in separate transactions, substantially all of his household goods, personal effects, and other tangible personal property described in § 301.6334–1.

(3) *Examples.* The application of this paragraph may be illustrated by the following examples:

Example (1). A, an attorney's widow, sells a set of law books for $200 to B, for B's own use. Prior to the sale a notice of lien was filed with respect to A's delinquent tax liability in accordance with § 301.6323(f)–1. B has no actual notice or knowledge of the tax lien. In addition, B does not know that the sale is one of a series of sales. Because the sale is a casual sale for less than $250 and involves books of a profession (tangible personal property of a type described in § 301.6334–1, irrespective of the fact that A has never engaged in the legal profession), the tax lien is not valid against B even though a notice of lien was filed prior to the time of B's purchase.

Example (2). Assume the same facts as in example (1) except that B purchases the books for resale in his second-hand bookstore. Because B purchased the books for resale, he purchased the books subject to the lien.

Example (3). In an advertisement appearing in a local newspaper, G indicates that he is offering for sale a lawn mower, a used television set, a desk, a refrigerator, and certain used dining room furniture. In response to the advertisement, H purchases the dining room furniture for $200. H does not receive any information which would impart notice of a lien, or that the sale is one of a series of sales, beyond the information contained in the advertisement. Prior to the sale a notice of lien was filed with respect to G's delinquent tax liability in accordance with § 301.6323(f)–1. Because H had no actual notice or knowledge that substantially all of G's household goods were being sold, or that the sale is one of a series of sales and because the sale is a casual sale for less than $250, H does not purchase the dining room furniture subject to the lien. The household goods are of a type described in § 301.6334–1(a)(2) irrespective of whether G is the head of a family or whether all such household goods offered for sale exceed $500 in value.

(e) *Personal property subject to possessory liens.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid against a holder of a lien on tangible personal property which under local law secures the reasonable price of the repair or improvement of the property if the property is, and has been, continuously in the possession of the holder of the lien from the time the possessory lien arose. For example, if local law gives an automobile repairman the right to retain possession of an automobile he has repaired as security for payment of the repair bill and the repairman retains continuous possession of the automobile until his lien is satisfied, a tax lien filed in accordance with § 301.6323(f)(1) which has attached to the automobile will not be valid to the extent of the reasonable price of the repairs. It is immaterial that the notice of tax lien was filed before the repairman undertook his work or that he knew of the lien before undertaking the work.

(f) *Real property tax and special assessment liens*—(1) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid against the holder of another lien upon the real property (regardless of when such other lien arises), if such other lien is entitled under local law to priority over security interests in real property which are prior in time and if such other lien on real property secures payment of—

(i) A tax of general application levied by any taxing authority based upon the value of the property;

(ii) A special assessment imposed directly upon the property by any taxing authority, if the assessment is imposed for the purpose of defraying the cost of any public improvement; or

(iii) Charges for utilities or public services furnished to the property by the United States, a State or political subdivision thereof, or an instrumentality of any one or more of the foregoing.

(2) *Examples.* The application of this paragraph may be illustrated by the following examples:

Example (1). A owns Blackacre in the city of M. A notice of lien affecting Blackacre is filed in accordance with § 301.6323(f)–1. Subsequent to the filing of the notice of lien, the city of M acquires a lien against Blackacre to secure payment of real estate taxes. Such taxes are levied against all property in the city in proportion to the value of the property. Under local law, the holder of a lien for real property taxes is entitled to priority over a security interest in real property even though the security interest is prior in time. Because the real property tax lien held by the city of M secures payment of a tax of general application and is entitled to priority over security interests which are prior in time, the lien held by the city of M is entitled to priority over the Federal tax lien with respect to Blackacre.

Example (2). B owns Whiteacre in N county. A notice of lien affecting Whiteacre is filed in accordance with § 301.6323(f)–1. Subsequent to the filing of the notice of lien, N county constructs a sidewalk, paves the street, and installs water and sewer lines adjacent to Whiteacre. In order to defray the cost of these improvements, N county imposes upon Whiteacre a special assessment which under local law results in a lien upon Whiteacre that is entitled to priority over security interests that are prior in time. Because the special assessment lien is (i) entitled under local law to priority over security interests which are prior in time, and (ii) imposed directly upon real property to defray the cost of a public improvement, the special assessment lien has priority over the Federal tax lien with respect to Whiteacre.

Example (3). C owns Greenacre in town O. A notice of lien affecting Greenacre is filed in accordance with § 301.6323(f)–1. Town O furnishes water and electricity to Greenacre and periodically collects a fee for these services. Subsequent to the filing of the notice of lien, town O supplies water and electricity to Greenacre, and C fails to pay the charges for these services. Under local law, town O acquires a lien to secure charges for the services, and this lien has priority over security interests which are prior in time. Because the lien of town O (i) is for services furnished to the real property and (ii) has priority over earlier security interests, town O's lien has priority over the Federal tax lien with respect to Greenacre.

(g) *Residential property subject to a mechanic's lien for certain repairs and improvements*—(1) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid against a mechanic's lienor (as defined in § 301.6323(h)–1(b)) who holds a lien for the repair or improvement of a personal residence if—

(i) The residence is occupied by the owner and contains no more than four dwelling units, and

(ii) The contract price on the prime contract with the owner for the repair or improvement (excluding interest and expenses described in § 301.6323(e)–1) is not more than $1,000.

For purposes of subdivision (ii) of this subparagraph, the amounts of subcontracts under the prime contract with the owner are not to be taken into consideration for purposes of computing the $1,000 prime contract price. It is immaterial that the notice of tax lien was filed before the contractor undertakes his work or that he knew of the lien before undertaking the work.

(2) *Examples.* The application of this paragraph may be illustrated by the following examples:

Example (1). A owns a building containing four apartments, one of which he occupies as his personal residence. A notice of lien which affects the building is filed in accordance with § 301.6323(f)–1. Thereafter, A enters into a contract with B in the amount of $800, which includes labor and materials, to repair the roof of the building. B purchases roofing shingles from C for $300. B completes the work and A fails to pay B the agreed amount. In turn, B fails to pay C for the shingles. Under local law, B and C acquire mechanic's liens on A's building. Because the contract price on the prime contract with A is not more than $1,000 and under local law B and C acquire mechanic's liens on A's building, the liens of B and C have priority over the Federal tax lien.

Example (2). Assume the same facts as in example (1), except that the amount of the prime contract between A and B is $1,100. Because the amount of the prime contract with the owner, A, is in excess of $1,000, the tax lien has priority over the entire amount of each of the mechanic's liens of B and C, even though the amount of the contract between B and C is $300.

Example (3). Assume the same facts as in example (1), except that A and B do not agree in advance upon the amount due under the prime contract but agree that B will perform the work for the cost of materials and labor plus 10 percent of such cost. When the work is completed, it is determined that the total amount due is $850. Because the prime contract price is not more than $1,000 and under local law B and C acquire mechanic's liens on A's residence, the liens of B and C have priority over the Federal tax lien.

(h) *Attorneys' liens*—(1) *In general.* Even though notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid against an attorney who, under local law, holds a lien upon, or a contract enforceable against, a judgment or other amount

in settlement of a claim or of a cause of action. The priority afforded an attorney's lien under this paragraph shall not exceed the amount of the attorney's reasonable compensation for obtaining the judgment or procuring the settlement. For purposes of this paragraph, reasonable compensation means the amount customarily allowed under local law for an attorney's services for litigating or settling a similar case or administrative claim. However, reasonable compensation shall be determined on the basis of the facts and circumstances of each individual case. It is immaterial that the notice of tax lien is filed before the attorney undertakes his work or that the attorney knows of the tax lien before undertaking his work. This paragraph does not apply to an attorney's lien which may arise from the defense of a claim or cause of action against a taxpayer except to the extent such lien is held upon a judgment or other amount arising from the adjudication or settlement of a counterclaim in favor of the taxpayer. In the case of suits against the taxpayer, see § 301.6325-1(d)(2) for rules relating to the subordination of the tax lien to facilitate tax collection.

(2) *Claim or cause of action against the United States.* Paragraph (h)(1) of this section does not apply to an attorney's lien with respect to—

(i) Any judgment or other fund resulting from the successful litigation or settlement of an administrative claim or cause of action against the United States to the extent that the United States, under any legal or equitable right, offsets its liability under the judgment or settlement against any liability of the taxpayer to the United States, or

(ii) Any amount credited against any liability of the taxpayer in accordance with section 6402.

(3) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). A notice of lien is filed against A in accordance with § 301.6323(f)-1. Subsequently, A is struck by an automobile and retains B, an attorney to institute suit on A's behalf against the operator of the automobile. B knows of the tax lien before he begins his work. Under local law, B is entitled to a lien upon any recovery in order to secure payment of his fee. A is awarded damages of $10,000. B charges a fee of $3,000 which is the fee customarily allowed under local law in similar cases and which is found to be reasonable under the circumstances of this particular case. Because, under local law, B holds a lien for the amount of his reasonable compensation for obtaining the judgment, B's lien has priority over the Federal tax lien.

Example (2). Assume the same facts as in example (1), except that before suit is instituted A and the owner of the automobile settle out of court for $7,500. B charges a reasonable and customary fee of $1,800 for procuring the settlement and under local law holds a lien upon the settlement in order to secure payment of the fee. Because, under local law, B holds a lien for the amount of his reasonable compensation for obtaining the settlement, B has priority over the Federal tax lien.

Example (3). In accordance with § 301.6323(f)-1, a notice of lien in the amount of $8,000 is filed against C, a contractor. Subsequently C retains D, an attorney, to initiate legal proceedings to recover the amount allegedly due him for construction work he has performed for the United States. C and D enter into an agreement which provides that D will receive a reasonable and customary fee of $2,500 as compensation for his services. Under local law, the agreement will give rise to a lien which is enforceable by D against any amount recovered in the suit. C is successful in the suit and is awarded $10,000. D claims $2,500 of the proceeds as his fee. The United States, however, exercises its right of set-off and applies $8,000 of the $10,000 award to satisfy C's tax liability. Because the $10,000 award resulted from the successful litigation of a cause of action against the United States, B's contract for attorney's fees is not enforceable against the amount recovered to the extent the United States offsets its liability under the judgment against C's tax liability. It is immaterial that D had no notice or knowledge of the tax lien at the time he began work on the case.

(i) *Certain insurance contracts*—(1) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)-1, the lien is not valid with respect to a life insurance, endowment, or annuity contract, against an organization which is the insurer under the contract, at any time—

(i) Before the insuring organization has actual notice or knowledge (as defined in paragraph (a) of § 301.6323(i)-1) of the existence of the tax lien,

(ii) After the insuring organization has actual notice or knowledge of the lien (as defined in paragraph (a) of § 301.6323(i)-1), with respect to advances (including contractual interest thereon as provided in paragraph (a) of § 301.6323(e)-1) required to be made automatically to maintain the contract in force under an agreement entered into before the insuring organization had such actual notice or knowledge, or

(iii) After the satisfaction of a levy pursuant to section 6332(b), unless and until the district director delivers to the insuring organization a notice (for example, another notice of levy, a letter, etc.), executed after the date of such satisfaction, that the lien exists.

Delivery of the notice described in subdivision (iii) of this subparagraph may be made by any means, including regular mail, and delivery of the notice shall be effective only from the time of actual receipt of the notification by the insuring organization. The provisions of this paragraph are applicable to matured as well as unmatured insurance contracts.

(2) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). On May 1, 1964, the X insurance company issues a life insurance policy to A. On June 1, 1970, a tax assessment is made against A, and on June 2, 1970, a notice of lien with respect to the assessment is filed in accordance with § 301.6323(f)-1. On July 1, 1970, without actual notice or knowledge of the tax lien, the X company makes a "policy loan" to A. Under subparagraph (1)(i) of this paragraph, the loan, including interest (in accordance with the provisions of paragraph (a) of § 301.6323(e)-1), will have priority over the tax lien because X company did not have actual notice or knowledge of the tax lien at the time the policy loan was made.

Example (2). On May 1, 1964, B enters into a life insurance contract with the Y insurance company. Under one of the provisions of the contract, in the event a premium is not paid, Y is to advance out of the cash loan value of the policy the amount of an unpaid premium in order to maintain the contract in force. The contract also provides for interest on any advances so made. On June 1, 1971, a tax assessment is made against B, and on June 2, 1971, in accordance with section 6323(f)-1, a notice of lien is filed. On July 1, 1971, B fails to pay the premium due on that date, and Y makes an automatic premium loan to keep the policy in force. At the time the automatic premium loan is made, Y had actual knowledge of the tax lien. Under subparagraph (1)(ii) of this paragraph, the lien is not valid against Y with respect to the advance (and the contractual interest thereon), because the advance was required to be made automatically under an agreement entered into before Y had actual notice or knowledge of the tax lien.

Example (3). On May 1, 1964, C enters into a life insurance contract with the Z insurance company. On January 4, 1971, an assessment is made against C for $5,000 unpaid income taxes, and on January 11, 1971, in accordance with § 301.6323(f)-1, a notice of lien is filed. On January 29, 1971, a notice of levy with respect to C's delinquent tax is served on Z company. The amount which C could have had advanced to him from Z company under the contract on the 90th day after service of the notice of levy on Z company is $2,000. The Z company pays $2,000 pursuant to the notice of levy, thereby satisfying the levy upon the contract in accordance with section 6332(b). On February 1, 1973, Z company advances $500 to C, which is the increment in policy loan value since satisfaction of the levy of January 29, 1971. On February 5, 1973, a new notice of levy for the unpaid balance of the delinquent taxes, executed after the first levy was satisfied, is served upon Z company. Because the new notification was not received by Z company until after the policy loan was made, under paragraph (1)(iii) of this paragraph, the tax lien is not valid against Z company with respect to the policy loan (including interest thereon in accordance with paragraph (a) of § 301.6323(e)-1).

Example (4). On June 1, 1973, a tax assessment is made against D and on June 2, 1973, in accordance with § 301.6323(f)-1, a notice of lien with respect to the assessment is filed. On July 2, 1973, D executes an assignment of his rights, as the insured, under an insurance contract to M bank as security for a loan. M bank holds its security interest subject to the lien because it is not an insurer entitled to protection under section 6323(b)(9) and did not become a holder of the security interest prior to the filing of the notice of lien for purposes of section 6323(a). It is immaterial that a notice of levy had not been served upon the insurer before the assignment to M bank was made.

(j) *Passbook loans*—(1) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)-1, the lien is not valid against an institution described in section 581 or 591 to the extent of any loan made by the institution which is secured by a savings deposit, share, or other account evidenced by a passbook (as defined in subparagraph (2) of this para-

graph) if the institution has been continuously in possession of the passbook from the time the loan is made. This paragraph applies only to a loan made without actual notice or knowledge (as defined in paragraph (a) of § 301.6323 (i)–1) of the existence of the lien. Even though an original passbook loan is made without actual notice or knowledge of the existence of the lien, this paragraph does not apply to any additional loan made after knowledge of the lien is acquired by the institution even if it continues to retain the passbook from the time the original passbook loan is made.

(2) *Definition of passbook.* For purposes of this paragraph, the term "passbook" includes—

(i) Any tangible evidence of a savings deposit, share, or other account which, when in the possession of the bank or other savings institution, will prevent a withdrawal from the account to the extent of the loan balance, and

(ii) Any procedure or system, such as an automatic data processing system, the use of which by the bank or other savings institution will prevent a withdrawal from the account to the extent of the loan balance.

(3) *Example.* On June 1, 1970, a tax assessment is made against A and on June 2, 1970, a notice of lien with respect to the assessment is filed in accordance with § 301.6323 (f)–1. A owns a savings account at the M bank with a balance of $1,000. On June 10, 1970, A borrows $300 from the M bank using the savings account as security therefor. The M bank is continuously in possession of the passbook from the time the loan is made and does not have actual notice or knowledge of the lien at the time of the loan. The tax lien is not valid against M bank with respect to the passbook loan of $300 and accrued interest and expenses entitled to priority under § 301.6323(e)–1. Upon service of a notice of levy, the M bank must pay over the savings account balance in excess of the amount of its protected interest in the account as determined on the date of levy.

§ 301.6323(c) Statutory provisions; validity and priority against certain persons; protection for certain commercial transactions financing agreements, etc.

SEC. 6323. *Validity and priority against certain persons.* * * *

(c) *Protection for certain commercial transactions financing agreements, etc.*—(1) *In general.* To the extent provided in this subsection, even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing but which—

(A) Is in qualified property covered by the terms of a written agreement entered into before tax lien filing and constituting—

(i) A commercial transactions financing agreement,

(ii) A real property construction or improvement financing agreement, or

(iii) An obligatory disbursement agreement, and

(B) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

(2) *Commercial transactions financing agreement.* For purposes of this subsection—

(A) *Definition.* The term "commercial transactions financing agreement" means an agreement (entered into by a person in the course of his trade or business)—

(i) To make loans to the taxpayer to be secured by commercial financing security acquired by the taxpayer in the ordinary course of his trade or business, or

(ii) To purchase commercial financing security (other than inventory) acquired by the taxpayer in the ordinary course of his trade or business;

but such an agreement shall be treated as coming within the term only to the extent that such loan or purchase is made before the 46th day after the date of tax lien filing or (if earlier) before the lender or purchaser had actual notice or knowledge of such tax lien filing.

(B) *Limitation on qualified property.* The term "qualified property", when used with respect to a commercial transactions financing agreement, includes only commercial financing security acquired by the taxpayer before the 46th day after the date of tax lien filing.

(C) *Commercial financing security defined.* The term "commercial financing security" means (i) paper of a kind ordinarily arising in commercial transactions, (ii) accounts receivable, (iii) mortgages on real property, and (iv) inventory.

(D) *Purchaser treated as acquiring security interest.* A person who satisfies subparagraph (A) by reason of clause (ii) thereof shall be treated as having acquired a security interest in commercial financing security.

(3) *Real property construction or improvement financing agreement.* For purposes of this subsection—

(A) *Definition.* The term "real property construction or improvement financing agreement" means an agreement to make cash disbursements to finance—

(i) The construction or improvement of real property,

(ii) A contract to construct or improve real property, or

(iii) The raising or harvesting of a farm crop or the raising of livestock or other animals.

For purposes of clause (iii), the furnishing of goods and services shall be treated as the disbursement of cash.

(B) *Limitation on qualified property.* The term "qualified property", when used with respect to a real property construction or improvement financing agreement, includes only—

(i) In the case of subparagraph (A)(i), the real property with respect to which the construction or improvement has been or is to be made,

(ii) In the case of subparagraph (A)(ii), the proceeds of the contract described therein, and

(iii) In the case of subparagraph (A)(iii), property subject to the lien imposed by section 6321 at the time of tax lien filing and the crop or the livestock or other animals referred to in subparagraph (A)(iii).

(4) *Obligatory disbursement agreement.* For purposes of this subsection—

(A) *Definition.* The term "obligatory disbursement agreement" means an agreement (entered into by a person in the course of his trade or business) to make disbursements, but such an agreement shall be treated as coming within the term only to the extent of disbursements which are required to be made by reason of the intervention of the rights of a person other than the taxpayer.

(B) *Limitation on qualified property.* The term "qualified property", when used with respect to an obligatory disbursement agreement, means property subject to the lien imposed by section 6321 at the time of tax lien filing and (to the extent that the acquisition is directly traceable to the disbursements referred to in subparagraph (A)) property acquired by the taxpayer after tax lien filing.

(C) *Special rules for surety agreements.* Where the obligatory disbursement agreement is an agreement insuring the performance of a contract between the taxpayer and another person—

(i) The term "qualified property" shall be treated as also including the proceeds of the contract the performance of which was insured, and

(ii) If the contract the performance of which was insured was a contract to construct or improve real property, to produce goods, or to furnish services, the term "qualified property" shall be treated as also including any tangible personal property used by the taxpayer in the performance of such insured contract.

[Sec. 6323(c) as amended by sec. 101(a), Federal Tax Lien Act 1966 (80 Stat. 1125)]

§ 301.6323(c)–1 Protection for commercial transactions financing agreements.

(a) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid with respect to a security interest which:

(1) Comes into existence after the tax lien filing,

(2) Is in qualified property covered by the terms of a commercial transactions financing agreement entered into before the tax lien filing, and

(3) Is protected under local law against a judgment lien arising, as of the time of the tax lien filing, out of an unsecured obligation.

See paragraphs (a) and (e) of § 301.6323 (h)–1 for definitions of the terms "security interest" and "tax lien filing," respectively. For purposes of this section, a judgment lien is a lien held by a judgment lien creditor as defined in paragraph (g) of § 301.6323(h)–1.

(b) *Commercial transactions financing agreement.* For purposes of this section, the term "commercial transactions financing agreement" means a written agreement entered into by a person in the course of his trade or business—

(1) To make loans to the taxpayer (whether or not at the option of the person agreeing to make such loans) to be secured by commercial financing security acquired by the taxpayer in the ordinary course of his trade or business, or

(2) To purchase commercial financing security, other than inventory, acquired by the taxpayer in the ordinary course of his trade or business.

Such an agreement qualifies as a commercial transactions financing agreement only with respect to loans or purchases made under the agreement before (i) the 46th day after the date of tax lien filing or, (ii) the time when the lender or purchaser has actual notice or knowledge (as defined in paragraph (a) of § 301.6323(i)–1) of the tax lien filing, if earlier. For purposes of this paragraph, a loan or purchase is considered to have been made in the course of the lender's or purchaser's trade or business if such

person is in the business of financing commercial transactions (such as a bank or commercial factor) or if the agreement is incidental to the conduct of such person's trade or business. For example, if a manufacturer finances the accounts receivable of one of his customers, he is considered to engage in such financing in the course of his trade or business. The extent of the priority of the lender or purchaser over the tax lien is the amount of his disbursements made before the 46th day after the date the notice of tax lien is filed, or made before the day (before such 46th day) on which the lender or purchaser has actual notice or knowledge of the filing of the notice of the tax lien.

(c) *Commercial financing security.* (1) *In general.* The term "commercial financing security" means—

(i) Paper of a kind ordinarily arising in commercial transactions,

(ii) Accounts receivable (as defined in subparagraph (2) of this paragraph),

(iii) Mortgages on real property, and

(iv) Inventory.

For purposes of this subparagraph, the term "paper of a kind ordinarily arising in commercial transactions" in general includes any written document customarily used in commercial transactions. For example, such written documents include paper giving contract rights (as defined in subparagraph (2) of this paragraph), chattel paper, documents of title to personal property, and negotiable instruments or securities. The term "commercial financing security" does not include general intangibles such as patents or copyrights. A mortgage on real estate (including a deed of trust, contract for sale, and similar instrument) may be commercial financing security if the taxpayer has an interest in the mortgage as a mortgagee or assignee. The term "commercial financing security" does not include a mortgage where the taxpayer is the mortgagor of realty owned by him. For purposes of this subparagraph, the term "inventory" includes raw materials and goods in process as well as property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.

(2) *Definitions.* For purposes of §§ 301.6323(d)–1, 301.6323(h)–1 and this section—

(i) A contract right is any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper, and

(ii) An account receivable is any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper.

(d) *Qualified property.* For purposes of paragraph (a) of this section, qualified property consists solely of commercial financing security acquired by the taxpayer-debtor before the 46th day after the date of tax lien filing: Commercial financing security acquired before such day may be qualified property even though it is acquired by the taxpayer after the lender received actual notice or knowledge of the filing of the tax lien. For example, although the receipt of actual notice or knowledge of the filing of the notice of the tax lien has the effect of ending the period within which protected disbursements may be made to the taxpayer, property which is acquired by the taxpayer after the lender receives actual notice or knowledge of such filing and before such 46th day, which otherwise qualifies as commercial financing security, becomes commercial financing security to which the priority of the lender extends for loans made before he received the actual notice or knowledge. An account receivable (as defined in paragraph (c)(2)(ii) of this section) is acquired by a taxpayer at the time, and to the extent, a right to payment is earned by performance. Chattel paper, documents of title, negotiable instruments, securities, and mortgages on real estate are acquired by a taxpayer when he obtains rights in the paper or mortgage. Inventory is acquired by the taxpayer when title passes to him. A contract right (as defined in paragraph (c)(2)(i) of this section) is acquired by a taxpayer when the contract is made. Identifiable proceeds, which arise from the collection or disposition of qualified property by the taxpayer, are considered to be acquired at the time such qualified property is acquired if the secured party has a continuously perfected security interest in the proceeds under local law. The term "proceeds" includes whatever is received when collateral is sold, exchanged, or collected. For purposes of this paragraph, the term "identifiable proceeds" does not include money, checks and the like which have been commingled with other cash proceeds. Property acquired by the taxpayer after the 45th day following tax lien filing, by the expenditure of proceeds, is not qualified property.

(e) *Purchaser treated as acquiring security interest.* A person who purchases commercial financing security, other than inventory, pursuant to a commercial transactions financing agreement is treated, for purposes of this section, as having acquired a security interest in the commercial financing security. In the case of a bona fide purchase at a discount, a purchaser of commercial financing security who satisfies the requirements of this section has priority over the tax lien to the full extent of the security.

(f) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). (i) On June 1, 1970, a tax is assessed against M, a tool manufacturer, with respect to his delinquent tax liability. On June 15, 1970, M enters into a written financing agreement with X, a bank. The agreement provides that, in consideration of such sums as X may advance to M, X is to have a security interest in all of M's presently owned and subsequently acquired commercial paper, accounts receivable, and inventory (including inventory in the manufacturing stages and raw materials). On July 6, 1970, notice of the tax lien is filed in accordance with § 301.6323(f)–1. On August 3, 1970, without actual notice or knowledge of the tax lien filing, X advances $10,000 to M. On August 5, 1970, M acquires additional inventory through the purchase of raw materials. On August 20, 1970, M has accounts receivable, arising from the sale of tools, amounting to $5,000. Under local law, X's security interest arising by reason of the $10,000 advance on August 3, 1970, has priority, with respect to the raw materials and accounts receivable, over a judgment lien against M arising July 6, 1970 (the date of tax lien filing) out of an unsecured obligation.

(ii) Because the $10,000 advance was made before the 46th day after the tax lien filing, and the accounts receivable in the amount of $5,000 and the raw materials were acquired by M before such 46th day, X's $10,000 security interest in the accounts receivable and the inventory has priority over the tax lien. The priority of X's security interest also extends to the proceeds, received on or after the 46th day after the tax lien filing, from the liquidation of the accounts receivable and inventory held by M on August 20, 1970, if X has a continuously perfected security interest in identifiable proceeds under local law. However, the priority of X's security interest will not extend to other property acquired with such proceeds.

Example (2). Assume the same facts as in example (1) except that on July 15, 1970, X has actual knowledge of the tax lien filing. Because an agreement does not qualify as a commercial transactions financing agreement when a disbursement is made after tax lien filing with actual knowledge of the filing, X's security interest will not have priority over the tax lien with respect to the $10,000 advance made on August 3, 1970.

Example (3). Assume the same facts as in example (1) except that, instead of additional inventory, on August 5, 1970, M acquires an account receivable as the result of the sale of machinery which M no longer needs in his business. Even though the account receivable was acquired by taxpayer M before the 46th day after tax lien filing, the tax lien will have priority over X's security interest arising in the account receivable pursuant to the earlier written agreement because the account receivable was not acquired by the taxpayer in the ordinary course of his trade or business.

Example (4). Pursuant to a written agreement with the N Manufacturing Company entered into on January 4, 1971, Y, a commercial factor, purchases the accounts receivable arising out of N's regular sales to its customers. On November 1, 1971, in accordance with § 301.6323(f)–1, a notice of lien is filed with respect to N's delinquent tax liability. On December 6, 1971, Y, without actual notice or knowledge of the tax lien filing, purchases all of the accounts receivable resulting from N's November 1971 sales. Y has taken appropriate steps under local law so that the December 6, 1971, purchase is protected against a judgment lien arising November 1, 1971 (the date of tax lien filing) out of an unsecured obligation. Because the purchaser of commercial financing security, other than inventory, is treated as having acquired a security interest in commercial financing security, and because Y otherwise meets the requirements of this section, the tax lien is not valid with respect to Y's December 6, 1971, purchase of N's accounts receivable.

§ 301.6323(c)–2 Protection for real property construction or improvement financing agreements.

(a) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid with respect to a security interest which:

(1) Comes into existence after the tax lien filing,

(2) Is in qualified property covered by the terms of a real property construction or improvement financing agreement entered into before the tax lien filing, and

(3) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

For purposes of this section, it is immaterial that the holder of the security interest had actual notice or knowledge of the lien at the time disbursements are made pursuant to such an agreement. See paragraphs (a) and (e) of § 301.6323(h)–1 for general definitions of the terms "security interest" and "tax lien filing." For purposes of this section, a judgment lien is a lien held by a judgment lien creditor as defined in paragraph (g) of § 301.6323(h)–1.

(b) *Real property construction or improvement financing agreement.* For purposes of this section, the term "real property construction or improvement financing agreement" means any written agreement to make cash disbursements (whether or not at the option of the party agreeing to make such disbursements):

(1) To finance the construction, improvement, or demolition of real property if the agreement provides for a security interest in the real property with respect to which the construction, improvement, or demolition has been or is to be made;

(2) To finance a contract to construct or improve, or demolish real property if the agreement provides for a security interest in the proceeds of the contract; or

(3) To finance the raising or harvesting of a farm crop or the raising of livestock or other animals if the agreement provides for a security interest in any property subject to the lien imposed by section 6321 at the time of tax lien filing, in the crop raised or harvested, or in the livestock or other animals raised.

For purposes of subparagraphs (1) and (2) of this paragraph, construction or improvement may include demolition. For purposes of any agreement described in subparagraph (3) of this paragraph, the furnishing of goods and services is treated as the disbursement of cash.

(c) *Qualified property.* For purposes of this section, the term "qualified property" includes only—

(1) In the case of an agreement described in paragraph (b)(1) of this section, the real property with respect to which the construction or improvement has been or is to be made;

(2) In the case of an agreement described in paragraph (b)(2) of this section, the proceeds of the contract to construct or improve real property; or

(3) In the case of an agreement described in paragraph (b)(3) of this section, property subject to the lien imposed by section 6321 at the time of tax lien filing, the farm crop raised or harvested, or the livestock or other animals raised.

(d) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). A, in order to finance the construction of a dwelling on a lot owned by him, mortgages the property to B. The mortgage, executed January 4, 1971, includes an agreement that B will make cash disbursements to A as the construction progresses. On February 1, 1971, in accordance with § 301.6323(f)–1, a notice of lien is filed with respect to A's delinquent tax liability. A continues the construction, and B makes cash disbursements on June 10, 1971, and December 10, 1971. Under local law B's security interest arising by virtue of the disbursements is protected against a judgment lien arising February 1, 1971 (the date of tax lien filing) out of an unsecured obligation. Because B is the holder of a security interest coming into existence by reason of cash disbursements made pursuant to a written agreement, entered into before tax lien filing, to make cash disbursements to finance the construction of real property, and because B's security interest is protected, under local law, against a judgment lien arising as of the time of tax lien filing out of an unsecured obligation, B's security interest has priority over the tax lien.

Example (2). (i) C is awarded a contract for the demolition of several buildings. On March 3, 1969, C enters into a written agreement with D which provides that D will make cash disbursements to finance the demolition and also provides that repayment of the disbursements is secured by any sums due C under the contract. On April 1, 1969, in accordance with § 301.6323(f)–1, a notice of lien is filed with respect to C's delinquent tax liability. With actual notice of the tax lien, D makes cash disbursements to C on August 1, September 1, and October 1, 1969. Under local law D's security interest in the proceeds of the contract with respect to the disbursements is entitled to priority over a judgment lien arising on April 1, 1969 (the date of tax lien filing) out of an unsecured obligation.

(ii) Because D's security interest arose by reason of disbursements made pursuant to a written agreement, entered into before tax lien filing, to make cash disbursements to finance a contract to demolish real property, and because D's security interest is valid under local law against a judgment lien arising as of the time of tax lien filing out of an unsecured obligation, the tax lien is not valid with respect to D's security interest in the proceeds of the demolition contract.

Example (3). Assume the same facts as in example (2) and, in addition, assume that, as further security for the cash disbursements, the March 3, 1969 agreement also provides for a security interest in all of C's demolition equipment. Because the protection of the security interest arising from the disbursements made after tax lien filing under the agreement is limited under section 6323(c)(3) to the proceeds of the demolition contract and because, under the circumstances, the security interest in the equipment is not otherwise protected under section 6323, the tax lien will have priority over D's security interest in the equipment.

Example (4). (i) On January 2, 1969, F and G enter into a written agreement, whereby F agrees to provide G with cash disbursements, seed, fertilizer, and insecticides as needed by G, in order to finance the raising and harvesting of a crop on a farm owned by G. Under the terms of the agreement F is to have a security interest in the crop, the farm, and all other property then owned or thereafer acquired by G. In accordance with § 301.6323(f)–1, on January 10, 1969, a notice of lien is filed with respect to G's delinquent tax liability. On March 3, 1969, with actual notice of the tax lien, F makes a cash disbursement of $5,000 to G and furnishes him seed, fertilizer, and insecticides having a value of $10,000. Under local law F's security interest, coming into existence by reason of the cash disbursement and the furnishing of goods, has priority over a judgment lien arising January 10, 1969 (the date of tax lien filing) out of an unsecured obligation.

(ii) Because F's security interest arose by reason of a disbursement (including the furnishing of goods) made under a written agreement which was entered into before tax lien filing and which constitutes an agreement to finance the raising or harvesting of a farm crop, and because F's security interest is valid under local law against a judgment lien arising as of the time of tax lien filing out of an unsecured obligation, the tax lien is not valid with respect to F's security interest in the crop even though a notice of lien was filed before the security interest arose. Furthermore, because the farm is property subject to the tax lien at the time of tax lien filing, F's security interest with respect to the farm also has priority over the tax lien.

Example (5). Assume the same facts as in example (4) and in addition that on October 1, 1969, G acquires several tractors to which F's security interest attaches under the terms of the agreement. Because the tractors are not property subject to the tax lien at the time of tax lien filing, the tax lien has priority over F's security interest in the tractors.

§ 301.6323(c)–3 Protection for obligatory disbursement agreements.

(a) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid with respect to a security interest which:

(1) Comes into existence after the tax lien filing,

(2) Is in qualified property covered by the terms of an obligatory disbursement agreement entered into before the tax lien filing, and

(3) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

See paragraphs (a) and (e) of § 301.6323(h)–1 for definitions of the terms "security interest" and "tax lien filing." For purposes of this section, a judgment lien is a lien held by a judgment lien creditor as defined in paragraph (g) of § 301.6323(h)–1.

(b) *Obligatory disbursement agreement.* For purposes of this section the term "obligatory disbursement agreement" means a written agreement, entered into by a person in the course of his trade or business, to make disbursements. An agreement is treated as an obligatory disbursement agreement only with respect to disbursements which are required to be made by reason of the intervention of the rights of a person other than the taxpayer. The obligation to pay must be conditioned upon an event beyond the control of the obligor. For example, the provisions of this section are applicable where an issuing bank obligates itself to honor drafts or other demands for payment on a letter of credit

and a bank, in good faith, relies upon that letter of credit in making advances. The provisions of this section are also applicable, for example, where a bonding company obligates itself to make payments to indemnify against loss or liability and, under the terms of the bond, makes a payment with respect to a loss. The priority described in this section is not applicable, for example, in the case of an accommodation endorsement by an endorser who assumes his obligation other than in the course of his trade or business.

(c) *Qualified property.* Except as provided under paragraph (d) of this section, the term "qualified property," for purposes of this section, means property subject to the lien imposed by section 6321 at the time of tax lien filing and, to the extent that the acquisition is directly traceable to the obligatory disbursement, property acquired by the taxpayer after tax lien filing.

(d) *Special rule for surety agreements.* Where the obligatory disbursement agreement is an agreement insuring the performance of a contract of the taxpayer and another person, the term "qualified property" shall be treated as also including—

(1) The proceeds of the contract the performance of which was insured, and

(2) If the contract the performance of which was insured is a contract to construct or improve real property, to produce goods, or to furnish services, any tangible personal property used by the taxpayer in the performance of the insured contract.

For example, a surety company which holds a security interest, arising from cash disbursements made after tax lien filing under a payment or performance bond on a real estate construction project, has priority over the tax lien with respect to the proceeds of the construction contract and, in addition, with respect to any tangible personal property used by the taxpayer in the construction project if its security interest in the tangible personal property is protected under local law against a judgment lien arising, as of the time the tax lien was filed, out of an unsecured obligation.

(e) *Examples.* This section may be illustrated by the following examples:

Example (1). (i) On January 2, 1969, H, an appliance dealer, in order to finance the acquisition from O of a large inventory of appliances, enters into a written agreement with Z, a bank. Under the terms of the agreement, in return for a security interest in all of H's inventory, presently owned and subsequently acquired, Z issues an irrevocable letter of credit to allow H to make the purchase. On December 31, 1968 and January 10, 1969, in accordance with § 301.6323(f)–1, separate notices of lien are filed with respect to H's delinquent tax liabilities. On March 31, 1969, Z honors the letter of credit. Under local law, Z's security interest in both existing and after-acquired inventory is protected against a judgment lien arising on or after January 10, 1969, out of an unsecured obligation. Under local law, Z's security interest in the inventory purchased under the letter of credit qualifies as a purchase money security interest and is valid against persons acquiring security interests in or liens upon such inventory at any time.

(ii) Because Z's security interest in H's inventory did not arise under a written agreement entered into before the filing of notice of the first tax lien on December 31, 1968, that lien is superior to Z's security interest except to the extent of Z's purchase money security interest. Because Z's interest qualifies as a purchase money security interest with respect to the inventory purchased under the letter of credit, the tax liens attach under section 6321 only to the equity acquired by H, and the rights of Z in the inventory so purchased are superior even to the lien filed on December 31, 1968, without regard to this section.

(iii) Because Z's security interest arose by reason of disbursements made under a written agreement which was entered into before the filing of notice of the second tax lien on January 10, 1969, and which constitutes an agreement to make disbursements required to be made by reason of the intervention of the rights of O, a person other than the taxpayer, and because Z's security interest is valid under local law against a judgment lien arising as of the time of such tax lien filing on January 10, 1969, out of an unsecured obligation, the second tax lien is, under this section, not valid with respect to Z's security interest in inventory owned by H on January 10, 1969, as well as any after-acquired inventory directly traceable to Z's disbursements (apart from such greater protection as Z enjoys, with respect to the latter, under its purchase money security interest). No protection against the second tax lien is provided under this section with respect to a security interest in any other inventory acquired by H after January 10, 1969, because such other inventory is neither subject to the tax lien at the time of tax lien filing nor directly traceable to Z's disbursements.

Example (2). On June 1, 1971, K is awarded a contract to construct an office building. At the same time, S, a surety company, agrees in writing to insure the performance of the contract. The agreement provides that in the event S must complete the job as the result of a default by K, S will be entitled to the proceeds of the contract. In addition, the agreement provides that S is to have a security interest in all property belonging to K. On December 1, 1971, prior to the completion of the building, K defaults. On the same date, under § 301.6323(f)–1, a notice of lien is filed with respect to K's delinquent tax liability. S completes the building on June 1, 1972. Under local law S's security interest in the proceeds of the contract and S's security interest in the property of K are entitled to priority over a judgment lien arising December 1, 1971 (the date of tax lien filing) out of an unsecured obligation. Because, for purposes of an obligatory disbursement agreement which is a surety agreement, the security interest may be in the proceeds of the insured contract, S's security interest in the proceeds of the contract has priority over the tax lien even though a notice of lien was filed before S's security interest arose. Furthermore, because the insured contract was a contract to construct real property, S's security interest in any of K's tangible personal property used in the performance of the contract also has priority over the tax lien.

Example (3). (i) On February 2, 1970, L enters into an agreement with M, a contractor, to construct an apartment building on land owned by L. Under a separate agreement, N bank agrees to furnish funds on a short-term basis to L for the payment of amounts due to M during the course of construction. Simultaneously, X, a financial institution, makes a binding commitment to N bank and L to provide long-term financing for the project after its completion. Under its commitment, X is obligated to pay off the balance of the construction loan held by N bank upon the execution by L of a new promissory note secured by a mortgage deed of trust upon the improved property. On September 4, 1970, in accordance with § 301.6323(f)–1, notice of lien is properly filed with respect to L's delinquent tax liability. On September 8, 1970, X obtains actual notice of the tax lien filing. On September 14, 1970, the documents creating X's security interest are executed and recorded, N bank's lien for its construction loan is released, and X makes the required disbursements to N bank. Under local law, X's security interest is protected against a judgment lien arising on September 4, 1970 (the time of tax lien filing) out of an unsecured obligation.

(ii) Because X's security interest arose by reason of a disbursement made under a written agreement entered into before tax lien filing, which constitutes an agreement to make disbursements required to be made by reason of the intervention of the rights of N bank, a person other than the taxpayer, and because X's security interest is valid under local law against a judgment lien arising as of the time of the tax lien filing out of an unsecured obligation, the tax lien is not valid with respect to X's security interest to the extent of the disbursement to N bank. The obligatory disbursement is protected under section 6323(c)(4) even if X is not subrogated to N bank's rights or X's agreement is not itself a real property construction financing agreement.

§ 301.6323(d) Statutory provisions; validity and priority against certain persons; 45-day period for making disbursements.

SEC. 6323. *Validity and priority against certain persons.*

* * * * * *

(d) *45-day period for making disbursements.* Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing by reason of disbursements made before the 46th day after the date of tax lien filing, or (if earlier) before the person making such disbursements had actual notice or knowledge of tax lien filing, but only if such security interest—

(1) Is in property (A) subject, at the time of tax lien filing, to the lien imposed by section 6321, and (B) covered by the terms of a written agreement entered into before tax lien filing, and

(2) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

[Sec. 6323(d) as amended by sec. 236(a) Rev. Act 1964 (78 Stat. 127); sec. 101(a) Federal Tax Lien Act 1966 (80 Stat. 1125)]

§ 301.6323(d)–1 45-day period for making disbursements.

(a) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid with respect to a security interest which comes into existence, after tax lien filing, by reason of disbursements made before the 46th day after the date of tax lien filing, or if earlier, before the person making the disbursements has actual notice or knowledge of the tax lien filing, but only if the security interest is—

(1) In property which is subject, at the time of tax lien filing, to the lien imposed by section 6321 and which is covered by the terms of a written agreement entered into before tax lien filing, and

(2) Protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

For purposes of subparagraph (1) of this paragraph, a contract right (as defined in paragraph (c)(2)(i) of § 301.6323(c)–1) is subject, at the time of tax lien filing, to the lien imposed by section 6321 if the contract has been made by such time. An account receivable (as defined in paragraph (c)(2)(ii) of § 301.6323(c)–1) is subject, at the time of tax lien filing, to the lien imposed by section 6321 if, and to the extent, a right to payment has been earned by performance at such time. For purposes of subparagraph (2) of this paragraph, a judgment lien is a lien held by a judgment lien creditor as defined in paragraph (g) of § 301.6323(h)–1. For purposes of this section, it is immaterial that the written agreement provides that the disbursements are to be made at the option of the person making the disbursements. See paragraphs (a) and (e) of § 301.6323(h)–1 for definitions of the terms "security interest" and "tax lien filing," respectively. See paragraph (a) of § 301.6323(i)–1 for certain circumstances under which a person is deemed to have actual notice or knowledge of a fact.

(b) *Examples.* The application of this section may be illustrated by the following examples:

Example (1). On December 1, 1967, an assessment is made against A with respect to his delinquent tax liability. On January 2, 1968, A enters into a written agreement with B whereby B agrees to lend A $10,000 in return for a security interest in certain property owned by A. On January 10, 1968, in accordance with § 301.6323(f)–1 notice of the tax lien affecting the property is filed. On February 1, 1968, B, without actual notice or knowledge of the tax lien filing, disburses the loan to A. Under local law, the security interest arising by reason of the disbursement is entitled to priority over a judgment lien arising January 10, 1968 (the date of tax lien filing) out of an unsecured obligation. Because the disbursement was made before the 46th day after tax lien filing, because the disbursement was made pursuant to a written agreement entered into before tax lien filing, and because the resulting security interest is protected under local law against a judgment lien arising as of the date of tax lien filing out of an unsecured obligation, B's $10,000 security interest has priority over the tax lien.

Example (2). Assume the same facts as in example (1) except that when B disburses the $10,000 to A on February 10, 1968, B has actual knowledge of the tax lien filing. Because the disbursement was made with actual knowledge of tax lien filing, B's security interest does not have priority over the tax lien even though the disbursement was made before the 46th day after the tax lien filing. Furthermore, B is not protected under § 301.6323(a)–1(a) as a holder of a security interest because he had not parted with money or money's worth prior to the time the notice of tax lien was filed (Jan. 10, 1968) even though he had made a firm commitment to A before that time.

§ 301.6323(e) Statutory provisions; validity and priority against certain persons; priority of interest and expenses.

SEC. 6323. *Validity and priority against certain persons.* * * *

(e) *Priority of interest and expenses.* If the lien imposed by section 6321 is not valid as against a lien or security interest, the priority of such lien or security interest shall extend to—

(1) Any interest or carrying charges upon the obligation secured,

(2) The reasonable charges and expenses of an indenture trustee or agent holding the security interest for the benefit of the holder of the security interest,

(3) The reasonable expenses, including reasonable compensation for attorneys, actually incurred in collecting or enforcing the obligation secured,

(4) The reasonable costs of insuring, preserving, or repairing the property to which the lien or security interest relates,

(5) The reasonable costs of insuring payment of the obligation secured, and

(6) Amounts paid to satisfy any lien on the property to which the lien or security interest relates, but only if the lien so satisfied is entitled to priority over the lien imposed by section 6321,

to the extent that, under local law, any such item has the same priority as the lien or security interest to which it relates.

[Sec. 6323(e) as amended by sec. 236(a) Rev. Act 1964 (78 Stat. 127); sec. 101(a), Federal Tax Lien Act 1966 (80 Stat. 1125)]

§ 301.6323(e)–1 Priority of interest and expenses.

(a) *In general.* If the lien imposed by section 6321 is not valid as against another lien or security interest, the priority of the other lien or security interest also extends to each of the following items to the extent that under local law the item has the same priority as the lien or security interest to which it relates:

(1) Any interest or carrying charges (including finance, service, and similar charges) upon the obligation secured,

(2) The reasonable charges and expenses of an indenture trustee (including, for example, the trustee under a deed of trust) or agent holding the security interest for the benefit of the holder of the security interest,

(3) The reasonable expenses, including reasonable compensation for attorneys, actually incurred in collecting or enforceing the obligation secured,

(4) The reasonable costs of insuring, preserving, or repairing the property to which the lien or security interest relates,

(5) The reasonable costs of insuring payment of the obligation secured (including amounts paid by the holder of the security interest for mortgage insurance, such as that issued by the Federal Housing Administration), and

(6) Amounts paid to satisfy any lien on the property to which the lien or security interest relates, but only if the lien so satisfied is entitled to priority over the lien imposed by section 6321.

(b) *Collection expenses.* The reasonable expenses described in paragraph (a)(3) of this section include expenditures incurred by the protected holder of the lien or security interest to establish the priority of his interest or to collect, by foreclosure or otherwise, the amount due him from the property subject to his lien. Accordingly, the amount of the encumbrance which is protected is increased by the amounts so expended by the holder of the security interest.

(c) *Costs of insuring, preserving, etc.* The reasonable costs of insuring, preserving, or repairing described in paragraph (a)(4) of this section include expenditures by the holder of a security interest for fire and casualty insurance on the property subject to the security interest and amounts paid by the holder of the lien or security interest to repair the property. Such reasonable costs also include the amounts paid by the holder of the lien or security interest in a leasehold to the lessor of the leasehold to preserve the leasehold subject to the lien or security interest. Accordingly, the amount of the lien or security interest which is protected is increased by the amounts so expended by the holder of the lien or security interest.

(d) *Satisfaction of liens.* The amounts described in paragraph (a)(6) of this section include expenditures incurred by the protected holder of a lien or security interest to discharge a statutory lien for State sales taxes on the property subject to his lien or security interest if both his lien or security interest and the sales tax lien have priority over a Federal tax lien. Accordingly, the amount of the lien or security interest is increased by the amounts so expended by the holder of the lien or security interest even though under local law the holder of the lien or security interest is not subrogated to the rights of the holder of the State sales tax lien. However, if the holder of the lien or security interest is subrogated, within the meaning of paragraph (b) of § 301.6323(i)–1, to the rights of the holder of the sales tax lien, he will also be entitled to any additional protection afforded by section 6323(i)(2).

§ 301.6323(f) Statutory provisions; validity and priority against certain persons; place for filing notice; form.

SEC. 6323. *Validity and priority against certain persons.* * * *

(f) *Place for filing notice; form*—(1) *Place for filing.* The notice referred to in subsection (a) shall be filed—

(A) *Under State laws*—(i) *Real property.* In the case of real property, in one office within the State (or the county, or other governmental subdivision) as designated by the laws of such State, in which the property subject to the lien is situated; and

(ii) *Personal property.* In the case of personal property, whether tangible or intangible, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; or

(B) *With clerk of district court.* In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law designated one office which meets the requirements of subparagraph (A); or

(C) *With recorder of deeds of the District of Columbia.* In the office of the Recorder of Deeds of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(2) *Situs of property subject to lien.* For purposes of paragraph (1), property shall be deemed to be situated—

(A) *Real property.* In the case of real property, at its physical location; or

(B) *Personal property.* In the case of personal property, whether tangible or intangible, at the residence of the taxpayer at the time the notice of lien is filed.

For purposes of paragraph (2)(B), the residence of a corporation or partnership shall be deemed to be the place at which the principal executive office of the business is located, and the residence of a taxpayer whose residence is without the United States shall be deemed to be in the District of Columbia.

(3) *Form.* The form and content of the notice referred to in subsection (a) shall be prescribed by the Secretary or his delegate. Such notice shall be valid notwithstanding any other provision of law regarding the form or content of a notice of lien.

[Sec. 6323(f) as added by sec. 101(a) Federal Tax Lien Act of 1966 (80 Stat. 1125)]

§ 301.6323(f)–1 Place for filing notice; form.

(a) *Place for filing.* The notice of lien referred to in § 301.6323(a)–1 shall be filed as follows:

(1) *Under State laws*—(i) *Real property.* In the case of real property, notice shall be filed in one office within the State (or the county or other governmental subdivision), as designated by the laws of the State, in which the property subject to the lien is deemed situated under the provisions of paragraph (b)(1) of this section.

(ii) *Personal property.* In the case of personal property, whether tangible or intangible, the notice shall be filed in one office within the State (or the county or other governmental subdivision), as designated by the laws of the State, in which the property subject to the lien is deemed situated under the provisions of paragraph (b)(2) of this section.

(2) *With the clerk of the U.S. district court.* Whenever a State has not by law designated one office which meets the requirements of subparagraph (1)(i) or (1)(ii) of this paragraph, the notice shall be filed in the office of the clerk of the U.S. district court for the judicial district in which the property subject to the lien is deemed situated under the provisions of paragraph (b) of this section. For example, a State has not by law designated one office meeting the requirements of subparagraph (1)(i) of this paragraph if more than one office is designated within the State, county, or other governmental subdivision for filing notices with respect to all real property located in such State, county, or other governmental subdivision. A State has not by law designated one office meeting the requirements of subparagraph (1)(ii) of this paragraph if more than one office is designated in the State, county, or other governmental subdivision for filing notices with respect to all of the personal property of a particular taxpayer.

(3) *With the Recorder of Deeds of the District of Columbia.* If the property subject to the lien imposed by section 6321 is deemed situated, under the provisions of paragraph (b) of this section, in the District of Columbia, the notice shall be filed in the office of the Recorder of Deeds of the District of Columbia.

(b) *Situs of property subject to lien.* For purposes of paragraph (a) of this section, property is deemed situated as follows:

(1) *Real property.* Real property is deemed situated at its physical location.

(2) *Personal property.* Personal property, whether tangible or intangible, is deemed situated at the residence of the taxpayer at the time the notice of lien is filed.

For purposes of subparagraph (2) of this paragraph the residence of a corporation or partnership is deemed to be the place at which the principal executive office of the business is located, and the residence of a taxpayer whose residence is not within the United States is deemed to be in the District of Columbia.

(c) *Form.* The notice referred to in § 301.6323(a)–1 shall be filed on Form 668, "Notice of Federal Tax Lien under Internal Revenue Laws". Such notice is valid notwithstanding any other provision of law regarding the form or content of a notice of lien. For example, omission from the notice of lien of a description of the property subject to the lien does not affect the validity thereof even though state law may require that the notice contain a description of the property subject to the lien.

(d) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). The law of State X provides that notices of Federal tax lien affecting personal property are to be filed in the Office of the Recorder of Deeds of the county where the taxpayer resides. The laws of State X also provide that notices of lien affecting real property are to be filed with the recorder of deeds of the county where the real property is located. On June 1, 1970, in accordance with § 301.6323(f)–1, a notice of lien is filed in county M with respect to the delinquent tax liability of A. At the time the notice is filed, A is a resident of county M and owns real property in that county. One year later A moves to county N and one year after that A moves to county O. Because the situs of personal property is deemed to be at the residence of the taxpayer at the time the notice of lien is filed, the notice continues to be effectively filed with respect to A's personal property even though A no longer resides in county M. Furthermore, because the situs of real property is deemed to be at its physical location, the notice of lien also continues to be effectively filed with respect to A's real property.

Example (2). B is a resident of Canada but owns personal property in the United States. On January 4, 1971, in accordance with § 301.6323(f)–1, a notice of lien is filed with the Office of the Recorder of Deeds of 1973, B changes his residence to State Y in the United States. Because the residence of the United States. Because the residence of a taxpayer who is not a resident of the United States is deemed to be in the District of Columbia and the situs of personal property is deemed to be at the residence of the taxpayer at the time of filing, the lien continues to be effectively filed with respect to the personal property of B located in the United States even though B has returned to the United States and taken up residence in State Y and even though B has at no time been in the District of Columbia.

Example (3). The law of State Z in effect before July 1, 1967, provides that notices of lien affecting real property are to be filed in the office of the recorder of deeds of the county in which the real property is located, but that if the real property is registered under the Torrens system of title registration the notice is to be filed with the registrar of titles rather than the recorder of deeds. The law of State Z in effect after June 30, 1967, provides that all notices of lien affecting real property are to be filed with the recorder of deeds of the county in which the real property is located. Accordingly, where the Torrens system is adopted by a county in State Z, there were before July 1, 1967, two offices designated for filing notices of Federal tax lien affecting real property in the county because one office was designated for Torrens real property and another office was designated for non-Torrens real property. Because State Z had not designated one office within the State, county, or other governmental subdivision for filing notices before July 1, 1967, with respect to all real property located in the State, county, or governmental subdivision, before July 1, 1967, the place for filing notices of lien under this section, affecting property located in counties adopting the Torrens system, was with the clerk of the U.S. district court for the judicial district in which the real property is located. However, after June 30, 1967, the place for filing notices of lien under this section, affecting both Torrens and non-Torrens real property in counties adopting the Torrens system is with the recorder of deeds for each such county. Notices of lien filed under this section with the clerk of the U.S. district court before July 1, 1967, remain validly filed whether or not refiled with the recorder of deeds after the change in State law or upon refiling during the required refiling period.

Example (4). The law of State W provides that notices of lien affecting personal property of corporations and partnerships are to be filed in the office of the Secretary of State. Notices of lien affecting personal property of any other person are to be filed in the office of the clerk of court for the county where the person resides. Because the State law designates only one filing office within State W with respect to personal property of any particular taxpayer, notices of lien filed under this section, affecting personal property, shall be filed in the office designated under State law.

§ 301.6323(g) Statutory provisions; validity and priority against certain persons; refiling of notice of tax lien.

SEC. 6323. *Validity and priority against certain persons.* * * *

(g) *Refiling of notice.*—For purposes of this section—

(1) *General rule.*—Unless notice of lien is refiled in the manner prescribed in paragraph (2) during the required refiling period, such notice of lien shall be treated as filed on the date on which it is filed (in accordance with subsection (f)) after the expiration of such refiling period.

(2) *Place for filing.*—A notice of lien refiled during the required refiling period shall be effective only—

(A) If such notice of lien is refiled in the office in which the prior notice of lien was filed; and

(B) In any case in which, 90 days or more prior to the date of a refiling of notice of lien under subparagraph (A), the Secretary or his delegate received written information (in

the manner prescribed in regulations issued by the Secretary or his delegate) concerning a change in the taxpayer's residence, if a notice of such lien is also filed in accordance with subsection (f) in the State in which such residence is located.

(3) *Required refiling period.*—In the case of any notice of lien, the term "required refiling period" means—

(A) The 1-year period ending 30 days after the expiration of 6 years after the date of the assessment of the tax, and

(B) The 1-year period ending with the expiration of 6 years after the close of the preceding required refiling period for such notice of lien.

(4) *Transitional rule.*—Notwithstanding paragraph (3), if the assessment of the tax was made before January 1, 1962, the first required refiling period shall be the calendar year 1967.

[Sec. 6323(g) as added by sec. 101(a), Federal Tax Lien Act 1966 (80 Stat. 1125)]

§ 301.6323(g)–1 Refiling of notice of tax lien.

(a) *In general*—(1) *Requirement to refile.* In order to continue the effect of a notice of lien, the notice must be refiled in the place described in paragraph (b) of this section during the required refiling period (described in paragraph (c) of this section). In the event that two or more notices of lien are filed with respect to a particular tax assessment, the failure to comply with the provisions of paragraphs (b)(1)(i) and (c) of this section in respect of one of the notices of lien does not affect the effectiveness of the refiling of any other notice of lien. Except for the filing of a notice of lien required by paragraph (b)(1)(ii) of this section (relating to a change of residence) the validity of any refiling of a notice of lien is not affected by the refiling or nonrefiling of any other notice of lien.

(2) *Effect of refiling.* A timely refiled notice of lien is effective as of the date on which the notice of lien to which it relates was effective.

(3) *Effect of failure to refile.* If the district director fails to refile a notice of lien in the manner described in paragraphs (b) and (c) of this section, the notice of lien is not effective, after the expiration of the required refiling period, as against any person without regard to when the interest of the person in the property subject to the lien was acquired. However, the failure of the district director to refile a notice of lien during the required refiling period will not, following the expiration of the refiling period, affect the effectiveness of the notice with respect to:

(i) Property which is the subject matter of a suit, to which the United States is a party, commenced prior to the expiration of the required refiling period, or

(ii) Property which has been levied upon by the United States prior to the expiration of the refiling period.

However, if a suit or levy referred to in the preceding sentence is dismissed or released and the property is subject to the lien at such time, a notice of lien with respect to the property is not effective after the suit or levy is dismissed or released unless refiled during the required refiling period. Failure to refile a notice of lien does not affect the existence of the lien.

(4) *Filing of new notice.* If a notice of lien is not refiled, and if the lien remains in existence, the Internal Revenue Service may nevertheless file a new notice of lien either on the form prescribed for the filing of a notice of lien or on the form prescribed for refiling a notice of lien. This new filing must meet the requirements of section 6323(f) and § 301.6323(f)–1 and is effective from the date on which such filing is made.

(b) *Place for refiling notice of lien*—(1) *In general.* A notice of lien refiled during the required refiling period (described in paragraph (c) of this section) shall be effective only—

(i) If the notice of lien is refiled in the office in which the prior notice of lien (including a refiled notice) was filed under the provisions of section 6323; and

(ii) In any case in which 90 days or more prior to the date the refiling of the notice of lien under subdivision (i) is completed, the Internal Revenue Service receives written information (in the manner described in subparagraph (2) of this paragraph) concerning a change in the taxpayer's residence, if a notice of such lien is also filed in accordance with section 6323(f)(1)(A)(ii) in the State in which such new residence is located (or, if such new residence is located without the United States, in the District of Columbia).

A notice of lien is considered as refiled in the office in which the prior notice or refiled notice was filed under the provisions of section 6323 if it is refiled in the office which, pursuant to a change in the applicable local law, assumed the functions of the office in which the prior notice or refiled notice was filed. If on or before the 90th day referred to in subdivision (ii) more than one written notice is received concerning a change in the taxpayer's residence, a notice of lien is required by this subdivision to be filed only with respect to the residence shown on the written notice received on the most recent date. Subdivision (ii) is applicable regardless of whether the taxpayer resides at the new residence on the date the refiling of notice of lien under subdivision (i) of this subparagraph is completed.

(2) *Notice of change of taxpayer's residence*—(i) *In general.* Except as provided in subdivision (ii) or (iii) of this subparagraph, for purposes of this section, a notice of change of a taxpayer's residence will be effective only if it (A) is received, in writing, from the taxpayer or his representative by the district director or the service center director having jurisdiction where the original notice of lien was filed, (B) relates to an unpaid tax liability of the taxpayer, and (C) states the taxpayer's name and the address of his new residence. Although it is not necessary that a written notice contain the taxpayer's identifying number authorized by section 6109, it is preferable that it include such number. For purposes of this subdivision, a notice of change of a taxpayer's residence shown on a return or an amended return (including a return of the same tax) will not be effective to notify the Internal Revenue Service.

(ii) *Notice received before August 23, 1976.* For purposes of this section, a notice of a change of a taxpayer's residence will also be effective if it (A) is received, in writing, by any office of the Internal Revenue Service before August 23, 1976, from the taxpayer or his representative, (B) relates to an unpaid tax liability of the taxpayer, and (C) states the taxpayer's name and the address of his new residence.

(iii) *By return or amended return.* For purposes of this section, in the case of a notice of lien which relates to an assessment of tax made after December 31, 1966, a notice of change of a taxpayer's residence will also be effective if it is contained in a return or amended return of the same type of tax filed with the Internal Revenue Service by the taxpayer or his representative which on its face indicates that there is a change in the taxpayer's address and correctly states the taxpayer's name, the address of his new residence, and his identifying number required by section 6109.

(iv) *Other rules applicable.* Except as provided in subdivisions (i), (ii), and (iii) of this subparagraph, no communication (either written or oral) to the Internal Revenue Service will be considered effective as notice of a change of a taxpayer's residence under this section, whether or not he Service has actual notice or knowledge of the taxpayer's new residence. For the purpose of determining the date on which a notice of change of a taxpayer's residence is received under this section, the notice shall be treated as received on the date it is actually received by the Internal Revenue Service without reference to the provisions of section 7502.

(3) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). A, a delinquent taxpayer, is a resident of State M and owns real property in State N. In accordance with § 301.6323(f)–1, notices of lien are filed in States M and N. In order to continue the effect of the notice of lien filed in M, the Internal Revenue Service must refile, during the required refiling period, the notice of lien with the appropriate office in M but is not required to refile the notice of lien with the appropriate office in N. Similarly, in order to continue the effect of the notice of lien filed in State N, the Internal Revenue Service must refile, during the required refiling period, the notice of lien with the appropriate office in N but is not required to refile the notice of lien with the appropriate office in M.

Example (2). B, a delinquent taxpayer, is a resident of State M. In accordance with § 301.6323(f)–1, notice of lien is properly filed in that State. One year before the beginning of the required refiling period, B establishes his residence in State N, and B immediately notifies the Internal Revenue Service of his change in residence in accordance with the provisions of paragraph (b)(2) of this section. In order to continue

the effect of the notice of lien filed in M, the Internal Revenue Service must refile, during the required refiling period, notices of lien with (i) the appropriate office in M, and (ii) the appropriate office in N, because B properly notified the Internal Revenue Service of his change in residence to N more than 89 days prior to the date refiling of the notice of lien in M is completed. Even if the Internal Revenue Service had acquired actual notice or knowledge of B's change in residence by other means, if B had not properly notified the Internal Revenue Service of his change in residence, the effect of the notice of lien in State M could have been continued without any refiling in State N.

Example (3). C, a delinquent taxpayer, is a resident of State O. In accordance with § 301.6323(f)–1, notice of lien is properly filed in that State. Four years before the required refiling period, C establishes his residence in State P, and C immediately notifies the Internal Revenue Service of his change in residence in accordance with the provisions of paragraph (b)(2) of this section. Three years before the required refiling period, C establishes his residence in State R, and again C immediately notifies the Internal Revenue Service of his change in residence in accordance with the provisions of paragraph (2) of this section. In order to continue the effect of the notice of lien filed in O, the Internal Revenue Service must refile, during the required refiling period, notices of lien with (i) the appropriate office in O, and (ii) the appropriate office in R. Refiling in R is required because the notice received by the Service of C's change in residence to R was the most recent notice received more than 89 days prior to the date refiling in O is completed. The notice of lien is not required to be filed in P, even though C properly notified the Internal Revenue Service of his change in residence to P, because such notice is not the most recent one received.

Example (4). Assume the same facts as in example (3), except that C does not notify the Internal Revenue Service of his change in residence to R in accordance with the provisions of paragraph (b)(2) of this section. In order to continue the effect of the notice of lien filed in O, the Internal Revenue Service must refile, during the required refiling period, the notice of lien with (i) the appropriate office in O, and (ii) the appropriate office in P. Refiling in P is required because C properly notified the Internal Revenue Service of his change in residence to P, even though C is not a resident of P on the date refiling of the notice of lien in O is completed. The Internal Revenue Service is not required to file a notice of lien in R because C did not properly notify the Service of his change in residence to R.

Example (5). D, a delinquent taxpayer, is a resident of State M and owns real property in States N and O. In accordance with § 301.6323(f)–1, the Internal Revenue Service files notices of lien in M, N, and O States. Five years and 6 months after the date of the assessment shown on the notice of lien, D establishes his residence in P, and at that time the Internal Revenue Service received from D a notification of his change in residence in accordance with the provisions of paragraph (b)(2) of this section. On a date which is 5 years and 7 months after the date of the assessment shown on the notice of lien, the Internal Revenue Service properly refiles notices of lien in M, N, and O which refilings are sufficient to continue the effect of each of the notice of lien. The Internal Revenue Service is not required to file a notice of lien in P because D did not notify the Internal Revenue Service of his change of residence to P more than 89 days prior to the date each of the refilings in M, N, and O was completed.

Example (6). Assume the same facts as in example (5) except that the refiling of the notice of lien in O occurs 100 days after D notifies the Internal Revenue Service of his change in residence to P in accordance with the provisions of paragraph (b)(2) of this section. In order to continue the effect of the notice of lien filed in O, in addition to refiling the notice of lien in O, the Internal Revenue Service must also refile, during the required refiling period, a notice of lien in P because D properly notified the Internal Revenue Service of his change of residence to P more than 89 days prior to the date the refiling in O was completed. However, the Internal Revenue Service is not required to refile the notice of lien in P to maintain the effect of the notices of lien in M and N because D did not notify the Internal Revenue Service of his change in residence to P more than 89 days prior to the date the refilings in M and N were completed.

Example (7). E, a delinquent taxpayer, is a resident of State T. Because T has not designated one office in the case of personal property for filing notices of lien in accordance with the provisions of section 6323(f)(1)(A)(ii), the Internal Revenue Service properly files a notice of lien with the clerk of the appropriate United States district court. However, solely as a matter of convenience for those who may have occasion to search for notices of lien, and not as a matter of legal effectiveness, the Internal Revenue Service also files notice of lien with the recorder of deeds of the county in T where E resides. In addition, the Internal Revenue Service sends a copy of the notice of lien to the X life insurance company to give the company actual notice of the notice of lien. In order to continue the effect of the notice of lien, the Internal Revenue Service must refile the notice of lien with the clerk of the appropriate United States district court during the required refiling period. In order to continue the effect of the notice of the lien, it is not necessary to refile the notice of lien with the Recorder of Deeds of the county where E resides, because the refiling of the notice of lien with the recorder of deeds does not constitute a proper filing for the purposes of section 6323(f). In addition, to continue the effect of the notice of lien under this section it is not necessary to send a copy of the notice of lien to the X life insurance company, because the sending of a notice of lien to an insurance company does not constitute a proper filing for the purposes of section 6323(f).

(c) *Required refiling period*—(1) *In general.* For the purpose of this section, except as provided in subparagraph (2) of this paragraph, the term "required refiling period" means—

(i) The 1-year period ending 30 days after the expiration of 6 years after the date of the assessment of the tax, and

(ii) The 1-year period ending with the expiration of 6 years after the close of the preceding required refiling period for such notice of lien.

(2) *Tax assessments made before January 1, 1962.* If the assessment of the tax is made before January 1, 1962, the first required refiling period shall be the calendar year 1967. Thus, to maintain the effectiveness of any notice of lien on file which relates to a lien which arose before January 1, 1962, the Internal Revenue Service will refile the notice of lien during the calendar year 1967.

(3) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). On March 1, 1963, an assessment of tax is made against B, a delinquent taxpayer, and a lien for the amount of the assessment arises on that date. On July 1, 1963, in accordance with § 301.6323(f)–1, a notice of lien is filed. The notice of lien filed on July 1, 1963, is effective through March 31, 1969. The first required refiling period for the notice of lien begins on April 1, 1968, and ends on March 31, 1969. A refiling of the notice of lien during that period will extend the effectiveness of the notice of lien filed on July 1, 1963, through March 31, 1975. The second required refiling period for the notice of lien begins on April 1, 1974, and ends on March 31, 1975.

Example (2). Assume the same facts as in example (1), except that although the Internal Revenue Service fails to refile a notice of lien during the first required refiling period (April 1, 1968, through March 31, 1969), a notice of lien is filed on June 2, 1971, in accordance with § 301.6323(f)–1. Because of this filing, the notice of lien filed on June 2, 1971, is effective as of June 2, 1971. That notice must be refiled during the 1-year period ending on March 31, 1975, if it is to continue in effect after March 31, 1975.

Example (3). On April 1, 1960, an assessment of tax is made against B, a delinquent taxpayer, and a tax lien for the amount of the assessment arises on that date. On June 1, 1962, in accordance with § 301.6323(f)–1, a notice of lien is filed. Because the assessment of tax was made before January 1, 1962, the notice of lien filed on June 1, 1962, is effective through December 31, 1967. The first required refiling period for the notice of lien is the calendar year 1967. A refiling of the notice of lien during 1967 will extend the effectiveness of the notice of lien filed on June 1, 1962, through December 31, 1973.

§ 301.6323(h) Statutory provisions; validity and priority against certain persons; definitions.

SEC. 6323. *Validity and priority against certain persons.* * * *

(h) *Definitions.* For purposes of this section and section 6324—

(1) *Security interest.* The term "security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time (A) if, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien arising out of an unsecured obligation, and (B) to the extent that, at such time, the holder has parted with money or money's worth.

(2) *Mechanic's lienor.* The term "mechanic's lienor" means any person who under local law has a lien on real property (or on the proceeds of a contract relating to real property) for services, labor, or materials furnished in connection with the construction or improvement of such property. For purposes of the preceding sentence, a person has a lien on the earliest date such lien becomes valid under local law against subsequent purchasers without actual notice, but not before he begins to furnish the services, labor, or materials.

(3) *Motor vehicle.* The term "motor vehicle" means a self-propelled vehicle which is registered for highway use under the laws of any State or foreign country.

(4) *Security.* The term "security" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by a corporation or a government or political subdivision thereof, with interest coupons or in

registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument or money.

(5) *Tax lien filing.* The term "tax lien filing" means the filing of notice (referred to in subsection (a)) of the lien imposed by section 6321.

(6) *Purchaser.* The term "purchaser" means a person who, for adequate and full consideration in money or money's worth, acquires an interest (other than a lien or security interest) in property which is valid under local law against subsequent purchasers without actual notice. In applying the preceding sentence for purposes of subsection (a) of this section, and for purposes of section 6324—

(A) A lease of property,

(B) A written executory contract to purchase or lease property,

(C) An option to purchase or lease property or any interest therein, or

(D) An option to renew or extend a lease of property,

which is not a lien or security interest shall be treated as an interest in property.

[Sec. 6323(h) as added by sec. 101(a), Federal Tax Lien Act 1966 (80 Stat. 1125)]

§ 301.6323(h)–0 Scope of definitions.

Except as otherwise provided by § 301.6323(h)–1, the definitions provided by § 301.6323(h)–1 apply for purposes of §§ 301.6323(a)–1 through 301.6324–1.

§ 301.6323(h)–1 Definitions.

(a) *Security interest*—(1) *In general.* The term "security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time—

(i) If, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien (as provided in subparagraph (2) of this paragraph) arising out of an unsecured obligation; and

(ii) To the extent that, at such time, the holder has parted with money or money's worth (as defined in subparagraph (3) of this paragraph).

For purposes of this subparagraph, a contract right (as defined in paragraph (c)(2)(i) of § 301.6323(c)–1) is an existence when the contract is made. An account receivable (as defined in paragraph (c)(2)(ii) of § 301.6323(c)–1) is in existence when, and to the extent, a right to payment is earned by performance.

A security interest must be in existence, within the meaning of this paragraph, at the time as of which its priority against a tax lien is determined. For example, to be afforded priority under the provisions of paragraph (a) of § 301.6323(a)–1, a security interest must be in existence within the meaning of this paragraph before a notice of lien is filed.

(2) *Protection against a subsequent judgment lien.* (i) For purposes of this paragraph, a security interest is deemed to be protected against a subsequent judgment lien on—

(A) The date on which all actions required under local law to establish the priority of a security interest against a judgment lien have been taken, or

(B) If later, the date on which all required actions are deemed effective, under local law, to establish the priority of the security interest against a judgment lien.

For purposes of this subdivision, the dates described in (A) and (B) of this subdivision (i) shall be determined without regard to any rule or principle of local law which permits the relation back of any requisite action to a date earlier than the date on which the action is actually performed. For purposes of this paragraph, a judgment lien is a lien held by a judgment lien creditor as defined in paragraph (g) of this section.

(ii) The application of this subparagraph may be illustrated by the following example:

Example. (i) Under the law of State X, a security interest in negotiable instruments, stocks, bonds, or other securities may be perfected, and hence protected against a judgment lien, only by the secured party taking possession of the instruments or securities. However, a security interest in such intangible personal property is considered to be temporarily perfected for a period of 21 days from the time the security interest attaches, to the extent consideration other than past consideration is given under a written security agreement. Under the law of X, a security interest attaches to such collateral when there is an agreement between the creditor and debtor that the interest attaches, the debtor has rights in the property, and consideration is given by the creditor. Under the law of X, in the case of temporary perfection, the security interest in such property is protected during the 21-day period against a judgment lien arising, after the security interest attaches, out of an unsecured obligation. Upon expiration of the 21-day period, the holder of the security interest must take possession of the collateral to continue perfection.

(ii) Because the security interest is protected during the 21-day period against a subsequent judgment lien arising out of an unsecured obligation, and because the taking of possession before the conclusion of the period of temporary perfection is not considered, for purposes of subdivision (i) of this subparagraph, to be a requisite action which relates back to the beginning of such period, the requirements of this paragraph are satisfied. However, because taking possession is a condition precedent to continued perfection, possession of the collateral is a requisite action to establish such priority after expiration of the period of temporary perfection. If there is a lapse of perfection for failure to take possession, the determination of when the security interest exists (for purposes of protection against the tax lien) is made without regard to the period of temporary perfection.

(3) *Money or money's worth.* For purposes of this paragraph, the term "money or money's worth" includes money, a security (as defined in paragraph (d) of this section), tangible or intangible property, services, and other consideration reducible to a money value. Money or money's worth also includes any consideration which otherwise would constitute money or money's worth under the preceding sentence which was parted with before the security interest would otherwise exist if, under local law, past consideration is sufficient to support an agreement giving rise to a security interest. A relinquishing or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights is not a consideration in money or money's worth. Nor is love and affection, promise of marriage, or any other consideration not reducible to a money value a consideration in money or money's worth.

(4) *Holder of a security interest.* For purposes of this paragraph, the holder of a security interest is the person in whose favor there is a security interest. For provisions relating to the treatment of a purchaser of commercial financing security as a holder of a security interest, see § 301.6323(c)–1(e).

(b) *Mechanic's lienor*—(1) *In general.* The term "mechanic's lienor" means any person who under local law has a lien on real property (or on the proceeds of a contract relating to real property) for services, labor, or materials furnished in connection with the construction or improvement (including demolition) of the property. A mechanic's lienor is treated as having a lien on the later of—

(i) The date on which the mechanic's lien first becomes valid under local law against subsequent purchasers of the real property without actual notice, or

(ii) The date on which the mechanic's lienor begins to furnish the services, labor, or materials.

(2) *Examples.* The provisions of this paragraph may be illustrated by the following example:

Example (1). On February 1, 1968, A lets a contract for the construction of an office building on property owned by him. On March 1, 1968, in accordance with § 301.6323(f)–1, a notice of lien for delinquent Federal taxes owed by A is filed. On April 1, 1968, B, a lumber dealer, delivers lumber to A's property. On May 1, 1968, B records a mechanic's lien against the property to secure payment of the price of the lumber. Under local law, B's mechanic's lien is valid against subsequent purchasers of real property without notice from February 1, 1968, which is the date the construction contract was entered into. Because the date on which B's mechanic's lien is valid under local law against subsequent purchasers is February 1, and the date on which B begins to furnish the materials is April 1, the date on which B becomes a mechanic's lienor within the meaning of this paragraph is April 1, the later of these two dates. Under paragraph (a) of § 301.6323(a)–1, B's mechanic's lien will not have priority over the Federal tax lien, even though under local law the mechanic's lien relates back to the date of the contract.

(c) *Motor vehicle.* (1) The term "motor vehicle" means a self-propelled vehicle which is registered for highway use under the laws of any State, the District of Columbia, or a foreign country.

(2) A motor vehicle is "registered for highway use" at the time of a sale if immediately prior to the sale it is so registered under the laws of any State,

the District of Columbia, or a foreign country. Where immediately prior to the sale of a motor vehicle by a dealer, the dealer is permitted under local law to operate it under a dealer's tag, license, or permit issued to him, the motor vehicle is considered to be registered for highway use in the name of the dealer at the time of the sale.

(d) *Security.* The term "security" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by a corporation or a government or political subdivision thereof, with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(e) *Tax lien filing.* The term "tax lien filing" means the filing of notice of the lien imposed by section 6321 in accordance with § 301.6323(f)–1.

(f) *Purchaser*—(1) *In general.* The term "purchaser" means a person who, for adequate and full consideration in money or money's worth (as defined in subparagraph (3) of this paragraph), acquires an interest (other than a lien or security interest) in property which is valid under local law against subsequent purchasers without actual notice.

(2) *Interest in property.* For purposes of this paragraph, each of the following interests is treated as an interest in property, if it is not a lien or security interest:

(i) A lease of property,

(ii) A written executory contract to purchase or lease property,

(iii) An option to purchase or lease property and any interest therein, or

(iv) An option to renew or extend a lease of property.

(3) *Adequate and full consideration in money or money's worth.* For purposes of this paragraph, the term "adequate and full consideration in money or money's worth" means a consideration in money or money's worth having a reasonable relationship to the true value of the interest in property acquired. See paragraph (a)(3) of this section for definition of the term "money or money's worth." Adequate and full consideration in money or money's worth may include the consideration in a bona fide bargain purchase. The term also includes the consideration in a transaction in which the purchaser has not completed performance of his obligation, such as the consideration in an installment purchase contract, even though the purchaser has not completed the installment payments.

(4) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). A enters into a contract for the purchase of a house and lot from B. Under the terms of the contract A makes a down payment and is to pay the balance of the purchase price in 120 monthly installments. After payment of the last installment, A is to receive a deed to the property. A enters into possession, which under local law protects his interest in the property against subsequent purchasers without actual notice. After A has paid five monthly installments, a notice of lien for Federal taxes is filed against B in accordance with § 301.6323(f)–1. Because the contract is an executory contract to purchase property and is valid under local law against subsequent purchasers without actual notice, A qualifies as a purchaser under this paragraph.

Example (2). C owns a residence which he leases to his son-in-law, D, for a period of 5 years commencing January 1, 1968. The lease provides for payment of $100 a year, although the fair rental value of the residence is $2,500 a year. The lease is recorded on December 31, 1967. On March 1, 1968, a notice of tax lien for unpaid Federal taxes of C is filed in accordance with § 301.6323(f)–1. Under local law, D's interest is protected against subsequent purchasers without actual notice. However, because the rental paid by D has no reasonable relationship to the value of the interest in property acquired, D does not qualify as a purchaser under this paragraph.

(g) *Judgment lien creditor.* The term "judgment lien creditor" means a person who has obtained a valid judgment, in a court of record and of competent jurisdiction, for the recovery of specifically designated property or for a certain sum of money. In the case of a judgment for the recovery of a certain sum of money, a judgment lien creditor is a person who has perfected a lien under the judgment on the property involved. A judgment lien is not perfected until the identity of the lienor, the property subject to the lien, and the amount of the lien are established. Accordingly, a judgment lien does not include an attachment or garnishment lien until the lien has ripened into judgment, even though under local law the lien of the judgment relates back to an earlier date. If recording or docketing is necessary under local law before a judgment becomes effective against third parties acquiring liens on real property, a judgment lien under such local law is not perfected with respect to real property until the time of such recordation or docketing. If under local law levy or seizure is necessary before a judgment lien becomes effective against third parties acquiring liens on personal property, then a judgment lien under such local law is not perfected until levy or seizure of the personal property involved. The term "judgment" does not include the determination of a quasi-judicial body or of an individual acting in a quasi-judicial capacity such as the action of State taxing authorities.

§ 301.6323(i) Statutory provisions; validity and priority against certain persons; special rules.

SEC. 6323. *Validity and priority against certain persons.* * * *

(i) *Special rules*—(1) *Actual notice or knowledge.* For purposes of this subchapter, an organization shall be deemed for purposes of a particular transaction to have actual notice or knowledge of any fact from the time such fact is brought to the attention of the individual conducting such transaction, and in any event from the time such fact would have been brought to such individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(2) *Subrogation.* Where, under local law, one person is subrogated to the rights of another with respect to a lien or interest, such person shall be subrogated to such rights for purposes of any lien imposed by section 6321 or 6324.

(3) *Disclosure of amount of outstanding lien.* If a notice of lien has been filed pursuant to subsection (f), the Secretary or his delegate is authorized to provide by regulations the extent to which, and the conditions under which, information as to the amount of the outstanding obligation secured by the lien may be disclosed.

[Sec. 6323(i) as added by sec. 101(a), Federal Tax Lien Act 1966 (80 Stat. 1125)]

§ 301.6323(i)–1 Special rules.

(a) *Actual notice or knowledge.* For purposes of subchapter C (section 6321 and following), chapter 64 of the Code, an organization is deemed, in any transaction, to have actual notice or knowledge of any fact from the time the fact is brought to the attention of the individual conducting the transaction, and in any event from the time the fact would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(b) *Subrogation*—(1) *In general.* Where, under local law, one person is subrogated to the rights of another with respect to a lien or interest, such person shall be subrogated to such rights for purposes of any lien imposed by section 6321 or 6324. Thus, if a tax lien imposed by section 6321 or 6324 is not valid with respect to a particular interest as against the holder of that interest, then the tax lien also is not valid with respect to that interest as against any person who, under local law, is a successor in interest to the holder of that interest.

(2) *Example.* The application of this paragraph may be illustrated by the following example:

Example. On February 1, 1968, an assessment is made and a tax lien arises with respect to A's delinquent tax liability. On February 25, 1968, in accordance with § 301.6323(f)–1, a notice of lien is properly filed. On March 1, 1968, A negotiates a loan from B, the security for which is a second mortgage on property owned by A. The first mortgage on the property is held by C and has priority

over the tax lien. Upon default by A, C begins proceedings to foreclose upon the first mortgage. On September 1, 1968, B pays the amount of principal and interest in default to C in order to protect the second mortgage against the pending foreclosure of C's senior mortgage. Under local law, B is subrogated to C's rights to the extent of the payment to C. Therefore, the tax lien is invalid against B to the extent he became subrogated to C's rights even though the tax lien is valid against B's second mortgage on the property.

(c) *Disclosure of amount of outstanding lien.* If a notice of lien has been filed (see § 301.6323(f)–1), the amount of the outstanding obligation secured by the lien is authorized to be disclosed as a matter of public record on Form 668 "Notice of Federal Tax Lien Under Internal Revenue Laws." The amount of the outstanding obligation secured by the lien remaining unpaid at the time of an inquiry is authorized to be disclosed to any person who has a proper interest in determining this amount. Any person who has a right in the property or intends to obtain a right in the property by purchase or otherwise will, upon presentation by him of satisfactory evidence, be considered to have a proper interest. Any person desiring this information may make his request to the office of the Internal Revenue Service named on the notice of lien with respect to which the request is made. The request should clearly describe the property subject to the lien, identify the applicable lien, and give the reasons for requesting the information.

PAR. 8. Section 301.6325 is amended to read as follows:

§ 301.6325 Statutory provisions; release of lien or discharge of property.

SEC. 6325. *Release of lien or discharge of property*—(a) *Release of lien.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of release of any lien imposed with respect to any internal revenue tax if—

(1) *Liability satisfied or unenforceable.* The Secretary or his delegate finds that the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied or has become legally unenforceable; or

(2) *Bond accepted.* There is furnished to the Secretary or his delegate and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified by such regulations.

(b) *Discharge of property*—(1) *Property double the amount of the liability.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to any lien imposed under this chapter if the Secretary or his delegate finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the unsatisfied liability secured by such lien and the amount of all other liens upon such property which have priority over such lien.

(2) *Part payment; interest of United States valueless.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if—

(A) There is paid over to the Secretary or his delegate in partial satisfaction of the liability secured by the lien an amount determined by the Secretary or his delegate, which shall not be less than the value, as determined by the Secretary or his delegate, of the interest of the United States in the part to be so discharged, or

(B) The Secretary or his delegate determines at any time that the interest of the United States in the part to be so discharged has no value.

In determining the value of the interest of the United States in the part to be so discharged, the Secretary or his delegate shall give consideration to the value of such part and to such liens thereon as have priority over the lien of the United States.

(3) *Substitution of proceeds of sale.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if such part of the property is sold and, pursuant to an agreement with the Secretary or his delegate, the proceeds of such sale are to be held, as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the discharged property.

(c) *Estate or gift tax.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any or all of the property subject to any lien imposed by section 6324 if the Secretary or his delegate finds that the liability secured by such lien has been fully satisfied or provided for.

(d) *Subordination of lien.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of subordination of any lien imposed by this chapter upon any part of the property subject to such lien if—

(1) There is paid over to the Secretary or his delegate an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the United States, or

(2) The Secretary or his delegate believes that the amount realizable by the United States from the property to which the certificate relates, or from any other property subject to the lien, will ultimately be increased by reason of the issuance of such certificate and that the ultimate collection of the tax liability will be facilitated by such subordination.

(e) *Nonattachment of lien.* If the Secretary or his delegate determines that, because of confusion of names or otherwise, any person (other than the person against whom the tax was assessed) is or may be injured by the appearance that a notice of lien filed under section 6323 refers to such person, the Secretary or his delegate may issue a certificate that the lien does not attach to the property of such person.

(f) *Effect of certificate*—(1) *Conclusiveness.* Except as provided in paragraphs (2) and (3), if a certificate is issued pursuant to this section by the Secretary or his delegate and is filed in the same office as the notice of lien to which it relates (if such notice of lien has been filed) such certificate shall have the following effect:

(A) In the case of a certificate of release, such certificate shall be conclusive that the lien referred to in such certificate is extinguished;

(B) In the case of a certificate of discharge, such certificate shall be conclusive that the property covered by such certificate is discharged from the lien;

(C) In the case of a certificate of subordination, such certificate shall be conclusive that the lien or interest to which the lien of the United States is subordinated is superior to the lien of the United States; and

(D) In the case of a certificate of nonattachment, such certificate shall be conclusive that the lien of the United States does not attach to the property of the person referred to in such certificate.

(2) *Revocation of certificate of release or nonattachment.* If the Secretary or his delegate determines that a certificate of release or nonattachment of a lien imposed by section 6321 was issued erroneously or improvidently, or if a certificate of release of such lien was issued pursuant to a collateral agreement entered into in connection with a compromise under section 7122 which has been breached, and if the period of limitation on collection after assessment has not expired, the Secretary or his delegate may revoke such certificate and reinstate the lien—

(A) By mailing notice of such revocation to the person against whom the tax was assessed at his last known address, and

(B) By filing notice of such revocation in the same office in which the notice of lien to which it relates was filed (if such notice of lien had been filed).

Such reinstated lien (i) shall be effective on the date notice of revocation is mailed to the taxpayer in accordance with the provisions of subparagraph (A), but not earlier than the date on which any required filing of notice of revocation is filed in accordance with the provisions of subparagraph (B), and (ii) shall have the same force and effect (as of such date), until the expiration of the period of limitation on collection after assessment, as a lien imposed by section 6321 (relating to lien for taxes).

(3) *Certificates void under certain conditions.* Notwithstanding any other provision of this subtitle, any lien imposed by this chapter shall attach to any property with respect to which a certificate of discharge has been issued if the person liable for the tax reacquires such property after such certificate has been issued.

(g) *Filing of certificates and notices.* If a certificate or notice issued pursuant to this section may not be filed in the office designated by State law in which the notice of lien imposed by section 6321 is filed, such certificate or notice shall be effective if filed in the office of the clerk of the United States district court for the judicial district in which such office is situated.

(h) *Cross reference.* For provisions relating to bonds, see chapter 73 (sec. 7101 and following).

[Sec. 6325 as amended by sec. 77, Technical Amendments Act 1958 (72 Stat. 1662); sec. 103(a), Federal Tax Lien Act 1966 (80 Stat. 1133)]

PAR. 9. Section 301.6325–1 is amended by revising the heading, by revising subparagraphs (1)(i), (2), (3), and (4) of paragraph (b), by revising paragraph (d), and by adding new paragraphs (e), (f), and (g). These revised and added provisions read as follows:

§ 301.6325–1 Release of lien or discharge of property.

* * * * *

(b) *Discharge of specific property from the lien*—(1) *Property double the amount of the liability.* (i) The district director may, in his discretion, issue a certificate of discharge of any part of the property subject to a lien imposed under chapter 64 of the Code if he determines that the fair market value of that part of the property remaining subject to the lien is at least double the sum of the amount of the unsatisfied liability secured by the lien and of the amount of all other liens upon the property which have priority over the lien. In general, fair market value is that amount which one ready and willing but not compelled to buy would pay to another ready and willing but not compelled to sell the property.

* * * * *

(2) *Part payment; interest of United States valueless*—(i) *Part payment.* The district director may, in his discretion, issue a certificate of discharge of any part of the property subject to a lien imposed under chapter 64 of the Code if there is paid over to him in partial satisfaction of the liability secured by the lien an amount determined by him to be not less than the value of the interest of the United States in the property to be so discharged. In determining the amount to be paid, the district director will take into consideration all the facts and circumstances of the case, including the expenses to which the Government has been put in the matter. In no case shall the amount to be paid be less than the value of the interest of the United States in the property with respect to which the certificate of discharge is to be issued.

(ii) *Interest of the United States valueless.* The district director may, in his discretion, issue a certificate of discharge of any part of the property subject to the lien if he determines that the interest of the United States in the property to be so discharged has no value.

(iii) *Valuation of interest of United States.* For purposes of this subparagraph, in determining the value of the interest of the United States in the property, or any part thereof, with respect to which the certificate of discharge is to be issued, the district director shall give consideration to the value of the property and the amount of all liens and encumbrances thereon having priority over the Federal tax lien. In determining the value of the property, the district director may, in his discretion, give consideration to the forced sale value of the property in appropriate cases.

(3) *Discharge of property by substitution of proceeds of sale.* A district director may, in his discretion, issue a certificate of discharge of any part of the property subject to a lien imposed under chapter 64 of the Code if such part of the property is sold and, pursuant to a written agreement with the district director, the proceeds of the sale are held, as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as the lien or claim had with respect to the discharged property. This subparagraph does not apply unless the sale divests the taxpayer of all right, title, and interest in the property sought to be discharged. Any reasonable and necessary expenses incurred in connection with the sale of the property and the administration of the sale proceeds shall be paid by the applicant or from the proceeds of the sale before satisfaction of any lien or claim of the United States.

(4) *Application for certificate of discharge.* Any person desiring a certificate of discharge under this paragraph shall submit an application in writing to the district director responsible for collection of the tax. The application shall contain such information as the district director may require.

* * * * *

(d) *Subordination of lien*—(1) *By payment of the amount subordinated.* A district director may, in his discretion, issue a certificate of subordination of a lien imposed under chapter 64 of the Code upon any part of the property subject to the lien if there is paid over to the district director an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the United States. For this purpose, the tax lien may be subordinated to another lien or interest on a dollar-for-dollar basis. For example, if a notice of a Federal tax lien is filed and a delinquent taxpayer secures a mortgage loan on a part of the property subject to the tax lien and pays over the proceeds of the loan to a district director after an application for a certificate of subordination is approved, the district director will issue a certificate of subordination: This certificate will have the effect of subordinating the tax lien to the mortgage.

(2) *To facilitate tax collection*—(i) *In general.* A district director may, in his discretion, issue a certificate of subordination of a lien imposed under chapter 64 of the Code upon any part of the property subject to the lien if the district director believes that the subordination of the lien will ultimately result in an increase in the amount realized by the United States from the property subject to the lien and will facilitate the ultimate collection of the tax liability.

(ii) *Examples.* The provisions of this subparagraph may be illustrated by the following examples:

Example (1). A, a farmer, needs money in order to harvest his crop. A Federal tax lien, notice of which has been filed, is outstanding with respect to A's property. B, a lending institution is willing to make the necessary loan if the loan is secured by a first mortgage on the farm which is prior to the Federal tax lien. Upon examination, the district director believes that ultimately the amount realizable from A's property will be increased and the collection of the tax liability will be facilitated by the availability of cash when the crop is harvested and sold. In this case, the district director may, in his discretion, subordinate the tax lien on the farm to the mortgage securing the crop harvesting loan.

Example (2). C owns a commercial building which is deteriorating and in unsalable condition. Because of outstanding Federal tax liens, notices of which have been filed, C is unable to finance the repair and rehabilitation of the building. D, a contractor, is willing to do the work if his mechanic's lien on the property is superior to the Federal tax liens. Upon examination, the district director believes that ultimately the amount realizable from C's property will be increased and the collection of the tax liability will be facilitated by arresting deterioration of the property and restoring it to salable condition. In this case, the district director may, in his discretion, subordinate the tax lien on the building to the mechanic's lien.

Example (3). E, a manufacturer of electronic equipment, obtains financing from F, a lending institution, pursuant to a security agreement, with respect to which a financing statement was duly filed under the Uniform Commercial Code on June 1, 1970. On April 15, 1971, F gains actual notice or knowledge that notice of a Federal tax lien had been filed against E on March 31, 1971, and F refuses to make further advances unless its security interest is assured of priority over the Federal tax lien. Upon examination, the district director believes that ultimately the amount realizable from E's property will be increased and the collection of the tax liability will be facilitated if the work in process can be completed and the equipment sold. In this case, the district director may, in his discretion, subordinate the tax lien to F's security interest for the further advances required to complete the work.

Example (4). Suit is brought against G by H, who claims ownership of property the legal title to which is held by G. A Federal tax lien against G, notice of which has previously been filed, will be enforceable against the property if G's title is confirmed. Because section 6323(b)(8) is inapplicable, J, an attorney, is unwilling to defend the case for G unless he is granted a contractual lien on the property, superior to the Federal tax lien. Upon examination, the district director believes that the successful defense of the case by G will increase the amount ultimately realizable from G's property and will facilitate collection of the tax liability. In this case, the district director may, in his discretion, subordinate the tax lien to J's contractual lien on the disputed property to secure J's reasonable fees and expenses.

(3) *Application for certificate of subordination.* Any person desiring a certificate of subordination under this paragraph shall submit an application therefor in writing to the district director responsible for the collection of the tax. The application shall contain such information as the district director may require.

(e) *Nonattachment of lien.* If a district director determines that, because of confusion of names or otherwise, any person (other than the person against whom the tax was assessed) is or may be injured by the appearance that a notice of lien filed in accordance with § 301.6323(f)–1 refers to such person, the district director may issue a certificate of nonattachment. Such certificate shall state that the lien, notice of which has been filed, does not attach to the property of such person. Any person desiring a certificate of nonattachment under this paragraph shall submit an application

therefor in writing to the district director responsible for the collection of the tax. The application shall contain such information as the district director may require.

(f) *Effect of certificate*—(1) *Conclusiveness.* Except as provided in subparagraphs (2) and (3) of this paragraph, if a certificate is issued under section 6325 by a district director and the certificate is filed in the same office as the notice of lien to which it relates (if the notice of lien has been filed), the certificate shall have the following effect—

(i) In the case of a certificate of release issued under paragraph (a) of this section, the certificate shall be conclusive that the tax lien referred to in the certificate is extinguished;

(ii) In the case of a certificate of discharge issued under paragraph (b) or (c) of this section, the certificate shall be conclusive that the property covered by the certificate is discharged from the tax lien;

(iii) In the case of a certificate of subordination issued under paragraph (d) of this section, the certificate shall be conclusive that the lien or interest to which the Federal tax lien is subordinated is superior to the tax lien; and

(iv) In the case of a certificate of nonattachment issued under paragraph (e), the certificate shall be conclusive that the lien of the United States does not attach to the property of the person referred to in the certificate.

(2) *Revocation of certificate of release or nonattachment*—(i) *In general.* If a district director determines that either—

(*a*) A certificate of release or a certificate of nonattachment of the general tax lien imposed by section 6321 was issued erroneously or improvidently, or

(*b*) A certificate of release of such lien was issued in connection with a compromise agreement under section 7122 which has been breached,

and if the period of limitation on collection after assessment of the tax liability has not expired, the district director may revoke the certificate and reinstate the tax lien. The provisions of this subparagraph do not apply in the case of the lien imposed by section 6324 relating to estate and gift taxes.

(ii) *Method of revocation and reinstatement.* The revocation and reinstatement described in subdivision (i) of this subparagraph is accomplished by—

(*a*) Mailing notice of the revocation to the taxpayer at his last known address, and

(*b*) Filing notice of the revocation of the certificate in the same office in which the notice of lien to which it relates was filed (if the notice of lien has been filed).

(iii) *Effect of reinstatement*—(*a*) *Effective date.* A tax lien reinstated in accordance with the provisions of this subparagraph is effective on and after the date the notice of revocation is mailed to the taxpayer in accordance with the provisions of subdivision (ii) (*a*) of this subparagraph, but the reinstated lien is not effective before the filing of notice of revocation, in accordance with the provisions of subdivision (ii) (*b*) of this subparagraph, if the filing is required by reason of the fact that a notice of the lien had been filed.

(*b*) *Treatment of reinstated lien.* As of the effective date of reinstatement, a reinstated lien has the same force and effect as a general tax lien imposed by section 6321 which arises upon assessment of a tax liability. The reinstated lien continues in existence until the expiration of the period of limitation on collection after assessment of the tax liability to which it relates. The reinstatement of the lien does not retroactively reinstate a previously filed notice of lien. The reinstated lien is not valid against any holder of a lien or interest described in § 301.6323(a)–1 until notice of the reinstated lien has been filed in accordance with the provisions of § 301.6323(f)–1 subsequent to or concurrent with the time the reinstated lien became effective.

(iv) *Example.* The provisions of this subparagraph may be illustrated by the following example:

Example. On March 1, 1967, an assessment of an unpaid Federal tax liability is made against A. On March 1, 1968, notice of the Federal tax lien, which arose at the time of assessment, is filed. On April 1, 1968, A executes a bona fide mortgage on property belonging to him to B. On May 1, 1968, a certificate of release of the tax lien is erroneously issued and is filed by A in the same office in which the notice of lien was filed. On June 3, 1968, the lien is reinstated in accordance with the provisions of this subparagraph. On July 1, 1968, A executes a bona fide mortgage on property belonging to him to C. On August 1, 1968, a notice of the lien which was reinstated is properly filed in accordance with the provisions of § 301.6323(f)–1. The mortgages of both B and C will have priority over the rights of the United States with respect to the tax liability in question. Because a reinstated lien continues in existence only until the expiration of the period of limitation on collection after assessment of the tax liability to which the lien relates, in the absence of any extension or suspension of the period of limitation on collection after assessment, the reinstated lien will become unenforceable by reason of lapse of time after February 28, 1973.

(3) *Certificates void under certain conditions.* Notwithstanding any other provisions of subtitle F of the Code, any lien for Federal taxes attaches to any property with respect to which a certificate of discharge has been issued if the person liable for the tax reacquires the property after the certificate has been issued. Thus, if property subject to a Federal tax lien is discharged therefrom and is later reacquired by the delinquent taxpayer at a time when the lien is still in existence, the tax lien attaches to the reacquired property and is enforceable against it as in the case of after-acquired property generally.

(g) *Filing of certificates and notices.* If a certificate or notice described in this section may not be filed in the office designated by State law in which the notice of lien imposed by section 6321 (to which the certificate or notice relates) is filed, the certificate or notice is effective if filed in the office of the clerk of the United States district court for the judicial district in which the State office where the notice of lien is filed is situated.

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SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES

[T.D. 7431]

PART 53—FOUNDATION EXCISE TAXES

Application of Taxes to Certain Nonexempt Trusts

By a notice of proposed rule making appearing in the FEDERAL REGISTER for Thursday, March 18, 1971 (36 FR 25015), amendments to the Foundation Excise Tax Regulations (26 CFR Part 53) were proposed in order to provide rules for the application of such taxes to certain nonexempt trusts under section 4947 of the Internal Revenue Code of 1954. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, certain changes were made, and the proposed amendments of the regulations, subject to the changes, are adopted by this document.

Section 4947 generally subjects nonexempt charitable trusts to many of the requirements and restrictions imposed on private foundations in order to prevent taxpayers from avoiding these restrictions by the use of nonexempt trusts instead of private foundations. Thus, many nonexempt charitable trusts are subject to those provisions relating to self-dealing, retention of excess business holdings, and the making of speculative investments or taxable expenditures, but not the current income payout requirement if the trust is a split-interest trust (one in which not all the interests are charitable). However, the stock ownership and speculative investment requirements do not apply to split-interest trusts (a) in cases where charity is the only income beneficiary (and has no remainder interest) and the beneficial interest of charity in the trust is not more than 60 percent of the value of the trust property and also (b) in cases where the only interest of charity in the trust is as a remainderman (and there are no noncharitable remainder interests). In the latter case, the stock ownership and speculative investment requirements become applicable at the time the charitable remainder interest comes into possession.

The final regulations expand upon the proposed regulations by providing additional rules for determining the kinds of trusts that are subject to section 4947, when its provisions become applicable to trusts and the extent to which its provisions make other provisions of the Internal Revenue Code Applicable to trusts.

Adoption of amendments to the regulations. In consideration of the foregoing, the Foundation Excise Tax Regu-

lations (26 CFR Part 53) are amended as follows:

Subpart H is added to 26 CFR Part 53 as follows:

Subpart H—Application to Certain Nonexempt Trusts

Sec.
53.4947 Statutory provisions; application of taxes to certain nonexempt trusts.
53.4947–1 Application of tax.
53.4947–2 Special rules.

SUBPART H—APPLICATION TO CERTAIN NONEXEMPT TRUSTS

§ 53.4947 Statutory provisions; application of taxes to certain nonexempt trusts.

SEC. 4947. *Application of taxes to certain nonexempt trusts*—(a) *Application of tax*—(1) *Charitable trusts.* For purposes of part II of subchapter F of chapter 1 (other than section 508 (a), (b), and (c)) and for purposes of this chapter, a trust which is not exempt from taxation under section 501(a), all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 (or the corresponding provisions of prior law), shall be treated as an organization described in section 501(c)(3). For purposes of section 509(a)(3)(A), such a trust shall be treated as if organized on the day on which it first becomes subject to this paragraph.

(2) *Split-interest trusts.* In the case of a trust which is not exempt from tax under section 501(a), not all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and which has amounts in trust for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522, section 507 (relating to termination of private foundation status), section 508(e) (relating to governing instruments) to the extent applicable to a trust described in this paragraph, section 4941 (relating to taxes on self-dealing), section 4943 (relating to taxes on excess business holdings) except as provided in subsection (b)(3), section 4944 (relating to investments which jeopardize charitable purpose) except as provided in subsection (b)(3), and section 4945 (relating to taxes on taxable expenditures) shall apply as if such trust were a private foundation. This paragraph shall not apply with respect to—

(A) Any amounts payable under the terms of such trust to income beneficiaries, unless a deduction was allowed under section 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B),

(B) Any amounts in trust other than amounts for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522, if such other amounts are segregated from amounts for which no deduction was allowable, or

(C) Any amounts transferred in trust before May 27, 1969.

(3) *Segregated amounts.* For purposes of paragraph (2)(B), a trust with respect to which amounts are segregated shall separately account for the various income, deduction, and other items properly attributable to each of such segregated amounts.

(b) *Special rules*—(1) *Regulations.* The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(2) *Limit to segregated amounts.* If any amounts in the trust are segregated within the meaning of subsection (a)(2)(B) of this section, the value of the net assets for purposes of subsections (c)(2) and (g) of section 507 shall be limited to such segregated amounts.

(3) *Sections 4943 and 4944.* Sections 4943 and 4944 shall not apply to a trust which is described in subsection (a)(2) if—

(A) All the income interest (and none of the remainder interest) of such trust is devoted solely to one or more of the purposes described in section 170(c)(2)(B), and all amounts in such trust for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 have an aggregate value not more than 60 percent of the aggregate fair market value of all amounts in such trust[s], or

(B) A deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 for amounts payable under the terms of such trust to every remainder beneficiary but not to any income beneficiary.

(Sec. 4947, as added by sec. 101(b) Tax Reform Act 1969 (83 Stat. 517).)

§ 53.4947–1 Application of tax.

(a) *In general.* Section 4947 subjects trusts which are not exempt from taxation under section 501(a), all or part of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and which have amounts in trust for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 to the same requirements and restrictions as are imposed on private foundations. The basic purpose of section 4947 is to prevent these trusts from being used to avoid the requirements and restrictions applicable to private foundations. For purposes of this section, a trust shall be presumed (in the absence of proof to the contrary) to have amounts in trust for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 if a deduction would have been allowable under one of these sections. Also for purposes of this section and § 53.4947–2, the term "purposes described in section 170(c)(2)(B)" shall be treated as including purposes described in section 170(c)(1).

(b) *Charitable trusts*—(1) *General rule.* (i) For purposes of this section and § 53.4947–2, a "charitable trust", within the meaning of section 4947(a)(1), is a trust which is not exempt from taxation under section 501(a), all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2) or 2522 (or the corresponding provisions of prior law). A trust is one for which a deduction was allowed under section 642(c), within the meaning of section 4947(a)(1), once a deduction is allowed under section 642(c) to the trust for any amount paid or permanently set aside. (See sections 642(c) and § 1.642–4 for the limitation on such deduction in certain cases.) A charitable trust (as defined in this paragraph) shall be treated as an organization described in section 501(c)(3) and, if it is determined under section 509 that the trust is a private foundation, then Part II of subchapter F of chapter 1 of the Code (other than section 508 (a), (b) and (c)) and chapter 42 shall apply to the trust. However, the charitable trust is not treated as an organization described in section 501(c)(3) for purposes of exemption from taxation under section 501(a). Thus, the trust is subject to the excise tax on its investment income under section 4940(b) rather than the tax imposed by section 4940(a). For purposes of satisfying the organizational test described in § 1.501(c)(3)–1(b) when a charitable trust seeks an exemption from taxation under section 501(a), a charitable trust (as defined in this paragraph) shall be considered organized on the day it first becomes subject to section 4947(a)(1). However, for purposes of the special and transitional rules in section 4940(c)(4)(B), 4942(f)(4), 4943(c)(4)(A)(i) and (B) and section 101(1)(2)(A), (B), (C), and (D), and (1)(3) of the Tax Reform Act of 1969, a charitable trust (as defined in this paragraph) shall be considered organized on the first day it has amounts in trust for which a deduction was allowed (within the meaning of paragraph (a) of this section) under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522. Thus, under this rule, a trust may be treated as a private foundation in existence on a date governing one of the applicable special and transitional rules even though the trust did not otherwise become subject to the provisions of chapter 42 until a later date.

(ii) The provisions of paragraph (b)(1) of this section may be illustrated by the following examples:

Example (1). On January 30, 1970, X creates an inter vivos trust under which M receives 50 percent and N receives 50 percent of the trust's income for 10 years, and upon the termination of which, at the end of the 10-year period, the corpus is to be distributed to O. M, N and O are all organizations described in section 501(c)(3) and X is allowed a deduction under section 170 for the value of all interests placed in trust. The trustees of the trust do not give notice to the Internal Revenue Service under the provisions of section 508(a), and the trust will therefore not be exempt from taxation under section 501(a). The trust is a charitable trust within the meaning of section 4947(a)(1) from the date of its creation.

Example 2. On March 1, 1971, Y creates a charitable remainder annuity trust described in section 664(d)(1) under which Z, Y's son, receives $10,000 per year for life, remainder to be held in trust for P, an organization described in section 501(c)(3). Y is allowed a deduction under section 170 for the present value of the remainder interest to P. During Z's lifetime, the trust is a split-interest trust described in section 4947(a)(2) and paragraph (c) of this section. Upon the death of Z, all unexpired interests (consisting of P's remainder interest) will be devoted to section 170(c)(2)(B) purposes. Except as provided in § 53.4947–1(b)(2)(iv) (relating to a reasonable period of settlement) the trust will be treated as a charitable trust within the meaning of section 4947(a)(1) from the date of the death of Z unless the trustees of the trust apply for recognition of

section 501(c)(3) status under the provisions of section 508(a).

(2) *Scope of application of section 4947(a)(1).*—(i) *In general.* Subject to paragraph (b)(2)(ii) through (vii) of this section, section 4947(a)(1) applies to nonexempt trusts in which all unexpired interests are charitable. For purposes of this section, the term "charitable" when used to describe an interest or beneficiary refers to the purposes described in section 170(c)(2)(B). An estate from which the executor or administrator is required to distribute all of the net assets in trust to such beneficiaries will not be considered a charitable trust under section 4947(a)(1) during the period of estate administration or settlement, except as provided in paragraph (b)(2)(ii) of this section. A charitable trust created by will shall be considered a charitable trust under section 4947(a)(1) as of the date of death of the decedent-grantor, except as provided in paragraph (b)(2)(v) of this section (relating to trusts which wind up). For the circumstances under which segregated amounts are treated as charitable trusts, see § 53.4947-1(c)(3)(iii).

(ii) *Estates.* (A) When an estate from which the executor or administrator is required to distribute all of the net assets in trust for charitable beneficiaries, or free of trust to such beneficiaries, is considered terminated for Federal income tax purposes under § 1.641(b)-3(a), then the estate will be treated as a charitable trust under section 4947(a)(1) between the date on which the estate is considered terminated under § 1.641(b)-3(a) and the date final distribution of all of the net assets is made to or for the benefit of the charitable beneficiaries. This (ii) does not affect the determination of the tax liability under subtitle A of the beneficiaries of the estates.

(B) The provisions of this (ii) may be illustrated by the following example:

Example. X bequeaths his entire estate, including 100 percent of the stock of a wholly-owned corporation, to M, an organization described in section 501(c)(3), under a will which gives his executor authority to hold the stock and manage the corporation for a period of up to 10 years for the benefit of M prior to its ultimate disposition. A deduction for the charitable bequest was allowed to X's estate under section 2055. The executor is vested with a full range of powers, including the power of sale. Upon the death of X, his executor distributes X's assets to M except for the stock of the corporation, which he holds for 5 years prior to its disposition. The continued holding of the stock of the corporation by the executor after the expiration of a reasonable time for performance of all the ordinary duties of administration causes the estate to be considered terminated for Federal income tax purposes pursuant to § 1.641(b)-3(a) and thereby subjects it to the provisions of section 4947(a)(1) from the date of such termination to the date of final disposition of the stock of the corporation.

(iii) *Certain split-interest trusts which wind up.* A split-interest trust (as defined in paragraph (c) of this section) in which all of the unexpired interests are charitable remainder interests and in which the charitable beneficiaries have become entitled to distributions of corpus in trust or free of trust shall continue to be treated as a split-interest trust under section 4947(a)(2) until the date on which final distribution of all the net assets is made. However, if after the expiration of any intervening interests the trust is considered terminated for Federal income tax purposes under § 1.641(b)-3(b), then the trust will be treated as a charitable trust under section 4947(a)(1), rather than a split interest trust under section 4947(a)(2), between the date on which the trust is considered terminated under § 1.641(b)-3(b) and the date on which such final distribution of all of the net assets is made to or for the benefit of the charitable remainder beneficiaries. This (iii) does not affect the determination of the tax liability under subtitle A of the beneficiaries of the trusts.

(iv) *Split-interest trusts which become charitable trusts.* (A) A split-interest trust (as defined in paragraph (c) of this section) in which all of the unexpired interests are charitable remainder interests and in which some or all of the charitable beneficiaries are not entitled to distributions of corpus within the meaning of paragraph (b)(2)(iii) of this section shall continue to be treated as a split-interest trust under section 4947(a)(2) rather than a charitable trust under section 4947(a)(1) for a reasonable period of settlement after the expiration of the noncharitable interest. Thus, a split-interest trust which under its terms is to continue to hold assets for charitable beneficiaries after the expiration of the noncharitable interest rather than distributing them as in paragraph (b)(2)(iii) of this section is given a reasonable period of settlement before being treated as a charitable trust. For purposes of this paragraph, the term "reasonable period of settlement" means that period reasonably required (or if shorter, actually required) by the trustee to perform the ordinary duties of administration necessary for the settlement of the trust. These duties include, for example, the collection of assets, the payment of debts, taxes, and distributions, and the determination of the rights of the subsequent beneficiaries.

(B) This (iv) may be illustrated by the following example:

Example. On January 15, 1971, A creates a charitable remainder annuity trust described in section 664(d)(1) under which the trustees are required to distribute $10,000 a year to B, A's wife, for life, remainder to be held in trust for the use of M, an organization described in section 501(c)(3). A is allowed a deduction under section 170 for the amount of the charitable interest, and the trust is, therefore, treated as a split-interest trust under section 4947(a)(2) from the date of its creation. B dies on February 10, 1975. On April 15, 1975, the trustees complete performance of the ordinary duties of administration necessary for the settlement of the trust brought about by the death of B. These duties include, for example, an accounting for and payment to the estate of B of amounts accrued by B while alive during 1975. However, the trustees do not distribute the corpus to M by April 15, 1975. The trust shall continue to be treated as a split-interest trust under section 4947(a)(2) until April 15, 1975. After April 15, 1975, the trust shall be treated as a charitable trust under section 4947(a)(1).

(v) *Certain revocable and testamentary trusts which wind up.* A revocable trust that becomes irrevocable upon the death of the decedent-grantor, or a trust created by will, from which the trustee is required to distribute all of the net assets in trust for or free of trust to charitable beneficiaries is not considered a charitable trust under section 4947(a)(1) for a reasonable period of settlement (within the meaning of paragraph (b)(2)(iv) of this section) after becoming irrevocable. After that period the trust is considered a charitable trust under section 4947(a)(1).

(vi) *Revocable trusts which become charitable trusts.* A revocable trust that becomes irrevocable upon the death of the decedent-grantor in which all of the unexpired interests are charitable and under the terms of the governing instrument of which the trustee is required to hold some or all of the net assets in trust after becoming irrevocable solely for charitable beneficiaries is not considered a trust under section 4947(a)(1) for a reasonable period of settlement (within the meaning of paragraph (b)(2)(iv) of this section) after becoming irrevocable except that section 4941 may apply if the requirements of § 53.4941(d)-1(b)(3) are not met. After that period, the trust is considered a charitable trust under section 4947(a)(1).

(vii) *Trust devoted to 170(c) purposes.* (A) A trust all of the unexpired interests in which are devoted to section 170(c)(3) or (5) purposes together with section 170(c)(2)(B) purposes shall be considered a charitable trust except that payments under the terms of the governing instrument to an organization described in section 170(c)(3) or (5) shall not be considered a violation of section 4945(d)(5) or any other provisions of chapter 42 and shall be considered qualifying distributions under section 4942.

(B) *Example.* The application of paragraph (b)(2)(vii) of this section may be illustrated by the following example:

Example. On January 30, 1970, H creates an inter vivos trust under the terms of the governing instrument of which M, an organization described in section 170(c)(3), and N, an organization described in section 501(c)(3), are each to receive 50 percent of the income for a period of 10 years. At the end of the 10 year period, the corpus is to be distributed to O, an organization also described in section 501(c)(3). H is allowed a deduction under section 170 for the value of all interests placed in trust. The payments to M do not constitute a violation of section 4945(d)(5) or any other provision of chapter 42 and constitute qualifying distributions under section 4942. However, except as provided in the previous sentence, the trust shall be considered a charitable trust.

(3) *Charitable trusts described in section 509(a)(3).* For purposes of section 509(a)(3)(A), a charitable trust shall be treated as if organized on the day on

which it first becomes subject to section 4947(a)(1). However, for purposes of applying §§ 1.509(a)–4(d)(2)(iv)(*a*), and 1.509(a)–4(i)(1) (ii) and (iii)(*c*) the previous relationship between the charitable trust and the section 509(a) (1) or (2) organizations it benefits or supports may be considered. If the charitable trust otherwise meets the requirements of section 509(a)(3), it may obtain recognition of its status as a section 509(a)(3) organization by requesting a ruling from the Internal Revenue Service. For the special rules pertaining to the application of the organizational test to organizations terminating their private foundation status under the 12-month or 60-month termination period provided under section 507(b)(1)(B) by becoming "public" under section 509(a)(3), see the regulations under section 507(b)(1).

(c) *Split-interest trusts*—(1) *General rule*—(i) *Definition.* For purposes of this section and § 53.4947–2, a "split-interest trust", within the meaning of section 4947(a)(2), is a trust which is not exempt from taxation under section 501 (a), not all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and which has amounts in trust for which a deduction was allowed (within the meaning of paragraph (a) of this section) under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522. A trust is one which has amounts in trust for which a deduction was allowed under section 642(c) within the meaning of section 4947(a)(2) once a deduction is allowed under section 642(c) to the trust for any amount permanently set aside. This (i) also includes any trust which is not treated as a charitable trust by operation of paragraph (b)(2)(iii) or (iv) of this section (relating to split-interest trusts in the process of winding up or during a reasonable period of settlement). Section 4947(a)(1) shall apply to a trust described in this (i) (without regard to section 4947(a)(2)(A), (B), or (C)) from the first date upon which the provisions of paragraph (b)(2) (iii) or (iv) of this section are satisfied. For the circumstances under which a trust all of the unexpired interests in which are devoted to section 170 (c) (3) or (5) purposes together with section 170(c)(2)(B) purposes is considered a charitable trust, see § 53.4947–1 (b)(2)(vii).

(ii) *Applicability of statutory rules.* A split-interest trust is subject to the provisions of section 507 (except as provided in paragraph (e) of this section), 508(e) (to the extent applicable to a split-interest trust), 4941, 4943 (except as provided in section 4947(b)(3)), 4944 (except as provided in section 4947(b)(3)), and 4945 in the same manner as if such trust were a private foundation.

(iii) *Special rules.* A newly created trust shall, for purposes of section 4947(a)(2), be treated as having amounts in trust for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 from the date of its creation, even if a deduction was allowed for such amounts only at a later date. For purposes of this (iii), the date of creation of a charitable remainder trust shall be determined by applying the rules in § 1.664–1(a)(4).

(2) *Exception for amounts payable to income beneficiaries.*—(i) Under section 4947(a)(2)(A), paragraph (c)(1)(ii) of this section does not apply to any amounts payable under the terms of a split-interest trust to income beneficiaries unless a deduction was allowed under section 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B) with respect to the income interest of any such beneficiary. See § 1.170A–6(c), § 20.2055–2(e)(2), and § 25.2522(c)–3(c)(2) for rules regarding the allowance of these deductions. However, section 4947(a)(2)(A) does not apply when the value of all interests in property transferred in trust are deductible under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522.

(ii) The application of this subparagraph may be illustrated by the following examples:

Example (1). H creates a charitable remainder unitrust (described in section 664(d)(2)) which is required annually to pay W, H's wife, 5 percent of the net fair market value of the trust assets, valued annually, for her life; and to pay the remainder to Y, a section 501(c)(3) organization. A deduction under section 170(f)(2)(A) was allowed with respect to the remainder interest of Y. Under section 4947(a)(2)(A), each annual amount which becomes payable to W during her life is not subject to paragraph (c)(1)(ii) of this section on or after the date upon which it becomes so payable and the payment of each amount to W is not an act of self-dealing under section 4941(d)(1) and does not violate any other provision of chapter 42. However, except as provided in the preceding sentence, the trust is subject to paragraph (c)(1)(ii) of this section in the same manner as any other split-interest trust.

Example (2). H bequeaths the residue of his estate in trust for the benefit of S, his son, and Y, an organization described in section 501(c)(3). A guaranteed annuity interest of $10,000 is to be paid to S for 20 years. A guaranteed annuity interest of $5,000 which meets the requirements contained in § 20.2055–2(e)(2)(v)(*a*) is also to be paid to Y for 20 years. Upon termination of the 20-year term, the corpus is to be distributed to Z, another organization described in section 501(c)(3). The trust is a charitable remainder annuity trust as described in section 664(d)(1) and the regulations thereunder, and a deduction under section 2055(e)(2)(A) was allowed with respect to the remainder interest of Z. A deduction was also allowed under section 2055(e)(2)(B) with respect to the guaranteed annuity interest of Y. The assets in the trust are not segregated under section 4947(a)(2)(B) and paragraph (c)(3) of this section. Under section 4947(a)(2)(A), each payment of $10,000 to S is not subject to section 4947(a)(2) and paragraph (c)(1)(ii) of this section. The payment of each amount to S is not an act of self-dealing under section 4941(d)(1) and does not violate any other provision of chapter 42. However, except as provided in the preceding sentence, the trust is subject to section 4947(a)(2) and paragraph (c)(1)(ii) of this section in the same manner as any other split-interest trust.

Example (3). H creates a trust under which the trustees are required to pay over an annuity interest of $20,000 to W, H's wife, for her life. A guaranteed annuity interest of $10,000 which meets the requirements contained in § 25.2522(c)–3(c)(2)(v) is also to be paid to X, an organization described in section 501(c)(3), for the life of W. Upon the death of W, the corpus of the trust, which consists of office buildings M and N, is to be distributed to S, H's son. H received a deduction under section 2522(c)(2)(B) for the value of X's income interest in the trust. The assets in the trust are not segregated under section 4947(a)(2)(B) and paragraph (c)(3) of this section. Under section 4947(a)(2)(A), each payment of $20,000 to W is not subject to section 4947(a)(2) and paragraph (c)(1)(ii) of this section. The payment of each amount to W is not an act of self-dealing under section 4941(d)(1) and does not violate any other provision of chapter 42. However, except as provided in the preceding sentence, the trust is subject to paragraph (c)(1)(ii) of this section in the same manner as any other split-interest trust. See example (1) of paragraph (c)(3)(v) of this section for the application of section 4947(a)(2)(B) to a similar trust where the trustees segregate the assets of the trust.

(3) *Exception for certain segregated amounts.*—(i) *In general.* Under section 4947(a)(2)(B) paragraph (c)(1)(ii) of this section does not apply to assets held in trust (together with the income and capital gains derived from the assets), which are segregated from other assets held in trust for which a deduction was allowed for an income or remainder interest under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522.

(ii) *Segregation of amounts.* Amounts will generally be considered segregated (within the meaning of section 4947(a)(2)(B)) if:

(A) assets with respect to which no deduction was allowed (for an income or remainder interest) under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522, are separately accounted for under section 4947(a)(3) and paragraph (c)(4) of this section from assets for which such a deduction was allowed for any income or remainder interest and,

(B) by reason of the separate accounting the trust can be treated as two separate trusts, one of which is devoted exclusively to noncharitable income and remainder interests and the other of which is a charitable trust described in section 4947(a)(1) or a split-interest trust described in section 4947(a)(2).

Under these circumstances, only the "trust" which is devoted exclusively to noncharitable income and remainder interests will be considered a segregated amount which, under section 4947(a)(2)(B), is not subject to section 4947(a)(2) and paragraph (c)(1)(ii) of this section.

(iii) *Exclusively charitable amounts.* If, under section 4947(a)(2)(B),

(A) an amount held in trust which is devoted exclusively to noncharitable income and remainder interests is segregated from

(B) an amount held in trust which is devoted exclusively to charitable income and remainder interests,

then for purposes of this section the amount described in paragraph (c)(3)(iii)(B) of this section will be treated as a charitable trust which is subject to the provisions of section 4947(a)(1).

(iv) *Charitable and noncharitable amounts.* If, under section 4947(a)(2)(B),

(A) an amount held in trust which is devoted exclusively to noncharitable income and remainder interests is segregated from

(B) an amount held in trust which is devoted to both charitable income or remainder interests and noncharitable income or remainder interests,

then for purposes of this section the amount described in paragraph (c)(3)(iv)(B) of this section will be treated as a split-interest trust which is subject to the provisions of section 4947(a)(2).

(v) *Examples.* The application of paragraph (c)(3) of this section may be illustrated by the following examples:

Example (1). H creates a trust under which the trustees are required to pay over annually 5 percent of the net fair market value of M building, valued annually, to W, H's wife, for life, remainder to S, H's son. The other asset in the trust is N building, with respect to which the trustees are required to pay over annually 5 percent of the net fair market value of the building, valued annually, to X, a section 501(c)(3) organization, for a period of 15 years, remainder to S. Each asset is separately accounted for under section 4947(a)(3) and paragraph (c)(4) of this section. He received a deduction under section 2522 for the value of X's income interest in N building. Under these circumstances, M building is considered segregated (within the meaning of section 4947(a)(2)(B)) from N building and is not subject to section 4947(a)(2). The remainder interest of S in N building is not considered segregated from the income interest of X in N building, since both are interests in the same asset. N building is considered held in a split-interest trust which is subject to section 4947(a)(2) and paragraph (c)(1)(ii) of this section.

Example (2). H transfers $50,000 in trust to pay $2,500 per year to Z, a section 501(c)(3) organization, for a term of 20 years, remainder to S, H's son. H is allowed a deduction under section 2522 for the present value of Z's income interest. The income interest of Z in the trust asset cannot be segregated (within the meaning of section 4947(a)(2)(B)) from the remainder interest of S since both are interests in the same asset. Therefore, the entire trust is subject to section 4947(a)(2) and paragraph (c)(1)(ii) of this section.

(4) *Accounting for segregated amounts.*—(i) *General rule.* Under section 4947(a)(2)(B), a trust with respect to which amounts are segregated within the meaning of paragraph (c)(3) of this section must separately account for the various income, deduction, and other items properly attributable to each segregated amount in the books of account and separately account to each of the beneficiaries of the trust.

(ii) *Method.* Separate accounting shall be made—

(A) According to the method regularly employed by the trust, if the method is reasonable, and

(B) In all other cases in a manner which, in the opinion of the Commissioner, is reasonable.

A method of separate accounting will be considered "regularly employed" by a trust when the method has been consistently followed in prior taxable years or when a trust which has never before maintained segregated amounts initiates a reasonable method of separate accounting for its segregated amounts and consistently follows such method thereafter. The trust shall keep permanent records and other data relating to the segregated amounts as are necessary to enable the district director to determine the correctness of the application of the rules prescribed in paragraph (c)(3) and (4) of this section.

(5) *Amounts transferred in trust before May 27, 1969.*—(i) *General rule.* Under section 4947(a)(2)(C), paragraph (c)(1)(ii) of this section does not apply to any amounts transferred in trust before May 27, 1969. For purposes of this (5), an amount shall be considered to be transferred in trust only when the transfer is one which meets the requirements for the allowance of a deduction under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 (or the corresponding provisions of prior law). Income and capital gains which are derived at any time from amounts transferred in trust before May 27, 1969, shall also be excluded from the application of paragraph (c)(1)(ii) of this section. If an asset which was transferred in trust before May 27, 1969, is sold or exchanged after May 26, 1969, any asset received by the trust upon the sale or exchange shall be treated as an asset which was transferred in trust before May 27, 1969.

(ii) *Requirement for separate accounting for amounts transferred in trust before May 27, 1969.* If:

(A) Amounts are transferred in trust after May 26, 1969, and the trust to which the amounts are transferred also contains

(B) Amounts transferred in trust before May 27, 1969,

the general rule of paragraph (c)(5)(i) of this section applicable to the amounts described in paragraph (c)(5)(ii)(B) of this section will apply only if the amounts described in paragraph (c)(5)(ii)(A) of this section (together with all income and capital gains derived therefrom) are separately accounted for (within the meaning of paragraph (c)(4) of this section) from the amounts described in paragraph (c)(5)(ii)(B) of this section, together with all income and capital gains derived therefrom. For the application of section 508(e) to a trust with respect to which amounts were transferred both before and after May 27, 1969, see section 508(e) and the regulations thereunder.

(iii) *Exception for certain testamentary trusts.* (A) Amounts transferred in trust before May 27, 1969 include amounts transferred in trust after May 26, 1969 when the transfer is made under the terms of a testamentary trust created by the will of a decedent who died before May 27, 1969, (regardless of whether the executors or the testamentary trustees are required to execute testamentary trusts by court order under applicable local law). Amounts transferred in trust before May 27, 1969, also include amounts transferred to a testamentary trust created by the will of a decedent who died after May 26, 1969 if the will was executed before May 27, 1969 and no dispositive provision of the will was amended (within the meaning of § 20.2055-2(e)(4) and (5)) by the decedent by codicil or otherwise, after May 26, 1969, and the decedent was on May 27, 1969, and at all times thereafter under a mental disability (as defined in § 1.642(c)-2(b)(3)(ii)) to amend the will by codicil or otherwise.

(B) The provisions of this (iii) may be illustrated by the following example:

Example. X executed a will in 1960 which provided for the creation of a testamentary trust which meets the description of a split-interest trust under section 4947(a)(2). X died on April 15, 1969. Under the provisions of his will, the probate court permitted certain property in X's estate to be transferred to the testamentary trust at fixed intervals over a period of two years during the administration of the estate. Section 4947(a)(2) does not apply to any amount described in this example, including the amounts transferred after May 26, 1969, because, for purposes of section 4947(a)(2)(C), each such transfer will be treated as an amount transferred in trust before May 27, 1969, within the meaning of section 4947(a)(2)(C).

(6) *Scope of application of section 4947(a)(2).*—(i) *In general.* Subject to paragraph (c)(6)(ii), (iii), and (iv) of this section, section 4947(a)(2) applies to trusts in which some but not all unexpired interests are charitable. An estate from which the executor or administrator is required to distribute all of the net assets in trust or free of trust to both charitable and noncharitable beneficiaries will not be considered to be a split-interest trust under section 4947(a)(2) during the period of estate administration or settlement, except as provided in paragraph (c)(6)(ii) of this section. A split-interest trust created by will shall be considered a split-interest trust under section 4947(a)(2) as of the date of death of the decedent-grantor, except as provided in paragraph (c)(6)(iv) of this section.

(ii) *Estates.* (A) When an estate from which the executor or administrator is required to distribute all of the net assets in trust or free of trust to both charitable and noncharitable beneficiaries is considered terminated for Federal income tax purposes under § 1.641(b)-3(a), then the estate will be treated as a split-interest trust under section 4957(a)(2) (or a charitable trust under section 4957(a)(1), if applicable) between the date on which the estate is considered terminated under § 1.641(b)-3(a) and the date on which final distribution of the net assets to the last remaining charitable beneficiary is made. This (ii) does not affect the determination of the tax liability under subtitle A of either charitable or noncharitable beneficiaries of the estates.

(B) The provisions of this (ii) may be illustrated by the following example:

Example. X dies on January 15, 1973 and bequeaths $10,000 to M, an organization described in section 501(c)(3), and the residue of his estate to W, his wife. A deduction for the charitable bequest was allowed to X's

estate under section 2055. Substantially all of X's estate consists of 100 percent of the stock of a wholly owned corporation, certain liquid assets such as marketable stocks and securities and bank accounts, and X's home, automobile, and other personal property. X's will gives his executor a full range of powers, including the power to sell the stock of the wholly owned corporation. After the death of X, his executor continues to manage the wholly owned corporation while attempting to sell the stock of the corporation. During this period, the executor makes no distributions to M. On May 24, 1978, the Internal Revenue Service determines under § 1.641(b)-3(a) that the administration of the estate has been unduly prolonged and the estate is considered terminated as of that date for Federal income tax purposes. X's estate will be treated as a split-interest trust described in section 4947(a)(2) between May 24, 1978 and the date on which the $10,000 bequest to M is satisfied. X's estate will therefore be subject to the applicable private foundation provisions during that period and, for example, a sale of the house by the estate to any disqualified person (as defined in section 4946) will be an act of self-dealing under section 4941.

(iii) *Revocable trusts which become split-interest trusts.* A revocable trust that becomes irrevocable upon the death of the decedent-grantor under the terms of the governing instrument of which the trustee is required to hold some or all of its net assets in trust after becoming irrevocable for both charitable and noncharitable beneficiaries is not considered a split-interest trust under section 4947(a)(2) for a reasonable period of settlement after becoming irrevocable except that section 4941 may apply if the requirements of § 53.4941(d)-1(b)(3) are not met.

After that period, the trust is considered a split-interest trust under section 4947(a)(2). For purposes of this (iii), the term "reasonable period of settlement" means that period reasonably required (or if shorter, actually required) by the trustee to perform the ordinary duties of administration necessary for the settlement of the trust. These duties include, for example, the collection of assets, the payment of debts, taxes, and distributions, and the determination of rights of the subsequent beneficiaries.

(iv) *Certain revocable and testamentary trusts which wind up.* A revocable trust that becomes irrevocable upon the death of the decedent-grantor, or a trust created by will, from which the trustee is required to distribute all of the net assets in trust or free of trust to both charitable and noncharitable beneficiaries is not considered a split-interest trust under section 4947(a)(2) for a reasonable period of settlement (within the meaning of paragraph (c)(6)(iii) of this section) after becoming irrevocable. After that period, the trust is considered a split-interest trust under section 4947(a)(2) (or a charitable trust under section 4947(a)(1), if applicable).

(d) *Cross references; Governing instrument requirements and charitable deduction limitations.* For the application of section 642(c)(6) (relating to section 170 limitations on charitable deductions of non-exempt private foundation trusts) to a trust described in section 4947(a)(1), see § 1.642(c)-4. For the denial of a deduction under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 for a gift, a bequest, or an amount paid to (and the denial of a deduction under section 642(c) for an amount set aside in) a trust described in section 4947(a)(1) or (2) that fails to meet the applicable governing instrument requirements of section 508(e) by the end of the taxable year of the trust, see section 508(d)(2) and § 1.508-2(b). Since a charitable remainder trust (as defined in section 664) is not exempt under section 501(a), it is subject to section 4947(a)(2), and thus to the governing instrument requirements of section 508(e) to the extent they are applicable.

(e) *Application of section 507(a).*—(1) *General rule.* The provisions of section 507(a) shall not apply to a trust described in section 4947(a)(1) or (2) by reason of any payment to a beneficiary that is directed by the terms of the governing instrument of the trust and is not discretionary with the trustee or, in the case of a discretionary payment, by reason of, or following, the expiration of the last remaining charitable interest in the trust.

(2) *Examples.* The provisions of this (e) may be illustrated by the following examples:

Example (1). H creates a section 4947(a)(1) trust under which the income is to be paid for 15 years to R, a section 501(c)(3) organization. Upon the expiration of 15 years, the trust is to terminate and distribute all of its assets to S, another section 501(c)(3) organization. Distribution of the corpus of the trust to S will not be considered a termination of the trust's private foundation status within the meaning of section 507(a).

Example (2). H creates a trust under which X, a section 501(c)(3) organization, receives $20,000 per year for a period of 20 years, remainder to S, H's son. H is allowed a deduction under section 2522 for the present value of X's interest.

When the final payment to X has been made at the end of the 20-year period in accordance with the terms of the trust, the provisions of section 4947(a)(2) will cease to apply to the trust because the trust no longer retains any amounts for which the deduction under section 2522 was allowed. However, the final payment to X will not be considered a termination of the trust's private foundation status within the meaning of section 507(a).

Example (3). J creates a charitable remainder annuity trust described in section 664(d)(1) under which S, J's son, receives $10,000 per year for life, remainder to be distributed outright to P, an organization described in section 501(c)(3). J is allowed a deduction under section 170 for the value of the remainder interest placed in trust for the benefit of P, and the provisions of section 4947(a)(2) apply to the trust. At the death of S, the trust will terminate and all assets will be distributed to P. However, such final distribution to P will not be considered a termination of the trust's private foundation status within the meaning of section 507(a).

§ 53.4947-2 Special rules.

(a) *Limit to segregated amounts.* If any amounts held in trust are segregated within the meaning of § 53.4947-1(c)(3), the value of the net assets for purposes of section 507(c)(2) and (g) shall be limited to the segregated amounts with respect to which a deduction under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 was allowed. See the regulations under section 507(c)(2) and (g).

(b) *Applicability of sections 4943 and 4944 to split-interest trusts.*—(1) *General rule.* Under section 4947(b)(3), sections 4943 and 4944 do not apply to a split-interest trust described in section 4947(a)(2) if:

(i) all the income interest (and none of the remainder interest) of the trust is devoted solely to one or more of the purposes described in section 170(c)(2)(B) and all amounts in the trust for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 have an aggregate value (at the time for which the deduction was allowed) of not more than 60 percent of the aggregate fair market value of all amounts in the trust (after the payment of estate taxes and all other liabilities), or

(ii) a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2) or 2522 for amounts payable under the terms of the trust to every remainder beneficiary, but not to any income beneficiary.

This (1) shall apply to a trust described in paragraph (b)(1)(ii) of this section only if all amounts payable under the terms of the trust to every remainder beneficiary are to be devoted solely to one or more of the purposes described in section 170(c)(2)(B). After the expiration of all income interests in a trust described in paragraph (b)(1)(ii) of this section, the trust shall become subject to section 4947(a)(1) under § 53.4947-1(b)(2), and section 4947(b)(3) shall no longer apply to the trust. A pooled income fund described in section 642(c)(5) will generally meet the requirements of paragraph (b)(1)(ii) of this section, as will a charitable remainder trust described in section 664(d)(1), if in either case it does not make payments to any income beneficiary described in section 170(c).

(2) *Definitions.* (i) For purposes of section 4947(b)(3)(A), the term "income interest" shall include an interest in property transferred in trust which is in the form of a guaranteed annuity interest or unitrust interest as described in § 1.170A-6(c), § 20.2055-2(e)(2) or § 25.2522(c)-3(c)(2) and the term "remainder interest" shall include an interest which succeeds an "income interest" within the meaning of this (i).

(ii) For purposes of section 4947(b)(3)(B), the term "income beneficiary" shall include a recipient of payments described in section 642(c)(5)(F) from a pooled income fund, payments described in section 664(d)(1)(A) from a charitable remainder annuity trust, or payments described in section 664(d)(2)(A) or (3) from a charitable remainder unitrust. The term "remainder beneficiary" shall include a beneficiary

of a remainder interest described in section 642(c)(5) or 664(d)(1)(C) or (2)(C).

(c) *Effective date.* Except as otherwise provided in §§ 53.4947–1 and 53.4947–2 and the regulations under sections 508 (d) and (e), §§ 53.4947–1 and 53.4947–2 shall take effect on January 1, 1970.

(Secs. 4947 and 7805, Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: August 16, 1976.

CHARLES M. WALKER,
Assistant Secretary of the Treasury.

[FR Doc.76-24678 Filed 8-20-76;8:45 am]

Title 7—Agriculture

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

[Valencia Orange Regulation 540, Amdt. 1]

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

Limitation of Handling

PREAMBLE

This regulation increases the quantity of California-Arizona Valencia oranges that may be shipped to fresh market during the weekly regulation period August 13–19, 1976. The quantity that may be shipped is increased due to improved market conditions for California-Arizona Valencia oranges. The regulation and this amendment are issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 908.

§ 908.840 Valencia Orange Regulation 540.

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

(2) The need for an increase in the quantity of oranges available for handling during the current week results from changes that have taken place in the marketing situation since the issuance of Valencia Orange Regulation 540 (41 FR 34006). The marketing picture now indicates that there is a greater demand for Valencia oranges than existed when the regulation was made effective. Therefore, in order to provide an opportunity for handlers to handle a sufficient volume of Valencia oranges to fill the current demand thereby making a greater quantity of Valencia oranges available to meet such increased demand, the regulation should be amended, as hereinafter set forth.

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

(b) *Order, as amended.* The provisions in paragraph (b)(1)(iii) of § 908.840 (Valencia Orange Regulation 540 (41 FR 34006)) are hereby amended to read as follows:

"(i) District 1: 292,000 cartons;
"(ii) District 2: 358,000 cartons."

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

Dated: August 18, 1976.

FLOYD F. HEDLAND,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.76-24600 Filed 8-20-76;8:45 am]

PART 967—CELERY GROWN IN FLORIDA

Handling Regulation

This handling regulation establishes the quantity of Florida celery to be marketed fresh during the 1976–77 season, with the objective of assuring adequate supplies and orderly marketing.

Notice of rule making was published in the FEDERAL REGISTER July 29, 1976 (41 FR 31558) that the Secretary of Agriculture was considering the issuance of a handling regulation designed to promote orderly marketing of celery grown in Florida. The proposal was discussed at a public meeting June 9, 1976, in Orlando, and was unanimously recommended by the Florida Celery Committee. This committee was established under Marketing Agreement No. 149 and Order No. 967, both as amended (7 CFR Part 967). This program regulates the handling of celery grown in Florida and is issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.). The notice afforded interested persons an opportunity to file written data, views or arguments regarding the proposal with the Hearing Clerk not later than August 12, 1976. None was filed.

The committee recommended a Marketing Quantity of 9,223,520 crates of fresh celery for the 1976–77 season. This recommendation is based on the appraisal of expected supply and prospective market demand for the 1976–77 season.

During the past decade, planted acreage generally has ranged between 10,300 and 12,800 acres each year. Yield has been variable, mainly in response to weather, although unfavorable market conditions may sometimes reduce average output per acre. The 3.9 million hundredweight produced in 1975–76 was 6 percent below the previous season and 2 percent below the 1968–69—72–73 average. The relatively small crop reflected heavy insect-caused losses during the fall, and a moderate decline in total acreage following two years of low prices.

The Marketable Quantity recommended for 1976–77 of 9,223,520 crates is 11 percent more than the 8,326,671 crates in 1975–76. Each producer will have an allotment equal to 100 percent of his historical marketings compared with 90 percent in 1975–76. The recommended large supply will afford the Florida celery industry an opportunity to evaluate market response in a situation when maximum supplies are made available to markets that generally exhibit an inelastic demand. Actual acreage of celery to be planted in Florida and elsewhere for harvest during the 1976–77 season has not been officially estimated. However, the committee projects that 11,000 acres may be planted compared with 10,359 last season and 11,424 in 1974–75. Production may amount to 4.55 million hundredweight for fresh marketing as well as for processing purposes.

With no applicants for new or increased Base Quantities, no reserve was recommended for additional Base Quantities under § 967.37(d)(1).

On the basis of all considerations it is believed that this regulation will tend to effectuate the declared policy of the act.

It is hereby found that good cause exists for not postponing the effective date of this section until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) notice was given of the handling regulation set forth in this section through publicity in the production area and by publication of the proposal in the July 29, 1976, FEDERAL REGISTER, (2) as provided in the marketing agreement and order, this regulation applies to celery marketed during the 1976–77 season, (3) compliance with this section will not require any special preparation by handlers which cannot be completed prior to the time actual handling of harvested celery begins, approximately the latter part of October, (4) prompt issuance of this regulation will be beneficial to all interested persons because it should afford producers and handlers maximum time to plan their operations accordingly, and (5) no useful purpose will be served by postponing such issuance.

The regulation is as follows:

§ 967.312 **Handling regulation; marketable quantity; and uniform percentage for the 1976–77 season ending July 31, 1977.**

(a) The Marketable Quantity is established under § 967.36(a) as 9,223,520 crates of celery.

(b) As provided in § 967.38(a), the Uniform Percentage shall be 100 percent.

(c) Pursuant to § 967.36(b), no handler shall handle any harvested celery unless it is within the Marketable Allotment of a producer who has a Base Quantity and such producer authorizes the first handler thereof to handle it.

(d) No reserve for Base Quantities is established for the 1976–77 season.

(e) Terms used herein shall have the same meaning as when used in the said marketing agreement and order.

It is hereby certified that the economic and inflationary impacts of this regulation have been carefully evaluated in accordance with OMB Circular A–107.

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

Dated: August 18, 1976.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.76–24601 Filed 8–20–76;8:45 am]

[EDITORIAL NOTE: The following document was published at 41 FR 35156, August 20, 1976. However, the date, signature, and the file line were left blank. The document is reprinted below, without change, except for the addition of the the date, signature and file line.]

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

[Lemon Reg. 53]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

This regulation fixes the quantity of California-Arizona lemons that may be shipped to fresh market during the weekly regulation period August 22–28, 1976. It is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 910. The quantity of lemons so fixed was arrived at after consideration of the total available supply of lemons, the quantity of lemons currently available for market, the fresh market demand for lemons, lemon prices, and the relationship of season average returns to the parity price for lemons.

§ 910.353 **Lemon Regulation 53.**

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectute the declared policy of the act.

(2) The need for this regulation to limit the quantity of lemons that may be marketed during the ensuing week stems from the production and marketing situation confronting the lemon industry.

(i) The committee has submitted its recommendation with respect to the quantity of lemons it deems advisable to be handled during the ensuing week. Such recommendation resulted from consideration of the factors enumerated in the order. The committee further reports the demand for lemons is good for first grade fruit but continues to ease for the lower grade lemons. Average f.o.b. price was $6.51 per carton the week ended August 14, 1976 compared to $6.40 per carton the previous week. Track and rolling supplies at 145 cars were down 5 cars from last week.

(ii) Having considered the recommendation and information submitted by the committee, and other available information, the Secretary finds that the quantity of lemons which may be handled should be fixed as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this regulation until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this regulation, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this regulation effective during the period herein specified; and compliance with this regulation will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on August 17, 1976.

(b) *Order.* (1) The quantity of lemons grown in California and Arizona which may be handled during the period August 22, 1976, through August 28, 1976, is hereby fixed at 250,000 cartons.

(2) As used in this section, "handled", and "carton(s)" have the same meaning as when used in the said amended marketing agreement and order.

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

Dated: August 18, 1976.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.76–24728 Filed 8–19–76;11:36 am]

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

PART 1427—COTTON

Subpart 1976—Crop Supplement to Cotton Loan Program Regulations

Correction

In FR Doc. 76–21670 appearing on page 31545 in the issue for Thursday, July 29, 1976, make the following changes: in § 147.101:

1. On page 31545, column 3, under Alabama, the 3rd entry should read:

Tuscombia	Colbert	39.40

2. On page 31546, column 1, under Georgia, the 33rd entry should read:

Haralson	Coweta	39.95

3. Also on page 31546, column 2, under Georgia, the 5th entry should read:

Waynesboro	Burke	39.95

4. In column 3 on page 31546, under Tennessee, the 1st entry should read:

Brownsville	Haywood	39.30

5. On page 31547, column 1, the 34th and 52nd entries should read respectively:

Littlefield	Lamb	38.85
* * * * *		
Quitoque	Briscoe	38.85

6. On page 31547, in § 1427.102, in the column for "1 1/32" the entry for "Light gray: SM and better", the number now reading "—155" should have read "—165".

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 76–165]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Back Bay of Biloxi, Mississippi

This amendment revokes the regulations for the drawbridge across the Back

Bay of Biloxi, Mississippi, mile 2.8, because this bridge has been replaced by a fixed bridge.

§ 117.245 [Amended]

Accordingly, Part 117 of Title 33 of the Code of Federal Regulations is amended by revoking subparagraph (20–a) of paragraph (i) of § 117.245.

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

Effective date: This revision shall become effective September 27, 1976.

Dated: August 17, 1976.

A. F. FUGARD,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.76-24636 Filed 8-20-76;8:45 am]

[CGD 76–068]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Bayou Boeuf, La.

This amendment changes the regulations for the pontoon bridge on State Route 307 across Bayou Boeuf, mile 1.3, at Kraemer, Louisiana, to require at least 12 hours notice from 9 p.m. to 5 a.m. daily. The draw shall open on signal from 5 a.m. to 9 p.m. This amendment was circulated as a public notice dated June 21, 1976, by the Commander, Eighth Coast Guard District, and was published in the FEDERAL REGISTER as a notice of proposed rule making (CGD 76–068) on June 14, 1976, (41 FR 23977). The one response received had no objection to the proposal.

Accordingly, Part 117 of Title 33 of the Code of Federal Regulations is amended as follows:

§ 117.540 [Amended]

In § 117.540(b), by adding the words "Bayou Boeuf, mile 1.3, S–307 highway drawbridge at Kraemer" immediately after the words "Bayou DuLarge, mile 23.2, S–315 highway drawbridge, near Theriot," in the listing.

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

Effective date: This revision shall become effective on September 27, 1976.

Dated: August 17, 1976.

A. F. FUGARO,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.76-24637 Filed 8-20-76;8:45 am]

[CGD 76–077]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Bayou Lafourche, Louisiana

This amendment changes the regulations for the three drawbridges across Bayou Lafourche at mile 58.2, mile 58.7, and mile 66.1, to require at least 6 hours notice at all times. This amendment was circulated as a public notice dated June 21, 1976, by the Commander, Eighth Coast Guard District, and was published in the FEDERAL REGISTER as a notice of proposed rule making (CGD 76–077) on June 14, 1976, (41 FR 23977). No comments were received.

Accordingly, Part 117 of Title 33 of the Code of Federal Regulations is amended by:

1. Adding a new § 117.245(j)(4–a) to read as follows:

§ 117.245 Navigable waters discharging into the Atlantic Ocean south of and including Chesapeake Bay and into the Gulf of Mexico, except the Mississippi River and its tributaries and outlets; bridges where constant attendance of draw tenders is not required.

* * * * *

(j) * * *

(4–a) Bayou Lafourche, La.; U.S. 90 drawbridge, mile 58.2, Raceland; U.S. 90 drawbridge, S. 307, Raceland, mile 58.7; and S. 18 drawbridge, Lafourche, mile 66.1. The draws shall open on signal if at least 6 hours notice is given.

* * * * *

§ 117.540 [Amended]

2. In § 117.540(b), by deleting the Words "Bayou Lafourche, mile 58.2, U.S. 90 highway drawbridge at Raceland" and the words "Bayou Lafourche, mile 66.1, S–18 highway drawbridge at St. Charles" from the listing.

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

Effective date: This revision shall become effective on September 27, 1976.

Dated: August 17, 1976.

A. F. FUGARO,
Rear Admiral, U.S. Coast Guard Chief, Office of Marine Environment and Systems.

[FR Doc.76-24635 Filed 8-20-76;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20665; RM–2324]

PART 91—INDUSTRIAL RADIO SERVICES

Elimination of Required Annual Measurement of Transmitter Power, Frequency and Modulation and Specification of Transmitter Power in Terms of Output Power; Correction

In the Matter of Amendment of Parts 89, 91, and 93 of the Commission's Rules and Regulations to eliminate the required annual measurement of transmitter power, frequency and modulation, and to specify transmitter power in terms of output power.

The Report and Order in the above-captioned matter released August 6, 1976, and published in the FEDERAL REGISTER on August 11, 1976, 41 FR 33900, is corrected by adding the words "25 feet" following the last line of § 91.504(b)(14) in the second column of page 33905.

Dated: August 18, 1976.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.76-24650 Filed 8-20-76;8:45 am]

Title 49—Transportation

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 69–19; Notice 15]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Republication of Lighting Standard

This notice republishes in its entirety 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, Lamps, Reflective Devices, and Associated Equipment.

Since Standard No. 108 was last reissued (36 FR 22902, December 2, 1971), it has been amended approximately 29 times. The republication will insure that the public is afforded a current and convenient copy of a complex motor vehicle safety standard. Amendments to this standard published in the FEDERAL REGISTER are therefore reflected in the reissuance, and have been incorporated through August 1, 1976.

In consideration of the foregoing, 49 CFR 571.108, Motor Vehicle Safety Standard No. 108 is republished to read as set forth below.

(Sec. 103, 119, Pub. L. 89–563, 80 Stat. 718; 15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.)

Issued on August 16, 1976.

ROBERT L. CARTER,
Associate Administrator, Motor Vehicle Programs.

§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

S1. *Purpose and scope.* This standard specifies requirements for original and replacement lamps, reflective devices, and associated equipment necessary for signaling and for the safe operation of motor vehicles during darkness and other conditions of reduced visibility.

S2. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks, buses, trailers (except pole trailers and trailer converter dollies), and motorcycles, and to lamps, reflective devices, and associated equipment for replacement of like equipment on vehicles to which this standard applies.

S3. *Definitions.* "Flash" means a cycle of activation and deactivation of a lamp by automatic means continuing until stopped either automatically or manually.

"Speed attainable in 1 mile" means the speed attainable by accelerating at maximum rate from a standing start for 1 mile on a level surface.

S4. *Requirements.*

S4.1 *Required motor vehicle lighting equipment.*

S4.1.1 Except as provided in succeeding paragraphs of S4.1.1, each vehicle shall be equipped with at least the number of lamps, reflective devices, and associated equipment specified in Tables I and III, as applicable. Required equipment shall be designed to conform to the SAE Standards or Recommended Practices referenced in those tables. Table I applies to multipurpose passenger vehicles, trucks, trailers, and buses, 80 or more inches in overall width. Table III applies to passenger cars and motorcycles and to multipurpose passenger vehicles, trucks, trailers, and buses, less than 80 inches in overall width.

S4.1.1.1 A truck tractor need not be equipped with turn signal lamps mounted on the rear if the turn signal lamps at or near the front are so constructed (double-faced) and so located that they meet the requirements for double-faced turn signals specified in SAE Standard J588e, "Turn Signal Lamps," September 1970.

S4.1.1.2 A truck tractor need not be equipped with any rear side marker devices, rear clearance lamps, and rear identification lamps.

S4.1.1.3 Intermediate side marker devices are not required on vehicles less than 30 feet in overall length.

S4.1.1.4 Reflective material conforming to Federal Specification L–S–300, "Sheeting and Tape, Reflective; Nonexposed Lens, Adhesive Backing," September 7, 1965, may be used for side reflex reflectors if this material, as used on the vehicle, meets the performance standards in Table I of SAE Standard J594d, "Reflex Reflectors," March 1967.

S4.1.1.5 The turn signal operating unit on each passenger car, and multipurpose passenger vehicle, truck, and bus less than 80 inches in overall width manufactured on or after January 1, 1973, shall be self-canceling by steering wheel rotation and capable of cancellation by a manually operated control.

S4.1.1.6 Each stop lamp on any motor vehicle manufactured between January 1, 1973, and September 1, 1978, may be designed to conform to SAE Standard J586b, *Stop Lamps*, June 1966. It shall meet the photometric minimum candlepower requirements for class A red turn signal lamps specified in SAE Standard J575d, *Test for Motor Vehicle Lighting Devices and Components*, August 1967. Each such lamp on a passenger car and on a multipurpose passenger vehicle, truck, trailer or bus less than 80 inches in overall width shall have an effective projected luminous area not less than 3½ square inches. If multiple compartment lamps or multiple lamps are used, the effective projected luminous area of each compartment or lamp shall be not less than 3½ square inches; however, the photometric requirements may be met by a combination of compartments or lamps.

S4.1.1.7 Each turn signal lamp on any motor vehicle, except motorcycles, manufactured between January 1, 1972, and September 1, 1978, may be designed to conform to SAE Standard J588d, *Turn Signal Lamps*, June 1966, and shall meet the photometric minimum candlepower requirements for Class A turn signal lamps specified in SAE Standard J575d, *Tests, for Motor Vehicle Lighting Devices and Components*, August 1967. Each such lamp on a passenger car and on a multipurpose passenger vehicle, truck, trailer or bus less than 80 inches in overall width shall have an effective projected luminous area not less than 3½ square inches. If multiple compartment lamps or multiple lamps are used, the effective projected luminous area of each compartment or lamp shall be not less than 3½ square inches; however, the photometric requirements may be met by a combination of compartments or lamps. Each such lamp on a multipurpose passenger vehicle, truck, trailer or bus 80 inches or more in overall width shall have an effective projected luminous area not less than 12 square inches.

S4.1.1.8 For each passenger car, and each multipurpose passenger vehicle, truck, trailer, and bus of less than 80 inches in overall width the photometric minimum candlepower requirements for side marker lamps specified in SAE Standard J592e "Clearance, Side Marker, and Identification Lamps," July 1972, may be met for all inboard test points at a distance of 15 feet from the vehicle and on a vertical plane that is perpendicular to the longitudinal axis of the vehicle and located midway between the front and rear side marker lamps.

S4.1.1.9 Boat trailers need not be equipped with both front and rear clearance lamps provided an amber (to front) and red (to rear) clearance lamp is located at or near the midpoint on each side of the trailer so as to indicate its extreme width.

S4.1.1.10 Multiple license plate lamps and backup lamps may be used to fulfill the requirements of the SAE Standards applicable to such lamps referenced in Tables I and III.

S4.1.1.11 A parking lamp is not required to meet the minimum photometric values at each test point specified in Table I of SAE Standard J222, "Parking Lamps (Position Lamps)," if the sum of the candlepower measured at the test points within the groups listed in Figure 1 is not less than the sum of the candlepower values for such test points specified in J222.

S4.1.1.12 A taillamp, stop lamp, or turn signal lamp is not required to meet the minimum photometric values at each test point specified in the referenced SAE Standards, if the sum of the candlepower measured at the test points is not less than that specified for each group listed in Figure 1, or for motorcycle turn signal lamps, not less than one-half of such sum.

Group totals, CP

Groups	Test points degrees	Parking lamps	Tall lamps			Red stop and turn signal lamps			Yellow turn signal lamps		
			One	Two	Three	One	Two	Three	One	Two	Three
1	20L-5U 20L-H 20L-5D 10L-10U 10L-10D	2.8	1.6	2.7	3.8	55	66	80	135	165	190
2	10U-V 5U-10L 5U-10R	2.4	2.1	3.6	5.5	85	100	115	210	251	290
3	10L-H 5L-5U 5L-5D	4.2	3.4	5.3	8.0	140	167	195	350	420	490
4	5U-V H-5L H-V H-5R 5D-V	16.8	9.6	16.5	24.0	380	449	520	950	1,130	1,295
5	5R-5U 5R-5D 10R-H	4.2	3.4	5.3	8.0	140	167	195	350	420	490
6	5D-10L 5D-10R 10D-V	2.4	2.1	3.6	5.5	85	100	115	210	251	290
7	10R-10U 10R-10D 20R-5U 20R-H 20R-5D	2.8	1.6	2.7	3.8	55	66	80	135	165	190
Maximum rear lamps only			15	20	25	300	360	420	900	900	900

FIGURE 1.—Grouped photometric minimum candlepower requirements for devices using one, two, or three separately lighted compartments, or for one, two, or three lamps used in a single design location to perform a single function.

S4.1.1.13 [Reserved]

S4.1.1.14 [Reserved]

S4.1.1.15 [Reserved]

S4.1.1.16 All passengers cars and multipurpose passenger vehicles, trucks, and buses of less than 80 inches overall width shall be equipped with turn signal operating units designed to complete a durability test of 100,000 cycles.

S4.1.1.17 A trailer that is less than 30 inches in overall width may be equipped with only one of each of the following lamps and reflective devices, located at or near its vertical centerline: Tall lamp, stop lamp, and near reflex reflector.

S4.1.1.18 A trailer that is less than 6 feet in overall length, including the trailer tongue, need not be equipped with front side marker lamps and front side reflex reflectors.

S4.1.1.19 A lamp manufactured on or after January 1, 1974, and designed to use a type of bulb that has not been assigned a mean spherical candlepower rating by its manufacturer and is not listed in SAE Standard J573d, "Lamp Bulbs and Sealed Units," December 1968, shall meet the applicable requirements of this standard when used with any bulb of the type specified by the lamp manufacturer, operated at the bulb's design voltage. A lamp that contains a sealed-in bulb shall meet these requirements with the bulb operated at the bulb's design voltage.

S4.1.1.20 Except for a lamp having a sealed-in bulb, a lamp manufactured on or after January 1, 1974 shall meet the applicable requirements of this standard when tested with a bulb whose filament is positioned within ±.010 inch of the nominal design position specified in SAE Standard J573d, "Lamp Bulbs and Sealed Units," December 1968, or specified by the bulb manufacturer.

S4.1.1.21 Instead of a headlighting system of two Type 1 headlamps and two Type 2, 5¾-inch headlamps, a vehicle manufactured on or after January 1, 1974 may be equipped with a headlighting system of two Type 1A headlamps and two Type 2A headlamps, that meet the following requirements.

(a) Each Type 1A headlamp and Type 2A headlamp shall be designed to conform to the requirements for a Type 1 headlamp and Type 2, 5¾-inch headlamp respectively, as specified in any SAE Standard or Recommended Practice, referenced or subreferenced by Tables I and III, except as provided below.

(b) Each Type 1A and Type 2A headlamp shall be designed to conform to the applicable dimensional requirements and specifications of Figure 2. At a voltage of 12.8 volts, the maximum design wattage with an allowable tolerance of plus 7.5 percent shall be 50 watts for a Type 1A headlamp and 60 watts for each filament of a Type 2A headlamp.

(c) The following SAE Standards and Recommended Practices or portions thereof, do not apply:

(i) SAE Standard J571b, "Dimensional Specifications for Sealed Beam Headlamp Units," April 1965.

(ii) SAE Standard J573d, "Lamp Bulbs and Sealed Units," December 1968.

(iii) Figure 1, SAE Recommended Practice J602, "Headlamp Aiming Device for Mechanically Aimable Sealed Beam Headlamp Units," August 1963.

(iv) Paragraph 2 of "Retaining Ring Requirements," and the paragraph "Proper Seating of Sealed Beam Unit," SAE Standard J580a. "Sealed Beam Headlamp," June 1966.

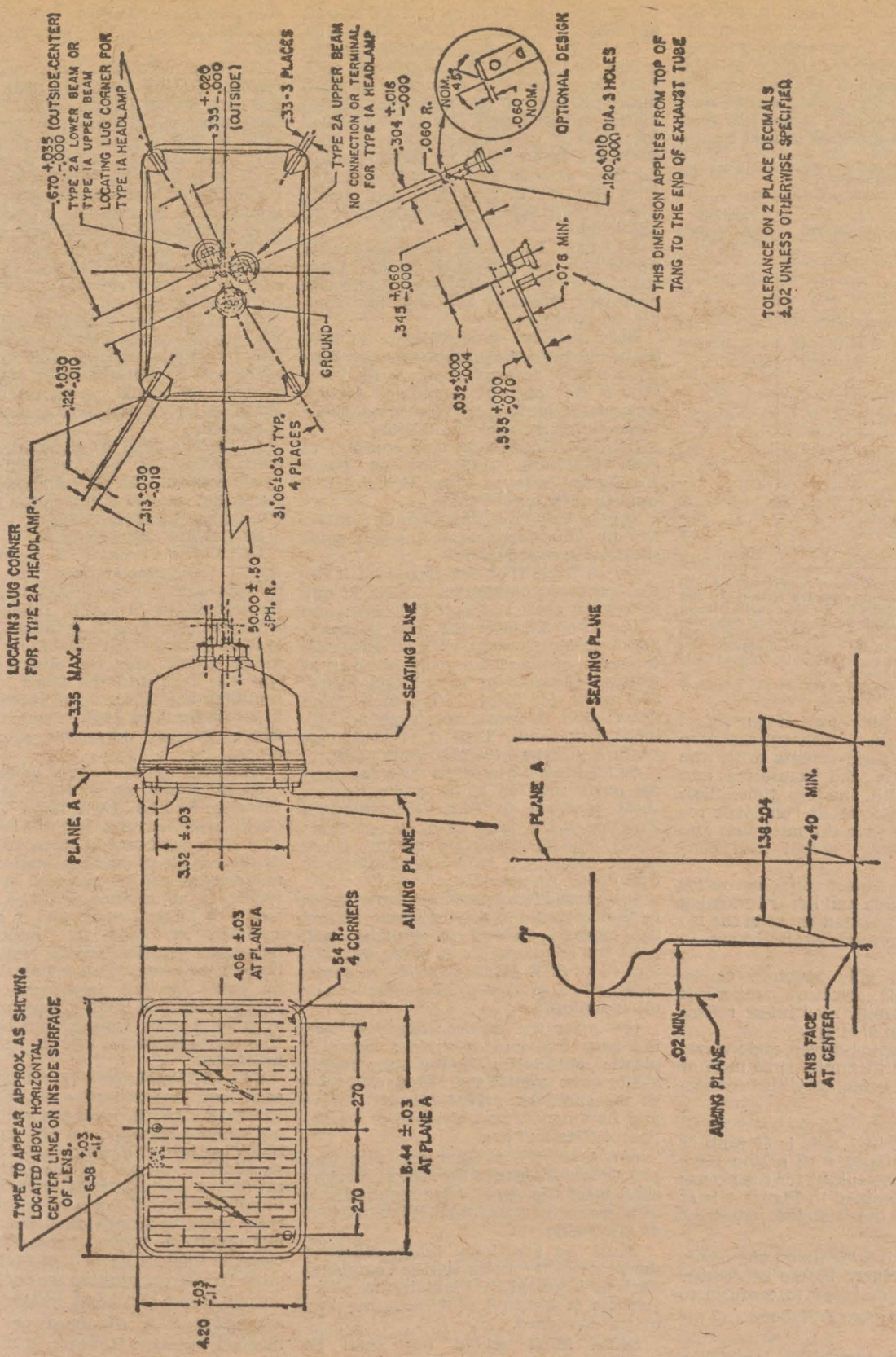


FIGURE 2
RECTANGULAR HEADLAMP SPECIFICATIONS

S4.1.1.22 A backup lamp is not required to meet the minimum photometric values at each test point specified in Table I of SAE Standard J593c "Backup Lamps" if the sum of the candlepower measured at the test points within each group listed in Figure 3 is not less than the group totals specified in that figure.

FIGURE 3.—*Minimum luminous intensity requirements for backup lamps*

Group	Test point, degrees	Total for group, candela (see note 1)
1[1]	45L–5U 45L–H 45L–5D	45
2[1]	30L–H 30L–5D	50
3	10L–10U 10L–5U V–10U V–5U 10R–10U 10R–5U	100
4	10L–H 10L–5D V–H V–5D 10R–H 10R–5D	360
5[1]	30R–H 30R–5D	50
6[1]	45R–5U 45R–H 45R–5D	45

[1] When 2 lamps of the same or symmetrically opposite design are used, the reading along the vertical axis and the averages of the readings for the same angles left and right of vertical for 1 lamp shall be used to determine compliance with the requirements. If 2 lamps of differing designs are used, they shall be tested individually and the values added to determine that the combined units meet twice the candela requirements.

When only 1 backup lamp is used on the vehicle, it shall be tested to twice the candela requirements.

S4.1.1.23 Variable load turn signal flashers shall comply with voltage drop and durability requirements with the maximum design load connected and shall comply with starting time, flash rate, and percent current "on" time requirements both with the minimum and with the maximum design load connected.

S4.1.1.24 The lowest voltage drop for turn signal flashers and hazard warning signal flashers measured between the input and load terminals shall not exceed 0.8 volt.

S4.1.1.25 The only required equipment for mobile structure trailers is stoplamps, taillamps, rear reflex reflectors, and turn signal lamps.

S4.1.1.26 A motor-driven cycle whose speed attainable in 1 mile is 30 mph or less need not be equipped with turn signal lamps.

S4.1.1.27 A motor-driven cycle whose speed attainable in 1 mile is 30 mph or less may be equipped with a stop lamp whose photometric output for the groups of test points specified in Figure 1 is at least one-half of the minimum values set forth in that figure.

S4.1.1.28 Each taillamp on any motor vehicle manufactured before September 1, 1978, may be designed to conform to SAE Standard J585c, *Tail Lamps*, June 1966.

S4.1.1.29 Each turn signal lamp on a motorcycle manufactured between January 1, 1973, and September 1, 1978, may be designed to conform to SAE Standard J588d, *Turn Signal Lamps*, June 1966.

S.4.1.1.30 Except as provided in paragraph S4.1.1.12 of this standard, each turn signal lamp on a motorcycle shall meet one-half of the minimum photometric values at each test point specified for Class A turn signal lamps in SAE Standard J575d, *Tests for Motor Vehicle Lighting Devices and Components*, August 1967, or in SAE Standard J588e, *Turn Signal Lamps*, September 1970, as applicable.

S4.1.1.31 Each turn signal lamp on a motorcycle manufactured on and after January 1, 1973, shall have an effective projected luminous area not less than 3½ square inches.

S4.1.1.32 Note 6 of Table 1 in SAE Standard J588e, *Turn Signal Lamps*, September 1970, does not apply. A stop lamp that is not optically combined with a turn signal lamp shall remain activated when the turn signal is flashing.

S4.1.1.33 Headlamps may conform to SAE Standard J579c, *Sealed Beam Headlamp Units for Motor Vehicles*, December 1974, except that:

(a) In Table I of SAE Standard J579c, the maximum candela at any test point shall not exceed 37,500;

(b) In Table II of SAE Standard J579c, the combined maximum candela at any test point shall not exceed 37,500; and

(c) At a voltage of 12.8 volts, the maximum design wattage, with an allowable tolerance of plus 7.5 percent, shall be as follows: 50 watts for Type 1 (5¾-inch); 37.5 watts for Type 2 (5¾-inch) high beam; and 60 watts for Type 2 (5¾-inch) low beam, Type 2 (7-inch) low beam, and Type 2 (7-inch) high beam.

S4.1.2 Plastic materials used for optical parts such as lenses and reflectors shall conform to SAE Recommended Practice J576c, May 1970, except that:

(a) Plastic materials manufactured before January 1, 1976, may conform to SAE J576b, August 1966;

(b) Plastic lenses used for inner lenses or those covered by another material and not exposed directly to sunlight shall meet the requirements of paragraphs 3.4 and 4.2 of SAE J576b, or J576c, as applicable, when covered by the outer lens or other material;

(c) After the outdoor exposure test, the haze and loss of surface luster of plastic materials used for lamp lenses shall not be greater than 30 percent haze as measured by ASTM–1003–61, "Haze and Luminous Transmittance of Transparent Plastic;" and

(d) After the outdoor exposure test, plastic materials used for reflex reflectors shall meet the appearance requirements of paragraph 4.2.2 of SAE J576b or J576c as applicable.

S4.1.3 No additional lamp, reflective device, or other motor vehicle equipment shall be installed that impairs the effectiveness of lighting equipment required by this standard.

S4.1.4 Each school bus shall be equipped with a system of either:

(a) Four red signal lamps designed to conform to SAE Standard J887, "School Bus Red Signal Lamps," July 1964, and installed in accordance with that standard; or

(b) Four red signal lamps designed to conform to SAE Standard J887, "School Bus Red Signal Lamps," July 1964, and four amber signal lamps designed to conform to that standard, except for their color, and except that their candlepower shall be at least 2½ times that specified for red signal lamps. Both red and amber lamps shall be installed in accordance with SAE Standard J887, except that:

(i) Each amber signal lamp shall be located near each red signal lamp, at the same level, but closer to the vertical centerline of the bus; and

(ii) The system shall be wired so that the amber signal lamps are activated only by manual or foot operation, and if activated, are automatically deactivated and the red signal lamps automatically activated when the bus entrance door is opened.

S4.1.5 The color in all lighting equipment covered by this standard shall be in accordance with SAE Standard J578a, April 1965, "Color Specification for Electric Signal Lighting Devices".

S4.2 *Other requirements.*

S4.2.1 The words "it is recommended that," "recommendations," or "should be" appearing in any SAE Standard or Recommended Practice referenced or subreferenced in this standard shall be read as setting forth mandatory requirements, except that the aiming pads on the lens face and the black area surrounding the signal lamp, recommended in SAE Standard J887, "School Bus Red Signal Lamps," July 1964, are not required.

S4.3 *Location of required equipment.*

S4.3.1 Except as provided in S4.3.1.1 through S4.3.1.8, each lamp, reflective device, and item of associated equipment shall be securely mounted on a rigid part of the vehicle other than glazing that is not designed to be removed except for repair, in accordance with the requirements of Table I or III and in locations specified in Table II (multipurpose passenger vehicles, trucks, trailers, and buses 80 or more inches in overall width) or Table IV (all passenger cars, and motorcycles, and multipurpose passenger vehicles, trucks, trailers, and buses less than 80 inches in overall width), as applicable.

S4.3.1.1 Except as provided in S4.3.1.1.1, each lamp and reflective device shall be located so that it meets the visibility requirements specified in any applicable SAE Standard or Recommended Practice. In addition, no part of the vehicle shall prevent a parking lamp, taillamp, stop lamp, turn signal lamp, or backup lamp from meeting its photometric output at any applicable group of test points specified in Figures 1 and 3, or prevent any other lamp from meeting the photometric output at any test point specified in any applicable SAE Standard or Recommended Practice. However, if motor vehicle equipment (e.g., mirrors, snow plows, wrecker booms, backhoes, and winches) prevents compliance with this

paragraph by any required lamp or reflective device, an auxiliary lamp or device meeting the requirements of this paragraph shall be provided.

S4.3.1.1.1. Clearance lamps may be mounted at a location other than on the front and read if necessary to indicate the overall width of a vehicle, or for protection from damage during normal operation of the vehicle, and at such a location they need not be visible at 45 degrees inboard.

S4.3.1.2 On a truck tractor, the red rear reflex reflectors may be mounted on the back of the cab, at a minimum height not less than 4 inches above the height of the rear tires.

S4.3.1.3 On a trailer, the amber front side reflex reflectors and amber front side marker lamps may be located as far forward as practicable exclusive of the trailer tongue.

S4.3.1.4 When the rear identification lamps are mounted at the extreme height of a vehicle, rear clearance lamps need not meet the requirement of Table II that they be located as close as practicable to the top of the vehicle.

S4.3.1.5 The center of the lens referred to in SAE Standard J593c, "Back-up Lamps," February 1968, is the optical center.

S4.3.1.6 On a truck tractor, clearance lamps mounted on the cab may be located to indicate the width of the cab, rather than the overall width of the vehicle.

S4.3.1.7 The requirement that there be not less than 4 inches between a front turn signal lamp and a low beam headlamp, specified in SAE Standard J588e, "Turn Signal Lamps," September 1970, shall not apply if the sum of the candlepower values of the turn signal lamp measured at the test points within each group listed in Figure 1 is not less than two and one-half times the sum specified for each group for yellow turn signal lamps.

S4.4 *Equipment combinations.*

S4.4.1 Two or more lamps, reflective devices, or items of associated equipment may be combined if the requirements for each lamp, reflective device, and item of associated equipment are met, except that no clearance lamp may be combined optically with any taillamp or identification lamp.

S4.5 *Special wiring requirements.*

S4.5.1 Each vehicle shall have a means of switching between lower and upper headlamp beams that conforms to SAE Recommended Practice J564a "Headlamp Beam Switching," April 1964 or to SAE Recommended Practice J565b, "Semi-Automatic Headlamp Beam Switching Devices," February 1969.

S4.5.2 Each vehicle shall have a means for indicating to the driver when the upper beams of the headlamps are on that conforms to SAE Recommended Practice J564a, April 1964, except that the signal color need not be red.

S4.5.3 The taillamps on each vehicle shall be activated when the headlamps are activated in a steady-burning state.

S4.5.4 The stoplamps on each vehicle shall be activated upon application of the service brakes.

S4.5.5 The vehicular hazard warning signal operating unit on each vehicle shall operate independently of the ignition or equivalent switch, and when activated, shall cause to flash simultaneously sufficient turn signal lamps to meet, as a minimum, the turn signal lamp photometric requirements of this standard.

S4.5.6 Each vehicle equipped with a turn signal operating unit shall also have an illuminated pilot indicator. Failure of one or more turn signal lamps to operate shall be indicated in accordance with SAE Standard J588e, "Turn Signal Lamps," September 1970, except where a variable-load turn signal flasher is used on a truck, bus, or multipurpose passenger vehicle 80 or more inches in overall width, on a truck that is capable of accommodating a slide-in camper, or on any vehicle equipped to tow trailers.

S4.5.7 On all passenger cars, and motorcycles, and multipurpose passenger vehicles, trucks, and buses of less than 80 inches overall width:

(a) When the parking lamps are activated, the taillamps, license plate lamps, and side marker lamps shall also be activated; and

TABLE I.—REQUIRED MOTOR VEHICLE LIGHTING EQUIPMENT

MULTIPURPOSE PASSENGER VEHICLES, TRUCKS, TRAILERS, AND BUSES, OF 80 OR MORE INCHES OVERALL WIDTH

Item	Multipurpose passenger vehicles, trucks, and buses	Trailers	Applicable SAE standard or recommended practice
Headlamps	2 white, 7-inch, Type 2 headlamp units; or 2 white, 5¾-inch, Type 1 headlamp units and 2 white 5¾-inch, Type 2 headlamp units.	None	J580a, June 1966; J579a, August 1965; and J566, January 1960.
Taillamps	2 red	2 red	J585d, August 1970.
Stoplamps	2 red [1]	2 red [1]	J586c, August 1970.
License plate lamp	1 white [2]	1 white [1]	J587d, March 1969.
Reflex reflectors	4 red; 2 amber [6]	4 red; 2 amber	J594e, March 1970.
Side marker lamps	2 red; 2 amber [6]	2 red; 2 amber	J592e, July 1972.
Backup lamp	1 white [3]	None	J593c, February 1968.
Turn signal lamps	2 red or amber; 2 amber [3]	2 red or amber	J588e, September 1970.
Turn signal operating unit.	1	None	J589, April 1964.
Turn signal flasher	1 [5]	None	J590b, October 1965.
Vehicular hazard warning signal operating unit.	1	None	J910, January 1966.
Vehicular hazard warning signal flasher.	1 [5]	None	J945, February 1966.
Identification lamps	3 amber; 3 red [6]	3 red	J592e, July 1972.
Clearance lamps	2 amber; 2 red [6]	2 amber, 2 red	J592e, July 1972.
Intermediate side marker lamps.	2 amber [4]	2 amber [4]	J592e, July 1972.
Intermediate reflex reflectors.	2 amber [4]	2 amber [4]	J594e, March 1970.

[1] See S4.1.1.6. [2] See S4.1.1.10. [3] See S4.5.6. [4] See S4.1.1.3. [5] See S4.4.2. [6] See S4.1.1.2.

(b) When the headlamps are activated in a steady-burning state, the taillamps, parking lamps, license plate lamps and side marker lamps shall also be activated.

S4.6 When activated:

(a) Turn signal lamps, hazard warning signal lamps, and school bus warning lamps shall flash; and

(b) All other lamps shall be steady-burning, except that means may be provided to flash headlamps and side marker lamps for signaling purposes.

S4.7 *Replacement Equipment.*

S4.7.1 Each lamp, reflective device, or item of associated equipment manufactured to replace any lamp, reflective device, or item of associated equipment on any vehicle to which this standard applies, shall be designed to conform with this standard.

S4.7.2 Each lamp, reflective device, or item of associated equipment to which section S4.7.1 applies may be labeled with the symbol DOT, which shall constitute a certification that it conforms to applicable Federal motor vehicle safety standards.

S5. *Subreferenced SAE Standards and Recommended Practices.*

S5.1 SAE Standards and Recommended Practices subreferenced by the SAE Standards and Recommended Practices included in Tables I and III and paragraphs S4.1.4 and S4.5.1 are those published in the 1970 edition of the SAE Handbook, except that the SAE Standard referred to as "J599" is J599c, *Lighting Inspection Code*, March 1973, and the subreferenced SAE Standard referred to as "J575" is J575e, *Tests for Motor Vehicle Lighting Devices and Components*, August 1970, for tail lamps, stop lamps, and turn signal lamps designed to conform to SAE Standard J585d, J586c, and J588e respectively.

S5.2 Requirements of SAE Standards incorporated by reference in this standard, other than J576b and J576c, do not include tests for warpage of devices with plastic lenses.

TABLE II.—LOCATION OF REQUIRED EQUIPMENT

MULTIPURPOSE PASSENGER VEHICLES, TRUCKS, TRAILERS, AND BUSES, OF 80 OR MORE INCHES OVERALL WIDTH

Item	Location on—		Height above road surface measured from center of item on vehicle at curb weight
	Multipurpose passenger vehicles, trucks, and buses	Trailers	
Headlamps	Type 1 headlamps at the same height, 1 on each side of the vertical centerline; Type 2 headlamps at the same height, 1 on each side of the vertical centerline; as far apart as practicable.	Not required	Not less than 24 inches, nor more than 54 inches.
Taillamps	On the rear, 1 on each side of the vertical centerline, at the same height, and as far apart as practicable.	On the rear, 1 on each side of the vertical centerline, at the same height, and as far apart as practicable.	Not less than 15 inches, nor more than 72 inches.
Stoplamps	On the rear, 1 on each side of the vertical centerline, at the same height, and as far apart as practicable.	On the rear, 1 on each side of the vertical centerline, at the same height, and as far apart as practicable.	Not less than 15 inches, nor more than 72 inches.
License plate lamp.	At rear license plate, to illuminate the plate from the top or sides.	At rear license plate, to illuminate the plate from the top or sides.	No requirement.
Backup lamp	On the rear	Not required	No requirement.
Turn signal lamps.	At or near the front—1 amber on each side of the vertical centerline, at the same height, and as far apart as practicable. On the rear—1 red or amber on each side of the vertical centerline, at the same height, and as far apart as practicable.	On the rear—1 red or amber on each side of the vertical centerline, at the same height, and as far apart as practicable.	Not less than 15 inches, nor more than 83 inches.
Identification lamps.	On the front and rear—3 lamps, amber in front, red in rear, as close as practicable to the top of the vehicle, at the same height, as close as practicable to the vertical centerline, with lamp centers spaced not less than 6 inches or more than 12 inches apart.	On the rear—3 lamps as close as practicable to the top of the vehicle at the same height, as close as practicable to the vertical centerline, with lamp centers spaced not less than 6 inches or more than 12 inches apart.	No requirement.
Clearance lamps.	On the front and rear—2 amber lamps on front, 2 red lamps on rear, to indicate the overall width of the vehicle, one on each side of the vertical centerline, at the same height, and as near the top as practicable.[1]	On the front and rear—2 amber lamps on front, 2 red lamps on rear, to indicate the overall width of the vehicle, one on each side of the vertical centerline, at the same height, and as near the top thereof as practicable.[2][3][4]	No requirement.
Intermediate side marker lamps.	On each side—1 amber lamp located at or near the midpoint between the front and rear side marker lamps.	On each side—1 amber lamp located at or near the midpoint between the front and rear side marker lamps.	Not less than 15 inches.
Intermediate side reflex reflectors.	On each side—1 amber located at or near the midpoint between the front and rear side reflex reflectors.	On each side—1 amber located at or near the midpoint between the front and rear side reflex reflectors.	Not less than 15 inches nor more than 60 inches.
Reflex reflectors.	On the rear—1 red on each side of the vertical centerline, as far apart as practicable, and at the same height.[3] On each side—1 red as far to the rear as practicable, and 1 amber as far to the front as practicable.	On the rear—1 red on each side of the vertical centerline, as far apart as practicable, and at the same height. On each side—1 red as far to the rear as practicable, and 1 amber as far to the front as practicable.	Not less than 15 inches nor more than 60 inches.
Side marker lamps.	On each side—1 red as far to the rear as practicable, and 1 amber as far to the front as practicable.	On each side—1 red as far to the rear as practicable, and 1 amber as far to the front as practicable.	Not less than 15 inches.

[1] See S4.3.1.6.
[2] See S4.3.1.2.
[3] See S4.3.1.4.
[4] See S4.1.1.9.

TABLE III—REQUIRED MOTOR VEHICLE LIGHTING EQUIPMENT

ALL PASSENGER CARS AND MOTORCYCLES, AND MULTIPURPOSE PASSENGER VEHICLES, TRUCKS, TRAILERS, AND BUSES, OF LESS THAN 80 INCHES OVERALL WIDTH

Item	Passenger cars, multipurpose passenger vehicles, trucks, and buses	Trailers	Motorcycles	Applicable SAE standard or recommended practice
Headlamps	2 white, 7-inch, Type 2 headlamp units, or 2 white, 5¾-inch, Type 1 headlamp units and 2 white, 5¾-inch, Type 2 headlamp units.			J580a, June 1966, J579a, August 1965, and J566, January 1960.
			1 white	J584, April 1964 and J566, January 1960.
Taillamps	2 red	2 red [14]	1 red	J585d, August 1970.
Stoplamps	2 red [1 2]	2 red [1 14]	1 red [1]	J586c, August 1970.
License plate lamp	1 white [3]	1 white [3]	1 white [3]	J587d, March 1969.
Parking lamps	2 amber or white [4]	None	None	J222, December 1970.
Reflex reflectors	4 red; 2 amber [5]	4 red; 2 amber [11 12]	3 red; 2 amber	J594e, March 1970.
Intermediate side reflex reflectors.	2 amber [9]	2 amber [9]	None	J594e, March 1970.
Intermediate side marker lamps.	2 amber [9]	2 amber [9]	None	J592e, July 1972.
Side marker lamps	2 red; 2 amber [3]	2 red; 2 amber [13]	None	J592e, July 1972.
Backup lamp	1 white [3 11]	None	None	J593e, July 1972.
Turn signal lamps	2 red or amber; 2 amber [3 6]	2 red or amber	2 amber. 2 red or amber. [7 12]	J588e, September 1970.
Turn signal operating unit.	1 [7 8 10]	None	1 [12]	J589, April 1964.
Turn signal flasher	1 [6]	None	1 [12]	J590b, October 1965.
Vehicular hazard warning signal operating unit.	1	None	None	J910, January 1966.
Vehicular hazard warning signal flasher.	1 [6]	None	None	J945, February 1966.

[1] See S4.1.1.6. [2] See S4.1.1.7. [3] See S4.1.1.10. [4] See S4.1.1.11. [5] See S4.1.1.2. [6] See S4.4.2.
[7] See S4.5.6. [8] See S4.1.1.5. [9] See S4.1.1.3. [10] See S4.1.1.15. [11] See S4.1.1.17. [12] See S4.1.1.18.

TABLE IV.—LOCATION OF REQUIRED EQUIPMENT

ALL PASSENGER CARS AND MOTORCYCLES, AND MULTIPURPOSE PASSENGER VEHICLES, TRUCKS, TRAILERS, AND BUSES OF LESS THAN 80 INCHES OVERALL WIDTH

Item	Location on: Passenger cars, multipurpose passenger vehicles, trucks, trailers, and buses	Location on: Motorcycles	Height above road surface measured from center of item on vehicle at curb weight
Column 1	Column 2	Column 3	Column 4
Headlamps	Type 1 headlamps at the same height, 1 on each side of the vertical centerline; Type 2 headlamps at the same height 1 on each side of the vertical centerline; as far apart as practicable.	On the vertical centerline, except that if two are used, they shall be symmetrically disposed about the vertical centerline.	Not less than 24 inches, nor more than 54 inches.
Taillamps	On the rear—1 on each side of the vertical centerline, at the same height, and as far apart as practicable.[2]	On the rear—on the vertical centerline except that if two are used, they shall be symmetrically disposed about the vertical centerline.	Not less than 15 inches, nor more than 72 inches.
Stoplamps	On the rear—1 on each side of the vertical centerline, at the same height, and as far apart as practicable.[2]	On the rear—on the vertical centerline except that if two are used, they shall be symmetrically disposed about the vertical centerline.	Not less than 15 inches, nor more than 72 inches.
License plate lamp.	At rear license plate, to illuminate the plate from the top or sides.	At rear license plate	No requirement.
Parking lamps.	On the front—1 on each side of the vertical centerline, at the same height, and as far apart as practicable.	Not required	Not less than 15 inches, nor more than 72 inches.
Reflex reflectors.	On the rear—1 red on each side of the vertical centerline, at the same height, and as far apart as practicable. [2] On each side—1 red as far to the rear as practicable, and 1 amber as far to the front as practicable. [2]	On the rear—1 red on the vertical centerline except that, if two are used on the rear, they shall be symmetrically disposed about the vertical centerline. On each side—1 red as far to the rear as practicable, and 1 amber as far to the front as practicable.	Not less than 15 inches, nor more than 60 inches.
Backup lamp	On the rear	Not required	No requirement.
Turn signal lamps.[1]	At or near the front—1 amber on each side of the vertical centerline, at the same height, and as far apart as practicable. On the rear—1 red or amber on each side of the vertical centerline, at the same height, and as far apart as practicable.	At or near the front—1 amber on each side of the vertical centerline at the same height, and having a minimum horizontal separation distance (centerline of lamps) of 16 inches. Minimum edge to edge separation distance between lamp and headlamp is 4 inches. At or near the rear—1 red or amber on each side of the vertical centerline, at the same height and having a minimum horizontal separation distance (centerline to centerline of lamps) of 9 inches. Minimum edge to edge separation distance between lamp and tail or stop lamp is 4 inches.	Not less than 15 inches, nor more than 83 inches.
Side marker lamps.	On each side—1 red as far to the rear as practicable, and 1 amber as far to the front as practicable.	Not required	Not less than 15 inches.
Intermediate side marker lamps.	On each side—1 amber located at or near the midpoint between the front and rear side marker lamps.	Not required	Not less than 15 inches.
Intermediate side marker reflectors.	On each side—1 amber located at or near the midpoint between the front and rear side marker reflectors.	Not required	Not less than 15 inches, nor more than 60 inches.

[1] Front turn signal lamps not required for trailers. [2] See S4.1.1.18.

NOTE: (1) The term "overall width" refers to the nominal design dimension of the widest part of the vehicle, exclusive of signal lamps, marker lamps, outside rearview mirrors, flexible fender extensions, and mud flaps, determine with doors and windows closed, and the wheels in the straight-ahead position.

This supersedes the interpretation of the term "overall width" appearing in the FEDERAL REGISTER of March 1, 1967 (32 F.R. 3390).

(2) Paragraph S3.1 and Tables I and III of § 571.108 as amended (32 F.R. 18033, Dec. 16, 1967), specify that certain lamp assemblies shall conform to applicable SAE Standards. Each of these basically referenced standards subreferences both SAE Standard J575 (tests for motor vehicle lighting devices and components) which in turn references SAE Standard J573 on bulbs, and SAE Standard J567 on bulb sockets.

(3) Paragraph C of SAE Standard J575 states in part: "Where special bulbs are specified, they should be submitted with the devices and the same or similar bulbs used in the tests and operated at their rated mean spherical candlepower." The Administrator has determined that this provision of SAE Standard J575 permits the use of special bulbs, including tubular-type bulbs, which do not conform to the detailed requirements of Table I of SAE Standard J573. It follows that the sockets for special bulbs need not conform to the detailed requirements of SAE Standard J567. These provisions for special bulbs in no way except the lamp assemblies from meeting all performance requirements specified in Federal Standard No. 108, including those specified in the basically referenced SAE Standards, and in the subreferenced SAE Standard J575.

[FR Doc.76-24446 Filed 8-20-76;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 TREASURY

Bureau of Alcohol, Tobacco and Firearms

[27 CFR Part 5]

[Notice No. 299]

METRIC SIZES FOR DISTILLED SPIRITS

Completeness of Conversion

The Director, Bureau of Alcohol, Tobacco and Firearms (ATF), with the approval of the Secretary of the Treasury or his delegate, is considering an amendment to the labeling and advertising regulations for distilled spirits. ATF proposes to modify the "completeness of conversion" provision relating to metric sizes for distilled spirits by adding a State-by-State provision.

Background

ATF published T.D. ATF–25 in the Federal Register on March 10, 1976, which established metric standards of fill for distilled spirits. Under the provisions of that Treasury decision, a bottler may optionally use metric standards of fill between October 1, 1976, and December 31, 1979. After December 31, 1979, the metric standards of fill become mandatory, and bottlers will no longer be permitted to use current standards of fill stated in U.S. measurements.

T.D. ATF–25 also contained a "completeness of conversion" provision which regulates the change to metric sizes during the transition period of October 1, 1976, through December 31, 1979. The "completeness of conversion" regulation requires that the optional conversion to metric sizes during the transition period will be on a permit, brand and size basis. Thus, a bottler, who begins bottling XYZ gin in liter liquor bottles may no longer bottle XYZ gin in quart bottles. The bottler could continue to bottle XYZ gin in fifth-size bottles and ABC gin (a different brand) in quart bottles.

As ATF stated in the notice proposing the metric standards of fill for distilled spirits (40 FR 29866), the "completeness of conversion" requirement was intended to "* * * reduce the period of overlap of new metric and U.S. sizes, while at the same time would allow bottlers a considerable degree of flexibility in terms of using up existing bottle stocks, etc." ATF feels that the reduction in the period of overlap of metric and U.S. sizes is an important consideration. Industry members will benefit because they they will have fewer packages to store, handle and account for. Equally important, consumers will be confronted less frequently with metric sizes appearing side-by-side with U.S. sizes of the same brand on retailers' shelves.

Reasons for Change

State laws and regulations. Industry members not only have to comply with ATF laws and regulations, they must also comply with the requirements of State agencies. Several States have laws and/or regulations which, if not changed, would prevent the sale of liquor in some metric size bottles in those States. The following are a few examples which illustrate the problems industry members may face:

1. *Minimum size.* Kansas State law prevents liquor from being sold in containers of less than one-half pint in size. The new 200 ml size, contains slightly less than 8 ounces and, thus, under Kansas law, the 200 ml size cannot be sold or offered for sale in that State.

2. *Maximum size.* Wisconsin State law prevents liquor from being sold in containers greater than 32 ounces in capacity. The liter, which contains 33.8 ounces could not be sold in Wisconsin under its current State laws.

3. *Delayed effective dates.* The State of Michigan will allow metric size liquor bottles to be sold in that State. However, Michigan has set January 23, 1977, as the earliest date for the introduction of metric sizes.

Although many States have or are planning to revise their laws and regulations, it will be some time after October 1, 1976, when distilled spirits in metric sizes will be allowed to be sold in all States. Industry members are faced with a potential dilemma because the current "completeness of conversion" provisions does not allow for a State-by-State conversion process. Thus, a permittee, who wishes to commence bottling XYZ gin in liters on October 1, 1976, may have to postpone that conversion because one or several States have laws which prohibit the introduction of liquor in bottles containing more than 32 ounces. On the other hand, if the same bottler converted to bottling liters of XYZ gin on October 1, 1976, that bottler would be unable to supply XYZ gin in quart bottles to those States which prohibit bottle sizes in excess of 32 ounces.

Single-plant proprietors. Under the current "completeness of conversion" provision, a company with one bottling plant (one permit) is at a disadvantage in comparison to a company with two or more bottling plants (two or more permits). Since the conversion process is on a permit-by-permit basis, a single-plant proprietor (one permit) cannot, after October 1, 1976, bottle the same brand in corresponding metric and U.S. sizes (e.g., the liter and the quart). Thus, the single-plant proprietor could not bottle liters of XYZ gin for one marketing area (or State) and quarts of XYZ gin for another marketing area (or State). A multiplant company (two or more permits), on the other hand, could have one of its plants bottle in liters and another of its plants bottle in quarts of the same brand and, therefore, it could supply two different marketing areas.

The permit-by-permit basis for the conversion process was adopted because conditions affecting the time of conversion to new metric bottles can vary considerably from one bottling plant to another, even though they are of the same ownership. For example, bottling and packing machinery can be significantly different, resulting in varying lead times as far as making the equipment changes necessary for metrication. Similarly, supplies of bottles and labels can vary considerably from one plant to another. Without the permit-by-permit conversion provisions, it would be impossible in many situations to make the conversion simultaneously at two or more plants without wasting considerable stocks of unused bottles or labels or a costly redistribution of such materials. At the same time, since for competitive reasons different plants bottling the same brand almost invariably distribute to different market areas, the permit-by-permit conversion provision did not seem to threaten our consumer protection objective of keeping to a minimum the period during which a retailer might have both the old U.S. size and the replacement metric size of a given brand on his shelves at the same time.

Proposal

ATF proposes to modify the "completeness of conversion" regulation by adding a *State-by-State* provision. In effect, instead of requiring that conversion to metrication be complete on a nationwide basis, the regulation would require that such conversion be complete for any given State. Once a permittee had converted a given size and brand to a corresponding metric size for distribution to a particular State, he could not continue, or revert back to, bottling that product in the U.S. size for distribution to that State. He could, however, continue to bottle the U.S. size of that product for distribution to other States.

ATF believes that this new provision would retain the consumer protection advantage of our current "completeness of conversion" requirement, while at the same time resolving the difficulties bottlers are encountering with State laws and regulations which now prevent the sale of distilled spirits in some metric bottles. It would also eliminate the bulk

of the competitive disadvantages accruing to the single-plant proprietor from the current "completeness of conversion" provision.

SUBMISSION OF WRITTEN COMMENTS

Persons who wish to participate in the rulemaking process are invited to submit written comments or suggestion on the proposed regulatory change. The written material should be submitted, in duplicate, to the Director, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (Attn: Chief, Regulations and Procedures Division) by [thirty days after publication in the Federal Register]. The provisions of 27 CFR 71.31(b) shall apply with respect to the designation of portions of comments as exempt from disclosure. Written comments, which are not exempt from disclosure, may be inspected by any person upon compliance with 27 CFR 71.22. Any interested person submitting comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his/her request, in writing, to the Director by [thirty days after publication in the Federal Register].

The proposed regulation is issued under the authority contained in section 27 U.S.C. 205 (49 Stat. 981, as amended).

PROPOSED REGULATION

In consideration of the foregoing, ATF proposes to amend the regulation relating to "completeness of conversion" (27 CFR Part 5), as follows:

Paragraph (d) of § 5.47a is proposed to be amended, as follows:

§ 5.47a Metric standards of fill.

(d) *Completness of conversion.* (1) Whenever a permittee or foreign bottler commences bottling a given product in a standard liquor bottle corresponding to a metric standard of fill prescribed by paragraph (a) of this section for distribution to a particular State, he may not thereafter bottle that product in any standard liquor bottle corresponding to a standard of fill prescribed by § 5.47 for distribution to that State. He may, however, continue to use a corresponding standard of fill prescribed by § 5.47 for that product in a bottle of unusual design which has been approved under the provisions of § 5.48. For the purposes of this paragraph, (i) product shall mean a given class and type of distilled spirits bearing a given brand name (e.g., ABC bourbon, ABC gin, XYZ bourbon, and XYZ gin would be four distinct products), and (ii) the standards of fill in U.S. measure which correspond to the metric standards are:

Metric standard (prescribed by sec. 5.47a(a)):		*Corresponding standard (prescribed by sec. 5.47(a))*
1.75 liters	gallon	½
1.00 liter	quart	1
750 milliliters	do	⅘
500 milliliters	pint	1
200 milliliters	do	½
50 milliliters	do	⅛

⅛, 1/10, 1/16.

* * * * *

Dated: August 12, 1976.

REX D. DAVIS,
Director.

Signed: August 17, 1976.

JAMES J. FEATHERSTONE,
Acting Assistant Secretary of the Treasury.

[FR Doc.76-24611 Filed 8-20-76;8:45 am]

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

[7 CFR Part 1867]

[FmHA Instruction 452.1]

REAMORTIZING AND RENEWING OPERATING LOANS

Account Servicing

Notice is hereby given that the Farmers Home Administration has under consideration the proposed amendment of §§ 1867.3 and 1867.9 of Part 1867 of Title 7, Code of Federal Regulations (40 FR 13203). Paragraph (b) of § 1867.3 by revising the eligibility requirements for reamortizing and renewing Operating loans; § 1867.9 by deleting the requirement that the combined Operating loan and Emergency loan principal balances not exceed the loan approval official's approval authority.

Interested persons are invited to submit written comments, suggestions, data or arguments regarding the proposed amendments to the Office of the Chief, Directive's Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6316, South Building, Washington, D.C. 20250. All materials received on or before September 22, 1976 will be considered. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Chief, Directive's Management Branch, during regular business hours. (8:15 a.m.–4:45 p.m.)

As proposed, § 1867.3(b) (1), (2), (3), and (4) and § 1867.9 read as follows:

§ 1867.3 Eligibility requirements.

* * * * *

(b) *Other operating loans.* * * *

(1) The borrower has made an extra payment from sale of basic security or refund which will result in a significantly reduced income for the remaining period of the loan; and

(2) The approving official determines that the borrower cannot reasonably be expected to meet the repayment schedule in the original note(s); and

(3) The borrower's plan for the next operating year (or typical year if the next year will not be typical) shows that he can realistically meet the terms of the proposed payment schedule on the reamortized or renewed note under the conditions which will likely prevail; and

(4) The justification for the reamortization or renewal is fully documented in the running case record.

* * * * *

§ 1867.9 Approval authority.

Loan approval officials are hereby authorized to approve the reamortization or renewal of Operating loans subject to the policies within this regulation, and provided the principal amount owed on the Operating loan note being reamortized or renewed plus the outstanding total principal balance owed by the borrower on the Operating loans does not exceed the loan approval official's authority shown in Subpart B of Part 1810 of this Chapter.

(7 U.S.C. 1989; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70)

Dated: August 16, 1976.

FRANK W. NAYLOR, Jr.,
Acting Administrator, Farmers Home Administration.

[FR Doc.76-24602 Filed 8-20-76;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 128f]

[Docket No. 76N-0037]

TREE NUTS AND PEANUTS

Good Manufacturing Practice Regulation; Extension of Comment Period

The Food and Drug Administration is extending the period for comments on the proposed good manufacturing practice regulation for tree nuts and peanuts to September 30, 1976.

In the FEDERAL REGISTER of June 30, 1976 (41 FR 2700) the Commissioner of Food and Drugs issued a proposal to establish a good manufacturing practice regulation for nuts (almonds, Brazil nuts, cashew nuts, filberts, macadamia nuts, peanuts, pecans, pine nuts, pistachio nuts, and walnuts). Comments were to be filed on or before August 30, 1976.

The Commissioner has received a request for an extension of the comment period from the Dried Fruit Association of California, an association of dried fruit and tree nuts processors, in order to permit the association an opportunity to meet with all its commodity groups regarding the issues raised by the proposal. This opportunity will allow for the submission of more meaningful comments.

The Commissioner hereby extends the period for filing comments on the subject proposal to close of business September 30, 1976.

Interested persons may submit to the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20852, written comments (preferably in quintuplicate and identified with the Hearing Clerk docket number found in brackets in the heading of this document) regarding this proposal. Received comments may be seen in the above office during working hours, Monday through Friday.

This action is taken under the Federal Food, Drug, and Cosmetic Act (secs. 402 (a)(3) and (4), 701(a), 52 Stat. 1046,

1055 (21 U.S.C. 342(a) (3) and (4), 371 (a)) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)).

Dated: August 18, 1976.

JOSEPH P. HILE,
Acting Associate Commissioner for Compliance.

[FR Doc.76-24716 Filed 8-20-76;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 20891]

FM BROADCAST STATIONS IN RED OAK, IOWA AND MARYVILLE, MISSOURI

Proposed Table of Assignments

In the matter of amendment of § 73.202 (b), *Table of Assignments*, FM Broadcast Stations. (Red Oak, Iowa and Maryville, Missouri), Docket No. 20891, RM-2692.

1. The Commisison has before it a petition for rule making filed on April 23, 1976, by Red Oak Broadcasting Co., Inc. (petitioner), proposing the asignment of FM Channel 237A to Red Oak, Iowa, and the substitution of Channel 257A for Channel 237A at Maryville, Missouri. An opposition to the petition was filed by Nodaway Broadcasting Corp., licensee of FM Station KNIM-FM, operating on Channel 237A at Maryville, Missouri. The proposed change in the assignment at Maryville and the proposed assignment of a channel to Red Oak comply with the minimum mileage separation requirements.

2. Red Oak, Iowa, is a community of 6,210 persons[1] and is located in Montgomery County (pop. 12,781). It is situated in the southwestern part of Iowa, and 50 miles southeast of Omaha, Nebraska. It has one daytime-only AM station (KOAK), licensed to petitioner, and no FM assignments. Petitioner states that Red Oak has a mayor-council form of government, full-time fire and police departments, and elementary, junior high and high schools. It notes that the two banking institutions in Red Oak have deposits of $35,095,245, and total assets of $39,545,553. Petitioner adds that the six largest industries are Union Carbide, Thomas V. Murphy Co., Wilson Concrete Co., Red Oak Manufacturing Co., Red Oak Machine Co., and Na-Churs Plant Food Company, with the principal products produced being batteries, calendars, concrete products, pipe, agricultural-chemical packaging, metal fabrication and liquid fertilizer.

3. Nodaway Broadcasting Corp. (KNIM-FM), in its opposition alleges that the Red Oak Broadcasting Co., Inc. proposal which would require KNIM-FM to change channels, would be unfair to it, the public, merchants, and staff since they have put a lot of effort and expense into orienting the public to the station's format and location on the dial. KNIM-FM states that it has discussed this with the President of Red Oak Broadcasting Co., Inc., pointing out that this proposed change would cause a strain on the staff and management of KNIM-FM and a big loss of revenue which would be a very heavy burden. KNIM-FM urges the Commission not to proceed with the proposed change unless Red Oak and KNIM-FM are in agreement 100 percent. KNIM-FM contends that it has a large listening audience due to the effort of its staff in covering the needs of the public by working with the local, national and state news media; local market media; and local and state authorities. KNIM-FM states also that it covers all types of live sports direct from local. It argues that, in changing channels, it would lose a large number of listeners who would not know where KNIM-FM is located on the radio dial.

4. Red Oak states that in the event the proposed FM channel is assigned it will make application therefor, and, if granted, will promptly place the channel in operation. It also adds that it is ready, willing and able to reimburse Station KNIM-FM for those expenses reasonably and prudently expended in the required requested changeover from its present channel.

5. Although the proposed assignment is for a first Class A FM service and preclusion studies are not normally required, petitioner shows that the preclusion would occur only on Channels 237A and 257A. Substitution of Channel 257A for Channel 237A at Maryville would make available the assignment of Channel 237A to Falls City, Nebraska (pop. 5,444) which does not have any local aural broadcast service.

6. After careful consideration of the petitioner's proposal we believe it would be in the public interest to explore the possibility of making an FM assignment to Red Oak, Iowa, even though it would be inconvenient to the existing station (KNIM-FM) at Maryville, Missouri.

7. Accordingly, pursuant to our authority contained in sections 4(i), 303(r) and 307(b) of the Communications Act of 1934, as amended, it is proposed to amend § 73.202(b), the FM Table of Assignments, as follows:

City	Channel No.	
	Present	Proposed
Red Oak, Iowa		237A
Maryville, Mo.	237A	257A

8. *It is ordered*, That, pursuant to section 316 of the Communications Act of 1934, as amended, and with the understanding that it will receive reasonable reimbursement of expenses incurred in changing the channel on which it has a license, the following licensee shall show cause why the license of the station should not be modified to specify operation on the new channel as proposed herein instead of the present channel:

Station	Location	Licensee
KNIM-FM	Maryville, Mo...	Nodaway Broadcasting Corp.

9. Pursuant to § 1.87 of the Commission's rules and regulations, the licensee of Station KNIM-FM may, not later than 1976, request that a hearing be held on the proposed modification. Pursuant to § 1.87(f), if the right to request a hearing is waived, Nodaway Broadcasting Corp. may, not later than September 27, 1976, file a written statement showing with particularity why its license should not be modified as proposed in the Order to Show Cause. If the right to request a hearing is waived and no written statement is filed by the date referred to above, Nodaway Broadcasting Corp. is deemed to consent to the modification as proposed in the Order to Show Cause and a final Order will be issued by the Commission if the channel change referred to in paragraph 7 above is found to be in the public interest.

10. *It is further ordered*, That the Secretary of the Commission shall send a copy of this order by Certified mail return receipt requested, to Nodaway Broadcasting Corp., Station KNIM-FM, Maryville, Missouri, the party to whom the Order to Show Cause is directed.

11. The Commission's authority to institute rule making proceedings; showings required; cut-off procedures; and filing requirements are contained below and are incorporated by reference herein.

12. Interested parties may file comments on or before September 27, 1976, and reply comments on or before October 18, 1976.

Adopted: August 13, 1976.

Released: August 20, 1976.

FEDERAL COMMUNICATIONS COMMISSION,

WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the notice of proposed rulemaking.

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

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

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

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

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

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

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

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

[FR Doc.76-24648 Filed 8-20-76;8:45 am]

[47 CFR Part 73]

[Docket No. 20892]

FM BROADCAST STATIONS IN GREEN BAY AND STURGEON BAY, WISCONSIN

Proposed Table of Assignments

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Green Bay and Sturgeon Bay, Wisconsin.

1. The Commission has for its consideration a petition filed on February 9, 1976, by Communications Properties, Inc. (Communications), licensee of standard broadcast Station WNFL in Green Bay, Wisconsin, for rule making to amend the FM Table of Assignments by the assignment of Channel 240A to Green Bay, Wisconsin, and the substitution of Channel 261A for unoccupied Channel 240A at Sturgeon Bay, Wisconsin. This proposal would not require any other changes in the FM Table of Assignments. Communications' petition is opposed by Ralph E. Evans Associates (Evans) in a document entitled "Engineering Exhibit—Comments in Response to Petition for Rule Making," which was filed on April 21, 1976. Subsequently, Communications replied by a letter, received on May 19, 1976, and by a document entitled "Comment Upon Engineering Exhibit in Opposition to Petition" which was filed on May 25, 1976. These documents will be considered below.

2. Green Bay, Wisconsin (pop. 87,809)[1] is the seat of Brown County (pop. 158,244) and is located approximately 100 miles north of Milwaukee at the tip of Green Bay, which is an arm of Lake Michigan. Petitioner points out that Green Bay has grown 39.6 percent in population between 1960 and 1970, and that Brown County's population has increased by 26.5% during this same period. Green Bay is presently served locally by three standard broadcast stations and two commercial FM stations—WNFL, a full-time Class III AM station licensed to the petitioner; WBAY, a full-time Class III AM station; WDUZ, a full-time Class IV AM station; WBAY-FM, a Class C station (Channel 266); and WDUZ-FM a Class C station (Channel 253).[2] There are also two noncommercial, educational FM stations serving Green Bay—WGBW (Channel 218A) and WPNE-FM, a Class C station (Channel 207).

3. Petitioner urges that the Commission should propose the assignment of Channel 240A to Green Bay because it is a growing community. Petitioner states that Green Bay is a major Lake Michigan port with numerous paper mills and other industries. In addition, petitioner alleges that Green Bay is the agricultural trading center for northeastern Wisconsin and that Green Bay is the home of an NFL pro-football team.

4. Communications states that, although its proposal for adding a Class A channel as a third FM assignment for Green Bay would result in the intermixture of one Class A channel with two Class C channels, this would not be inconsistent with the Commission's usual practice of avoiding intermixture because there is no Class C channel available for assignment to Green Bay and because the petitioner is willing to operate a Class A channel in competition with the two existing Class C channels. Moreover, petitioner points out that the Commission permitted intermixture of commercial Class A Channel 252A with commercial Class C Channel 266 for many years in Green Bay until Class C Channel 253 was recently substituted for Channel 252A. See footnote 2, *supra*.

5. On April 21, 1976, Evans filed an Opposition to Communications' petition in which Evans states that the proposed assignment of Channel 240A is contrary to the public interest because of the resulting intermixture of Class A and Class C channels and because of the inability of a low power Class A station to place a city-grade signal over all of Green Bay from the reference point used by the petitioner. Evans also questions whether there is any land available for use as a transmitter site from which a city grade signal could cover the entire city of Green Bay.

6. By a letter received on May 19, 1976, and by a document filed on May 25, 1976, Communications argues that the Commission should dismiss or disregard Evans' Opposition because it was filed approximately four weeks late in violation of § 1.405(a) of the Commission's rules. According to § 1.405(a), "Any interested person may file a statement in support of or in opposition to a petition for rule making prior to Commission action on the petition but not later than 30 days after 'Public Notice' * * * is given of the filing of such a petition." Communications points out that in conformity with Section 1.403 of the Commission's Rules, the Commission issued a Public Notice on February 20, 1976, of Communications' petition for rule making to assign Channel 240A to Green Bay and to substitute Channel 261A for Channel 240A at Sturgeon Bay. See Public Notice, Report No. 967, Mimeo No. 61287. However, petitioner points out that Evans did not file its Opposition until April 21, 1976.

7. Although § 1.405(a) could be applied here to dismiss Evans' filing due to the fact that it was submitted late and without a request for late acceptance, we believe that in this instance it is in the public interest to consider this filing as an opposition. Our consideration of this document will not result in prejudice to any of the parties, and the engineering issues discussed in the Opposition are part of the routine study by our engineering staff of the technical feasibility of a proposed amendment to the FM Table of Assignments. In any event, Evans' Opposition could still be considered as a comment to this notice of proposed rulemaking because the Opposition was filed before the cut-off dates for submitted comments or reply comments to this Notice as set out in paragraph 12 below. We would like to add that Communications' filing, which we shall treat as a reply, was submitted late on May 25, 1976, and without a request for a late acceptance in violation of § 1.405(b) which requires that a reply to statements in opposition to a petition for rulemaking be filed not later than 15 days after the filing of such a statement. Since Evans' Opposition was filed on April 21, 1976, the cut-off date for filing replies was May 6, 1976. However, due to the fact that our records do not indicate that Evans served its

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[1] Unless otherwise indicated, all population data is taken from the 1970 U.S. Census.

[2] The Commission, effective January 15, 1976, amended its FM Table of Assignments to substitute Class C Channel 253 for Channel 252A and to modify the license held by Green Bay Broadcasting Company for Station WDUZ-FM to specify operation on Channel 253 in lieu of Channel 252A (Report and Order, Docket No. 20467, 35 R.R. 2d 1059 (1976)). This eliminated intermixture of a Class A and a Class C channel in Green Bay. See discussion of intermixture in para. 4, infra.

Opposition on the petitioner, we will excuse Communications' late filing.

8. Communications' Reply also asserts that there exists a three mile long area within which a Channel 240A transmitter site could be located to provide city-grade coverage over all of Green Bay. Petitioner alleges that such a transmitter site would maintain the full 65 mile separation from Station WCWC-FM (Channel 240A) in Ripon, Wisconsin. In addition, Communications submitted a letter from Barnard Corporation, a Green Bay realtor, affirming the availability for purchase or lease of several tracts of land within the designated three mile area which would be of adequate size for the proposed transmitter site. Because of the conflicting allegations over the existence of a transmitter site from which a city grade signal would cover all of Green Bay, we specifically request that the parties address the petitioner's statement in its Reply that there is a three mile long area which could be used as a transmitter site in conformity with out city-grade signal and minimum mileage separation rules.

9. We note that the addition of Channel 240A at Green Bay would not present any preclusion problems because there will be either no change in or reductions in the preclusion areas for Channels 237 through 243. Also, the substitution of Channels 258, 259, 260, and 262; however, will cause no additional preclusions for Channels 258, 259, 260, and 262; however, there will be small additional preclusions in land areas for Channels 261A, 263, and 264. Nevertheless, there are not communities in the precluded areas which are presently without an FM assignment.

10. In view of the above, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, with regard to Green Bay and Sturgeon Bay, Wisconsin, as follows:

City	Channel No.	
	Present	Proposed
Green Bay, Wis	253, 266	253, 266, 240A
Sturgeon Bay, Wis	230, 240A	230, 261A

11. The Commission's authority to institute rule making proceedings; showings required; cut-off procedures; and filing requirements are contained below and are incorporated herein.

12. Interested parties may file comments on or before September 27, 1976, and reply comments on or before October 18, 1976.

Adopted: August 13, 1976.

Released: August 20, 1976.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the Notice of proposed rulemaking.

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

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

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

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

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

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

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

[FR Doc.76-24649 Filed 8-20-76;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Airspace Docket No. 76-EA-59]

[14 CFR Part 71]

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

Proposed Alteration of Control Zone

The Federal Aviation Administration is considering amending § 71.171 of Part 71 of the Federal Aviation Regulations so as to alter the Plattsburgh, N.Y., Control Zone (41 FR 417).

A new LOC RWY 1 instrument approach procedure developed for Clinton County Airport, Plattsburgh, N.Y., requires alteration of the control zone to provide some additional controlled airspace protectin for aircraft executing the prcedure.

Interested parties may submit such written data or views as they may desire. Communications should be submitted in triplicate to the Director, Eastern Region, Attn: Chief, Air Traffic Division, Department of Transportation, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. All communications received on or before September 22, 1976 will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements may be made for informal conferences with Federal Aviation Administration officials by contacting the Chief, Airspace and Procedures Branch, Eastern Region.

Any data or views presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested parties at the Office of Regional Counsel, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York.

The Federal Aviation Administration, having completed a review of the airspace requirements for the terminal area of Plattsburgh, N.Y., proposes the airspace action hereinafter set forth:

1. Amend § 71.171 of Part 71 of the Federal Aviation Regulations so as to amend the description of the Plattsburgh, N.Y. Control Zone by adding the following:

within 3 miles each side of the Clinton County Airport ILS localizer south course, extending from the localizer to 3 miles south of the OM.

(Sec. 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348) and sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Jamaica, N.Y., on August 9, 1976.

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

[FR Doc.76-24365 Filed 8-20-76;8:45 am]

Coast Guard

[33 CFR Part 117]

[CGD 76-138]

BLACK RIVER, MICHIGAN

Proposed Drawbridge Operation Regulations

At the request of the City of Port Huron, the Coast Guard is considering revising the regulations for the Military Street, Seventh Street and Tenth Street drawbridges across the Black River, Port Huron, Michigan, to provide more restrictive opening periods. The draws of each bridge are presently required to open on signal. This change is being considered because of a significant increase in vehicular traffic during the daylight hours and because of infrequent requests for opening during the night.

Interested persons may participate in this proposed rule making by submitting written data, views, or arguments to the Commander (oan), Nineth Coast Guard District, 1240 East Main Street, Cleveland, Ohio 44199. Each person submitting comments should include his name and address, identify the bridge, and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Ninth Coast Guard District.

The Commander, Ninth Coast Guard District, will forward any comments received before September 28, 1976, with his recommendations to the Chief, Office of Marine Environment and Systems, U.S. Coast Guard Headquarters, Washington, D.C., who will evaluate all communications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations, be amended by: 1. Revoking § 117.641(f)(5).

2. Adding a new § 117.702 immediately before § 117.703 to read as follows:

§ 117.702 Black River, Port Huron, Michigan; bridges.

(a) The draws of the Military Street, and Seventh Street bridges shall open as follows:

(1) From May 1 through October 31—(i) From Monday through Saturday, except holidays, from 9 a.m. to 5:30 p.m., the draw need open only on the hour and half hour; and

(ii) From 5:30 p.m. to 9 a.m., and on Sundays and holidays, the draw shall open on signal.

(2) During the months of April and November—(i) From 8 a.m. to 4 p.m., the draws shall open on signal; and

(ii) From 4 p.m. to 8 a.m., the draws shall open on signal if at least three hours notice is given.

(3) From December 1 through March 31, the draws shall open on signal if at least twenty four hours notice is given.

(b) The draw of the Tenth Street bridge shall open as follows:

(1) From May 1 through October 31—(i) From 8 a.m. to 11 p.m., the draw shall open on signal; and

(ii) From 11 p.m. to 8 a.m., the draw shall open on signal if at least one hour notice is given.

(2) During the months of April and November, the draw shall open on signal if at least three hours notice is given.

(3) From December 1 through March 31, the draw shall open on signal if at least twenty four hours notice is given.

(c) Signals. (1) The opening signal from the vessel for each of these bridges is one long blast followed by one short blast of a whistle, horn, siren, or by shouting.

(2) The acknowledging signal from the drawbridge is—

(i) One long blast followed by one short blast when the draw will open promptly; and

(ii) Four short blasts when the draw will not open promptly, or is open and must be closed.

(d) The owners of or agencies controlling each bridge shall provide the necessary draw tenders and the proper mechanical appliances for the safe, prompt opening of the draw for the passage of vessels.

(e) Advance notice for the opening of the draws may be given to the dispatcher of the City of Port Huron Police Department.

(f) Public vessels of the United States, state or local government vessels used for public safety, and vessels in distress, shall be passed through the draws of these bridges as soon as possible at any time.

(g) The owner of or agency controlling each bridge shall keep a copy of the regulations in this section, together with a notice stating exactly how the dispatcher may be reached, conspicuously posted both upstream and downstream, either on the bridge or elsewhere in such a manner that it can easily be read from an approaching vessel at all times.

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

Dated: August 16, 1976.

A. F. FUGARO,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.76-24639 Filed 8-20-76;8:45 am]

[33 CFR Part 117]

[CGD 76 161]

MIDDLE RIVER, CALIFORNIA

Proposed Drawbridge Operation Regulations

At the request of the Atchison, Topeka and Santa Fe Railroad, the Coast Guard is considering revising the regulations for the drawbridge across Middle River, mile 6.8, to permit the draw to remain closed to the passage of vessels. The draw is presently required to open on signal if at least 12 hours notice is given. This change is being considered because of the limited requests for the opening of the draw from vessels (one in the past 25 years).

Interested persons may participate in this proposed rule making by submitting written data, views, or arguments to the Commander (oan), Twelfth Coast Guard District, 630 Sansome Street, San Francisco, California 94126. Each person submitting comments should include his name and address, identify the bridge, and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Twelfth Coast Guard District.

The Commander, Twelfth Coast Guard District, will forward any comments received before September 28, 1976, with his recommendations to the Chief, Office of Marine Environment and Systems, U.S. Coast Guard Headquarters, Washington, D.C., who will evaluate all communications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations, be amended by revising § 117.714(c)(1)(ii) to read as follows:

§ 117,714 San Joaquin River and its tributaries, California.

* * * * *

(c)(1) * * *

(ii) The Atchison, Topeka and Santa Fe Railroad bridge near Middle River Station. The draw need not open for the passage of vessels.

* * * * *

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

Dated: August 17, 1976.

A. F. FUGARO,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.76-24638 Filed 8-20-76;8:45 am]

FEDERAL RESERVE SYSTEM

[12 CFR Part 226]

[Reg. Z; Docket No. R-0053]

TRUTH IN LENDING

Proposed Interpretation on Disclosure of Amount of Dealer Participation

The Board of Governors of the Federal Reserve System proposes to adopt an interpretation of Regulation Z regarding disclosure of the amount of a dealer participation, commonly found in the financing of purchases of automobiles and other major consumer goods. In order to provide an opportunity for public discussion, the Board is publishing this interpretation for comment prior to any final action on this issue by the Board. The interpretation will not be-

come effective until further notice by the Board.

The interpretation relates to the requirements of § 226.8(c)(8)(i) of Regulation Z with respect to identification of allocations by creditors to dealers of a portion of the finance charge on credit used to finance the purchase of automobiles and other consumer goods. The amount of dealer participation typically represents a portion of the interest component of a finance charge which is either allocated by the crediter to the dealer on the sale of its retail instalment contracts to that creditor or paid by the creditor to the dealer for arranging or referring a direct loan from the creditor.

The Board has been requested to determine whether these portions of the finance charge constitute finder's fees or similar charges within the meaning of § 226.4(a)(3) of the Regulation and whether they must be itemized as a separate component in disclosure of the finance charge under § 226.8(c)(8)(i).

Proponents of a requirement for separate disclosure of this amount take the position that the dealer participation represents a separate charge and that its specific disclosure would be beneficial to consumers. It is argued that disclosure of this amount would place the consumer in a more advantageous bargaining position with the dealer and that it would encourage a consumer to engage in further cost comparisons among various credit sources. Those in favor of this position apparently believe that this disclosure would indicate to the consumer that some portion of the cost of credit is attributable to the dealer's presence in the transaction. This awareness, they argue, would prompt the consumer to shop for better terms through direct financing.

Based on the information presently available, the Board does not believe that separate disclosure of these amounts is either required by the terms of the Regulation or mandated by the purposes of the Act. In the Board's view, a dealer participation differs from the concept of a finder's fee as that term is used in the Regulation. Unlike the dealer participation, a finder's fee or other charge of the type described in § 226.4(a)(3) is considered to be a separate charge imposed in addition to that portion of the finance charge which is attributable to a percentage rate or rates. Such fees are normally earned in full at the time of the transaction and are not subject to later adjustments on the basis of subsequent events.

A dealer participation, to the contrary, serves the purpose of apportioning the risk of loss on the credit transaction between the dealer and the financial institution. Through dealer reserve accounts and various recourse devices, the institution is able to accept a lower yield on dealer-related transactions where it does not bear the entire risk of loss. Because these amounts are frequently subject to later deductions for such occurrences as prepayment or default on the contract, the amount of dealer participation which would be disclosed to the customer may bear no relationship to the amount ultimately received by the dealer.

In the Board's view, the credit-shopping function of Truth in Lending is primarily served by disclosure of the total finance charge and annual percentage rate. These two terms, which already reflect any portion of the finance charge received by the dealer, provide the essential information needed for comparing credit sources and would not be enhanced by separate disclosure of the dealer participation. The present length and complexity of Truth in Lending disclosures argue against any additional disclosure which is not clearly mandated by the letter and the spirit of Truth in Lending and which may in fact detract from consumers' awareness of important credit terms.

For the reasons stated, the Board takes the position, in a proposed Interpretation § 226.821, that allocations of the finance charge between the dealer and the institution do not constitute finder's fees or similar charges and need not be separately described, when they represent a distribution of a portion of a finance charge which is computed by the application of a percentage rate or rates to the amount financed.

While the Board believes that the proposed interpretation correctly applies the present requirements of the Truth in Lending Act and Regulation Z, the Board is aware that this issue has been the subject of some controversy and wishes to provide an opportunity for public discussion before any final action is taken. Therefore, the Board invites written comments on the issue addressed in the interpretation. Comments should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 and must be received by September 27, 1976. Comments should include a reference to Docket No. R–0053.

The text of the proposed interpretation is as follows:

§ 226.821 Disclosure of dealer participation.

(a) Section 226.8(c)(8)(i) requires the itemization of each component of a finance charge consisting of more than one type of charge. Section 226.4(a)(3) lists among the types of charges to be included in the finance charge a "finder's fee or similar charge." In certain credit transactions, such as the sale of automobiles and other consumer goods, where the finance charge is determined by application of a percentage rate or rates to the amount financed, a portion of that charge may be allocated to the dealer by the financial institution as a dealer participation. The question arises whether such allocations must be itemized as a separate component of the total finance charge in the nature of a finder's fee.

(b) The requirement for itemization of a finance charge which includes a finder's fee or other elements in addition to an interest component is intended to assure that the total finance charge disclosed to the customer properly reflects all components which must be included in that amount. Any component of the finance charge which is computed by the application of a percentage rate or rates to the amount financed constitutes a single charge of the type described in § 226.4(a)(1). As such, it must be included in the finance charge calculation and disclosure. A portion of such single component of the finance charge which is distributed to a dealer is not considered a "finder's fee or similar charge" and need not be separately identified or disclosed. The concept of a "finder's fee," as that term is used in § 226.4(a)(3), is intended to cover certain charges in the nature of brokerage fees which are imposed in addition to that portion of the finance charge attributable to the application of a percentage rate or rates to the amount financed. Any such separate fee must, of course, be separately itemized.

(Interprets and applies 12 CFR 226.8)

By order of the Board of Governors, August 17, 1976.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.76–24647 Filed 8–20–76;8:45 am]

NUCLEAR REGULATORY COMMISSION

[10 CFR Part 70]

SPECIAL NUCLEAR MATERIAL

Reporting of Material Accounting Data

On November 6, 1973, the Atomic Energy Commission published amendments to its regulations in 10 CFR Part 70 which revised the materials control and accounting requirements for special nuclear material (38 FR 30542). Included in those revised requirements were provisions for the periodic performance of physical inventories, and for the determination of the quantity of special nuclear material unaccounted for (MUF) and its associated limit of error (LE MUF). The results of these determinations were required to be recorded along with supporting data describing the quantities of special nuclear material in each component of the material balance, and the quantities of special nuclear material added to or removed from the process. These records are presently available to the Nuclear Regulatory Commission on request. Licensees are required by 10 CFR Part 70 to report to the Commission when the material unaccounted for exceeds its associated limit of error and specified quantities of special nuclear material, or when the limit of error of the material unaccounted for exceeds specified limits.

The Nuclear Regulatory Commission is considering amendments to its regulations in 10 CFR Part 70, "Special Nuclear Material," which would specify additional material accounting reporting requirements. The proposed amendments would require the reporting of the results of each ending physical inventory and associated material accounting and measurement error data. The information received from licensees would pro-

vide an improved data basis from which the Nuclear Regulatory Commission would monitor the status of special nuclear material control and accounting in the commercial nuclear fuel cycle. The Commission considers such actions to be in the interest of the common defense and security and of the public health and safety. The new requirements would become effective 30 days after publication of this amendment in effective form in the FEDERAL REGISTER.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, and Sections 552 and 553 of Title 5 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR Part 70 is contemplated. All interested persons who desire to submit written comments or suggestions in connection with the proposed amendments should send them to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, by October 22, 1976. Copies of comments regarding the proposed amendments may be examined at the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C.

1. Section 70.53 is amended by adding a new paragraph (c) to read as follows:

§ 70.53 Material status reports.

* * * * *

(c) Each licensee subject to the requirements of § 70.51(e) shall submit to the appropriate Regional Office of the NRC Office of Inspection and Enforcement listed in Appendix A of Part 73 of this chapter, promptly upon determination of the quantities described in paragraph (1), (2), and (3) of this paragraph (c), but not later than five calendar days after the material balance has been established following each ending physical inventory, a report containing for each plant (defined as a set of processes or operations coordinated into a single manufacturing, research and development, or testing effort identified by title, location and designated boundaries):

(1) The quantities of uranium and of fissile isotope contained in uranium enriched to less than 20 percent in the uranium-235 isotope, the quantities of uranium and of fissile isotope contained in uranium enriched to 20 percent or greater in the uranium-235 isotope, the quantities of uranium-233 and uranium element contained in uranium enriched in the uranium-233 isotope and the quantities of plutonium element associated with (i) the beginning plant inventory and the beginning inventory of the material in process, (ii) additions to the plant balance, and additions to material in process during the inventory interval, (iii) removals from the plant balance, and removals from material in process during the inventory interval by mode of removal, i.e., discards, encapsulated as sealed sources, tamper-safed product placed in storage, shipments to licensed waste disposal sites, burial, material shipped offsite, or to another plant, and (iv) the ending physical inventory, and the physical inventory of material in process;

(2) The calculated absolute quantities of material unaccounted for, for the entire plant material balance interval;

(3) The calculated quantities of material unaccounted for, for the in process material balance interval and the associated limit of error both (i) in terms of absolute quantity of element and, for uranium-235, or uranium-233, the fissile isotope, and (ii) relative to additions to and removals from material in process for the material balance interval.

The quantities reported pursuant to this paragraph (c) shall refer only to inventory results and material transactions pertinent to the material balance interval closed by the ending plant inventory for the current reporting period. Any adjustments to records related to prior inventory interval entries also shall be evaluated and reported separately.

(Secs. 53, 161i; Public Law 83-703, 68 Stat. 930, 948; Sec. 201(f), Pub. Law 93-438, 88 Stat. 1234 (42 U.S.C. 2073, 2201(i), 5841).)

Dated at Washington, D.C., this 18th day of August 1976.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc.76-24748 Filed 8-20-76;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 STATE

[Public Notice CM-6/83]

ADVISORY COMMITTEE TO THE UNITED STATES NATIONAL SECTION OF THE INTER-AMERICAN TROPICAL TUNA COMMISSION

Meeting

Notice is hereby given, pursuant to the provisions of Public Law 92-463, that a meeting of the Advisory Committee to the United States National Section of the Inter-American Tropical Tuna Commission, will meet on September 23-25, 1976 in the auditorium of the Southwest Fisheries Center, National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, California at 10:00 a.m. The meeting is to consider the 1975 fishery experience and outlook, the 1976 preliminary outlook for the fishery, and the domestic and international aspects of the tuna/porpoise problem. The meeting on September 23 will be open to the public. Persons wishing to attend the open session may participate in the discussions subject to instructions of the Chairman.

The Advisory Committee will also meet in closed session on September 24 and 25, 1976. At these sessions documents classified in accordance with Executive Order 11652 will be circulated and discussed and matters will be considered which the public interest requires be withheld from disclosure as provided in 5 USC 552(b)(1).

AUGUST 17, 1976.

ROZANNE L. RIDGWAY,
Deputy Assistant Secretary.

[FR Doc.24599 Filed 8-20-76;8:45 am]

[Public Notice CM-6/77]

NATIONAL COMMITTEE FOR THE INTERNATIONAL TELEGRAPH AND TELEPHONE CONSULTATIVE COMMITTEE (CCITT)

Meeting

The Department of State announces that the U.S. National Committee for the International Telegraph and Telephone Consultative Committee (CCITT) will meet September 15, 1976 at 10 a.m. in Room 1105, Department of State, 2201 C Street NW., Washington, D.C.

The U.S. National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCITT activities; provides advice on matters of policy and positions in the preparation for CCITT Plenary Assemblies and meetings of the international Study Groups; provides advice and recommendations in regard to the work of the U.S. CCITT Study Groups; and recommends the disposition of proposed U.S. contributions to the international CCITT which are submitted to the Committee for consideration.

The purpose of the meeting on September 15 will be to discuss preparations for U.S. participation at the VIth Plenary Assembly of the CCITT, to be held September 27-October 8, 1976, in Geneva, Switzerland.

Members of the general public may attend the meeting and join in the discussion subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. It is therefore requested that prior to September 11, 1976, members of the general public who plan to attend the meeting inform Mr. Arthur L. Freeman, Office of International Communications Policy, Department of State, telephone (202) 632-1007, of their intention. All non-Government attendees must use the C Street entrance to the building.

ARTHUR L. FREEMAN,
Chairman,
National Committee.

Dated: August 12, 1976.

[FR Doc.76-24598 Filed 8-20-76;8:45 am]

[Public Notice CM—6/79]

SHIPPING COORDINATING COMMITTEE

Meeting

An open meeting of the Shipping Coordinating Committee will be held at 9:30 a.m. on Thursday, September 23, 1976, in Room 8236 of the Department of Transportation, 400 Seventh Street, S.W. Washington, D.C.

The purpose of the meeting will be to discuss preparations for the 35th Session of the Maritime Safety Committee (MSC), a committee of the Intergovernmental Maritime Consultative Organization (IMCO), scheduled to meet in London commencing September 27, 1976. Included in the agenda will be reports by the various MSC subcommittees:

Subcommittee on Fire Protection, 18th Session
Subcommittee on Ship Design and Equipment, 15th Session
Subcommittee on Bulk Chemicals, 1st Session
Subcommittee on Carriage of Dangerous Goods, 26th Session
Subcommittee on Containers and Cargoes, 17th Session
Subcommittee on Subdivision, Stability and Load Lines, 19th Session

Also included in the agenda will be discussions on

Substandard Ships
- guidelines for judging a ship to be substandard
- ships of non-Convention countries or those below Convention size

Tonnage Measurement
- treatment of ballast spaces of segregated water ballast tankers
- matters related to the 1969 Tonnage Convention

Requests for further information on the meeting should be directed to Richard K. Bank, Chairman, Shipping Coordinating Committee. He may be reached by telephone on (area code 202) 632-0704.

The Chairman will entertain comments from the public as time permits.

AUGUST 10, 1976.

RICHARD K. BANK,
Chairman,
Shipping Coordinating Committee.

[FR Doc.76-24594, Filed 8-20-76;8:45 am]

[Public Notice CM-6/80]

SHIPPING COORDINATING COMMITTEE

Meeting

An open meeting of the Shipping Coordinating Committee will be held at 9:30 a.m. on Friday, September 24, 1976, in Room 8236 of the Department of Transportation, 400 Seventh Street, S.W., Washington, D.C.

The purpose of the meeting will be to discuss preparations for the 37th Session of the Council of the Intergovernmental Maritime Consultative Organization (IMCO), scheduled to be held in London commencing October 5, 1976. Agenda items to be covered at the meeting include:

- status of the IMCO Convention (IMCO Membership)
- status of Coventions and other Multilateral Instruments deposited with IMCO since the 36th Session of the Council

consideration of the reports of the subsidiary organs of the Council
- report of the Legal Committee
- report of the Committee on Technical Co-operation

headquarters facilities and accommodation: report on progress achieved since the 36th Session of the Council

Requests for further information on the meeting should be directed to Richard K. Bank, Chairman, Shipping Coordinating Committee. He may be reached by telephone on (area code 202) 632-0704.

The Chairman will entertain comments from the public as time permits.

AUGUST 11, 1976.

RICHARD K. BANK,
Chairman,
Shipping Coordinating Committee.

[Public Notice CM-6/75]

SHIPPING COORDINATING COMMITTEE, SUBCOMMITTEE ON SAFETY OF LIFE AT SEA

Meeting

The working group on standards of training and watchkeeping of the Subcommittee on Safety of Life at Sea, a subcommittee of the Shipping Coordinating Committee, will hold an open meeting at 10:00 a.m. on Tuesday, September 14, 1976, in Room 7202 of the Department of Transportation, 400 Seventh Street, S.W., Washington, D.C.

The purpose of the meeting will be to

review the report of the Eighth Session of the Subcommittee on Standards of Training and Watchkeeping of the Intergovernmental Maritime Consultative Organization (IMCO) held in London, June 14–18, 1976

formulate the U.S. position on the agenda items of the Ninth Session of the Subcommittee on Standards of Training and Watchkeeping scheduled to be held in London December 13–17, 1976.

Requests for further information on the meeting should be directed to CDR B. E. Joyce, United States Coast Guard. He may be reached by telephone on (area code 202) 426–2251.

The Chairman will entertain comments from the public as time permits.

AUGUST 13, 1976.

RICHARD K. BANK,
Chairman,
Shipping Coordinating Committee.

[FR Doc.76-29591 Filed 8-20-76;8:45]

[Public Notice CM-6/76]

SHIPPING COORDINATING COMMITTEE, SUBCOMMITTEE ON SAFETY OF LIFE AT SEA

Meeting

The working group on ship design and equipment of the Subcommittee on Safety of Life at Sea, a subcommittee of the Shipping Coordinating Committee, will hold open meetings on September 14, 15 and 16, 1976, at 8:00 a.m. in Room 8334 of the Department of Transportation, 400 Seventh Street, S.W., Washington, D.C.

On September 14 and 15, the agenda topic is mobile offshore drilling units with specific consideration to the following:

Electrical and machinery requirements (including industrial systems and equipment).
Operations manual.
Crane and other lifting appliances.
Helicopter facilities.
Towing arrangements.
Mooring of offshore supply vessels.
Diving systems.

On September 16, the agenda topics will be draft requirements for segregated ballast tankers under 150 meters in length and electrical and machinery requirements for the following types of vessels:

Training vessels.
Oceanographic research and exploration vessels.
Offshore supply vessels.
Pipe-laying vessels.
Shipborne barges and barge carriers.

Requests for further information on the meeting should be directed to CAPT D. J. Linde, United States Coast Guard. He may be reached by telephone on (area code 202) 426–2167.

The Chairman will entertain comments on documents from the public as time permits.

AUGUST 13, 1976.

RICHARD K. BANK,
Chairman, Shipping Coordinating Committee.

[FR Doc. 76-24592 Filed 8-20-76; 8:45 am]

[Public Notice CM-6/78]

SHIPPING COORDINATING COMMITTEE, SUBCOMMITTEE ON SAFETY OF LIFE AT SEA

Meeting

The working group on safety of fishing vessels of the Subcommittee on Safety of Life at Sea, a subcommittee of the Shipping Coordinating Committee, will hold an open meeting at 10:30 a.m. on Tuesday, September 21, 1976, in Rooms 8236 and 8238 of the Department of Transportation, 400 Seventh Street, S.W., Washington, D.C.

The purpose of the meeting will be to

Discuss the U.S. approach to the forthcoming Conference (International Conference on Safety of Fishing Vessels, 1977).

Review and approve a U.S. paper on the draft Convention document (SFV/CONF./4).

Requests for further information on the meeting should be directed to Mr. W. Cleary, Jr., United States Coast Guard. He may be reached by telephone on (area code 202) 426–2187.

The Chairman will entertain comments from the public as time permits.

RICHARD K. BANK,
Chairman,
Shipping Coordinating Committee.

AUGUST 13, 1976.

[FR Doc.76-24593 Filed 8-20-76;8:45 am]

[Public Notice CM-6/91]

SHIPPING COORDINATING COMMITTEE, SUBCOMMITTEE ON SAFETY OF LIFE AT SEA

Meeting

The working group on fire protection of the Subcommittee on Safety of Life at Sea, a subcommittee of the Shipping Coordinating Committee, will hold an open meeting at 9:30 a.m. on Friday, September 17, 1976, in Room 8236 of the Department of Transportation, 400 Seventh Street, S.W., Washington, D.C.

The purpose of the meeting will be to discuss preparations and requirements for the 19th Session of the Subcommittee on Fire Protection of the Intergovernmental Maritime Consultative Organization (IMCO) scheduled to be held in London November 23–27, 1976; in particular the fire protection requirements for

Mobile offshore drilling units.
Tank vessels.
Vessels carrying dangerous goods.

Requests for further information on the meeting should be directed to Mr. Daniel F. Sheehan, United States Coast Guard. He may be reached by telephone (area code 202) 426–2197.

The Chairman will entertain comments from the public as time permits.

CARL TAYLOR, JR.,
Acting Director Office of Maritime Affairs.

AUGUST 16, 1976.

[FR Doc.76-24596 Filed 8-20-76;8:45 am]

SHIPPING COORDINATING COMMITTEE, SUBCOMMITTEE ON SAFETY OF LIFE AT SEA

Meeting

The working group on life-saving appliances of the Subcommittee on Safety of Life at Sea, a subcommittee of the Shipping Coordinating Committee, will hold an open meeting on Friday, September 17, 1976, at 1:00 p.m. in Room 8236 of the Department of Transportation, 400 Seventh Street, S.W., Washington, D.C.

The purpose of the meeting will be to discuss

Preparations for the Tenth Session of the Subcommittee on Life-Saving Appliances of the Intergovernmental Maritime Consultative Organization (IMCO), scheduled to be held in London October 18–22, 1976.

The revision of SOLOAS Chapter III.

The use of emergency position-indicating radio beacons.

The revision of the IMCO Code for Life-Saving Appliances on mobile offshore drilling units.

Code for novel craft.

Requests for further information on the meeting should be directed to Mr. N. W. Lemley, United States Coast Guard. He may be reached by telephone on (area code 202) 426–1444.

The Chairman will entertain comments from the public as time permits.

CARL TAYLOR, JR.,
Acting Director,
Office of Maritime Affairs.

AUGUST 16, 1976.

[FR Doc.76-24597 Filed 8-20-76;8:45 am]

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

(Notice No. 76-9; Reference: ATF O 1100.6)

FORMULAS FOR DENATURED ALCOHOL AND RUM REGULATIONS

Authorities of the Director in 27 CFR Part 212; Delegation Order

1. *Purpose.* This order is being issued to delegate certain authorities, now vested in the Director by regulations in 27

CFR part 212, to the Assistant Director, Technical and Scientific Services.

2. *Background.* The position of Director has been written in regulations as the position of final authority on numerous minor actions relating to formulas for denatured alcohol and rum. The position as used in regulations, has meant Division Director of the former Alcohol, Tobacco and Firearms Division of the Internal Revenue Service. With the establishment of the Bureau, the position of Director increased in stature from that of Division Director to that of Bureau Director. It has been administratively determined that certain authorities now vested in the Director by regulations in 27 CFR Part 212, Formulas For Denatured Alcohol and Rum Regulations, rightly belong at a lower organizational level and therefore should be delegated.

3. *Delegations.* Pursuant to the authority vested in the Director by Treasury Department Order No. 221, dated June 6, 1972, and by 26 CFR section 301.7701–9 there is hereby delegated to the Assistant Director, Technical and Scientific Services, the authority to take final action on the following matters relating to 27 CFR, Part 212, Formulas for Denatured Alcohol and Rum Regulations:

a. Approval or disapproval of ATF Forms 1479–A describing manufacturing processes in wich stocks of specially denatured alcohol formulas no longer authorized in this part will be used up pursuant to 27 CFR 212.3(b).

b. Authorizations for the addition of odorants, rust inhibitors or dyes to completely denatured alcohol under 27 CFR 212.10.

c. Authorizations, pursuant to Forms 1479–A, for the use of any formula of specially denatured alcohol or specially denatured rum for uses not specifically authorized in this part under 27 CFR 212.15(b).

d. Authorizations, pursuant to Forms 1479–A, for the use of Specially Denatured Alcohol Formula No. 2–B in other than closed and continuous systems under 27 CFR 212.17(c).

e. Authorizations, pursuant to Forms 1479–A, for the use of Specially Denatured Alcohol Formula No. 2–C in other than closed and continuous systems under 27 CFR 212.18(c).

f. Approval of applications to use chemicals other than acetaldehyde or ethyl acetate as denaturants in Specially Denatured Alcohol Formula No. 29 under 27 CFR 212.39(a).

4. *Redelegation.* The authorities delegated herein may be redelegated in Bureau Headquarters but not below the level of chemist in the Chemical Branch.

Effective date. This order becomes effective on August 13, 1976.

Signed: August 13, 1976.

JOHN S. KROGMAN,
Deputy Director.

[FR Doc.76-24577 Filed 8-20-76;8:45 am]

[Notice No. 76-10; Reference: ATF O 1100.67]

DISTRIBUTION AND USE OF DENATURED ALCOHOL AND RUM REGULATIONS

Authorities of the Director in 27 CFR Part 211; Delegation Order

1. *Purpose.* This order is being issued to delegate certain authorities now vested in the Director by regulations in 27 CFR part 211, to the Assistant Director, Technical and Scientific Services.

2. *Background.* The position of Director has been written in regulations as the position of final authority on numerous minor actions relating to the distribution and use of denatured alcohol and rum. The position as used in regulations, has meant Division Director of the former Alcohol, Tobacco and Firearms Division of the Internal Revenue Service. With the establishment of the Bureau, the position of Director increased in stature from that of Division Director to that of Bureau Director. It has been administratively determined that certain authorities now vested in the Director by regulations in 27 CFR Part 211, Distribution and Use of Denatured Alcohol and Rum Regulations, rightly belong at a lower organizational level and therefore should be delegated.

3. *Delegations.* Pursuant to the authority vested in the Director by the Treasury Department Order No. 221, dated June 6, 1972, and by 26 CFR section 301.7701–9 there is hereby delegated to the Assistant Director, Technical and Scientific Services, the authority to take final action on the following matters relating to 27 CFR Part 211, Distribution and Use of Denatured Alcohol and Rum Regulations:

a. Approval or disapproval of all formulas and processes submitted on ATF Forms 1479–A except formulas for rubbing alcohol and rubbing alcohol base under 27 CFR 211.23.

b. Approval or disapproval of new labels or facsimilies for adopted formulas under 27 CFR 211.62.

c. Requests for the submission of samples of (a) any ingredient included in formulas submitted on Forms 1479–A and (b) proprietary antifreeze solutions containing completely denatured alcohol under 27 CFR 211.107.

d. Restrictions on Forms 1479–A covering the size of containers in which an article may be sold, the maximum quantity which may be sold to any person at one time, the class of vendee to which an article may be sold and the specific use for which an article may be sold under 27 CFR 211.108.

e. Approval or disapproval of extraneous matter to be printed on labels for completely denatured alcohol under 27 CFR 211.121.

f. Approval or disapproval of materials for use in making containers for proprietary antifreeze solutions under 27 CFR 211.123.

g. Approval or disapproval of Forms 1479–A covering the manufacture of proprietary solvent formulations under 27 CFR 211.170.

h. Approval or disapproval of Forms 1479–A covering the use of proprietary solvents in the manufacture of articles for sale under 27 CFR 211.172.

i. Approval or disapproval of Forms 1479–A covering the manufacture of special industrial solvent formulations under 27 CFR 211.180.

j. Approval or disapproval of Forms 1479–A covering the use of special industrial solvents in the manufacture of articles for sale under 27 CFR 211.182.

k. Approval or disapproval of labels for products specified under paragraph 211.191 under 27 CFR 197.

l. Approval or disapproval of Forms 1479–A covering the reprocessing of duplicating and printing fluids containing 1 percent or more by weight of a glycol ether and 10 percent or more by weight of methyl alcohol into printing ink for sale under 27 CFR 211.200.

m. Approval or disapproval of Forms 1479–A covering the manufacture of solvents for own use (but not for sale) under 27 CFR 211.200.

n. Action to impose label requirements on containers of articles, other than those specified in this part, containing specially denatured alcohol under 27 CFR 211.201, and 27 CFR 211.108.

4. *Redelegation.* The authorities delegated herein may be redelegated in Bureau Headquarters but not below the level of chemist in the Chemical Branch.

Effective date: This order becomes effective on August 13, 1976.

Signed: August 13, 1976.

JOHN S. KROGMAN,
Deputy Director.

[FR Doc.76-24578 Filed 8-20-76;8:45 am]

[Notice No. 76-11; Reference: ATF O 1100.68]

DRAWBACK ON DISTILLED SPIRITS USED IN MANUFACTURING NONBEVERAGE PRODUCTS

Authorities of the Director in 27 CFR Part 197; Delegation Order

1. *Purpose.* This order is being issued to delgate certain authorities now vested in the Director by regulations in 27 CFR part 197, to the Assistant Director, Technical and Scientific Services.

2. *Background.* The position of Director has been written in regulations as the position of final authority on numerous minor actions relating to obtaining drawback of internal revenue tax on distilled spirits used in manufacturing certain nonbeverage products. The position, as used in regulations, has meant Division Director of the former Alcohol, Tobacco and Firearms Division of the Internal Revenue Service. With the establishment of the Bureau, the position of Director increased in stature from that ternal Revenue Service. With the establishment of the Bureau, the position of Director increased in statur from that of Division Director to that of Bureau

Director. It has been administratively determined that certain authorities now vested in the Director by regulations in 27 CFR Part 197, Drawback on Distilled Spirits Used in Manufacturing Nonbeverage Products Regulations, rightly belong at a lower organizational level and therefore should be delegated.

3. *Delegations.* Pursuant to the authority vested in the Director by Treasury Department Order No. 221, dated June 6, 1972, and by 26 CFR section 301.7701–9 there is hereby delegated to the Assistant Director, Technical and Scientific Services, the authority to take final action on the following matters relating to 27 CFR, Part 197, Drawback on Distilled Spirits Used in Manufacturing Nonbeverage Products Regulations:

a. Approval or disapproval of all formulas and processes submitted on ATF Forms 1678 as eligible for drawback of tax as stated under 27 CFR 197.95.

b. Requests for any drawback manufacturer to submit a sample of any nonbeverage product for examination as stated under 27 CFR 197.98.

4. *Redelegation.* The authorities delegated herein may be redelegated in Bureau Headquarters but not below the level of physical science technician in the Chemical Branch.

Effective date: This order becomes effective on August 13, 1976.

Signed: August 13, 1976.

JOHN S. KROGMAN,
Director.

[FR Doc.76-24579 Filed 8-20-76;8:45 am]

GRANTING OF RELIEF

Notice is hereby given that pursuant to 18 U.S.C. Section 925(c) the following named persons have been granted relief from disabilities imposed by Federal laws with respect to acquisition, transfer, receipt, shipment, or possession of firearms incurred by reason of their convictions of crimes punishable by imprisonment for a term exceeding one year.

It has been established to my satisfaction that the circumstances regarding the convictions of each applicant's record and reputation are such that the applicants will not be likely to act in a manner dangerous to public safety, and that the granting of the relief will not be dangerous to the public interest.

Ackerman, Thomas E., 1916 27th Street, Des Moines, Iowa, convicted on October 19, 1957, in the District Court, Warren County, Iowa.

Amaro, Leandro, 1466 Silver Lake Boulevard, Los Angeles, California, convicted on June 16, 1970, in the Superior Court, Los Angeles County, California.

Angle, James C., 2209 Simpson, Winfield, Kansas, convicted on June 2, 1950, in the District Court, Cowley County, Kansas.

Bark, Carey G., Route No. 1, Denver, Iowa, convicted on March 1, 1974, in the District Court, Brewer County, Iowa; and April 11, 1974, in the District Court, Black Hawk County, Iowa.

Barnes, Jeffrey D., 5705 S.E. 39th, Lacey, Washington, convicted on October 1, 1969, in the Thurston County Superior Court, Washington.

Barnes, Warren E., 303 North 10th Street, Manitowoc, Wisconsin, convicted on August 7, 1967, in the County Court, Manitowoc County, Wisconsin.

Notice of Granting of Relief Pursuant to Section 925(c), Title 18, United States Code.

Baskin, Klayton D., 1711 River Road, Yakima, Washington, convicted on October 24, 1972, in the Superior Court, Thurston County, Washington.

Beard, James L., 9137 South Laflin, Chicago, Illinois, convicted on March 3, 1966, in the Circuit Court of Cook County, Illinois.

Beasley, Harrison, Jr., 3561 Claymore, Apartment 3, Memphis, Tennessee, convicted on February 18, 1963, in the Circuit Court, Criminal Division, 10th Judicial Circuit, Alabama.

Bell, Gary D., 206 South Monroe, Carrollton, Missouri, convicted on October 14, 1968, in the Carroll County Circuit Court, Carrollton, Missouri.

Berry, Richard J., Route 3, Cedartown, Georgia, convicted on September 28, 1956, and July 15, 1966, and April 14, 1967, in the United States District Court, Northern District, Rome, Georgia.

Blomgren, Bennett E., 249 Park Drive, Hartland, Wisconsin, convicted on July 16, 1957, in the County Court, Polk County, Balsam Lake, Wisconsin; and March 21, 1960, in the United States District Court, Western District of Kentucky.

Boehm, William M., P.O. Box 408, Old Veal Station Road, Azle, Texas, convicted on May 4, 1972, in the United States District Court, Northern District of Texas, Dallas, Texas.

Brown, Malcolm L., 3015 107th SE, Bellevue, Washington, convicted on November 7, 1973, in the United States District Court, Western District Washington, Seattle, Washington.

Burkey, Clifford E., 6400 Lonas Drive, Apartment 316, Knoxville, Tennessee, convicted on November 15, 1963, in the Fulton County Superior Court, Georgia; and May 12, 1965, and May 30, 1967, in the Greene County Criminal Court, Tennessee.

Burr, Sanford E., 209 Kingwood Avenue, Newport News, Virginia, convicted on or about March 3, 1944, in the Mecklenburg County Superior Court, North Carolina; and on or about March 28, 1944, in the Guilford County Superior Court, Greensboro, North Carolina; and January 30, 1947, in the United States District Court, Western District of North Carolina.

Notice of Granting of Relief Pursuant to Section 925(c), Title 18, United States Code.

Burton, Marion D., Route 2, Box 115, Ione, Washington, convicted on December 8, 1966, in the Criminal Court of Record, Dade County, Florida.

Butterworth, Robert W., 4921 Morwanda Street, Roanoke, Virginia, convicted on November 9, 1971, in the Circuit Court for the County of Roanoke, Virginia.

Cady, Wesley J., Wilson Hill Road, Colrain, Massachusetts, convicted on April 13, 1963, and June 18, 1970, in the Franklin County District Court, Greenfield, Massachusetts.

Calcote, Charles A., 703 Pennsylvania Avenue, Beaumont, California, convicted on or about November 15, 1957, in the Superior Court, San Bernardino County, California; and December 1960, in the United States District Court, New Mexico.

Cellamare, Dennis J., RFD 3, South Windham, Maine, convicted on March 17, 1969, in the Cumberland County Superior Court, Maine.

Cox, Jerry C., 21426 84th Avenue South, Kent, Washington, convicted on October 25, 1940, in the Superior Court, Clark County, Washington; and August 15, 1945, in the General Court-Martial, Fort Meade, Maryland, United States Army.

Davis, Raymond E., 419 Elm Street, Antigo, Wisconsin, convicted on September 4, 1957, in the United States District Court for the Eastern District of Wisconsin; and on or about January 23, 1970, in the County Court, Langlade County, Antigo, Wisconsin.

Devol, Thomas P., RR #1, Box 420, Westfield, Indiana, convicted on May 20, 1971, in the Hamilton County Superior Court, Indiana.

Ellis, Jack, 1342 West 67th Street, Cleveland, Ohio, convicted on February 25, 1937, and June 7, 1939, in the Logan County Courthouse, Logan, West Virginia.

Farris, Robert E., Box 205, Houstonia, Missouri, convicted on October 6, 1936, in the Circuit Court, Saline County, Missouri.

Notice of Granting of Relief Pursuant to Section 925(c), Title 18, United States Code.

Franklin, Sherrill D., 803 West 1st, Anderson, Indiana, convicted on May 12, 1954, in the Circuit Court, Madison County, Indiana.

Fritchman, Roger A., 1115 De la Vina #2, Santa Barbara, California, convicted on March 26, 1963, in the Superior Court, Wake County, North Carolina.

Gordon, Robert L., 1804 Silver Birch Lane, Las Vegas, Nevada, convicted on November 12, 1973, in the United States District Court for the Southern District of California.

Griffiths, Gerald M., 4456 Naval Air Road (Trailer Court) #45, Fort Hueneme, California, convicted on August 2, 1949, in the United States District Court, Denver, Colorado; and March 30, 1962, in the California Superior Court, Los Angeles County, California.

Gronenthal, Gale R., 7106 Olive Street, LaVista, Nebraska, convicted on August 16, 1972, in the District Court, Wayne County, Nebraska.

Habeck, Allen M., 1308 South 12th Avenue, Wausau, Wisconsin, convicted on July 25, 1972, in the Marathon County Court, Marathon County, Wisconsin.

Henry, Hans M., 1851–A Arundel Drive, Lexington, Kentucky, convicted on or about September 17, 1971, in the Scott County Circuit Court, Georgetown, Kentucky; and August 1971, in the Fayette County Quarterly Court, Lexington, Kentucky.

Highsmith, Gale V., 2825 South Burrell Street, Milwaukee, Wisconsin, convicted on June 28, 1956, in the Municipal Court, City and County of Milwaukee, Wisconsin.

Hixon, Pete E., 1200 East 24th Street, Winston-Salem, North Carolina, convicted on June 18, 1958, in the United States District Court, Middle District, North Carolina.

Horton, Robert J., 5410 Raymond Avenue, Burton, Michigan, convicted on October 3, 1952, in the Genesee Circuit Court, Michigan.

Kincheloe, Larry W., 1920 Poli, Ventura, California, convicted on November 3, 1972, in the Superior Court, Santa Barbara County, California.

Lazor, Raymond V., 13310 30th Avenue NE, Seattle, Washington, convicted on September 14, 1973, in the United States District Court, Tacoma, Washington.

Notice of Granting of Relief Pursuant to Section 925(c), Title 18, United States Code.

Lenski, Donald A., 20151 Oleander, Perris, California, convicted on March 4, 1968, in the Superior Court of the State of California; and August 2, 1966, in the Superior Court of Riverdale County, California; and July 26, 1968, and November 15, 1968, in the Superior Court of the State of California, County of Riverside.

Lisiecki, Paul L., 460 Grant Street Apartment 3, Stanley, Wisconsin, convicted on January 31, 1973, in the County Court, Chippewa County, Chippewa Falls, Wisconsin.

Llanto, Gilmore C., 922 14th Avenue, Seattle,

Washington, convicted on January 15, 1971, in the Superior Court, King County, Washington.

McDowell, Michael R., 5806 Roosevelt Street, Middleton, Wisconsin, convicted on or about April 22, 1968, in the Circuit Court, Dane County, Madison, Wisconsin.

MacKenzie, John W., 321 Oella Avenue, Catonsville, Maryland, convicted on August 10, 1944, in the United States Military Court, General Court-Martial, Fort Monmouth, New Jersey.

Maxfield, Don G., 3220 Tabor, Idaho Falls, Idaho, convicted on October 23, 1973, in the United States District Court, District of Idaho, Boise, Idaho.

Meyer, Edward C., 2808 Chelfield Street, Philadelphia, Pennsylvania, convicted on November 1, 1963, in the Philadelphia County Court, Pennsylvania.

Nitchals, David W., Rural Route 1, Wallingford, Iowa, convicted on or about July 20, 1972, in the Dickinson County District Court, Spirit Lake, Iowa.

O'Bryant, Michael G., 681 S. Magnolia, Rialto, California, convicted on January 22, 1971, in the San Bernardino County Municipal Court District, Valley Division, California.

Paulson, Jerry L., 3111 Cass Street, Omaha, Nebraska, convicted on January 12, 1970, in the District Court, Mills County, Iowa.

Notice of Granting of Relief Pursuant to Section 925(c), Title 18, United States Code.

Ronniger, Stephen L., 2254 Fisher Lane, Salt Lake City, Utah, convicted on July 20, 1970, in the Circuit Court, Lane County, Oregon.

Roper, George W., II, 7406 Glencove Place, Norfolk, Virginia, convicted on March 29, 1974, in the United States District Court, Eastern District of Virginia, Norfolk, Virginia.

Rose, James C., Jr., 400 South Tiffin, Ranger, Texas, convicted on September 18, 1940, in the 91st Judicial District Court, Eastland County, Texas.

Rubino, James S., 1121 Golfview Drive, Carmel, Indiana, convicted on July 25, 1940, in New York, New York; and on September 23, 1957, in the County Court Judges Criminal Court, Windsor, Ontario, Canada.

Rueter, Kenneth T., 1000 South 1st Street, Ozark, Missouri, convicted on April 28, 1967, in the Circuit Court of Greene County, Missouri.

Seals, Levester, Jr., 1539 L'Orient, St. Paul, Minnesota, convicted on August 16, 1961, in the District Court, Second Judicial District, Ramsey County, Minnesota.

Shy, Larry G., 5522 N.E. Meadowbrook, Kansas City, Missouri, convicted on September 23, 1965, and on May 25, 1967, in the Circuit Court of Scott County, Missouri.

Silver, Sterling H., 707 Felton Street, Miles City, Montana, convicted on April 8, 1966, in the District Court of the Sixteenth Judicial District, Custer County, Montana.

Smith, Wilburn L., 314 Maple Street, Chaffee, Missouri, convicted on June 16, 1964, and on April 1, 1969, and on June 17, 1969, in the Circuit Court of Cape Girardeau County, Missouri.

Souther, Narvy V., Route 2, Box 453, Wilkesboro, North Carolina, convicted on May 20, 1960, and on October 20 1961, in the United States District Court, Middle District, North Carolina.

Stabenow, Larry D., Rural Route 2, Box 380, Colfax, Wisconsin, convicted on November 3, 1972, in the County Court, Dunn County, Wisconsin.

Still, Jacob L., III, Box 47, Western Mobile Park Liberal, Kansas, convicted on December 13, 1974, in the District Court of Seward County, Kansas.

Notice of Granting of Relief Pursuant to Section 925(c), Title 18, United States Code.

Teigen, Thomas M., 8442 Nicollet South, Bloomington, Minnesota, convicted on August 22, 1973, in the District Court, Fourth Judicial District, Hennepin County, Minnesota.

Thacker, Alfred, 139 Tennyson, Highland Park, Michigan, convicted on October 28, 1954, in the Recorder's Court of the City of Detroit, Detroit, Michigan.

Tooley, Jack W., Post Office Box 254, Hartville, Missouri, convicted on December 1, 1966, in the Wright County Circuit Court, Missouri.

Wages, Johnny M., Route 2, Wilder, Idaho, convicted on March 19, 1971, in the Idaho District Court, Idaho.

Webster, Donald E., 2753 Glynn Court, Apartment 4, Detroit, Michigan, convicted on April 21, 1955, in the Recorder's Court of the City of Detroit, Michigan.

Williams, James, G., 1837 Andrews Drive, Concord, California, convicted on October 18, 1946, in the United States District Court, Eastern District, Missouri, St. Louis, Missouri.

Williams, Mack B., 209 Strange Street, Saraland, Alabama, convicted on July 13, 1973, in the United States District Court, Southern District, Alabama.

Williams, Phillip E., Route 2, Box 415-B, Wilkesboro, North Carolina, convicted on October 23, 1968, in the United States District Court, Middle District, North Carolina.

Wollin, Brad R., Route 1, Box 135, Lake Mills, Wisconsin, convicted on August 7, 1974, in the County Court of Jefferson County, Wisconsin.

Woods, Chester A., 1233 Yesler Avenue, Seattle, Washington, convicted on May 3, 1944, in the Superior Court, Yakima, County, Yakima, Washington.

Notice of Granting of Relief Pursuant to Section 925(c), Title 18, United States Code.

Woods, Robert H., Tom's Trailer Park #3, Fallon, Nevada, convicted on August 16, 1974, in the United States District Court, District of Nevada, Reno, Nevada.

Yoha, Richard O., 245 Luzena Avenue, Vacaville, California, convicted on October 2, 1970, in the United States District Court for Northern District of California.

Signed at Washington, DC, this 30th day of July 1976.

REX D. DAVIS,
Director, Bureau of Alcohol, Tobacco, and Firearms.

[FR Doc.78-24571 Filed 8-20-76; 8:45 am]

Office of the Secretary

[Administrative Ruling 76-1]

TREATMENT OF INDIAN TRIBE AND ALASKAN NATIVE VILLAGE ADJUSTED TAXES

Revenue Sharing

This ruling sets forth the procedure the Office of Revenue Sharing will follow in using Indian tribe and Alaskan native village adjusted tax data when calculating entitlements, pursuant to § 108(b) and § 108(c) of the State and Local Fiscal Assistance Act of 1972 (P.L. 92-512).

For purposes of paragraphs (1), (2), (3), (5), 6(C), (6)(D) of § 108(b) and for purposes of § 108(c) of the Act, the recognized governing body of an Indian tribe or Alaskan native village which performs substantial governmental functions is excepted from treatment as a "unit of local government" by § 108(d)(1) of the Act.

It is the determination of the Department of the Treasury that the revised application of this above-mentioned language will result in a more equitable entitlement calculation procedure. When Indian adjusted tax data first became available, it was initially applied in the total entitlement calculation process under § 108 of the Act. Section 108(b)(4) of the Act, in describing the amount of allocations for Indian tribes and Alaskan native villages, provides that before § 108(b)(1) is applied there shall be allocated to such tribe or village a portion of the amount allocated to the county area for the entitlement period which bears the same ratio to such amount as the population of that tribe or village within that county area bears to the population of that county area. The allocation for Indian tribes and Alaskan native villages is therefore completed at this stage of the allocation process before application of § 108(b)(1) and succeeding subsections of the Act relating to the calculation of entitlement amounts. In order to improve the entitlement calculation process, Indian tribe and Alaskan native village adjusted tax data will only be applied under § 108(a) relating to allocations among county areas and pursuant to § 108(d)(1) will be excluded from allocation calculations under § 108(b) and § 108(c). This ruling will result in Indian tribe and Alaskan native village adjusted tax data being applied only to that portion of the entitlement calculation process which affects entitlement amounts for Indian tribes and Alaskan native villages.

The effective date for this procedure shall be for Entitlement Period Seven beginning July 1, 1976. Final allocations for Entitlement Period Seven shall be determined pursuant to this ruling.

JEANNA D. TULLY,
Director,
Office of Revenue Sharing.

[FR Doc.76-24641 Filed 8-20-76;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Army

BOARD OF VISITORS, UNITED STATES MILITARY ACADEMY

Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463), announcement is made of the following meeting:

Name of Committee: Board of Visitors, United States Military Academy

Date of Meeting: 9 September 1976

Place of Meeting: Capitol Building, Washington, D.C.

Time: 10:00 a.m.

Proposed Agenda: Review of and Inquiry into Academic Matters, USMA

This meeting will be concerned with matters listed in 5 U.S.C., Section 552b

(6) and 552b(7)(A)(B) and will be closed to the public pursuant to Section 10(d), P.L. 92-463.

By Authority of The Secretary of the Army.

R. S. SEEBERG,
LTC, US Army, Acting Director, Administrative Management.

[FR Doc.76-24726 Filed 8-20-76;8:45 am]

Department of the Navy

CHIEF OF NAVAL OPERATIONS EXECUTIVE PANEL ADVISORY COMMITTEE

Meeting

Pursuant to the provisions of the Federal Advisory Commitee Act (5 U.S.C. App. I), notice is hereby given that the Chief of Naval Operations Executive Panel Advisory Committee will meet September 14 and 15, 1976, at the Pentagon, Washington, D.C. Sessions of the meeting will commence at 8:30 a.m. and terminate at 5:30 p.m. and the meeting will be closed to the public.

The agenda will consist of matters required by Executive Order to be kept secret in the interest of national defense, including special intelligence briefings on foreign naval operations and presentations on ocean surveillance, new technology, and U.S. Navy plans and programs. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in Section 552(b)(1) of Title 5, United States Code.

Dated: August 16, 1976.

JOHN S. JENKINS,
Captain, JAGC, U.S. Navy, Assistant Judge Advocate General (Civil Law).

[FR Doc.76-24587 Filed 8-20-76;8:45 am]

Office of the Secretary

DEFENSE INTELLIGENCE AGENCY SCIENTIFIC ADVISORY COMMITTEE

Closed Meeting

Pursuant to the provisions of section 10 of Pub. L. 92-463, effective January 5, 1973, notice is hereby given that closed meetings of the DIA Scientific Advisory Committee will be held at the Pentagon, Washington, D.C. on: Monday & Tuesday, 27-28 September 1976.

The entire meetings commencing at 0900 hours are devoted to the discussion of classified information as defined in section 552(b)(1), Title 5 of the U.S. Code and therefore will be closed to the public. The Committee will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA on related scientific and technical intelligence matters.

MAURICE W. ROCHE,
Director, Correspondence and Directives, OASD (Comptroller).

[FR Doc.76-24624 Filed 8-20-76;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[INT DES 76-30]

CROW CEDED AREA COAL LEASE DEVELOPMENT PROPOSAL

Availability of Draft Environmental Statement

Pursuant to Section 102 (2) (c) of the National Environmental Policy Act, the Bureau of Indian Affairs has prepared a Draft Environmental Statement for the Westmoreland Resources Crow Ceded Area Coal Lease, Tracts II and III, which is located in Bighorn County, Montana.

The environmental statement considers human and physical environmental effects associated with the approval of an existing 30,876 acre lease area. Written comments are invited within forty-five (45) days of this notice.

The U.S. Geological Survey is currently preparing a draft environmental statement on a proposed 20 year plan of mining and reclamation on 2,151 acres within Tract III; this statement will be made available to the public about October 1, 1976.

Copies of the BIA statement will be available for inspection at the following locations:

Bureau of Indian Affairs, Division of Trust Facilitation, Room 4554, Department of the Interior Bldg., Washington, D.C. 20245, Telephone: (202) 343-4004.

Bureau of Indian Affairs, Billings Area Office, Billings, Montana 59103, Telephone: (406) 245-6711.

Bureau of Indian Affairs, Crow Indian Agency, Crow Agency, Montana 59022, Telephone: (406) 638-2671.

Copies of the Draft Environmental Statement may be obtained from the Area Director, Bureau of Indian Affairs in Billings, Montana.

STANLEY D. DOREMUS,
Deputy Assistant Secretary of the Interior.

AUGUST 17, 1976.

[FR Doc.76-24614 Filed 8-20-76;8:45 am]

CROW CEDED AREA COAL LEASE DEVELOPMENT PROPOSAL

Draft Environmental Statement; Public Hearing

A Public Hearing will be held to receive public comments regarding the environmental impacts portrayed in the Bureau of Indian Affairs Crow Ceded Area Coal Lease, Tracts II and III, Westmoreland Resources Draft Environmental Statement.

The Hearing is scheduled for September 29, 1976 at 10 a.m. Crow Agency, Montana.

Oral and written statements by interested parties are invited. Oral statements by any party will be limited to no more than 10 minutes. Written statements can be entered into the record by filing a copy with the presiding officer.

Additional information on the hearing and copies of the Crow Ceded Area Coal Lease, Tracts II and III Westmoreland Resources Draft Environmental Statement may be obtained from the Area Director, Billings Area Office, 316 North 26th Street, Billings, Montana 59103. Telephone (406) 245-6711.

STANLEY D. DOREMUS,
Deputy Assistant Secretary of the Interior.

AUGUST 17, 1976.

[FR Doc.76-24613 Filed 8-20-76;8:45 am]

Bureau of Land Management

LAKEVIEW DISTRICT ADVISORY BOARD

Meeting

Notice is hereby given that the Bureau of Land Management, Lakeview District Advisory Board will meet at 9:00 a.m., Pacific Standard Time, on September 17, 1976, at the Lakeview Community Center.

The agenda for the meeting will include discussion of:

1. New BLM Grazing Regulation.
2. Memorial Day Motorcycle Race.
3. Board Reorganization.
4. District Tour.

The meeting will be open to the public insofar as seating is available. Time will be available for brief statements from members of the public, but those wishing to make an oral statement must inform the Chairman in writing prior to the meeting. Interested persons may file a written statement with the Board for its consideration. Statements should be sent to: Chairman, Lakeview District Advisory Board, Care of District Manager, Bureau of Land Management, P.O. Box 151, Lakeview, Oregon 97630.

RICHARD A. GERITY,
Lakeview District Manager.

AUGUST 12, 1976.

[FR Doc.76-24589 Filed 8-20-76;8:45 am]

YUMA DISTRICT MULTIPLE USE ADVISORY BOARD

Meeting

Notice is hereby given that the Yuma District Multiple Use Advisory Board will convene on October 7, 1976, commencing at 9:00 a.m. at the Western Room, Chilton Inn, 300 E. 32nd Street, Yuma, Arizona.

The Board will discuss and make recommendations on proposed plans for Black Meadow Landing concession on Lake Havasu, standards for commercial and concession contracts, activity plans for wildlife habitat and recreation use areas, and the permit program developed under the Lower Colorado River Land Use Plan.

The meeting will be open to the public with seating provided for approximately 40 persons. Time will be available for a limited number of brief statements by members of the public beginning at 2:45 p.m. Those wishing to make oral statements should so inform the Bureau of Land Management, Yuma District Office,

prior to the Board meeting. Written statements may also be filed with the Board for its consideration. Written statements may be submitted at the meeting or mailed to: Chairman, Yuma District Advisory Board, P.O. Box 5680, Yuma, Arizona 85364.

Prior to the meeting, the Board will tour the Laguna-Martinez areas on October 6, 1976. Members of the public may attend the tour but must furnish their own transportation.

Further information concerning the meeting may be obtained from H. Max Bruce, District Manager, at the above address. Telephone number: 602–726–2612.

Minutes of the meeting will be available for public inspection thirty (30) days after the meeting. Interested parties should contact the District Manager, Yuma District Office.

H. M. BRUCE,
District Manager.

AUGUST 13, 1976.

[FR Doc. 76-24590 Filed 8-20-76;8:45 am]

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

[Notice No. 112]

SUGARCANE—LOUISIANA

Extension of Closing Date for Filing Applications for the 1977 Crop Year

Pursuant to the authority contained in § 401.103 of Title 7 of the Code of Federal Regulations, the time for filing applications for sugarcane crop insurance for the 1977 crop year in all counties in Louisiana where such insurance is otherwise authorized to be offered is hereby extended until the close of business on September 30, 1976. Such applications received during this period will be accepted only after it is determined that no adverse selectivity will result.

Dated: August 9, 1976.

WARREN E. DIRKS,
Manager, Federal Crop Insurance Corporation.

[FR Doc.76-24673 Filed 8-20-76;8:45 am]

Forest Service

WILDERNESS STUDY REPORT, LONE PEAK WILDERNESS STUDY AREA, UINTA AND WASATCH NATIONAL FORESTS

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 the Wilderness Study Report, Lone Peak Wilderness Study Area, Uinta and Wasatch National Forests, Utah. The Forest Service report number is USDA–FS–FES (Adm) R4–76–1.

The action analyzed by the final environmental statement is the result of the Lone Peak Wilderness study and designation of the Lone Peak Scenic Area of approximately 28,440 acres. The Lone Peak Scenic Area will be established by the Regional Forester under the authority of Title 36, Code of Federal Regulations, Section 294.1.

This final environmental statement was transmitted to CEQ on August 16, 1976.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, South Agriculture Bldg., Room 3230, 12th St. and Independence Ave., SW, Washington, D.C. 20250.

Wasatch National Forest, 4311 Federal Building, 125 South State Street, Salt Lake City, Utah 84138.

Regional Planning & Budget, USDA, Forest Service, Federal Building, Room 4408, Ogden, Utah 84401.

Salt Lake Ranger District, USDA, Forest Service 3070 East 33rd South, Salt Lake City, Utah 84109.

A limited number of single copies are available upon request to Forest Supervisor Chandler P. St. John, Wasatch National Forest, 8226 Federal Building, 125 South State Street, Salt Lake City, Utah 84138, or Acting Forest Supervisor Gordon A. Colby, Uinta National Forest, 88 West 100 North, Provo, Utah 84601.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ Guidelines.

AUGUST 16, 1976.

P. M. REES,
Director,
Regional Planning and Budget.

[FR Doc.76-24584 Filed 8-20-76;8:45 am]

Office of the Secretary

ADVISORY COMMITTEE ON FOREIGN ANIMAL DISEASES

Determination

Notice is hereby given that the Secretary of Agriculture intends to reestablish an Advisory Committee on Foreign Animal Diseases for a 2-year period. The Secretary has determined that establishment of the Committee is in the public interest in connection with duties imposed on the Department by law.

The purpose of the Committee will be to advise the Secretary regarding program operations and measures to prevent, suppress, control or eradicate an outbreak of foot-and-mouth disease or other destructive foreign animal diseases in the event such diseases should enter the United States. The economic consequences of such outbreaks could have disastrous effects on all segments of the public because of ever-changing methods of livestock production and distribution. The Chairman of the Committee will be the Assistant Secretary for Marketing and Consumer Services, United States Department of Agriculture, Washington, DC 20250. Plans are for the Committee to meet annually.

This notice is given in compliance with the Federal Advisory Committee Act (Pub. L. 92–463). Views and comments of interested persons may be submitted to the Administrator, Animal and Plant Health Inspection Service, Room 316–E, United States Department of Agriculture, Washington, D.C. until September 7, 1976. Such comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

Dated: August 18, 1976.

J. PAUL BOLDUC,
Assistant Secretary for Administration.

[FR Doc.76-24674 Filed 8-20-76;8:45 am]

ANIMAL AND PLANT HEALTH INSPECTION SERVICE CONSUMER ADVISORY COMMITTEE

Determination

Notice is hereby given that the Secretary of Agriculture intends to establish an Animal and Plant Health Inspection Service (APHIS) Consumer Advisory Committee for a two-year period. The Secretary has determined that establishment of the Committee is in the public interest in connection with duties imposed on APHIS by law.

The laws governing the programs of APHIS are for the purposes of protecting livestock and poultry health; protecting crop production against plant pests and diseases; assuring the humane treatment of certain classes of animals; and assuring that meat and poultry food products are wholesome, safe for human consumption, and truthfully and informatively labeled.

The purpose of the Committee will be to provide a forum for the expression of views of persons qualified to represent consumers when changes are being considered in policies and procedures of APHIS. The Committee will have a balanced membership of persons representing consumer interests from all sections of the United States.

The Chairman of the Committee will be the Assistant Secretary for Marketing and Consumer Services, United States Department of Agriculture, Washington, D.C. 20250. Plans are for the Committee to meet at least three times annually.

This notice is given in compliance with the Federal Advisory Committee Act (Pub. L. 92–463). Views and comments of interested persons may be submitted to the Administrator, APHIS, Room 316–E, United States Department of Agriculture, Washington, D.C. 20250 until September 7, 1976. Such comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

Dated: August 18, 1976.

J. PAUL BOLDUC,
Assistant Secretary for Administration.

[FR Doc.76-24675 Filed 8-20-76;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

[File No. 22(74)-4 Case No. 504]

PATRICK HUGHES, ET AL.

Order Denying Export Privileges

In the Matter of Patrick Hughes, Dukerswell Engineering Ltd., Instrument

Maintenance Services, Mobile Maintenance Services, 20 St. Lukes Avenue, Maidstone, Kent ME145AN, England, Respondents.

Pursuant to orders appearing in 30 F.R. 2687 (March 3, 1965), 32 F.R. 15646 (November 10, 1967) and 33 F.R. 3653 (March 1, 1968), respondents were denied all export privileges for an indefinite period for failure to furnish answers to interrogatories and to produce certain records or as related parties to Dukerswell. By letter dated May 21, 1976, Patrick Hughes and Mobile Maintenance Services were charged by the Director, Compliance Division, Office of Export Administration with violations of the Export Administration Act of 1949, as amended and supplemented, 15 U.S.C. App. § 2401 *et seq.*, and the regulations thereunder. Charges were made that the parties had violated the terms of the denial order and, on not less than eight occasions, had negotiated and purchased U.S. equipment. The charging letter was duly served upon respondents, however, they did not answer and are now in default.

The case was referred to the Hearing Commisioner pursuant to the authority of 15 CFR 388.4. He found that the failure to reply to the charges is deemed as confession of the truth thereof, i.e., the parties did violate the express terms of the prior denial orders. He recommended that a further denial order be issued against the respondents to deny them all export privileges in commodities requiring validated licenses for a period of five years.

I find the facts are as stated by the Hearing Commissioner and I accept his recommendation. I find that an order denying export privileges for a reasonable period of time is necessary to protect the public interest and to achieve effective enforcement of the Export Control Act of 1949. Therefore, pursuant to the authority of that Act and the Export Administration Regulations, 15 CFR 387.1, 388.1, it is:

ORDERED

(1) Except as otherwise specifically excepted herein or as otherwise expressly authorized, respondents are hereby denied all privileges or participating directly or indirectly, for a period ending May 31, 1981, in any manner or capacity, in any transaction involving export of U.S. commodities requiring a validated export license.

(2) The denial of export privileges shall extend to the respondents, their agents, employees and to any successor and to any person, firm, corporation, partnership, or other business organization with which respondents now or hereafter may be related by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade of related services.

(3) During the time when respondents are denied export privileges, no person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Bureau of East-West Trade, shall do any of the above-mentioned acts, directly or indirectly or carry on negotiations with respect thereto in any manner or capacity, on behalf, or in any association with respondents or whereby respondents may obtain any benefit therefrom, or have any interest or participation therein directly or indirectly. The prohiibtions of this paragraph are restricted to transactions subject to validated license controls.

This supersedes the orders of 1965, 1967 and 1968, *supra*.

RAUER H. MEYER,
Office of
Export Administration.

Dated: August 3, 1976.

[FR Doc. 76-24585; Filed 8-20-76; 8:45 am]

[File No. 23-577]

PORN AND DUNWOODY, LTD.

Export Privileges Restored

In the matter of Porn & Dunwoody, Ltd., Union Works, Bear Gardens, London, SE1 9EB, Respondent.

Written interrogatories were directed to respondent in connection with unauthorized diversions, which occurred in 1957, of diesel engine parts and roller bearings. Respondent failed to answer. Accordingly, pursuant to the authority of the export regulations, 15 CFR 388.15 (previously 382.15), respondent, by Order appearing in 24 F.R. 8683 (October 27, 1959), was denied all United States export privileges. The Order provided that it would remain in effect until reply was made or adequate reasons given for failure to respond.

Respondent now appears and petitions for restoration of export privileges and for full access to U.S. commodities. Respondent explains its failure to reply to the interrogatories resulted because of the termination of employment of its then managing director, now deceased. Respondent states that company employees cannot recall any details of the matter.

The Director, Compliance Division, reports respondent is not presently suspect of violating the Export Administration Regulations and is not known to have violated the terms of the denial order.

The Hearing Commissioner, in view of the Compliance Division's report, recommends respondent be restored to full export privileges and access to U.S. commodities.

I have examined the report and recommendations of the Commissioner. The record fails to disclose any adverse report. Respondent is not presently suspect in connection with any violation of the United States export laws or the Export Administration Regulations. It is fair, fitting and proper that one who manifests intention of continued compliance with the export regulations, be restored to full export privileges. Restoration to full access to American commodities is in accord with the purpose and intent of the law, the regulations and the policies of this Department. Therefore, it is

ORDERED

Porn and Dunwoody, Ltd., is unconditionally restored to all United States export privileges.

Dated: August 16, 1976.

RAUER H. MEYER,
Director, Office of
Export Administration.

[FR Doc.76-24586 Filed 8-20-76;8:45 am]

[Department Organization Order 10-4: Amdt. 2]

Domestic and International Business Administration

FOREIGN AVAILABILITY SUBCOMMITTEE OF THE COMPUTER SYSTEMS TECHNICAL ADVISORY COMMITTEE

Partially Closed Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. IV, 1974), notice is hereby given that a meeting of the Foreign Availability Subcommittee of the Computer Systems Technical Advisory Committee will be held on Tuesday, September 14, 1976, at 1:00 p.m. in Room 1096, Main Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, the Acting Assistant Secretary for Administration approved the recharter and extension of the Committee for two additional years, pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act. The Foreign Availability Subcommittee of the Computer Systems Technical Advisory Committee was established on July 8, 1975, with the approval of the Director, Office of Export Administration, pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration, Bureau of East-West Trade, with respect to questions involving technical matters, world-wide availability and actual utilization of production and technology, and licensing procedures which may affect the level of export controls applicable to computer systems, including technical data related thereto, and including those whose export is subject to multilateral (COCOM) controls. The Foreign Availability Subcommittee was formed to ascertain if certain kinds of equipment are available in non-COCOM and Communist bloc countries, and if such equipment is available, then to ascertain if it is technically the same or similar to that available elsewhere.

The Subcommittee meeting agenda has four parts:

GENERAL SESSION

(1) Opening remarks by the Subcommittee Chairman.

(2) Presentation of papers or comments by the public.

(3) Further review of technical evaluations on foreign availability provided by industry/government and discussion thereof.

EXECUTIVE SESSION

(4) Discussion of matters properly classified under Executive Order 11652, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting is open to the public, at which a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

With respect to agenda item (4), the Acting Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on November 25, 1975, pursuant to Section 10(d) of the Federal Advisory Committee Act that the matters to be discussed in the Executive Session should be exempt from the provisions of the Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552 (b)(1), i.e., it is specifically required by Executive Order 11652 that they be kept confidential in the interest of the national security. All materials to be reviewed and discussed by the Subcommittee during the Executive Session of the meeting have been properly classified under the Executive Order. All Subcommittee members have appropriate security clearances.

Copies of the minutes of the open portion of the meeting will be available upon written request addressed to the Freedom of Information Officer, Domestic and International Business Administration, Room 3100, U.S. Department of Commerce, Washington, D.C. 20230.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Domestic and International Business Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202-377-4196.

The complete Notice of Determination to close portions of the series of meetings of the Computer Systems Technical Advisory Committee and of any subcommittees thereof, was published in the FEDERAL REGISTER on December 5, 1975 (40 FR 56960).

Dated: August 17, 1976.

LAWRENCE J. BRADY,
Acting Director, Office of Export Administration, Bureau of East-West Trade, U.S. Department of Commerce.

[FR Doc.76-24687 Filed 8-20-76;8:45 am]

Maritime Administration

CONSTRUCTION OF 125,000 CUBIC METER LIQUEFIED NATURAL GAS (LNG) VESSELS MA DESIGN LG8-S-102a

Recomputation of Foreign Cost; Amended Notice of Intent

In Doc. No. 76-2419 appearing in the FEDERAL REGISTER on July 23, 1976 (41 F.R. 30375) Notice was 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 recompute the estimated foreign cost of construction of 125,000 cubic meter liquefied natural gas (LNG) vessels, MA Design LG8-S-102a, in view of the occurrence of a significant change in shipbuilding market conditions since the previous determination of estimated foreign cost was made.

Upon request of interested parties, good cause having been shown, the time for filing written statements with respect to said Notice is hereby extended to close of business on September 22, 1976.

Dated: August 18, 1976.

By Order of the Maritime Subsidy Board, Maritime Administration.

ROBERT J. PATTON, Jr.,
Assistant Secretary.

[FR Doc.76-24688 Filed 8-20-76;8:45 am]

[Docket No. S-506]

AMERICAN PRESIDENT LINES, LTD., SECTION 805(A) REQUEST ON ATLANTIC/STRAITS SERVICE

Prehearing Conference Memorandum of Bulk Food Carriers, Inc.[1]

Responsive to the Notice of Prehearing Conference issued July 7, 1976, and pursuant to leave granted in the Ruling On Petition For Leave To Intervene, issued by the Administrative Law Judge on August 11, 1976, intervener, Bulk Food Carriers, Inc. ("BFC") hereby respectfully submits its prehearing conference memorandum in this proceeding.

I. BFC's STATEMENT OF THE ISSUES

It is BFC's position that this proceeding raises the following issues within the purview of Section 805(a) of the Merchant Marine Act of 1936 (46 U.S.C. 1223):

A. Will the granting of this application result in unfair competition to BFC, a corporation operating exclusively in the intercoastal service?

B. Will the granting of this application be prejudicial to the objects and policy of the Act?

II. BFC's POSITION

BFC opposes the granting of a Section 805(a) waiver to applicant, American President Lines, Ltd. ("APL") unless the proposed intercostal operations of APL are appropriately restricted to preclude operations competitive with those of BFC. The latter has devoted considerable effort to providing needed service in the intercostal trade, which in recent years, has declined sharply with the abandonment of operations by numerous carriers. It would be both unfair and contrary to the public interest to subject BFC to the competition of a subsidized carrier.

III. PROSPECTIVE NUMBER OF BFC WITNESSES

It is BFC's present intention to present one witness who will descripe BFC's present and proposed domestic operations, the history and development of the company, and its present financial posture.

IV. SUGGESTED PLACE AND SCHEDULE FOR HEARING

BFC would prefer to reserve discussion of time and place of hearing until the prehearing conference but will undertake to cooperate fully in accommodating the convenience of the parties.

V. REQUESTS FOR DISCOVERY

BFC concurs in and adopts the requests for discovery of Sea-Land Service, Inc. In addition, inasmuch as BFC does not have access to the discovery responses of APL in Docket No. S-417, it is requested that APL furnish copies of such responses to the extent that the information contained therein is not included in or replaced by more current information furnished in response to the discovery requests in this proceeding.

VI. PRELIMINARY MOTIONS

BFC has no preliminary motions. It does, however, propose a stipulation which, if accepted by the parties and the Board, will satisfy BFC's interest in this proceeding. BFC proposes that APL stipulate that any waiver granted herein be restricted to the intercoastal transportation of cargo in containers in vessels that are exclusively designed and operated as containerships.

Respectfully submitted,

J. RAYMOND CLARK,
Attorney for Bulk Food Carriers, Inc.

[FR Doc.76-24686 Filed 8-20-76;8:45 am]

[1] Certificate of service filed as part of original document.

Office of the Secretary

COMMERCE TECHNICAL ADVISORY BOARD

Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. IV 1974), notice is hereby given that the Commerce Technical Advisory Board will hold a meeting on Wednesday, September 22, 1976, from 9 a.m. to 5 p.m. and Thursday, September 23, from 8:30 a.m. to 12 m. in Room 6802 of the Main Department of Commerce Building, 14th and E Streets, NW., Washington, D.C.

The Board was established to study and evaluate the technical activities of the Department of Commerce and recommend measures to increase their value to the business community. The agenda for the meeting is as follows:

WEDNESDAY, SEPTEMBER 22, 1976

9 a.m. to 12:00 m. Morning session.
Opening remarks by Assistant Secretary Ancker-Johnson.
Technology policy issue paper draft review and critique.
12 m to 1 p.m. Lunch.
1 p.m. to 5 p.m. Afternoon session.
Technology policy issue paper draft (continued).
Report of the export administration subcommittee of the President's export council re. East-West trade technology controls.
CTAB panel on energy policy, status report.

THURSDAY, SEPTEMBER 23, 1976

8:30 a.m. to 12 m.
CTAB plans for the 1976–77 year.
12 m. Adjournment.

The meeting will be conducted in a manner to facilitate the orderly flow of business. Practical considerations may dictate alterations in the above agenda or schedule.

The meeting will be open to public observation. The public may submit written statements or inquiries to the Chairman before or after the meeting. Such communications shall be directly relevant to the above agenda items. Only comments and questions from members of the Board, DOC officials and invited participants will be entertained at the meeting. A limited number of seats will be available to the public and to the press on a first-come first-serve basis.

Copies of minutes or tape and materials distributed will be made available for reproduction, following certification by the Chairman, in accordance with the Federal Advisory Committee Act, at the U.S. Department of Commerce Central Reference and Inspection Facility, Washington, D.C. 20230.

Further information may be obtained from Frank Cacciapaglia, Jr., Executive Director, CTAB, Room 3877, U.S. Department of Commerce, Washington, D.C. 20230; telephone (202) 377–4595 after September 6, 1976.

Dated: August 17, 1976.

BETSY ANCKER-JOHNSON,
Assistant Secretary for Science and Technology.

[FR Doc.76–24672 Filed 8–20–76;8:45 am]

ASSISTANT SECRETARY FOR ECONOMIC DEVELOPMENT

Delegation of Authority

This order effective August 19, 1976 further amends the materials appearing at 40 FR 56702 of December 4, 1975 and of 40 FR 58878 of December 19, 1975.

Department Organization Order 10–4 of September 30, 1975, is hereby amended as shown below. The purpose of this amendment is to delegate the authority of the Secretary to administer Title I of the Public Works Employment Act of 1976, P.L. 94–369, to the Assistant Secretary for Economic Development (subparagraphs 4.01g. and 5.o.).

1. In section 4. Delegation of authority. A new subparagraph .01g. is added to read as follows:

"g. The Local Public Works Capital Development and Investment Act of 1976, which is Title I of the Public Works Employment Act of 1976 (Public Law 94–369, 42 U.S.C. 6701 et seq.)".

2. In section 5. General functions. a. A new subparagraph o. is added to read as follows:

"o. Assure the adequate and effective administration of Title I of the Public Works Employment Act of 1976, including the monitoring and servicing of grants."

b. In pen and ink reletter the current subparagraph o. as p.

JOSEPH E. KASPUTYS,
Assistant Secretary for Administration.

[FR Doc.76–24756 Filed 8–20–76;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Federal Council on the Aging

MEETING

The Federal Council on the Aging was established by the 1973 amendments to the Older Americans Act of 1965 (Pub. L. 93–29) for the purpose of advising the President, the Secretary of Health, Education, and Welfare, the Commissioner on Aging, and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to Pub. L. 92–463 that the Council will hold a regular quarterly meeting on September 13 and 14, 1976, from 9:30 a.m. to 5 p.m. in Room 4559 Donohoe Building, 400 Sixth Street, S.W., Washington, D.C. The agenda will consist of: President's response to FCA annual report and studies; Status of assets project; Recommendation for HUD assistance to minority housing sponsors; Response of aging agency network to Bicentennial Charter; Critique of 1971 White House Conference on Aging recommendations; Review of recommendations for services to the frail elderly; Status of Federal aging research plan; Status of FCA health manpower project; FCA project on older women; Review of Federal home health initiatives and FCA position on National Meals on Wheels legislative proposals.

This meeting will be open for public observation.

Further information on the Council may be obtained from: Cleonice Tavani, Executive Director, Federal Council on the Aging, Washington, D.C. 20201, telephone: (202) 245–0441.

CLEONICE TAVANI,
Executive Director, Federal Council on the Aging.

AUGUST 17, 1976.

[FR Doc.76–24580 Filed 8–20–76;8:45 am]

Food and Drug Administration

ADVISORY COMMITTEES

Meetings

This notice announces forthcoming meetings of the public advisory committees of the Food and Drug Administration. It also sets out a summary of the procedures governing the committee meetings and the methods by which interested persons may participate in the open public hearings conducted by the committees. The notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)). The following advisory committee meetings are announced:

Committee name	Date, time, and place	Type of meeting and contact person
1. Panel on Review of Gastroenterological and Urological Devices and its following subcommittees: Implants Subcommittee, Dialysis Devices Subcommittee, High Frequency Surgical Devices Subcommittee, and the Endoscope/Surgical Devices Subcommittee.	Sept. 26 and 27, 8 a.m., Captain's Room, Channel Inn Motel, 650 Water St. SW., Washington, D.C.	Open public hearing, Sept. 26, 8 a.m. to 9 a.m.; open committee discussion, Sept. 26, 9 a.m. to 5 p.m.; open public hearing, Sept. 27, 8 a.m. to 9 a.m.; open committee discussion, Sept. 27, 9 a.m. to 5 p.m.; Thomas L. Anderson, M.D. (HFK–460), 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7238.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons are encouraged to present information pertinent to the following list of devices to Thomas L. Anderson, M.D., executive secretary. Submission of data relative to tentative classification findings is also invited.

Open committee discussion—Implants Subcommittee (September 26, 9 a.m. to 12 m.). Discussion of the following devices: (1) Electrical implants: bladder pacemaker; electrical stimulator for incontinence. (2) Non-electrical implants: mechanical/hydraulic impotence devices; mechanical/hydraulic incontinence device; mesh steel; penile implants; prosthetic urethral sphincter; testicular implants; ureteral replacement; ureteral splints; ureterovesicle valves; urethral replacement; vas deferans implants. (3) Urine collecting devices: leg bag; ileostomy; ureterostomy; urosheath types incontinence devices. (4) Suprapubic drainage devices: malecot catheters; suprapubic catheters and tubes. (5) Surgical instruments: clips for suturing apparatus. (6) Intestinal (X-ray opaque) tubes: gastroenterostomy tube; ureteral catheters and accessories; ureteral catheters. (7) Urethral catheters: coude catheter; retention type catheter.

Dialysis Devices Subcommittee (September 26, 1 p.m. to 5 p.m.). Discussion of the following devices: (1) Blood circuit components: A–V shunt cannula; fistula needle; dialysis intracath, single needle dialyzer set; blood tubing set with and without anti-regurgitation valve. (2) Dialysate circuit components; proportioning subsystem. (3) Dialysate delivery systems: central multiple patient system; recirculating system; recirculating single pass system; sealed system; single pass system; single patient system; sorbent regenerated system. (4) Dialyzers: hollow fiber capillary dialyzer; disposable dialyzer; parallel flow dialyzer; single coil dialyzer; twin coil dialyzer. (5) Peritoneal devices: disposable single-use catheter; long term indwelling catheter; sorbent hemoperfusion apparatus; peritoneal automatic delivery system.

High Frequency Surgical Devices Subcommittee (September 27, 9 a.m. to 11 a.m.). Discussion of the following devices: (1) Electrosurgical units and accessories: flexible suction coagulator electrode; electrosurgical alarm systems; active electrosurgical electrodes; electrosurgical unit; solid state cautery devices; solid state coagulating devices. (2) Electric stone removal: electric bladder stone tripsors; high voltage stone fractionators. (3) Transurethral surgical instruments: electrodes; patient plates; resectoscope; transurethral disccators; tur loops; working element of resectoscope. (4) Ultrasound equipment: ultrasonic stone crusher.

Endoscopes/Surgical Devices Subcommittee (September 27, 12 m. to 5 p.m.). Discussion of the following devices: (1) Diagnostic light sources: routine fiberoptic light source. (2) Endoscopic equipment: diagnostic cystoscope; panendoscope (gastroduodenoscope); panendoscope (urethroscope). (3) Pressure and flow rate measuring devices: air cystometric device. (4) Physiologic function monitors: electrical recording cystometer; mechanical urinometer; urometer. (5) Surgical instruments: stomach and intestinal suturing apparatus. (6) Transabdominal instruments: automatic pneumoperitoneum apparatus. (7) Transurethral cryosurgical instruments: carbon dioxide delivery system; cryoprobe for carbon dioxide delivery system; cryoprobe for carbon dioxide monitering system; cryoprobe for liquid nitrogen delivery system; cryoprobe for liquid nitrogen monitoring system liquid nitrogen delivery system; liquid nitrogen monitoring system. (8) Accessory therapeutic devices: disposable urological drapes; sheets. (9) Intraluminal therapy: hemostatic bag; endomagnetic retriever.

Committee name	Date, time, and place	Type of meeting and contact person
2. Gastrointestinal Drugs Advisory Committee.	Sept. 27 and 28, 9:30 a.m. (Sept. 28), Conference Rm. A, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.	Closed committee deliberations, Sept. 27, 9:30 a.m. to 12:30 p.m.; open committee discussion, Sept. 27, 1:30 p.m. to 4:30 p.m.; open public hearing, Sept. 28, 9:30 a.m. to 10:30 a.m.; open committee discussion, Sept. 28, 10:30 a.m. to 12:30 p.m.; Joan C. Standaert (HFD–110), 5600 Fishers Lane, Rockville, MD 20852, 301–443–4730.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drugs for use in gastrointestinal diseases.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion of Carbex and issues for future consideration relative to hepatotoxicity.

Closed committee deliberations. Discussion of Metoclopramide (Reglan) NDA 17–854 and NDA 17–862. This portion of the meeting will be closed to permit discussion of trade secret data, to protect the free exchange of internal views, and to avoid undue interference with committee activities (5 U.S.C. 552(b) (4) and (5)).

Committee name	Date, time, and place	Type of meeting and contact person
3. Panel on Review of Ear, Nose, and Throat Devices.	Sept. 27 and 28, 9 a.m., Rm. 1409, FB–8, 200 C St. SW., Washington, D.C.	Open public hearing, Sept. 27, 9 a.m. to 10 a.m.; open committee discussion, Sept. 27, 10 a.m. to 4:30 p.m.; open committee discussion, Sept. 28, 9 a.m. to 4:30 p.m.; Harry R. Sauberman, P.E. (HFK–450), 8757 Georgia Ave., Silver Spring, Md. 20910, 301–427–7226.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons are encouraged to present information pertinent to devices to be classified at this meeting to Harry R. Sauberman, P.E., executive secretary. Submission of data relative to tentative classification findings is also invited.

Open committee discussion. Review of panel comments on procedures handbook for advisory panel members and executive secretaries. Review of provisions of medical device bill applicable to classification activities. Completion and review of supplementary classification data sheets for the following devices: Hearing aids; auditory impedance testers; audiometers; group hearing aids and auditory trainers; electrocochleographic devices; auditory evoked-response systems; nystagmographs; facial nerve stimulators; caloric irrigation baths; transdermal stimulators; antichoke devices (tongs and suction); columella; nasal struts; septal implants; gelfoam; silastic implant material; tantalum prosthesis wire; teflon implant material; esophageal tubes; esophageal prosthesis; stainless steel ear tubes (middle ear); polymer ear tubes (middle ear); multiple material ear tubes (middle ear); metal ossicular replacement; polymer ossicular replacement; multiple material ossicular replacement; sacculotomy tacks; cochlear implants.

As time is available, the panel will also complete supplementary data sheets for the following devices: Acoustic chambers; air conduction transducers; bone conduction transducers; hearing trumpets; mechanical noise generators; sisi adaptors; tuning forks; gustometers; nasomanometers; Toynbee diagnostic tubes; transilluminators; cuspidors; powered ENT examining/treatment chairs; ENT examining/treatment tables; ENT treatment units; oral lavage units; polymer middle earmold; otoplasty prosthesis; rhinoplasty prosthesis; cutting blocks; gelfoam punch; ossicular finger vise; piston cutting jigs; wire bending die; wire closure forceps; wire crimpers; wire cutting scissors.

Committee name	Date, time, and place	Type of meeting and contact person
4. Panel on Review of Obstetrical and Gynecological Devices.	Sept. 27 and 28, 9 a.m., Rm. 6821, FB-8, 200 C St. SW., Washington, DC.	Open public hearing, Sept. 27, 9 a.m. to 10 a.m.; open committee discussion, Sept. 27, 10 a.m. to 4 p.m. open public hearing, Sept. 28, 9 a.m. to 10 a.m. open committee, discussion, Sept. 28, 10 a.m. to 3 p.m.; Lillian Yin, Ph. D. (HFK-470), 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7238.

General function of the committee: Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons are encouraged to present information pertinent to the devices listed below to Lillian Yin, Ph. D., executive secretary. Submission of data relative to tentative classification findngs is also invted. On September 28, John B. Josimovich, M.D., will speak on patterns of infection with IUD use.

Open committee discussion: The panel will review classification of the following devices: Colpomicroscopes; colposcopes; pelvimeters; gyn biopsy forceps; cervical cytological spatula; fetoscopes (stethoscopic); aminiotomes; vaginal applicators; uterine insufflation cannula and accessories; circumcision clamps; umbilical clamps; uterine clamps; cleidoclast; lithotomy drape clips; cranioclasts; craniotribes; uterine curettes; expandable dilators; fixed size dilators; vaginal dilators; uterine elevators; gynecological-surgical forceps and acessories; obstetrical forceps and accessories; fibroid hooks; obstetrical-destructive hooks; cervical cone knives; cerclage needles; uterine packers; vaginal retractors; episiotomy scissors; umbilical scissors; fibroid screws; uterine sounds; vaginal/illuminated specula; vaginal/non-illuminated specula; uterine tenacula; menstrual cups; vaginal douche kits; vaginal insufflator; menstrual pads; nonpowered sitz bath kits; abdominal binders; breast binders; maternity and nursing brassieres; maternity girdles; breast pads; manual breast pump; breast shields; vaginal electrical stimulators; ovulation detectors; bladder support implants; perineometer. The panel will review the draft guidelines for preclinical and clinical studies for a product development protocol for IUD's prepared by the Conception Control Devices Subcommittee.

Committee name	Date, time, and place	Type of meeting and contact person
5. Panel on Review of Ophthalmic Devices.	Sept. 27 and 28, 9:30 a.m., Rm. 4131, HEW-N, 330 Independence Ave. SW., Washington, DC.	Open public hearing, Sept. 27, 9:30 a.m. to 10:30 a.m.; open committee discussion, Sept. 27, 10:30 a.m. to 4:30 p.m.; open public hearing Sept. 28, 9:30 a.m. to 10:30 a.m.; open committee discussion, Sept. 28, 10:30 a.m. to 4:30 p.m.; James G. Dillon, Ph. D. (HFK-470), 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7238.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons are encouraged to submit pertinent information in writing or to make an oral presentation to the panel. Any interested person who wishes to make a presentation should inform James Dillon, Ph. D., executive secretary, orally or in writing, prior to the meeting.

Open committee discussion. The panel will review clinical guidelines for the development of intraocular lenses. The panel, having completed classification of ophthalmic devices and having begun to summarize the reasons for the recommendations and identification of any risks to health that may be associated with the device, will continue with the summarization until it is completed.

Committee name	Date, time, and place	Type of meeting and contact person
6. Panel on Review of Topical Analgesics.	Sept. 27 and 28, 8 a.m. (Sept. 28), Hyatt Regency, 939 Ridge Lake Blvd., Memphis, TN.	Closed committee deliberations, Sept. 27, 11 a.m. to 7 p.m.; open public hearing, Sept. 28, 8 a.m. to 9 a.m.; closed committee deliberations, Sept. 28, 11 a.m. to 7 p.m.; Lee Geismar (HFD-510), 5600 Fishers Lane, Rockville, MD 20852, 301-443-4960.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Closed committee deliberations. The panel will review data submitted in confidence pursuant to the OTC review's call for data for this panel (see also 21 CFR 330.10(a)(2)). This will include product names, formulas and formulation process data, sales data, and in some cases, portions of pending or approved New Drug Applications. Also, discussions relating to labeling, drug class standards, and testing will often be intermixed with discussion of formulas, sales data, or NDA material in such a way that the two discussions often cannot be separated without seriously impeding the progress of the panel's deliberations.

The panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

This portion of the meeting will be closed to permit discussion of trade secret data and to avoid undue interference with the panel's continuing review and investigation of the ingredients included in OTC drug products (5 U.S.C. 552(b) (4) and (5)).

Committee name	Date, time, and place	Type of meeting and contact person
7. Dermatology Advisory Committee.	Sept. 30, 8:30 a.m., Conference Rm. F, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.	Open public hearing, 8:30 a.m. to 9:30 a.m.; closed presentation of data, 9:30 a.m. to 12 m.; open committee discussion, 1 p.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 5 p.m.; Mary K. Bruch (HFD-140), 5600 Fishers Lane, Rockville, MD 20852, 301-443-4310.

General function of the committee. Reviews and evaluates all available data concerning the safety and effectiveness of presently marketed and new prescription drug products proposed for marketing for use in the practice of dermatology.

Agenda—Open public hearing. Any interested persons may present data, information or views, orally or in writing, on issues pending before the committee.

Closed presentation of data. Review of Topicycline (NDA 50-493); presentations by Procter & Gamble and FDA reviewers. This portion of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552(b)(4)).

Open committee discussion. Discussion of Kwell, and review of guidelines for topical corticosteroids.

Closed committee deliberations. Discussion of subjects shown in open session above. This portion of the meeting will be closed to permit the free exchange of internal views and to avoid undue interference with agency operations (5 U.S.C. 552(b)(5)).

Committee name	Date, time, and place	Type of meeting and contact person
8. Panel on Review of Oral Cavity Drug Products.	Sept. 30 and Oct. 1, 9 a.m., Conference Rm. B, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.	Open public hearing, Sept. 30, 9 a.m. to 10 a.m.; closed committee deliberations, Sept. 30, 10 a.m. to 4:30 p.m., Oct. 1, 9 a.m. to 4:30 p.m.; John T. McElroy (HFD-510), 5600 Fishers Lane, Rockville, MD 20852, 301-443-4960.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Closed committee deliberations. The panel will review data submitted in confidence pursuant to the OTC review's call for data for this panel (see also 21 CFR 330.10(a)(2)). This will include product names, formulas and formulation process data, sales data and, in some cases, portions of pending or approved New Drug Applications. Also, discussions relating to labeling, drug class standards, and testing will often be intermixed with discussion of formulas, sales data, or NDA material in such a way that the two discussions often cannot be separated without seriously impeding the progress of the panel's deliberations.

The panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

This portion of the meeting will be closed to permit discussion of trade secret data and to avoid undue interference with the panel's continuing review and investigation of the ingredients included in OTC drug products (5 U.S.C. 552(b)(4) and (5)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this FEDERAL REGISTER notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the Advisory committee meetings so designated in this notice shall be closed. Both the Federal Advisory Committee Act and 5 U.S.C. 552(b) permit such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed shall, however, be closed for the shortest time possible consistent with the intent of the cited statutes.

Generally, FDA advisory committees will be closed because the subject matter is exempt from public disclosure under 5 U.S.C. 552(b)(4), (5), (6), or (7), although on occasion the other exemptions listed in 5 U.S.C. 552(b) may also apply. Thus, a portion of a meeting may be closed where the matter involves a trade secret; commercial or financial information that is privileged or confidential; personnel, medical, and similar files, disclosure of which could be an unwarranted invasion of personal privacy; and investigatory files compiled for law enforcement purposes. A portion of a meeting may also be closed if the Commissioner determines: (1) That it involves inter-agency or intra-agency memoranda or discussion and deliberations of matters that, if in writing would constitute such memoranda, and which would, therefore, be exempt from public disclosure; and (2) that it is essential to close such portion of a meeting to protect the free exchange of internal views and to avoid undue interference with agency or committee operations.

Examples of matters to be considered at closed portions are those related to the review, discussion, evaluation or ranking of grant applications; the review, discussion, and evaluation of specific drugs or devices; the deliberation and voting relative to the formation of specific regulatory recommendations (general discussion, however, will generally be done during the open committee discussion portion of the meeting); review of trade secrets or confidential data; consideration of matters involving FDA investigatory files; and review of medical records of individuals.

Examples of matters that ordinarily will be considered at open meetings are those related to the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices, consideration of labeling requirements for a class of marketed drugs and devices, review of data and information on specific investigational or marketed drugs and devices that have previously been made public, and presentation of any other data or information that is not exempt from public disclosure.

Dated: August 16, 1976.

SHERWIN GARDNER,
Acting Commissioner of Food and Drugs.

[FR Doc.76-24408 Filed 8-20-76;8:45 am]

Food and Drug Administration

BACTERIOLOGICAL ANALYTICAL MANUAL FOR FOODS

Availability

The Food and Drug Administration (FDA) announces the public availability of the recently revised and expanded fourth edition of the Bacteriological Analytical Manual for Foods (BAM).

The purpose of this edition of the BAM, like previous editions, is to provide FDA laboratories with effective methods for qualitative and quantitative detection of microorganisms and some of their metabolic products. No claim is made that these methods are permanent. However, these methods are currently considered to be the most useful to FDA in enforcing the provisions of the Federal Food, Drug, and Cosmetic Act.

The contents of the BAM include procedures for sampling, handling and preparing samples, and conducting microscopic examination and aerobic plate counts. The chapters deal with specific organisms such as coliforms, enterococci, *Salmonella* (cultural and fluorescent antibody methods), *Shigella, Vibrio parahaemolyticus, Vibrio cholerae, Staphylococcus aureus* and its enterotoxins, *Clostridium botulinum, Clostridium perfringens,* and *Bacillus cereus.*

The manual also includes methods for enumeration of yeasts and molds in foods, examination of sterilized or microbiologically stable milk products, direct microscopic examination of eggs, and the detection of penicillin and other microbial inhibitors in milk and milk products. Appendices cover culture media, reagents, diluents, stains and staining procedures, and most-probable-number tables.

The manual is available from the Association of Official Analytical Chemists (AOAC), Box 540, Benjamin Franklin Station, Washington, DC 20044. The cost is $10.00 per copy, including postage and handling. Supplements will be forwarded automatically to purchasers at no additional charge. It is anticipated that supplements dealing with the examination of canned foods and can seams will be available in the near future.

Dated: August 17, 1976.

JOSEPH P. HILE,
Acting Associate
Commissioner for Compliance.

[FR Doc.76-24576 Filed 8-20-76;8:45 am]

National Institutes of Health

STUDY SECTIONS

Meetings During October and November

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the following study sections for October and November 1976 and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to Study Section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in sections 552(b)(4), 552(b)(5) and 552(b)(6), Title 5 U.S. Code and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual initial pending, supplemental and renewal grant applications. The closed portions of the meetings involve solely the internal expression of views and judgments of study section members on individual applications which contain information of a proprietary or confidential nature, including detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications.

Mr. Richard Turlington, Chief, Grants Inquiries Office of the Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20014, telephone area code 301-496-7441 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each Executive Secretary whose name, room number, and telephone number are listed below each study section. Anyone planning to attend a meeting should contact the Executive Secretary to confirm the exact meeting time.

Study section	October-November 1976 meetings	Time	Location
Allergy and Immunology, Dr. Mischa E. Friedman, Rm. 320, Tel. 301-496-7380.	Nov. 4-6	8:45	Holiday Inn, Chevy Chase, Md.
Applied Physiology and Bioengineering, Mrs. Been E. Stewart, Rm. 318, Tel. 301-496-7581.	Oct. 28-30	8:30	Building 31, Bethesda, Md.
Bacteriology and Mycology, Dr. Milton Gordon, Rm. A-27, Tel. 301-496-7340.	Oct. 28-30	8:30	Holiday Inn, Chevy Chase, Md.
Biochemistry, Dr. Adolphus P. Toliver, Rm. 350, Tel. 301-496-7516.	Nov. 10-13	9:00	Holiday Inn, Bethesda, Md.
Biophysics and Biophysical Chemistry A, Dr. Irvin Fuhr, Rm. 4A-09, Tel. 301-496-7060.	Nov. 5-7	9:00	Mayflower Hotel, Washington, D.C.
Biophysics and Biophysical Chemistry B, Dr. John B. Wolff, Rm. 4A-07, Tel. 301-496-7070.	Oct. 28-30	8:30	Kenwood Country Club, Bethesda, Md.
Cardiovascular and Pulmonary, Dr. Vincent J. Cairoli, Rm. 339, Tel. 301-496-7901.	Oct. 27-30	8:30	Holiday Inn, Bethesda, Md.
Cardiovascular and Renal, Dr. Floyd O. Atchley, Rm. 339, Tel. 301-496-7901.	Nov. 3-6	8:30	Do.
Cell Biology, Dr. Evelyn A. Horenstein, Rm. 4A-04, Tel. 301-496-7029.	Nov. 11-13	8:30	Holiday Inn, Chevy Chase, Md.
Communicative Sciences, Mr. Frederick J. Gutter, Rm. 321, Tel. 301-496-7550.	Oct. 27-29	8:30	Building 31, Bethesda, Md.
Computer and Biomathematical Sciences, Dr. Bernice S. Lipkin, Rm. 310, Tel. 301-496-7568.	Nov. 10-12	9:00	Executive House, Washington, D.C.
Developmental Behavioral Sciences, Dr. Bertie H. R. Woolf, Rm. 4A-10, Tel. 301-496-7471.	Nov. 3-5	9:00	Mayflower Hotel, Washington, D.C.
Endocrinology, Mr. Morris M. Graff, Rm. 333, Tel. 301-496-7346.	Oct. 18-21	7:00	Sheraton Inn, Silver Spring, Md.
Epidemiology and Disease Control, Mr. Glenn G. Lamson, Jr., Rm. 4A-11, Tel. 301-496-7224.	Nov. 3-5	8:30	Building 31, Bethesda, Md.
Experimental Psychology, Dr. A. Keith Murray, Rm. 220, Tel. 301-496-7004.	Nov. 2-4	9:00	Quality Inn, Silver Spring, Md.
Experimental Therapeutics, Dr. Anne R. Bourke, Rm. 319, Tel. 301-496-7839.	Oct. 21-23	8:30	Kenwood Country Club, Bethesda, Md.
Experimental Virology, Dr. Eugene Zebovitz, Rm. 206, Tel. 301-496-7474.	Nov. 15-17	8:30	Building 31, Bethesda, Md.
General Medicine A, Dr. Harold M. Davidson, Rm. 354, Tel. 301-496-7797.	Nov. 8-10	9:00	Do.
General Medicine B, Dr. William F. Davis, Jr., Rm. 322, Tel. 301-496-7730.	Nov. 4-6	9:00	Embassy Row Hotel, Washington, D.C.
Genetics, Dr. Katherine S. Wilson, Rm. 349, Tel. 301-496-7271.	Nov 4-6	9:00	Building 31, Bethesda, Md.
Hematology, Dr. Joseph E. Hayes, Jr., Rm. 355, Tel. 301-496-7508.	Nov. 18-20	9:00	Holiday Inn, Chevy Chase, Md.
Human Embryology and Development, Dr. Samuel Moss, Rm. 221, Tel. 301-496-7597.	Oct. 28-30	9:00	Building 31, Bethesda, Md.
Immunobiology, Dr. James H. Turner, Rm. A-25, Tel. 301-496-7780.	Nov. 3-5	9:00	Kenwood Country Club, Bethesda, Md.
Immunological Sciences, Dr. Lottie Kornfeld, Rm. A-26, Tel. 301-496-7179.	Nov. 15-17	9:00	Building 31, Bethesda, Md.
Medicinal Chemistry A, Dr. Asher A. Hyatt, Rm. 222, Tel. 301-496-7286.	Nov. 4-7	9:00	Hyatt Regency Washington, Washington, D.C.
Medicinal Chemistry B, Dr. Richard P. Bratzel, Rm. 222, Tel. 301-496-7286.	Nov. 18-20	9:00	Kenwood Country Club, Bethesda, Md.
Metabolism, Dr. Robert M. Leonard, Rm. 218, Tel. 301-496-7091.	Nov. 4-6	8:30	Building 31, Bethesda, Md.
Microbial Chemistry, Dr. Gustave Silber, Rm. 357, Tel. 301-496-7130.	Nov. 4-6	8:30	Embassy Row Hotel, Washington, D.C.
Molecular Biology, Dr. Donald T. Disque, Rm. 328, Tel. 301-496-7830.	Oct. 28-30	8:30	Connecticut Inn Motel, Washington, D.C.
Molecular Cytology, Dr. Wendell H. Kyle, Rm. 325, Tel. 301-496-7149.	Nov. 4-6	8:30	Building 31, Bethesda, Md.
Neurology A, Dr. William E. Morris, Rm. 326, Tel. 301-496-7095.	Nov. 10-13	9:00	Do.
Neurology B, Dr. Willard L. McFarland, Rm. 2A-10, Tel. 301-496-7422.	Oct. 21-23	8:00	Embassy Row Hotel, Washington, D.C.
Nutrition, Dr. John R. Schubert, Rm. 204, Tel. 301-496-7178.	Nov. 3-5	8:30	Holiday Inn, Bethesda, Md.
Oral Biology and Medicine, Dr. Thomas M. Tarpley, Jr., Rm. 4A-03, Tel. 301-496-7818.	Oct. 26-29	9:00	Building 31, Bethesda, Md.
Pathobiological Chemistry, Dr. J. Sri Ram, Rm. 206, Tel. 301-496-7432.	Nov. 3-8	9:00	Do.
Pathology A, Dr. William B. Savchuck, Rm. 337, Tel. 301-496-7305.	Oct. 27-29	8:30	Sheraton Inn, Silver Spring, Md.
Pathology B, Mrs. Barbara S. Bynum, Rm. 352, Tel. 301-496-7244.	Nov. 3-5	8:30	Holiday Inn, Chevy Chase, Md.
Pharmacology, Dr. Joseph A. Kaiser, Rm. 334, Tel. 301-496-7408.	Oct. 26-28	8:30	Georgetown Inn, Washington, D.C.
Physiological Chemistry, Dr. Robert L. Ingram, Rm. 338, Tel. 301-496-7837.	Nov. 11-13	9:00	Building 31, Bethesda, Md.
Physiology, Dr. Clara E. Hamilton, Rm. 219, Tel. 301-496-7878.	Nov. 4-6	9:00	Do.
Population Research, Miss Carol A. Campbell, Rm. 210, Tel. 301-496-7140.	Nov. 5-7	9:00	Dupont Plaza Hotel, Washington, D.C.
Radiation, Dr. Robert L. Straube, Rm. 309, Tel. 301-496-7510.	Nov. 1-3	8:30	Building 31, Bethesda, Md.
Reproductive Biology, Dr. Dharam S. Dhindsa, Rm. 307, Tel. 301-496-7318.	Nov. 3-6	8:30	Holiday Inn, Bethesda, Md.
Surgery A, Dr. Raymond J. Helvig, Rm. 336, Tel. 301-496-7771.	Oct. 28-30	8:30	Holiday Inn, Chevy Chase, Md.

Study section	October–November 1976 meetings	Time	Location
Surgery B, Dr. Joe W. Atkinson, Rm. 348, Tel. 301-496-7506.	Oct. 28-30.....	8:30	Do.
Toxicology, Dr. Rob S. McCutcheon, Rm. 226, Tel. 301-496-7570.	Oct. 28-30.....	8:30	Holiday Inn, Bethesda, Md.
Tropical Medicine and Parasitology, Dr. Betty June Myers, Rm. 319, Tel. 301-496-7494.	Oct. 30 to Nov. 1.	9:00	University City Holiday Inn, Philadelphia, Pa.
Virology, Dr. Claire H. Winestock, Rm. 340, Tel. 301-496-7128.	Oct. 28-30.....	8:30	Building 31, Bethesda, Md.
Visual Sciences A, Dr. Orvil E. A. Bolduan, Rm. 2A-05, Tel. 301-496-7180.	Oct. 27-29.....	9:00	Sheraton Park Hotel, Washington, D.C.
Visual Sciences B, Dr. Marie A. Jakus, Rm. 353, Tel. 301-496-7251.	Oct. 27-30.....	9:00	Kenwood Country Club, Bethesda, Md.

[1] P.m.

(Catalog of Federal Domestic Assistance Program Nos. 13.333, 13.337, 13.349, 13.393–13.396, 13.836–13.844, 13.846–13.871, 13.876, National Institutes of Health, DHEW.)

Dated: August 13, 1976.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc.76-24373 Filed 8-20-76;8:45 am]

Office of the Assistant Secretary for Health

NATIONAL COMMISSION FOR THE PROTECTION OF HUMAN SUBJECTS OF BIOMEDICAL AND BEHAVIORAL RESEARCH

Meeting

Notice is hereby given that the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research will meet on September 10, 11 and 12, 1976, in Conference Room 6, C Wing, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20014. The meeting will convene at 9:00 a.m. each day and will be open to the public, subject to the limitation of available space. The meeting will be held on September 12 only if it is determined to be necessary at the session on September 11.

The agenda will include discussion of issues identified in the legislative mandate to the Commission under Pub. L. 93-348 and 94-278, including deliberations on psychosurgery, deliberations on research involving children and the institutionalized mentally infirm, reports on the moral status of children and the use of "distributive justice" in policy making, sections of a final report on institutional review boards relating to research involving children and the institutionalized mentally infirm, and preliminary reports on the Special Study (section 203 of Pub. L. 93-348).

In accordance with the provisions of 5 U.S.C. 552(b)(6) and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 4:00 p.m. to 5:00 p.m. on September 11, 1976 for the discussion of internal personnel matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Requests for information should be directed to Ms. Anne Ballard, (301) 496-7776, Room 125, Westwood Building, 5333 Westbard Avenue, Bethesda, Maryland 20016.

Dated: August 16, 1976.

CHARLES U. LOWE,
Executive Director, National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research.

[FR Doc.76-24657 Filed 8-20-76;8:45 am]

NATIONAL COMMISSION FOR THE PROTECTION OF HUMAN SUBJECTS OF BIOMEDICAL AND BEHAVIORAL RESEARCH

Meeting

The portion of the meeting of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research on September 11, 1976 from 4 p.m. to 5 p.m. listed in the notice as being closed involves the discussion of internal personnel matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. For this reason, this portion of the meeting is concerned with matters exempt from mandatory disclosure under 5 U.S.C. 552(b)(6).

Therefore, it is hereby determined in accordance with the provision of section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix 1) that the portion of the meeting referred to above will be closed as indicated.

Dated: August 17, 1976.

JAMES F. DICKSON, III,
Acting Assistant Secretary for Health.

[FR Doc.76-24655 Filed 8-20-76;8:45 am]

Office for Civil Rights

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Report on Nonpublic Schools Participating in Federal Programs

This Report is in response to questions concerning the participation by children enrolled in a nonpublic school in federally assisted programs administered by a public school.

Section 601 of Title VI of the Civil Rights Act of 1964 provides as follows:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity which receives Federal financial assistance.

Any educational institution or system which applies to become a recipient of Federal financial assistance is required by the Office for Civil Rights (OCR) to submit an assurance of compliance form (HEW Form 441). See 45 CFR 80.4. In addition, the Office for Civil Rights requires such an applicant to provide adequate documentation relating to the policies and practices of participating institutions, in order to show that the program receiving Federal assistance will not be administered in a discriminatory manner.

The issue addressed here in whether OCR requires any information or documentation from a nonpublic school in order to determine that children enrolled in that nonpublic school are eligible to participate in a federally assisted program being administered by a public school or agency.

If the nonpublic school were a recipient of Federal financial assistance, apart from the federally assisted program administered by the public school, then the nonpublic school would be subject to the requirements, noted above, to submit a HEW Form 441 and other documentation. However, if the nonpublic school is not to be a recipient of Federal financial assistance, but merely seeks eligibility for its students to participate in the federally assisted program of the public institution, OCR does not require HEW Form 441 from the nonpublic school. Rather, OCR requires the public institution which is the recipient of Federal assistance to provide that form and the documentation referred to above. The recipient school is responsible for making sure that no discriminatory practices occur in the federally assisted program and, if any questions arise in this regard, OCR looks to the recipent for further information or compliance activities.

It should be noted, however, that the children enrolled in the nonpublic school cannot participate in the public school program if the nonpublic school engages in discriminatory practices prohibited by Title VI. Even though the nonpublic school is not a recipient, any discriminatory practices by it would, in our view, directly affect the federally assisted program.

Although the Regional Offices of OCR will be able to provide information about those schools which have become the subject of a compliance review, OCR does not maintain a list, as such, of approved nonpublic schools and we do not require a nonpublic school to be so listed in order that children enrolled there can participate in public school programs.

If there are any questions they should be sent to the appropriate Regional OCR

Director. Their names and addresses are as follows:

REGION I—CONNECTICUT, MAINE, MASSACHUSETTS, NEW HAMPSHIRE, RHODE ISLAND, VERMONT

Mr. John G. Bynoe, Director, Office for Civil Rights, Region I, Department of Health, Education, and Welfare, RKO General Building—Room 501, Bullfinch Place—Government Center, Boston, Massachusetts 02114.

REGION II—NEW JERSEY, NEW YORK, PUERTO RICO, VIRGIN ISLANDS

Ms. Barbara Walker, Acting Director, Office for Civil Rights, Region II, Department of Health, Education, and Welfare, 26 Federal Plaza—Room 3908, New York, New York 10007.

REGION III—DELAWARE, DISTRICT OF COLUMBIA, MARYLAND, PENNSYLVANIA, VIRGINIA, WEST VIRGINIA

Mr. Dewey E. Doods, Director, Office of Civil Rights, Region III, Department of Health, Education, and Welfare, Gateway Building, 3535 Market Street, Post Office Box 13716, Philadelphia, Pennsylvania 19101.

REGION IV—ALABAMA, FLORIDA, GEORGIA, KENTUCKY, MISSISSIPPI, NORTH CAROLINA, SOUTH CAROLINA, TENNESSEE

Mr. William Thomas, Director, Office for Civil Rights, Region IV, Department of Health, Education, and Welfare, 50 Seventh Street, N.E., Atlanta, Georgia 30308.

REGION V—ILLINOIS, INDIANA, MICHIGAN, MINNESOTA, OHIO, WISCONSIN

Mr. Kenneth A. Mines, Director, Office for Civil Rights, Region V, Department of Health, Education, and Welfare, 300 South Wacker Drive—8th Floor, Chicago, Illinois 60606.

REGION VI—ARKANSAS, LOUISIANA, NEW MEXICO, OKLAHOMA, TEXAS

Ms. Dorothy D. Stuck, Director, Office for Civil Rights, Region VI, Department of Health, Education, and Welfare, 1200 Main Tower Building—Room 960, Dallas, Texas 75202.

REGION VII—IOWA, KANSAS, MISSOURI, NEBRASKA

Mr. Taylor D. August, Director, Office for Civil Rights, Region VII, Department of Health, Education, and Welfare, 12 Grand Building, 12th & Grand Streets—7th Floor, Kansas City, Missouri 64106.

REGION VIII—COLORADO, MONTANA, NORTH DAKOTA, SOUTH DAKOTA, UTAH, WYOMING

Mr. David Florence, Director, Office for Civil Rights, Region VIII, Department of Health, Education, and Welfare, Federal Building, 1961 Stout Street—Room 11037, Denver, Colorado 80202.

REGION IX—ARIZONA, CALIFORNIA, HAWAII, NEVADA

Mr. Floyd L. Pierce, Director, Office for Civil Rights, Region IX, Department of Health, Education, and Welfare, 760 Market Street—Room 700, San Francisco, California 94102.

REGION X—ALASKA, IDAHO, OREGON, WASHINGTON

Ms. Marlaina Kiner, Director, Office for Civil Rights, Region X, Department of Health, Education, and Welfare, Arcade Plaza Building, 1321 Second Avenue, M/S 137, Seattle, Washington 98101.

Dated: August 16, 1976.

MARTIN H. GERRY,
Director, Office for Civil Rights.

[FR Doc.76-24656 Filed 8-20-76;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[Docket No. 76-159]

DESIGN AND EQUIPMENT SOLAS WORKING GROUP

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Design and Equipment SOLAS Working Group, Ad-Hoc Working Group on Nuclear Ships to be held Friday, September 17, 1976 at NASSIF Building, Room 7200, 400 Seventh St., SW., Washington, D.C., at 9:30 a.m.

The agenda for this meeting is as follows: To discuss the development by the Inter-governmental Maritime Consultative Organization of an international code for the design, equipment and operation of nuclear powered merchant vessels.

Attendance is open to the interested public. With the approval of the Chairman, members of the public may present oral statements at the hearing. Persons wishing to attend and persons wishing to present oral statements should notify, not later than the day before the meeting, and information may be obtaind from, CDR J. DECK, III, Chief, Ship Design Branch, COMDT (G-MMT-4/82), U.S. Coast Guard, Washington, D.C. 20590 (Phone: 202-426-2197). Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C. 20590 on 16 August 1976.

W. W. BENKERT,
Chief, Office of Merchant Marine Safety.

[FR Doc.76-24644 Filed 8-20-76;8:45 am]

Federal Aviation Administration

FAA FLIGHT INFORMATION ADVISORY COMMITTEE (FIAC)

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting (No. 2-76) of the Federal Aviation Administration (FAA) Flight Information Advisory Committee (FIAC) to be held beginning at 9:30 a.m., e.d.t., September 23, 1976, in Rooms 5A, B, C, at FAA Headquarters, 800 Independence Avenue, SW., Washington, D.C. The agenda for this meeting is as follows:

1. Approval of minutes of meeting 1-76.

2. Approval of agenda.

3. A status report and further discussion on the following subjects from previous meetings.

a. Airport/facility directory.

b. Criteria for frequencies to be shown on IAP Charts.

c. IAP bound volume concept.

d. The establishment of a Pacific FLIP similar to that in Alaska and other alternatives.

e. New concept (VFR Radio Navigation) of World Aeronautical Chart (WAC).

f. Minimum Terrain Elevation Figure (MTEF) and Minimum Elevation Figure (MEF).

g. Pilot controlled lighting.

4. A discussion of the need for a new publication consolidated procedures from various sources for oceanic operations.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the hearing. Persons wishing to attend and persons wishing to present oral statements should notify, not later than September 13, 1976, and information may be obtained from, Mr. Milton Wassmann, Executive Secretary, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone No. (202) 426-3758. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C. on August 17, 1976.

CHARLES V. HANNAN,
Chairman, Flight Information, Advisory Committee.

[FR Doc.76-24645 Filed 8-20-76;8:45 am]

National Highway Traffic Safety Administration

[Docket No. EX76-4; Notice 2]

DAIHATSU MOTOR CO. LTD.

Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard

This notice grants in part and denies in part the petition by Daihatsu Motor Co. Ltd. of Osaka, Japan, for a temporary exemption from portions of two Federal motor vehicle safety standards that apply to motorcycles. The basis of the petition was that it would facilitate the development and field evaluation of a low-emission vehicle.

Notice of the petition was published on June 3, 1976 (41 FR 22403) and an opportunity afforded for comment.

The vehicle for which exemption is sought is the Daihatsu Trike Model B20, an electric tricycle which has been developed for short distance on-road use. The B20's headlamp does not meet minimum photometric requirements specified for headlamps of motor-driven cycles in Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, nor will its parking

brake system hold it for 5 minutes on a 30 percent grade in the reverse direction as required by Motor Vehicle Safety Standard No. 122, *Motorcycle Brake Systems*. The company argued that these nonconformances do not degrade the overall safety of the vehicle. The Daihatsu headlamp is said to be able to reveal an individual or vehicle at a distance of 300 feet, while it has its ability to stop within 15 feet from its top speed of 17.5 mph. Its maximum climbing ability is 10.5 percent which renders it unlikely ever to be parked on a grade that exceeds it. Its parking brake system however, holds it in a reverse direction on a 20-percent grade, but the vehicle begins to slide at any grade exceeding 20 percent. Petitioner argued that the exemption would allow evaluation of "one step of electric motor vehicle evolution". It will work to conform by July. 15, 1978, and in the interim will not export more than 2,500 units of exempted B20's to the United States in any 12-month period for which an exemption is granted.

The California Highway Patrol supported the request for exemption from Standard No. 122 and opposed any exemption from Standard No. 108. No other comments were received. California agreed with petitioner's conclusion that the parking brake noncompliance with Standard No. 122 is relatively unimportant since it is unlikely that the low-powered B20 would ever be operated on a grade exceeding its ability to climb it. In its view, however, other electric motorcycles and tricycles are available with conforming lighting equipment, and for this reason it did not appear that an exemption from Standard No. 108 would facilitate low-emission vehicle development.

Under Section 123(a)(1)(C) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1410(a)(1)(C)) the Administrator may provide the exemption that Daihatsu has requested if he finds that it "would facilitate the development or field evaluation of a low-emission motor vehicle and would not unreasonably degrade the safety of such vehicle." This authority implements national policy to encourage the development of engines whose toxic emissions are below the levels established by Congress, as well as those that may be acceptable alternatives to internal combustion power plants. Pursuant to this authority exemptions have been provided a number of manufacturers of electric motor vehicles for a variety of transportation purposes—to an established manufacturer who had contracted to supply light trucks to the US Postal Service (AM General), to companies formed for the express purpose of electric vehicle production (Vanguard, Elcar); and to private entrepreneurs converting conventional motor vehicles to electric power (Electric Propulsion Systems, Waterman Industries, Jet Industries). The Daihatsu petition represents the first application on behalf of an electric powered motorcycle. While its range and carrying capacity appears limited, the B20 Trike is nevertheless an alternative form of transportation to a conventional motorcycle, deserving an opportunity to be tested under the competitive conditions of the American market. It is clear that an exemption would facilitate the field evaluation of a low-emission motor vehicle.

It is also clear, however, that an exemption from Standard No. 108 would unreasonably degrade the safety of the motor vehicle. With respect to Standard No. 122, the NHTSA agrees with Daihatsu, as concurred in by California, that a vehicle with a climbing ability of less than 11 percent is unlikely ever to be operated on a grade exceeding the ability of its parking brake to hold it there. However, the failure of the headlamp to meet the already-low photometric output required of motor driven cycle headlamps presents a different problem. While it may be true that the B20 can stop from its maximum speed of 17.5 mph in 15 feet, and its headlamps illuminate an object at a distance of 300 feet, there remains the question of whether the B20 will be accurately perceived by motorists approaching it from the opposite direction. The low silhouette and lessened speed of the B20 appear to make it as vulnerable as any other motor driven cycle such as a moped or motor scooter, in a traffic environment of heavier and faster moving motor vehicles. It ought, therefore, to be provided with the minimum headlamp output that Standard No. 108 requires if the overall safety of the vehicle is not to be degraded. There is a further consideration, too. The B20 headlamp uses a 24 volt bulb, not generally available on the American market. In the event of bulb failure, the inability to readily obtain a replacement would without doubt degrade the safety of the vehicle. The NHTSA asked Daihatsu whether it would be willing to use a 12 volt bulb, readily available on the American replacement market, which would require only a simple wiring change in the B20. The petitioner replied that this would cause a "power loss" and that it was more "convenient" to use the 24 volt bulb. The NHTSA has concluded that any such power loss should not be great and that a denial of the petition for exemption from Standard No. 108 ought not to prevent the introduction of the B20 into the American market, modified to accept a 12 volt bulb, and providing the headlamp output of other motordriven cycles.

In consideration of the foregoing, it is hereby found that a temporary exemption from the parking brake requirements of Standard No. 122 would facilitate the development and field evaluation of a low-emission motor vehicle and not degrade its overall safety. Accordingly, Daihatsu Motor Co. Ltd. is hereby granted NHTSA Exemption No. 76–4 from paragraph S5.6 of 49 CFR 571.122, Motor Vehicle Safety Standard No. 122, expiring July 1, 1978. The Administrator finds that an exemption from 49 CFR 571.108 Motor Vehicle Safety Standard No. 108 would degrade the overall safety of the vehicle, and Daihatsu's petition for exemption from this standard is hereby denied.

(Sec. 3, Pub. L. 92–548, 86 Stat. 1159 (15 U.S.C., 1410); delegation of authority at 49 CFR 1.50.)

Issued on August 13, 1976.

JOHN W. SNOW,
Administrator.

[FR Doc.76–24444 Filed 8–20–76;8:45 am]

[Docket No. EX 76–3; Notice 2]

WAYNE CORP.

Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard

This notice grants the petition by Wayne Corporation, through its Miller-Meteor Division of Piqua, Ohio, for a temporary exemption from Motor Vehicle Safety Standard No. 301–75, *Fuel System Integrity*, on the basis that compliance would cause it substantial economic hardship.

Miller-Meteor is a final-stage manufacturer of multi-purpose passenger vehicles, specifically funeral coaches and ambulances which it mounts on commercial chassis supplied by Cadillac Division of General Motors Corporation ("GM" hereafter). In the 12-month period March 1, 1975 through February 29, 1976, Miller-Meteor produced 551 such vehicles. In the same period Wayne produced approximately 5700 additional motor vehicles, primarily school buses, and specialized vehicles manufactured under contract. As required by 49 CFR Part 568, *Vehicles Manufactured in Two or More Stages*, GM as the manufacturer of an incomplete vehicle furnishes with each chassis information that the final-stage manufacturer, Miller-Meteor, may use to complete the vehicle so that it meets, and may be certified as meeting, all applicable Federal motor vehicle safety standards. On and after September 1, 1976, Standard No. 301–75 will apply to multi-purpose passenger vehicles including petitioner's products, and GM has informed the petitioner that it will make no representation as to conformity with Standard No. 301–75 on the grounds that compliance with it is not substantially determined by design of the incomplete vehicle. Petitioner has submitted itemized lists of fuel system compliance test programs for its vehicles based upon frontal barrier impact tests, estimating the cost of the 1977 model test program at $148,000, and the 1978 model test program at $71,000. It anticipates that modification in the body side and wheelhouse areas, and the "addition of deflection members, isolation plates and protective cages" will be required to effect compliance by September 1, 1978. To require compliance with Standard No. 301–75 in advance of that time would in its opinion add over $1,000 to the cost of an ambulance and in excess of 600 to that of a hearse. The company anticipates retail price increases of 15 to 20 percent for its 1977 models, without

including any 301 conformance costs. Although Wayne Corporation had a net profit of $2,992,000 before taxes in 1975, the Miller-Meteor Division had a net loss of $461,000 for that year, and projects a further net loss of $351,000 in 1976. The company argues that an exemption is in the public interest and consistent with traffic safety objectives since it provides employment in an economically troubled geographic area and only a small number of vehicles are involved.

No comments on the petition were received.

NHTSA depends upon cooperation between incomplete vehicle and final-stage manufacturers in effecting compliance of multi-stage vehicles with the Federal motor vehicle safety standards. In its review of Wayne's petition, this agency has been concerned with GM's position that it will make no representation as to conformity with Standard No. 301–75 "as compliance is not substantially determined by design of the incomplete vehicle". GM delivers its chassis to Wayne with fuel system components and power train already installed, some of which Wayne removes (in order to mount a body) and reinstalls. It is clear that compliance of the completed vehicle with Standard No. 301–75 is substantially determined by both the design of the incomplete vehicle and the manner of completion by the final-stage manufacturer. Therefore the factual context of the GM-Wayne relationship precludes GM from use of a disclaimer in the incomplete vehicle document. GM must instead include, pursuant to Part 568, a statement that the complete vehicle will conform if no alterations are made in identified components of the incomplete vehicle will conform to Standard No. 301–75. GM has been informed of NHTSA's views in this matter.

Wayne has argued that a 2-year exemption is necessary in order to allow it to conform with the additional requirements effective on September 1, 1977. Although Wayne argues that there will be a distinct difference between 1976-model and 1977-model commercial car chassis because of the shorter models planned by Cadillac for 1977, it is understood that modifications to the 1978-model chassis will be minor. Further, the requirements of Standard No. 301–75 effective September 1, 1977, have been a matter of public record for some time and it is probable that GM has already completed engineering studies of 1978-model chassis incorporating changes deemed necessary. Consequently NHTSA expects Wayne to obtain compliance information through cooperation with GM in advance of the September 1, 1977, effective date, and to ensure that sufficient technical information, experience with the redesigned chassis, or some combination of the two will be available to allow it to conform with the additional requirements that become effective September 1, 1977. Bodies might be redesigned in such a way that no change in chassis construction is necessary. Conversely, all the necessary protection might be incorporated in an improved chassis design. The determination of the most appropriate form of such design or the time that each manufacturer might consider desirable to effect the transition is best made through cooperation or negotiation between the private parties involved. The NHTSA is therefore providing an exemption only until September 1, 1977, which should be sufficient to cover all vehicles completed on 1977-model commercial car chassis, and to insure an orderly program of compliance with 1978-model requirements. On the other hand, it seems clear that insufficient time remains before the commencement of 1977-model production to effect any changes that might be required.

It has been determined that to require compliance with Standard No. 301–75 before September 1, 1977, would cause Wayne Corp. substantial economic hardship. Since only a limited number of vehicles are involved, it is further found that the exemption is in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act.

In consideration of the foregoing, Wayne Corp. is hereby granted NHTSA Exemption No. 76–3 from 49 CFR 571.301–75, Motor Vehicle Safety Standard No. 301–75, *Fuel System Integrity*, expiring September 1, 1977.

(Sec. 3, Pub. L. 92–548, 86 Stat. 1159 (15 U.S.C. 1410); delegation of authority at 49 CFR 1.50.)

Issued on August 13, 1976.

JOHN W. SNOW,
Administrator.

[FR Doc.76-24445 Filed 8-20-76;8:45 am]

Pipeline Safety Operations Office

[Docket No. Pet. 75–13W]

TRANS-ALASKA CRUDE OIL PIPELINE

Grant of Waiver

By letter dated November 24, 1975, the Alyeska Pipeline Service Company (Alyeska) requested a waiver from compliance with the coating and cathodic protecton requirements of 49 CFR 195.238(a)(5) and 195.242(a) with respect to thermally insulated piping to be installed at the pump stations and the terminal on the Trans-Alaska crude oil pipeline.

Section 195.238(a)(5) provides: (a) No pipeline system component may be buried unless that component has an external protective coating that—

(5) Supports any supplemental cathodic protection.

Section 195.242(a) provides: (a) A cathodic protection system must be installed for all buried facilities to mitigate corrosion deterioration that might result in structural failure. A test procedure must be developed to determine whether adequate cathodic protection has been achieved.

The piping for which the waiver is sought is to be covered with an inner coating of inorganic zinc or Scotch-kote 202 and an outer coating of thermal insulation material. The outer coating consists of a high density closed-cell polyurethane foam and a vapor barrier sealant inside a rigid polyethylene jacket. This coating system precludes the effective operation of external cathodic protection. The insulation coating is necessary to maintain the temperature of oil in the piping and the temperature of the surrounding refrigerated soil.

Alyeska argues that a waiver is appropriate because the characteristics of the insulation coating and the low moisture content of the refrigerated soil virtually exclude the possibility that corrosion would occur on the piping. Alyeska further points out that these factors were determinative in the grant of waiver to Alyeska dated May 19, 1975 (40 FR 22579) regarding compliance with §§ 195.238(a)(5) and 195.242(a) for 4.3 miles of special, buried refrigerated sections of the pipeline.

In addition, Alyeska submits that the following procedures are to be followed in applying the insulation coating to the piping:

1. All insulation shall be examined upon receipt in the field and prior to application to determine integrity of vapor barrier and jacketing. If any discontinuities or flaws are found, they shall be coated or repaired (in accordance with applicable specifications). If repair is not feasible, they shall be replaced.

2. All joints shall be firmly butted together so that all voids are eliminated. Damaged butt ends or longitudinal faces shall be refitted or discarded. Insulating cement or vapor barrier material shall not be used to fill voids.

3. All circumferential and longitudinal joints shall have the polyethylene jacket sealed with a hot welding system in accordance with the manufacturer's recommendations.

4. When field conditions are such that manufacturer's recommendations for application temperatures cannot be met, or during inclement weather, the Contractor shall provide material and/or substrate heating, shelter, or other measures as necessary to insure successful application.

5. After sealing of all joints, contractor shall examine all joints or jacketing welds to insure integrity of jacketing and vapor barrier effectiveness. Examination shall be conducted by means of an electrical holiday detector.

The Materials Transportation Bureau (MTB) has reviewed the information submitted by Alyeska in connection with the requested waiver. Based on that review and other relevant information, MTB finds that a waiver is appropriate and consistent with pipeline safety for the following reasons: (1) the polyethylene jacket is a relatively impermeable barrier to moisture which is necessary for corrosion to occur; (2) in the event of a break in the outer jacket, the possibility of corrosion is minimized by the combination of a vapor barrier, low permeability of the polyurethane foam to water, and the existence of an underlying coating of Scotchkote 202 or inor-

ganic zinc material; (3) if water does penetrate the thermal insulation, the supply of oxygen and its replenishment to support corrosion would be minimal; (4) the very high resistivity of the surrounding soil due to mechanical refrigeration virtually eliminates corrosive action; (5) the application procedures to be followed appear sufficient to insure the integrity of the insulation coating; and (6) the location of the piping at pump stations and the terminal facilitates inspection and observation of any leak which might occur.

Accordingly, effective immediately, the Alyeska Pipeline Service Company is hereby granted a waiver from compliance with the coating and cathodic protection requirements of 49 CFR 195.238 (a) (5) and 195.242(a) with respect to thermaly insulated piping to be installed at the pump stations and the terminal on the Trans-Alaska crude oil pipeline.

(Sec. 6, Pub. L. 89-670, 80 Stat. 937 (49 USC 1655); (18 USC 831-835); 40 FR 43901, 49 CFR 1.53.)

Issued in Washington, D.C. on August 16, 1976.

JAMES T. CURTIS, Jr.,
Director,
Materials Transportation Bureau.

[FR Doc.76-24745 Filed 8-20-76;8:45 am]

Office of the Secretary

CITIZENS' ADVISORY COMMITTEE ON TRANSPORTATION QUALITY

Open Meeting

The Citizens' Advisory Committee on Transportation Quality of the Department of Transportation will meet at 9 a.m., September 13 and 14, 1976, in Room 2230, 400 7th Street, SW., Washington, D.C.

The Citizens' Advisory Committee on Transportation Quality recommends transportation initiatives to the Secretary of Transportation, and assesses transportation policies from the consumer's viewpoint.

The subject of the two-day meeting will be the Federal Motor Vehicle Safety Standard No. 208 (Occupant Crash Protection).

The meeting is open to public observation. Those wishing to attend or to obtain additional information should contact Gail Boyle, Acting Executive Director, Citizens' Advisory Committee on Transportation Quality, Office of the Secretary of Transportation, TES-40, 400 Seventh Street, SW., Washington, D.C. 20590, telephone 202/426-4542.

This notice is given pursuant to section 10 of the Federal Advisory Committee Act (Public Law 92-463).

Issued in Washington, D.C., on August 18, 1976.

JUDITH T. CONNOR,
Assistant Secretary for Environment, Safety and Consumer Affairs.

[FR Doc.76-24643 Filed 8-20-76;8:45 am]

DELAWARE RIVER BASIN COMMISSION

PUBLIC HEARING

Notice is hereby given that the Delaware River Basin Commission, P.O. Box 7360, West Trenton, N.J. 08628, will hold a public hearing on Wednesday August 25, 1976, commencing at 2 p.m. The hearing will be held in the main conference room of the Commission's headquarters building, 25 State Police Drive, West Trenton, N.J. The subject of the hearing will be as follows:

A. Applications for approval of the following projects as amendments to the Comprehensive Plan pursuant to Article 11 of the Compact and/or as project approvals pursuant to Section 3.8 of the Compact:

1. *Bristol Water and Sewer Authority (D-69-66 CP(Rev.)*. Revision to the Authority's sewage treatment plant expansion in Bristol Borough, Bucks County, Pa. The facility is designed to provide removal of 89 percent of BOD, from an average sewage flow of 2.7 million gallons per day. Treated effluent will discharge to the Delaware River.

2. *Weatherly Municipal Authority (D-76-75 CP)*. A well water supply project to augment public water supplies in Weatherly Borough, Carbon County, Pa. Designated as Well No. 2, the new facility is expected to yield 144,000 gallons per day.

3. *Mobil Oil Corp. (D-69-195 CP (Rev.)*. Extension of a wastewater outfall line at the company's plant in Greenwich Township, Gloucester County, N.J. Approximately 15.8 million gallons per day of heated waste water will discharge to the Delaware River in a prescribed heat mixing zone.

4. *Caloric Corp. (D-76-36)*. An industrial wastewater discharge at the company's manufacturing plant in the Borough of Topton, Berks County, Pa. Treatment will involve neutralization of acid wastewater and removal of metals. About 257,000 gallons per day of treated effluent will discharge to Toad Creek, a tributary of the Lehigh River.

5. *Firestone Tire & Rubber Co. (D-76-17)*. Upgrading of industrial waste treatment facilities at the company's plant in Lower Pottsgrove Township, Montgomery County, Pa. A clarifier and oil separator will be installed to treat an average wastewater flow of 1.3 million gallons per day. Effluent will discharge to the Schuylkill River.

6. *Eastern Associated Coal Corp. (D-75-145)*. A cooling water discharge at the company's Philadelphia Coke Division in the City of Philadelphia, Pa. Approximately 4.5 million gallons per day of cooling water will be discharged to the Delaware River. Process wastewater will be segregated from the cooling water and discharged to the City's sanitary sewer system.

7. *Jersey Central Power and Light Co. (D-71-167 (Rev.))*. Modifications to the plan of operation during periods of low stream flow at the company's Gilbert Generating Station, Holland Township, Hunterdon County, N.J.

Documents relating to the items listed above may be examined at the Commission's offices. Persons wishing to testify are requested to notify the Secretary prior to the hearing ((609) 883-9500).

AUGUST 11, 1976.

W. BRINTON WHITALL,
Secretary.

[FR Doc.76-24588 Filed 8-20-76;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 819]

COMMON CARRIER SERVICES INFORMATION

Applications Accepted for Filing

AUGUST 16, 1976.

The applications listed herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any of these applications, if upon further examination, it is determined they are defective and not in conformance with the Commission's Rules and Regulations or its policies.

Final action will not be taken on any of these applications earlier than 31 days following the date of this notice, except for radio applications not requiring a 30 day notice period (see § 309(c) of the Communications Act), applications filed under Part 68, or as otherwise noted. Unless specified to the contrary, comments or petitions may be filed concerning radio and Section 214 applications within 30 days of the date of this notice and within 20 days for Part 68 applications.

In order for an application filed under Part 21 of the Commission's Rules (Domestic Public Radio Services) to be considered mutually exclusive with any other such application appearing herein, it must be substantially complete and tendered for filing by whichever date is earlier: (a) the close of business one business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which the subsequent application is in conflict) as having been accepted for filing. In common carrier radio services other than those listed under Part 21, the cut-off date for filing a mutually exclusive application is the close of business one business day preceding the day on which the previously filed application is designated for hearing. With limited exceptions, an application which is subsequently amended by a major change will be considered as a newly filed application for purposes of the cut-off rule (See § 1.227(b)(3) and 21.30(b) of the Commission's Rules.)

FEDERAL COMMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

22577–CD–P–76, Phone Depots of Connecticut, Inc, d/b as Liberty Communications (KCC485), C.P. for additional facilities to operate on 152.03 MHz to be located at a new site described as Loc. No. 5: Corner Danbury and New Town Roads, Danbury, Connecticut.

22578–CD–P–76, Paging, Inc. (New), C.P. for a new station to operate on 152.21 MHz. (Base) and 459.200 MHz (Repeater) at Loc. No. 1 to be located at Peak knob, 1.3 miles Southeast of Pulaski; 454.200 MHz (Control) Loc. No. 2; to be located at 147 Jackson Street, Blacksburg, Virginia.

22579–CD–P–(2)–76, Radio Call Co. of New Jersey, Inc. (KEK290), C.P. to relocate, replace transmitter and change antenna system operating on 454.200 MHz. at Loc. No. 1 to be located at 8200 Kennedy Boulevard East, North Bergen: Change antenna system operating on 454.200 MHz at Loc. No. 3 located at 318 Eagle Rock Avenue, West Orange, New Jersey.

22580–CD–P–76, Great Eastern Communications Company (KWU242), C.P. to change antenna system operating on 35.58 MHz located 1 mile North on Rt. 662, Waterford, Virginia.

22588–CD–P–(3)–76, Radio Call Island, Inc. (KED367), C.P. to relocate and change antenna system operating on 454.200 MHz (Loc. No. 1); 1 Fairchild Avenue Plainview, and 454.200 MHz. (Loc. No. 2); E Side of Adirondack Dr., 300 feet S of Midvale Avenue, Selden, New York, and add a new site described as Loc. No. 3 to operate on 454.200 MHz. to be located at North Shore Towers, Grand Central Parkway, Glen Oaks, New York.

22589–CD–P–76, Radio Contact Corp. (KTS256), C.P. for additional facilities to operate on 158.70 MHz at a new site described as Loc. No. 3 to be located Near Buckhorn Mountain, 15.5 miles WNW of Fort Collins, Colorado.

22581–CD–TC–76, Radio Call Co. of Long Island, Inc. Consent to Transfer of Control from Marvin R. Neuwirth, Transferor to Long Island Message Centers, Inc. Transferee KED–367, Melville, New York.

22582–CD–P–(3)–76, The Mountain States Telephone & Telegraph Co. (KOA607), C.P. for additional facilities to operate on 454.450 and 454.600 MHz (Loc. No. 1) located 7.5 miles South of Phoenix: 152.78 MHz at (Loc. No. 3) to be located at White Tank Mountain, 8 miles WSW of Waddell, Arizona.

22583–CD–MP–76, AAA Anserphone, Inc., Jackson (KRS618), C.P. to relocated and change antenna system operating on 454.325 MHz. located 1½ miles NE of Petal, Mississippi.

22584–CD–P–ML–(2)–76, Southwestern Bell Telephone Company (KRS684), C.P. for additional facilities to operate on 152.57 MHz. to be located at 116 Ash Street, Pearsall, Texas.

22585–CD–AL–76, A–R Microwave Corporation. Consent to Assignment of License from A–R Microwave Corporation Assignor to Summit Mobile Radio Company. Assignee, Station KCA752, Auburn, Maine.

22586–CD–P–(2)–76, Mobilfone Service, Inc. (KKA402), C.P. to change antenna system operating on 459.25 MHz at Loc. No. 1 located at Magazine, 3 miles NE of Blue Mountain, Arkansas: 454.25 MHz at Loc. No. 3 located at Intersection of Yoakum and Choctaw streets, Arkoma, Oklahoma.

CORRECTION

22553–CD–TC–76, Correct entry to show Name of licensee as West Indies Communications and correct location to read St. Thomas, Virgin Islands. All other particulars to remain as previously Report No. 818, dated 8/9/76.

INFORMATIVE

This notice concerns the recent introduction of data processing to the licensing of applications in the Domestic Public Land Mobile Radio Service. The Mobile Services Division is currently issuing authorizations via the computer. In order to accomplish this mission it is necessary that we develop a data base for each authorized system (call sign). This process together with some remaining problems in the operation of our system has and will continue to cause an increase in the processing time of applications in the DPLMRS. The processing time for a non-contested, correctly completed application will increase to approximately 90 days from the date of its receipt at the Commission. It is anticipated that this increase in processing time will be temporary, lasting until the remaining new problems and procedures, which are inherent with the introduction of a data processing system, are resolved.

The benefits which can be expected due to a complete data base of all DPLMRS licensees and their facilities will far outweigh the consequences of a temporary increase in backlog.

We would therefore appreciate it if inquiries concerning the status of ones applications are not made until 90 days after the date it was filed.

On July 27, 1976, The Commission adopted Docket 19905 (FCC 76–719). It was released August 10, 1976. Included in this Report and Order is revised Section 21.33. New section 21.33 is titled Amendment of Applications and more clearly defines "Major Amendment" as used in Part 21 of the Rules. New Section 21.27(c)(1) of Docket 19905 indicates new filed applications will also be considered major or minor pursuant to the provisions of Section 21.23, subjecting them to the Public Notice requirements of Section 21.27.

At present FCC Form 401 does not provide a convenient location to indicate whether an application should be considered major or minor pursuant to Section 21.23. Effective September 17, 1976 and until FCC Form 401 is revised, all applications to be considered minor and meeting, the requirements of Section 21.23 should include as part of exhibit No. 1 (The environmental statement) a request that the application be considered minor and not subject to the Public Notice requirements of Section 21.27 (a) and (b) of the Commission's Rules.

RURAL RADIO:

60388–CR–P–(2)–76, RCA ALASKA COMMUNICATIONS, INC. (New), C.P. for a new Rural subscriber station to operate on 157.-83 and 157.92 MHz to be located: Village located 8 miles ENE of Anchor Point, Nikolaevsk, Alaska.

60436–CR–P/L–(2)–76, RCA ALASKA COMMUNICATIONS, INC. (New), C.P. for a new Central Office Fixed station to operate on 87.50 MHz to be located 2.7 miles ESE of the Yakataga Airport, Yakataga, Alaska.

60437–CR–P/ML–76, Southwestern Bell Telephone Company (WIV29), C.P. for additional facilities to operate on 157.92 and 157.95 at 27.5 miles NNW of Laredo, Texas.

60438–CR–P/ML–76, Southwestern Bell Telephone Company (WPF–31), C.P. for additional facilities to operate on 157.92 and 157.98 MHz to be located at 24 miles North of Laredo, Texas.

60439–CR–P/ML–76, Southwestern Bell Telephone Company (WAQ583), C.P. for additional facilities to operate on 157.92 and 157.95 MHz to be located at 12 miles N.E. of Zapata, Texas.

4345–CF–P–76, Southwestern Bell Telephone Company (WDE62), IH20 & Hwy. 349, Midland, Texas. Lat. 31°58'37" N., Long. 102°-04'44" W. C.P. to change frequencies 6345.5V to 6286.2V toward Odessa RS, Texas on azimuth 283.2°; replace transmitter for this frequency and for 6226.9V toward Odessa RS.

4346–CF–P–76, Same, (KLT69), Odessa RS, 10 miles North, Odessa, Texas Lat. 32°02'-11" N., Long. 102°22'42" W. C.P. to change frequencies on 6093.5V 6034.2V toward Midland, Texas on azimuth 103.0°; change 5952.6H 6071.2H to 5974.8V 6034.2V MHz toward Andrens, Texas on azimuth 333.3°; replace transmitters on these frequencies and on 5974.8V MHz toward Midland RS, Texas.

4347–CF–P–76, Same, (KKK21), 1.7 miles North, Andrews, Texas Lat. 32°20'14" N., Long. 102°33'25" W. C.P. to change frequencies 6204.7H 6323.3H to 6226.9V 6286.-2V MHz toward Odessa RS, Texas on azimuth 153.2°; change 6278.9H 6397.4H to 6226.9V 6286.2V MHz toward Seminole, Texas on azimuth 348.7°; replace transmitters and antenna.

4348–CF–P–76, Same, (KLT52), 307 Southwest Third St. Seminole, Texas. Lat. 32°42'-57" N., Long. 102°38'48" W. C.P. to change frequencies 6026.7H 6145.3H to 5974.8V 6034.2V MHz toward Andrews, Texas on azimuth 168.6°; replace transmitters and antenna on these frequencies and on 5982.-3V 6100.9V MHz toward Hobbs, Texas on azimuth 268.3°; 5937.8V 6056.4V MHz toward Seagraves, Texas on azimuth 17.6°.

4725–CF–P–76, South Central Bell Tel. Company, (New), Almedia Rd. L&A R.R., Almedia, Louisiana Lat. 29°58'12" N., Long. 90°18'21" W. C.P. for a new station on frequencies 11485V 11485H MHz toward Norco, Louisiana on azimuth 288.9°.

4726–CF–P–76, Same, (new), Corner of Good Hope & 3rd, Norco, Louisiana. Lat. 30°00'-04" N., Long. 90°24'37" W. C.P. for a new station on frequencies 11035V 11035H MHz toward Almedia, Louisiana on azimuth 108.9°; and 11035V MHz toward Laplace, Louisiana on azmiuth 316.4°.

4727–CF–P–76, Same, (New), Laplace Co. 821 Main Street, Laplace, Louisiana. Lat. 40°03'57" N., Long. 90°28'52" W. C.P. for a new station on frequency 11485V MHz toward Norco, Louisiana on azimuth 136.4°.

4758–CF–P–76, The Bell Telephone Company of Nevada, (New), 551 6th Street, Hawthorne Nevada Lat. 38°31'35" N., Long. 118°37'24" W. C.P. for a new station on frequencies 11485.0V 11325.0V MHz toward Skidue, passive reflector on azimuth 67.70°, and from passive reflector toward Rabbit Spring, Nevada on azimuth 284.5°.

4759–CF–P–76, Same, (KPF90), Rabbit Spring, 18.5 miles NW of Luning, Nevada. Lat. 38°39'16" N., Long. 118°18'40" W. C.P. to add point communication on frequencies 11035.0V 10875.0V MHz toward Skidue passive reflector on azimuth 104.4°, and from passive reflector toward Hawthorne, Nevada on azimuth 247.9°.

4760–CF–P–76, The Bell Telephone Company of Pennsylvania, (KYJ36), 210 Pine Street, Harrisburg, Pennsylvania Lat. 40°15'44" N., Long. 76°53'07" W. C.P. to replace transmitters and increase output power 11625H 11265V 11545H MHz Ramsey, Pennsylvania.

4761–CF–P–76, Same, (KYS58), Ramsey Hill 2.6 miles SW of Lewisberry, Pennsylvania Lat. 40°06'12" N., Long. 76°53'23' W. C.P. to replace transmitters on frequencies 10735H 11135H MHz toward Harrisburg, Pennsylvania and 11115H MHz toward Concordia, Pennsylvania; increase transmit antenna structure height and replace and move antenna on frequencies 11115H 6078.6V 6137.-9V 6019.8V MHz toward Concordia, Pennsylvania.

4762–CF–P–76, Same, (WDE64), Concordia 0.38 miles SW of Concordia Church, Pennsylvania Lat. 40°02'49" N., Long. 76°27'16" W. C.P. to replace transmitters and increase output power on frequency 11565H MHz toward Ramsey.

4776–CF–P–76, The Mountain States Telephone and Telegraph Company, (KPH60), Missoula Montana Lat. 46°51'21" N., Long. 113°55'18" W. C.P. to replace antennas and transmitters, increase output power on frequencies 10755V 10995H MHz toward TV Mountain, Montana.

4777–CF–P–76, Same, (KPH61), TV Mountain 9.5 miles N of Missoula, Montana Lat. 47°-01'09" N., Long. 114°00'41" W. C.P. to replace antennas and transmitters, increase power output on frequencies 11405V 11645H MHz toward Charlo, Montana, and 11445H 11685V MHz toward Missoula, Montana.

4778–CF–P–76, Same, (KPH62), Charlo 4.5 miles NW of Charlo, Montana Lat. 47°27' 54" N., Long. 114°15'35" W. C. P. to replace antennas and transmitters, increase output power on frequencies 10715H 10955V MHz toward TV Mountain, Montana and 10755H 10995V MHz toward TM179, Montana; add 1 Hot Standby Transmitter to 6011.9H toward Ronan, Montana.

4779–CF–P–76, Same, (WOF83), Ronan, 21 Street & H Street, Ronan, Montana Lat. 47°31'47" N. Long. 114°05'52"W. C. P. to add a Hot Standby transmitter on frequency 6264H MHz toward Charlo, Montana.

4781–CF–P–76, Continental Telephone Company of California, (KPJ28), Parker, 912 12th Street Parker, Arizona Lat. 34°08'54" N., Long. 114°17'17"W. C. P. to add frequency 2114.0V MHz toward Black Peak, Arizona.

4782–CF–76, Same, (WQQ33), Black Peak 4.8 mile ESE of Parker, Arizona Lat. 34°07'29" N., Long. 114°12'36"' W. C. P. to change frequency 2164.0V to 2172.0V MHz toward Bouse, Arizona; and frequency 2164.0V MHz toward Parker, Arizona; add 2164.0H MHz toward Poston, Arizona on azimuth 229.8 degrees; replace transmitter 2172.0H MHz toward Parker, Arizona.

4783–CF–P–76, Same, (WQQ32), Bouse, Plomosa Road, Bouse, Arizona Lat. 33°55'56" N., Long. 114°00'20" W. C. P. to change frequency 2114.0V to 2122.0V MHz toward Black Peak, Arizona.

4784–CF–P–76, Same, (New) Poston, Arizona Lat. 33°59'28" N., Long. 114°23'59"W. C. P. for a new station on frequency 2114.0H MHz Black Peak, Arizona on azimuth 49.7°

4763–CF–P/ML–76, Hawaiian Telephone Company, (KUQ83), Puu Kapele, Puu Kapele Trig., Hawaii. Lat. 22°04'58" N., Long. 159°40'10" W. C.P. and Mod. of License to change polarizations from horizontal to vertical on frequencies 6219.5 and 6278.8 Mhz toward Kapele passive reflector, and from passive reflector toward Kukuiolono, Hawaii.

4764–CF–P/ML–76, Same, (KXR51), Kukuiolono 0.9 miles S of Kalaheo, Hawaii Lat. 21°54'54" N., Long. 159°31'51" W. C. P. and Mod. of License to change polarization from horizontal to vertical on frequencies 5967.4 and 6026.7 MHz toward Kapele passive reflector and from passive reflector toward Puu Kapele.

4790–CF–P–76, The Offshore Telephone Company, (WGI40), EC216A Block 261 East Cameron Area, Gulf of Mexico Lat. 28°28'19" N., Long. 92°54'55" W. C. P. to change receive location for 2112.0H to West Cameron Block 513B; move antenna on 2120.0V to East Cameron Block 195A; add frequency 2128.0V toward East Cameron Block 323A on azimuth 147.6°

4791–CF–P–76, Same, (New), EC 322A Block 322 East Cameron Area, Gulf of Mexico Lat. 28°11'55" N., Long. 92°43'09" W. C. P. for a new station on frequency 2178.0V MHz toward East Cameron Block 261A on azimuth 327.7°.

4792–CF–MP–76, Same, (WAU231), Block 513 West Cameron, Gulf of Mexico Lat. 28°23'53" N., Long. 93°12'38" W. Mod. of C. P. (1169–CF–P–76) to delete West Cameron Block 513A as a point of communication; increase tower height move antennas and add frequencies 2162.0H Mhz East Cameron Block 261A on azimuth 74.0°; 2170.4V MHz toward High Island Area Block 309A on azimuth 63.8°; 2178.4H MHz toward West Cameron Block 605A on azimuth 172.6°.

4793–CF–P–76, Same, (New), Block A309, High Island Area. Gulf of Mexico Lat. 28°14'55" N., Long. 93°33'25" W. C. P. for a new station on frequencies 2120.0V MHz toward West Cameron Block 513B on azimuth 63.8°; 2126.5 Mhz toward High Island Block 330A on azimuth 155.6°.

4794–CF–P–76, Same, (New), Block A 330, High Island Area. Gulf of Mexico Lat. 28°05'47" N., Long. 93°28'43' W. C. P. for a new station on frequency 2177.0H MHz toward High Island Block 309A on azimuth 335.6°.

4795–CF–P–76, Same, (New), Block 605 West Cameron, Gulf of Mexico Lat. 28°04'36" N., Long. 93°09'48" W. C. P. for a new station on frequency 2128.4 MHz toward West Cameron Block 513B on azimuth 352.6°.

4671–CF–P–76, Southern Pacific Communication Co., (WLJ 66), Southern Pacific Bldg., Superstition Mtn., California. (Lat. 32°56'42" N., Long. 115°47'57" W.): Construction permit to add 6034.2V and 5947.8V MHz toward El Centro, California.

4672–CF–P–76, Southern Pacific Communications Co., (WQO 35), Southern Pacific Station, El Centro, California. (Lat. 32°47'36" N., Long. 115°33'03" W.): Construction permit to add 6226.9V and 6286.2V MHz toward Superstition Mtn. and Holtville, California on azimuth 95.4° toward Holtville.

4673–CF–P–76, Southern Pacific Communications Co., (WBA 878), 6.5 miles SE of Holtville, California. (Lat. 32°46'19" N., Long. 115°17'09" W.): Construction permit to add 5974.8H and 6034.2H MHz toward El Centro and 5945.2V and 5974.8H MHz toward Midway Wells, both in California on azimuths 27.5 and 114.6° respectively.

4674–CP–P–76, Southern Pacific Communications Co., (WQC 34), Southern Pacific Bldg. Midway Wells, California. (Lat. 32°42'36" N., Long. 115°07'33" W.): Construction permit to add 6226.9V and 6256.5H MHz toward Holtville, California and 3710.0H MHz toward Telegraph Pass, Arizona, on azimuth 294.7° toward Holtville, California.

4675–CF–P–76, Southern Pacific Communications Co., (WQO 32), Southern Pacific Bldg., Telegraph Pass, Arizona. (Lat. 32°40'13" N., Long. 14°20'05" W.): Construction permit to add 3950.0V MHz toward Oatman Mtn Arizona and 3750.0H MHz toward Midway Wells, California.

4676–CF–P–76, Southern Pacific Communications Co., (WQO 31), Southern Pacific Bldg., Oatman Mtn, Arizona. (Lat. 33°03'06" N., Long. 114°20'05" W.): Construction permit to add 3950.0V MHz toward Oatman Mtn Arizona and 3750.0H MHz toward Midway Wells, California.

4677–CF–P–76, Southern Pacific Communications Co., (WQO 30), Southern Pacific Bldg., Oatman Mtn, Arizona. (Lat. 33°03'06" N., Long. 113°08'03" W.): Construction permit to add 3850.0H) toward White Tank Mtn and Telegraph Pass, both in Arizona.

4678–CF–P–76, Southern Pacific Communications Co., (WQO 29), Union Station, Phoenix, Arizona. (Lat. 33°26'40" N., Long. 112°04'40" W.): Construction permit to add 3850.0V MHz toward Pinal Peak and 5960.0H MHz toward White Tank, both in Arizona.

4679–CF–P–76, Southern Pacific Communications Co., (WQO 28), Group 1, Lot 8, Pinal Peak, Arizona. (Lat. 33°16'49" N., Long. 110°49'11" W.): Construction permit to add 4030.0V MHz toward Mt. Lemmon and 3790.0H MHz toward Phoenix, both in Arizona.

4734–CF–P–76, Midwestern Relay Co., (WLJ 43), Merchandise Mart, Chicago, Illinois. (Lat. 41°53'28" N., Long. 87°38'07" W.): Construction permit to (a) add 6093.5H MHz, (b) change frequencies to 6034.2H and 6152.8H MHz toward existing point of communication, Glendale Heights, Illinois, on azimuth 273.2°.

4735–CF–P–76, Midwestern Relay Co., (WLJ 44), 0.5 mile East of Schmale Rd., Glendale Heights, Illinois. (Lat. 41°54'25" N., Long. 88°05'48" W.): Construction permit to add 6197.2H MHz toward Chicago #1 and Crystal Lake, Illinois, on azimuths 92.9 and 338.2°.

4736–CF–P–76, Midwestern Relay Co., (WLJ 45), 1.9 miles East of Crystal Lake, Illinois. (Lat. 42°15'14" N., Long. 88°17'02" W.): Construction permit to add 6034.2V MHz toward Glendale Heights, Illinois and 6152.8H MHz toward Lake Geneva #1, Wisconsin, on azimuths 158.0 and 350.9°.

4737–CF–P–76, Midwestern Relay Co., (WLJ 46), 3.0 miles East of Lake Geneva, Wisconsin. (Lat. 42°35'49" N., Long. 88°21'30" W.): Construction permit to add 6345.5V MHz toward Crystal Lake, Illinois on azimuth 170.8°.

4770–CF–P–76, American Microwave & Communications, Inc., (KQL 44), Millie Hill, 1 mile East of Iron Mtn., Michigan. (Lat. 45°49'15" N., Long. 88°02'30" W.): Construction permit to add 6219.5H 6278.8H, 6338.1H and 6397.4H MHz toward Iron Mtn. Headquarters, Michigan, on azimuth 281.0°.

4771–CF–P–76, American Microwave & Communications Inc., (KQM 45), 15 miles SE of Elmira, Michigan. (Lat. 45°02'23" N., Long. 84°50'23" W.): Construction permit to (a) add 6241.7V and 6360.3V MHz toward Gaylord, (b) 6241.7H and 6360.3H MHz toward Boyne City, both in Michigan, via power split, on azimuths 98.2 and 302.6°, respectively.

4772–CF–P–76, New England Microwave Inc. (New) 0.6 mile North of Wintechog Hill Rd, North Stonington, Connecticut. (Lat. 41°27'36" N., Long. 71°55'33" W.): Construction permit for new station—(a) 5989.6 MHz toward Westerly, (c) 5874.8H MHz toward Norwich, and (d) 5974.8V, 6034.2V, and 6093.5V MHz toward New London, all in Connecticut, on azimuths, 262.5, 121.5, 315.4, and 267.3°, respectively.

4773–CF–P–76, New England Microwave, Inc., (New), Killingworth, Connecticut. (Lat. 41°23'45" N., Long. 72°33'31" W.): Construction permit for new station—6212.0H and 6330.7H MHz toward Branford and 6301.0H and 6360.3H MHz toward Wintechog, both in Connecticut, on azimuths 261.8 and 82.1°, respectively.

4774–CF–P–76, New England Microwave, Inc., (New), 500 E. of Parsonage Hill Rd, Branford, Connecticut. (Lat. 41°22'05" N., Long. 72°48'38" W.): Construction permit for new station—5945.2H MHz toward Killingworth, Connecticut, on azimuth 81.6°.

4775–CF–P–1976, Orange County Radiotelephone Service, Inc., (New), Santa Ana, California. (Lat. 33°44'33" N., Long. 117°51'18" W.): Construction permit to add 11665H MHz toward Panorama, (MDS station) California, on azimuth 75.5°.

4680–CF–P–1976, Southern Pacific Communications Co., (WQO 26), Mt. Lemmon, Arizona. (Lat. 32°26'23" N., Long. 110°47'04" W.): Construction permit to add 3750.0V MHz toward Pinal Peak, Arizona.

4732–CF–MP–1976, MCI Telecommunications, Corp., (WLI 92), 1.0 miles NW of North Royalton, Ohio. (Lat. 41°19'25" N., Long. 81°44'24" W.): Construction permit to change antenna system on existing point of communication—5945.2V MHz toward Medina, Ohio, on azimuth 197.6°.

4733–CF–MP–1976, MCI Telecommunications Corp., (WAU 312) 3.0 miles SSE of Medina, Ohio. (Lat. 41°04'48" N., Long. 81°50'32" W.): Construction permit to change antenna system and to change frequencies toward existing points of communication—6404.8V MHz toward North Royalton, 3730.0V MHz toward Akron, and 6286.2H MHz toward Nova, all in Ohio, on azimuth 17.6, 89.5, and 256.5°, respectively.

MAJOR AMENDMENTS:

3523–CF–P–1976, American Telephone and Telegraph Company, (KYS56), 2.2 miles NW of Monmouth Junction, New Jersey. AMEND application to change azimuth toward Freehold, New Jersey to read 122.3° for frequencies 3750V 3830V.

CORRECTIONS

4620–CF–P–76, Microvideo, Inc., (KLH 35), 0.5 mile North of Silverton, Texas. (Lat. 34°33'08" N., Long. 101°17'34" W.): This entry appearing in Public Notice of August 9, 1976, No. 818 is corrected to show applicant replacing transmitters and changing frequencies to 6182.4H MHz, 6241.7H, and 6301.0H MHz toward Memphis, Texas, via power split, on azimuth 73.4°.

4621–CF–P–76, Microvideo, Inc., (KLH 36), 0.7 mile West of Memphis, Texas. (Lat. 34°43'47" N., Long. 100°33'59" W.): This entry appearing in Public Notice dated August 9, 1976, No. 818 is corrected to show applicant replacing transmitters and changing frequencies to 5960.H, 6019.3H, and 6078.6H MHz toward Wellington and Childress, both in Texas, via power split, on azimuths 136.8 and 64.2°, respectively.

4622–CF–P–76, Microvideo, Inc., (KLU 60), SE Edge of Childress, Texas. (Lat. 30°24'25" N., Long. 100°12'05" W.),: This entry appearing in Public Notice of August 9, 1976, No. 818 is corrected to show applicant replacing transmitters and changing frequencies to 6241.7V, 6301.0V, and 6360.3V MHz toward Paducah, and Quanah, both in Texas, via power split, on azimuths 195.9 and 103.8°.

4601–CF–MP–76, Eastern Microwave, Inc., (WPX 31), Attica, SE Corner of Fullington and Werner Rds, Attica, New York. (Lat. 42°50'12" N., Long. 78°12'20" W.): This entry appearing in Public Notice dated August 2, 1976, No. 817 is corrected to show 5960.0H and 6019.3H MHz toward Niagara Falls and Lackawanna as well as 5960.0V and 6019.3V MHz toward Buffalo, all in New York, via power split, on azimuths 283.7, 294.7, and 267.2°, respectively.

4509–CF–P–76, New Jersey Bell Telephone Company, Hamilton Square, 2 miles SW of Hamilton, New Jersey. Correct Call Sign to read WHT85. All other particulars remain as reported on Public Notice No. 815 dated July 19, 1976.

[FR Doc.76-24652 Filed 8-20-76;8:45 am]

[Report No. 997]

PETITIONS FOR RULE MAKING FILED

AUGUST 17, 1976.

Interested persons may file statements opposing or supporting any Petition for Rule Making listed herein within 30 days after the date of this Public Notice.

File No.	Rule No.	Petitioner	Date received	Nature of petition
RM-2736	Sec. 73.202(b)	Stoner Broadcasting System, Inc. Filed by Eugene F. Mullin and Nathaniel F. Emmons, attorneys.	July 23, 1976	Request amendment FM Table of Assignments to assign Channel 257A to Fort Myers Beach, Fla.
RM-2737	Part 73	Midwest St. Louis, Inc., et al. Filed by Benito Ganine and Irving Gastfreund, attorneys.	do	Request institution of rulemaking to provide for uniform standards for designation for hearing of applications requesting subscription television authorization.
RM-2738	Sec. 73.507(a)	Faith Media, Inc. Filed by Julian P. Freret, attorney.	July 26, 1976	Request amendment FM Table of Educational Assignments to assign Channel 212B to Oxnard, Calif.
RM-2739	Part 74	National Translator Association. Filed by Leon T. Knauer, counsel.	Aug. 10, 1976	Request amendment of part 74 to allow VHF television translator stations to undertake originations which would be limited to the solicitation of contributions toward defrayal of the costs of installation, operation and maintenance of translator stations or acknowledgements of financial support for those purposes.
RM-2740	Part 74	National Translator Association. Filed by Leon T. Knauer, counsel.	do	Request amendment of part 74 to allow FM and television translator stations to originate oral emergency warnings of imminent danger.
RM-2741	Part 74	National Translator Association. Filed by Leon T. Knauer, counsel.	do	Request amendment of part 74 to allow FM translator stations to operate on an unattended basis.
RM-2742	Part 73	CBS, Inc. Filed by Eleanor S. Applewhaite, attorney.	do	Request institution of rulemaking proceedings looking toward adoption of standards for compatible FM stereo-quadraphonic broadcast transmissions.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.76-24651 Filed 8-20-76;8:45 am]

FEDERAL HOME LOAN BANK BOARD

ALTERNATIVE MORTGAGE INSTRUMENTS RESEARCH STUDY ADVISORY COMMITTEE

Establishment

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I (Supp. II, 1972)) and Office of Management and Budget Circular A–63 of March 1974, and after consultation with OMB, the Chairman of the Federal Home Loan Bank Board has determined that the establishment of the Alternative Mortgage Instruments Research Study Advisory Committee is in the public interest in connection with the performance of duties imposed on the Board by law.

The Committee will advise the Chairman, through the Director of the Office of Economic Research, on the direction, form and substance of the study as it develops. This study will entail a close examination of a wide variety of alternative new mortgage instrument designs from the practical perspective of both borrowers and lenders.

The Committee will consist of 25 members, with a balanced representation of borrowers, lenders, representatives of related industries, government and universities, etc., appointed by the Chairman of the Bank Board.

The Committee will function solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act, 15 days from the date of the publication of this notice.

Interested persons are invited to submit comments regarding the establishment of the Alternative Mortgage Instruments Research Study Advisory Committee. Such comments, as well as any inquiries, may be addressed to Dr. Donald M. Kaplan, Director, Office of

Economic Research, Federal Home Loan Bank Board, Washington, D.C. 20552, phone: 202-376-3131.

August 18, 1976.

GARTH MARSTON,
Acting Chairman.

[FR Doc.76-24606 Filed 8-20-76;8:45 am]

ALTERNATIVE MORTGAGE INSTRUMENTS RESEARCH STUDY ADVISORY COMMITTEE

Meeting

AUGUST 18, 1976.

Pursuant to Section 10(a) of Public Law 92-463, entitled the Federal Advisory Committee Act, notice is hereby given of the meeting of the Alternative Mortgage Instruments Research Study Advisory Committee on Friday, September 10, 1976. The meeting will commence at 9:00 a.m. on September 10 at the HYATT Regency Hotel, 400 New Jersey Avenue, NW. Washington, D.C.

Meeting Agenda

Introductions
Background Review
Current Status of Alternative Mortgage Instruments
Definitions of Alternative Mortgage Instruments
Committee Administrative Matters
Section by Section Review of Proposed Analyses

The meeting of the Alternative Mortgage Instruments Research Study Advisory Committee is open to the public.

GARTH MARSTON,
Acting Chairman.

[FR Doc. 76-24607; Filed 8-20-76; 8:45 am]

FEDERAL MARITIME COMMISSION

CITY OF KODIAK AND SEA-LAND SERVICE, INC.

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street 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 September 13, 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.

Notice of agreement filed by:

Gerald A. Malia, Esquire, Ragan & Mason, The Farragut Building, 900 Seventeenth Street, NW., Washington, D.C. 20006.

Agreement No. T-2582-2, between the City of Kodiak (City) and Sea-Land Service, Inc. (Sea-Land), modifies the basic agreement between the parties which provides for the preferential use by Sea-Land of a containership terminal constructed by the City for a term of 20 years, with renewal options. The purpose of the modification is to adjust the payment of overhead, maintenance and repair until June 30, 1978, biennially thereafter, at which time a review will be made and an adjusted amount will be negotiated. In addition, the payment of debt service by Sea-Land may, at Sea-Land's option, be made by the surrender of revenue bonds, which were issued by the City, and interest coupons instead of cash. The remainder of revenue bonds shall be counted for the purpose of computing the credit due Sea-Land under Paragraph 4.2.

By Order of the Federal Maritime Commission.

Dated: August 18, 1976.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76-24671 Filed 8-20-76;8:45 am]

DART CONTAINERLINE CO.

Agreement Filed

Notice is hereby given that the following agreement has ben 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 September 13, 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:

Edwin Longcope, Esquire, Hill, Betts & Nash, Suite 5215, One World Trade Center, New York, New York 10048.

Agreement No. 9745-2 modifies the basic agreement to (1) delete "Clarke Traffic Service, Ltd." as a listed party and substitute therefor "Consolidated Container Service Co., Ltd."; (2) delete "The Bristol City Line of Steamships, Ltd." as a listed party and substitute "Bristol City Line, Limited"; (3) expand the scope of the agreement to cover arrangements with other modes of transport for the movement of cargo to or from inland points in Europe and to or from ports on the U.S. Pacific Coast whether moving under a through bill of lading or otherwise and to cover intermodal and terminal rates, rules, charges and practices connected with or ancillary to such movements; and (4) identify the corporation established pursuant to the agreement as Dart Containerline Company Limited, a Bermuda Corporation.

Dated: August 17, 1976.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76-24667 Filed 8-20-76;8:45 am]

[Independent Ocean Freight Forwarder License No. 629-R]

JOHN A. CONKEY & CO.

Reinstatement of License

By Federal Maritime Commission Order served July 22, 1976, John A. Conkey & Company's Independent Ocean Freight Forwarder License No. 629-R was revoked, effective July 16, 1976, for failure to maintain a valid surety bond on file with the Commission. The Order of Revocation was published on July 28, 1976 in 41 FR 31425.

An appropriate surety bond has been received in favor of John A. Conkey & Company and compliance pursuant to Section 44, Shipping Act, 1916, and Section 510.9 of General Order 4 has been achieved.

Therefore, by virtue of authority vested in my by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (revised) Section 7.04(a), dated September 15, 1973, Independent Ocean Freight Forwarder License No. 629-R shall be reissued to John A. Conkey & Company,

effective July 16, 1976. A copy of this Notice of Reinstatement shall be published in the FEDERAL REGISTER and served upon John A. Conkey & Company.

DONALD J. BRUNNER,
Managing Director.

[FR Doc.76-24670 Filed 8-20-76;8:45 am]

IBERIAN/U.S. NORTH ATLANTIC WESTBOUND FREIGHT 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 September 13, 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.

Notice of Agreement Filed by:

Stanley O. Sher, Esquire, Billig, Sher & Jones, P. C., Suite 300, 2033 K Street, NW., Washington, D.C. 20006.

Agreement No. 9615-21, among the member lines of the above-named conference, modifies the conference's self-policing provisions and adds to the list of activities which shall constitute a violation or breach of the agreement.

By Order of the Federal Maritime Commission.

Dated: August 18, 1976.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76-24669 Filed 8-20-76;8:45 am]

LYKES BROS. STEAMSHIP CO. INC. AND TAPPER & COMPANY, INC.

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, NW., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., San Juan, Puerto Rico and San Francisco, California. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before September 2, 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.

Notice of agreement filed by:

R. J. Finnan, Pricing Analyst, Lykes Bros. Steamship Co., Inc., 300 Poydras Street, New Orleans, Louisiana 70130.

Agreement No. 10194, between Lykes Bros. Steamship Co., Inc. and Tapper & Company, Inc., is an agency agreement whereby Lykes appoints Tapper to act as its agent in the port of Port St. Joe, Florida, on the terms and conditions and to the extent set forth therein. Notice of the filing of this agreement was originally published in the Federal Register on November 25, 1975, Volume 40, Number 228. The agreement has since been revised to provide the agent with the authority to solicit and book cargo at the aforementioned port.

Dated: August 17, 1976.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76-24666 Filed 8-20-76;8:45 am]

TRANS-PACIFIC FREIGHT CONFERENCE, ET AL.

Agreements Filed

Notice is hereby given that the following agreements have 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 agreements at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126; or may inspect the agreements 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 September 13, 1976. Any person desiring a hearing on the proposed agreements 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 agreements (as indicated hereinafter) and the statement should indicate that this has been done.

Trans-Pacific Freight Conference, Orient Overseas Line, Orient Overseas Container Line, Zim Container Service (Agreement No. 10107).

New York Freight Bureau, American Export Line, Orient Overseas Line, Orient Overseas Container Line, Zim Container Service (Agreement No. 10108).

Notice of Agreements Filed by:

Charles F. Warren, Esq., 1100 Connecticut Avenue, NW, Washington, D.C. 20036.

Agreement No. 10107-3 among the Trans-Pacific Freight Conference and Orient Overseas Line, Orient Overseas Container Line and Zim Container Service and Agreement No. 10108-2 among the New York Freight Bureau and American Export Line, Orient Overseas Line, Orient Overseas Container Line and Zim Container Service, would amend Article 1 of each rate agreement to extend the scope thereof to include ports in Macao.

By Order of the Federal Maritime Commission.

Dated: August 17, 1976.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76-24668 Filed 8-20-76;8:45 am]

FEDERAL POWER COMMISSION

Rate Schedule Nos. 25, *et al.*

DEVON CORPORATION, ET AL.

Rate Change Filings Pursuant to Commission's Opinion No. 699-H

AUGUST 11, 1976.

Take notice that the producers listed in the Appendix attached hereto have filed proposed increased rates to the application new gas national ceiling based on the interpretation of vintaging concepts set forth by the Commission in its Opinion No. 699-H, issued December 4, 1974. Pursuant to Opinion No. 699-H the rates, if accepted, will become effective as of the date of filing.

The information relevant to each of these sales is listed in the Appendix.

Any person desiring to be heard or to make any protest with reference to said filings should on or before August 25, 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). A protest will not serve to make the protestant a party to the proceeding. Any party wishing to become a party to a proceeding must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

Filing date	Producer	Rate schedule No.	Buyer	Area
July 26, 1976	Devon Corp., 3300 Liberty Tower, Oklahoma City, Okla. 73102.	25	Texas Eastern Transmission Corp.	Other southwest.
Do	Eason Oil Co., P.O. Box 18755, Oklahoma City, Okla. 73118.	52	do	Do.
Do	Phillips Petroleum Co., Bartlesville, Okla. 74004.	[1] 600	Mississippi River Transmission Corp.	Do.
July 29, 1976	Ashland Oil, Inc., P.O. Box 1503, Houston, Tex. 77001.	230	Tennessee Gas Pipeline Co.	Texas Gulf Coast
Do	Atlantic Richfield Co., P.O. Box 2819, Dallas, Tex. 75221.	525	Trunkline Gas Co.	Southern Louisiana.
Do	Kerr-McGee Corp., P.O. Box 25861, Oklahoma City, Okla. 73125.	46	Natural Gas Pipeline Co. of America.	Hugoton-Anadarko.
Do	do	53	do	Do.
Aug. 2, 1976	Texaco, Inc., P.O. Box 52332, Houston, Tex. 77052.	146	Tennessee Gas Pipeline Co.	Southern Louisiana.

[1] Proposed designation of contract to supersede Phillips Petroleum Co. rate schedule No. 239.

[FR Doc.76-24484 Filed 8-20-76;8:45 am]

[Docket No. RI76-143]

CABOT CORP. (SW)

Order Providing for Hearing on and Suspension of Proposed Change in Rate, and Allowing Rate Change To Become Effective Subject to Refund

AUGUST 12, 1976.

Respondent has filed a proposed change in rate and charge for the jurisdictional sale of natural gas, as set forth in Appendix A hereof.

The proposed changed rate and charge may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon a hearing regarding the lawfulness of the proposed change, and that the supplement herein be suspended and its use be deferred as ordered below.

The Commission orders: (A) Under the Natural Gas Act, particularly Sections 4 and 15, the Regulations pertaining thereto [18 CFR, Chapter I], and the Commission's Rules of Practice and Procedure, a public hearing shall be held concerning the lawfulness of the proposed change.

(B) Pending hearing and decision thereon, the rate supplement herein is suspended and its use deferred until date shown in the "Date Suspended Until" column. This supplement shall become effective, subject to refund, as of the expiration of the suspension period without any further action by the Respondent or by the Commission. Respondent shall comply with the refunding procedure required by the Natural Gas Act and Section 154.102 of the Regulations thereunder.

(C) Unless otherwise ordered by the Commission, neither the suspended supplement, nor the rate schedule sought to be altered, shall be changed until disposition of this proceeding or expiration of the suspension period, whichever is earlier.

By the Commission.

KENNETH F. PLUMB,
Secretary.

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until	Cent per 1,000 ft [1] [2] Rate in effect	Cent per 1,000 ft [1] [2] Proposed increased rate	Rate in effect subject to refund in docket Nos.
RI76-143	Cabot Corp. (SW)	77	9	Southern Natural Gas Co. (Southern Louisiana).	$116,438	7-13-76		8-14-76	20.35	[3] 37.60	

[1] Unless otherwise stated, the pressure base is 15.025 lb/in²a.
[2] Unless otherwise stated, the rate shown is the total rate, inclusive of any applicable British thermal unit adjustment and tax.
[3] Includes 0.51¢/1,000 ft³ gathering allowance prescribed in opinion No. 749.

Cabot has filed a unilateral rate increase from its contractually authorized rate to the ceiling rate under Opinion No. 749. Cabot claims that the contract has been canceled, and thus it is entitled to make a unilateral filing. This is a question as to whether the contract has been canceled as a result of Cabot's determination not to replace the existing compression facilities at the current contract price.[1] Southern has indicated that it does not agree with Cabot that the contract has terminated. Cabot, in its filing, has stated that it has no objection to a one-day suspension pending resolution of the contract issue. Cabot's proposed rate increase is suspended for one day, pending such a determination and Cabot is permited to collect the rate thereafter subject to refund.

[1] Cabot filed on July 13, 1976, an abandonment application in Docket No. C176-681 with respect to the subject sales.

[FR Doc.76-24485 Filed 8-20-76;8:45 am]

[Docket Nos. G-6272, et al.]

GETTY OIL COMPANY, ET AL.

Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

AUGUST 16, 1976.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 9, 1976, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to be-

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

come parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per M ft [3]	Pressure base
G-6272..... B 6-28-76	Getty Oil Co., P.O. Box 1404, Houston, Tex. 77001.	El Paso Natural Gas Co., Blinebry et al. fields, Lea County, N. Mex.	Wells reclassified	.....
CI76-620 [1]..... A 6-18-76	Cities Service Oil Co., P.O. Box 300, Tulsa, Okla. 74102.	Tennessee Gas Pipeline Co., Grand Isle block 48 (W/2), offshore Louisiana.	[2] $1.75	15.025
CI76-647..... A 6-30-76	Pennzoil Offshore Gas Operations, Inc., P.O. Box 2967, Houston, Tex. 77001.	Sea Robin Pipeline Co., block 533, West Cameron area, south addition, offshore Louisiana.	[3] $1.7754	15.025
CI76-648..... A 6-30-76	Pennzoil Offshore Gas Operators, Inc.	Sea Robin Pipeline Co., block 335, East Cameron area, south addition, offshore Louisiana.	[3] $1.7754	15.025
CI76-649..... A 6-30-76	do	Sea Robin Pipeline Co., block 532, West Cameron area, south addition, offshore Louisiana.	[3] $1.7754	15.025
CI76-650..... A 6-30-76	Gulf Oil Corp., P.O. Box 2100, Houston, Tex. 77001.	Natural Gas Pipeline Co. of America, Fashing Field, Atascosa and Karnes Counties, Tex.	[4] [5] 57.7065	14.65
CI76-651..... B 6-30-76	Alpar Resources, Inc., Allen Bldg., P.O. Box 906, Perryton, Tex. 79070.	Northern Natural Gas Co., Ochiltree County, Tex.	Nonproductive	.....
CI76-653 [6]..... A 7-1-76	Pennzoil Offshore Gas Operators, Inc.	Sea Robin Pipeline Co., block 334, East Cameron area, south addition, offshore Louisiana.	[5] $1.7754	15.025
CI76-662..... B 6-28-76	The Superior Oil Co., P.O. Box 1521, Houston, Tex. 77001.	United Gas Pipe Line Co., South Sunrise Field, Terrebonne Parish, La.	Nonproductive	.....
CI76-674..... (CS71-431) E 7-7-76	Gulf Oil Corp. (successor to S. & G. Oil Co., Inc.).	Arkansas Louisiana Gas Co., Carthage Field, Beckville area, Panola County, Tex.	20.17 [5] 32.7133	14.65
CI76-680..... B 7-12-76	Lear Petroleum Corp., 950 1 Energy Sq., 4925 Greenville Ave., Dallas, Tex. 75206.	Transwestern Pipeline Co., Ivanhoe Field, Beaver County, Okla.	Wells plugged and abandoned.	.....
CI76-681..... B 7-13-76	Cabot Corp. (SW) Operator et al., P.O. Box 1101, Pampa, Tex. 79065.	Southern Natural Gas Co., Bayou Henry Field, Iberville Parish, La.	Uneconomical	
CI76-682..... A 7-12-76	Sun Oil Co., P.O. Box 20, Dallas, Tex. 75221.	Northern Natural Gas Co., Emperor Field, Winkler County, Tex.	[5] 55.9109	14.65
CI76-683..... A 7-15-76	Marathon Oil Co., 539 South Main St., Findlay, Ohio 45840.	Transwestern Pipeline Co.....	[5] 55.9016	14.65
CI76-684..... B 7-6-76	Union Texas Petroleum, a Division of Allied Chemical Corp., P.O. Box 2120, Houston, Tex. 77001.	Cities Service Gas Co., Hillsdale northwestern area, Grant County, Oklahoma.	Depleted	.....
CI76-685..... B 7-15-76	Kirkpatrick Oil & Gas Co. and Damon Resources Corp. (successor in interest to Natol Petroleum Corp.), 1300 North Broadway, Oklahoma City, Okla. 73103; 3033 Northwest 63d St., Oklahoma City, Okla. 73112.	Michigan Wisconsin Pipeline Co., section 5, township 24 north, range 13, west, Woodward area, Woods County, Okla.	Depleted	.....
CI76-686..... B 7-19-76	Coastal States Gas Producing Co. and its successors by Mary Kate Withers, applicant, 1020 Bank & Trust Tower, Corpus Christi, Tex. 78477 and Five Greenway Plaza East, Room 1260B, Houston, Tex. 77046.	Natural Gas Pipeline Co. of America, Maguelitos field, Webb County, Tex.	Nonproductive	.....
CI76-687..... B 7-19-76	Amoco Production Co., Security Life Bldg., Denver, Colo. 80202.	Northern Natural Gas Co., Hansford Morrow (lower) field, Ochiltree County, Tex.	Wells watered out	.....
CI76-688..... A 7-19-76	Getty Oil Co., P.O. Box 1404, Houston, Tex. 77001.	Tennessee Gas Pipeline Co., Grand Isle, block 48 W/2, offshore Jefferson, La.	[5] $1.75	15.025
CI76-689.....	Texaco Inc., P.O. Box 60252, New	Columbia Gas Transmission Corp.,	[2] 163.0	15.025

Filing code; A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession.
See footnotes at end of table.

Docket No. and date filed	Applicant	Purchaser and location	Price per M ft ³	Pressure base
A 7-19-76	Orleans, La. 70160.	Eugene Island block 313-B platform, offshore La.		
CI76-690 B 7-19-76	Marathon Oil Co. (operator) et al.	Colorado Interstate Gas Co., South Wamsutter area, Sweetwater County, Wyo.	Leases terminated	.....
CI76-691 A 7-21-76	Amoco Production Co.	El Paso Natural Gas Co., Carlsbad South et al. fields, Eddy and Lea Counties, N. Mex.	59.2127	14.73
CI76-692 B 7-19-76	Exchange Oil & Gas Corp. (successor to Exchange Oil & Gas Co.), 16th floor, 1010 Common St., New Orleans, La. 70112.	Southern Natural Gas Co., block 19, Breton Sound area, Plaquemines Parish, La.	Depleted	.....
I76-693 B 7-15-76	Kirkpatrick Oil & Gas Co. and Damson Resources Corp. (successor in interest to Natol Petroleum Corp.).	Panhandle Eastern Pipeline Co., section 5, township 24 north, range 13 west, Woodward area, Woods County, Okla.	Depleted	.....
CI76-694 A 7-21-76	Gulf Oil Corp.	El Paso Natural Gas Co., North Avalon Field, Hanson Federal No. 2 Well, S/2 of section 28-T20S-R27E, Eddy County, N. M x.	57.3310	14.73
CI76-695 B 7-12-76	Perry R. Bass, 3100 Fort Worth National Bank Bldg., Forth Worth, Tex. 76102.	Southern Natural Gas Co., Cox Bay, Little Lake, South Little Lake, etc. Fields, Plaquemines, Jefferson and La Fourche Parishes, La.	Production ceased	.....
CI76-696 B 7-12-76	Weva Oil Corp., 608 Main St., Hingham, Mass. 02043.	Consolidated Gas Supply Corp., Wirt, Roane and Calhoun Counties, W. Va.	(12)	.....
CI76-697 A 7-22-76	Mobil Oil Corp., 3 Greenway Plaza East, Suite 800, Houston, Tex. 77046.	Northern Natural Gas Co., West Cameron area, South Addition, blocks 609 and 617, Federal offshore, La.	[8] 53.5514	15.025
CI76-698 (G-4146) F 7-22-76	Dallas McCasland (successor to Gulf Oil Corp.), P.O. Box 763, Hobbs, N. Mex. 88240.	Northern Natural Gas Co., Jalmat Field, Lea County, N. Mex.	[8] 28.42	15.025
CI76-699 B 7-22-76	Lock 3 Oil, Coal & Dock Co., 200 Union Carbide Bldg., Pittsburgh, Pa. 15220.	Consolidated Natural Gas Corp., Warren District, Upshur County, W. Va.	Depleted	.....
CI76-700 A 7-22-76	Amoco Production Co.	Texas Eastern Transmission Corp., Bethany-Longstreet field, DeSoto Parish, La.	[10] 62.8626	15.025
CI76-701 A 7-23-76	Texaco Inc.	Sea Robin Pipeline Co., Eugene Island block 339, offshore, La.	[2] [5] 174.56	15.025
CI76-702 A 7-22-76	J. M. Huber Corp., 2000 West Loop South, Houston, Tex. 77027.	Natural Gas Pipeline Co., of America, Philly Federal No. 1 well, Eddy County, N. Mex.	[8] 95	14.73
CI76-703 B 7-23-76	Bill Forney, Inc., 1800 St. James Place—Suite 204, Houston, Tex. 77056.	Transcontinental Gas Pipe Line Corp., North Hillje Area, Wharton County, Tex.	(11)	.....
CI76-705 A 7-26-76	MRT Exploration Co., 9900 Clayton Rd., St. Louis, Mo. 63124.	Mississippi River Transmission Corp., Mills Ranch (Arbuckle) field, Wheeler County, Tex.	[8] 55.9109	14.65
CI76-706 A 7-26-76 [6]	Pennzoil Offshore Gas Operators, Inc.	Sea Robin Pipeline Co., Block 128, South Marsh Island area, South Addition, offshore La.	[8] $1.7745	15.025
CI76-707 B 7-28-76	McCulloch Oil Corp., 10880 Wilshire Blvd., Suite 1500, Los Angeles, Calif. 90024.	Transcontinental Gas Pipe Line Corp., North Lake des Allemands field, section 27, township 13 south, range 19 east, St. Charles Parish, La.	Well plugged and abandoned	.....
CI76-708 A 7-26-76	Phillips Petroleum Co., Bartlesville, Okla. 74004.	Michigan Wisconsin Pipe Line Co., Coldwater Creek field, Hugoton-Anadarko area, Sherman County, Tex.	[2] [8] 80.0	14.65
CI76-709 B 7-28-76	Howell Drilling, Inc. et al., (operator), Milam Bldg., San Antonio, Tex. 78205.	United Gas Pipe Line Co., South El Toro Field, Jackson County, Tex.	Depleted	.....
CI76-710 B 7-28-76	David Jackman, Jr., P.O. Box 246, Augusta, Kans. 67010.	Panhandle Eastern Pipe Line Co., Greensburg, Kiowa County, Kans.	(12)	.....
CI76-711 B 7-29-76	Continental Oil Co., P.O. Box 2197, Houston, Tex. 77001.	Cities Service Gas Co., Southeast Eureka field, Grant and Alfalfa Counties, Okla.	Leases terminated	.....
CI76-712 A 7-29-76	ONG Exploration, Inc., 624 South Boston, Tulsa, Okla. 74119.	Northern Natural Gas Co., Morrow field, Ellis County, Okla.	[8] 55.66	14.65
CI76-713 A 7-29-76	Champlin Petroleum Co., 700 Houston Natural Gas Bldg., Houston, Tex. 77002.	El Paso Natural Gas Co., Carlsbad field, Eddy County, N. Mex.	[2] [8] 81.00	14.73

[1] Being renoticed to correct docket number.
[2] Applicant is willing to accept a certificate conditioned to the opinion No. 699-H rate.
[3] Applicant requests certification at applicable national rate.
[4] Applicant is willing to accept a permanent certificate at the national rate in conformance with sec. 2.56a.
[5] Subject to upward and downward British thermal unit adjustment.
[6] Initial service under opinion No. 699.
[7] Unilateral rate based on opinion No. 607 and subject to upward and downward British thermal unit adjustment.
[8] Unilateral rate based on opinion No. 749; subject to upward and downward British thermal unit adjustment.
[9] Includes upward British thermal unit adjustment of 1.134¢/M ft³.
[10] Includes 1.8012¢ upward British thermal unit adjustment.
[11] Approval of settlement proposal in Docket No. CP74-94.
[12] Unable to sell gas in commercial quantities into purchaser's high pressure line.
[13] The subject deep formations are not being exploited and developed.

[FR Doc.76-24486 Filed 8-20-76;8:45 am]

[Docket Nos. CS76-924, *et al.*]

INSCOL PETROLEUM CO., ET AL.

Applications for "Small Producer" Certificates [1]

AUGUST 16, 1976.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7(c) of the Natural Gas Act and Section 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before August 30, 1976, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Filing date	Applicant
CS76-924	June 21, 1976	Inscol Petroleum Co., 8447 Wilshire Blvd. No. 323, Beverly Hills, Calif. 90211.
CS76-925	June 30, 1976	Magic Circle Gas Corp., 1450 United Founders Tower, Oklahoma City, Okla. 73112.
CS76-926	June 29, 1976	Kirby Exploration Co., 1100 Milam Bldg., Suite 2690, Houston, Tex. 77002.
CS76-927	July 1, 1976	Bolyard Oil & Gas, Ltd., 1020 15th St., Suite 20-D, Denver, Colo. 80202.
CS76-928	July 6, 1976	Monte Carlo Exploration, Inc., P.O. Box 6195, Bossier City, La. 71010.
CS76-929	do	W. H. Oberthier, P.O. Box 811, Texarkana, Tex.
CS76-930	do	Clemco, Inc., 478 Fair Foundation Bldg., Tyler, Tex. 75701.
CS76-931	do	John T. Pickens, 2320 Republic Bank Tower, Dallas, Tex. 75201.
CS76-932	do	R. H. Pickens, 2320 Republic Bank Tower, Dallas, Tex. 75201.
CS76-933	do	Willard Pease Oil and Gas Co., P.O. Box 548, Grand Junction, Colo. 81501.
CS76-934	July 7, 1976	Wylo Gas Co., 1338 3d Ave., Huntington, W. Va. 25701.
CS76-935	July 9, 1976	Langford Keith, Jr., Conservator of the Property of G. A. Brown a/k/a George A. Brown, P.O. Box 190, Silver City, N. Mex. 88061.
CS76-936	do	A. J. Hodges, Jr., P.O. Box 1817, Shreveport, La.
CS76-937	do	Harbert Construction Corp., P.O. Box 1297, Birmingham, Ala. 35201.
CS76-938	do	A. A. Lollar, 907 Crestway, Derby, Kans. 67037.
CS76-939	July 12, 1976	Filon Exploration Corp., Suite 2216, 1700 Broadway, Denver, Colo. 80202.
CS76-940	July 9, 1976	Peel Tree Gas Co., P.O. Box 57, Bridgeport, W. Va. 26330.
CS76-942	July 13, 1976	Melzer & Henderson, P.O. Box 82, Midland, Tex. 79701.
CS76-943	July 14, 1976	Greenbrier Petroleum Corp., Suite 604 Commerce Sq., Charleston, W. Va. 25301.
CS76-944	July 15, 1976	Viola J. Kirkwood, P.O. Drawer 3439, Casper, Wyo. 82601.
CS76-946	do	Bright Day Corp., P.O. Box 1394, Shawnee, Okla. 74801.
CS76-950	July 19, 1976	Crazy Mountain Resources, Inc., No. 350 Rocky Village, 1500 Poly Dr., Billings, Mont. 59102.
CS76-951	do	Netumar Resources, Inc., Hindry & Meyer, 2300 1st National Bank Bldg., Denver, Colo. 80202.
CS76-952	do	Sue Dimit Krutsinger, 121 Timber Lane, Boulder, Colo. 80302.
CS76-953	do	Jane Dimit North, 40 Raven Hills Ct., Colorado Springs, Colo. 80919.
CS76-954	do	Linda Adele Dimit, 1770 South Jackson No. 403, Denver, Colo. 80210.
CS76-955	do	Donald C. Condie, P.O. Box 82, Midland, Tex. 79701.
CS76-956	do	R. J. Sullivan, d/b/a Sullivan and Co., 1801 NBT Bldg., Tulsa, Okla. 74103.
CS76-957	July 21, 1976	Burl J. Bandy, P.O. Box 1248, Dalton, Ga. 30720.
CS76-958	July 20, 1976	Charles Gabbard, Route 2, Box 597, Manchester, Ky. 40962.
CS76-959	do	Copeland Energy Corp., 1100 Oil Center Bldg., 2601 NW. Expressway, Oklahoma City, Okla. 73112.
CS76-960	July 21, 1976	Evelyn R. Joeckel, 1660 Lincoln Suite 2210, Denver, Colo. 80203.
CS76-961	do	Waggoned Properties, 1252 Main Tower, Dallas, Tex. 75202.
CS76-962	July 23, 1976	Double Four Investment Club, 101 East Main St., Harrisville, W. Va. 26362.
CS76-963	July 22, 1976	Mr. and Mrs. Michael W. A. Wade, 4523 Yuma St., NW., Washington, D.C. 20016.
CS76-964	July 23, 1976	Donald B. Jones, 2403 Gulf, Midland, Tex.
CS76-965	do	Warren J. Hancock, P.O. Box 2527, Billings, Mont. 59103.
CS76-966	do	Eulalie M. Nobles, c/o James H. Nobles, Jr., 205 Armstron Bldg., El Dorado, Ark. 71730.
CS76-967	do	Nansey Dimit Campbell, 11250 West 78th Dr. Arvada Colo. 80005.
CS76-968	July 22, 1976	Somerset Gas Service City Hall, Somerset, Ky. 42500
CS76-969	July 26, 1976	Loyd B. Sands, 2900 1st National Bank Bldg., Dallas, Tex. 75202.
CS76-970	do	Billy Ray Troxell, Route 2, Shamrock, Tex. 79079.
CS76-971	do	George A. Thomas, 1450 Midland National Bank Tower, Midland, Tex. 79701.
CS76-972	do	Elmer A. Nelson and Roy E. Shipley, 6570 South Normandie Ave., Los Angeles, Calif. 90044.
CS76-973	do	Harold Melville, Jr., 1100 Milam Bldg., Suite 3333, Houston, Tex. 77002.
CS76-974	do	Burmont Exploration 1972-A 1100 Milam Bldg., Suite 3333, Houston, Tex. 77002.
CS76-975	do	Burmont Co., 1100 Milam Bldg., Suite 3333, Houston, Tex. 77002.
CS76-976	do	John L. Mistrot, 1100 Milam Bldg., Suite 3333, Houston, Tex. 77002.
CS76-977	do	Pelmont International, Inc., 1100 Milam Bldg, Suite 3333, Houston, Tex. 77002.
CS76-978	do	Pel-Tex Oil Co., Inc., 1100 Milam Bldg., Suite 3333, Houston, Tex. 77002.
CS76-979	do	Earl P. Burke, Jr. (operator), 1100 Milam Bldg., Suite 3333, Houston, Tex. 77002.
CS76-980	do	Burmont-Rosenbloom 1971 Venture, 1100 Milam Bldg., Suite, 3333, Houston, Tex. 77002.
CS76-981	do	Burmont Exploration 1973 A, 1100 Milam Bldg., Suite 3333, Houston, Tex. 77002.
CS76-982	do	Tar Heel Energy Corp., Box 1398, Gastonia, N.C. 28052.
CS76-983	do	John J. Kemmerer, Jr., 607 Colorado Bldg., 1615 California St., Denver, Colo. 80202.
CS76-984	July 27, 1976	J. Rober King, d/b/a Jacobson Oil Co., 6421 Independence Ave., Woodland Hills, Calif. 91367.
CS76-985	do	Gene C. Sigler, 504 Mid South Towers, Shreveport, La.
CS76-986	do	Fortune Gas and Oil, Inc., 504 Mid South Towers, Shreveport, La.
CS76-987	do	Harland B. Hundley, 504 Mid South Tower, Shreveport, La.
CS76-988	do	Robert M. Key, 501 Mid South Towers, Shreveport, La.
CS76-989	do	Panoak Oil and Gas Corp., 6809 East 40th St., Tulsa, Okla. 74145.

[FR Doc.76-24487 Filed 8-20-76;8:45 am]

CITIES SERVICE GAS CO.

[Docket No. RP76-13]

Notice of Conference on Rates and Charges

AUGUST 16, 1976.

Take notice that on August 24, 1976, a conference of all parties to intervene in this proceeding, the Cities Service Gas Company, any interested customers, and the Commission Staff will be held in Conference Room No. 3200 at the Federal Power Commission, 941 North Capitol Street, NE., Washington, D.C., at 10:00 a.m. (d.s.t.).

Copies of this notice are being mailed this date to all jurisdictional customers and interested State Commissions.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-24615 Filed 8-20-76;8:45 am]

[Docket No. RI76-65]

DEVON CORPORATION, ET AL.

Order Setting Matter for Hearing, Establishing Procedures and Granting Intervention

AUGUST 17, 1976.

On November 18, 1975, Devon Corporation (Operator), *et al.* (Devon) filed in Docket No. RI76-65 a petition for special relief pursuant to Sections 2.56a(g) and 2.76 of the Commission's General Policy and Interpretations (18 C.F.R. §§ 2.56a (g), 2.76) and Section 154.107(e) of the Commission's Regulations under the Natural Gas Act (18 C.F.R. § 154.107(e)) seeking a rate higher than the applicable area or national rate ceilings for sales of natural gas from 50 wells located in West Virginia which Devon operates and in which Devon owns interests.

Prior to June 21, 1973, Commonwealth Gas Corporation (Commonwealth) made sales in interstate commerce from the 50 subject wells to Columbia Gas Transmission Corporation (Columbia), Consolidated Gas Supply Corporation (Consolidated), and Cities Service Oil Company (Cities). On June 21, 1973, Commonwealth assigned all of its interests in these wells, one-half to John W. Nichols, the President of Devon, and one-half to Eason Oil Company (Eason). On June 23, 1973, John W. Nichols assigned his interest to Devon and retained a 36 percent overriding royalty interest.

Devon and Eason, on whose behalf Devon also seeks special relief, are currently selling natural gas pursuant to rate schedules on file with the Commission to Columbia from 48 of the subject wells at 29 cents per Mcf, to Consolidated from one of the subject wells at 29 cents per Mcf, and to Cities from one of the subject wells at 16.65 cents per Mcf. In its original petition Devon stated that production from these wells has declined to the extent that reconditioning, deepening, and installation of additional equipment are necessary to permit continued operations. Devon proposes a five-year program in which it will conduct reworking operations on eight of the wells, recomplete 25 of the wells in other producing formations, deepen one of the wells, and install compression facilities on 21 of the wells. The proposed program involves performing additional work on each of the subject wells, except for the well from which gas is sold to Consolidated, and Devon estimates that an ad-

ditional 9,977,870 Mcf will be made available to the interstate market by the program. In return for conducting the proposed program, Devon requested in its original petition for special relief that it be authorized to collect a rate of 70 cents per Mcf plus an annual escalation of one cent per Mcf for its sales from all 50 wells. On February 23, 1976, Devon filed an amendment to its petition for special relief in which Devon stated that it is also requesting special relief from the rates set forth in Opinion No. 749 pursuant to Section 2.56B(h) of the Commission's General Policy and Interpretations. In its amendment to its petition Devon stated that its recent actual operating expenses far exceeded the estimates made by Devon when it prepared its original petition, and thus Devon requested that it be authorized to collect a rate of $1.08 per Mcf plus an annual escalation of one cent per Mcf. The requested rate includes costs from all 50 wells, an allowance for Federal income taxes as provided in Opinion No. 749, and a 20 percent rate of return as was provided for small producers in Opinion No. 742.[1]

Of the three purchasers of the subject gas, Columbia has agreed to pay Devon whatever rate the Commission determines to be just and reasonable for the sales. However, Devon has not as yet obtained contractual authority for any rate increase from either Consolidated or Cities. If Devon fails to obtain such contract authority prior to the issuance of a Commission order in this proceeding, Devon requests that the Commission condition any relief such that such relief be effective for its sales to Consolidated and Cities only if contractual authorization is obtained.

Notice of Devon's petition for special relief was issued on December 4, 1975, and appeared in the FEDERAL REGISTER on December 12, 1975, at 40 FR 57845. Notice of Devon's amendment to its petition was issued on March 10, 1976, and appeared in the FEDERAL REGISTER on March 16, 1976, at 41 FR 11078. Columbia and Cities filed timely petitions to intervene, and the Public Service Commission of the State of New York (PSCNY) filed a notice of intervention.

The Commission Staff has conducted a field audit of Devon's books and an extensive analysis of the data submitted by Devon and has concluded that the proposed rate increase may not be cost justified. In light of the factual and legal issues raised by Devon's petition for special relief, this proceeding should be set for hearing in order to provide Devon and other interested parties an opportunity to present evidence on the issues raised and on any other matters considered to be relevant to the proceeding. Specifically, Devon and any supporting intervenors should present testimony and evidence on the following issues:

(1) Whether data pertaining to the two wells for which Devon does not have contractual authorization for the proposed rate should be treated separately or included in the overall cost calculations;

(2) Whether data pertaining to the well upon which Devon does not propose to do any additional work should be included in the overall cost calculations;

(3) The additional recoverable reserves that will result from Devon's proposed workover program;

(4) Whether to include in the cost calculations as working interest volumes of Devon those volumes of gas attributable to the overriding royalty interest retained by John W. Nichols, the President of Devon;

(5) Whether a Federal income tax allowance should be included in the cost calculations, and if so, whether Devon is entitled to claim a Federal income tax allowance of 48 percent;

(6) Whether Devon's estimated future annual operating expenses should be based on an annualization of four recent months of expenses rather than on an actual year's expenses.

The Commission finds: (1) It is necessary and in the public interest that the above-docketed proceeding be set for hearing.

(2) Good cause exists to grant the petitions to intervene of Columbia and Cities.

The Commission orders: (A) Pursuant to the authority of the Natural Gas Act, particularly Sections 4, 5, 7, 14, and 16 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Natural Gas Act (18 C.F.R. Chapter 1), a public hearing shall be held in a hearing room of the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, to determine the lawfulness of Devon's proposed rate increase.

(B) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (See Delegation of Authority, 18 C.F.R. § 3.5(d)) shall preside at the hearing in this proceeding, with authority to establish and change all procedural dates, and to rule on all motions (with the sole exception of petitions to intervene, motions to consolidate and sever, and motions to dismiss, as provided for in the Rules of Practice and Procedure).

(C) Devon and all intervenors supporting Devon shall file their direct testimony and evidence on or before September 15, 1976. All testimony and evidence shall be served upon the Presiding Administrative Law Judge, the Commission Staff, and all parties to this proceeding.

(D) The Presiding Administrative Law Judge shall preside at a pre-hearing conference to be held on September 30, 1976, at 9:30 A.M. EDT, in a hearing room at the address noted in Ordering Paragraph (A).

(E) Columbia and Cities are permitted to intervene in the above-entitled proceeding, subject to the rules and regulations of the Commission; *Provided, however,* That their participation shall be limited to matters affecting asserted rights and interests specifically set forth in their petitions for leave to intervene; and *Provided, further,* that their admission in the manner provided shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders entered in this proceeding, and that they agree to accept the record as it now stands.

(F) 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.76-24621 Filed 8-20-76;8:45 am]

[1] Devon filed an application for a small producer certificate on May 24, 1976, in Docket No. CS76-842. Eason was issued a small producer certificate in Docket No. CS71-631 on April 11, 1972.

[Docket No. RP72-134 (PGA 76-18)]

EASTERN SHORE NATURAL GAS CO.

Purchased Gas Cost Adjustment to Rates and Charges

AUGUST 16, 1976.

Take notice that Eastern Shore Natural Gas Company (Eastern Shore) on July 30, 1976, tendered for filing Thirty-Second Revised Sheet No. 3A and Thirty-Second Revised PGA-1 to its FPC Gas Tariff, Original Volume No. 1. These revised tariff sheets, to be effective September 1, 1976, will increase the commodity or delivery charges of Eastern Shore's Rate Schedules CD-1, CD-E, E-1, I-1 and PS-1 by .003¢ per Mcf. These increases reflect corresponding "tracking" rate increases for advance payments by Transcontinental Gas Pipe Line Corporation (Transco), Eastern Shore's sole supplier, in its filing of July 16, 1976, in FPC Docket Nos. RP75-75 and AP-76.

Pursuant to § 154.51 of the Regulations under the Natural Gas Act, Eastern Shore respectfully requests waiver of the notice requirements of § 154.22 of those Regulations and of § 20.2 of the General Terms and Conditions of its Tariff, to the extent necessary, to permit the tariff sheets submitted to become effective as of September 1, 1976, to coincide with the effective date of Transco's rate changes. In support thereof, Eastern Shore states that Transco's July 16 filing of its revised tariff sheets prohibited Eastern Shore from fulfilling the prescribed notice requirements under the General Terms and Conditions of its Tariff.

Eastern Shore states that copies of the filing have been mailed to each of the Company's jurisdictional customers and to interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 30, 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.76-24616 Filed 8-20-76;8:45 am]

[Docket No. ER76-211]

FLORIDA POWER & LIGHT CO.

Settlement Conference

AUGUST 16, 1976.

Take notice that on September 10, 1976, a conference of all parties to intervene in these proceedings, Florida Power & Light Company, and the Commission Staff will be held in a Commission's Conference Room at 825 North Capitol Street NE., Washington, D.C., at 10:00 a.m.

Customers and other interested persons will be permitted to attend, but if such persons have not previously been permitted to intervene by order of the Commission, attendance at the conference will not be deemed to authorize intervention as a party in the proceedings.

All parties will be expected to come fully prepared to discuss the merits of all issues concerning the lawfulness of the proposed rate increase and any procedural matters preparatory to a full evidentiary hearing or to make commitments with respect to such issues and any offers of settlement or stipulations discussed at the conference.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-24617 Filed 8-20-76;8:45 am]

[Docket No. RP73-14]

MICHIGAN WISCONSIN PIPE LINE CO.

Filing of Report

AUGUST 16, 1976.

Take notice that on August 2, 1976, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) filed a report pursuant to Paragraph (C) of the Commission's Order dated May 10, 1976 in Docket Nos. RI74-56 and RI74-57.

Michigan Wisconsin states that pursuant to the provisions of the General Terms and Conditions of its tariff, Michigan Wisconsin will credit its Unrecovered Purchased Gas Cost Account with the amounts received ($45,029.81) from Phillips Petroleum Company ($36,803.60) and Kerr-McGee Corporation ($8,226.21) refunded pursuant to Paragraph (B) of the order referred to above.

Michigan Wisconsin further states that copy of its report has been mailed to each of Michigan Wisconsin's gas sales customers as well as to each of the following:

Illinois Commerce Commission
Public Service of Indiana
Iowa Commerce Commission
Kansas State Corporation Commission
Michigan Public Service Commission
Missouri Public Service Commission
Public Utilities Commission of Ohio
Tennessee Public Service Commission
Public Service Commission of Wisconsin

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 27, 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.76-24618 Filed 8-20-76;8:45 am]

[Docket No. RP72-149 (PGA 76-12)]

MISSISSIPPI RIVER TRANSMISSION CORP.

Proposed Change in Rates

AUGUST 16, 1976.

Take notice that Mississippi River Transmission Corporation (Mississippi) on July 30, 1976, submitted for filing Forty-Fourth Revised Sheet No. 3A to its FPC Gas Tariff, First Revised Volume No. 1, to become effective September 1, 1976.

The instant filing is being made pursuant to the provisions of Mississippi's purchased gas cost adjustment clause to track a rate change filing of Natural Gas Pipeline Company of America made pursuant to the terms of the PGA provisions of its tariff.

Mississippi submitted schedules containing computations supporting the rate changes to be effective September 1, 1976. Mississippi states that copies of its filing were served on Mississippi's jurisdictional customers and the State Commissions of Arkansas, Illinois and Missouri.

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 27, 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 unless such petition has previously been filed. Copies of the filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-24619 Filed 8-20-76; 8:45 am]

[Docket No. ER76-305]

NORTHERN STATES POWER CO. (WISCONSIN)

Filing of Settlement Agreement

AUGUST 16, 1976.

Take notice that on August 4, 1976, Northern States Power Company (Wisconsin) (NSP) tendered for filing a proposed Settle-Agreement in the above-referenced docket. In the Settlement Agreement the parties thereto state that the agreement is in full settlement of all issues arising in the proceeding in this docket.

In the proposed Settlement Agreement it is requested that the proposed settlement rates be made effective March 1, 1976.

Any person desiring to be heard or to protest said settlement agreement should file comments with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before September 3, 1976. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this agreement are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-24620 Filed 8-20-76;8:45 am]

[Docket No. E-7172]

SOUTHWESTERN POWER ADMINISTRATION

Order Extending the Confirmation and Approval of Rate Schedules

AUGUST 17, 1976.

Pursuant to Section 5 of the Flood Control Act of 1944 (58 Stat. 887, 890), The Secretary of the Interior filed a request on May 20, 1976, on behalf of the Southwestern Power Administration (SWPA) requesting that the Commission extend for a maximum period of six months, to November 30, 1976, its confirmation and approval of the following system rate schedules and contractual rates and charges:

System rate schedules	*Contractual rates and charges*
F-1, firm power. P-2 (Revised), peaking power. EE, excess energy. IC, interruptible capacity.	Contract No. Ispa-356, with Oklahoma Gas and Electric Co. and Public Service Co. of Oklahoma (Oklahoma Companies). Contract No. 14-02-001-864 with Tex-La Electric Cooperative Inc. (Tex-La).

By order issued November 30, 1971, the Commission confirmed and approved all the system rate schedules listed above and the rates and charges set forth in Contract No. Ispa 356 (Oklahoma Companies). By order issued February 20, 1973, the Commission confirmed and approved the rates and charges set forth in Contract No. 14-02-001-864 (Tex-La). In both of the above orders, the rates and charges were ap-

proved for a period ending not later than May 31, 1974. By order issued May 31, 1974, the Commission extended its approval of the rates and charges for a period ending not later than May 31, 1975. By order issued July 3, 1975, the Commission extended its approval of the rates and charges for a period ending not later than November 30, 1975. By order issued February 9, 1976, the Commission extended its approval for an additional period ending not later than May 31, 1976.

SWPA currently markets the power and energy from an integrated system of 19 hydroelectric plants constructed and operated by the Corps of Engineers. The total installed capacity of the 19 plants is presently 1,839,200 kilowatts with an average annual generation of 5.08 billion kilowatt-hours.

CURRENT RATES AND CHARGES

The rates and charges currently in effect and for which Interior requests extention of the Commission's approval for up to six additional months are:

Rate Schedule F–1 for sale of firm power service to wholesale customers. The monthly demand charge is $1.60 per kilowatt, but a discount of $0.40 is given if service is taken from SWPA's high voltage grid. The monthly energy charge is 2.0 mills per kilowatt-hour for the first 150 kilowatt-hours per kilowatt, 3.0 mills for the next 290 kilowatt-hours per kilowatt, and 5.0 mills per kilowatt-hour for all in excess of 440 kilowatt-hours per kilowatt of billing demand.

Rate Schedule P–2 (Revised) for sale of peaking power at a monthly rate of $1.20 per kilowatt for capacity plus 2.0 mills per kilowatt-hour for energy, when service is taken from SWPA's high voltage grid. Where transmission service is provided beyond SWPA's high voltage grid and SWPA incurs additional costs therefor, the customer is required to pay an additional Transmission Service Charge equal to the cost to SWPA of providing such service.

Rate Schedule IC for sale of interruptible capacity at 4.5 cents per kilowatt per day with accompanying energy at 2.0 mills per kilowatt-hour.

Rate Schedule EE for sale of excess energy at 1.5 mills per kilowatt-hour.

Under Contract No. Ispa–356 wholesale sales of peaking power are made to the Oklahoma Companies at a monthly capacity charge of $1.20 per kilowatt and an energy charge of 3.4 mills per kilowatt-hour.

Under Contract No. 14–02–001–864 sale to Tex-La of 15,000 kilowatts of capacity and associated firm energy is made at a monthly capacity charge of $1.60 per kilowatt of billing demand, and energy charges of 2.0 mills per kilowatt-hour for the first 150 kilowatt-hour per kilowatt per month of billing demand, 3.0 mills per kilowatt-hour for the next 290 kilowatt-hours per kilowatt, and 5.0 mills per kilowatt-hour for energy in excess of 440 kilowatt-hours per kilowatt per month of billing demand.

STATUS OF REPAYMENT

In the filing of May 20, 1976, Interior made the following statements:

The Commission was advised in our letter dated November 28, 1975, requesting a six-month extension to May 31, 1976, that Federal court decisions concerning previous FPC approved rate increases involving approximately $3.7 million in annual revenue were pending and that in the event any one of these cases was decided within the six-month extension period, the repayment studies would be adjusted accordingly.

The action by the Supreme Court on October 6, 1975, denying the plaintiff's petition for certiorari in the suit brought by Associated Electric Cooperative, confirmed the November 1974 decision of the Court of Appeals which established the validity of the transmission service charge in SPA's Rate Schedule P–2 (Revised). This decision will result in additional gross revenue to SPA after resolution of the 'factual dispute' now pending before the District Court relating to the matter of computing such charge. SPA's proposed rate and repayment study has been revised to include an adjustment of $16.1 million in Fiscal Year 1976 as accounts receivable due from Associated Electric Cooperative, Inc., for Transmission Charges approved under Rate Schedule P–2 (Revised) for the period June 1, 1970, through June 30, 1976. The study also includes $2,647,100 per year thereafter expected to be recovered from Associated for Transmission Service Charges in the future.

At the time of preparation of the 1971 Study, SPA had repaid none of the original investment in power production and transmission facilities. In fact, on June 30, 1970, an accumulated deficit of over $28 million was recorded on financial records. SPA systematically reduced this deficit in succeeding years and eliminated it in FY 1974. Since then SPA has been able to commence repayment of the original investments and has applied almost $21 million to this purpose as of the end of FY 1975. At this time it appears that about another $7.0 million from sales of power will be applied to amortization in FY 1976. With the addition of the adjustment for past transmission service charges to Associated of $16.1 million, the total amount available for debt reduction will be about $23.1 million in 1976.

Studies completed by SPA, in anticipation of the expiration of the Commission's confirmation and approval of SPA's rate schedules disclose that revenues derived under these rate schedules will still not be adequate to fulfill SPA's repayment obligation during the payout period as required under Section 5 of the Flood Control Act of 1944. An increase of approximately $8.6 million per year in additional revenues will be required.

The extension requested will provide time during which SPA will conduct hearings on the study prepared in support of the proposed rates.

PUBLIC NOTICE

Public Notice of Interior's filing was issued June 1, 1976, and was published in the Federal Register on June 8, 1976. Comments or suggestions relative to the filing were requested to be submitted in writing on or before June 18, 1976.

COMMENTS RECEIVED

On June 17, 1976, the Oklahoma Companies filed a "Petition To Intervene And Protest." The Companies request permission to intervene and participate in a hearing if so ordered by the Commission. Alternatively, the Companies request that the Commission defer any action on Interior's request for extension of confirmation and approval of rates and charges until a final judgment has been rendered by the United States Court of Claims in pending litigation, and in connection with any appeal that may be taken therefrom. The Companies further state that the petition was filed to protect the Companies interest and to avoid any prejudice to their position in the litigation pending in the United States Court of Claims which might arise from a failure to respond to the Commission's notice of June 1, 1976.

The Commission finds: (1) The extension of its confirmation and approval of SWPA's above-listed system rate schedules and contractual rates and charges as hereinafter provided, will not be inconsistent with the provisions of the Flood Control Act of 1944.

(2) Grant of the requested extension through November 30, 1976, will not prejudice the rights of any party with respect to the litigation over Contract No. Ispa–356 between SWPA and the Oklahoma Companies now pending in the United States Court of Claims in *Public Service Company of Oklahoma and Oklahoma Gas & Electric Company vs. The United States of America*, No. 20–73.

The Commission orders: (A) The extension of its confirmation and approval of SWPA's above-listed system and contractual rates and charges for the period ending not later than November 30, 1976.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76–24622 Filed 8–20–76;8:45 am]

[Docket No. ER76–92]

WESTERN POWER DIVISION, CENTRAL TELEPHONE & UTILITIES CORPORATION

Electric Rates; Order Denying Motion for Reconsideration and Granting Permission To Withdraw

AUGUST 17, 1976.

On July 12, 1976, Western Power Division, Central Telephone & Utilities Corporation (Western Power) filed a motion for reconsideration of a letter dated June 1, 1976, from the Secretary of the Commission advising Western Power that its filing of revised rates to reflect exclusion of construction work in progress (CWIP) from rate base was deficient. In the alternative, Western Power moves for permission to withdraw a portion of the rate change. For reasons hereinafter stated, we will deny reconsideration of the deficiency letter and grant Western Power's motion to withdraw.

This docket commenced on August 29, 1975, with Western Power's filing of a proposed rate increase to thirty-two wholesale customers. By letter dated September 24, 1975, Western Power was in-

formed that its filing was deficient by reason of stale test year data. On October 6, 1975, Western Power applied for rehearing of the September 24 deficiency letter and by order issued November 5, 1975, the Commission denied rehearing. On January 27, 1976, Western Power completed the filing upon submission of updated test year data. By order issued February 20, 1976, the Commission, inter alia, accepted for filing and suspended for one day the proposed rate changes and required Western Power to file revised rates reflecting the elimination of CWIP from rate base.

On April 6, 1976, Western Power filed revised rates based on the exclusion from rate base of the amount of CWIP included in the Period II test year (hereafter "Stale Period II") contained in its original filing of August 29, 1975. On May 4, 1976, Western Power's eleven wholesale cooperative customers (Cooperatives), intervenors herein, filed a "Protest of Revised Filing" claiming that Western Power had failed to utilize the Period II data underlying the January 27, 1976 filing (hereafter "Updated Period II") in computing the CWIP adjustment.

The argument advanced by Cooperatives in its May 4 protest is as follows: In its January 27 filing, Western Power relied upon Updated Period II, the 12 month period ending August 31, 1976, to present its test year support of the proposed rates. Based on such test year data, Western Power's cost-of-service analysis showed that the revenue increases of $59,074 to Central Kansas Electric Cooperative, Inc. (Central Kansas)[1] and $950,590 to the other ten cooperative customers yielded rates of return of 8.07% and 9.09% respectively. The April 6, 1976 filing of revised rates to reflect exclusion of CWIP from rate base used the Stale Period II data from Western Power's original filing to compute the CWIP adjustment thereby reducing the above referenced rate increases from $59,074 and $950,590 to $26,914 and $891,304, respectively. Testing those revised rates against the Updated Period II adjusted for exclusion of CWIP from rate base yielded rates of return of 8.76% and 9.96%, respectively. Cooperatives argue that insomuch as the Commission found Western Power's original filing deficient due to stale data, it is improper to compute the revised rate schedules on the Stale Period II included in such filing. Cooperatives claim that using Updated Period II data with a 9.09% return component, the CWIP adjustment would reduce the rate increase from $59,074 to negative $26,026 to Central Kansas and from $950,590 to $713,451 to the other cooperative customers.

By letter dated June 1, 1976, the Secretary of the Commission advised Western Power that its April 6 filing was deficient in that the revised rates were improperly based upon the Stale Period II and directed Western Power to submit revised rates reflecting the exclusion of CWIP from the rate base of Updated Period II.

In its motion for reconsideration of the June 1 deficiency letter, Western Power presumes that the policy underlying said letter is that when a revision is made by a utility in a pending rate increase filing, the rate of return proposed in the pending filing for any class of customers may not be exceeded and one item of cost of service may not be substituted for another item of cost of service to support the same rate of return level. Western Power argues that blind allegiance to such a policy can produce unfair results, such as here, where due to the change in test period from Stale Period II to Updated Period II there was a substantial increase in construction work in progress and a shift in the demand responsibility of the several classes of customers such that compliance with the June 1 deficiency letter would result in a rate decrease as to one rate schedule (i.e., Central Kansas) whereas rate increases would still be applicable to all other rate schedules.

We find Western Power's arguments unpersuasive. In a similar case the Commission rejected New England Power Company's attempt to rely upon a tax normalization alternative to justify its requested rate increase notwithstanding exclusion of CWIP from rate base.[2] In denying the company's motion for stay pending review of the Commission's orders in that case, Chief Judge Coffin of the U.S. Court of Appeals for the First Circuit had occasion to express the same rationale that underlies the Commission's actions here:

> For the present, neither claim persuades us in view of the administrative necessity of closing the books at a time certain and having a mechanism to prevent utilities from delaying refund orders by offering alternative justifications for the rate increases it has filed. FPC staff and intervenors cannot be expected to follow a moving target. Tax normalization was always and still remains an option for NEPCO. New data will often prove old projections wrong, but the risk of some shortfall because of interim refund orders is both recognized and inevitable. *F.P.C.* v. *Tennessee Gas Transmission Co.*, 371 U.S. 145 (1962).[3]

Accordingly, we shall deny Western Power's motion for reconsideration and grant permission to Western Power to withdraw Supplement 8 to Rate Schedule FPC No. 35 applicable to Central Kansas.

The Commission finds: (1) Good cause does not exist to grant Western Power's motion for reconsideration of the deficiency letter dated June 1, 1976.

(2) Good cause exists pursuant to 35.17(a) of the Regulations under the Federal Power Act to grant Western Power permission to withdraw Supplement No. 8 to Rate Schedule FPC No. 35.

The Commission orders: (A) Western Power's motion for reconsideration of the June 1, 1976 deficiency letter is hereby denied.

(B) Within 30 days of the issuance of this order, Western Power shall file revised rate schedules in compliance with the June 1, 1976 deficiency letter and shall otherwise comply with the refund provisions of our February 20, 1976 order in this proceedings.

(C) Western Power is hereby granted permission to withdraw Supplement No. 8 to Rate Schedule FPC No. 35 and is hereby ordered to refund within 30 days of the issuance of this order all increased amounts collected pursuant to the rates contained therein with interest at 9% per annum.

(D) Within 15 days after appropriate refunds have been made in accordance with Paragraphs (B) and (C) above, Western Power shall file with the Commission a compliance report detailing by customer the monthly billing determinants and revenues under the prior, originally proposed and revised rates and the monthly interest computation. The report shall also include a summary of the above information for the total refund period.

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

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-24623 Filed 8-20-76;8:45 am]

[1] Central Kansas is served on a different rate schedule from the other ten cooperatives.

[2] New England Power Company, Docket Nos. E-9136 and E-9140, Order issued August 5, 1975.

[3] *New England Power Co.* v. *F.P.C.*, No. 75-1379, slip at 3 (1st Cir. November 13, 1975).

FEDERAL OPEN MARKET COMMITTEE

DOMESTIC POLICY DIRECTIVE

July 19–20, 1976

In accordance with § 271.5 of its rules regarding availability of information, there is set forth below the Committee's Domestic Policy Directive issued at its meeting held on July 19–20, 1976.[1]

The information reviewed at this meeting suggests that growth in real output of goods and services, which had been vigorous in the first quarter, moderated in the second quarter as a consequence of a smaller advance in consumer spending and little change in the rate of inventory accumulation. In June growth in industrial production slowed and nonfarm payroll employment changed little. The unemployment rate edged up to 7.5 per cent from 7.3 per cent in May, but this increase may have partly reflected seasonal adjustment problems. Retail sales rebounded strongly in June. The rise in the wholesale price index for all

[1] The Record of Policy Actions of the Committee for the meeting of July 19–20, 1976 is filed as part of the original document. Copies are available on request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

commodities remained moderate, as the advance in average prices of farm products and foods slowed further. However, average prices of industrial commodities rose more than in other recent months. The advance in the index of average wage rates slowed considerably in June following a sharp rise in May; over the second quarter as a whole the index rose at about the same rate as in the first quarter.

The average value of the dollar against leading foreign currencies has remained relatively steady in recent weeks. In May there was a small surplus in the U.S. foreign trade balance.

M_1, which had grown moderately in May, declined slightly in June. From the first to the second quarter, however, M_1 expanded at an 8.4 per cent annual rate because of the exceptional rise in April. Growth in M_2 and M_3 moderated in June, mainly because of the decline in M_1, although inflows of the time and savings deposits included in the broader aggregates also slowed somewhat. Short-term market interest rates have declined somewhat in recent weeks, and most long-term rates have edged down.

In light of the foregoing developments, it is the policy of the Federal Open Market Committee to foster financial conditions that will encourage continued economic expansion, while resisting inflationary pressures and contributing to a sustainable pattern of international transactions.

To implement this policy, while taking account of developments in domestic and international financial markets, the Committee seeks to achieve bank reserve and money market conditions consistent with moderate growth in monetary aggregates over the period ahead.

By order of the Federal Open Market Committee, August 20, 1976.

ARTHUR L. BROIDA,
Secretary.

[FR Doc.76-24812 Filed 8-20-76;10:21 am]

FEDERAL RESERVE SYSTEM

[H. 2, 1976 No. 31]

ACTIONS OF THE BOARD; APPLICATIONS AND REPORTS

Received During the Week Ending July 31, 1976

ACTIONS OF THE BOARD

Statement by Chairman Arthur F. Burns before the House Committee on Banking, Currency and Housing on the condition of the national economy and the course of monetary policy.

Statement by Governor Philip C. Jackson before the Senate Committee on Banking, Housing and Urban Affairs on the Board's enforcement activities under the Consumer Credit Protection Act.

Termination of registration for Columbus Production Credit Association, Columbus, Ohio.[1]

Commercial Bankshares Corp., Adrian, Michigan, extension of time within which to become a bank holding company through the acquisition of 100 percent of the voting shares of the sucecssor by consolidation to The Commercial Savings Bank, Adrian, Michigan.[1]

Trans Texas Bancorporation, El Paso, Texas, extension of time to July 31, 1977, within which to dispose of its forty percent interest in Associated International, Ltd.[1]

United California Bank, Los Angeles, California, extension of time to March 6, 1977, within which to establish a branch in the vicinity of the intersection of Fairview Avenue and Calle Real, Santa Barbara County, California.[1]

Citizens Bank of Warrenton, Warrenton, North Carolina, proposed merger with Branch Banking and Trust Company, Wilson, North Carolina; report to the Federal Deposit Insurance Corporation on competitive factors.

Monroe Bank and Trust Company, Monroe, Connecticut, proposed merger with Lafayette Bank and Trust Company, Bridgeport, Connecticut; report to the Federal Deposit Insurance Corporation on competitive factors.

Plaza National Bank, Secaucus, New Jersey, proposed merger with New Jersey Bank (National Association), Clifton, New Jersey; report to the Comptroller of the Currency on competitive factors.

Somerset Loan and Building Association, Skowhegan, Maine, proposed merger with Franklin County Savings Bank, Farmington, Maine; report to the Federal Deposit Insurance Corporation on competitive factors.

To Establish a Domestic Branch Pursuant to Section 9 of the Federal Reserve Act.

APPROVED

Barclays Bank of New York, New York. Branch to be established at 3 Park Avenue, New York.[2]

Manufacturers Hanover Trust Company, Central New York, Rochester, New York. Branch to be established in the immediate neighborhood of Teal Avenue and Grant Boulevard, City of Syracuse, Onondaga County.[2]

Lincoln First Bank of Rochester, Rochester, New York. Branches to be established at the following locations:

A. The rehabilitation and diagnostic center, University of Rochester Medical Center, Crittenden Boulevard, Rochester, Monroe County.

B. Todd Union, University of Rochester-River Campus, Alumi Road, Rochester, Monroe County.[2]

Commonwealth Bank and Trust Company of Virginia, Sterling, Virginia. Branch to be established on Catoctin Circle near the Route 7 intersection in Leesburg, Loudoun County.[2]

Bank of Virginia, Richmond, Virginia. Branch to be established in the Canterbury Shopping Center at the intersection of Patterson Avenue and Pump Road, Henrico County.[2]

DENIED BY STATE

First Bank and Trust Company of South Bend, South Bend, Indiana. Branch to be established at 12435 Lincoln Way East, Penn Township, Osceola, St. Joseph County.

* * * * *

To Become a Member of the Federal Reserve System Pursuant to Section 9 of the Federal Reserve Act.

APPROVED

Seabrook Bank and Trust Company, Seabrook, New Hampshire.[2]

* * * * *

International Investments and Other Actions Approved Pursuant to Sections 25 and 25(a) of the Federal Reserve Act and Sections 4(c)(9) and 4(c)(13) of the Bank Holding Company Act of 1956, as amended.

Boston Overseas Financial Corporation, Boston, Massachusetts: investment—additional in Boston leasing—Arrendamento representacoes E. servicos, Sao Paulo, Brazil.

First National City Overseas Investment Corporation, New York, New York: removal of the standard condition presently imposed on Coic's holding of shares of Bangkek First Investment & Trust Ltd.

* * * * *

To Form a Bank Holding Company Pursuant to Section 3(a)(1) of the Bank Holding Company Act of 1956.

SUSPENDED

Utica Agency, Inc., Utica, Kansas for approval to acquire 80 percent or more of the voting shares of The Citizens State Bank of Utica, Utica, Kansas.

REACTIVATED

Chambanco, Inc., Chambers, Nebraska, for approval to acquire 100 percent (less directors' qualifying shares) of voting shares of Chambers State Bank, Chambers, Nebraska.[2]

APPROVED

Banco de Santander, S.A., Santander, Spain, for approval to become a bank holding company through the acquisition of 67 percent or more of the voting shares of First National Bank of Puerto Rico, San Juan (P.O.), Hato Rey, Puerto Rico.

Chambanco, Inc., Chambers, Nebraska, for approval to acquire 100 percent (less directors' qualifying shares) of the voting shares of Chambers State Bank, Chambers, Nebraska.[2]

To Expand a Bank Holding Company Pursuant to Section 3(a)(3) of the Bank Holding Company Act of 1956.

APPROVED

Indian Head Banks Inc., Nashua, New Hampshire, for approval to acquire 67 per cent or more of the voting shares of Community National Bank of Rochester, Rochester, New Hampshire.

DENIED

Florida National Banks of Florida, Inc., Jacksonville, Florida, for approval to acquire 50.37 per cent or more of the voting shares of the Citizens Bank of Bunnell, Bunnell, Florida.

* * * * *

To Expand a Bank Holding Company Pursuant to Section 4(c)(8) of the Bank Holding Company Act of 1956.

DELAYED

Utica Agency, Inc., Utica, Kansas, for approval to acquire the shares of Horn Insurance Agency, Phoenix, Arizona.

[1] Application processed on behalf of the Board of Governors under delegated authority.

[2] Application processed on behalf of the Board of Governors under delegated authority.

RETURNED

Merchants National Corporation, Indianapolis, Indiana, notification of intent to engage in de novo activities (leasing of capital of goods and equipment to industry, and banks or others or acting as agent broker or adviser in leasing such personal property where at the inception of the initial lease the effect of the transaction will yield a return that will compensate the lessor for not less than the lessor's full investment in the property, plus the estimated total cost of financing the property over the term of the lease, and such leases shall contain such other terms and conditions) at Austin Center, Cypress at West Shore Boulevard, Tampa, Florida, through a subsidiary of Circle Leasing Corp., to be known as Circle Leasing of Florida Corp. (7/30/76) [2]

First Security Corporation, Salt Lake City, Utah, for approval to retain 100 per cent of the voting shares of First Security Savings and Loan Association, Pocatello, Idaho.

REACTIVATED

Ashton Investment Company, Rock Rapids, Iowa, notification of intent to engage in de novo activities (leasing of real property on a one time basis where at the inception of the initial lease the expectation is that the effect of the transaction will be to compensate the lessor for not less than the lessor's full investment in the property plus the estimated cost of financing the investment over the term of the lease) at 104 North Story Street, Rock Rapids, Iowa (7/30/76) [3]

PERMITTED

Citicorp, New York, New York notification of intent to engage in de novo activities (consumer personal lending, preauthorized consumer revolving credit; and acting as broker for the sale of consumer credit related life and accident and health insurance and consumer credit related property and casualty insurance; if these proposals are effected, the subsidiary will offer to sell insurance as follows: credit life and accident and health or individual decreasing or level (in the case of single payment loan life insurance to cover the outstanding balance of consumer credit transactions singly or jointly with their spouses or cosigner in the case of life coverage in the event of death, or to make the contractual monthly payments on the consumer credit transactions in the event of the obligators' disability to the extent permissible under applicable state insurance laws and regulations and individual casualty insurance on personal property, subject to security agreements and to include liability coverage, in home or automobile owner "package" policies where such is the general practice; further, in regard to the sale of credit related insurance, the subsidiary will not act as a general insurance agency) at 1701 North Kipling Street, Suite 205, Lakewood, Colorado, through its subsidiary, Nationwide Financial Services Corporation and its subsidiary, Citicorp Person-to-Person Financial Center, Inc., (7/24/76) [3]

Manufacturers Hanover Corporation, New York, New York, notification of intent to engage in *de novo* activities (a consumer finance business included without limitation, making or acquiring, for its own account or for the account of others, loans and other extensions of credit such as would be made by a finance company, servicing loans and other extensions of credit for any person; and acting as agent or broker for the sale of credit related life/accident and health insurance and consumer credit related property which is related to extensions of credit made or acquired by Ritter Finance Company and/or its direct and indirect subsidiaries) at King Street, Elizabethtown, North Carolina, through its subsidiary, Ritter Finance Company and its subsidiary, Ritter Finance Company, Inc., of North Carolina. (8/1/76) [3]

First Pennsylvania Corporation, Philadelphia, Pennsylvania, notification of intent to relocate *de novo* activities (making, or acquiring and servicing loans or other extensions of credit for personal, family or household purposes, including the sale of credit insurance (life/accident and health and disability insurance) which is directly related to such consumer loans) from 1302 Horner Road, Woodbridge, Virginia to 14337 Jefferson Davis Highway, Woodbridge, Virginia through its indirect subsidiary, Investors Loan Corp. of Virginia (7/31/76) [3]

Union Trust Bancorp, Baltimore, Maryland, notification of intent to engage in *de novo* activities (making secondary mortgage loans secured in whole or in part by mortgage, deed of trust, security agreement or other lien on real estate situated in the State of Maryland, which property is subject to the lien of one or more prior encumbrances, or other leasehold interest; and act as agent in the sale of credit life insurance and credit accident and health insurance in connection with its extensions of credit) at Fallston Building, Room 202, 1710A Harford Road, Fallston, Maryland, through its subsidiary Union Home Loan Corporation (7/29/76) [3]

Root River Agency, Inc., Preston, Minnesota, notification of intent to engage in the activities of (an agriculture credit company) at 100 Anthony, North Preston, Minnesota (7/29/76) [3]

To Expand a Bank Holding Company Pursuant to Section 4(c)(12) of the Bank Holding Company Act of 1956.

PERMITTED

Sterling Precision Corporation, West Palm Beach, Florida, notification of intent to acquire the outstanding stock of Thorpe Automotive Company, Pawtucket, Rhode Island, an automotive replacement parts distributor (7/29/76) [3]

* * * * *

To Establish a Domestic Branch Pursuant to Section 9 of the Federal Reserve Act.

Girard Trust Bank, Bala Cynwyd, Montgomery County, Pennsylvania. Branch to be established in the John Wanamaker Store located in the Roosevelt Mall, Cottman Avenue and Roosevelt Boulevard, Philadelphia County, Pennsylvania.

The Union Bank and Savings Company, Bellevue, Ohio. Branch to be established at 855 Kilbourne Street, Bellevue, Sandusky County.

Citizens Bank of Pacific, Pacific, Missouri. Branch to be established on the West side of State Highway 100 near its intersection with Highway M in the unincorporated community of Gray Summitt, Franklin County.

Planters Bank & Trust Company, Hopkinsville, Kentucky. Branch to be established on U.S. Highway 41–A between gates 4 and 5 of Fort Campbell, in Oak Grove, Christian County.

Walker Bank and Trust Company, Salt Lake City, Utah. Branch to be established in the vicinity of Downtown Tooele, Tooele County.

* * * * *

To Retain Bank Shares Acquired in a Fiduciary Capacity Pursuant to Section 3 of The Bank Holding Company Act of 1956.

First International Bancshares, Inc., Dallas, Texas, to retain shares of The First State Bank of Kerens, Kerens, Texas. [3]

* * * * *

To form a Bank Holding Company Pursuant to Section 3(a)(1) of the Bank Holding Company Act of 1956.

First Hanover Park Corporation, Chicago, Illinois, for approval to acquire 80.03 per cent of the voting shares of First State Bank & Trust Company of Hanover Park, Hanover Park, Illinois.

Inland Beloit Corporation, Milwaukee, Wisconsin, for approval to acquire 100 per cent of the voting shares of Financial Network Corporation, Beloit, Wisconsin, and Community Holding Corporation, Beloit, Wisconsin, and indirectly acquire 95.4 per cent of the voting shares of The Beloit State Bank, Beloit, Wisconsin, and 75.3 per cent of the voting shares of Community Bank of Beloit, Beloit, Wisconsin.

Union Holding Company, Halliday, North Dakota, for approval to acquire 80 per cent of the voting shares of The Union Bank, Halliday, North Dakota.

* * * * *

To expand a Bank Holding Company Pursuant to Section 3(a)(3) of the Bank Holding Company Act of 1956.

Inland Heritage Corporation, Wauwatosa, Wisconsin for approval of successor by merger to Financial Network Corporation, Beloit, Wisconsin, and indirectly acquire The Beloit State Bank, Beloit, Wisconsin.

Inland Heritage Corporation, Wauwatosa, Wisconsin, for approval of successor by merger to Community Holding Corporation, Beloit, Wisconsin, and indirectly acquire Community Bank of Beloit, Beloit, Wisconsin.

The Jacobus Company, Milwaukee, Wisconsin, for approval of successor by merger to Financial Network Corporation, Beloit, Wisconsin, and indirectly acquire The Beloit State Bank, Beloit, Wisconsin.

The Jacobus Company, Milwaukee, Wisconsin, for approval of successor by merger to Community Holding Corporation, Beloit, Wisconsin, and indirectly acquire Community Bank of Beloit, Beloit, Wisconsin.

To Expand a Bank Holding Company Pursuant to Section 4(c)(8) of the Bank Holding Company of 1956.

[3] Application processed on behalf of the Board of Governors under delegated authority.

[2] 4(c)(8) and 4(c)(12) notifications processed by Reserve Bank on behalf of the Board of Governors under delegated authority.

[3] 4(c)(8) and 4(c)(12) notifications processed by Reserve Bank on behalf of the Board of Governors under delegated authority.

[3] 4(c)(8) and 4(c)(12) notifications processed by Reserve Bank on behalf of the Board of Governors under delegated authority.

National Central Financial Corporation, Lancaster, Pennsylvania, for approval to acquire all of the mortgage servicing portfolio of Land Mortgages, Inc., Dayton, Ohio (and to engage in the mortgage banking business at Land Mortgages' Dayton office).

Southern Bankshares, Inc., Richmond, Virginia, for approval to retain the shares of Charter Insurance Managers, Inc. and National Union Life Insurance Company, both in Richmond, Virginia (acting as an insurance agency for credit life and credit accident and health insurance directly related to an extension of credit by the bank holding company system; and acting as an underwriter for credit life insurnace and credit accident and health insurance which is directly related to extensions of credit by the bank holding company system).

Great American Corporation, Baton Rouge, Louisiana, notification of intent to engage in *de novo* activities (making and acquiring for its own account, loans discounts, acceptances and other extensions of credit and such other business as is customarily engaged in by consumer credit of finance company, and acting as insurance agent or broker in selling insurance to borrowers from such finance subsidiary to include credit life insurance, accident and health insurance and property insurance for collateral supporting loans made by said finance subsidiary) at 2960 Johnston, Winwood Shopping Center, Lafayette, Louisiana, through a subsidiary, Ambank Acceptance Corporation D/B/S American Acceptance Associates. (7/30/76)[3]

First Tennessee National Corporation, Memphis, Tennessee, notification of intent to engage in *de novo* activities (making or acquiring, for its own account, interest-bearing and discount loans and other extensions of credit; and offering through the direct insurer or the reinsurer, or acting as agent or broker with respect to insurance that is directly related to an extension of credit by the company or its subsidiaries), at 2711 North Fourteenth Street, Ponca City, Oklahoma, through its wholly-owned subsidiary, Crown Finance Corporation. (7/30/76)[3]

Patagonia Corporation, Tucson, Arizona, notification of intent to engage in de novo activities (leasing personal property or acting as agent, broker or advisor in leasing such property provided: the lease is to serve as the functional equivalent of an extension of credit to the lessee of the property; the property to be leased is acquired specifically for the leasing transaction under consideration or was acquired specifically for an earlier leasing transaction; the lease is on a nonoperating basis; and at the inception of the initial lease the effect of the transaction (and, with respect to governmental entities only, reasonable anticipated future transactions) will yield a return that will compensate the lessor for not less than the lessor's full investment in the property plus the estimated total cost of financing the property over term of the lease) at Transco Tower, 2700 Post Oak, Houston, Texas, through its subsidiary, Patagonia Leasing Company. (7/21/76)[3]

* * * * *

REPORTS RECEIVED

Current Report Filed Pursuant to Section 13 of the Securities Exchange Act.

None.

* * * * *

PETITIONS FOR RULEMAKING

None.

Board of Governors of the Federal Reserve System, August 17, 1976.

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

[FR Doc.76-24653 Filed 8-20-76;8:45 am]

FIRST MIDWEST BANCORP., INC.

Acquisition of Bank

First Midwest Bancorp., Inc., St. Joseph, Missouri, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 per cent or more of the voting shares of Platte Valley Bank, Ravenwood, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than September 7, 1976.

Board of Governors of the Federal Reserve System, August 16, 1976.

GRIFFITH L. GARWOOD,
Assistant Secretary of the Board.

[FR Doc.76-24646 Filed 8-20-76;8:45 am]

FEDERAL TRADE COMMISSION

INTERLOCKING DIRECTORATES

Statement of Policy

On May 17, 1976, the Federal Trade Commission issued a complaint against Perpetual Federal Savings & Loan Association ("Perpetual"), Docket No. 9083. The complaint states that the Commission has reason to believe that Perpetual is violating Section 5 of the Federal Trade Commission Act by sharing common directors with competing banks in the Washington, D.C. area. The complaint alleges that Perpetual competes for savings deposits and residential loans with two of the largest banks in Washington and that six members of Perpetual's board of directors are also members of the boards of directors of one or the other of the two banks. A majority of the Commission voted to name Perpetual as a respondent but not the six individuals. A third Commissioner dissented from the motion to issue the complaint because the individuals were not also named as respondents.

The courts have recognized the Commission's discretion in determining who, among those who may be in violation of its act, should be made a respondent in a Commission proceeding.[1] This Statement of Policy is nonetheless being released to avoid misunderstanding in the legal and business communities concerning the susceptibility of individual directors to Commission process in interlock cases.

This Statement of Policy is only intended to provide general guidance and information. When time, circumstances, and the public interest require, this Statement may be superseded or amended by subsequent Commission action without prior notice. This Statement is not a rule or regulation. It does not modify the scope or coverage of any provision of the antitrust laws or the Federal Trade Commission Act. In issuing this Statement, the Commission has made no determination on the merits that Perpetual or any other person or corporation has actually violated the law by maintaining interlocking director relationships between a savings and loan association and a bank.

TRADITIONAL INTERLOCK ENFORCEMENT

In recent complaints that allege director interlocks to be violations of Section 5 of the Federal Trade Commission Act and Section 8 of the Clayton Act, the Commission's usual practice has been to name as respondents individual directors as well as the corporations they serve. Section 8 of the Clayton Act states that "no person at the same time shall be a director in any two or more [competing] corporations. * * *" (Emphasis added.) Section 5 of the FTC Act grants the Commission the authority to prevent "persons" as well as corporations from engaging in unfair acts, practices, and methods of competition. Although interlock cases terminated by consent generally result in resignations by the interlocked directors and, in the past, have often been concluded by orders issued against the offending corporations only the Commission has recently issued a final consent order against an individual respondent in an interlock case who had resigned after the issuance of the administrative complaint.[2]

The Commission traditionally has viewed compliance with the laws against director interlocks to be as much the responsibility of individual directors as of the affected corporations. Directors are expected to be consistently loyal to their corporations and to the shareholders of those corporations. They are not to place themselves in situations which entail actual or potential conflicts of interest.[3]

SAVINGS AND LOAN ASSOCIATIONS

Legal commentors have observed that savings and loan associations are subject

[1] *Moog Industries* v. *Federal Trade Commission*, 355 U.S. 411, 412 (1958).

[2] *See* In the Matter of Kraftco, Inc., SCM Corporation, and Richard G. Bond, Docket No. 9035, 41 F.R. 21442.

[3] *See generally*, 5. W. Fletcher, Private Corporations, ch. 20, § 441 (perm. ed. 1965); H. Henn, Handbook of the Law of Corporations, ch. 9, § 235 (2d ed. 1970).

to the antitrust laws and the FTC Act.[4] The Federal Home Loan Bank Board has advised regulated savings and loan associations of their susceptibility to antitrust and FTC Act liability.[5]

While the reach of Section 8 of the Clayton Act to interlocks between banks and other corporations such as savings and loans may not be clear,[6] no similar express statutory provision is contained in Section 5 of the FTC Act. The Commission has cited Section 5 as an independent basis of liability in interlock cases.[7]

In the case of savings and loan/bank interlocks there are two factors underlying the Commission's determination to emphasize a prospective approach to enforcement against individuals.

The first factor is the longstanding and apparently widespread nature of the practice of interlocking banks with savings and loan associations. According to publicly available information,[8] there may be over a thousand interlocks between banks and their savings and loan competitors, many of longstanding duration. The sheer number and duration of these may have reinforced the erroneous impression that these interlocks would never be subject to Federal Trade Commission scrutiny.

The second factor affecting the Commission's decision is that the agencies which are the principal regulators of banks and savings and loan associations have never prohibited the interlocks. The Federal Reserve Board has maintained that it lacks the statutory authority to address these interlocks.[9] The Federal Home Loan Bank Board has proposed regulations on the subject but has not promulgated final regulations.[10]

These factors would not justify future non-involvement by the Commission. Accordingly, the Commission will henceforth in appropriate situations adhere to its customary practice of naming individuals as well as corporations in interlock complaints subject to the Commission's jurisdiction. The Commission recognizes, however, that, in view of the apparent ubiquity of savings and loan association interlocks with banks, immediate resignations by interlocking directors might be disruptive. The Commission, therefore, believes that a short grace period may be appropriate as a matter of policy.[11] It is the Commission's intention, however, that after January 1, 1977, savings and loan association directors will be charged invidually in complaints which may from time to time issue challenging allegedly unlawful interlocks of this nature which it has reason to believe remain in existence on or after that date.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46; 80 Stat. 378; (5 U.S.C. 552).)

By direction of the Commission dated August 3, 1976.

CHARLES A. TOBIN,
Secretary.

[FR Doc.76-24574 Filed 8-20-76;8:45 am]

[4] *See* the following articles in the Legal Bulletin of the Savings and Loan League: Carothers and Kramer, The Savings Association Business—Does It Have An Antitrust Future?, *Legal Bull.* 145, 164 (May, 1969); Manning, Savings and Loan Operations Under Antitrust, *Legal Bull.* 187 (July, 1975); Moscov, Antitrust Aspects of Merger, *Legal Bull.* 202 (July, 1975); Groeke, Savings Associations and the Antitrust Laws, *Legal Bull.* 1 (Jan., 1963).

[5] *See* Federal Home Loan Bank Board, Statement of Policy to Support 12 C.F.R. § 571.11 "Exclusive leases and similar arrangements," 41 FR 2805-806 (1976).

[6] Section 8 states, in pertinent part, that: "No private banker or director, officer, or employee of any member bank of the Federal Reserve System or any branch thereof shall be at the same time a director, officer, or employee of any other bank, banking association, savings bank, or trust company organized under the National Bank Act or organized under the laws of any State or of the District of Columbia, or any branch thereof, except that the Board of Governors of the Federal Reserve System may by regulation permit such service as a director, officer, or employee of not more than one other such institution or branch thereof; * * *" and "* * * from and after two years from the date of the approval of this Act no person at the same time shall be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than $1,000,000, engaged in whole or in part in commerce, other than banks, banking associations, trust companies, and common carriers subject to the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws."

[7] *E.g.*, Kraftco Inc. et al. Docket No. 9035 (1975).

[8] *See* Herman, *Conflicts of Interest in the Savings and Loan Industry*, in *Study of the Savings and Loan Industry* at 871-72 (FHLBB, 1969); see also reports of condition on file at the federal savings and loan and bank regulatory agencies.

[9] 12 C.F.R. § 212.5 (1976).

[10] Proposed Insurance Regulations No. 75-863, 40 Fed. Reg. 43832 (1975).

[11] Such a grace period is in keeping with the spirit of § 8 of the Clayton Act, which allows a director to serve one year from the date of his election if he was eligible to serve at that time but became ineligible subsequently. It is also in accord with the policy of seeking voluntary compliance with § 8 followed for some years by the Department of Justice. *See* ABA *Antitrust Law Developments* 102, n. 240.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-27]

CHICORY ROOT: CRUDE AND PREPARED

Notice and Order

CONCERNING REVISED PROCEDURE FOR COMMISSION ACTION

Notice is hereby given that—

1. The United States International Trade Commission has extended the time, from August 16, 1976, to August 23, 1976, by which the presiding officer in this proceeding is to submit to the Commission his recommended determination concerning whether there is reason to believe that there is a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337). In connection therewith, the Commission has also extended its own administrative deadline for issuing its determination from August 25, 1976, to September 3, 1976.

2. The Commission will hold a hearing beginning at 10:00 a.m., e.d.t., August 30, 1976, in the Commission's Hearing Room, Room 331, 701 E Streeet NW., Washington, D.C., for the purpose of (1) hearing oral argument with respect to the recommended determination of the presiding officer concerning whether there is reason to believe, in this matter, that there is a violation of section 337 of the Tariff Act of 1930; (2) hearing oral argument concerning appropriate relief in the event the Commission determines that there is reason to believe that there is a violation of section 337 and determines that there should be relief; and (3) receiving information and hearing oral argument, as provided for in section 210.14(a) of the Commission's Rules of Practice and Procedure (41 F.R. 17710), concerning relief, bonding, and the public interest factors set forth in sections 337(e) and (f) of the Tariff Act which the Commission is to consider in the event it determines there is reason to believe that there is a violation of section 337 and determines that there should be relief.

For the purpose of this hearing, parties wishing to make oral argument with respect to the recommended determination shall be limited to no more than 30 minutes time per party, 10 minutes of which may be reserved by complainant for rebuttal; and parties wishing to make oral argument with respect to relief shall be limited to no more than 15 minutes time per party.

The Commission will take information and hear argument concerning relief, bonding, and the public interest factors from all parties and interested persons and agencies. Each participant will be limited to no more than 30 minutes time for making his presentation, and each participant will be permitted an additional 5 minutes time for closing arguments after all of the 30 minute presentations have been concluded.

For the duration of this hearing, the intervenor parties, Wm. B. Reily & Co., Inc., Community Coffee Co., Inc., and American Coffee Co., Inc., will jointly share the time limits allocable to one party, since they are similarly situated.

Requests for appearances at the hearing should be filed, in writing, with the Secretary of the Commission at his office in Washington no later than noon, Friday, August 27, 1976. Requests should indicate the part of the hearing (i.e., with respect to the recommended determination; relief; or relief, bonding, and the public interest factors) in which the requesting person desires to participate.

Notice of the Commission's institution of investigation and of the former procedure for Commission action was published in the FEDERAL REGISTER of July 16, 1976 (41 F.R. 29496).

Issued: August 18, 1976.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.76-24654 Filed 8-20-76;8:45 am]

NUCLEAR REGULATORY COMMISSION

[DOCKET NO. 50-261]

CAROLINA POWER AND LIGHT COMPANY

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 22 to Facility Operating License No. DPR-23 issued to Carolina Power & Light Company which revised Technical Specifications for operation of the H. B. Robinson Steam Electric Plant Unit No. 2, located in Darlington County, Hartsville, South Carolina. The amendment is effective as of its date of issuance.

The amendment requires operability and surveillance of shock suppressors (snubbers) required to protect the primary coolant system and all other safety related systems and components.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental statement, negative declaration or environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated January 28, 1976, (2) Amendment No. 22 to License No. DPR-23, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 11th day of August 1976.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc.76-24393 Filed 8-20-76;8:45 am]

[Docket No. 50-10]

COMMONWEALTH EDISON CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 16 to Facility Operating License No. DPR-2, issued to the Commonwealth Edison Company (the licensee), which revised Technical Specifications for operation of Unit No. 1 of the Dresden Nuclear Power Station (the facility) located in Grundy County, Illinois. The license amendment is affective as of its date of issuance.

The license amendment revised Technical Specifications for the facility to require limiting conditions for operation and surveillance requirements for safety-related shock suppressors.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, negative declaration or environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated March 16, 1976, (2) Amendment No. 16 to License No. DPR-2, and (3) the Commission's concurrently issued related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 9th day of August 1976.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc.76-24394 Filed 8-20-76;8:45 am]

INTERNATIONAL ATOMIC ENERGY AGENCY DRAFT SAFETY GUIDE

Availability of Draft for Public Comment

The International Atomic Energy Agency (IAEA) is developing a limited number of internationally acceptable codes of practice and safety guides for nuclear power plants. These codes and guides will be developed in the following five areas: Government Organization, Siting, Design, Operations, and Quality Assurance. The purpose of these codes and guides is to provide IAEA guidance to countries beginning nuclear power programs.

The IAEA Codes of Practice and Safety Guides are developed in the following way. The IAEA receives and collates relevant existing information used by member countries. Using this collation as a starting point, an IAEA Working Group of a few experts then develops a preliminary draft. Following this, an IAEA Technical Review Committee reviews the preliminary draft and modifies it to the extent necessary to develop a draft acceptable to the IAEA Technical Review Committee. This draft Code of Practice or Safety Guide is then sent to the IAEA Senior Advisory Group which reviews and modifies the draft as necessary to reach agreement on the draft and then forwards it to the IAEA Secretariat to obtain comments from the member states.

As a part of this program, Safety Guide SG-S4 "Population Distribution Around Nuclear Power Plants" has been developed and the NRC staff is soliciting comments on this Guide from the U.S. public.

An IAEA Working Group consisting of Mr. L. Namestek of Czechoslovakia, Mr. R. Gerald of Franee, Mr. T. Sarma of India, Mr. W. Gutschmidt of the Federal Republic of Germany, and Mr. W. Ramsay (Resources for the Future) of the United States developed the draft from an IAEA collation during a meeting that was held in Vienna, Austria on June 28 to July 16, 1976.

As the next step in its development the draft Safety Guide is scheduled to be reviewed by the IAEA Technical Review Committee on Siting at a meeting in Vienna, Austria on September 27–October 1, 1976. Comments received by September 15, 1976 will be useful to this review. Single copies of this draft may be obtained by a written request to the Director, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(5 U.S.C. 522(a))

Dated at Rockville, Maryland, this 12th day of August 1976.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director, Office of Standards Development.

[FR Doc.76-24389 Filed 8-20-76;8:45 am]

INTERNATIONAL ATOMIC ENERGY AGENCY DRAFT SAFETY GUIDE

Availability of Draft for Public Comment

The International Atomic Energy Agency (IAEA) is developing a limited number of internationally acceptable codes of practice and safety guides for nuclear power plants. These codes and guides will be developed in the following five areas: Government Organization, Siting, Design, Operations, and Quality Assurance. The purpose of these codes and guides is to provide IAEA guidance to countries beginning nuclear power programs.

The IAEA Codes of Practice and Safety Guides are developed in the following way. The IAEA receives and collates relevant existing information used by member countries. Using this collation as a starting point, an IAEA Working Group of a few experts then develops a preliminary draft. Following this, an IAEA Technical Review Committee reviews the preliminary draft and modifies it to the extent necessary to develop a draft acceptable to the IAEA Technical Review Committee. This draft Code of Practice or Safety Guide is then sent to the IAEA Senior Advisory Group which reviews and modifies the draft as necessary to reach agreement on the draft and then forwards it to the IAEA Secretariat to obtain comments from the member states.

As a part of this program, Safety Guide SG–S3b "Meteorology—Extreme Meteorological Conditions in Nuclear Power Plant Siting" is being developed. The draft of this Safety Guide was approved by the IAEA Technical Review Committee on Siting which met in June 1976.

As the next step in its development the draft Safety Guide is scheduled to be reviewed by the IAEA Senior Advisory Group at a meeting in Vienna, Austria on December 6–10, 1976. Comments received by September 30, 1976 will be useful to this review. Single copies of this draft may be obtained by a written request to the Director, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(5 U.S.C. 522(a))

Dated at Rockville, Maryland, this 11th day of August 1976.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director, Office of Standards Development.

[FR Doc.76-24390 Filed 8-20-76;8:45 am]

Docket Nos. 50-282 and 50-306

NORTHERN STATES POWER CO.

Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 14 and 8 to Facility Operating License Nos. DPR–42 and DPR–60, issued to the Northern States Power Company (the licensee), which revised Technical Specifications for operation of Unit Nos. 1 and 2 of the Prairie Island Nuclear Generating Plant (the facilities) located in Goodhue County, Minnesota. The amendments are effective as of their date of issuance.

The amendments specify operability and surveillance requirements for shock suppressors (snubbers) to protect the primary coolant system and all other safety related systems and components of the facilities.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental statement, negative declaration or environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated April 30, 1976, (2) Amendment No. 14 and 8 to License Nos. DPR–42 and DPR–60, respectively, and (3) the Commission's concurrently issued related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at The Environmental Conservation Library of the Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota 55401. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 11th day of August 1976.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc.76-24391 Filed 8-20-76;8:45 am]

[Docket Nos. 50-282 and 50-306]

NORTHERN STATES POWER CO.

Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 15 and 9 to Facility Operating License Nos. DPR–42 and DPR–60, issued to the Northern States Power Company (the licensee), which revised Technical Specifications for operation of Units 1 and 2 of the Prairie Island Nuclear Generating Plant (the facilities) located in Goodhue County, Minnesota. The amendments are effective as of their date of issuance.

The amendments revised the Appendix A portion of the Technical Specifications for the facilities to allow a one-month extension of the maximum interval for refueling outage surveillance tests for the first operating cycle of Unit No. 2 of the Prairie Island Nuclear Generating Plant. This action also incorporated a temporary exemption from the requirements of Section III.D of Appendix J of 10 CFR Part 50 that allows containment leak rate tests for the first operating cycle of Unit No. 2 to be postponed for one month.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement, negative declaration or environmental impact appraisal need not be prepared in connection with issuance of the amendments.

For further details with respect to this action, see (1) the application for amendment dated May 27, 1976, (2) Amendment Nos. 15 and 9 to License Nos. DPR–42 and DPR–60, respectively, (3) the Commission's concurrently issued related Safety Evaluation, and (4) the Commission's letter to the Northern States Power Company being issued concurrently with this Notice. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at The Environmental Conservation Library of the Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota 55401. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 11th day of August 1976.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc.76-24392 Filed 8-20-76;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

Proposed Meetings

In order to provide advance information regarding proposed meetings of ACRS Subcommittees, Working Groups,

and the full Committee, the following preliminary schedule is being published. This preliminary schedule reflects the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the list of proposed meetings published in FR Vol. 41, Monday, July 19, 1976, page 29764. Those meetings that are definitely scheduled have had, or will have, an individual notice published in the FEDERAL REGISTER approximately 15 days (or more) prior to the meeting. These Subcommittee and Working Group meetings for which it is anticipated that there will be a portion or all of the meeting open to the public are indicated by an asterisk (*). It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the September 9–11, 1976 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 202/634–1406, Attn: Mary E. Vanderholt) between 8:15 a.m. and 5 p.m., e.d.t.

SUBCOMMITTEE AND WORKING GROUP MEETINGS

**Peaking Factors*, August 20, 1976, Washington, DC to continue discussion of methods of measuring power distribution in reactors whose cores are fabricated by the Babcock and Wilcox Company. Notice has been published in FR Vol. 41, August 5, 1976, page 32796.

**Environmental*, August 24 and 25, 1976, Washington, DC to discuss proposed revisions to Regulatory Guides on emergency planning and occupation radiation exposure. Notice has been published in FR Vol. 41, August 9, 1976, page 33341.

**Montague Nuclear Power Station, Units 1 and 2*, August 26–27, 1976, Turners Falls, MA to review the application of the Northeast Nuclear Energy Company for a permit to construct Units 1 and 2. Notice has been published in FR Vol. 41, August 9, 1976, page 33342.

**Diablo Canyon Nuclear Station, Unit 2*, rescheduled from August 31 to September 29, 1976, Los Angeles, CA.

**Emergency Core Cooling Systems (ECCS)*, September 2, 1976, Washington, DC to discuss the effect of upper-head injection (UHI) on the Westinghouse Electric Corporation's analytical models formulated to meet current ECCS criteria. Notice has been published in FR Vol. 41, August 16, 1976, page 34705.

**Regulatory Guides*, September 8, 1976, Washington, DC to review working papers regarding future Regulatory Guides and proposed changes to existing Guides.

**Three Mile Island Nuclear Station, Unit 2*, September 23–24, 1976, Harrisburg, PA to review the application of the Metropolitan Edison Company for an operating license.

**Clinch River Breeder Reactor*, September 28–29, 1976, Oak Ridge, TN to develop information for consideration by the ACRS in its review of the combined application of the U.S. Energy Research and Development Administration, the Tennessee Valley Authority, and the Project Management Corporation for a permit to construct this nuclear power plant.

**Diablo Canyon Nuclear Power Station, Units 1 and 2*, September 29, 1976 (rescheduled from August 31, 1976), Los Angeles, CA to continue the review of the application of the Pacific Gas and Electric Company for an operating license for Units 1 and 2. Notice has been published in FR Vol. 41, August 16, 1976, page 34704 and notice of the change of date appears elsewhere in this issue.

**Floating Nuclear Plant*, September 30–October 1, 1976, Los Angeles, CA to review the liquid pathway study, emergency core cooling, and probabilities of shipping accidents as part of the review for a manufacturing license.

**Marble Hill Nuclear Generating Station, Units 1 and 2*, October 1, 1976, Louisville, KY to review the application of the Public Service Company of Indiana for a permit to construct Units 1 and 2.

**Reactor Safety Study*, October 12, 1976 (tentative), Washington, DC to continue Working Group review of WASH–1400 (NUREG–75/014), "An Assessment of Accident Risks in U.S. Commercial Nuclear Power Plants."

**North Anna Power Station, Units 1 and 2*, October 13, 1976, Washington, DC. Concurrent meetings will be held to review steam generator and reactor coolant pump support questions at one meeting, and to continue the review of the application of the Virginia Electric Power Company for an operating license for Units 1 and 2 at the other meeting.

**San Joaquin Nuclear Project*, October 29, 1976, Bakersfield, CA to develop information for consideration by the ACRS in its review of the report on the suitability of the proposed site of the Department of Water and Power of the City of Los Angeles for the San Joaquin Nuclear Project.

FULL COMMITTEE MEETINGS

September 9–11, 1976

A. *Montague Nuclear Power Station, Units 1 and 2—Construction Permit Review
B. *Emergency Core Cooling Systems Upper-Head Injection—Review of Analytical Models

October 14–16, 1976

Agenda to be announced.

Dated: August 17, 1976.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc.76–24625 Filed 8–20–76;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS; SUBCOMMITTEE ON THE DIABLO CANYON NUCLEAR POWER STATION UNITS 1 AND 2

Change of Meeting Date

The Aug. 31, 1976 meeting of the ACRS Subcommitte on the Diablo Canyon Nuclear Power Station, Units 1 and 2, announced in FR Vol. 41, page 34704, Aug. 16, 1976 will be held on Sept. 29, 1976 at the same location.

Persons desiring to mail written comments may do so as indicated in the FR notice cited above. Comments postmarked no later than Sept. 22, 1976 will normally be received in time to be considered at this meeting.

Further information regarding the meeting can be obtained by a prepaid telephone call on Sept. 28, 1976 to the Office of the Executive Director of the Committee (telephone 202/634–1374 ATTN: Mr. John C. McKinley) between 8:15 a.m. and 5 p.m., e.d.t.

A copy of the transcript of the open portion of the meeting and a copy of the minutes of the meeting will be available for inspection on October 6, 1976 and December 29, 1976, respectively, at the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555 and at the San Luis Obispo County Free Library, San Luis Obispo, CA 93406.

All other matters pertaining to this meeting remain unchanged.

Dated: August 17, 1976.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc.76–24626 Filed 8–20–76;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS; SUBCOMMITTEE ON REGULATORY GUIDES

Meeting

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards Subcommittee on Regulatory Guides will hold a meeting on September 8, 1976 in Room 1062, 1717 H Street, NW., Washington, DC 20555. This meeting will have both open and closed sessions.

The following constitutes that portion of the Subcommittee's agenda for the above meeting which will be open to the public:

Wednesday, September 8, 1976, 9 a.m. until about 11 a.m. The Subcommittee will hear presentations from the NRC Staff and will hold discussions with this group pertinent to the following items:

(1) Regulatory Guide 1.106, Revision 1, "Thermal Overload Protection for Electric Motors on Motor-Operated Valves."

(2) Regulatory Guide 1.107, Revision 1, "Qualifications for Cement Grouting for Prestressing Tendons in Containment Structures."

In connection with the above agenda items, the Subcommittee may hold one or more Executive Sessions, not open to the public, at approximately 8:30 a.m. and 11 a.m. to consider matters related to the above reviews. These sessions will involve an exchange of opinions and discussions of preliminary views and recommendations of Subcommittee members and internal deliberations for the purpose of formulating recommendations to the ACRS.

After the above portion of the meeting is concluded, the Subcommittee will meet in closed session with the NRC Staff and any consultants at about 11 a.m. until the close of business to discuss working papers on Regulatory Guide 1.XX, "Acceptable Model and Related Statistical Methods for Analysis of Fuel Densification."

This portion of the meeting may include Executive Sessions both before and after the closed session with the NRC Staff.

I have determined, in accordance with subsection 10(d) of Pub. L. 92–463, that it is necessary to conduct the above closed sessions to protect the free interchange of internal views in the final stages of the Subcommittee's deliberative process and that other closed sessions will be held to discuss and exchange views on

working papers (5 U.S.C. 552(b)(5)). Separation of factual material from individuals' advice, opinions, and recommendations while closed Executive Sessions are in progress is considered impractical.

Practical considerations may dictate alterations in the above agenda or schedule. The Chairman of the Subcommittee is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incompleted open session from one day to the next.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding Regulatory Guides 1.106 and 1.107 may do so by providing a readily reproducible copy to the Subcommittee at the beginning of the meeting. Such comments shall be based upon documents on file and available for public inspection at the NRC Public Document Room, 1717 H St., NW., Washington, DC 20555.

Persons desiring to mail written comments may do so by sending a readily reproducible copy thereof in time for consideration at this meeting. Comments postmarked no later than September 1, 1976 to Mr. G. R. Quittschreiber, ACRS, NRC, Washington, DC 20555 will normally be received in time to be considered at this meeting.

(b) Those persons wishing to make an oral statement at the meeting should make a written request to do so, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements on topics relevant to the Committee's purview at an appropriate time chosen by the Chairman of the Subcommittee.

(c) Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call on September 7, 1976 to the Office of the Executive Director of the Committee (telephone 22/634–1374, Attn: Mr. G. R. Quittschreiber) between 8:15 a.m. and 5 p.m., e.d.t.

(d) Questions may be propounded only by members of the Subcommittee and its consultants.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(f) A copy of the transcript of the open portion of the meeting will be available for inspection on or after September 15, 1976 at the NRC Public Document Room, 1717 H St., NW., Washington, D.C. 20555.

Copies of the minutes of the meeting will be made available for inspection at the NRC Public Document Room, 1717 H St., NW., Washington, D.C. 20555 after December 8, 1976. Copies may be obtained upon payment of appropriate charges.

Dated: August 17, 1976.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc.76-24627 Filed 8-20-76;8:45 am]

[Docket No. 50-318]

BALTIMORE GAS AND ELECTRIC CO., CALVERT CLIFFS NUCLEAR PLANT, UNIT 2

Issuance of a Facility Operating License

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has issue Facility Operating License No. DPR–69 to Baltimore Gas and Electric Company authorizing operation of the Calvert Cliffs Nuclear Plant, Unit 2 in accordance with the provisions of the license and the Technical Specifications. The Calvert Cliffs Nuclear Plant, Unit 2 is a pressurized water nuclear reactor located at the licensee's site in Calvert County, Maryland, about 10½ miles southeast of Prince Frederick, Maryland.

The Commission has made appropriate findings regarding the environmental impact associated with issuing an operating license for testing purposes. These findings are contained in documents entitled "Negative Declaration Regarding Issuance of a Limited Facility License DPR–69, Calvert Cliffs Nuclear Power Plant, Unit 2" and "Environmental Impact Appraisal of Issuance of Fuel Loading, Criticality Lower-Power Testing Operating License for Calvert Cliffs Nuclear Power Plant, Unit 2". Pursuant to the findings in these documents, Facility Operating License No. DPR–69 authorizes operation of the facility at a reactor core power level not to exceed 25.6 megawatts thermal for testing purposes. License No. DPR–69 is conditioned to provide a sequential approach to one percent power by accounting for a series of incomplete construction items, preoperational tests, startup tests and other items which must be completed prior to attaining one percent power, and provides for further Commission approval at various stages of these activities.

The Commission has made appropriate findings as required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license. The application for the license complies with the standards and requirements of the Act and the Commission's rules and regulations.

A copy of (1) Facility Operating License No. DPR–69, complete with Technical Specifications (Appendices "A" and "B"); (2) the "Negative Declaration Regarding Issuance of a Limited Facility License DPR–69, Calvert Cliffs Nuclear Power Plant, Unit 2," (3) the Environmental Impact Appraisal of Issuance of Fuel Loading, Criticality Low-Power Testing Operating License for Calvert Cliffs Nuclear Power Plant, Unit 2," (4) the report of the Advisory Committee on Reactor Safeguards, dated January 14, 1974; (5) the Office of Nuclear Reactor Regulation's Safety Evaluation Report and Supplements 1, 2, 3, 4, 5 and 6 thereto, dated August 28, 1972, May 4, 1973, December 4, 1973, June 14, 1974, December 27, 1974, August 10, 1976, and August 13, 1976, respectively; (6) the Final Safety Analysis Report and amendments thereto; (7) the applicant's Environmental Report dated November 1970 and supplements thereto; (8) the Draft Environmental Statement dated January 1972; and (9) the Final Environmental Statement dated April 1973, are available for public inspection at the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. and the Calvert County Library, Prince Frederick, Maryland. Single copies of items (1), (2), (3), (4), (5) and (9) may be obtained upon request addressed to the United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Project Management.

Dated at Bethesda, Maryland, this 13th day of August 1976.

For the Nuclear Regulatory Commission.

R. C. DEYOUNG,
Deputy Director, Division of Project Management, Office of Nuclear Reactor Regulation.

[FR Doc.76-24629 Filed 8-20-76;8:45 am]

[Docket No. 50-318]

CALVERT CLIFFS NUCLEAR POWER PLANT, UNIT 2

Negative Declaration Regarding Issuance of a Limited Facility License DPR–69

The U.S. Nuclear Regulatory Commission (the Commission) is issuing a limited Facility Operating License No. DPR–69 to Baltimore Gas and Electric Company, for authorizing certain operations of the Calvert Cliffs Nuclear Power Plant, Unit 2 located in Calvert County, Maryland.

The license would authorize operation of the facility at not more than 1 percent of full power for the purpose of testing the facility.

The Commission has prepared an environmental impact appraisal for the limited license and has concluded that an environmental impact statement for this particular action is not warranted because there will be no environmental impact significantly affecting the quality of the human environment.

The environmental impact appraisal is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Calvert Cliffs Library, Prince Frederick, Maryland 20678. A copy may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Project Management.

Dated at Bethesda, Maryland, this 13th day of August 1976.

For the Nuclear Regulatory Commission.

DANIEL R. MULLER,
Deputy Director, Division of Site Safety and Environmental Analysis Office of Nuclear Reactor Regulation.

[FR Doc.76-24630 Filed 8-20-76;8:45 am]

[Docket Nos. 50-329 and 50-330]

CONSUMERS POWER CO.

Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the FEDERAL REGISTER (37 FR 28710) and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding:

CONSUMERS POWER CO.

(MIDLAND PLANT, UNITS NO.1 AND NO.2) CONSTRUCTION PERMIT NOS. CPPR-81 AND CPPR-82

This action is in reference to the Memorandum and Order of the Commission dated August 16, 1976, directing that an Atomic Safety and Licensing Board for the Midland Facility be reconvened for the limited purpose of considering whether construction permits for that facility should be continued, modified or suspended until an interim fuel cycle rule has been made effective.

The Members of the Board and their addresses are as follows:

Daniel M. Head, Esq., Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dr. Emmeth A. Luebke, Member, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dr. J. Venn Leeds, Jr., Member, 10807 Atwell, Houston, Texas 77096.

Dated at Bethesda, Maryland, this 17th day of August 1976.

Atomic Safety and Licensing Board Panel,

ROBERT M. LAZO,
Acting Chairman.

[FR Doc.76-24631 Filed 8-20-76;8:45 am]

[Docket No. 50-272]

PUBLIC SERVICE ELECTRIC AND GAS CO., ET AL.

Issuance of a Facility Operating License

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has issued Facility Operating License No. DPR-70 to Public Service Electric and Gas Company, Philadelphia Electric Company, Delmarva Power and Light Company, and Atlantic City Electric Company. License No. DPR-70 authorizes operation of the Salem Nuclear Generating Station, Unit No. 1 by the Public Service Electric and Gas Company in accordance with the provisions of the license and the Technical Specifications. The Salem Nuclear Generating Station, Unit No. 1 is a pressurized water nuclear reactor located at the licensees' site in Lower Alloways Creek Township, Salem County, New Jersey.

The Commission has made appropriate findings regarding the environmental impact associated with issuing an operating license for testing purposes. These findings are contained in documents entitled, "Negative Declaration Regarding Issuance of a Limited Facility License DPR-70, Salem Nuclear Generating Station, Unit No. 1," and "Environmental Impact Appraisal of Issuance of Fuel Loading, Criticality Low-Power Testing Operating License for Salem Nuclear Generating Station Unit No. 1." Pursuant to the findings in these documents, Facility Operating License No. DPR-70 authorizes operation of the Salem Nuclear Generating Station, Unit No. 1 at a reactor core power level not to exceed 33.38 megawatts thermal for testing purposes. License No. DPR-70 is conditioned to provide a sequential approach to one percent power by accounting for a series of incomplete construction items, preoperational tests, startup tests and other items which must be completed prior to attaining one percent power, and provides for further Commission approval at various stages of these activities.

The Commission has made appropriate findings as required by the Atomic Energy Act (the Act) of 1954, as amended, and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license. The application for the license complies with the standards and requirements of the Act and the Commission's rules and regulations.

A copy of (1) Facility Operating Licensing No. DPR-70, complete with Attachment 1 and Technical Specifications (Appendices "A" and "B"); (2) the "Negative Declaration Regarding Issuance of a Limited Facility License DPR-70, Salem Nuclear Generating Station, Unit No. 1," (3) the "Environmental Impact Appraisal of Issuance of Fuel Loading, Criticality Low-Power Testing Operating License for Salem Nuclear Generating Station Unit No. 1," (4) the report of the Advisory Committee on Reactor Safeguards, dated February 14, 1975; (5) the Office of Nuclear Reactor Regulation's Safety Evaluation Report and Supplements Nos. 1 and 2 thereto, dated October 11, 1974, June 28, 1976, and August 13, 1976 respectively; (6) the Final Safety Analysis Report and amendments thereto; (7) the applicants' Environmental Report dated June 30, 1970 and supplements thereto; (8) the Draft Environmental Statement dated October 1972; and (9) the Final Environmental Statement dated April 1973, are available for public inspection at the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C., and the Salem Free Public Library, 112 West Broadway, Salem, New Jersey. Single copies of items (1), (2), (3), (4), (5) and (9) may be obtained upon request addressed to the United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Project Management.

Dated at Bethesda, Maryland, this 13th day of August 1976.

For the Nuclear Regulatory Commission.

R. C. DEYOUNG,
Deputy Director, Division of Project Management, Office of Nuclear Reactor Regulation.

[FR Doc.76-24632 Filed 8-20-76;8:45 am]

[Docket No. 50-272]

SALEM NUCLEAR GENERATING STATION UNIT NO. 1

Negative Declaration Regarding Issuance of a Limited Facility License DPR-70

The U.S. Nuclear Regulatory Commission (the Commission) is issuing a limited Facility Operating License No. DPR-70 to Public Service Electric and Gas Company, for authorizing certain operations of the Salem Nuclear Generating Station Unit No. 1, located in Salem County, New Jersey.

The license would authorize operation of the facility at not more than 1 percent of full power for the purpose of testing the facility.

The Commission has prepared an environmental impact appraisal for the limited license and has concluded that an environmental impact statement for this particular action is not warranted because there will be no environmental impact significantly affecting the quality of the human environment.

The environmental impact appraisal is available for public inspection at the Commission's Public Document, 1717 H Street, NW., Washington, D.C., and at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079. A copy may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Project Management.

Dated at Bethesda, Maryland, this 13th day of August 1976.

For the Nuclear Regulatory Commission.

DANIEL R. MULLER,
Deputy Director, Division of Site Safety and Environmental Aanalysis, Office of Nuclear Reactor Regulation.

[FR Doc.76-24633 Filed 8-20-76;8:45 am]

[Docket No. STN 50-485]

ROCHESTER GAS AND ELECTRIC CORP. (STERLING POWER PROJECT NUCLEAR UNIT NO. 1)

Evidentiary Hearing

The evidentiary hearing in this matter will resume on Monday, August 30, 1976, at 1:30 p.m., at the Green Room, First Floor, Holiday Harbor Hotel, East

Bridge Street (Route 57), Oswego, New York. The hearing will continue through Friday, September 3, 1976.

It is so ordered.

Dated at Bethesda, Maryland, this 16th day of August 1976.

The Atomic Safety and Licensing Board.

EDWARD LUTON,
Chairman.

[FR Doc.76-24628 Filed 8-20-76;8:45 am]

[Docket No. 50-271]

VERMONT YANKEE NUCLEAR POWER CORP.

Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the FEDERAL REGISTER (37 FR 28710) and §§ 2.105, 2.700, 2.712, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding:

VERMONT YANKEE NUCLEAR POWER CORPORATION

(VERMONT YANKEE NUCLEAR POWER STATION) FACILITY OPERATING LICENSE NO. DPR-28

This action is in reference to the Memorandum and Order of the Commission dated August 16, 1976, directing that an Atomic Safety and Licensing Board for the Vermont Yankee Facility be reconvened for the limited purpose of considering whether the operating license for that facility should be continued, modified or suspended until an interim fuel cycle rule has been made effective.

The Members of the Board and their addresses are as follows:

Samuel W. Jensch, Esq., Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dr. David B. Hall, Member, Los Alamos Scientific Laboratory, P.O. Box 1663, Los Alamos, New Mexico 87544.

Dr. Paul W. Purdom, Member, 245 Gulph Hills Road, Radnor, Pennsylvania 19087.

Dated at Bethesda, Maryland, this 17th day of August 1976.

ATOMIC SAFETY AND LICENSING BOARD PANEL,
ROBERT M. LAZO,
Acting Chairman.

[FR Doc.76-24634 Filed 8-20-76;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

Meeting

In accordance with the purposes of Sections 29 and 182 b. of the Atomic Energy Act (42 U.S.C. 2039, 2232 b.), the Advisory Committee on Reactor Safeguards will hold a meeting on September 9-11, 1976, in Room 1046, 1717 H Street, NW, Washington, DC.

The agenda for the subject meeting will be as follows:

Thursday, September 9, 1976

8:30 a.m. to 9:30 a.m.: Executive Session (Closed)—The Committee will meet in closed executive session to exchange and discuss the personal opinions of individual members leading to the formulation of advice and recommendations regarding candidates for ACRS membership, procedures for conduct of ACRS meetings and related records, and proposed procedures for ACRS discussions with representatives of foreign governments. The Committee will also discuss the individual opinions and recommendations of ACRS members and consultants who may be present regarding proposed construction of the Montague Nuclear Power Station Units 1 & 2.

9:30 a.m. to 1:30 p.m.: Montague Nuclear Power Station Units 1 & 2 (Open)—The Committee will meet with representatives of the applicants and the NRC Staff to hear presentations and hold discussions regarding the request for a construction permit for this facility. Portions of this session will be closed if required to discuss proprietary information related to the design, construction or operation of these units. Closed portions will also be held if necessary to discuss security provisions for this facility and for Committee deliberative sessions.

2:30 p.m. to 3:15 p.m.: Executive Session (Closed)—The Committee will discuss the individual opinions and recommendations of ACRS members and consultants who may be present regarding the request for approval of the Upper Head Injection System proposed for Westinghouse Nuclear Power Plants.

3:15 p.m. to 5 p.m.: Upper Head Injection System (Open)—The Committee will hear presentations and hold discussions regarding the request for approval of this proposed change in the emergency core cooling systems for Westinghouse Electric Corporation nuclear steam supply systems. Portions of this session will be closed if required to discuss proprietary material related to this system modification. Closed Sessions will also be held for Committee deliberative sessions.

5 p.m. to 6:30 p.m.: Executive Session (Closed)—The Committee will meet in closed session to exchange personal opinions and recommendations of ACRS members leading to the formulation of advice and recommendations related to the evaluation of the Heavy Section Steel Technology Program and the Crystal River Nuclear Generating Plant and proposed Regulatory Guides.

Friday, September 10, 1976

8:30 a.m. to 9:30 a.m.: Executive Session (Closed)—The Committee will meet with the Executive Director for Operations to discuss NRC Staff review of internal practices and policies regarding backfitting of nuclear facilities and inspection of nuclear facilities.

9:30 a.m. to 11 a.m.: Meeting with NRC Staff (Open)—The Committee will meet with members of the NRC Staff to hear presentations and to discuss reactor operating experience and licensing actions, resolution of generic items related to light-water reactors and the future schedule for ACRS activities.

11 a.m. to 12:30 p.m.: Executive Session (Closed)—The Committee will meet in closed session to exchange and discuss the personal opinions and recommendations of individual members leading to the formulation of advice regarding items considered at this meeting.

1:30 p.m. to 3 p.m.: Report on Enrichment Facilities (Closed)—The Committee will hear presentations by representatives of the NRC Staff and ERDA regarding the design of and security provisions related to nuclear fuel enrichment facilities. This portion of the meeting will be closed to discuss material classified as Restricted Data.

3 p.m. to 6:30 p.m.: Executive Session (Closed)—The Committee will meet in closed session to exchange and discuss the personal opinions of ACRS members leading to the formulation of advice regarding management of radioactive wastes and safeguards provisions for nuclear facilities.

Saturday, September 11, 1976

8:30 a.m. to 4 p.m.: Executive Session (Closed)—The Committee will meet in closed executive session to exchange and discuss personal opinions and recommendations leading to the formulation of advice with respect to the items considered at this meeting. Proposed ACRS activities and reports on generic matters such as underground siting of nuclear plants and safety of mixed-oxide fuels will also be discussed.

I have determined in accordance with Subsection 10(d) of Public Law 92-463 that it is necessary to close portions of the meeting as noted above to protect classified restricted data (5 U.S.C. 552(b)(3)), proprietary data (5 U.S.C. 552(b)(4)), to protect the free exchange of opinion during the Committee's deliberative process (5 U.S.C. 552(b)(5)). These closed sessions will cosist primarily of deliberative discussion among the Committee members leading to the formulation of advice and recommendations to the Nuclear Regulatory Commission. Separation of factual information from the individual advice, opinion or recommendations of ACRS members and consultants during this discussion is not considered practical.

Practical considerations may dictate alterations in the above agenda or schedule. The Chairman of the Committee is empowered to conduct the meeting in a manner that in his judgment will facilitate the orderly conduct of business, including provisions to carry over an incompleted open session from one day to the next.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by providing a readily reproducible copy to the Committee at the beginning of the meeting. Comments should be limited to safety related areas within the Committee's purview. Persons desiring to mail written comments may do so by mailing a readily reproducible

copy thereof in time for consideration at this meeting. Comments postmarked no later than September 2, 1976, to the Executive Director, Advisory Committee on Reactor Safeguards, Nuclear Regulatory Commission, Washington, DC 20555 will normally be received in time to be considered at this meeting. Background information concerning items to be considered at this meeting can be found in documents on file and available for public inspection at the Nuclear Regulatory Commission's Public Document Room, 1717 H Street, NW, Washington, DC 20555 and at the following Public Document Rooms:

Montague Nuclear Power Station, Units 1 & 2, Carnegie Library, Avenue A, Turner Falls, MA 01376.

(b) Those persons wishing to make oral statements regarding agenda items at the meeting should make a request to do so prior to the meeting, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements in safety related areas within the Committee's purview at an appropriate time chosen by the Chairman of the Committee.

(c) Further information regarding topics to be discussed, whether the meeting or portions of the meeting have been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor, can be obtained by a prepaid telephone call on September 8, 1976, to the Office of the Executive Director of the Committee (Telephone: 202-634-1371) between 8:15 AM and 5:00 PM, Eastern Time. It should be noted that the above schedule is tentative, based on the anticipated availability of related information, etc. It may be necessary to reschedule items to accommodate required changes. The ACRS Executive Director will be prepared to describe these changes on September 8, 1976.

(d) Questions may be propounded only by members of the Committee and its consultants.

(e) The use of still, movie, and television cameras, the physical installation and presence of which will not interfere with the course of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(f) Persons with agreements or orders permitting access to proprietary information other than safeguards information may attend portions of ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and relate to the material being discussed.

The Executive Director of the ACRS should be informed of such an agreement at least 3 days prior to the meeting so that the agreement can be confirmed and a determination can be made regarding the applicability of this agreement to the material that will be discussed during the meeting. Minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Executive Director at the beginning of the meeting.

(g) A copy of the transcript of the open portions of the meeting will be available for inspection during the following workday at the Nuclear Regulatory Commission's Public Document Room, 1717 H Street, NW, Washington, DC. Copies of the minutes of the meeting will be made available for inspection at the Nuclear Regulatory Commission's Public Document Room, 1717 H Street, NW, Washington, DC, on or after December 10, 1976. Copies may be obtained upon payment of appropriate charges.

Dated: August 19, 1976.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc.76-24747 Filed 8-20-76;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on 08/17/76 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice thru this release.

Further information about the items on this daily list may be obtained from the clearance office, Office of Management and Budget, Washington, D.C. 20503 (202-395-4529), or from the reviewer listed.

REVISIONS

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service:
Report of Acreage and Marketing of Peanuts to Non-Established Buyers, MQ-98-1, Annually, Lowry, R. L., 395-3772.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health:
Multiple Risk Factor Intervention Trial Forms, NIH-HL-9, Other (see SF-83), Industr. Employees; General Population and M.D.'s, Richard Eisinger, 395-6140.

Health Services Administration:
End Stage Renal Disease Home Dialysis Study, Single-Time, Candidates for Home Dialysis, Richard Eisinger, 395-6140.

Health Resources Administration:
Pretest of Household Interview Portion of Medical Care Expenditure Survey, None, Single-Time, Sampler of Household and Their Health Care Provided in 2 Locations, Richard Eisinger, Strasser, A. 395-6140.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary:
Property Report Questionnaire, None, Single-time, Recipients of Property Reports; Housing, Veterans and Labor Division, Lowry, R. L., 395-3532.

PHILIP D. LARSEN,
Budget and Management Officer.

[FR Doc.76-24761 Filed 8-20-76;8:45 am]

FEDERAL PROCUREMENT POLICY

Cost Comparisons Under OMB Circular A-76

Proposed Transmittal Memorandum to OMB Circular A-76, Providing Cost Factors to be Used in Determining the Cost of Government Commercial and Industrial Activities.

OMB Circular A-76, originally issued in 1966 and revised on August 30, 1967, states the Government's general policy of reliance on the private enterprise system for needed products and services. The Circular provides that exceptions to that policy may be justified when direct Government performance can be shown to be in the National interest. One basis for such an exception is a demonstrated cost saving from Government operation of a commercial or industrial activity. When executive agencies make a comparative cost analysis between commercial and Government sources, the cost to be incurred under each alternative must be determined in accordance with prescribed procedures.

The cost of commercial performance can be established primarily from a contract bid or proposal, but Government costs must be developed from less specific cost data. Circular A-76 states that Government costs must include: "all elements of compensation and allowances for both military and civilian personnel, including the full cost to the Government of retirement systems, calculated on a normal cost basis."

Both the employing agency and the employee contribute 7% of salary to the Civil Service Retirement System. The agency's 7% contribution is currently used in cost comparisons as the full cost to the Government, although it is widely recognized that the actual cost to the Government is substantially higher. The discrepancy results from the fact that agency and employee contributions are based on a "static" projection of the normal cost for the system; i.e., a projection which assumes that there will be no general increases in Civil Service wage

scales and no increases in benefit payments to retirees under the Consumer Price Index (CPI) escalator provisions. When these increases do occur, they create a deficit in funding of the system that is paid by additional Government contributions from general Treasury funds distributed over a thirty-year period. Underfunding prior to 1969 created an unfunded liability which is being stabilized by annual direct transfers of interest payments from the Treasury to the Civil Service Retirement Trust Fund.

In order to achieve greater accuracy 90801 Thoren 8-20-76 D. Lino Mach 52 and uniformity in agency cost studies, standard factors which reflect the full cost to the Government must be provided for use by all executive agencies. At the request of OMB, the Civil Service Commission developed cost factors for the Civil Service Retirement System and for Government contributions to employee insurance programs.

The retirement system factor was first approached from the standpoint of the cost of financing the system under current conditions, while excluding any cost attributable to past failures of the Government to make payments into the fund when due. The resulting figure, 19.9% of salary, included the agency contribution to the system, thirty-year payments to cover benefit improvements, and a portion of the interest on the unfunded liability. This retirement cost factor was criticized on the basis that it reflected the cost of financing obligations which have already been incurred, and that it did not include the impact of future salary and benefit increases, which must be anticipated. It was also recognized that a factor computed on this basis would increase each year as additional thirty-year payments are initiated. For example, the 19.9% factor, which was based on FY 1975 data, increased to 20.4% when recomputed with FY 1976 data.

An alternative approach was developed to determine a factor that reflects full Government cost for the system through the use of "dynamic" rather than "static" normal costs. Calculation of normal costs on a "dynamic" basis provides a more realistic measure of system costs by anticipating future changes in salaries, interest rates, and retirement benefits. This method has been recommended by the Board of Actuaries of the Civil Service Retirement System and the Comptroller General of the United States. Dynamic normal costs were calculated using the actuarial models of the Civil Service Retirement System.

In developing a cost factor on this basis, it was necessary to make economic assumptions about future average annual wage increases to civil service employee and average annual interest rates for money in the fund. Using empirical analyses of historical data and judgments as to how trends might change in the future, the following economic assumptions were developed:

Average annual real wage increase 1.3 percent.

Average annual real interest rate 1.6 percent.

The annual real interest rate of 1.6 percent was the prevailing rate between 1952 and 1964, our last period of sustained stability in inflation rates. If periods of erratic inflation had been included, the interest rate would have been lower. The average annual real wage increase was based on 1948-1973 real GNP growth per manhour worked, corrected for factors such as intersectoral shifts, and increased quality of workers. Data for 1974 and 1975 were excluded from the computation because of the greatly reduced GNP growth during those recession years. In addition, a conservative set of assumptions (from the point of view of retirement costs) was established, setting the real wage growth rate at 1.0 percent, and real interest rate at 2.0 percent. A third economic assumption that was required by the actuarial model was the expected rate of inflation. However, because the effect of different inflation rates proved to be essentially irrelevant, a zero inflation rate was used and the analysis was carried out in constant dollar terms.

The Civil Service Commission actuary was asked to calculate normal costs under the following three combinations of assumptions, assuming in addition that the "one percent kicker" on CPI initiated benefit increases will be discontinued.

Case	Annual real wage increase (percent)	Annual real interest rate (percent)
1	1.3	1.6
2	1.0	2.0
3	1.3	2.0

The actuary projected the costs of retirement in each case as a percentage of payroll costs. These were: Case 1, 36.6%; Case 2, 31.7%; and Case 3, 33.0%. Since the individual contributes 7 percent of his salary to the retirement system, costs to the Government become 29.6, 24.7, and 26.0 percent, respectively.

The 24.7% cost to the Government, which results from use of the set of assumptions most favorable to minimum retirement costs, has been selected for use in all cost comparisons under Circular A-76.

To ensure uniformity and consistency in cost studies performed by different agencies within the executive branch, the following Transmittal Memorandum to Circular A-76 has been prepared. All interested parties are invited to submit their views and comments on this memorandum for consideration by the Office of Federal Procurement Policy. Responses should be received by September 20, 1976 and should be addressed to:

Administrator for Federal Procurement Policy, Office of Management and Budget, 726 Jackson Place, NW, Washington, D.C. 20503.

HUGH E. WITT,
Administrator.

Subject: Policies for Acquiring Commercial or Industrial Products and Services for Government Use

1. *Purpose.* This Transmittal Memorandum provides guidance and specific cost factors to be used when agencies prepare a cost analysis under OMB Circular A-76.

2. *Background.* OMB Circular A-76 expresses the Government's general policy of relying upon the private enterprise system to supply its needs for products and services, in preference to engaging in commercial or industrial activity. This policy reflects the fundamental concept that the Government should generally perform only those functions which are governmental in nature and should utilize the competitive incentives of the private enterprise system to provide the products and services which are necessary to support governmental functions. Those commercial or industrial activities which the Government performs directly for itself are not inherently governmental functions, but rather are exceptions to the fundamental concept, and their performance by Government personnel must be justified as being in the National interest.

3. *Supplemental Guidance.* Circular A-76 sets forth specific circumstances under which it may be in the National interest for the Government to provide directly some products and services for its own use. One of these circumstances permits justification of Government commercial or industrial activity if a detailed comparative cost analysis demonstrates that Government performance would result in sufficient savings to justify involvement in such activity. However, the Circular does not require that a cost study be made in every case to support a decision in compliance with the policy preference for reliance on commercial sources. A cost analysis is not needed in circumstances where the Government's economic interests would be protected, such as the existence of a competitive commercial market, unless the agency has some unique economic advantage which would permit it to supply the needed product or service at less than commercial cost. In determining whether a cost study should be undertaken, consideration should be given to the delay and expense involved in a study sufficiently detailed and comprehensive to provide valid results.

Cost studies, when conducted, should be made in accordance with the guidelines in Section 6 of Circular A-76, and must cover all identifiable costs of both commercial and Government performance. Instructions for the determination of costs incurred by Government activities in providing products and services are set forth in paragraph 6.C. of the Circular. In computing the cost of civilian personnel services for a Government activity, the actual cost to the Government for employee benefits, such as retirement and insurance programs, must be included. Guidance in calculating these cost elements has been provided by the U.S. Civil Service Commission, which has determined current percentage factors for Government contributions to employee insurance programs and the full cost to the Government of the Civil Service Retirement System.

4. *Cost Factors.* (a) For the convenience of Federal agencies making cost studies, the following percentages of base pay will be used in computing the costs of civilian personnel services: Retirement, 24.7 percent; Health Insurance, 3.5 percent; Life Insurance, .5 percent.

(b) Cost comparisons made under the provisions of Circular A-76 should be sufficiently complete and documented to permit ready audit by qualified financial personnel. Copies will be made available to in-

terested persons, on a cost reimbursable basis, when requested under the provisions of the Freedom of Information Act.

5. *Effective Date.* This Transmittal Memorandum is effective immediately.

6. *Inquiries.* Inquiries or requests for assistance should be directed to the Office of Federal Procurement Policy, telephone 395–3327.

[FR Doc. 76–24760 Filed 8–20–76;8:45 am]

PRIVACY PROTECTION STUDY COMMISSION

PERSONAL-DATA RECORD-KEEPING PRACTICES IN EDUCATIONAL INSTITUTIONS

Hearings

On October 7 and 8, 1976, the Privacy Protection Study Commission will hold public hearings on personal-data record-keeping practices in educational institutions including elementary, secondary, and post-secondary schools. The October 7 and 8 hearings will be held in Room 8544, Federal Building, 300 North Los Angeles Street, Los Angeles, California, from 9:30 a.m. to 5:00 p.m. on October 7 and from 9:00 a.m. to 5:00 p.m. on October 8. Additional hearings will also be held on the East coast at a date and place to be announced.

These two Commission hearings will consider the protections afforded parents and students by th Family Educational Rights and Privacy Act of 1974, (FERPA) 20 U.S.C. § 1232g, and the Federal regulations issued thereunder. Because FERPA and its implementing regulations represent one approach to establishing a nationwide fair information practices policy, the Commission is interested in hearing about its feasibility and practical effects. In particular, the Commission wishes to understand the effects of FERPA on the record-keeping practices of educational institutions as applied in different school settings and in the context of different State statutes. Necessarily included in this inquiry will be the school records about students which are used by institutions that share responsibilities with educational institutions—for example, juvenile courts, law enforcement units, social service agencies, and persons conducting research in schools.

Section I below indicates the information needed for both sets of hearings. Section II focuses specifically on the matters to be handled in the Los Angeles hearings in October. As to the East Coast hearings, they will be partly devoted to matters not treated in the Los Angeles hearings, such as questions pertaining to the practices of organizations maintaining personal records related to school admissions or financial aid; resources and strategy for implementing FERPA; sanctions for violations of FERPA; and computer-based information systems. The notice announcing the time and place of the East Coast hearings will give further details on their subject matter.

To assist in the development of these inquiries the Commission wishes to learn about the experiences and views of interested parties, including students, parents, educational institutions and members of the public, prior to the Los Angeles hearings. Statements should be made in writing to the Executive Director, Privacy Protection Study Commission, Suite 424 2120 L Street, N.W., Washington, D.C. 20506, and should be received in the Commission offices no later than September 24, 1976.

I. Request for Background Information

The Commission needs additional background information on the actual practices of educational institutions that maintain records on students, former students, parents, and applicants. Accordingly, written submissions which deal with the following topics are requested.

The Commission needs detailed descriptions of the record-keeping systems in which different types of educational institutions maintain information on students, parents, former students, and applicants. FERPA recognizes six categories for records maintained by educational institutions: (a) education records; (b) medical records; (c) law enforcement records; (d) directory information; (e) research records; (f) "desk drawer" notes. In each case, the Commission would like to learn what type of information is typically contained in such records.

In addition, the Commission needs detailed answers to the following questions regarding the management of information that educational institutions maintain on students, former students, parents, and applicants. (1) Are explicit criteria of data relevance and reliability established and enforced in the day-to-day record-keeping practices of an educational institution and if so, who establishes them and what are they? (2) What training is provided staff who work with records about individuals? (3) What information is kept permanently and what is destroyed? (4) What information is maintained by electronic means? (5) What precautions are taken to avoid unauthorized access to information? (6) How are records linked within an institution and with records maintained by other organizations, including other educational institutions? (7) What procedures and standards govern routine use of recorded personal information by employees and other users? (8) What institutional policies and practices govern the security, sharing, and release of informal ("desk drawer") records and notes about students developed by individual teachers, counselors, law enforcement officers, medical personnel, and others working directly with students in schools? (9) How and why do breaches of policy, good practice, or security occur?

Although the following topics will be covered more extensively in the later East Coast hearings on FERPA, the Commission would also like written comments and background information on them at this time.

1. Practices of organizations that provide testing or screening services related to admissions and financial aid.

2. Encroachments on students' and parents' control over the dissemination of information about themselves which FERPA may have unintentionally ratified.

3. Resources and strategy for implementation of FERPA by the Department of Health, Education and Welfare (DHEW).

4. Adequacy of the current sanctions (withholding Federal funds) for violations of FERPA and alternatives that might be considered.

5. Development and funding of computer-based information systems containing individually identifiable data about parents, students and applicants for auditing, eligibility determination, or providing special services in schools.

6. Interaction of Federal statutes with current and pending State legislation.

II. Subject of October Hearings

For its October 7 and 8 hearings the Commission will focus on and seek written submissions and public testimony on the following matters.

Policies of Educational Institutions Pursuant to FERPA.

The FERPA regulations issued by the Department of Health, Education and Welfare on June 17, 1976, require that local educational institutions formulate and adopt policies and procedures for informing parents and students of their rights under the Act and for carrying out the minimum requirements of the Act. (1) What policies have individual educational agencies developed and how have they developed them? (2) Which features of such policies are the product of State statutes and which are the product of FERPA requirements? (3) What evidence is there that these policies have produced parent and student awareness of their rights with respect to the records that are kept about them? (4) Are the FERPA grievance and redress requirements practical for schools and timely and convenient for students and parents? (5) What actual experiences have parents and students had in exercising their rights under local policies and procedures? (6) Have such policies increased the specificity, objectivity, and substantiation of the information that educational institutions record about students, former students, parents, and applicants?

Waivers of Rights. FERPA provides that the right to inspect and review certain education records (e.g., letters of recommendation) may be waived by a student. The Commission is interested in information concerning how and under what circumstances such waivers are obtained, the impact of the use of such waivers, and the consequences of an individual's decision not to waive his rights. The Commission would also like to learn whether the fact that a record, recommendation, or other information has been or may be reviewed by its subject might lead educators to treat it as less credible than would otherwise be the case, or as incomplete. For example, is it becoming necessary to verify or

supplement "reviewed" statements through oral inquiries of which no formal record is made or kept? Is a "reviewed" statement readily distinguishable on its face from one that has not been reviewed by its subject? Are there specific documentable situations in which permitting a student to read a candid appraisal of his qualifications, potential, or performance can be shown to have been harmful to him, to the individual making the appraisal, or to the educational institution requesting it? If there are such situations, how could the waiver provision in the Act be modified to deal specifically with them?

Access to Recorded Information by Law Enforcement Officials. Records maintained by the law enforcement unit(s) of an educational institution are exempted from the subject access requirements of FERPA provided that four conditions are met (1) such records are used solely for law enforcement purposes; (2) such records are kept separately from "education records"; (3) such records are not disclosed to "individuals other than law enforcement officials from the same jurisdiction"; and (4) the "education records" of the educational institution are not disclosed to its law enforcement officials. The Act further provides that educational agencies may disclose "education record" information without the consent of the student or his parents "to State or local officials or authorities to whom the information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974."

These provisions appear to give law enforcement officials outside an educational institution considerable access to recorded information about a student. The Commission is interested in learning about the extent of release of information to law enforcement agencies, and the standards of relevance and reliability that are imposed on information so released. What standards should define the circumstances under which education records are released to law enforcement officials?

The Commission is interested in learning how effectively records maintained by law enforcement units of an educational institution are restricted from other uses. How are such records distinguished from education records? For example, is the term "education record" being construed so as to give internal or external law enforcement officials broad access to information obtained for research or educational uses? Do law enforcement agency records affect educational decisions? To what extent does the disclosure of recorded information to outside law enforcement officials adversely affect the ability of schools to fulfill their primary missions? Would the fact that a student is said in an education record to be taking a medically prescribed but popularly abused drug be disclosed or disclosable to law enforcement officials within or outside the educational institution? How are records concerning a student's participation in "predelinquent" or "diversionary" programs used by an educational institution in making educational decisions about the student?

The DHEW regulations do not explicitly indicate what the phrase "same law enforcement jurisdiction" should be construed to mean in practice. Given that records might be released to law enforcement officials only under explicitly specified standards, how should the term "same jurisdiction" be defined. Should it be defined in personal/geographic terms? Or, should "same" be defined in terms of subject-matter jurisdiction; e.g., the FBI might use education records in cases of interstate car theft, while the State highway patrol might use education records in cases of State motor vehicle code violations.

Disclosures to Parents of a Minor Student. By providing parents the right to inspect their minor students' records, FERPA appears to make it impossible for school officials to guarantee a minor student that education record information he divulged about himself will be held in confidence. Does this conflict with protections afforded by State statutes?

The student may have volunteered sensitive information or opinions about his parents to school officials—regarding alcoholism or abuse of a sibling, for example. Mere record of contact with a school screening or information project concerning drug abuse or venereal disease, might also provide parents with information that would not be in the best interest of their child for them to have. Should any records of the student be withheld from parents, and if so, why? Are parents securing inappropriate access to medical records regarding a child?

Present and Pending State Legislation in California. A number of State legislatures have been very attentive to matters bearing on the creation, use, and management of records maintained by educational institutions. In California, for example, both current laws and proposed new statutes go beyond FERPA in a variety of ways and thus may anticipate matters that should be taken into account in considering amendments to FERPA. Accordingly, the Commission wishes information on present and pending State legislation affecting the personal-data recordkeeping practices of educational institutions in California. What arguments and facts have been cited concerning such State legislation? What experiences have States had in implementing such State laws? What is the rationale for current laws and pending legislation? What problems do current and proposed laws seek to resolve? How has FERPA affected current and proposed State statutes? How are State requirements for individually identifiable data (e.g., for program auditing) treated in State laws on personal data recordkeeping in education?

Research Conducted in Educational Institutions. Schools are a major source of data for social science researchers and for research training. Schools are often the subject of considerable public interest-in particular, concerning the propriety, equity or effectiveness of local educational practices. FERPA and existing regulations under the act require the prior consent of subjects for research using educational records where such research is *not* conducted for or on behalf of either specified Federal authorities or an educational agency or institution.

The Commission needs to learn how FERPA requirements are being interpreted in the field, and how those interpretations are affecting research conducted in schools. How are local educational agencies deciding *who* can conduct research in schools without prior consent of subjects? Are FERPA requirements restricting research trainees' opportunities for data collection? Are students', citizens', or public interest research groups' inquiries into the propriety, equity, or effectiveness of educational practices being constrained by FERPA? Are FERPA requirements for prior consent for access to education records making retrospective longitudinal research strategies infeasible?

Whether or not subject to FERPA requirements, research in schools raises a number of additional questions. Should parents or law enforcement officials have access to data collected from students for research purposes? Under what circumstances should sensitive information about a student's family or teachers be solicited from the student? What practices are followed regarding consent of students or parents for student participation in research? How consistently do researchers use confidentiality-preserving modes of recording, reporting, and storing their data? How effective are these procedures when used? What safeguards should be used to protect against redisclosure of personal data in the course of reanalysis for purposes other than those for which the data were originally collected? Does collection of research information authorized under FERPA conflict with State statutes or local policies which establish tighter rules for data collection, use, and dissemination? Should information generated about individuals by clinical research studies be used for individual decision making.

Dated: August 17, 1976.

DAVID F. LINOWES,
Chairman.
CAROLE W. PARSONS,
Executive Director.

[FR Doc.76-24608 Filed 8-20-76;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-12703; File No. SR-CBOE-1976-16]

CHICAGO BOARD OPTIONS EXCHANGE, INC.

Proposed Rule Change

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. Nos. 94-29, 16 (June 4, 1975), notice is hereby given that on August 4, 1976 the above mentioned self-regulatory organ-

ization filed with the Securities and Exchange Commission a proposed rule change as follows: (deletions, bracketed; additions italicized)

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

Rule 1.1(v) Primary Market. The term "primary market" in respect of an underlying security *which is principally traded on a national securities exchange* means the principal *exchange* market in which the underlying security is traded, and *in respect of an underlying security principally traded in the over-the-counter market means the over-the-counter market reflected in the National Association of Securities Dealers Automated Quotation System (NASDAQ).*

RESTRICTION OF OUT-OF-THE MONEY OPTIONS

Rule 4.17.[1] (a) Subject to the provisions of paragraphs (b) through (d), no member on behalf of a customer or for his own account, shall enter any order for an opening transaction (purchase or writing) in any call option contract as to which (i) the exercise price is more than $5 above the closing price of, *or, where applicable, the mean between the final representative bid and asked quotation for,* the underlying security in the primary on the last previous day on which the underyling security was traded and (ii) the closing price of the option on the Exchange was less than $0.50 per unit of trading on the last previous day on which the option was traded; and no member, on behalf of a customer or for his own account, shall enter any order for an opening transaction (purchase or writing) in any put option contract as to which (x) the exercise price is more than $5 below the closing price of, *or, where applicable, the mean between the final representative bid and asked quotation for,* the underlying security in the primary market on the last previous day on which the underyling security was traded and (y) the closing price of the option on the Exchange was less than $0.50 per unit of trading on the last previous day on which the option was traded.

* * * Interpretations and Policies: .01 It is contemplated that the authority given in paragraph (c)(ii) to make exceptions, modifications or additions will be applied primarily when an unusual intra-day trading movement in the price of the option or the *price of or representative quotations for* the underlying security is such that the President and Floor Officials determine that the prior day's [close] *closing price or final representative quotations* should no longer be decisive as to the application of the Rule.

APPROVAL OF UNDERLYING SECURITIES

Rule 5.3. The underlying securities of option contracts traded on the Exchange shall be approved for Exchange transactions by the Board following the recommendations of the Securities Committee. In approving underlying securities, both the Securities Committee and the Board shall give due regard to, and the Board shall promulgate guidelines relative to, the following factors:

(a) Underlying securities approved for Exchange transactions shall be characterized by a large number of outstanding units which are widely held and actively traded in the primary market;

(b) Underlying securities shall *either* be duly listed and registered on a national securities exchange[;] or, *shall be designated as "OTC Margin Stock" pursuant to Regulation T under the Securities Exchange Act of 1934;*

(c) The list of approved underlying securities shall be representative of issuers engaged in a wide variety of business activities; and

(d) Underlying securities shall meet the requirements set forth in the agreements of the Exchange with the Clearing Corporation.

TERMS OF OPTION CONTRACTS

Rule 5.6. (a) The expiration month and exercise price of option contracts of each series of options shall be determined by the Securities Committee at the time each series of options is first opened for trading. [Unless the Securities Committee otherwise provides and so indicates at the post at which the option contract is traded, option contracts shall expire in the months of January, April, July and October, and] Series of options of a given expiration month shall generally be opened for trading about nine months prior to such expiration month (e.g., October options will generally be opened during the preceding January). The exercise price of each series of options shall be fixed at a price per unit which is reasonably close to the price per unit at which the underlying security is traded in the primary market at the time such series of options is first opened for trading. Additional series of options of the same class may be opened as the market price of the underlying security moves substantially from the initial price or prices.

TRADING ROTATIONS

Rule 6.2. * * * Interpretations and Policies: .01 Trading rotations shall be employed at the opening and at the close of the Exchange each business day. For each class of option contracts that has been approved for trading, the opening and closing rotation shall be conducted by the Board Broker acting in such class of options. The rotations shall be conducted in the following manner.

(a) Opening Rotations. The opening rotation in each class of options shall be held promptly following *either* the opening of the underlying security on the principal exchange where it is traded [.] *or, in the case of underlying securities principally traded in the over-the-counter market, the availability of representative quotations through the NASDAQ system.* As a rule, a Board Broker acting in more than one class of options should open them in the same order in which opening transactions are reported *or representative quotations are available* in the underlying securities. In conducting each such opening rotation, the Board Broker should first open the one or more series of options of a given class having the nearest expiration, then proceed to series of options having the next most distant expiration, and so forth, until all series have been opened.[2] Except as otherwise provided by the Floor Procedure Committee, if both puts and calls covering the same underlying security are traded, the Board Broker shall determine which type of option should open first, and may alternate the opening of put series and call series or may open all series of one type before opening any series of the other type, depending on current market conditions.

In the event an underlying security *which is listed on an Exchange* has not opened *or current represenative quotations are not available for an underlying security which is principally traded in the over-the-counter market,* within a reasonable time after 9:00 a.m. (Chicago Time), the Board Broker acting in option contracts on such security shall report the delay to a Floor Official and an inquiry shall be made to determine the cause of the delay. The opening rotation for option contracts in such security shall be delayed until *either* the underlying security *which is listed on an exchange* has opened *or until current representative* quotations *are available for the underlying security which is principally traded in the over-the-counter market,* unless two Floor Officials determine that the interests of a fair and orderly market are best served by opening trading in the option contracts.

TRADING HALTS

Rule 6.3. (a) Halts. Any Floor Official may halt trading in any option contract in the interests of a fair and orderly market for a period not in excess of two consecutive business days. Among the factors that may be considered by the Floor Official are that:

(i) Trading in the underlying security has been halted or suspended in the primary market,

(ii) The opening of such underlying security in the primary market, *where the primary market is a national securities exchange,* has been delayed because of unusual circumstances,

(iii) Current representative quotations are not available for underlying securities principally traded in the over-the-counter market, or

[iii] *(iv)* Other unusual conditions or circumstances are present.

b. Resumptions. Trading in an option contract that has been the subject of a halt under paragraph (a) above may be resumed upon a determination by the

[1] The text of Rule 4.17(a) reflects a proposed amendment filed under Rule 19b-4 in file No. SR-CBOE-1975-7.

[2] The text of paragraph (a) of interpretation 6.2.01 following the asterisk reflects a proposed amendment filed under Rule 19b-4 in file No. SR-CBOE-1975-7.

majority of Floor Officials that the conditions which led to the halt are no longer present or that the interests of a fair and orderly market are best served by a resumption of trading.

SUSPENSION OF TRADING

Rule 6.4. (a) Suspension. The Board may suspend trading in an option contract in the interests of a fair and orderly market. Among the factors that may be considered by the Board are that:

(i) Trading in the underlying security has been suspended in the primary market,

(ii) Representative quotations are unavailable for underlying securities principally traded in the over-the-counter market,

[(ii)] *(iii)* Trading in the option contract has been halted for two business days by the Floor Official acting in accordance with Rule 6.3, and the conditions which led to such halt are still present, or

[(iii)] *(iv)* Other unusual conditions or circumstances are present.

(b) Resumptions. Trading in an option contract that has been the subject of a suspension under paragraph (a) above may be resumed upon a determination of the Board that the conditions which led to the suspension are no longer present or that the interests of a fair and orderly market are best served by a resumption of trading.

RESPONSIBILITIES OF FLOOR BROKERS

Rule 6.73. (a) General Responsibility. A Floor Broker handling an order is to use due diligence to execute the order at the best price or prices available to him, in accordance with the Rules.

(b) Contingency order or one-cancels-the-other order. A Floor Broker handling a contingency order or a one-cancels-the-other order that is dependent upon the price of, *or the representative quotation for,* the underlying security shall be responsible for satisfying the dependency requirement on the basis of the last reported price of, *or representative quotation for,* the underlying security in the primary market that is generally available on the floor of the Exchange at any given time. Unless mutually agreed by the members involved, an execution or non-execution that results shall not be altered by the fact that such price *or representative quotation* is subsequently found to have been erroneous.

(c) Spread orders at the opening or close. A Floor Broker shall not be held responsible for executing a spread order based upon transaction prices that are established at the opening or close of trading or during any trading rotation employed in accordance with Rule 6.2.

OBLIGATIONS OF MARKET-MAKERS

Rule 8.7 * * * (a) * * *

(b) Principal Appointment * * *

(i) * * *

(ii) Bidding no more than $1 lower and/or offering no more than $1 higher than the last preceding transaction price for the particular option contract. However, this standard shall not ordinarily apply if the *representative bid or offer for, or* price per share (or other unit of trading) of, the underlying security has changed by more than $1 since the last preceding transaction for the particular option contract.

CBOE'S STATEMENT OF BASIS AND PURPOSE

The principal purpose of the proposed rule changes is to permit selected securities that are traded in the over-the-counter market and are not listed on any national securities exchange to serve as underlying securities for options traded on CBOE. (These are referred to herein as "OTC underlying securities".) Prior to reflecting the proposed rule changes, under CBOE's rules each underlying security in respect of options traded on CBOE must itself be duly listed and registered on a national securities exchange. The purpose of each particular rule change that is proposed herein may be explained as follows:

Rule 1.1(v). The purpose of this amendment is to define the "primary market" in respect of securities principally traded in the OTC market to mean that market as reflected in the National Association of Securities Dealers Automated Quotation System (NASDAQ).

Rule 4.17. It is proposed to amend Rule 4.17 and Interpretation .01 thereunder to provide that for purposes of imposing restrictions on certain transactions in out-of-the-money options covering OTC underlying securities, the mean between the final representative bid and asked quotation on NASDAQ will be utilized as the current market price of the underlying security.

Rule 5.3. The proposed amendment to Rule 5.3 would permit CBOE to select for options trading underlying securities that are designated as "OTC Margin Stock" pursuant to Regulation T, provided that such securities meet all of the other requirements which presently pertain to the selection of underlying securities.

Rule 5.6. The proposed amendment to Rule 5.6, which is unrelated to the proposal to trade options covering OTC underlying securities, reflects the deletion from Rule 5.6 of the provision that unless otherwise designated, options shall expire in the months of January, April, July and October. This provision has been made obsolete by CBOE's practice of introducing options having expiration cycles other than as stated in the Rule.

Interpretation .01 of Rule 6.2. It is proposed to amend this Interpretation to provide that the opening rotation of options covering OTC underlying securities shall commence each trading day following the availability of representative quotations on NASDAQ.

Rules 6.3 and 6.4. Rule 6.3 is proposed to be amended to permit a Floor Official to halt trading in an option covering an OTC underlying security whenever current representative quotations for the underlying security are not available. Similarly, it is proposed to amend Rule 6.4 to permit the Board of Directors to suspend trading in such an option in the event such representative quotations are not available.

Rule 6.73. It is proposed to amend Rule 6.73, which describes various contingency orders that are dependent upon the market price of underlying securities, to provide that in the case of options covering OTC underlying securities, such contingency orders will depend upon representative quotations for the underlying securities in the over-the-counter market.

Rule 8.7. The proposed amendment to Rule 8.7 reflects that, in the case of options covering OTC underlying securities, changes in the representative bid or offer for the underlying security serve to determine the circumstances under which a market maker may change his option quotation by more than $1.00.

CBOE believes that it is consistent with the standards of the Act designated for the protection of investors and the public interest to select as underlying securities for options transactions certain of the most widely held and actively traded securities that are traded in the over-the-counter market and are not listed on any national securities exchange. In the case of such securities, the availability of current quotations via the NASDAQ system will enable options premiums to fairly reflect the current market value of the underlying security in the same manner as options premiums for listed securities are today determined on the basis of the last reported sale price. For this purpose, CBOE will make available at each post where options covering OTC underlying securities are traded a current updated Level I NASDAQ display showing the current representative bid and offer for each such security. In addition, CBOE is considering providing Level II NASDAQ information showing the bids and offers of each market maker in each such underlying security through interrogation devices on the CBOE trading floor. The availability of Level II NASDAQ information will depend upon whether arrangements can be made with the NASD and what the costs of providing such information would be. In all other material respects, trading in options covering OTC underlying securities is no different from the options trading that presently takes place in listed underlying securities.

Although formal comments have not been solicited or received, opinions informally expressed to CBOE have been in support of the proposal to extend options trading to selected OTC underlying securities.

The proposed rule changes will impose no burden on competition.

On or before September 27, 1976, 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, Washington, D.C., 20549. Copies of the filing with respect to the foregoing and all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before September 13, 1976.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

AUGUST 12, 1976.

[FR Doc.76-24566 Filed 8-20-76;8:45 am]

[Rel. No. 34-12704; File No. SR-CBOE-1976-15]

CHICAGO BOARD OPTIONS EXCHANGE, INC.

Proposed Rule Change

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 27, 1976, the above mentioned self-regulatory organization 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 text of the proposed rule change is as follows (language to be deleted is included in brackets):

BROKERS' BLANKET BONDS

Rule 9.22, Interpretations and Policies. .01.5(a) A member organization may choose to maintain coverage in excess of the minimum requirements as set forth above in paragraph .01.2, and in such case, a deductible provision of up to $5,000 or 10% of the amount of the blanket bond coverage, whichever is greater, may be included in the bond purchased. However, the excess of this greater deductible amount over the maximum permissible deductible amount as described above in paragraph .01.5 must be subtracted from the member organization's net worth in the calculation of the member organization's net capital under SEC Rule 15c3-1 [If the member organization is a subsidiary of another exchange member which guarantees the subsidiary's net capital in writing, the excess deductible amount may instead be subtracted from the parent company's net worth.]

STATEMENT OF THE BASIS AND PURPOSE

The purpose of the proposed rule change is to delete the provision contained in the last sentence of Interpretation .01.5(a) under Rule 9.22 of the CBOE rules which provides that a member-subsidiary which carries bonding coverage greater than the minimum requirements for the firm would be permitted to have the amount of excess deductible in its bond subtracted from the parent's net worth, rather than from the subsidiary's net worth, in the calculation of the subsidiary's net capital pursuant to Section 240.15c3-1 (the "Uniform Net Capital Rule"). It appears that this provision is inconsistent with the purposes of the Uniform Net Capital Rule inasmuch as Appendix "C" thereto prohibits flow through capital benefits of this kind. Accordingly, the proposed rule change is being made in order to render Rule 9.22 consistent with the purposes of the Uniform Net Capital Rule in this regard.

Section 6(b)(1) under the Act provides, among other things, that an exchange shall not be registered as a national securities exchange unless "such exchange is so organized and has the capacity to be able to carry out the purposes of this title and to comply, and * * * to enforce compliance by its members and persons associated * * * with the provisions of this title, the rules and regulations thereunder, and the rules of the exchange." This section establishes the basis for the Exchange's proposal to amend Rule 9.22 in order to render it consistent with the purposes of the Uniform Net Capital Rule, particularly with respect to the policies set forth in Appendix "C" thereto.

Comments on the proposed rule were not solicited from members.

The Exchange does not believe that the proposed rule change will impose any burden upon competition.

On or before September 27, 1976, 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, 500 North Capitol Street, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and 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 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 13, 1976.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

AUGUST 12, 1976.

[FR Doc. 76-24565 Filed 8-20-76; 8:45 am]

[Rel. No. 34-12708; File No. SR-DTC-76-7]

DEPOSITORY TRUST CO.

Proposed Rule Change

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 August 4, 1976, the above mentioned self-regulatory organization 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 proposed rule change provides for a new Certificate as to Citizenship to be executed by all Participants of The Depository Trust Company (DTC). The primary differences between the new Certificate and the former Certificate are that the new Certificate (a) deals more specifically with the requirements of Section 310 of Title 47 of the United States Code (restricting alien ownership of radio station licensees' capital stock), (b) encompasses the deposited capital stock of all corporate radio station licensees which securities are Eligible Securities under DTC's Rules, without naming the licensees, and (c) requires indemnification by the Participant of DTC and each officer, director, employee and DTC Participant against liabilities to which they may become subject due to action taken by DTC in reliance upon the new Certificate.

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

3. *Purpose of Proposed Rule Change.* The purpose of the proposed rule change is to enable corporate radio station licensees whose capital stock is eligible for deposit at DTC to comply with Section 310 of Title 47 of the United States Code which restricts alien ownership of said capital stock.

4. *Basis under the Act for Proposed Rule Change.* (a) Not Applicable.

(b) The proposed rule change relates to DTC's carrying out the purposes of Section 17A of the Securities Exchange Act of 1934 (the Act) by increasing DTC's capacity to facilitate the prompt and accurate clearance and settlement of securities transactions in that the proposed rule change allows DTC to make issues eligible for deposit which, due to governmental restrictions on citizenship of stockholders, might otherwise have to be excluded from eligibility.

(c) Not Applicable.

5. *Comments Received from Members, Participants or Others on Proposed Rule Change.* No comments have been solicited.

6. *Burden on Competition.* None.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the public reference room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should be submitted on or before September 13, 1976.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

AUGUST 16, 1976.

[FR Doc.76-24563 Filed 8-20-76;8:45 am]

[Rel. No. 34-12712; File No. SR-OCC-76-7]

OPTIONS CLEARING CORP.

Proposed Rule Change

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 August 6, 1976, the above-mentioned self-regulatory organization 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 proposed rule change would permit each Clearing Member of OCC to effect settlements in respect of exercised option contracts through a clearing corporation designated by the Clearing Member for that purpose.

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

The primary purpose of the proposed rule change is to permit each Clearing Member of OCC to effect settlements in respect of exercised option contracts through the clearing corporation of its choice. OCC's present Rules assume that exercise settlements will be effected through an omnibus account maintained by OCC for its Clearing Members with a single clearing corporation. The proposed rule changes would permit each Clearing Member to designate a clearing corporation for exercise settlement purposes and to maintain an exercise settlement account directly with its designated clearing corporation.

The specific purpose of each of the proposed rule changes set forth under Item 1 is as follows:

1. The definition of "correspondent clearing corporation" in the OCC By-Laws is revised to incorporate the definition of "clearing agency" in the Securities Exchange Act of 1934, as amended, and to conform to the revised definition of "exercise settlement account" referred to below.

2. The term "designated clearing corporation" is made a defined term for the purpose of simplifying subsequent provisions.

3. The definition of "exercise settlement account" is revised to indicate that such accounts are to be maintained by Clearing Members directly, rather than through OCC (see paragraph 7, below), and to provide that the only settlements to be effected through such an account are settlements in respect of options exercised by the Clearing Member for which the account is maintained. Settlements in respect of the Clearing Member's assignments would be effected through its regular clearing account, so as to permit netting against other securities transactions.

4. A technical change is made in the definition of "long value position" and the term "short value position" is made a defined term to simplify the drafting of subsequent provisions.

5. Definitions are added for the terms "Receiving Clearing Member" and "Delivering Clearing Member" to simplify the drafting of subsequent provisions.

6. Article VIII, Sections 1 and 5 of the By-Laws are amended to clarify their application to losses incurred by OCC in connection with exercised option contracts.

7. New Rule 212 would require each Clearing Member to be a participant of at least one correspondent clearing corporation. Prior to or concurrently with the effectiveness of the proposed rule changes filed herein, OCC anticipates entering into exercise settlement agreements with Stock Clearing Corporation, American Stock Exchange Clearing Corporation, Midwest Clearing Corporation,[2] Pacific Clearing Corporation and Stock Clearing Corporation of Philadelphia. OCC understands that all but approximately five of its Clearing Members are currently participants of at least one of those clearing agencies, and anticipates that the remainder will voluntarily become participants prior to the effectiveness of proposed Rule 212.

[2] The new exercise settlement agreement will supersede OCC's present agreement with MCC and Midwest Securities Trust Company.

8. Technical changes have been made in Rule 909 and 912.

9. Proposed Rule 913(a) establishes a procedure whereby each Clearing Member is to designate the clearing corporation through which it wishes to effect option exercise settlements. It is anticipated that each Clearing Member will initially designate a single clearing corporation, but the Rule permits procedures to be developed in the future for designating different clearing corporations for different classifications of option contracts (e.g. contracts relating to particular underlying securities or contracts traded on particular exchanges).

10. A number of changes, largely of a technical nature, have been made in Rule 913(b) formerly Rule 913(a)), and a provision has been added permitting OCC to net (in reporting exercises to correspondent clearing corporations) a Clearing Member's rights to receive securities against its obligations to deliver securities of the same class on the same exercise settlement date.

11. Subparagraphs (c), (d) and (e) (formerly (b), (c) and (d)) of Rule 913 have been revised to conform their provisions to amended subparagraphs (a) and (b) of the Rule.

12. Rule 914 has been amended to clarify its provisions and to regulate positions resulting from settlements in respect of put option contracts.

13. The changes in subparagraphs (a) through (d) of Rule 915 are largely of a technical nature. A new subparagraph (e) has been added to prescribe the obligations of a Clearing Member after a buy-in of a long value position with a correspondent clearing corporation. Former subparagraphs (e), (f) and (g) have been redesignated and certain technical changes have been made therein.

14. Present Rule 916 is proposed to be deleted. Its purpose was to reduce OCC's exposure in the exent that a Clearing Member defaulted in its obligations to a correspondent clearing corporation. However, under the new exercise settlement system, OCC would no longer be exposed to loss in the event of such a default, because Clearing Members would maintain their exercise settlement accounts directly, rather than through OCC, and the correspondent clearing corporation would have no recourse against OCC in the event of a default.

15. New Rule 916 would provide a sell-out procedure for Clearing Members with short value positions in exercise settlement accounts in the event of the failure of a correspondent clearing corporation. The procedure generally parallels the buy-in procedure provided in amended Rule 915(f) for Clearing Members with long value positions. Under proposed Rule 916, no distinction is made, in terms of remedies, between a Clearing Member with a short value position which has not yet delivered securities in against that position and a Clearing Member which has delivered securities in but has not yet been paid. The latter would be required to seek either the return of the securities or payment of the applicable price from the

correspondent clearing corporation directly.

The proposed rule change relates to the prompt and accurate clearance and settlement of securities transactions, fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

Comments were not and are not intended to be solicited with respect to the proposed rule change.

OCC does not believe that the proposed rule change would impose any burden on competition. To the contrary, the proposed rule change would enhance competition among clearing agencies.

On or before September 27, 1976, 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 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 13, 1976.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

AUGUST 17, 1976.

[FR Doc.76-24567 Filed 8-20-76; 8:45 am]

TEXT OF PROPOSED RULE CHANGE

Brackets indicate deletions, Italics indicate new material.

ARTICLE I, SECTION 1 OF BY-LAWS

Definitions. Section 1. Unless the context requires otherwise, the terms defined herein shall, for all purposes of these By-Laws and the Rules of the Corporation, have the meanings herein specified.

(a) through (aaa): [No change].

Correspondent Clearing Corporation. (bbb) The term "correspondent clearing corporation" means *a clearing agency (as defined in Section 3(a) of the Securities Exchange Act of 1934, as amended) which, by agreement with the Corporation, provides facilities for settlements in respect of exercised option contracts.* [clearing corporation (as that term is defined in Article 8 of the Uniform Commercial Code of the State of Illinois, or of such other State as may from time to time be designated by the Board of Directors, as the same may be amended from time to time) with which the Corporation maintains exercise settlement accounts.]

Designated Clearing Corporation. (ccc) *The term "designated clearing corporation," when used with respect to a Clearing Member and an exercised option contract for which the Clearing Member is the exercising or the Assigned Clearing Member, means the correspondent clearing corporation designated by that Clearing Member to act on its behalf in accordance with Chapter IX of the Rules in effecting settlement in respect of such exercised option contract.*

Exercise Settlement Account. (ddd) [(ccc)] The term "exercise settlement account" means an account maintained by a *Clearing Member* [the Corporation] with a correspondent clearing corporation [on behalf of a clearing Member for the purpose of facilitating] *for the sole purpose of effecting* settlements in respect of option contracts exercised by [or assigned to] such Clearing Member.

Free Position. (eee) [(ddd)] The term "free position," when used with respect to an exercise setlement account of a Clearing Member, means the position of the Clearing Member with respect to a security credited to such account for which the Clearing Member has fully paid or such account has been charged.

Long Value Position. (fff) [(eee)] The term "long value position," when used with respect to a security in an exercise settlement account of a Clearing Member, means the position of the Clearing Member with respect to the security when, under the rules and procedures of the correspondent clearing corporation carrying such acocunt, the correspondent clearing corporation is obligated to deliver the security to the Clearing Member against payment of a [stipulated settlement] price *fixed pursuant to the rules of the correspondent clearing corporation* and the Clearing Member is obligated to receive the security and to pay such [settlement] price.

Short Value Position. (ggg) *The term "short value position," when used with respect to a security in an exercise settlement account of a Clearing Member, means the position of the Clearing Member with respect to the security when, under the rules and procedures of the correspondent clearing corporation carrying such account, the Clearing Member is obligated to deliver the security to the correspondent clearing corporation against payment of a price fixed pursuant to the rules of the correspondent clearing corporation and the correspondent clearing corporation is obligated to receive the securirty and pay such price.*

(fff) through (mmm). [Redesignated as (hhh) through(ooo); no change in text.]

Receiving Clearing Member. (ppp) *The Term "Receiving Clearing Member," when used (i) with respect to a call option contract, shall mean the exercising Clearing Member; and (ii) with respect to a put option contract shall mean the Assigned Clearing Member.*[1]

Delivering Clearing Member. (qqq) *The term "Delivering Clearing Member," when used (i) with respect to a call option contract shall mean the Assigned Clearing Member; and (ii) with respect to a put option contract shall mean the exercising Clearing Member.*[1]

ARTICLE VIII, SECTION 1 OF BY-LAWS

Maintenance and Purpose of the Clearing Fund.—Section 1. The Corporation shall maintain a Clearing Fund, to which each Clearing Member shall contribute, as provided in this Article VIII, to make good losses suffered by the Corporation as a result of the failure of any Assigned Clearing Member to perform its obligations under any assigned option contract, or as a result of the failure of any correspondent clearing corporation to *make any payment or delivery required with respect to an* [deliver securities credited or long value positions in] exercise settlement account[s], [to Clearing Members entitled thereto,] or as the result of any liquidation of a Clearing Member's open positions with the Corporation *or obligations in respect of exercised option contracts for which settlement has not yet been made,* or as a result of the failure by any Clearing Member to make any required payment to the Corporation or *any required payment* to a correspondent clearing corporation *which the Corporation makes on behalf of the Clearing Member.*

ARTICLE VIII, SECTION 5 OF BY-LAWS

Application of Clearing Fund.—Section 5. If any Clearing Member shall fail to discharge duly any obligation on or arising from any Exchange transaction accepted by the Corporation or any option contract assigned to such Clearing Member, or if the Clearing Member fails to make any required payment to the Corporation, or if the Clearing Member fails to make any required payment to a correspondent clearing corporation and the Corporation makes such payment on its behalf, or if the Corporation suffers any loss upon the liquidation of the Clearing Member's open long and short positions *or the Clearing Member's obligations in respect to exercised option contracts for which settlement has not yet been made,* [(including positions maintained at a correspondent clearing corporation)], then the Corporation shall apply the Clearing Member's Clear-

[1] The addition of this definition was proposed in SR-OCC-75-7, which is currently pending.

ing Fund contribution to the discharge of such obligation, the making of such payment or the reimbursement of such loss. If the amount of the undischarged obligation, payment or loss exceeds the amount of the Clearing Member's total Clearing Fund contribution, and if the Clearing Member fails to pay the Corporation the amount of any such deficiency within 24 hours, the amount of the deficiency shall be paid out of the Clearing Fund and charged pro rata against all other Clearing Members' contributions as fixed at the time, but the Clearing Member who failed to pay the deficiency shall remain liable to the Corporation for the full amount of such deficiency until repayment thereof by such Clearing Member. If a correspondent clearing corporation shall fail to *make any required payment or delivery with respect to any* [deliver to a Clearing Member securities credited to a long value position in an] exercise settlement account, [of such Clearing Member], and *as a result thereof,* [such] securities are bought *in or sold out* for the account of in accordance with the Rules, [and the correspondent clearing corporation fails to reimburse the Corporation for all losses in connection therewith], the amount of [such unreimbursed] *any* loss[es] *incurred by the Corporation in connection with such buy-in or sell-out* shall be paid to the Corporation out of the Clearing Fund and charged pro rata against all Clearing Members' contributions as fixed at the time. [but without prejudice to the rights of the Corporation against such correspondent clearing corporation.]

PARTICIPATION IN CORRESPONDENT CLEARING CORPORATION

Rule 212. Every Clearing Member shall be and remain a participant in good standing of at least one correspondent clearing corporation.

NOTICE OF DELIVERY AND PAYMENT

Rule 909. Unless settlement is made through correspondent clearing corporations pursuant to Rule 913, the delivering Clearing Member and the receiving Clearing Member shall each promptly notify the Corporation, on forms prescribed by the Corporation, when delivery and payment have been made. Such notice shall be submitted to the Corporation as promptly as possible and in any event not later than 11:00 A.M. Central Time (12:00 noon Eastern Time) on the business day following the day on which delivery occurs. Notwithstanding the foregoing, in the event that a receiving Clearing Member is informed by the Corporation that a delivering Clearing Member has notified the Corporation that delivery has been made to such receiving Clearing Member, and the receiving Clearing Member does not advise the Corporation to the contrary by the close of business on the succeeding business day, the receiving Clearing Member's failure to do so shall constitute its acknowledgment to the Corporation that delivery has been made in the manner indicated in the notice furnished by the delivering Clearing Member. A delivering Clearing Member shall also notify the Corporation whenever it ships securities (whether through a bank, a correspondent broker, another clearing system or otherwise) for the purpose of effecting delivery, which notice shall state the certificate numbers of the securities being shipped.

DELIVERY AFTER "EX" DATE

Rule 912. *Subject to the provisions of Rule 913(e),* when an exercise notice is properly tendered to the Corporation pursuant to Rule 801 prior to an "ex" date (as fixed by the primary market for the underlying security) for a distribution that causes an adjustment to be made pursuant to the By-Laws, the delivering Clearing Member shall make delivery as required by such adjustment unless the parties otherwise agree. When an exercise notice is properly tendered to the Corporation prior to such an "ex" date for a distribution that does not cause an adjustment to be made pursuant to the By-Laws, and delivery of the underlying security is made too late to enable the receiving Clearing Member to transfer the security into its name and to receive such distribution, the delivering Clearing Member shall, at the time of delivery, issue its due bill check to the receiving Clearing Member for the amount of the distribution, which check shall be payable on the payment date of such distribution.

SETTLEMENT THROUGH CORRESPONDENT CLEARING CORPORATIONS

Rule 913. *(a) Each Clearing Member shall designate, in such manner as the Corporation shall from time to time prescribe, a correspondent clearing corporation of which the Clearing Member is a participant in good standing to serve as the Clearing Member's designated clearing corporation for the purposes of these Rules. Such a designation shall be maintained in effect at all times by each Clearing Member. The Corporation may establish procedures whereby a Clearing Member may appoint different designated clearing corporations for different classifications of exercised option contracts.*

(b) Notwithstanding anything to the contrary in Rules 901 through 912, the Corporation may specify in any Delivery Advice issued pursuant to Rule 803 that settlement in respect of the exercised option contract or contracts designated therein shall be made through the facilities of correspondent clearing corporations. In such event, *the Corporation shall report the exercise to the designated clearing corporations of the Delivering and the Receiving Clearing Member, furnishing such information with respect thereto as shall be necessary to enable settlement to be effected in respect of such exercise in accordance with the respective rules of such designated clearing corporations on the exercise settlement date (or, if any such designated clearing corporation is not open for business on that date, on the next date on which such clearing corporation is open for business).* [the Corporation will communicate the names of the exercising and Assigned Clearing Members, the quantity and description of the underlying securities to be delivered, the exercise settlement date and the exercise settlement amount to such correspondent clearing corporation, which, as of the opening of business on the exercise settlement date (or, if the correspondent clearing corporation is not open for business on that date, as of the opening of business on its next business day), shall credit the exercise settlement account of the exercising Clearing Member and debit the exercise settlement account of the Assigned Clearing Member with the amount of underlying securities specified in the Delivery Advice.] If settlement is to be made through [a] correspondent clearing corporations, the Delivery Advice issued to the *Receiving* [exercising] Clearing Member need not specify the name of the *Delivering* [Assigned] Clearing Member, and the Delivery Advice issued to the *Delivering* [Assigned] Clearing Member need not specify the name or address of the *Receiving* [exercising] Clearing Member. *In reporting exercises to a Clearing Member's designated clearing corporation hereunder, the Corporation may net exercised option contracts for which such Clearing Member is the Delivering Clearing Member against exercised option contracts for which such Clearing Member is the Delivering Clearing Member against exercised option contracts relating to the same underlying security and having the same exercise settlement date for which such Clearing Member is the Receiving Clearing Member.*[2]

(c) If an exercise is reported to the designated clearing corporations of the Delivering and Receiving Clearing Members in accordance with paragraph (b) hereof, full settlement shall be deemed (for the purposes of these Rules) to have been made in respect of such exercise when the exercise settlement account of the exercising Clearing Member is credited or debited, as the case may be, with the quantity of underlying securities required to be delivered pursuant to the exercise. To the extent that an exercise is netted by the Corporation against an assignment in accordance with the last sentence of subparagraph (b) hereof, full settlement shall be deemed to have been made in respect of such exercise at the opening of business of the Corporation on the exercise settlement date; provided, however, that if the Corporation takes action with respect to such exercise pursuant to subparagraph (d) hereof, settlement shall be made in accordance with the provisions of subparagraph (d). From and after the time

[2] Previous filings under Rule 19b–4A with respect to this subparagraph (then designated as Rule 913(a)) were SR–OCC–75–1 (approved December 22, 1975) and SR–OCC–75–7 (currently pending). The proposed changes reflected in this filing incorporate certain changes proposed in SR–OCC–75–7.

when settlement is deemed to have been made in respect of any exercise pursuant to the preceding provisions of this subparagraph (c), the Corporation shall have no further obligation in respect thereof, except as provided in Rules 915 and 916, and the obligations of the Delivering and the Receiving Clearing Member in respect of such exercise, and any long or short value positions or other obligations resulting from settlement in respect thereof, shall be determined by the rules and procedures of their designated clearing corporations.

[(b) The making of the credits and debits provided for in subparagraph (a) hereof on the position records of the correspondent clearing corporation shall constitute full settlement in respect of the option contract or contracts in respect of which such credits and debits were made, and (except to the extent set forth in Rule 915) shall relieve the Corpoartion of any further obligation in respect thereof. From and after such settlement, the obligations of the respective Clearing Members in respect of the positions resulting from such credits and debits shall be subject to the rules and procedures of the correspondent clearing corporation.]

(d) [(c)] A specification in any Delivery Advice that settlement is to be made through the facilities of [a] correspondent clearing corpoartions may be revoked by the Corpoartion at any time prior to the opening of business on the exercise settlement date by an appropriate notice to the [exercising and Assigned] *Receiving and Delivering* Clearing Members. In the event of such revocation, delivery and payment shall be made in accordance with Rules 902 through 912 at the office established pursuant to Rule 201 by the *Receiving* [exercising] Clearing Member; provided, however, that the President of the Corpoartion may, upon the application of the *Receiving* [exercising] or the *Delivering* [Assigned] Clearing Member, extend or postpone the time for delivery to a date not more than five business days after the date of such revocation.

(e) [(d)] When an exercise notice is properly tendered to the Corporation pursuant to Rule 801 prior to an "ex" date (as fixed by the primary market for the underlying security) for any distribution, whether or not an adjustment is required to be made pursuant to the By-Laws, Clearing Members effecting settlement in respect of exercised option contracts pursuant to this Rule shall have such rights and obligations in respect of such distribution as may be provided under the rules and procedures of *their designated* [the correspondent] clearing corporations; [through which settlement is made]; provided, however, that the Board of Directors of the Corporation may in its discretion direct that additional adjustments be made as between *Receiving* [exercising] and *Delivering* [assigned] Clearing Members to prevent inequities in respect of any distribution.

MAINTENANCE AND ELIMINATION OF POSITIONS IN EXERCISE SETTLEMENT ACCOUNTS

Rule 914. (*a*) Positions of Clearing Members in exercise settlement accounts shall at all times be maintained in accordance with all applicable laws and governmental regulations and the rules and procedures of the correspondent clearing corporations carrying such accounts, including, without limitation, rules and procedures relating to the maintenance and elimination of long *and short* value positions and open fails to deliver or receive.

(*b*) No Clearing Member shall maintain a long value position with respect to any security in an exercise settlement account for a period in excess of thirty consecutive *calendar* days unless, during such *thirty-day period, the Clearing Member shall have duly demanded delivery of such security and shall have maintained such demand in effect continuously thereafter.*

(*c*) *No Clearing Member shall maintain a short value position or an open fail to deliver with respect to any security in an exercise settlement account without tendering delivery of such security for a period in excess of thirty consecutive days.*

FAILURE TO DELIVER BY CORRESPONDENT CLEARING CORPORATION

Rule 915. If a Clearing Member shall request the *immediate* delivery by a correspondent clearing corporation of securities *in respect of any* [credited to a] long value position in an exercise settlement account and shall comply with all applicable rules and procedures of the correspondent clearing corporation in connection with such request, and the correspondent clearing corporation shall fail, for a period of thirty or more calendar days thereafter, to deliver such securities to the Clearing Member *against payment therefor, or if a Clearing Member shall have an open fail to receive from a correspondent clearing corporation in an exercise settlement account for a period of thirty or more consecutive calendar days,* the Clearing Member may, not more than twenty days after the expiration of such thirty-day period, issue a written buy-in notice with respect to the undelivered securities. [Copies of] *Such* notice shall be delivered to the Corporation [and the correspondent clearing corporation] not later than 12:00 noon Central Time (1:00 P.M. Eastern Time) of the business day preceding the day when the buy-in is proposed to be executed. Such notice shall specify the date of the withdrawal request *or the settlement date for the open fail to receive* and the quantity and description of the undelivered securities, and shall state that unless delivery is made at or before a specified time, which may not be prior to 12:00 noon Central Time (1:00 P.M. Eastern Time) of the business day following the delivery of the notice, the undelivered securities shall be bought in on the date specified.

(b) Upon the failure of the Corporation or the correspondent clearing corporation to effect delivery *prior to the time specified in* [in accordance with] the buy-in notice, or to obtain a stay as hereinafter provided, the Clearing Member may purchase for "cash" in the best available market, or at the option of the Clearing Member for guaranteed delivery not later than five business days after the regular settlement date for such purchase, for the account and liability of the Corporation, all or any part of the securities necessary to complete the required delivery. In the event a buy-in is not completd pursuant hereto on the day specified in the notice, or as such date may be extended pursuant to subparagraph (c) hereof, the buy-in notice shall remain in force for five business days thereafter. Except as the Corporation may otherwise authorize, the Clearing Member shall buy in prior to the expiration of the buy-in notice. In all cases, Clearing Members must be prepared to defend the price at which the buy-in is executed relative to the current market at the time of the buy-in.

(c) If prior to the execution of a buy-in, the Clearing Member receives from the Corporation or the correspondent clearing corporation written notice stating that the securities are in transfer or in transit or *available for immediate delivery to the Clearing Member,* [are being shipped that day, and giving the certificate numbers] then the Clearing Member may not execute the buy-in for a period of five business days from the date delivery was due under the buy-in notice. [Upon request of the correspondent clearing corporation,] The Corporation may *extend such five-day period if* [grant additional extensions of time provided] the securities are in transfer and, due to the transfer agent, transfer is delayed.

(d) The Clearing Member executing a buy-in hereunder shall as promptly as possible on the day of execution notify the Corporation [and the correspondent clearing corporation] as to the description and quantity of the securities purchased and the price paid, and shall promptly mail or deliver formal confirmation thereof. [The Corporation shall promptly and in any event] *Prior* to 10:00 A.M. Central Time (11:00 A.M. Eastern Time) of the [following] business day following the *Corporation's receipt of such confirmation, the Corporation shall* pay the Clearing Member *an amount equal to the excess* [the difference] (if any) of (i) [between] the price paid on such buy-in [and] *over (ii)* the amount which would have been payable by the Clearing Member to the correspondent clearing corporation by reason of the delivery of the secuirties bought in if delivery thereof had been made by the correspondent clearing corporation on the business day preceding the date of the buy-in; *or, if (ii) exceeds (i), the Clearing Member shall pay to the Cor-*

poration an amount equal to such excess.

(e) Unless the Corporation shall direct otherwise, from and after the execution of any buy-in hereunder, the Clearing Member which executed the buy-in shall continue to maintain with its designated clearing corporation the long value position or open fail in respect of which the buy-in was executed, and shall pay to or receive from the Corporation, on a daily basis, any mark-to-the-market payments received or payable by the Clearing Member in respect of such long value position or open fail under the rules and procedures of the correspondent clearing corporation. The Clearing Member shall maintain in effect, with respect to any such long value position, a withdrawal request of the highest priority permissible under the rules and procedures of the correspondent clearing corporation. Any securities delivered by the correspondent clearing corporation after the date of the buy-in to the Clearing Member in respect of such long value position or open fail shall be sold out promptly by the Clearing Member, in the best available market. Prior to 10:00 A.M. Central Time (11:00 A.M. Eastern Time) of the business day following the date of such sell-out, the Corporation shall pay to the Clearing Member an amount equal to the excess (if any) of (i) the amount paid by the Clearing Member to the correspondent clearing corporation by reason of the delivery of such securities over (ii) the amount realized on such sell-out; or, (ii) exceeds (i), the Clearing Member shall pay to the Corporation an amount equal to such excess.

(f) [(e)] Notwithstanding the foregoing *provisions of this Rule*, if a correspondent clearing corporation shall become insolvent or shall fail to meet its obligations with respect to any exercise settlement account, Clearing Members *having* [then holding] long value positions *or open fails to receive* in exercise settlement accounts with such correspondent clearing corporation shall *immediately apply to the Corporation for instructions; and* unless the Corporation directs otherwise, *shall* [immediately] request the *immediate* delivery of [all] securities [then held] in *respect of all of* such *long value* positions. If the correspondent clearing corporation shall fail to comply in full with any such request at or before 12:00 noon Central Time (1:00 P.M. Eastern Time) on the business day following the filing thereof, *or if the Clearing Member shall have an open fail to receive as of that time in respect of such exercise settlement account*, the Clearing Member which filed the request shall, unless the Corporation directs otherwise, promptly issue a written buy-in notice and buy in the undelivered securities in the manner specified in the preceding subparagraphs of this Rule. In the event of a buy-in pursuant to this subparagraph *(f)* [(e)], the amount payable by the Corporation to the Clearing Member in respect thereof shall be the *excess* [difference] (if any) [between] *of* (i) the price paid on such buy-in [and] *over* (ii) the amount which would have been payable by the Clearing Member to the correspondent clearing corporation by reason of the delivery of the securities bought in if delivery thereof had been made by the correspondent clearing corporation on the date when such correspondent clearing corporation became insolvent or failed to meet its obligations, adjusted by any mark-to-market payments received *or paid* by the Clearing Member in respect of the undelivered securities on or after that date; *or, if (ii) exceeds (i); the Clearing Member shall pay to the Corporation an amount equal to such excess.*

(g) [(f)] The Corporation shall have no responsibility to any Clearing Member *and no Clearing Member shall have any responsibility to the Corporation* in respect of any *long value position or open fail to receive in any* exercise settlement account except to the extent provided in the preceding subparagraphs of this Rule.

(h) [(g)] The Corporation shall have no responsibility under this Rule in respect of any long value position *or open fail to receive* maintained in violation of Rule 914.

DEFAULT BY CLEARING MEMBER

Rule 916. [Deleted] [1]

FAILURE TO RECEIVE BY CORRESPONDENT CLEARING CORPORATION

Rule 916. *(a) If a correspondent clearing corporation shall fail or refuse to receive or to pay for any securities delivered to it in good deliverable form and otherwise in accordance with its rules and procedures against a Clearing Member's short value position or open fail to deliver in an exercise settlement account, or if a correspondent clearing corporation shall become insolvent or shall fail to meet its obligations with respect to any exercise settlement account, Clearing Members having short value positions or open fails to deliver in exercise settlement accounts with such correspondent clearing corporation or rights to payment in respect of securities delivered against such short value positions or open fails, shall immediately apply to the Corporation for instructions; and unless the Corporation directs otherwise, shall promptly sell out in the best available market, for the account of the Corporation, all securities required to be delivered against such short value positions or open fails or securities of the same description and quantity as those previously delivered against such short value positions or open fails and not yet paid for.*

(b) Any Clearing Member executing a sell-out pursuant to subparagraph (a) shall promptly deliver written notice thereof to the Corporation, specifying the description and quantity of the securities sold out and the price received. Prior to 10:00 A.M. Central Time (11:00 A.M. Eastern Time) of the business day following the Corporation's receipt of such notice, the Corporation shall pay to the Clearing Member an amount equal to the excess (if any) of (i) the amount which would have been received by the Clearing Member from the correspondent clearing corporation by reason of the delivery of the securities sold out if payment therefor had been made by the correspondent clearing corporation on the date of the event giving rise to the sell-out, adjusted by any applicable mark-to-market payments received or paid by the Clearing Member thereafter, over (ii) the amount received on such sell-out; or, if (ii) exceeds (i), the Clearing Member shall pay to the Corporation an amount equal to such excess.

(c) The Corporation shall have no responsibility to any Clearing Member, and no Clearing Member shall have any responsibility to the Corporation, in respect of any short value position or open fail to deliver in any exercise settlement account except to the extent provided in the preceding subparagraphs of this Rule.

(d) The Corporation shall have no responsibility under this Rule in respect of any such short value position or open fail to deliver maintained in violation of Rule 914.

[FR Doc. 76-24567 Filed 8-20-76; 8:45 am]

[1] Rule 916 was added to the Rules by SR-OCC-75-6 (approved January 28, 1976).

[Rel. No. 34-12701; File No. SR-PSE-76-27]

PACIFIC STOCK EXCHANGE INC.

Proposed Rule Change

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 27, 1976, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

Pacific Stock Exchange Incorporated ("PSE") hereby proposes to amend Section 1, Rule V of of its Rules as follows (italics indicate new language):

Section 1. Every member organization shall maintain a minimum net capital in accordance with the provisions of Rule 15c3-1 under the Securities Exchange Act of 1934, as amended. Each member organization shall promptly notify the Exchange if its net capital does not equal or exceed the appropriate minimum required by this paragraph. *If, in order to comply with the Constitution and Rules of the Exchange, the terms of Rule 153c-4 and any amendment or proposed amendment thereto, or any other Rule under the Securities Exchange Act of 1934, as amended, the member organization is required to deposit any sum of money into an escrow account for purposes of meeting minimum net capital requirements, then such sum, together with the proceeds from the sale of the membership under which the member organization does business on the Exchange, shall be subject to the prior claims of the Exchange, the Pacific Clearing Corporation*

and claims arising from member contracts as provided in Article VII, Section 4 of the Exchange's Constitution.

STATEMENT OF BASIS AND PURPOSE

The purpose of the proposed rule change is to provide for the financial responsibility of floor brokers and the availability of assets to settle contracts and claims upon the transfer of membership. PSE has previously received a no-action letter from the Commission Staff with respect to Floor Brokers on PSE who elect to comply with the alternative financial responsibility standard set forth in the proposed amendment to Rule 15c3–1(b)(2), as contained in Securities Exchange Act Release No. 11969, dated January 2, 1976.

Specifically, these Floor Brokers would be complying with the Rule, pending its final adoption, that the value of their exchange membership (based on the lesser of the most recent sale price or current bid price for an exchange membership) shall be not less than $15,000, or an amount equal to the excess of $15,000 over the value of the exchange membership shall be held by an independent agent in escrow. Since the proposed amendment further provides that exchange rules must require that sums held in escrow will on transfer of the membership be subject to the prior claims of the exchange, its clearing corporation, and for the settlement of member contracts, it is the purpose of the instant proposed rule change to make PSE rules fully consistent with the pending amendment to Rule 15c3–1(b)(2).

The proposed rule change facilitates (i) compliance by PSE members with the terms of proposed Rule 15c3–1(b)(2) by providing a mechanism for carrying out the purposes of insuring financial responsibility of floor brokers; (ii) equitable allocation of charges by insuring that sufficient assets are available to satisfy claims upon transfer of membership; (iii) protection of investors and the public interest by insuring that sufficient assets are available to satisfy member contracts upon a transfer of membership.

No comments have been solicited or received.

Any burden on competition brought about by the above rule change is necessary and appropriate in furtherance of the purpose of the Act to provide safeguards, with respect to the financial responsibility and related practices of brokers and dealers, and to protect customers' funds and securities.

On or before September 27, 1976, 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 twenty-one days after the date of this publication. For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

AUGUST 12,1976.

[FR Doc.76–24564; Filed 8–20–76;8:45 am]

[70–5891]

ALLEGHENY POWER SYSTEM, INC. ET AL.

Application for Exemption for Advances Made To Employees for Moving Expenses Related To Transfers Within a Holding Company System

In the matter of Allegheny Power System, Inc., Allegheny Power Service Corporation, 320 Park Avenue, New York, New York 10022; Monongahela Power Company, 1310 Fairmont Avenue, Fairmont, West Virginia; The Potomac Edison Company, Downsville Pike, Hagerstown, Maryland 21740, West Penn Power Company, 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601.

Notice is hereby given that Allegheny Power System, Inc., a registered holding company, and its wholly-owned subsidiary companies, Allegheny Power Service Corporation, Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (collectively referred to as the "Allegheny System"), have filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating section 9 of the Act and Rule 48(b) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

The Allegheny System has adopted a policy ("Policy") to govern the making of advances to employees transferred to new geographical locations within the Allegheny System. The Policy allows a company to make a cash advance, limited in amount to the employee's equity in his old home, to a transferred employee who, either because of delays in selling his old residence or because the closing date of the sale of the old residence is later than the closing date of the new residence, may not have sufficient funds to make the equity down payment on his new residence on the closing date. Such advances must be approved by the Executive Vice President and General Manager or the Vice President, Administration, and it is the approving officer who makes a determination as to the value of the employee's equity interest in his old residence. Advances must be repaid by the employee when his residence in the old location is sold or within three months from the date of the loan, whichever is shorter. Under unusual circumstances the loan period may be extended on written authorization of the approving officer. Renewal under these circumstances will be on a month-to-month basis and interest will be charged at the rate of ½ of 1 percent per month.

Rule 48(b) requires Commission approval for any loan to an employee in excess of $10,000, even pursuant to the Policy, unless a first mortgage is obtained by the company to secure such loan. The Allegheny System states that as a practical matter, the circumstances which generally bring about the need for such a loan, thereby making the Policy applicable, would make it impossible for the employee to give the company a first mortgage, unless the amount of the loan were increased to cover not only the employee's equity in the old residence, but the entire value of the house, since in virtually all cases, the employee will have a first mortgage on his residence which would have to be paid before a first mortgage on the property could be given to the company.

Accordingly, the Allegheny System requests that it be excepted from the requirement of Rule 48(b)(2)(iii), that personal advances to employees in an aggregate amount of over $10,000 be secured by a first mortgage on a residence occupied by the employee, provided such advances are made pursuant to the terms of the Policy.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $2,300. It is stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than September 9, 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 the filing which he desires to controvert; or he may request that he be notified of 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 declarants 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 declaration, as filed or

as it may be amended, may be 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 or 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.76-24661 Filed 8-20-76;8:45 am]

[File No. 500-1]

FREMONT CORP. AND BLACKSTONE INTERNATIONAL CORP.

Suspension of Trading

AUGUST 13, 1976.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the securities of Fremont Corp. and Blackstone International Corp. being traded on a national securities exchange or otherwise is required in the public interest and for the protection of investors;

Therefore, pursuant to section 12(k) of the Securities Exchange Act of 1934, trading in such securities on a national securities exchange or otherwise is suspended, for the period from 10:00 a.m., E.D.T. August 13, 1976 through August 22, 1976.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-24662 Filed 8-20-76;8:45 am]

[70-5882]

INDIANA & MICHIGAN ELECTRIC CO.

Proposed Sale of Utility Assets

Notice is hereby given that Indiana & Michigan Electric Company ("I&M"), 2101 Spy Run Avenue, Fort Wayne, Indiana 46801, an electric utility subsidiary company of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed a declaration with this Commission designating section 12(d) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 44 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

I&M proposes to sell to United Telephone Company of Indiana, Inc. ("United"), which is not affiliated with either I&M or AEP, 2587 of I&M's poles located in certain portions of the State of Indiana in which both companies operate.

The purchase is made pursuant to a Joint Use Agreement between I&M and United dated January 1, 1969. By this agreement, either party has the option to purchase from the other any number of poles up to the number necessary to obtain the objective percentage by that party of the jointly-used poles specified in the agreement. United has exercised its option to purchase 2587 of I&M's poles which will give it ownership of 45 percent of the jointly-used poles under the agreement. The selling price, which is based on the depreciated replacement cost, will be $128,930. The original installed cost of these facilities was $138,686.

The fees and expenses to be incurred by I&M or AEP in connection with the proposed transaction are estimated at $2,300. It is stated that the Public Service Commission of Indiana has jurisdiction over the proposed transaction and that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than September 7, 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 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 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 declaration, as filed or as it may be amended, may be 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.76-24663 Filed 8-20-76;8:45 am]

[75-5890]

MIDDLE SOUTH ENERGY, INC.

Proposal by Generation Subsidiary To Issue and Sell Long-Term Unsecured Debentures; Request for Exception From Competitive Bidding

Notice is hereby given that Middle South Energy, Inc. ("MSEI"), 225 Baronne Street, New Orleans, Louisiana 70112, an electric utility subsidiary of Middle South Utilities, Inc. ("Middle South"), 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 and 7 of the Act and Rule 50(a)(5) promulgated thereunder as applicable to the following proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement regarding the proposed transaction.

MSEI was incorporated in 1974 under the laws of Arkansas to own and finance certain future generating capacity for the five Middle South system operating companies. By order dated June 21, 1974 (HCAR No. 18437), MSEI was authorized to acquire the Grand Gulf Nuclear Electric Station Project ("Grand Gulf Project") from Mississippi Power & Light Company, one of the five operating companies. When completed, the Grand Gulf Project will be a two-unit nuclear plant with a total capability of 2,500 mw. The first unit is scheduled to become operational in 1980, and the second unit in 1984.

The Commission also authorized various proposals relating to the construction, financing and operation of the Grand Gulf Project, including a bank loan agreement ("Loan Agreement") between MSEI and a group of commercial banks. As amended, the Loan Agreement permits MSEI to borrow up to $465 million through December 31, 1979. As of August 5, 1976, MSEI had borrowed an aggregate of $229.5 million. All borrowings under the Loan Agreement are payable on December 31, 1982. Under the terms of a capital funds agreement, Middle South agreed to supply equity capital to MSEI in an amount sufficient to maintain MSEI's equity at not less than 35 percent of capitalization. As of August 5, 1976, Middle South had provided MSEI with $120.5 million through the purchase of 120,500 shares of its common stock. MSEI has no other securities outstanding. MSEI also entered into power supply agreements with each of the Middle South system operating companies.

MSEI estimates that the cost of completing the Grand Gulf Project will be $1,733 million. Of this, MSEI expects to borrow approximately $1,126 million, or more than twice the maximum borrowings available to MSEI under its existing Loan Agreement. Accordingly, to secure the additional funds needs for future capital expenditures, MSEI proposes to arrange for an alternative source of debt financing. MSEI believes that there are practical restrictions in the alternative forms of debt financing available to it. Specifically, MSEI states that it is limited in the amount of short-term construction financing readily avialable from commercial banks. MSEI also does not believe it is desirable to sell first mortgage bonds to finance construction of the Grand Gulf Project, inasmuch as the company does not have earnings or an

operating history to which prospective purchasers could look as security.

As an alternative to what MSEI believes are less attractive sources for its future debt financing, the company now proposes to issue and sell its unsecured long-term debentures ("Debentures") to a group of insurance companies and similar institutions. The Debentures will be issued in an amount not to exceed $400 million and will mature not less than 10 nor more than 20 years from the date of issuance thereof.

It is stated that the terms and conditions of the indenture under which the Debentures will be issued have not been determined but will be filed by amendment to this application-declaration. MSEI anticipates, however, that there will be two closings with respect to the Debentures. The first will involve the issuance of approximately $300 million on or about December 31, 1976; and the second will involve issuance of approximately $100 million on or about June 30, 1977. It is also contemplated that the Debentures will be noncallable for refunding purposes at a lower effective interest rate for a number of years (to be determined) from the issuance thereof and will have a sinking fund designed to retire the entire issue by maturity.

MSEI does not believe that a public offering of securities of this nature, in so great an amount, by an issuer such as MSEI is practical. Accordingly, MSEI proposes to offer the Debentures in a negotiated private sale, and requests an exception from the competitive bidding requirements of Rule 50 under clause (a) (5) thereof. MSEI cites, as representative of the special circumstances it faces, the company's lack of earnings or an operating history and its expectation that the Grand Gulf Project, now only 18 percent complete, will not become operational for at least four more years. MSEI believes that only through a negotiated sale could it effectively bargain for terms and conditions in the offering which will provide the company the flexibility it needs to cope with its special problems or any unanticipated changes in the company's circumstances. MSEI has retained Citibank, N.A., to act as its financial advisor in connection with the offering.

A statement of the fees, commissions and expenses incurred in connection with the proposed transaction will be supplied by amendment. MSEI proposes to pay Citibank, N.A., $800,000 on the proposed $400 million transaction. In the event that an amount less than $400 million were to be raised, the total fee would be 2/10 of 1 percent with a minimum fee of $25,000. It is stated that no State or Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than September 16, 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, as filed or as it may be amended, 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.76-24664 Filed 8-20-76;8:45 am]

UNITED STATES SINAI SUPPORT MISSION

[Delegation of Authority 1; Revision No. 1]

DIRECTOR, SINAI FIELD MISSION

Delegation of Authority Regarding General Administrative Functions

Pursuant to the authority vested in me by Executive Order 11896, issued January 13, 1976, I hereby delegate the following functions and authorities to the Director, Sinai Field Mission, to be exercised at or in support of the Sinai Field Mission:

1. Approve and authorize travel and hospitalization related to medical evacuation.
2. Approve and authorize TDY travel.
3. Authorize and issue GTR's.
4. Approve travel advances.
5. Approve travel vouchers.
6. Approve and authorize local expenditures for administrative support (including employment of local nationals in Tel Aviv and Cairo) or for emergency purposes when not provided by the contractor.
7. Sign Time and Attendance cards.
8. Approve and authorize premium compensatory work.

The functions and authorities delegated herein may be redelegated.

Delegation of Authority No. 1 issued February 6, 1976, and published in the FEDERAL REGISTER on February 17, 1976, page 7185, is hereby revoked.

This delegation of authority is effective immediately.

Dated: August 17, 1976.

C. WILLIAM KONTOS,
Director, United States Sinai Support Mission.

[FR Doc.76-24569 Filed 8-20-76;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 124]

ASSIGNMENT OF HEARINGS

AUGUST 18, 1976.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 141844, Grady County Farm Lines, Inc., now assigned September 20, 1976, at Louisville, Kentucky, has been postponed indefinitely.

MC-C-8829, Osborne West, Ltd., and West Transportation Inc., Investigation of Operations and Practices and Revocation of Certificates now being assigned November 10, 1976 (3 days) for continued hearings at San Francisco, California in a hearing room to be later designated.

MC 138635 (Sub 21), Carolina-Western Express, Inc., MC 139495 (Sub 128), and MC 25798 (Sub 278), Clay Hyder Trucking Lines, Inc. now being assigned November 8, 1976 (2 days) at San Francisco, California for continued hearing in a hearing room to be later designated.

MC-F-12633, Eagle Foods, Inc., DBA Rutherford's—Purchase (Portion)—Century Express, Ltd. Operator of Landsdale Transportation Co., Inc., now assigned July 29, 1976, at Washington, D.C. is postponed to October 14, 1976, at the Offices of the Interstate Commerce Commission, Washington, D.C.

No. 36268, Kentucky Coal Company, et al v. The Chesapeake & Ohio Railway Company, et al, now assigned August 18, 1976, at Washington, D.C., is postponed indefinitely.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-24684 Filed 8-20-76;8:45 am]

[Notice No. 125]

ASSIGNMENT OF HEARINGS

AUGUST 18, 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.

Correction

MC 67485 (Sub-No. 18), Texas Tex-Pack Express, Inc., now assigned September 20, 1976, at Austin, Tex. will be held in Room 577, Federal Building, 300 East 8th Street, instead of Room 557.

ROBERT L. OSWALD,
Secretary.

[FR Doc. 76-24685 Filed 8-20-76; 8:45 am]

FOURTH SECTION APPLICATION FOR RELIEF

AUGUST 18, 1976.

An application, as summarized below, has been filed requesting relief from the requirements of Section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1100.40) and filed on or before September 7, 1976.

FSA No. 43215—*Iron or Steel Articles to Points in Texas.*

Filed by Southwestern Freight Bureau, Agent, (No. B-627), for interested rail carriers. Rates on iron or steel articles, in carloads, as described in the application, from Alton, Federal, and Sterling, Illinois, also Kansas City, Mo.-Kans., to specified points in Texas. Grounds for relief—Market competition. Tariff—Supplement 216 to Southwestern Freight Bureau, Agent, tariff 301-F, I.C.C. No. 5098. Rates are published to become effective on September 15, 1976.

FSA No. 43216—*Methanol from Bishop, Texas.* Filed by Southwestern Freight Bureau, Agent, (No. B-628), for interested rail carriers. Rates on methanol, in tank-car loads, as described in the application, from Bishop, Texas, to Celriver, South Carolina. Grounds for relief—Market competition. Tariff—Supplement 15 to Southwestern Freight Bureau, Agent, tariff 11-G, I.C.C. No. 5217. Rates are published to become effective on September 15, 1976.

By the Commission

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-24682 Filed 8-20-76;8:45 am]

[Notice No. 107]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

AUGUST 18, 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 C.F.R. § 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 on or before September 7, 1976. 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 21455 (Sub-No. 42TA), filed August 11, 1976. Applicant: GENE MITCHELL CO., 1106 Division St., West Liberty, Iowa 52776. Applicant's representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, Iowa 52501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wheat products* (except in bulk), from ports of entry on the United States-Canadian International Boundary line located at Grand Rapids, Minn., and Champlain, N.Y., to Vernon, Calif.; Chicago and Schaumberg, Ill.; Terre Haute, Ind.; Hastings, Minn.; Kansas City, Mo.; Port Elizabeth, N.J.; Yonkers, N.Y.; Columbus and Worthington, Ohio; and Seattle and Spokane, Wash., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Industrial Grain Products, P.O. Box 6089, Montreal H3C 3H1, Quebec, Canada. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Bldg., Des Moines, Iowa 50309.

No. MC 58035 (Sub-No. 9 TA) (Correction), filed July 8, 1976, published in the FEDERAL REGISTER issue of July 26, 1976, and republished as corrected this issue. Applicant: TRANS-WESTERN EXPRESS, LTD., 48 East 56th Ave., Denver, Colo. 80216. Applicant's representative: Charles J. Kimball, 350 Capitol Life Center, 1600 Sherman St., Denver, Colo. 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Electric household appliances and equipment; kitchen and bathroom appliances and equipment; oral hygiene appliances and equipment; hydro therapy equipment; sink and shower fixtures; smoke alarms; food processing machines; and filters;* (A) between the plantsites and storage facilities of Teledyne Water Pik, located in Larimer County, Colo., and at Los Angeles, Calif.; (B) from the plansites and storage facilities of Teledyne Water Pik, located in Larimer County, Colo., and at Los Angeles, Calif., to points in the following named cities and their commercial zones: Denver, Colorado Springs, Pueblo and Grand Junction, Colo.; Albuquerque, Santa Fe and Gallup, N. Mex.; Phoenix, Tucson and Flagstaff, Ariz.; Salt Lake City and Provo, Utah; Las Vegas, Sparks and Reno, Nev.; and points in California, and (2) *Materials, equipment and supplies* used in the manufacture or distribution of the commodities named in (1) above; (A) between the plantsites and storage facilities of Teledyne Water Pik, located in Larimer County, Colo., and at Los Angeles, Calif.; and (B) from Alhambra, El Monte, Berkeley, Newbury Park, Monrovia, Los Angeles, Gardena, and Oxnard, Calif., to the plantsites and storage facilities of Teledyne Water Pik, located in Larimer County, Colo., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Teledyne Water Pik, 1730 East Prospect St., Fort Collins, Colo. 80521. Send protests to: Roger L. Buchanan, District Supervisor, Interstate Commerce Commission, 492 U.S. Customs House, Denver, Colo. 80202. The purpose of this republication is to state that Larimer County is in Colorado in lieu of California.

No. MC 96607 (Sub-No. 8 TA), filed August 10, 1976. Applicant: RUCKER BROTHERS TRUCKING, INC., 1820 Stewart, Tacoma, Wash. 98421. Applicant's representative: Michael D. Duppenthaler, 515 Lyon Bldg., 607 Third Ave., Seattle, Wash. 98104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prefabricated houses*, Chehalis, Wash., to points in Montana, for 180 days. Supporting shipper: West Mills, Inc., 887 N. W. Ave., Chehalis, Wash. 98532. Send protests to: L. D. Boone, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 858 Federal Bldg., 915 Second Ave., Seattle, Wash. 98174.

No. MC 107403 (Sub-No. 983 TA), filed August 10, 1976. Applicant: MATLACK, INC., Ten West Baltimore Ave., Lansdowne, Pa. 19050. Applicant's representative: John Nelson (same address as applicant). Authority sought to operate as *a common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Liquid chemicals*, in bulk, in tank vehicles; (2) *Ferric sulphate*, in bulk, in tank vehicles, (1) from the plantsite of Pearl River Chemical Co., at or near Pearl River, La., to points in Alabama, Arkansas, Florida, Georgia, Mississippi, Tennessee and Texas; (2) from Copperhill, Tenn., to points in Louisiana, for 180 days. Supporting: Pearl River Chemical Company, P.O. Box 1202, Slidell, La. 70459. Send protests to: Monica A. Blodgett, Transportation Assistant, Interstate Commerce Commis-

sion, 600 Arch St., Room 3238, Philadelphia, Pa. 19106.

No. MC 111434 (Sub-No. 91 TA), filed August 9, 1976. Applicant: DON WARD, INC., 241 West 56th Ave., Denver, Colo. 80216. Applicant's representative: J. Albert Sebald, 1700 Western Federal Bldg., Denver, Colo. 80216. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fly ash*, in bulk, from Pueblo, Colo., to points in Kansas, Oklahoma, New Mexico, Nebraska, Wyoming, Utah and Texas, for 180 days. Supporting shipper: Darold R. Tabor, Inc., P.O. Box 11354, Pueblo, Colo. Send protests to: Roger L. Buchanan, District Supervisor, Interstate Commerce Commission, 721 19th St., 492 U.S. Customs House, Denver, Colo. 80202.

No. MC 114789 (Sub-No. 55 TA), filed July 27, 1976. Applicant: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain, Minn. 55359. Applicant's representative: Allan L. Timmerman (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Floor coverings, stair treads, wall tile, china bath accessories, counter top coverings, mouldings and the materials and supplies* used in the installation, maintenance and repair of the commodities described above, from Elmsford, N.Y.; Roselle Park, Keyport and East Brunswick, N.J.; Philadelphia and Gettysburg, Pa., to points in the Minneapolis-St. Paul, Minn. Commercial Zone as defined by the Commission, under a continuing contract with Minnesota Tile Supply, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Minnesota Tile Supply, 4825 France Ave., North, Minneapolis, Minn. 55429. Send protests to: A. N. Spath, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg., and U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 117119 (Sub-No. 591 TA), filed August 11, 1976. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, Ark. 72728. Applicant's representative: L. M. McLean (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products and articles distributed by meat packinghouses* (except hides and commodities in bulk), from the facilities of Maverick Beef Packers, Inc., at or near Eagle Pass, Tex., to points in Georgia, Arkansas, Tennessee, South Carolina, North Carolina, Virginia, Kentucky, Illinois, Indiana, Ohio, West Virginia, Maryland, Pennsylvania, Delaware, Rhode Island, New Jersey, New York, Connecticut, Massachusetts, Vermont, New Hampshire, Maine, Michigan, Wisconsin, Missouri, Iowa, Minnesota, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, New Mexico, Texas, Colorado, Utah, Nevada, Arizona, California, and the District of Columbia, for 180 days. Supporting shipper: Maverick Beef Packers, Inc., P.O. Box 617, Eagle Pass, Tex. 78852. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Bldg., 700 West Capitol, Little Rock, Ark. 72201.

No. MC 118535 (Sub-No. 89 TA), filed August 6, 1976. Applicant: TIONA TRUCK LINES, INC., 111 S. Prospect, Butler, Mo. 64730. Applicant's representative: Jim Tiona, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Recycled waste materials*, in bulk, in pneumatic tank vehicles, from Washington, D.C., San Jose, Calif., and San Diego, Calif., to points in Wisconsin, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting Shipper: Wisconsin Solid Waste Recycling Authority, 3321 West Beltline Highway, Madison, Wis. 53702. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, 600 Federal Bldg., 911 Walnut St., Kansas City, Mo. 64106.

No. MC 119302 (Sub-No. 23TA), filed August 11, 1976. Applicant: MILLER TRANSFER AND RIGGING CO., P.O. Box 6077, Akron, Ohio 44312. Applicant's representative: A. David Millner, 167 Fairfield Ave., P.O. Box 1409, Fairfield, N.J. 07006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Machinery and machinery parts*, moving with the machinery or separately, between the plantsite of Elliott Co., Division of Carrier Corporation, at Donora, Pa., on the one hand, and, on the other, points in the United States (except Alaska and Hawaii), under a continuing contract with Elliott Co., Division of Carrier Corporation, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Elliott Co., Division of Carrier Corporation, North 4th St., Jeannette, Pa. 15644. 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 123091 (Sub-No. 17TA), filed August 10, 1976. Applicant: NICK STRIMBU, INC., 3500 Parkway Road, Brookfield, Ohio 44403. Applicant's representative: Edwin H. van Deusen, P.O. Box 97, 220 West Bridge St., Dublin, Ohio 43017. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Treated lumber and plywood*, from the facilities of Dixie Wood Preserving Company, at or near Thomson, Ga., to points in Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, West Virginia and the District of Columbia, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Dixie Wood Preserving Company, P.O. Box 746, Thomson, Ga. 30824. Send protests to: James Johnson, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 181 Federal Office Bldg., 1240 East Ninth St., Cleveland, Ohio 44199.

No. MC 127539 (Sub-No. 52TA), filed August 10, 1976. Applicant: PARKER REFRIGERATED SERVICE, INC., 1108 54th Ave. East, Tacoma, Wash. 98421. Applicant's representative: Michael D. Duppenthaler, 515 Lyon Bldg., 706 Third Ave., Seattle, Wash. 98104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Butter*, in cartons or packages, in vehicles equipped with mechanical refrigeration, from Hughson and Willows, Calif., to the facilities of Brown & Haley Candy Company, at Tacoma, Wash., for 180 days. Supporting shipper: Brown & Haley Candy Company, 1940 East 11th, Tacoma, Wash., 98421. Send protests to: L. D. Boone, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 858 Federal Bldg., Seattle, Wash. 98174.

No. MC 129032 (Sub-No. 25TA), filed August 11, 1976. Applicant: TOM INMAN TRUCKING, INC., 6015 S. 49th West Ave., P.O. Box 9667, Tulsa, Okla. 74107. Applicant's representative: John Paul Fischer, 256 Montgomery St., San Francisco, Calif. 94104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned seafood*, from Seattle and Bellingham, Wash., to Lubbock, San Angelo, Dallas and San Antonio, Tex.; Shreveport, La.; Little Rock, Ark.; Memphis, Tenn., and Pauline, Kans., for 180 days. Supporting shipper: Kelley Clarke Company, 2460 Sixth Ave., South, Seattle, Wash. 98124. Send protests to: Joe Green, District Supervisor, Room 240 Old Post Office Bldg., 215 Northwest Third St., Oklahoma City, Okla. 73102.

No. MC 133119 (Sub-No. 97 TA), filed August 10, 1976. Applicant: HEYL TRUCK LINES, INC., 200 Norka Drive, P.O. Box 206, Akron, Iowa 51001. Applicant's representative: Donald Heyl (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural* chemicals (except in bulk), from Des Moines, Iowa and the plantsite and warehouse facilities of Monsanto Company, at or near Muscatine, Iowa, to ports of entry located on the International Boundary between Canada and the United States in Montana, North Dakota, and Minnesota, restricted to transportation of shipments destined to points in Alberta, Saskatchewan and Manitoba, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Richard E. Schrick, Agricultural Transportation Supervisor, Monsanto Company, 800 North Lindbergh Blvd., St. Louis, Mo. 63166. Send protests: to Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th St., Omaha, Nebr. 68102.

No. MC 135381 (Sub-No. 4 TA), filed August 11, 1976. Applicant: DRUM

TRANSPORTATION CO., R.D. No. 1, Montgomery, Pa. 17752. Applicant's representative: J. G. Dail, Jr., P.O. Box 567, McLean, Va. 22101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Traffic and maintenance paints;* (2) *Thermoplastic and cold applied plastic* for street and highway marking; (3) *Street and highway marking machines*, and (4) *Materials, components, and supplies* used in the manufacture of the commodities named in (1) and (2) above, between the facilities of Prismo Universal Corporation, at Montgomery and Pennsdale, Pa., and Marble Falls, Tex., and points in the United States in and east of North Dakota, South Dakota, Nebraska, Colorado, and Arizona, under a continuing contract with Prismo Universal Corporation, for 180 days. Supporting shipper: Prismo Universal Corporation, Montgomery, Pa. 17752. Send protests to: Paul J. Kenworthy, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 134 U.S. Post Office Bldg., Scranton, Pa. 18503.

No. MC 136228 (Sub-No. 23 TA), filed August 3, 1976. Applicant: LUISI TRUCK LINES, INC., P.O. Box 606, Milton-Freewater, Oreg. 97862. Applicant's representative: Philip Skofstad, 18448 SE. Pine St., Portland, Oreg. 97233. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fresh hanging* beef, fresh and frozen boxed meat, from Wallula, Wash., to Sublimity, Oreg., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Columbia Foods, Inc., P.O. Box 926, Pasco, Wash. 99301. Send protests to: W. J. Huetig, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 114 Pioneer Courthouse, Portland, Oreg. 97204.

No. MC 136407 (Sub-No. 13TA), filed August 6, 1976. Applicant: COORS TRANSPORTATION CO., 5101 York St., Denver, Colo. 80216. Applicant's representative: Leslie R. Kehl, 1600 Lincoln Center Bldg., 1660 Lincoln St., Denver, Colo. 80203. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages*, from points in Jefferson County, Colo., to points in Montana and Washington, under a continuing contract or contracts with Adolph Coors Company of Golden, Colo.; and (2) *Equipment, materials* (except in bulk), *and supplies* (except in bulk), used and dealt in by breweries, from points in Louisiana, Montana, and Washington, to points in Boulder and Jefferson Counties, Colo., under a continuing contract with Adolph Coors Company of Golden, Colo., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Adolph Coors Company, Golden, Colo. Send protests to: Herbert C. Ruoff, District Supervisor, Interstate Commerce Commission, 492 U.S. Customs House, Denver, Colo. 80202.

No. MC 139858 (Sub-No. 9 TA), filed August 10, 1976. Applicant: AMSTAN TRUCKING, INC., 1255 Corwin Ave., Hamilton, Ohio 45015. Applicant's representative: Chandler L. VanOrman, 704 Southern Bldg., Washington, D.C. 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *All products* manufactured and distributed by American Standard and its subsidiaries including, but limited to *plumbing fixtures and fittings, folding doors or partitions, fabric covered wall panels, fireplaces and chimney assemblies, safes and security equipment, steel doors*, printed and advertising matter, railway equipment, off road vehicle parts, air quality equipment, heat exchangers, and related equipment and supplies for each product line (except commodities in bulk and those which because of size or weight, require the use of special equipment), from American Standard's Corporate Distribution Center in Hamilton, Ohio, to Phoenix and Tucson, Ariz.; Oakland, Sacramento, San Diego, San Francisco, San Jose, San Pablo, Stockton, and Redwood City and Los Angeles County and Orange County, Calif.; Denver, Colo.; Las Vegas and Reno, Nev.; Albuquerque, N. Mex.; Portland, Oreg.; Salt Lake City, Utah; and Seattle, Wash., under a continuing contract with American Standard Inc., for 180 days. Supporting shipper: James P. Nelligan, General Traffic Manager, American Standard Inc., P.O. Box 2003, New Brunswick, N.J. 08903. Send protests to: Paul J. Lowry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 5514–B Federal Bldg., 550 Main St., Cincinnati, Ohio 45202.

No. MC 140389 (Sub-No. 8 TA), filed August 11, 1976. Applicant: OSBORN TRANSPORTATION, INC., P.O. Box 1830, Gadsden, Ala. 35902. Applicant's representative: Jerome F. Marks (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Rugs, carpets* and textile products, from points in Georgia, to points in California, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: There are approximately 13 statements of support attached to the application, which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Clifford W. White, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Bldg., Birmingham, Ala. 35203.

No. MC 141328 (Sub-No. 3 TA), filed August 6, 1976. Applicant: MID-STATES HAULING CONTRACTORS, INC., P.O. Box 13, 106 North 25th St., Lexington, Md. 64067. Applicant's representative: Tom B. Kretsinger, 910 Brookfield Bldg., 101 West Eleventh St., Kansas City, Mo. 64105. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Rock, sand and gravel*, from points in Hot Springs, Sevier, Pulaski, Howard and Clark Counties, Ark., to points in Louisiana, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: (1) Pensacola Construction Company, 4745 Poplar, Suite 307, Memphis, Tenn. 38117 and (2) Souter Construction Co., Inc., P.O. Box 876, Conway, Ark. 72032. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Bldg., 911 Walnut St., Kansas City, Mo. 64106.

No. MC 142205 (Sub-No. 2 TA), filed August 11, 1976. Applicant: LOUDOUN TRANSFER, INC., P.O. Box 703, Leesburg, Va. 22075. Applicant's representative: Thomas G. Jewell (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Custom molded expandable polystryene packaging*, from the plantsite at Sterling Va., to points in Connecticut, Massachusetts, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Ohio and West Virginia, under a continuing contract with Preferred Plastics, Inc. Applicant intends to tack its existing authority with MC 142205, for 180 days. Applicant also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Preferred Plastics, Inc., State Rte. 634, P.O. Box 58, Sterling, Va. 22170. Send protests to: Interstate Commerce Commission, 12th & Constitution Ave., NW., Room 1413, W. C. Hersman, District Supervisor, Washington, D.C. 20423.

No. MC 142338 TA, filed August 10, 1976. Applicant: JOHN E. WHATCOTT, doing business as TRADE SPECIALTIES, 1020 South Center, Mesa, Ariz. 85202. Applicant's representative: John E. Whatcott, 345 South Hobson, Mesa, Ariz. 85201. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Asphalt roofing materials, and such commodities* as are used in the construction and installation of roofs, from Barstow, Camarillo, Corona, Long Beach, Los Angeles, Oakland, Riverside, San Francisco, San Leandro, Santa Clara, Southgate and Wilmington, Calif., to Phoenix, Mesa, and Tucson, Ariz., under a continuing contract with Southwest Roofing Supply Company, and A & H Supply Co., Inc., for 180 days. Supporting shippers: Southwest Roofing Supply Company, 3151 W. Osborn Road, Phoenix, Ariz. and A & H Supply Co., Inc., 1702 East Jackson St., Phoenix, Ariz. 85034. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Room 3427 Federal Bldg., 230 N. First Ave., Phoenix, Ariz. 85025.

No. MC 142339 TA, filed August 10, 1976. Applicant: KITSAP DELIVERY, INC., 6816 Kitsap Way, Bremerton, Wash. 98310. Applicant's representative: James Sells, 245 4th St. Bldg., Bremerton, Wash. 98310. Authority sought to operate as a *common carrier*, by motor

vehicle, over irregular routes, transporting: *General freight* not exceeding 1000 lbs. per delivery (except in bulk, in tank vehicles, between Seattle and points in King County and Tacoma and points in Pierce County and Bremerton and Points in Kitsap County. Applicant intends to interline at Seattle and Tacoma, Wash., for 180 days. Supporting shipper: Bennett Ford, 5101 Kean, Bremerton, Wash. 98310. Send protests to: L. D. Boone, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 858 Federal Bldg., 915 Second Ave., Seattle, Wash. 98174.

No. MC 142340 TA, filed August 10, 1976. Applicant: HERBERT F. CLARK, JR., INC., R.D. 2, Box 357 D, Selkirk, N.Y. 12158. Applicant's representative: Neil D. Breslin, 99 Washington Ave., Suite 1111, Albany, N.Y. 12210. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Scrap metal*, from Village of Green Island, N.Y., to Providence, R.I., Newark, N.J., Port of Entry at Niagara Falls, N.Y., Fairless Hills, Pa., Greenfield, Mass. and Sayerville, N.Y., for 180 days. Supporting shipper: Freedman & Son, Inc., P.O. Box 1533, Green Island, N.Y., 12183. Send protests to: Robert A. Radler, District Supervisor, P.O. Box 1167, Albany, N.Y. 12201.

PASSENGER APPLICATION

No. MC 142185 (Sub-No. 2 TA), filed August 2, 1976. Applicant: T.V. TRAVEL INC., doing business as T.V. WORLD TRAVEL SERVICE, Winters Bank Tower, Second and Jefferson Streets, Dayton, Ohio 45402. Applicant's representative: Richard S. Ewing, 1229 Nineteenth St., NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers*, in round-trip sightseeing excursions, beginning and ending at Hilton Head Island, S.C., and extending to points in Beaufort, Berkeley, Charleston, Colleton, Dorchester and Jasper Counties, S.C., and Chatham and Effingham Counties, Ga., restricted to the transportation of not more than 15 passengers in any one vehicle, in special operations, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately 9 statements of support attached to the application, which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Paul J. Lowry, District Supervisory, Bureau of Operations, Interstate Commerce Commission, 5514–B Federal Bldg., 550 Main St., Cincinnati, Ohio 45202.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76–24679 Filed 8–20–76;8:45 am]

[Notice No. 16]

MOTOR CARRIER TRANSFER PROCEEDINGS

AUGUST 23, 1976.

Application filed for temporary authority under Section 210a(b) in connection with transfer application under Section 212(b) and Transfer Rules, 49 CFR Part 1132:

No. MC–FC–76705. By application filed August 12, 1976, LANE TRUCK LINES, INC., 120 Newby Court, Rocky Mount, NC 27801, seeks temporary authority to transfer the operating rights of BUNDY TRUCK LINE, INC., Gatesville, NC 27938, under section 210a(b). The transfer to LANE TRUCK LINES, INC., of the operating rights of BUNDY TRUCK LINE, INC., is presently pending.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76–24680 Filed 8–20–76;8:45 am]

[Notice No. 15]

MOTOR CARRIER TRANSFER PROCEEDINGS

AUGUST 23, 1976.

Application filed for temporary authority under Section 210a(b) in connection with transfer application under Section 212(b) and Transfer Rules, 49 CFR Part 1132:

No. MC–FC–76702. By application filed August 11, 1976, DARYLE LAMONICA FREIGHT LINES, INC., 6621 Arctic Spur Road, Anchorage, AK 99502, seeks temporary authority to transfer the operating rights of ARCTIC MOTOR FREIGHT, INC., Box 6243, Anchorage, AK 99502, under section 210a(b). The transfer to DARYLE LAMONICA FREIGHT LINES, INC., of the operating rights of ARCTIC MOTOR FREIGHT, INC., is presently pending.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76–24681 Filed 8–20–76;8:45 am]

[AB 69 (Sub-No 2)]

WESTERN MARYLAND RAILWAY CO.

Abandonment Near Cumberland, Allegany County, Md., and Bedford County, Commonwealth of Pa.

AUGUST 13, 1976.

The Interstate Commerce Commission hereby gives notice that its Environmental Affairs staff has concluded that the proposed abandonment by the Western Maryland Railway Company of its State Line branch between Georges Creek Junction in Allegany County, Md., and State Line, in Bedford County, Pa., a distance of 4.52 miles, 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, that inasmuch as no traffic has moved over the line for several years, abandonment of the line will not result in diversion to motor carriers and the attendant environmental impacts. In view of the absence of developmental plans in the vicinity of the subject line, the proposed action will not have a serious adverse effect on community and rural development. The right-of-way, most of which is subject to reversionary interests, has not been found suitable for alternative public use.

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, Washington, D.C. 20423, on or before September 23, 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.76–24683 Filed 8–20–76;8:45 am]

federal register

MONDAY, AUGUST 23, 1976



PART II:

ENVIRONMENTAL PROTECTION AGENCY

CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES

■

Final Evaporative Emission Regulations for Light Duty Vehicles and Trucks

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 595-1]

PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES

Final Evaporative Emission Regulations for Light Duty Vehicles and Trucks

On January 13, 1976 a notice of proposed rulemaking (NPRM) was published in the FEDERAL REGISTER (41 FR 2022), setting forth proposed amendments to Subparts A and B of Part 86 of the Code of Federal Regulations (CFR) to become effective with 1978 model year light duty vehicles and light duty trucks. The NPRM announced the Agency's intention to revise the evaporative emission test procedures and establish standards of 6 g/test for 1978 and 2 g/test for 1979 and subsequent model years.

The issue of a 2 gram per test standard for 1979 is much more complex than the revised test procedures and the 1978 standard. Yet the current 1978 standard represents so large (about 70%) of a reduction from current light duty vehicle and truck evaporative emission levels that accepting the real risk of not being able to implement a 6 g/test standard for 1978, due to the additional time necessary to thoroughly study and evaluate the technical feasibility, relationship between a 2 g/test standard and background emission levels, cost and lead time associated with the 2 gram level, is not justified. Therefore, in order to allow implementation of the revised test procedure and the 6 g/test standard for 1978, the originally proposed regulatory action has been divided into two separate rulemaking actions. The revised test procedure and 1978 standard are being promulgated at this time. The final rulemaking for a longer term evaporative emission standard is presently being considered by the Agency. The 1978 standard will remain in effect for subsequent model years until revised.

Fuel evaporative hydrocarbon emissions have been studied and measured since 1958. Federal control of evaporative emission levels was first proposed in the FEDERAL REGISTER (32 FR 2448) in 1967 when a novel and relatively untried measurement procedure, the use of a vehicle enclosure, was proposed. These rules would have become effective for the 1969 model year. Final rulemaking published in 1968 (33 FR 8304) abandoned the vehicle enclosure measurement procedure in favor of a better known procedure (carbon trap method) which utilizes the adsorption of hydrocarbon on activated charcoal that is weighed before and after the test to determine the mass of hydrocarbon adsorbed. Because of manufacturing lead time requirements, the implementation of the standards was delayed until the 1971 model year, and the emission level was set at 6 g/test. The evaporative emission standard was reduced to a 2 g/test for 1972 and subsequent model years.

The current carbon trap method for measuring evaporative emissions has been found through testing with a more accurate measurement method to greatly underestimate actual evaporative emissions. The more accurate testing method is the Society of Automotive Engineers (SAE) recommended procedure for measuring evaporative emissions (SAE J171a) and involves collecting the evaporative emissions in a large sealed enclosure containing the test vehicle. Results from the 1972 EPA surveillance test program (as reported in Supplement No. 5 of AP-42) of "controlled" in-use vehicles indicate an average emisison level of about 24 g/test by the vehicle enclosure method, more than 12 times the current standard established for the carbon trap method. Thus, the amount of control thought to exist for evaporative emissions does not in actuality exist. Therefore, revised regulations are being implemented to reduce this major source of hydrocarbon air pollution.

The most significant change in the regulations is the revised evaporative emission test procedure which applies to both light duty vehicles and light duty trucks. The standard 6 g/test is established for the 1978 model year which appears to be higher than the present 2 g/test standard as measured by the "carbon trap method." However, when the 6 g/test standard is required to be met by the new test procedure, evaporative hydrocarbons emissions will be reduced from about 1.76 g/mile to 0.6 g/mile. This action will reduce nationwide hydrocarbon emissions from all mobile sources by as much as 46 percent by the year 1990. For certain Air Quality Control Regions that are expected to have difficulty meeting the ambient air quality standards for oxidants, this action will reduce hydrocarbon emissions from all sources by 7.8 percent by the year 1985.

It is estimated that the increased retail cost to the consumer will average about $7.30 for control system components to meet the new evaporative emission standard. No lifetime costs due to increased fuel consumption or maintenance are expected. It is estimated that the major impact on industry will be due to any decrease in sales resulting from this action; however, this is expected to be less than 0.16%. The cost of certification over the next five years that the manufacturers must bear is expected to increase by $2.2 million. The government's cost increase over the same five year period is expected to be $0.4 million. The total national capital investment over the first five years is estimated to total $530 million. This compares to a projected $230 billion in retail sales of new cars and light duty trucks during the same time period, i.e., 1978–1982.

The revised standard and procedure will provide improved air quality at a cost of about $50 per ton of hydrocarbon removed. As a comparison, the cost-effectiveness of reducing automotive exhaust hydrocarbon emissions from the current standard (1.5 g/mile) to the statutory standard (0.41 g/mile) is between $500 and $1400 per ton of hydrocarbon removed. This additional control of evaporative emissions is one of the more cost effective strategies available for reducing hydrocarbon emissions.

Comments on the NPRM were received from many motor vehicle manufacturers and from several other interested parties. All of the comments were analyzed and considered in the preparation of the final rulemaking. The major issues have been summarized here. For the minor technical issues, only the changes to the procedure will be identified. A complete analysis of comments on all issues has been prepared and is available for public review.

On July 18, 1975, the Environmental Protection Agency (EPA) published a decision in the FEDERAL REGISTER (40 FR 30311) which granted the State of California a waiver of Federal preemption under section 209(b) of the Clean Air Act to enable California to enforce an evaporative emission standard for 1977 and subsequent model year light duty vehicles and light duty trucks of 6 g/test as measured by the vehicle enclosure method. The decision granted the waiver to the extent that a Federal standard of equal or greater stringency was not subsequently established. At the same time, EPA announced that all reasonable efforts would be made to establish a more stringent Federal evaporative emission standard based on the vehicle enclosure measurement method. Since the Federal standard hereby published is of equal stringency to the 1978 California standard, the waiver granted to California on July 18, 1975, will no longer be in effect as of the date these Federal standards become effective.

MAJOR ISSUES

Feasibility and lead time requirements of a 6 g/test standard. Most manufacturers responded that a 6 g/test standard, measured by the proposed procedure, is feasible and desirable. Some stated that a delay until 1979 in the implementation of the standard would be more desirable. The consensus of opinion though, is that implementation for 1978 is achievable, although lead time constraints may present some problems.

Cost of a 6 g/test standard. The manufacturers estimated costs to the consumer that range from $1 to $15 per vehicle depending upon the control technique chosen. The sales weighted average of the manufacturers' cost estimates is $7.40 which is essentially the same as the value used in the draft economic impact statement ($7.30). An independent study performed by Exxon Research and Engineering Company for EPA indicated that costs of only about $2 per vehicle are possible. This indicates that the EPA estimate of $7.30 is conservative, and may be high.

Evaporative family concept for certification. The purpose of developing an evaporative family concept was to require evaporative emission testing of only those exhaust test vehicles which represent unique evaporative control systems. This would result in a reduction in the

required test load. Those manufacturers who understood the proposal agreed that the test load would be reduced and favored the proposal. Others thought that evaporative test vehicles would be added to the exhaust test vehicles thus increasing the test fleet and therefore the test load. Modifications have been made to the regulations to clarify the requirements in this regard.

Durability and evaporative system deterioration. Most manufacturers suggested that durability testing should not be required. Some commented that EPA must demonstrate the need for durability testing before it can be required. Others contended that no durability data exist, that they can not be obtained for 1978, and that component life testing is sufficient demonstration of system durability. Others said that existing data demonstrate that systems do not deteriorate. The data presented do show that at least some systems deteriorate. The EPA is required, under the provisions of section 206(a)(1), to make a determination that a control system to be installed on vehicles will be effective for the useful life of the vehicle, prior to issuing a Certificate of Conformity for such vehicle. Useful Life has been defined as 50,000 miles. For exhaust emission control system evaluation, the testing protocols include the operation of a limited number of test vehicles over a defined 50,000 mile run. The 50,000 miles are usually accumulated during a 3 month period. However, there are technical reasons for believing that the durability of evaporative emission control systems may be more significantly affected by time than by mileage; extensive use of plastic-like materials is expected to be made to seal possible sources of evaporative emissions, and such materials tend to deteriorate as a function of time, rather than miles. Thus there is considerable question about the validity of utilizing the 50,000 mile test as a basis for evaluating the durability of evaporative emission control systems.

The EPA is currently unable to specify a single test protocol that would be applicable to all vehicles that could be demonstrated to be a valid test of the durability of evaporative emission control systems. Thus, for the purpose of satisfying the requirement that the EPA evaluate the durability of evaporative emission control systems, as well as for the purpose of generating data on alternative test protocols some of which may have industry-wide applicability, the regulations require that each manufacturer specify in his Part I application the test procedures that he intends to utilize to evaluate the durability of his evaporative emission control system and to develop a Deterioration Factor for such systems. The data from these test programs, and the derived Deterioration Factor, are required to be submitted with the Part II Application. From the data thus submitted the EPA expects, for some subsequent model year, to be able to promulgate a standardized durability testing protocol that will apply on an industry-wide basis.

Need for evaporative regulations. Some manufacturers contended that the value from the 1973 EPA surveillance test program cited in the NPRM was the result of a defective test procedure and that the actual values are much lower. EPA has investigated the test procedures used in the study in question and finds that the tests were conducted properly. Due to the computational errors, however, it has been determined that the average value should have been 26.5 g/test rather than 31 g/test as reported in the NPRM.

The value used in the economic impact statement was based on the results of the 1972 surveillance study which showed emissions to be at a 24 g/test level (1.76 g/mi equivalent). The 24 g/test level has undergone the scrutiny required to be incorporated as a part of the Compilation of Air Pollutant Emission factors, AP-42 (Supplement No. 5). The results from the 1973 surveillance program have not yet undergone such scrutiny and therefore were not used.

Background emissions. EPA originally proposed to include non-fuel evaporative hydrocarbon (background) emissions in the evaporative emission measurement and expected manufacturers to provide test vehicles with stabilized background emissions. Manufacturers responded that they sometimes use brand new cars (less than 60–90 days old) which do not have stabilized background emissions. The manufacturers did not address whether artificial aging of new vehicles or obtaining aged vehicles from other sources would be viable solutions to the problem. EPA analysis indicates that both of these are viable options for assuring stabilized background emission levels. At least one study has shown that new car background emissions can be reduced quickly by baking the car for several hours which is not prohibited under the current regulations. Regarding alternative sources of aged vehicles, manufacturers already have the option to rebuild existing vehicles into certification vehicles. Therefore vehicles can be obtained from a variety of sources, and rebuilt into certification vehicles. EPA will place no restrictions on the manufacturers' ability to provide test vehicles with stabilized background emissions.

In addition, manufacturers have a number of options available to them to minimize background emissions that come from new paint, from plastic in the interior of vehicles, from newly manufactured tires, and from road oil and oil drippings on the engine. The regulations do not require test cars to be painted, to contain plastic headliners or seatcovers, or to be equipped with recently-manufactured tires; the regulations do not prohibit the steam cleaning of cars prior to emission testing. Inasmuch as manufacturers typically take advantage of every possible regulatory provision to minimize measured emissions on test vehicles, it is reasonable to expect manufacturers to do everything that they may legally do to minimize background evaporative emissions from their test vehicles. Providing a factor to account for possible background emissions (e.g., 1 g/test) would thus have the practical effect of easing the intended fuel evaporative emission standard by whatever the background allowance might be since manufacturers would still be expected to provide test vehicles with minimized background emissions. For that reason, the proposal of several manufacturers to provide an allowance for background emissions has not been adopted.

EPA is aware of the fact that the options available to the manufacturer to reduce background emissions from prototype vehicles used in certification testing are not available when vehicles may be tested in in-use vehicle emission surveillance programs, or on the assembly line. As regards in-use vehicles, such vehicles would not normally be tested by EPA before they are a year or more older, at which time background emissions can reasonably be expected to have stabilized and be minimal. If, however, a manufacturer uses paints or plastic materials that will continue for long periods of time to emit significant levels of background emissions, these emissions should properly be charged against the in-use vehicle inasmuch as such emissions are real hydrocarbons that contribute to air pollution. Thus, for in-use vehicles the only additional preconditioning that would be undertaken would be removal of spilled or leaked oil, and miscellaneous deposits of road oils.

As regards assembly-line testing, the Agency recognizes that newly assembled vehicles may have high background emissions unrepresentative of typical in-use background emissions. Thus, testing of such vehicles is expected to utilize analytical procedures, yet to be specified, which enable fuel evaporative emissions to be distinguished from emissions from non-fuel sources.

Test Procedure Changes

The amount of fuel for preconditioning is changed from 2 gallons (as proposed in the NPRM) to 40 percent of nominal tank capacity to prevent abnormal loading of the evaporative control system.

The diurnal test has been modified to require installation of the fuel cap when the fuel temperature reaches 60±2° F instead of immediately after fueling as proposed. This test procedure change will eliminate unrepresentative loading of the evaporative control system. This change requires that capping take place in the enclosure with the purge blowers operating.

The diurnal test has also been modified to allow artificial heating of the fuel tank(s) to bring the liquid fuel up to the prescribed starting temperature. The prescribed initial fuel temperature specification has been broadened from the proposed 60±1° F to 60±2° F. The temperature rise has been changed to a 24±1° F temperature rise (above the initial fuel temperature) instead of the proposed 60±1° F to 84±1° F temperature rise. Also, the temperature control limits during the diurnal have been broadened from ±2° F to ±3° F. These modifications should improve test repeatability

and provide a more practical test procedure.

Because of the changes to the diurnal test, the proposed requirement to use type T thermocouples is no longer necessary. Therefore, the type J thermocouples currently used can continue to be used without decreased accuracy.

Data show that vehicle idle times of up to 7 minutes have no effect on hot soak emissions. Time between the exhaust and the hot soak tests is changed from a total of 5 minutes, with no more than 1 minute of engine off time to a total of 7 minutes with no more than 2 minutes of engine off time.

The proposed regulations did not specify the exact amount of mixing required or specific fan location. The air circulation is now specified as not less than 200 cfm nor more than 1000 cfm. Multiple fans may be used, but the air stream(s) may not be directed toward the vehicle.

The proposed regulations did not specify the amount of propane to be used for the enclosure calibration. A nominal amount of propane (4g) is given as a convenient quantity for the enclosure calibration in the final regulations. Also, the criteria for an acceptable retention check have been changed. The final value (after 4 hours) may not differ by more than 4 percent of the initial value.

Enclosure background measurements need only be made after maintenance which can be expected to affect enclosure background levels rather than after any maintenance.

The proposed calculation of evaporative emissions required the use of a nominal value of 50 ft^3 for the volume of the vehicle. The final regulations add the option of allowing a manufacturer to measure the actual vehicle volume for all of his test vehicles.

These regulations do not change the requirement for evaporative emission testing at high altitude.

One further modification to the test procedures may be included in future rulemaking (expected to apply with the implementation of the longer term evaporative emission standard), but due to lead time requirements to develop such procedures is not included as a part of the 1978 regulations. This modification will be to place controls on the tank vapor temperature during the diurnal test to insure that the temperature rise in the vapor space is representative of actual use, since the vapor temperature rise is the principal driving force for diurnal emissions and recent data indicate that, although the liquid fuel temperature rises 24° F, the vapor temperature may rise only 12° to 14° F.

The proposed regulations reorganized Subpart B to promote clarity. Subpart B is further modified in the final regulations by the insertion of reserved sections for possible future expansion of the regulations.

The new numbering system that was proposed for Subpart B is adopted. The model year designation appears as a suffix following the section number and is separated by a hyphen. A section will remain effective until it is superseded. This change will make republishing for each model year unnecessary. Also, when a section is amended for an upcoming model year it will appear following the current section. This will enable the reader to quickly find the changes that have been made.

Comments which were received in response to the NPRM, EPA's analysis of the comments, and the Final Environmental Impact Statement are available for inspection and copying during normal business hours at the U.S. Environmental Protection Agency, Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street, SW., Washington, D.C. 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

Single copies of the Final Environmental Impact Statement for this regulation are available in limited number upon request from the Public Information Center (PM-215), U.S. Environmental Protection Agency, Washington, D.C. 20460.

This notice of final rulemaking is issued under authority of sections 202, 206, 207, 208, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 1857f-1, 1857f-5, 1957f-5a, 1857f-6, and 1857g(a)).

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

Effective date: This revision of Part 86 becomes effective on September 22, 1976.

Dated: August 12, 1976.

RUSSELL E. TRAIN,
Administrator.

Part 86 of Chapter I, Title 40 of the Code of Federal Regulations is amended by revising Subparts A and B as follows:

Subpart A—General Provisions for Emission Regulations for 1977 and Later Model Year New Light Duty Vehicles, 1977 and Later Model Year New Light Duty Trucks and for 1977 and Later Model New Heavy Duty Engines

1. A new § 86.078-2 is added and reads as follows:

§ 86.078-2 Definitions.

The following definitions apply beginning with the 1978 model year. Section 86.077-2 remains effective excepting those definitions which are hereby superseded.

"Accuracy" means the difference between a measurement and true value.

"Basic Engine" means a unique combination of manufacturer, engine displacement, number of cylinders, fuel system (as distinguished by number of carburetor barrels or use of fuel injection), catalyst usage, and other engine and emission control system characteristics specified by the Administrator.

"Body Type" means a name denoting a group of vehicles that are either in the same car line or in different car lines provided the only reason the vehicles qualify to be considered in different car lines is that they are produced by separate divisions of a single manufacturer.

"Calibration" means the set of specifications, including tolerances, unique to a particular design, version, or application of a component or component assembly capable of functionally describing its operation over its working range.

"Car line" means a name denoting a group of vehicles within a make or car division which has a degree of commonality in construction (e.g., body, chassis). Car line does not consider any level of decor or opulence and is not generally distinguished by characteristics as roof line, number of doors, seats or windows except for station wagons or light duty trucks. Station wagons and light duty trucks are considered to be different car lines than passenger cars.

"Diurnal breathing losses" means evaporative emissions as a result of the daily range in temperature.

"Engine Code" means a unique combination, within an engine system combination, of displacement, carburetor (or fuel injection) calibration, choke calibration, distributor calibration, auxiliary emission control devices and other engine and emission control system components specified by the Administrator.

"Engine—system combination" means an engine family-exhaust emission control system combination.

"Evaporative emission code" means a unique combination in an evaporative emission family—evaporative emission control system combination, of purge system calibrations, fuel tank and carburetor bowl vent calibrations and other fuel system and evaporative emission control system components and calibrations specified by the Administrator.

"Evaporative emissions" means hydrocarbons emitted into the atmosphere from a motor vehicle, other than exhaust and crankcase emissions.

"Evaporative vehicle configuration" means a unique combination of basic engine, engine code, body type, and evaporative emission code.

"Fuel system" means the combination of fuel tank(s), fuel pump, fuel lines, and carburetor or fuel injection components, and includes all fuel system vents and fuel evaporative emission control system components.

"Hot soak losses" means evaporative emissions after termination of engine operation.

"Malfunction" means not operating according to specifications listed in the application for certification.

"Model Type" means a unique combination of car line, basic engine, and transmission class.

"Nominal Fuel Tank Capacity" means the volume of the fuel tank(s), specified by the manufacturer to the nearest tenth of a U.S. gallon, which may be filled with fuel from the fuel tank filler inlet.

"Precision" means the standard deviation of replicated measurements.

"Tank fuel volume" means the volume of fuel in the fuel tank(s), which is determined by taking the manufacturer's nominal tank(s) capacity and multiplying by 0.40, the result being rounded using ASTM E29-67 to the nearest tenth of a U.S. gallon.

"Transmission Class" means the basic type of transmission, e.g., manual, automatic, semi-automatic.

"Transmission Configuration" means a unique combination, within a transmission class, of the number of the forward gears and, if applicable, overdrive. The Administrator may further subdivide a transmission configuration (based on such criteria as gear ratios, torque convertor, multiplication ratio, stall speed and shift calibration, etc.), if he determines that significant fuel economy or exhaust emission differences exist within that transmission configuration.

"Vehicle configuration" means a unique combination of basic engine, engine code, inertia weight, transmission configuraton, axle ratio.

"Zero (0) Miles" means that point after initial engine starting (not to exceed 10 miles of vehicle operation, or one hour of engine operation) at which normal assembly line operations adjustments are completed.

2. A new § 86.078–3 is added and reads as follows:

§ 86.078–3 Abbreviations.

(a) The abbreviations in this section apply to this subpart and also to Subparts B, H, I and J of this part.

(b) The abbreviations used in this subpart have the following meanings in both capital and lower case:

AECD—Auxiliary Emission Control Device.
API—American Petroleum Institute.
ASTM—American Society for Testing and Materials.
BHP—Brake horsepower.
BSCO—Brake specific carbon monoxide.
BSHC—Brake specific hydrocarbons.
BSNOx—Brake specific oxides of nitrogen.
C—Celsius.
cfh—Cubic feet per hour.
CFV—Critical flow venturi.
CL—Chemiluminescence.
CO_2—Carbon dioxide.
CO—Carbon monoxide.
Conc.—Concentration.
cfm—Cubic feet per minute.
CT—Closed Throttle.
cu. in.—Cubic inch(es).
CVS—Constant volume sampler.
EP—End point.
Evap.—Evaporated.
F—Fahrenheit.
FID—Flame ionization detector.
ft.—Feet.
FL—Full load.
gal.—U.S. gallon(s).
g—Grams.
GVW—Gross Vehicle Weight.
H_2O—Water.
HC—Hydrocarbon(s).
HFID—Heated flame ionization detector.
Hg—Mercury.
Hi.—High.
Hp—Horsepower.
Hr—Hour.
IBP—Initial boiling point.
ID—Internal diameter.
in.—Inches.
km/h—kilometers per hour.
kPa—Kilopascal(s).
Lb—Pound(s).
LFE—Laminar flow element.
Lb-ft—Pound-feet.
m—Metre.
Max.—Maximum.
Min.—Minimum.
Min.—Minute(s).
ml—Milliliter(s).
mph—Miles per hour.
mm—Millimeter(s).
mv—Millivolt(s).
N_2—Nitrogen.
NDIR—Nondispersive infrared.
NO—Nitric oxide.
NO_2—Nitrogen dioxide.
NOx—Oxides of nitrogen.
No.—Number.
Pb—Lead.
PDP—Positive displacement pump.
ppm—Parts per million by volume.
ppm C—Parts per million, carbon.
psi—Pounds per square inch.

3. A new § 86.078–8 is added and reads as follows:

§ 86.078–8 Emission standards for 1978 light duty vehicles.

(a) (See paragraph (a) of § 86.077–8)

(b)(1) Evaporative emissions from gasoline fueled light duty vehicles shall not exceed:

(i) *Hydrocarbons.* 6.0 grams per test.

(2) The standard set forth in paragraph (b)(1) of this section refers to a composite sample of the evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

(c) (See paragraph (c) of § 86.077–8)

4. A new § 86.078–9 is added and reads as follows:

§ 86.078–9 Emission standards for 1978 light duty trucks.

(a) (See paragraph (a) of § 86.077–9)

(b)(1) Evaporative emissions from 1978 model year gasoline fueled light duty trucks shall not exceed:

(i) *Hydrocarbons.* 6.0 grams per test.

(2) The standard set forth in paragraph (b)(1) of this section refers to a composite sample of the evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

(c) (See paragraph (c) of § 86.077–9)

5. A new § 86.078–21 is added and reads as follows:

§ 86.078–21 Application for certification.

(a) through (b)(3) (See paragraphs (a) through (b)(3) of § 86.077–21)

(4)(i) A description of the proposed mileage (or service) accumulation procedure for durability testing.

(ii) A description of the test procedures to be used to establish the evaporative emission deterioration factors required to be determined and supplied in § 86.077–23(a)(2).

(b)(5) through (c) (See paragraphs (b)(5) through (c) of § 86.077–21)

6. A new § 86.078–22 is added and reads as follows:

§ 86.078–22 Approval of application for certification test fleet selections.

(a) through (c) (See paragraphs (a) through (c) of § 86.077–22)

(d) The Administrator does not approve the test procedures for establishing the evaporative emission deterioration factors. The manufacturer shall submit the procedures as required in § 86.078–21(b)(4)(ii) prior to the Administrator's selection of the test fleet under § 86.078–24(b)(1) and if such procedures will involve testing of durability data vehicles selected by the Administrator or elected by the manufacturer under § 86.078–24(c)(1), prior to initiation of such testing.

7. A new § 86.078–23 is added and reads as follows:

§ 86.078–23 Required data.

The manufacturer shall perform the tests required by the applicable test procedures, and submit to the Administrator the following information:

(a)(1) Exhaust emission durability data on such vehicles (or engines) tested in accordance with applicable test procedures and in such numbers as specified, which will show the performance of the systems installed on or incorporated in the vehicle (or engine) for extended mileage (or extended operation), as well as a record of all pertinent maintenance (all maintenance and servicing for diesel heavy duty engines) performed on the test vehicles (or test engines).

(2) Evaporative emission deterioration factors for each evaporative emission family—evaporative emission control system combination and all test data, that are derived from testing described under § 86.078–21(b)(4)(ii) designed and conducted in accordance with good engineering practice to assure that the vehicles covered by a certificate issued under § 86.078–30 will meet the evaporative emission standards in § 86.078–8 for the useful life of the vehicle.

(b)(1)(i) (See paragraph (b)(1)(i) of § 86.077–23).

(ii) Emission data on those vehicles selected under §§ 86.078–24(b)(1)(v) and 86.078–24(b)(1)(vii)(D) and tested in accordance with the applicable test procedures of this subpart and in such numbers as therein specified, which shall be tested at zero kilometers (zero miles) at any altitude, and under high altitude conditions after 6436 kilometers (4000 miles) of operation at any altitude.

(b)(2) through (d)(2) (See paragraphs (b)(2) through (d)(2) of § 86.077–23)

(3) For evaporative emission durability, a statement of compliance with paragraph (a)(2) of this section.

8. A new § 86.078–24 is added and reads as follows:

§ 86.078–24 Test vehicles and engines.

(a)(1) through (a)(4) (See paragraphs (a)(1) through (a)(4) of § 86.077–24)

(5) The gasoline fueled vehicles covered by an application for certification will be divided into groupings which are expected to have similar evaporative emission characteristics throughout their useful life. Each group of vehicles with similar evaporative emission characteristics shall be defined as a separate evaporative emission family.

(6) To be classed in the same evaporative emission family, vehicles must be identical in all of the following respects:

(i) Vapor storage device (e.g., canister, air cleaner, crankcase, induction system).

(ii) Basic canister design.

(iii) Fuel system.

(7) Where vehicles are of a type which cannot be divided into evaporative emission families based on the criteria listed above, the Administrator will establish families for those vehicles based upon the features most related to their evaporative emission characteristics.

(b)(1)(i) (See paragraph (b)(1)(i) of § 86.077-24).

(ii) Vehicles of each engine family will be divided into engine displacement-exhaust emission control system combinations as applicable. A projected sales volume will be established for each combination for the model year for which certification is sought. One vehicle of each combination will be selected in order of decreasing projected sales volume until 70 percent of the projected sales of a manufacturer's total production of vehicles of that engine family is represented, or until a maximum of four vehicles is selected. If any single combination represents over 70 percent, then two vehicles of that combination may be selected. The vehicle selected for each combination will be specified by the Administrator as to such features as engine code, transmission type, fuel system, and inertia weight class.

(iii) through (v) (See paragraphs (b)(1)(iii) through (b)(1)(v) of § 86.077-24).

(vi) The Administrator may combine testing requirements for any vehicle selected under paragraph (b)(1)(v) or (b)(1)(vii)(D) of this section with the testing requirements for any similar vehicle in the same engine-system combination selected under paragraph (b)(1)(ii), (iii), or (iv) of this section or any similar vehicle in the same engine-system, evaporative emission family, evaporative emission control system combination selected under (b)(1)(vii) (A) or (B) of this section. The testing requirements may be combined by the Administrator requiring a vehicle selected for testing under paragraphs (b)(1)(ii), (iii), (iv), (vii)(A), or (vii)(B) of this section to be modified (if necessary) after mileage accumulation and emission testing for the purpose of demonstrating compliance with § 86.078-23(b)(1)(ii).

(vii)(A) Vehicles of each evaporative emission family will be divided into evaporative emission control systems. One vehicle of each evaporative emission control system within the evaporative emission family will be selected.

(B) The Administrator may select a maximum of four (4) additional vehicles within each evaporative emission family based upon features indicating that they may have the highest evaporative emission levels of vehicles in that family.

(C) The Administrator may determine that the vehicles selected under paragraphs (b)(1)(i) through (vi) of this section may be used to satisfy the requirements of paragraphs (b)(1)(vii)(A) and (B) of this section.

(D) The Administrator will also select one vehicle for each evaporative emission control system within each evaporative family for which vehicles are to be sold at high altitude.

(E) Vehicles selected under paragraph (b)(1)(v) of this section may be used to satisfy the requirements of paragraph (b)(1)(vii)(D) of this section.

(b)(2) through (g) (See paragraphs (b)(2) through (g) of § 86.077-241).

9. A new § 86.078-25 is added and reads as follows:

§ 86.078-25 Maintenance.

(a)(1) (See paragraph (a)(1) of § 86.077-25).

(a)(2)(i) Scheduled maintenance on the engine, emission control system, and fuel system of durability vehicles, selected by the Administrator or elected by the manufacturer under § 86.078-24(c)(1), shall be scheduled for performance during durability testing at the same mileage intervals that will be specified in the manufacturer's maintenance instructions furnished to the ultimate purchaser of the motor vehicle. Such maintenance shall be performed, except as provided in paragraph (a)(6)(iii) of this section, only under the following provisions.

(a)(2)(i)(A) through (a)(2)(v)(A)(1) (See paragraphs (a)(2)(i)(A) through (a)(2)(v)(1) of § 86.077-25).

(2) Has made a determination that the need for maintenance or repairs is indicated by an overt indication of malfunction such as persistent misfire, vehicle stall, overheating, fluid leakage, loss of oil pressure, or charge indicator warning. For the evaporative system, this overt indication may be indicated by such items as fuel odor or fluid leakage.

(a)(2)(v)(B) through (a)(3)(i) (See paragraphs (a)(2)(v)(B) through (a)(3)(i) of § 86.077-25).

(a)(3)(ii) Maintenance on Emission data vehicles selected under § 86.078-24(b)(1)(v) or 24(b)(1)(vii)(D) and permitted to be tested for purposes of § 86.078-23(b)(1)(ii) under the provisions of § 86.078-24(b)(1)(vi) may be performed in conjunction with emission control system modifications at the 6436 kilometer (4000 mile) test point, and shall be performed in accordance with the maintenance instructions to be provided to the ultimate purchaser required under § 86.077-38.

(a)(3)(iii) through (d) (See paragraphs (a)(3)(iii) through (d) of § 86.077-25)

10. A new § 86.078-26 is added and reads as follows:

§ 86.078-26 Mileage and service accumulation; emission measurements.

(a)(1) and (a)(2) (See paragraphs (a)(1) and (a)(2) of § 86.077-26)

(3) Emission data vehicles.

(i) Gasoline-fueled.

(A) Each gasoline-fueled emission data vehicle shall be driven 4000 miles with all emission control systems installed and operating. Complete exhaust emission tests shall be conducted at zero miles and 4000 miles on those vehicles selected under § 86.178-24(b)(1)(i) through (b)(1)(vi). Complete evaporative emission tests shall be conducted at 4000 miles on those vehicles selected under § 86.078-24(b)(1)(vii). The manufacturer may at his option test the vehicles selected under § 86.078-24(b)(1)(vii) up to three times at the 4000 mile test point as long as the ±250 mile test tolerance is adhered to. The Administrator may determine under § 86.078-24(f) that no testing is required.

(B) The emission data vehicle(s) selected for testing under § 86.078-24(b)(1)(v) or (b)(1)(vii)(D) shall be driven 6436 kilometers (4000 miles) at any altitude. Emission tests shall be conducted at zero kilometers (zero miles) at any altitude and 6436 kilometers (4000 miles) under high altitude conditions.

(C) The emission data vehicle(s) selected for testing under § 86.078-24(b)(1)(v) or (b)(1)(vii)(D) and permitted to be tested for purposes of § 86.078-23(b)(1)(ii) under the provisions of § 86.078-24(b)(1)(vi) shall be driven 6436 kilometers (4000 miles) at low altitude. Emission tests shall be conducted at zero kilometers (zero miles) at low altitude and 6436 kilometers (4000 miles) under both low and high altitude conditions. For the purposes of this subparagraph, low altitude means any elevation less than 549 meters (1800 feet).

(a)(3)(ii) through (a)(3)(ii)(C) (See paragraphs (a)(3)(ii) through (a)(3)(ii)(C) of § 86.077-26)

(4) Durability data vehicles

(i) *Gasoline Fueled.* Each gasoline fueled durability data vehicle selected by the Administrator or elected by the manufacturer under § 86.078-24(c)(1) shall be driven, with all emission control systems installed and operating for 50,000 miles or such lesser distance as the Administrator may agree to as meeting the objective of this procedure. Complete exhaust emission tests shall be made on all durability data vehicles selected by the Administrator or elected by the manufacturer under § 86.078-24(c) at the following mileage points: 0; 5000; 10,000; 15,000; 20,000; 25,000; 30,000; 35,000; 40,000; 45,000; 50,000. The Administrator may determine under § 86.078-24(f) that no testing is required.

(a)(4)(ii) through (a)(10) (See paragraphs (a)(4)(ii) through (a)(10) of § 86.077-26)

(a)(11) This section does not apply to testing conducted to meet the requirements of § 86.078-23(a)(2).

(b) through (c) (see paragraphs (b) through (c) of § 86.077-26)

11. A new § 86.078-28 is added and reads as follows:

§ 86.078-28 Compliance with emission standards.

(a)(1) through (a)(3) (see paragraphs (a)(1) through (a)(3) of § 86.077-28)

(4) The procedure for determining compliance of a new motor vehicle with exhaust emission standards is as follows:

(i) Separate emission deterioration factors shall be determined from the exhaust emission results of the durability data vehicle(s) for each engine-system condition. A separate factor shall be established for exhaust HC, exhaust CO, and exhaust NOx for each engine system combination. A separate evaporative emission deterioration factor shall be determined for each evaporative emission family-evaporative emission control system combination from the testing conducted by the manufacturer.

(A) The applicable results to be used in determining the exhaust emission deterioration factors for each engine-system combination shall be:

(1) All valid exhaust emission data from the tests required under § 86.078–26(a)(4), except the zero mile tests. This shall include the official test results, as determined in § 86.078–29 for all tests conducted on all durability data vehicles of the combination selected under § 86.078–24(c) (including all vehicles elected to be operated by the manufacturer under § 86.078–24(c)(1)(ii)).

(2) All exhaust emission data from the tests conducted before and after the scheduled maintenance provided in § 86.078–25(a).

(3) All exhaust emission data from tests required by maintenance approved under § 86.078–25, in those cases where the Administrator conditioned his approval for the performance of such maintenance on the inclusion of such data in the deterioration factor calculation.

(B) All applicable exhaust emission results shall be plotted as a function of the mileage on the system, rounded to the nearest mile, and the best fit straight lines, fitted by the method of least squares, shall be drawn through all these data points. The interpolated 4,000- and 50,000-mile points on this line must be within the standards provided in § 86.078–8 or § 86.078–9, as applicable, or the data will not be acceptable for use in calculation of a deterioration factor, unless no applicable data point exceeded the standard. An exhaust emission deterioration factor shall be calculated for each engine-system combination as follows:

factor=Exhaust emissions interpolated to 50,000 miles/exhaust emission interpolated to 4,000 miles.

These interpolated values shall be carried out to a minimum of four places to the right of the decimal point before dividing one by the other to determine the deterioration factor. The results shall be rounded to three places to the right of the decimal point in accordance with ASTM E 29–67.

(C) An evaporative emissions deterioration factor shall be determined from the testing conducted as described in § 86.078–21(b)(4)(ii), for each evaporative emission family-evaporative emission control system combination to indicate the evaporative emission level at 50,000 miles relative to the evaporative emission level at 4,000 miles as follows:

factor=Evaporative emission level at 50,000 miles *minus* the evaporative emission level at 4,000 miles.

The factor shall be established to a minimum of two places to the right of the decimal.

(ii)(A) The official exhaust emission test results for each emission data vehicle at the 4000 mile test point shall be multiplied by the appropriate deterioration factor: *Provided*, That if a deterioration factor as computed in paragraph (a)(4)(i)(B) of this section is less than one, that deterioration factor shall be one for the purposes of this paragraph.

(B) The official evaporative emission test results for each evaporative emission data vehicle at the 4000 mile test point shall be adjusted by addition of the appropriate deterioration factor: *Provided*, That if a deterioration factor as computed in paragraph (a)(4)(i)(c) of this section is less than zero, that deterioration factor shall be zero for the purposes of this paragraph.

(a)(4)(iii) (See paragraph (a)(4)(iii) of § 86.077–28)

(iv) Every test vehicle of an engine family must comply with the exhaust emission standards, as determined in paragraph (a)(4)(iii) of this section, before any vehicle in that family may be certified.

(v) Every test vehicle of an evaporative emission family must comply with the evaporative emission standards, as determined in paragraph (a)(4)(iii) of this section, before any vehicle in that family may be certified.

(b) through (c) (See paragraphs (b) through (c) of § 86.077–28)

12. A new § 86.078–29 is added and reads as follows:

§ 86.078–29 Testing by the Administrator.

(a)(1) through (a)(3)(i) (See paragraphs (a)(1) through (a)(3)(i) of § 86.077–29)

(ii) Whenever the Administrator does not conduct a test on a test vehicle at a test point, the manufacturer's test data will be accepted as the official data for that test point: *Provided*, That if the Administrator makes a determination based on testing under paragraph (a)(2) of this section, that there is a lack of correlation between the manufacturer's test equipment and the test equipment used by the Administrator, no manufacturer's test data will be accepted for purposes of certification until the reasons for the lack of correlation are determined and the validity of the data is established by the manufacturer, and further provided, that if the Administrator has reasonable basis to believe that any test data submitted by the manufacturer is not accurate or has been obtained in violation of any provisions of this part, the Administrator may refuse to accept that data as the official data pending retesting or submission or further information. If the manufacturer conducts more than one test on a vehicle, as authorized under § 86.078–26(a)(3)(i)(A), the data from the last test in that series of tests on that vehicle, will constitute the official data.

(a)(3)(iii)(A) (See paragraph (a)(3)(iii)(A) of § 86.077–29)

(B) If the Administrator determines that the test data developed on an emission data vehicle under paragraph (a)(3)(i) of this section would cause that vehicle to fail due to excessive 4000 mile emissions or by application of the appropriate deterioration factor, then the following procedure shall be observed:

(a)(3)(iii)(B)(1) through (b) (See paragraphs (a)(3)(iii)(B)(1) through (b) of § 86.077–29)

13. A new § 86.078–30 is added and reads as follows:

§ 86.078–30 Certification.

(a)(1) and (a)(2) (See paragraphs (a)(1) and (a)(2) of § 86.077–30)

(3) One such certificate will be issued for each engine family—evaporative family combination and will certify compliance with no more than one set of applicable standards.

(a)(4) through (a)(7) (See paragraphs (a)(4) through (a)(7) of § 86.077–30)

(b)(1) The Administrator will determine whether a vehicle (or engine) covered by the application complies with applicable standards by observing the following relationships:

(i) Light duty vehicles and light duty trucks.

(A) The durability data vehicle(s) selected under § 86.078–24(c)(1)(i) shall represent all vehicles of the same engine-system combination.

(B) The emission data vehicle(s) selected under § 86.078–24(b)(1)(ii), (b)(1)(iii), and (b)(1)(iv) shall represent all vehicles of the same engine-system combination as applicable to be sold below 4000 ft.

(C) The emission data vehicle(s) selected under § 86.078–24(b)(1)(vii)(A) and (b)(i)(vii)(B) shall represent all vehicles of the same evaporative control system within the evaporative family, as applicable, to be sold below 4000 ft.

(D) The emission data vehicle(s) selected under § 76.078–24(b)(1)(v) shall represent all vehicles of the same engine system combination to be sold at high altitude.

(E) The emission data vehicle(s) selected under § 86.078–24(b)(1)(vii)(D) shall represent all vehicles of the same evaporative control system within the evaporative family sold at high altitude.

(b)(1)(ii) through (b)(1)(iii)(C) (See paragraphs (b)(1)(ii) through (b)(1)(iii)(C) of § 86.077–30)

(2) The Administrator will proceed as in paragraph (a) of this section with respect to the vehicles belonging to an engine family—evaporative family combination, all of which comply with all applicable standards.

(3) (See paragraph (b)(3) of § 86.077–30)

(4) The manufacturer may, at his option, proceed with any of the following alternatives with respect to an emission

data vehicle determined not in compliance with all applicable standards for which it was tested.

(i) Request a hearing under § 86.078–6; or

(ii) Remove the vehicle configuration (or evaporative vehicle configuration as applicable) which failed from his application;

(A) If the failed vehicle was tested for compliance with exhaust emission standards only: The Administrator may select, in place of the failed vehicle, in accordance with the selection criteria employed in selecting the failed vehicle, a new emission data vehicle to be tested for exhaust emission compliance only.

(B) If the failed vehicle was tested for compliance with both exhaust and evaporative emission standards: The Administrator may select, in place of the failed vehicle, in accordance with the selection criteria employed in selecting the failed vehicle, a new emission data vehicle which will be tested for compliance with both exhaust and evaporative emissions standards. If one vehicle cannot be selected in accordance with the selection criteria employed in selecting the failed vehicle, then two vehicles may be selected (i.e., one vehicle to satisfy the exhaust emission vehicle-selection criteria, and one vehicle to satisfy the evaporative emission vehicle-selection criteria) both of which will be tested for compliance with both exhaust and evaporative emission standards; or

(iii) Remove the vehicle configuration (or evaporative vehicle configuration, as applicable) which failed from his application and add a vehicle configuration(s) (or evaporative vehicle configuration(s) as applicable) not previously listed. The Administrator may require if applicable that the failed vehicle be modified to the new engine code (or evaporative emission code as applicable) and demonstrate by testing that it meets applicable standards for which it was originally tested. In addition, the Administrator may select, in place of the failed vehicle, a new emission data vehicle (or vehicles) which may be tested for compliance with both exhaust and evaporative emissions standards; or

(iv) Correct a component or system malfunction and show that with a correctly functioning system or component, the failed vehicle meets applicable standards for which it was originally tested. The Administrator may require, a new emission data vehicle, of identical vehicle configuration (or evaporative vehicle configuration as applicable) to the failed vehicle, to be operated and tested for compliance with the applicable standards for which the failed vehicle was originally tested.

(c) (See paragraph (C) of § 86.077–30)

14. A new § 86.078–35 is added and reads as follows:

§ 86.078–35 Labeling.

(a) Through (a)(1)(iii)(B) (See paragraphs (a) through (a)(1)(iii)(B) or § 86.077–35)

(C) Engine displacement (in cubic inches), engine family identification and evaporative family identification.

(a)(1)(iii)(D) through (c) (See paragraph (a)(1)(iii)(D) through paragraph (c) of § 86.077–35).

15. Subpart B is enlarged by adding §§ 86.101–78 through 86.145–78 (effective for the 1978 model year) which read as follows:

Subpart B—Emission Regulations for 1977 and Later Model Year New Light Duty Vehicles and New Light Duty Trucks; Test Procedures

Sec.

86.101 Applicability.
86.102 Definitions.
86.103 Abbreviations.
86.104 Section numbering, construction.
86.105 Introduction; structure of subpart.
86.106 Equipment required; overview.
86.107 Sampling, and analytical system evaporative emissions.
86.108 Dynamometer.
86.109 Exhaust gas sampling system.
86.110 [Reserved]
86.111 Exhaust gas analytical system.
86.112 [Reserved]
86.113 Fuel specifications.
86.114 Analytical gases.
86.115 EPA urban dynamometer driving schedule.
86.116 Calibrations, frequency and overview.
86.117 Evaporative emission enclosure calibrations.
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86.119 Constant volume sampler calibration.
86.120 [Reserved]
86.121 Hydrocarbon analyzer calibration.
86.122 Carbon monoxide analyzer calibration.
86.123 Oxides of nitrogen analyzer calibration.
86.124 Carbon dioxide analyzer calibration.
86.125 [Reserved]
86.126 Calibration of other equipment.
86.127 Test procedures, overview.
86.128 Transmissions.
86.129 Road load power and inertia weight determination.
86.130 Test sequence, general requirements.
86.131 Vehicle preparation.
86.132 Vehicle preconditioning.
86.133 Diurnal breathing loss test.
86.134 Running loss test.
86.135 Dynamometer procedure.
86.136 Engine starting and restarting.
86.137 Dynamometer test runs.
86.138 Hot soak test.
86.139 [Reserved]
86.140 Exhaust sample analysis.
86.141 [Reserved]
86.142 Records required.
86.143 Calculations; evaporative emissions.
86.144 Calculations; exhaust emissions.
86.145 [Reserved]

AUTHORITY: Secs. 202, 206, 207, 208, and 301 (a) of the Clean Air Act, as amended (42 U.S.C. 1857F–1, 1857F–5, 1857F–5a, 1857F–6, 1857g(a))

Subpart B—Emission Regulations for 1977 and Later Model Year New Light Duty Vehicles and New Light Duty Trucks; Test Procedures

§ 86.101–78 General applicability.

(a) The provisions of this subpart are applicable to 1977 and later model year new light duty vehicles and light duty trucks.

(1) Sections 86.101–78 through 86.145–78 apply for 1978 and later model years.

(2) Sections 86.177–1 through 86.177–23 apply for the 1977 model year only.

(b) Provisions of this subpart apply to tests performed by both the Administrator and motor vehicle manufacturers.

§ 86.102–78 Definitions.

The definitions in §§ 86.077–2 and 86.078–2 apply to this subpart.

§ 86.103–78 Abbreviations.

The abbreviations in § 86.078–3 apply to this subpart.

§ 86.104–78 Section numbering, construction.

(a) The model year of initial applicability is indicated by the section number. The two digits following the hyphen designate the first model year for which a section is effective. A section remains effective until superseded.

Example. Section 86.111–78 applies to the 1978 and subsequent model years until superseded. If a § 86.111–81 is promulgated it would take effect beginning with the 1981 model year; § 86.111–78 would apply to model years 1978 through 1980.

(b) Unless indicated, all provisions in this subpart apply to both gasoline and diesel fueled vehicles.

§ 86.105–78 Introduction, structure of subpart.

(a) This subpart describes the equipment required and the procedures to follow in order to perform exhaust and evaporative emission tests on light duty vehicles and light duty trucks. This Subpart A sets forth the testing requirements and test intervals necessary to comply with EPA certification procedures.

(b) Three topics are addressed in this subpart. Sections 86.106 through 86.115 set forth specifications and equipment requirements; §§ 86.116 through 86.126 discuss calibration methods and frequency; test procedures and data requirements are listed (in approximate order of performance) in §§ 86.127 through 86.145.

§ 86.106–78 Equipment required; overview.

(a) This subpart contains procedures for both exhaust and evaporative emissions tests on diesel or gasoline fueled light duty vehicles and light duty trucks. Certain items of equipment are not necessary for a particular test, e.g., evaporative enclosure when testing diesel vehicles. Equipment required and specifications are as follows:

(1) *Evaporative emission tests, gasoline fueled vehicles.* The evaporative emission test is closely related to and connected with the exhaust emission test. All vehicles tested for evaporative emissions must be tested for exhaust emissions. Further, unless the evaporative emission test is waived by the Administrator under § 86.077–26, all gasoline fueled vehicles must undergo both tests. (Diesel vehicles are excluded from the evaporative emission standard.) Section 86.107 specifies the necessary equipment.

(2) *Exhaust emission tests.* All vehicles subject to this subpart are tested for exhaust emissions. Diesel and gasoline fueled vehicles are tested identically with

the exception of hydrocarbon measurements; diesel vehicles require a heated hydrocarbon detector, § 86.109. All gasoline fueled vehicles are either tested for evaporative emissions or undergo a diurnal heat build, diesel vehicles are excluded from this requirement. Equipment necessary and specifications appear in §§ 86.108 through 86.114.

(3) *Fuel, analytical gas, and driving schedule specifications.* Fuel specifications for exhaust and evaporative emission testing and for mileage accumulation for gasoline and diesel fueled vehicles are specified in § 86.113. Analytical gases are specified in § 86.114. The EPA Urban Dynamometer Driving Schedule for use in exhaust testing is specified in § 86.115 and Appendix I.

§ 86.107–78 Sampling and analytical system, evaporative emissions.

(a) Component description (evaporative emissions sampling system). The following components will be used in evaporative emissions sampling systems for testing under this subpart.

(1) *Evaporative emission measurement enclosure.* The enclosure shall be readily sealable, rectangular in shape, with space for personnel access to all sides of the vehicle. When sealed, the enclosure shall be gas tight in accordance with § 86.117. Interior surfaces must be impermeable to hydrocarbons. One surface should be of flexible, impermeable material to allow for minor volume changes, resulting from temperature changes. Wall design should promote maximum dissipation of heat, and if artificial cooling is used, interior surface temperatures shall not be less than 68° F (20° C).

(2) *Evaporative emission hydrocarbon analyzers.* A hydrocarbon analyzer utilizing the hydrogen flame ionization principle (FID) shall be used to monitor the atmosphere within the enclosure. Instrument bypass flow may be returned to the enclosure. The FID shall have a response time to 90 percent of final reading of less than 1.5 s, and be capable of meeting performance requirements expressed as a function of C_{std}; where C_{std} is the specific enclosure hydrocarbon level, in ppm, corresponding to the evaporative emission standard:

(i) Stability of the analyzer shall be better than 0.01 C_{std} ppm at both zero and C_{std}±5 ppm over a 15 minute period on all ranges used;

(ii) Repeatability of the analyzer, expressed as one standard deviation, shall be better than 0.005 C_{std} ppm at both zero and C_{std}±5 ppm on all ranges used.

(3) *Evaporative emission hydrocarbon data recording system.* The electrical output of the FID shall be recorded at least at the initiation and termination of each diurnal or hot soak. The recording may be by means of a strip chart potentiometric recorder, by use of an on-line computer system or other suitable means. In any case, the recording system must have operational chracteristics (signal to noise ratio, speed of response, etc.) equivalent to or better than those of the signal source being recorded, and must provide a permanent record of results. The record shall show a positive indication of the initiation and completion of each diurnal or hot soak along with the time elapsed between initiation and completion of each soak.

(4) *Tank fuel heating system.* The tank fuel heating system shall consist of a heat source and a temperature controller. A typical heat source is a 2000 w heating pad. Other sources may be used as required by circumstances. The temperature controller may be manual, such as a variable voltage transformer, or may be automated. The heating system must not cause hot spots on the tank wetted surface which could cause local overheating of the fuel. Heat must not be applied to the vapor in the tank above the liquid fuel. The temperature controller must be capable of controlling the fuel tank temperature during the diurnal soak to within ±3° F (1.7° C) of the following equation:

$$F = T_o + 0.4\ t$$

or for SI units:

$$C = T_o + (2/9)\ t$$

Where:

F = Temperature in °F
C = Temperature in °C
t = Time since start of test in minutes
T_o = Initial temperature

(5) *Temperature recording system.* Strip chart recorder(s) or automatic data processor shall be used to record enclosure ambient and vehicle fuel tank temperature during the evaporative emissions test. The temperature recorder or data processor shall record each temperature at least once every minute. The recording system shall be capable of resolving time to ±15s and capable of resolving temperature to ±0.75° F (0.42° C). The temperature recording system (recorder and sensor) shall have an accuracy of ±2° F (1.1° C). The recorder (data processor) shall have a time accuracy of ±15s and a precision of ±15s. Two ambient temperature sensors, connected to provide one average output, shall be located in the enclosure. These sensors shall be located at the approximate vertical centerline of each side wall extending 4 inches (nominally) into the enclosure at a height of 3±0.5 ft (0.9±0.2 m). The vehicle fuel tank temperature sensor shall be located in the fuel tank so as to measure the temperature of the prescribed test fuel at the approximate mid-volume of the fuel. Manufacturers shall arrange that vehicles furnished for testing at Federal certification facilities be equipped with iron-constantan Type J thermocouples for measurement of fuel tank temperature.

(6) *Purge blower.* One or more portable or fixed blowers shall be used to purge the enclosure. The blowers shall have sufficient flow capacity to reduce the enclosure hydrocarbon concentration from the test level to the ambient level between tests. Actual flow capacity will depend upon the time available between tests.

(7) *Mixing blower.* One or more small blowers or fans with a total capacity of 200 to 1000 cfm shall be used to mix the contents of the enclosure during evaporative emission testing. No portion of the air stream shall be directed towards the vehicle. Maintenance of uniform concentrations throughout the enclosure is important to the accuracy of the test.

§ 86.108–78 Dynamometer.

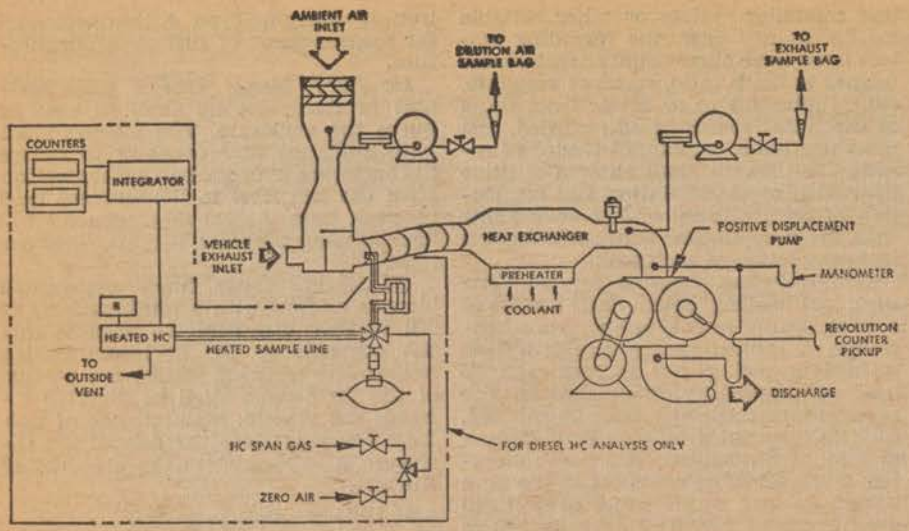
The dynamometer shall have a power absorption unit for simmulation of road load power and flywheels or other means of simulating the inertia weight as specified in § 86.129.

§ 86.109–78 Exhaust gas sampling system.

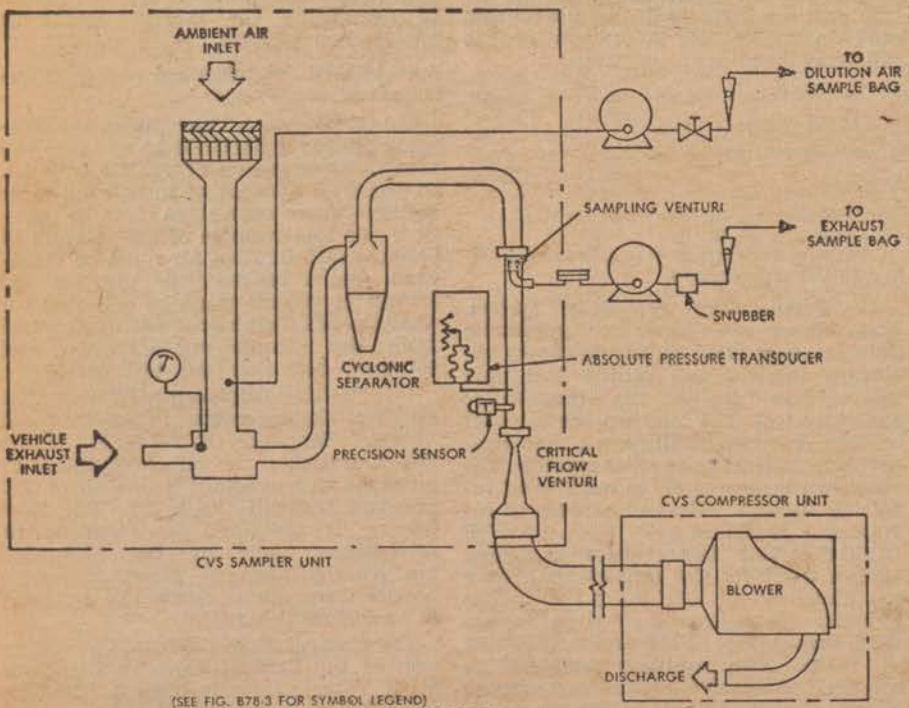
(a) (1) *General.* The exhaust gas sampling system is designed to measure the true mass emissions of vehicle exhaust. In the CVS concept of measuring mass emissions, two conditions must be satisfied; the total volume of the mixture of exhaust and dilution air must be measured, and a continuously proportioned sample of volume must be collected for analysis. Mass emissions are determined from the sample concentration and totalized flow over the test period.

(2) *Positive Displacement Pump.* The Positive Displacement Pump-Constant Volume Sampler (PDP–CVS), Figure B78–1, satisfies the first condition by metering at a constant temperature and pressure through the pump. The total volume is measured by counting the revolutions made by the calibrated positive displacement pump. The proportional sample is achieved by sampling at a constant flow rate.

(3) *Critical Flow Venturi.* The operation of the Critical Flow Venturi-Constant Volume Sample (CFV–CVS), Figure B78–2, is based upon the principles of fluid dynamics associated with critical flow. Proportional sampling throughout temperature excursions is maintained by use of a small CFV in the sample line. The variable mixture flow rate is maintained at sonic velocity, which is directly proportional to the square root of the gas temperature, and is computed continuously. Since the pressure and temperature are the same at both venturi inlets, the sample volume is proportional to the total volume.



(SEE FIG. B78-3 FOR SYMBOL LEGEND)
FIGURE B78-1—EXHAUST GAS SAMPLING SYSTEM (PDP-CVS)



(SEE FIG. B78-3 FOR SYMBOL LEGEND)
FIGURE B78-2—EXHAUST GAS SAMPLING SYSTEM (CFV-CVS)

(4) *Diesel sampling.* Diesel vehicles require a heated flame ionization detector (HFID) for hydrocarbon analysis. The sample must be taken as close as practical to the mixing point of the dilution air and exhaust sample. The HFID, by design, draws its sample at a constant flow rate. Unless compensation for varying flow is made the HFID must be used with a constant flow system to insure a representative sample.

(5) *Other systems.* Other sampling systems may be used if shown to yield equivalent results, and if approved in advance by the Administrator (e.g., a heat exchanger with the CFV–CVS; an electronic flow integrator without a heat exchanger, with the PDP–CVS; or, for diesel HC measurements, an electronic flow compensator with the CFV–CVS).

(b) *Component description, PDP–CVS.* The PDP–CVS, Figure B78–1, consists of a dilution air filter and mixing assembly, heat exchanger, positive displacement pump, sampling system, and associated valves, pressure and temperature sensors. The PDP–CVS shall conform to the following requirements:

(1) Static pressure variations at the tailpipe(s) of the vehicle shall remain within ±5 inches of water (1.2 kPa) of the static pressure variations measured during a dynamometer driving cycle with no connection to the tailpipe(s). (Sampling systems capable of maintaining the static pressure to within ±1 inch of water (0.25 kPa) will be used by the Administrator if a written request substantiates the need for this closer tolerance.)

(2) The gas mixture temperature, measured at a point immediately ahead of the positive displacement pump, shall be within ±10° F (5.6° C) of the designed operating temperature at the start of the test. The gas mixture temperature variation from its value at the start of the test shall be limited to ±10° F (5.6° C) during the entire test. The temperature measuring system shall have an accuracy and precision of ±2° F (1.1° C).

(3) The pressure gauges shall have an accuracy and precision of ±3 mm Hg (0.4 kPa).

(4) The flow capacity of the CVS shall be large enough to eliminate water condensation in the system (300 to 350 cfm, 0.140 to 0.165 m^3/s, is sufficient for most vehicles).

(5) Sample collection bags for dilution air and exhaust samples shall be of sufficient size so as not to impede sample flow.

(c) *Component description, CFV–CVS.* The CFV–CVS, Figure B78–2 consists of a dilution air filter and mixing assembly, cyclone particulate separator, sampling venturi, critical flow venturi, sampling system, and assorted valves, pressure and temperature sensors. The CFV–CVS shall conform to the following requirements:

(1) Static pressure variations at the tailpipe(s) of the vehicle shall remain within ±5 inches of water (1.2 kPa) of the static pressure variations measured during a dynamometer driving cycle with no connection to the tailpipe(s). (Sampling systems capable of maintaining the static pressure to within ±1 inch of water (0.25 kPa) will be used by the Administrator if a written request substantiates the need for this closer tolerance.)

(2) The temperature measuring system shall have an accuracy and precision of ±2° F (1.1° C) and a response time of 0.100 s to 62.5% of a temperature change (as measured in hot silicone oil).

(3) The pressure measuring system shall have an accuracy and precision of ±3 mm Hg (0.4 kPa).

(4) The flow capacity of the CVS shall be large enough to virtually eliminate water condensation in the system (300 to 350 cfm, 0.142 to 0.165 m^3/s, is sufficient for most vehicles).

(5) Sample collection bags for dilution air and exhaust samples shall be of sufficient size so as not to impede sample flow.

§ 86.110–78 [Reserved]

§ 86.111–78 Exhaust gas analytical system.

(a) *Schematic drawings.* Figure B78–3 is a schematic drawing of the exhaust gas analytical system. The schematic of the hydrocarbon analysis train for diesel fueled vehicles is shown as part of Figure B78–1. Since various configurations can produce accurate results, exact conformance with either drawing is not required. Additional components such as instruments, valves, solenoids, pumps and switches may be used to provide addi-

tional information and coordinate the functions of the component systems.

(b) *Major component description.* The analytical system, Figure B78–3, consists of a flame ionization detector (FID) for the determination of hydrocarbons, nondispersive infrared analyzers (NDIR) for the determination of carbon monoxide and carbon dioxide and a chemiluminescence analyzer (CL) for the determination of oxides of nitrogen. A heated flame ionization detector (HFID) is used for the continuous determination of hydrocarbons from diesel fueled vehicles, Figure B78–1. The exhaust gas analytical system shall conform to the following requirements:

(1) The chemiluminescence analyzer requires that the nitrogen dioxide present in the sample be converted to nitric oxide before analysis. Other types of analyzers may be used if shown to yield equivalent results and if approved in advance by the Administrator.

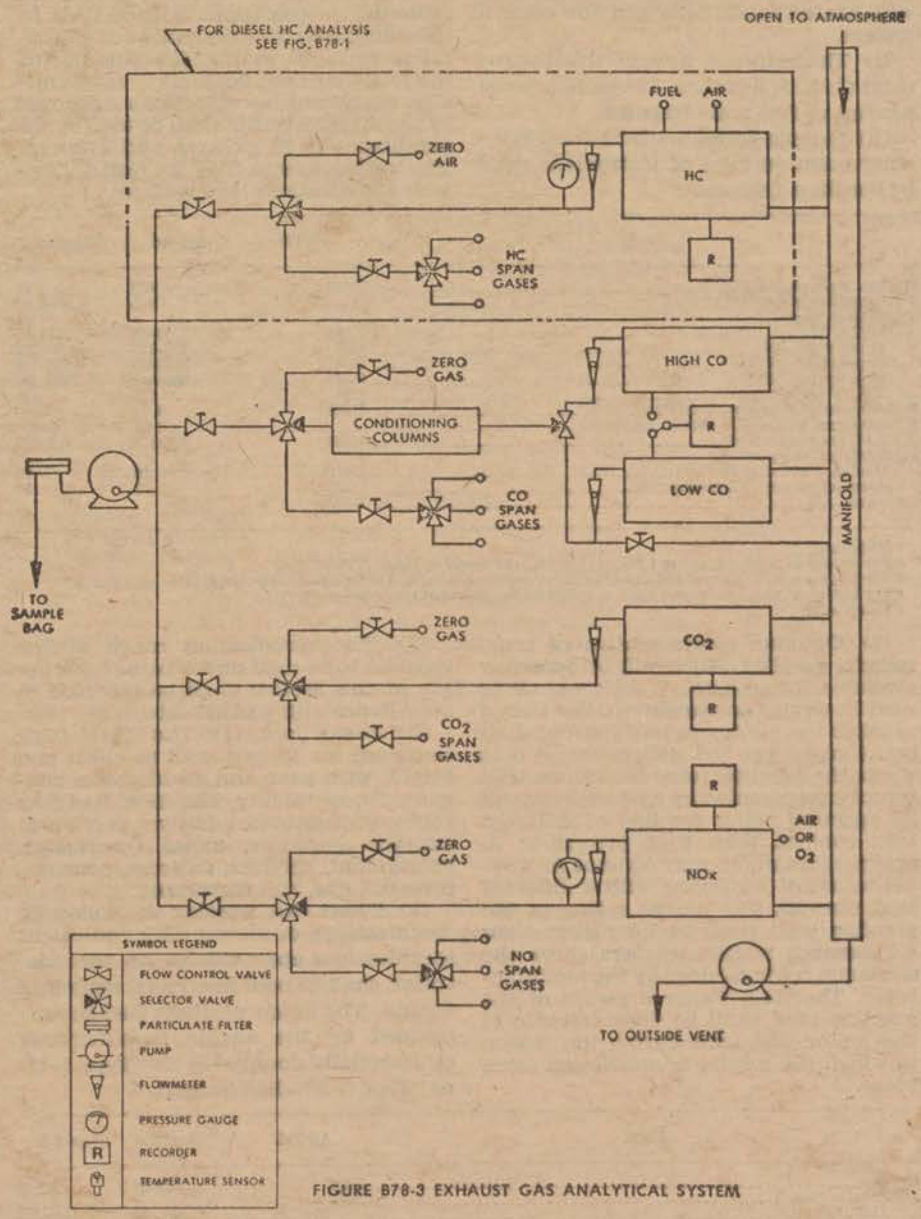


FIGURE B78-3 EXHAUST GAS ANALYTICAL SYSTEM

(2) The carbon monoxide (NDIR) analyzer may require a sample conditioning column containing $CaSO_4$, or indicating silica gel to remove water vapor and containing ascarite to remove carbon dioxide from the CO analysis stream.

(i) If CO instruments which are essentially free of CO_2 and water vapor interference are used, the use of the conditioning column may be deleted, see §§ 86.-122 and 86.144.

(ii) A CO instrument will be considered to be essentially free of CO_2 and water vapor interference if its response to a mixture of 3 percent CO_2 in N_2 which has been bubbled through water at room temperature produces an equivalent CO response, as measured on the most sensi-

tive CO range, which is less than 1 percent of full scale CO concentration on ranges above 300 ppm full scale or less than 3 ppm on ranges below 300 ppm full scale, see § 86.122.

(3) For diesel fueled vehicles a continuous sample shall be measured using a heated analyzer train as shown in Figure B78–1. The train shall include a heated continuous sampling line, a heated particulate filter and a heated hydrocarbon instrument (HFID) complete with heated pump, filter and flow control system.

(i) The response time of this instrument shall be less than 1.5 seconds for 90 percent of full-scale response.

(ii) Sample transport time from sampling point to inlet of instrument shall be less than 4 seconds.

(iii) The sample line and filter shall be heated to a set point ±10° F (±5.6° C) between 300 and 390° F (149 and 199° C).

(c) *Other analyzers and equipment.* Other types of analyzers and equipment may be used if shown to yield equivalent results and if approved in advance by the Administrator.

§ 86.112–78 [Reserved]

§ 86.113–78 Fuel specifications.

(a) *Gasoline.* (1) Gasoline having the following specifications will be used by the Administrator in exhaust and evaporative emission testing. Gasoline having the following specifications or substantially equivalent specifications approved by the Administrator, shall be used by the manufacturer in exhaust and evaporative testing, except that the lead and octane specifications do not apply.

Item	ASTM	Leaded	Unleaded
Octane, research, minimum	D2699	100	96
Pb. (organic), grams/U.S. gallon		[1] 1.4	0.00–0.05
Distillation range:			
IBP [2], °F	D86	75–95	75–95
10 pct point, °F	D86	120–135	120–135
50 pct point, °F	D86	200–230	200–230
90 pct point, °F	D86	300–325	300–325
EP, °F (maximum)	D86	415	415
Sulphur, weight percent, maximum	D1266	0.10	0.10
Phosphorous, grams/U.S. gallon, maximum		0.01	0.005
RVP [3] [4], per square inch	D323	8.7–9.2	8.7–9.2
Hydrocarbon composition:			
Olefins, percent, maximum	D1319	10	10
Aeromatics, percent, maximum	D1319	35	35
Saturates	D1319	[5]	[5]

[1] Minimum.
[2] For testing at altitudes above 1,219 m (4,000 ft) the specified range is 75–105.
[3] For testing which is unrelated to evaporative emission control, the specified range is 8.0–9.2.
[4] For testing at altitudes above 1,219 m (4,000 ft) the specified range is 7.9–9.2.
[5] Remainder.

(2) Gasoline representative of commercial gasoline which will be generally available through retail outlets shall be used in service accumulation. For leaded gasoline the minimum lead content shall be 1.4 grams per U.S. gallon, except that where the Administrator determines that vehicles represented by a test vehicle will be operated using gasoline of different lead content than that prescribed in this paragraph, he may consent in writing to use of a gasoline with a different lead content. The octane rating of the gasoline used shall be no higher than 4.0 research octane numbers above the minimum recommended by the manufacturer. The Reid Vapor Pressure of the gasoline used shall be characteristic of the motor fuel used during the season in which the service accumulation takes place.

(3) The specification range of the gasoline to be used under paragraph (a)(2) of this section shall be reported in accordance with § 86.077–21(b)(3).

(b) *Diesel fuel.* (1) The diesel fuels employed for testing shall be clean and bright, with pour and cloud points adequate for operability. The diesel fuel may contain nonmetallic additives as follows: Centane improver, metal deactivator, antioxidant, dehazer, antirust, pour depressant, dye, and dispersant.

(2) Diesel fuel meeting the following specifications, or substantially equivalent specifications approved by the Administrator, shall be used in exhaust emissions testing. The grade of diesel fuel recommended by the engine manufacturer commercially designated as "Type 1–D" or "Type 2–D", shall be used.

Item	ASTM	Type 1–D	Type 2–D
Cetane	D613	48–54	42–52
Distillation range	D86		
IBP, °F		330–390	340–400
10 pct point, °F		370–430	400–460
50 pct point, °F		410–480	470–540
90 pct point, °F		460–520	550–610
EP, °F		500–560	580–660
Gravity, °API	D287	40–44	33–37
Total sulfur, percent	D129 or D2622	0.05–0.20	0.2–0.5
Hydrocarbon composition	D1319		
Aromatics, percent		8–15	[1] 27
Paraffins, Naphtenes, Olefins		[2]	[2]
Flashpoint, °F (minimum)	D93	120	130
Viscosity, centistokes	D445	1.6–2.0	2.0–3.2

[1] Minimum.
[2] Remainder.

(3) Diesel fuel meeting the following specifications, or substantially equivalent specifications approved by the Administrator, shall be used in service accumulation. The grade of diesel fuel recommended by the engine manufacturer, commercially designated as "Type 1–D" or "Type 2–D", shall be used.

Item	ASTM	Type 1–D	Type 2–D
Cetane	D613	48–54	42–55
Distillation range	D86		
IBP, °F		330–390	340–410
10 pct point, °F		370–430	400–470
50 pct point, °F		410–480	470–540
90 pct point, °F		460–520	550–610
EP, °F		500–560	580–660
Gravity, °API	D287	40–44	33–40
Total sulfur, percent	D129 or D2622	0.05–0.20	0.2–0.5
Flashpoint, °F (minimum)	D93	120	130
Viscosity, centistokes	D445	1.6–2.0	2.0–3.2

(4) Other petroleum distillation fuel specifications:

(i) Other petroleum distillate fuels may be used for testing and service accumulation provided they are commercially available, and

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service, and

(iii) Use of a fuel listed under paragraphs (b)(2) and (b)(3) of this section would have a detrimental effect on emissions or durability, and

(iv) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(5) The specification range of the fuels to be used under paragraphs (b)(2), (b)(3), and (b)(4) of this section shall be reported in accordance with § 86.077–21(b)(3).

§ 86.114–78 Analytical gases.

(a) Analyzer gases.

(1) Gases for the CO and CO_2 analyzers shall be single blends of CO and CO_2 respectively using nitrogen as the diluent.

(2) Gases for the hydrocarbon analyzer shall be single blends of propane using air as the diluent.

(3) Gases for NOx analyzer shall be single blends of NO named as NOx with a maximum NO_2 concentration of 5 percent of the nominal value using nitrogen as the diluent.

(4) Fuel for the evaporative emission enclosure FID shall be a blend of 60 percent helium and 40 percent hydrogen containing less than 1 ppm equivalent carbon response. 98 to 100 percent hydrogen fuel may be used with advance approval by the Administrator.

(5) The allowable zero gas (air or nitrogen) impurity concentrations shall not exceed 1 ppm equivalent carbon response, 1 ppm carbon monoxide, 0.04 percent (400 ppm) carbon dioxide and 0.1 ppm nitric oxide.

(6) "Zero grade air" includes artificial "air" consisting of a blend of nitrogen and oxygen with oxygen concentrations between 18 and 21 mole percent.

(b) Calibration gases should be known to within ±2 percent of the true values.

§ 86.114–79 Analytical gases.

(a) Analyzer gases.

(1) Gases for the CO and CO_2 analyzers shall be single blends of CO and CO_2 respectively using nitrogen as the diluent.

(2) Gases for the hydrocarbon analyzer shall be single blends of propane using air as the diluent.

(3) Gases for NOx analyzer shall be single blends of NO named as NOx, with a maximum NO_2 concentration of 5 percent of the nominal value, using nitrogen as the diluent.

(4) Fuel for the evaporative emission enclosure FID shall be a blend of 40±2% hydrogen with the balance being helium. The mixture shall contain less than 1 ppm equivalent carbon response. 98 to 100 percent hydrogen fuel may be used with advance approval by the Administrator.

(5) The allowable zero gas (air or nitrogen) impurity concentrations shall not exceed 1 ppm equivalent carbon response, 1 ppm carbon monoxide, 0.04 percent (400 ppm) carbon dioxide and 0.1 ppm nitric oxide.

(6) "Zero grade air" includes artificial "air" consisting of a blend of nitrogen and oxygen with oxygen concentrations between 18 and 21 mole percent.

(b) Calibration gases shall be traceable to within 1 percent of NBS gas standards, or other gas standards which have been approved by the Administrator.

(c) Span gases shall be accurate to within 2 percent of true concentration, where true concentration refers to NBS gas standards, or other gas standards which have been approved by the Administrator.

§ 86.115–78 EPA urban dynamometer driving schedule.

(a) The dynamometer driving schedule is listed in Appendix I. The driving schedule is defined by a smooth trace drawn through the specified speed vs. time relationships. It consists of a nonrepetitive series of idle, acceleration, cruise, and deceleration modes of various time sequences and rates.

(b) The speed tolerance at any given time on the dynamometer driving schedule prescribed in Appendix I or as printed on a driver's aid chart approved by the Administrator, when conducted to meet the requirements of § 86.137 is defined by upper and lower limits. The upper limit is 2 mph (3.2 km/h) higher than the highest point on the trace within 1 second of the given time. The lower limit is 2 mph (3.2 km/h) lower than the lowest point on the trace within 1 second of the given time. Speed variations greater than the tolerances (such as may occur during gear changes) are acceptable provided they occur for less than 2 seconds on any occasion. Speeds lower than those prescribed are acceptable provided the vehicle is operated at maximum available power during such occurrences. When conducted to meet the requirements of § 86.128 the speed tolerance shall be as specified above, except that the upper and lower limits shall be 4 mph (6.4 km/h).

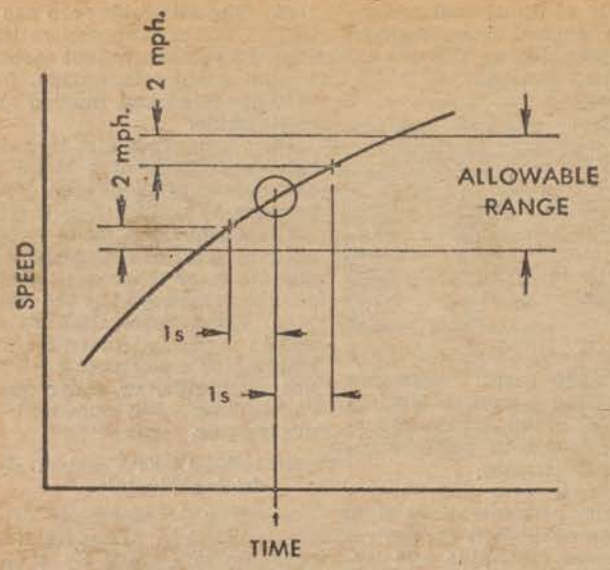


FIGURE B78-4a—DRIVERS TRACE, ALLOWABLE RANGE

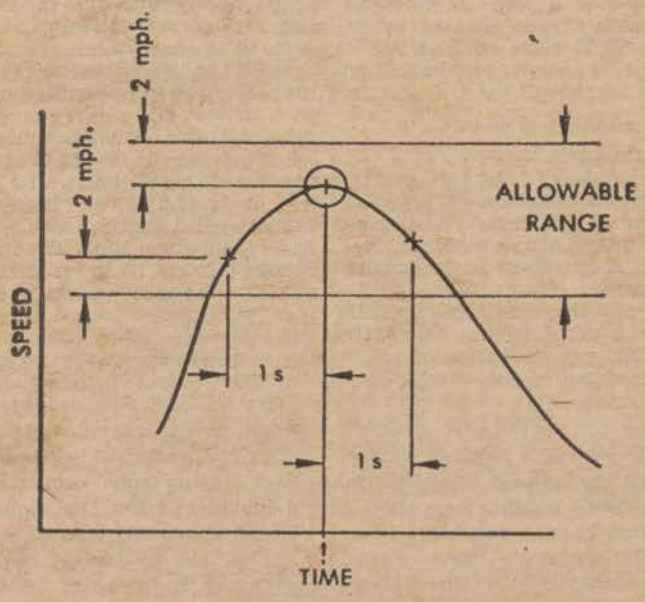


FIGURE B78-4b—DRIVERS TRACE, ALLOWABLE RANGE

(c) Figure B78–4 shows the range of acceptable speed tolerances for typical points. Figure B78–4(a) is typical of portions of the speed curve which are increasing or decreasing throughout the two second time interval. Figure B78–4 (b) is typical of portions of the speed curve which include a maximum or minimum value.

§ 86.116–78 Calibrations, frequency and overview.

(a) Calibrations shall be performed as specified in §§ 86.117 through 86.126.

(b) At least yearly or after any maintenance which could alter background emission levels, enclosure background emission measurements shall be performed.

(c) At least monthly or after any maintenance which could alter calibration, the following calibrations and checks shall be performed:

(1) Calibrate the hydrocarbon analyzers (both evaporative and exhaust instruments), carbon dioxide analyzer, carbon monoxide analyzer, oxides of nitrogen analyzer.

(2) Calibrate the dynamometer. If the dynamometer receives a weekly performance check (and remains within calibration) the monthly calibration need not be performed.

(3) Perform a hydrocarbon retention check and calibration on the evaporative emission enclosure.

(d) At least weekly or after any maintenance which could alter calibration, the following calibrations and checks shall be performed:

(1) Check the oxides of nitrogen converter efficiency, and

(2) Perform a CVS system verification, and

(3) Run a performance check on the dynamometer. This check may be omitted if the dynamometer has been calibrated within the preceding month.

(e) The CVS positive displacement pump or Critical Flow Venturi shall be calibrated following initial installation, major maintenance or as necessary when indicated by the CVS system verification (described in § 86.119).

(f) Sample conditioning columns, if used in the CO analyzer train, should be checked at a frequency consistent with observed column life or when the indicator of the column packing begins to show deterioration.

§ 86.117–78 Evaporative emission enclosure calibrations.

The calibration of the evaporative emission enclosure consists of three parts: Initial and periodic determination of enclosure background emissions; initial determination of enclosure internal volume; and periodic hydrocarbon retention check and calibration.

(a) *Initial and periodic determination of enclosure background emissions.* Prior to its introduction into service, annually thereafter, and after any repair which can affect the enclosure background emissions, the enclosure shall be checked to determine that it does not contain materials which will themselves emit hydrocarbons. Proceed as follows:

(1) Zero and span (calibrate if required) the hydrocarbon analyzer.

(2) Purge the enclosure until a stable background hydrocarbon reading is obtained.

(3) Turn on the mixing blower (if not already on).

(4) Seal enclosure and measure background hydrocarbon concentration, temperature, and barometric pressure. These are the initial readings C_{HCi}, T_i and P_{Bi} for the enclosure background determination.

(5) Allow the enclosure to stand undisturbed without sampling for four hours.

(6) Measure the hydrocarbon concentration on the same FID. This is the final concentration, C_{HCf}. Also measure final temperature and barometric pressure.

(7) Calculate the mass change of hydrocarbons in the enclosure according to the equations in paragraph (d) of this section. The enclosure background emissions shall not be greater than 0.4g for the 4 hours.

(b) *Initial determination of enclosure internal volume.* Prior to its introduction into service the enclosure internal volume shall be determined by the following procedure.

(1) Carefully measure the internal length, width and height of the enclosure, accounting for irregularities (such as braces) and calculate the internal volume.

(2) Perform an enclosure calibration check according to paragraph (c)(1) through (7) of this section.

(3) If the calculated mass does not agree within 2 percent of the injected propane mass, then corrective action is required.

(c) *Hydrocarbon retention check and calibration.* The hydrocarbon retention check provides a check upon the calculated volume and also measures the leak rate. Prior to its introduction into service and at least monthly thereafter the enclosure leak rate shall be determined as follows:

(1) Zero and span (calibrate if required) the hydrocarbon analyzer.

(2) Purge the enclosure until a stable background hydrocarbon reading is obtained.

(3) Turn on the mixing blower (if not already on).

(4) Seal enclosure and measure background hydrocarbon concentration, temperature and barometric pressure. These are the initial readings C_{HCi}, T_i and P_{Bi} for the enclosure calibration.

(5) Inject into the enclosure a known quantity of pure propane. (4 g is a convenient quantity.) The propane may be measured by volume flow or by mass measurement. The method used to measure the propane shall have an accuracy and precision of ±0.5% of the measured value.

(6) After a minimum of five minutes of mixing, analyze the enclosure atmosphere for hydrocarbon content, also record temperature and pressure. These measurements are the final readings for the enclosure calibration as well as the initial readings for the retention check.

(7) To verify the enclosure calibration calculate the mass of propane using the measurements taken in steps (4) and (6). See paragraph (d) of this section. This quantity must be within ±2% of that measured in step 5 above.

(8) Allow the enclosure to remain sealed for a minimum of four hours without sampling and with the mixing blower operating. After four hours analyze the enclosure atmosphere for hydrocarbon content; record temperature and barometric pressure. These are the final readings for the hydrocarbon retention check.

(9) Calculate, using the equations in paragraph (d) and the readings taken in (8), the hydrocarbon mass. It may not differ by more than 4 percent of the value in step (6).

(d) *Calculations.* The calculation of net hydrocarbon mass change is used to determine enclosure background and leak rate. It is also used to check the enclosure volume measurements. The mass change is calculated from the initial and final readings of hydrocarbon concentration, temperature and pressure according to the following equation:

$$M_{HC} = kV \times 10^{-4}\left[\frac{C_{HCf}P_{Bf}}{T_f} - \frac{C_{HCi}P_{Bi}}{T_i}\right]$$

Where:

M_{HC} = Hydrocarbon mass change, g.
C_{HC} = Hydrocarbon concentration as ppm carbon.
V = Enclosure volume, ft³ (m³), as measured in paragraph (b)(1) of this section.
P_B = Barometric pressure, in. Hg (kPa).
T = Enclosure ambient temperature, R(K).
k = 3.05.

for SI units,

k = 17.60.
i = Indicates initial reading.
f = Indicates final reading.

NOTE: Hydrocarbon concentration is stated in ppm carbon, that is, ppm propane x3. Expressions in parenthesis are for SI units.

§ 86.118–78 Dynamometer calibration.

(a) The dynamometer shall be calibrated at least one each month or performance verified at least one each week and then calibrated as required. The calibration shall consist of the manufacturer's recommended calibration procedure plus a determination of the dynamometer frictional power absorption at 50.0 mph (80.5 km/h). One method for determining dynamometer frictional power absorption at 50.0 mph (80.5 km/h) is described below, other methods may be used if shown to yield equivalent results. The measured absorbed road power includes the dynamometer friction as well as the power absorbed by the power absorption unit. The dynamometer is driven above the test speed range. The device used to drive the dynamometer is then disengaged from the dynamometer and the roll(s) is (are) allowed to coast down. The kinetic energy of the system is dissipated by the dynamometer. This method neglects the variations in roll bearing friction due to the drive axle weight of the vehicle. The inertia of the free (rear) roll may be neglected in the case of dynamometers with paired rolls.

(1) Devise a method to determine the speed of the drive roll if it is not already measured. A fifth wheel, revolution pickup, or other suitable means may be used.

(2) Place a vehicle on the dynamometer or devise another method of driving the dynamometer.

(3) Engage the inertial flywheel or other inertial simulation system for the most common vehicle mass category for which the dynamometer is used. In addition other vehicle mass categories may be calibrated, if desired.

(4) Drive the dynamometer up to 50.0 mph (80.5 km/h).

(5) Record indicated road power.

(6) Drive the dynamometer up to 60.0 mph (96.9 km/h).

(7) Disengage the device used to drive the dynamometer.

(8) Record the time for the dynamometer drive roll to coastdown from 55.0 mph (88.5 km/h) to 45 mph (72.4 km/h).

(9) Adjust the power absorption unit to a different level.

(10) Repeat steps 4 to 9 above sufficient times to cover the range of road power used.

(11) Calculate absorbed road power (HP_d). See paragraph (c) of this section.

(12) Plot indicated road load power at 50 mph (80.5 km/h) versus road load power at 50 mph (80.5 km/h) as shown in Figure B78–5.

(b) The performance check consists of conducting a dynamometer coastdown at one or more inertia-horsepower settings and comparing the coastdown time to that recorded during the last calibration. If the coastdown times differ by more than 1 s, a new calibration is required.

(c) *Calculations.* The road load power actually absorbed by the dynamometer is calculated from the following equation:

$$HP_d = (1/2)\ (W/32.2)\ (V_1^2 - V_2^2)/550t$$

Where:

HP_d = Power, horsepower (kilowatts)
W = Equivalent inertia, lb (Kg)
V_1 = Initial Velocity, ft/s (m/s)
(55 mph = 88.5 km/h = 80.67 ft/s = 24.58 m/s)
V_2 = Final Velocity, ft/s (m/s)
(45 mph = 72.4 km/h = 66 ft/s = 20.11 m/s)

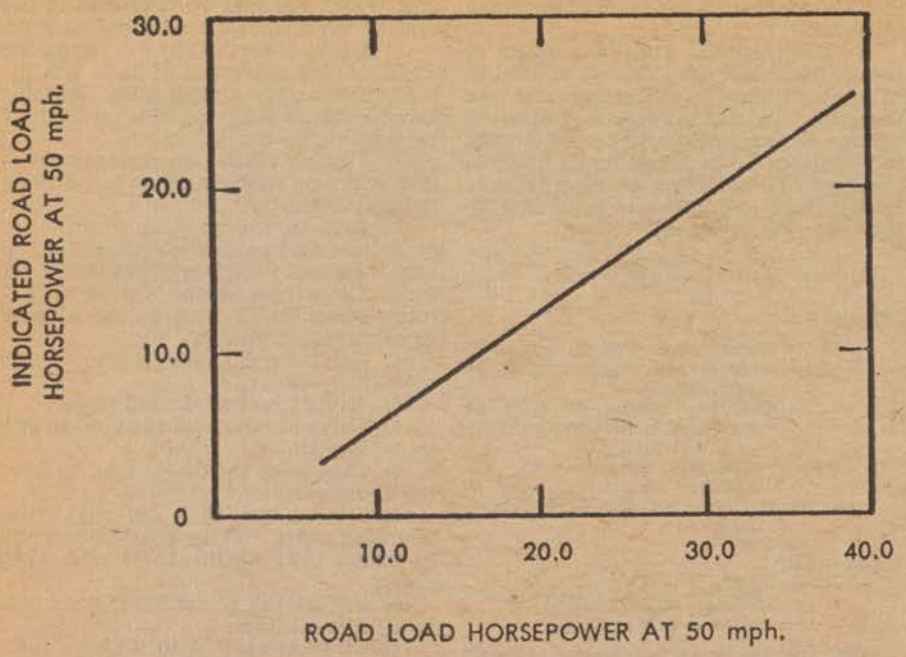


FIGURE B78-5—ROAD LOAD HORSEPOWER, ACTUAL VS. INDICATED

t=elapsed time for rolls to coast from 55 mph to 45 mph (88.5 to 72.4 km/h)

(Expressions in parenthesis are for SI units.) When the coastdown is from 55 to 45 mph (88.5 to 72.4 km/h) the above equation reduces to:

$HP_d = 0.06073\ (W/t)$
for SI units,
$HP_d = 0.09984\ (W/t)$

§ 86.119–78 CVS calibration.

The CVS (Constant Volume Sampler) is calibrated using an accurate flowmeter and restrictor valve. Measurements of various parameters are made and related to flow through the unit. Procedures used by EPA for both PDP (Positive Displacement Pump) and CFV (Critical Flow Venturi) are outlined below. Other procedures yielding equivalent results may be used if approved in advance by the Administrator. After the calibration curve has been obtained, verification of the entire system can be performed by injecting a known mass of gas into the system and comparing the mass indicated by the system to the true mass injected. An indicated error does not necessarily mean that the calibration is wrong, since other factors can influence the accuracy of the system, e.g. analyzer calibration. A verification procedure is found in paragraph (c) of this section.

(a) *PDP calibration.* (1) The following calibration procedure outlines the equipment, the test configuration, and the various parameters which must be measured to establish the flow rate of the constant volume sampler pump. All the parameters related to the pump are simultaneously measured with the parameters related to a flowmeter which is connected in series with the pump. The calculated flow rate ft^3/min. (at pump inlet absolute pressure and temperature) can then be plotted versus a correlation function which is the value on a specific combination of pump parameters. The linear equation which relates the pump flow and the correlation function is then determined. In the event that a CVS has a multiple speed drive, a calibration for each range used must be performed.

(2) This calibration procedure is based on the measurement of the absolute values of the pump and flowmeter parameters that relate the flow rate at each point. Three conditions must be maintained to assure the accuracy and integrity of the calibration curve. First, the pump pressures should be measured at taps on the pump rather than at the external piping on the pump inlet and outlet. Pressure taps that are mounted at the top center and bottom center of the pump drive headplate are exposed to the actual pump cavity pressures, and therefore reflect the absolute pressure differentials. Secondly, temperature stability must be maintained during the calibration. The laminar flowmeter is sensitive to inlet temperature oscillations which cause the data points to be scattered. Gradual changes (±2° F (1.1° C)) in temperature are acceptable as long as they occur over a period of several minutes. Finally, all connections between the flowmeter and the CVS pump must be absolutely void of any leakage.

(3) During an exhaust emission test the measurement of these same pump parameters enables the user to calculate the flow rate from the calibration equation.

(4) Connect a system as shown in Figure B78–6. Although particular types of equipment are shown, other configurations that yield equivalent results may be used if approved in advance by the Administrator. For the system indicated, the following data with given accuracy are required:

CALIBRATION DATA MEASUREMENTS

Parameter	Symbol	Units	Tolerances
Barometric pressure (corrected)	P_B	Inches Hg (kPa).	±.01 in Hg (±.034 kPa).
Ambient temperature	T_A	°F (°C).	±.5°F (±.28°C).
Air temperature into LFE	ETI	°F (°C).	±.25°F (±.14°C).
Pressure depression upstream of LFE	EPI	Inches H_2O (kPa).	±.05 in H_2O (±.012 kPa).
Pressure drop across the LFE matrix	EDP	Inches H_2O (kPa).	±.005 in H_2O (±.001 kPa).
Air temperature at CVS pump inlet	PTI	°F (°C).	±.5°F (±.28°C).
Pressure depression at CVS pump inlet	PPI	Inches fluid (kPa).	±.05 in fluid (±.022 kPa).
Specific gravity of manometer fluid (1.75 oil).	Sp. Gr		
Pressure head at CVS pump outlet	PPO	Inches fluid (kPa).	±.05 in fluid (±.022 kPa).
Air temperature at CVS pump outlet (optional).	PTO	°F (°C).	±.5°F (±.28°C).
Pump revolutions during test period	N	Revs.	±1 Rev.
Elapsed time for test period	t	s.	±.05 s.

(5) After the system has been connected as shown in Figure B78–6, set the variable restrictor in the wide open position and run the CVS pump for twenty minutes. Record the calibration data.

(6) Reset the restrictor valve to a more restricted condition in an increment of pump inlet depression (about 4'' H_2O (1.0 kPa) that will yield a minimum of six data points for the total calibration. Allow the system to stabilize for 3 minutes and repeat the data acquisition.

(7) Data analysis:

(i) The air flow rate, Qs, at each test point is calculated in standard cubic feet per minute from the flowmeter data using the manufacturer's prescribed method.

(ii) The air flow rate is then converted to pump flow, V_o, in cubic feet per revolution at absolute pump inlet temperature and pressure.

$$V_o = \frac{Qs}{n} \times \frac{T_p}{528} \times \frac{29.92}{P_p}$$

Where:

V_o = Pump flow, ft^3/revolution (m^3/revolution) at T_p, P_p

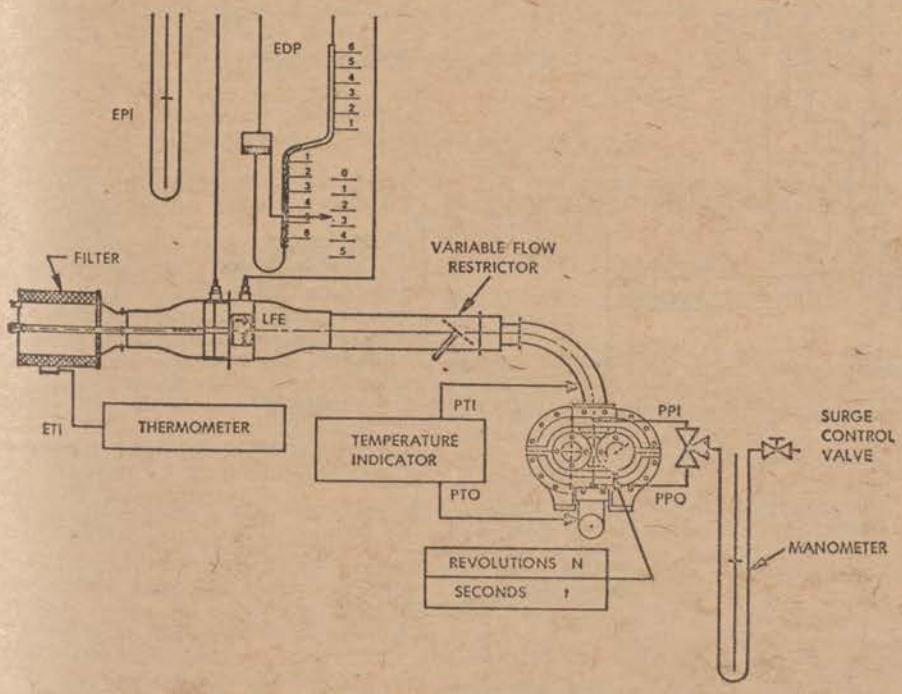


FIGURE B78-6—PDP-CVS CALIBRATION CONFIGURATION

Qs = Meter air flow rate in standard cubic feet per minute, standard conditions are 68° F, 29.92 in. Hg (20° C, 101.3 kPa).

n = Pump speed in revolutions per minute.

T_p = Pump inlet temperature, R(K) = PTI + 460

for SI units, T_p = PTI + 273

P_p = Absolute pump inlet pressure, in. Hg (kPa) = P_B − PPI (SP. GR./13.57)

for SI units, $P_p = P_B - PPI$

Where:

P_B = barometric pressure, in. Hg (kPa)

PPI = Pump inlet depression, in. fluid (kPa)

SP. GR. = Specific gravity of manometer fluid relative to water.

(iii) The correlation function at each test point is then calculated from the calibration data:

$$X_o = \frac{1}{n}\sqrt{\frac{\Delta P_p}{P_e}}$$

Where:

X_o = correlation function.

ΔP_p = The pressure differential from pump inlet to pump outlet, in. Hg (kPa) = $P_e - P_p$

P_e = Absolute pump outlet pressure, in. Hg (kPa) = P_B + PPO (SP. GR./13.57)

for SI units, $P_e = P_B + PPO$

Where:

PPO = Pressure head at pump outlet, in. fluid (kPa)

(iv) A linear least squares fit is performed to generate the calibration equations which have the forms:

$V_o = D_o - M(X_o)$

$n = A - B(\Delta P_p)$

D_o, M, A, and B are the slope-intercept constants describing the lines.

(8) A CVS system that has multiple speeds should be calibrated on each speed used. The calibration curves generated for the ranges will be approximately parallel and the intercept values, D_o, will increase as the pump flow range decreases.

(9) If the calibration has been performed carefully, the calculated values from the equation will be within ±0.50% of the measured value of V_o. Values of M will vary from one pump to another, but values of D_o for pumps of the same make, model, and range should agree within ±3% of each other. Particulate influx from use will cause the pump slip to decrease as reflected by lower values for M. Calibrations should be performed at pump start-up and after major maintenance to assure the stability of the pump slip rate. Analysis of mass injection data will also reflect pump slip stability.

(b) *CFV calibration.* (1) Calibration of the Critical Flow Venturi (CFV) is based upon the flow equation for a crit-

ical venturi. Gas flow is a function of inlet pressure and temperature:

$$Q_s = \frac{K_v P}{\sqrt{T}}$$

Where:

Q_s = Flow
K_v = Calibration coefficient
P = Absolute pressure
T = Absolute temperature

The calibration procedure described below establishes the value of the calibration coefficient at measured values of pressure, temperature and air flow.

(2) The manufacturer's recommended procedure shall be followed by calibrating electronic portions of the CFV.

(3) Measurements necessary for flow calibration are as follows:

CALIBRATION DATA MEASUREMENTS

Parameter	Symbol	Units	Tolerances
Barometric pressure (corrected)	P_B	Inches Hg (kPa)	±.01 in Hg (±.034 kPa).
Air temperature, flowmeter	ETI	°F (°C).	±.25°F (±.14°C).
Pressure depression upstream of LFE	EPI	Inches H_2O (kPa).	±.05 in H_2O (±.012 kPa).
Pressure drop across LFE matrix	EDP	Inches H_2O (kPa).	±.005 in H_2O (±.001 kPa).
Air flow	Q_s	Ft^3/min. (m^3/min,)	±.5 pct.
CFV inlet depression	PPI	Inches fluid (kPa).	±.05 in fluid (±.022 kPa).
Temperature at venturi inlet	T_v	°F (°C).	±.5°F (±.28°C).
Specific gravity of manometer fluid (1.75 oil).	Sp. Gr.	----------	

(4) Set up equipment as shown in Figure B78–7 and check for leaks. Any leaks between the flow measuring device and the critical flow venturi will seriously affect the accuracy of the calibration.

(5) Set the variable flow restrictor to the open position, start the blower and allow the system to stabilize. Record data from all instruments.

(6) Vary the flow restrictor and make at least 8 readings across the critical flow range of the venturi.

(7) Data analysis: The data recorded during the calibration are to be used in the following calculations:

(i) The air flow rate, Qs, at each test point is calculated in standard cubic feet per minute from the flow meter data using the manufacturer's prescribed method.

(ii) Calculate values of the calibration coefficient for each test point:

$$K_v = \frac{Q_s \sqrt{T_v}}{P_s}$$

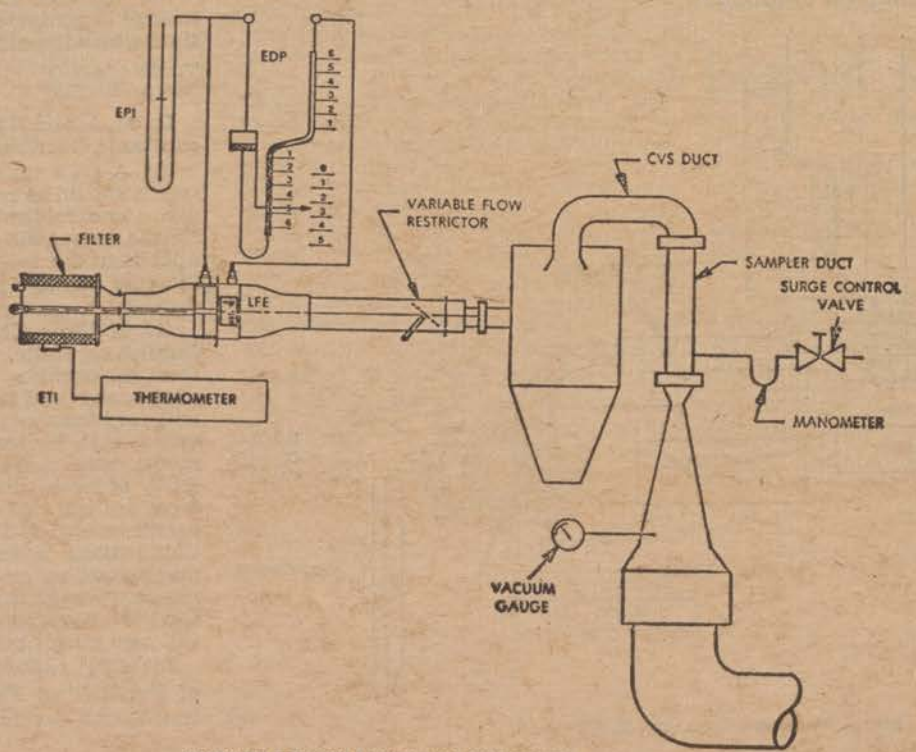


FIGURE B78-7 CFV-CVS CALIBRATION CONFIGURATION

Where:

Q_s=Flow rate in standard cubic feet per minute, standard conditions are 68° F, 29.92 in. Hg (20° C, 101.3 kPa).
T_v=Temperature at venturi inlet, $R(K)$.
P_v=Pressure at venturi inlet, mm Hg (kPa) $=P_B-PPI$ (SP. GR./13.57).

for SI units $P_v=P_B-PPI$.

Where:

PPI=Venturi inlet pressure depression, in. fluid (kPa).

SP. GR.=Specific gravity of manometer fluid, relative to water.

(iii) Plot K_v as a function of venturi inlet pressure. For sonic flow K_v will have a relatively constant value. As pressure decreases (vacuum increases) the venturi becomes unchocked and K_v decreases. See Figure B78–8.

(iv) For a minimum of 8 points in the critical region calculate an average K_v and the standard deviation.

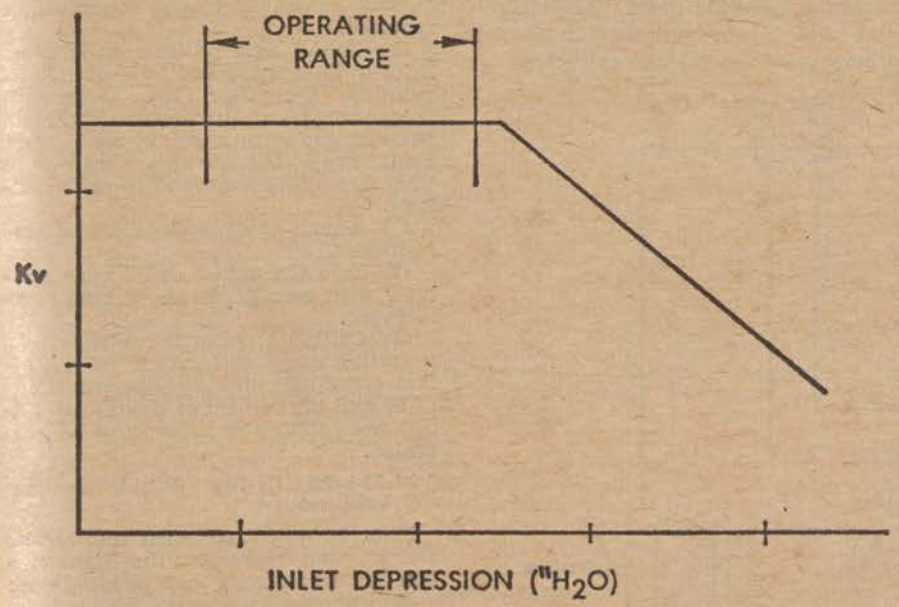


FIGURE B78-8—SONIC FLOW CHOKING

(v) If the standard deviation exceeds 0.3 percent of the average Kv take corrective action.

(c) *CVS System Verification.* The following "gravimetric" technique can be used to verify that the CVS and analytical instruments can accurately measure a mass of gas that has been injected into the system. (Verification can also be accomplished by constant flow metering using critical flow orifice devices.)

(1) Obtain a small cylinder that has been charged with pure propane or carbon monoxide gas (caution—carbon monoxide is poisonous).

(2) Determine a reference cylinder weight to the nearest 0.01 grams.

(3) Operate the CVS in the normal manner and release a quantity of pure propane or carbon monoxide into the system during the sampling period (approximately 5 minutes).

(4) The calculations of § 86.144 are performed in the normal way except, in the case of propane. The density of propane (17.30 g/ft³/carbon atom (0.6109 kg/m³/carbon atom)) is used in place of the density of exhaust hydrocarbons. In the case of carbon monoxide, the density of 32.97 g/ft³ (1.164 kg/m³) is used.

(5) The gravimetric mass is subtracted from the CVS measured mass and then divided by the gravimetric mass to determine the percent accuracy of the system.

(6) The cause for any discrepancy greater than ±2% percent must be found and corrected.

§ 86.120–78 [Reserved]

§ 86.121–78 Hydrocarbon analyzer calibration.

The FID hydrocarbon analyzer shall receive the following initial and periodic calibration. The HFID shall be operated to a set point ±10° F (±5.5° C) between 300 and 390° F (149 and 199° C).

(a) Initial and periodic optimization of detector response. Prior to its introduction into service and at least annually thereafter the FID hydrocarbon analyzer shall be adjusted for optimum hydrocarbon response. Alternate methods yielding equivalent results may be used, if approved in advance by the Administrator.

(1) Follow the manufacturer's instructions for instrument startup and basic operating adjustment using the appropriate fuel and zero grade air.

(2) Optimize on the most common operating range. Introduce into the analyzer, a propane in air mixture with a propane concentration equal to approximately 90 percent of the most common operating range.

(3) Select an operating fuel flow rate that will give near maximum response and least variation in response with minor fuel flow variations.

(4) To determine the optimum air flow, use the fuel flow setting determined above and vary air flow.

(5) After the optimum flow rates have been determined, they are recorded for future reference.

(b) Initial and periodic calibration. Prior to its introduction into service and monthly thereafter the FID hydrocarbon analyzer shall be calibrated on all normally used instrument ranges. Use the same flow rate as when analyzing samples.

(1) Adjust analyzer to optimize performance.

(2) Zero the hydrocarbon analyzer with zero grade air.

(3) Calibrate on each normally used operating range with propane in air calibration gases having nominal concentrations of 50 and 100 percent of that range. Additional calibration points may be generated.

§ 86.122–78 Carbon monoxide analyzer calibration.

The NDIR carbon monoxide analyzer shall receive the following initial and periodic calibrations:

(a) *Initial and periodic interference check.* Prior to its introduction into service and annually thereafter the NDIR carbon monoxide analyzer shall be checked for response to water vapor and CO_2:

(1) Follow the manufacturer's instructions for instrument startup and operation. Adjust the analyzer to optimize performance on the most sensitive range to be used.

(2) Zero the carbon monoxide analyzer with either zero grade air or zero grade nitrogen.

(3) Bubble a mixture of 3 percent CO_2 in N_2 through water at room temperature and record analyzer response.

(4) An analyzer response of more than 1 percent of full scale for ranges above 300 ppm full scale or of more than 3 ppm on ranges below 300 ppm full scale will require corrective action. (Use of conditioning columns is one form of corrective action which may be taken.)

(b) *Initial and periodic calibration.* Prior to its introduction into service and monthly thereafter the NDIR carbon monoxide analyzer shall be calibrated.

(1) Adjust the analyzer to optimize performance.

(2) Zero the carbon monoxide analyzer with either zero grade air or zero grade nitrogen.

(3) Calibrate on each normally used operating range with carbon monoxide in N_2 calibration gases having nominal concentrations of 15, 30, 45, 60, 75 and 90 percent of that range. Additional calibration points may be generated. For each range calibrated, if the deviation from a least-squares best-fit straight line is 2 percent or less of the value at each data point, concentration values may be calculated by use of a single calibration factor for that range. If the deviation exceeds 2 percent at any point, the best-fit non-linear equation which represents the data to within 2 percent of each test point shall be used to determine concentration.

§ 86.123–78 Oxides of nitrogen analyzer calibration.

The chemiluminescent oxides of nitrogen analyzer shall receive the following initial and periodic calibration.

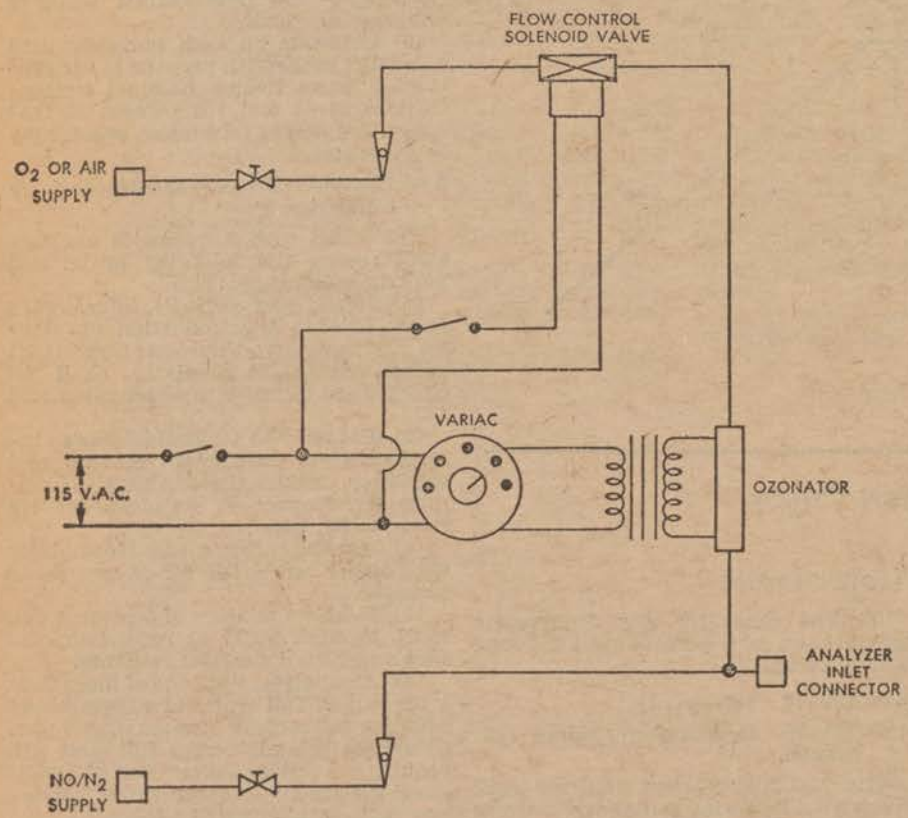
(a) Prior to its introduction into service and weekly thereafter the chemiluminescent oxides of nitrogen analyzer shall be checked for NO_2 to NO converter efficiency. Figure B78–9 is a reference for the following steps:

(1) Follow the manufacturer's instructions for instrument startup and operation. Adjust the analyzer to optimize performance.

(2) Zero the oxides of nitrogen analyzer with zero grade air or zero grade nitrogen.

(3) Connect the outlet of the NOx generator to the sample inlet of the oxides of nitrogen analyzer which has been set to the most common operating range.

(4) Introduce into the NOx generator analyzer-system an NO in nitrogen (N_2) mixture with a NO concentration equal to approximately 80 percent of the most common operating range. The NO_2 content of the gas mixture shall be less than 5 percent of the NO concentration.



(SEE FIG B78-3 FOR SYMBOL LEGEND)
FIGURE B78-9—NOx CONVERTER EFFICIENCY DETECTOR

(5) With the oxides of nitrogen analyzer in the NO mode, record the concentration of NO indicated by the analyzer.

(6) Turn on the NOx generator O_2 (or air) supply and adjust the O_2 (or air) flow rate so that the NO indicated by the analyzer is about 10 percent less than indicated in step 5. Record the concentration of NO in this NO+O_2 mixture.

(7) Switch the NOx generator to the generation mode and adjust the generation rate so that the NO measured on the analyzer is 20 percent of that measured in step 5. There must be at least 10 percent unreacted NO at this point. Record the concentration of residual NO.

(8) Switch the oxides of nitrogen analyzer to the NOx mode and measure total NOx. Record this value.

(9) Switch off the NOx generation but maintain gas flow through the system. The oxides of nitrogen analyzer will indicate the NOx in the NO+O_2 mixture. Record this value.

(10) Turn off the NOx generator O_2 (or air) supply. The analyzer will now indicate the NOx in the original NO in N_2 mixture. This value should be no more than 5 percent above the value indicated in step 4.

(11) Calculate the efficiency of the NOx converted by substituting the concentrations obtained into the following equation:

$$\text{Percent Eff.} = \left(1 + \frac{a-b}{c-d}\right) \times 100$$

where a=concentration obtained in step 8.
b=concentration obtained in step 9.
c=concentration obtained in step 6.
d=concentration obtained in step 7.

If converter efficiency is not greater than 90 percent corrective action will be required.

(b) Initial and periodic calibration. Prior to its introduction into service and monthly thereafter the chemiluminescent oxides of nitrogen analyzer shall be calibrated on all normally used instrument ranges. Use the same flow rate as when analyzing samples. Proceed as follows:

(1) Adjust analyzer to optimize performance.

(2) Zero the oxides of nitrogen analyzer with zero grade air or zero grade nitrogen.

(3) Calibrate on each normally used operating range with NO in N_2 calibration gases with nominal concentrations of 50 and 100 percent of that range. Additional calibration points may be generated.

§ 86.124–78 Carbon dioxide analyzer calibration.

Prior to its introduction into service and monthly thereafter the NDIR carbon dioxide analyzer shall be calibrated:

(a) Follow the manufacturer's instructions for instrument startup and operation. Adjust the analyzer to optimize performance.

(b) Zero the carbon dioxide analyzer with either zero grade air or zero grade nitrogen.

(c) Calibrate on each normally used operating range with carbon dioxide in N_2 calibration gases with nominal concentrations of 15, 30, 45, 60, 75 and 90 percent of that range. Additional calibration points may be generated. For each range calibrated, if the deviation from a least-squares best-fit straight line is 2 percent or less of the value at each data point, concentration values may be calculated by use of a single calibration factor for that range. If the deviation exceeds 2 percent at any point, the best-fit non-linear equation which represents the data to within 2 percent of each test point shall be used to determine concentration.

§ 86.125–78 [Reserved]

§ 86.126–78 Calibration of other equipment.

Other test equipment used for testing shall be calibrated as often as required by the manufacturer or as necessary according to good practice.

§ 86.127–78 Test procedures, overview.

The procedures described in this and subsequent sections are used to determine

the conformity of vehicles with the standards set forth in Subpart A for light duty vehicles and light duty trucks.

(a) The overall test consists of prescribed sequences of fueling, parking and operating conditions. Vehicles are either tested for only exhaust emissions or are tested for exhaust and evaporative emissions. The evaporative portion of the test procedure occurs before and after the exhaust emission test, and, in some cases, during the exhaust emission test.

(b) The exhaust emission test is designed to determine hydrocarbon, carbon monoxide, and oxides of nitrogen mass emissions while simulating an average trip in an urban area of 7.5 miles (12.1 km). The test consists of engine startups and vehicle operation on a chassis dynamometer, through a specified driving schedule. A proportional part of the diluted exhaust emissions is collected continuously for subsequent analysis, using a constant volume (variable dilution) sampler (Diesel dilute exhaust is continuously analyzed for hydrocarbons using a heated sample line and analyzer).

(c) The evaporative emission test (gasoline fueled vehicles only) is designed to determine hydrocarbon evaporative emissions as a consequence of diurnal temperature fluctuation, urban driving, and hot soaks during parking. It is associated with a series of events representative of a motor vehicle's operation, which result in hydrocarbon vapor losses. The test procedure is designed to measure:

(1) Diurnal breathing losses resulting from daily temperature changes, measured by the enclosure technique;

(2) Running losses from suspected sources (if indicated by engineering analysis or vehicle inspection) resulting from a simulated trip on a chassis dynamometer, measured by carbon traps; and

(3) Hot soak losses which result when the vehicle is parked and the hot engine is turned off, measured by the enclosure technique.

(d) Except in cases of component malfunction or failure, all emission control systems installed on or incorporated in a new motor vehicle shall be functioning during all procedures in this subpart. Maintenance to correct component malfunction or failure shall be authorized in accordance with § 86.077.

§ 86.128–78 Transmissions.

(a) All test conditions shall be run with automatic and automatic stick shift transmissions in "Drive" (highest gear); manual transmissions shall be run in highest gear, except as noted. Automatic stick-shift transmissions may be shifted as manual transmissions if requested by the manufacturer.

(b) Cars equipped with free-wheeling or overdrive units shall be tested with these units locked out of operation.

(c) Idle modes shall be run with automatic transmissions in "Drive" and the wheels braked, manual transmissions shall be in gear with the clutch disengaged; except first idle, see §§ 86.136 and 86.137.

(d) The vehicle shall be driven with minimum accelerator pedal movement to maintain the desired speed.

(e) Acceleration modes shall be driven smoothly. Automatic transmissions shall shift automatically through the normal sequence of gears; manual transmissions shall be shifted as recommended by the manufacturer with the operator releasing the accelerator pedal during each shift and accomplishing the shift with minimum time. If the vehicle cannot accelerate at the specified rate, the vehicle shall be operated with the accelerator pedal fully depressed until the vehicle speed reaches the value prescribed for that time in the driving schedule.

(f) The deceleration modes shall be run in gear using brakes or accelerator pedal as necessary to maintain the desired speed. Manual transmission vehicles shall have the clutch engaged and shall not change gears from the previous mode. For those modes which decelerate to zero, manual transmission clutches shall be depressed when the speed drops below 15 mph (24.14 km/h), when engine roughness is evident, or when engine stalling is imminent.

(g) Manual transmissions will be down shifted at the beginning of or during a power mode if recommended by the manufacturer or if the engine obviously is lugging.

(h) If shift speeds are not recommended by the manufacturer, manual transmission vehicles shall be shifted from first to second gear at 15 mph (24.14 km/h), from second to third gear at 25 mph (40.23 km/h), and, if so equipped, from third to fourth gear at 40 mph (64.37 km/h). Fifth gear, if so equipped, may be used at the manufacturer's option.

(i) If a four- or five-speed manual transmission has a first gear ratio in excess of 5:1, follow the procedure for three- or four-speed vehicles as if the first gear did not exist.

§ 86.129–78 Road load power and inertia weight determination.

(a) Flywheels, electrical or other means of simulating inertia as shown in the following table shall be used. If the equivalent inertia specified is not available on the dynamometer being used, the next higher equivalent inertia (not to exceed 250 lbs) available shall be used.

Loaded vehicle weight (pounds)	Equivalent inertia weight (pounds)	Road load power at 50 mph (horsepower)
Up to 1,125	1,000	5.9
1,126 to 1,375	1,250	6.5
1,376 to 1,625	1,500	7.1
1,626 to 1,875	1,750	7.7
1,876 to 2,125	2,000	8.3
2,126 to 2,375	2,250	8.8
2,376 to 2,625	2,500	9.4
2,626 to 2,875	2,750	9.9
2,876 to 3,250	3,000	10.3
3,251 to 3,750	3,500	11.2
3,751 to 4,250	4,000	12.0
4,251 to 4,750	4,500	12.7
4,751 to 5,250	5,000	13.4
5,251 to 5,750	5,500	13.9
5,751 to above	5,500	14.4

(b) *Power absorption unit adjustment.* (1) The power absorption unit shall be adjusted to reproduce road load power at 50 mph true speed. The indicated road load power setting shall take into account the dynamometer friction. The relationship between road load (absorbed) power and indicated road load power for a particular dynamometer shall be determined by the procedure outlined in § 86.118 or other suitable means.

(2) The road load power listed in the table above shall be used or the vehicle manufacturer may determine the road load power by an alternate procedure requested by the manufacturer and approved in advance by the Administrator, or the vehicle manufacturer may determine the road load power by the following procedure and request its use:

(i) *Gasoline fueled vehicles.* (A) Measuring the absolute manifold pressure of a representative vehicle, of the same equivalent inertia weight class, when operated on a level road under balanced wind conditions at a true speed of 50 mph (80 km/h), and

(B) Noting the dynamometer indicated road load horsepower setting required to reproduce that manifold pressure when the same vehicle is operated on the dynamometer at a true speed of 50 mph. The tests on the road and on the dynamometer shall be performed with the same vehicle ambient absolute pressure (usually barometric), i.e., within ±5 mm Hg (±0.7 kPa).

(C) The road load power shall be determined according to the procedure outlined in § 86.118 and adjusted according to the following if applicable.

(ii) *Diesel vehicles.* (A) Measuring the fuel flow rate of a representative vehicle of the same equivalent inertia weight class, when operated on a level road under balanced wind conditions at a true speed of 50 mph, and

(B) Noting the dynamometer indicated road load horsepower setting required to reproduce that fuel flow rate when the same vehicle is operated on the dynamometer at a true speed of 50 mph (80 km/h). The tests on the road and on the dynamometer shall be performed with the same vehicle ambient absolute pressure (usually barometric), i.e. within ±5 mm Hg (±0.7 kPa).

(C) The road load power shall be determined according to the procedure outlined in § 86.118 and adjusted according to the following if applicable.

(3) Where it is expected that more than 33 percent of the vehicles in an engine family will be equipped with air conditioning, the road load power listed above or as determined in paragraph (b)(2) of this section shall be increased by 10 percent for testing all test vehicles representing such an engine family if those vehicles are intended to be offered with air conditioning in production.

§ 86.130–78 Test sequence, general requirements.

The test sequence shown in Figure B78–10 shows the steps encountered as the test vehicle undergoes the procedures subsequently described to determine conformity with the standards set forth. Ambient temperature levels encountered by the test vehicle throughout the test sequence shall not be less than 68° F (20° C) nor more than 86° F (30° C). The vehicle shall be approximately level during all phases of the test sequence to prevent abnormal fuel distribution.

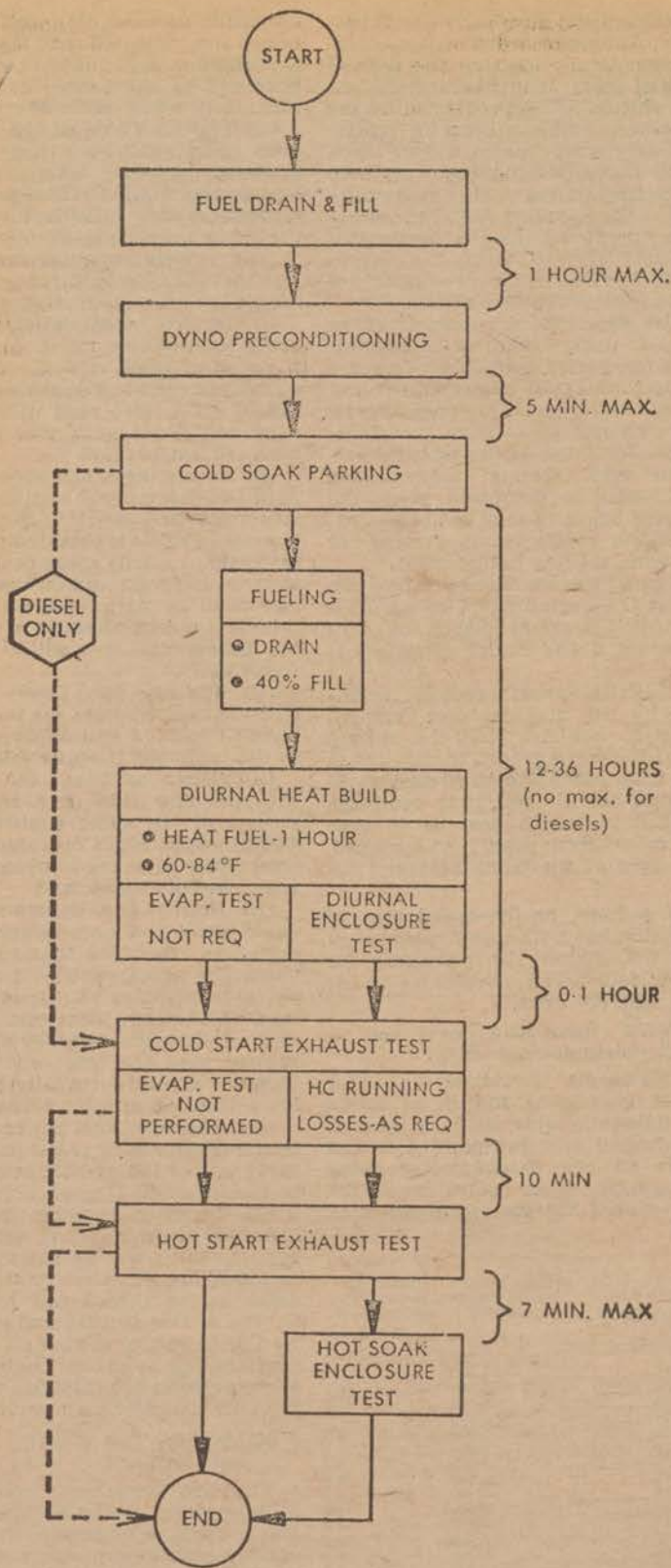


FIGURE B78-10 TEST SEQUENCE

§ 86.131–78 Vehicle preparation.

(a) For gasoline fueled vehicles prepare the fuel tank(s) for recording the temperature of the prescribed test fuel at the approximate mid-volume of the fuel.

(b) Provide additional fittings and adapters, as required, to accommodate a fuel drain at the lowest point possible in the tank(s) as installed on the vehicle.

§ 86.132–78 Vehicle preconditioning.

(a) The vehicle shall be moved to the test area and the following operations performed:

(1) The fuel tank(s) shall be drained through the provided fuel tank(s) drain(s) and filled to the prescribed "tank fuel volume" with the specified test fuel, § 86.113. For the above operations the evaporative emission control system shall neither be abnormally purged nor abnormally loaded.

(2) Within one hour of being fueled the vehicle shall be placed, either by being driven or pushed, on a dynamometer and operated through one Urban Dynamometer Driving Schedule test procedure, see § 86.115 and Appendix I. A gasoline fueled test vehicle may not be used to set dynamometer horsepower.

(3) For those unusual circumstances where additional preconditioning is desired by the manufacturer, such preconditioning may be allowed with the advance approval of the Administrator. The Administrator may also choose to conduct or require the conduct of additional preconditioning to insure that the evaporative emission control system is stabilized. The additional preconditioning shall consist of an initial one hour minimum soak and, one, two or three driving cycles of the UDDS, as described in paragraph (a)(2) of this section, each followed by a soak of at least one hour with engine off, engine compartment cover closed and cooling fan off. The vehicle may be driven off the dynamometer following each UDDS for the soak period.

(b) Within five minutes of completion of preconditioning the vehicle shall be driven off the dynamometer and parked. The vehicle shall be stored for not less than 12 hours nor for more than 36 hours (except diesel fueled vehicles which have no maximum time limitation) prior to the cold start exhaust test. (Gasoline fueled vehicles undergo a one hour diurnal heat build prior to the cold start exhaust test. A wait of up to one hour is permitted between the end of the diurnal heat build and the beginning of the cold start exhaust test. See § 86.130 and Figure B78–10.)

(c) Vehicles to be tested for evaporative emissions shall be processed in accordance with procedures in §§ 86.133 through 86.138. Vehicles to be tested for exhaust emissions only shall be processed according to §§ 86.133 through 86.137.

§ 86.133–78 Diurnal breathing loss test.

(a)(1) Following vehicle preparation and vehicle preconditioning procedures

described in §§ 86.131 and 86.132 the test vehicle shall be allowed to soak for a period of not less than 12 or more than 36 hours prior to the exhaust emission test. The diurnal test shall start not less than 10 or more than 35 hours after the end of the preconditioning procedure. The start of the exhaust test shall follow the end of the diurnal test within one hour.

(2) Gasoline fueled vehicles to be tested for exhaust emissions only, shall undergo the diurnal heat build. Since no evaporative measurements are necessary, an evaporative enclosure is not required.

(b) The evaporative emission enclosure shall be purged for several minutes immediately prior to the test.

NOTE.—If at anytime the hydrocarbon concentration exceeds 15,000 ppm C the enclosure should be immediately purged. This concentration provides a 4:1 safety factor against the lean flammability limit.

(c) The FID hydrocarbon analyzer shall be zeroed and spanned immediately prior to the test.

(d) If not already on, the evaporative enclosure mixing fan shall be turned on at this time.

(e) Immediately prior to the diurnal breathing loss test, the fuel tank(s) of the prepared vehicle shall be drained and recharged with the specified test fuel, § 86.113, to the prescribed "tank fuel volume," defined in § 86.078–2. The temperature of the fuel prior to its delivery to the fuel tank shall be between 50 and 60° F (10 and 16° C). The fuel tank cap(s) is not installed until the diurnal heat build begins.

(f) The test vehicle, with the engine shut off, shall be moved into the evaporative emission enclosure, the test vehicle windows and luggage compartments shall be opened, the fuel tank temperature sensor shall be connected to the temperature recording system, and, if required, the heat source shall be properly positioned with respect to the fuel tank(s) and/or connected to the temperature controller.

(g) The temperature recording system shall be started.

(h) The fuel may be artificially heated to the starting diurnal temperature.

(i) When the fuel temperature recording system reaches at least 58° F (14° C), immediately:

(1) Install fuel tank cap(s).

(2) Turn off purge blowers, if not already off at this time.

(3) Close and seal enclosure doors.

(j) When the fuel temperature recording system reaches 60±2° F (16±1.1° C), immediately:

(1) Analyze enclosure atmosphere for hydrocarbons and record. This is the initial (time=0 minutes) hydrocarbon concentration, C_{HCi}, § 86.143.

(2) Start diurnal heat build and record time. This commences the 60±2 minute test period.

(k) The fuel shall be heated in such a way that its temperature change conforms to the following function to within ±3° F (±1.6° C):

$F = T_o + 0.4t$

for SI units, $C = T_o + (2/9)t$

Where:

F=fuel temperature, ° F
C=fuel temperature, ° C
t=time since beginning of test, minutes.
T_o=initial temperature.

After 60±2 minutes of heating, the fuel temperature rise shall be 24±1° F (±0.5° C).

(l) The FID hydrocarbon analyzer shall be zeroed and spanned immediately prior to the end of the diurnal test.

(m) The end of the diurnal breathing loss test occurs 60±2 minutes after the heat build begins, paragraph (j)(2). Analyze the enclosure atmosphere for hydrocarbons and record. This is the final (time=60 minutes) hydrocarbon concentration, C_{HCf}, § 86.143. The time (or elapsed time) of this analysis shall be recorded.

(n) The heat source shall be turned off and the enclosure doors unsealed and opened.

(o) The heat source shall be moved away from the vehicle, if required, and/or disconnected from the temperature controller, the fuel tank temperature sensor shall be disconnected from the temperature recording system, the test vehicle windows and luggage compartments may be closed and the test vehicle, with the engine shut off, shall be removed from the evaporative emission enclosure.

(p) For vehicles with multiple tanks, the largest tank shall be designated as the primary tank and shall be heated in accordance with the procedures described in paragraph (k) of this section. All other tanks shall be designated as auxiliary tanks and shall undergo a similar heat build such that the fuel temperature shall be within 3°F (1.6°C) of the primary tank.

§ 86.134–78 Running loss test.

(a) If an engineering analysis or vehicle inspection indicates the possibility of evaporative emissions during vehicle operation, evaporative emission running loss measurements shall be made during the cold transient and stabilized portion of the exhaust emission test. Since running loss measurements cannot be made in the enclosure, the equipment described in § 86.177–17 shall be used to collect these emissions.

(1) The procedure in § 86.135 shall be followed.

(2) Prior to the initiation of the cold start exhaust emission test, the vapor loss measurement system shall be connected to all suspected sources of running loss evaporative emissions.

(3) The cold start transient and stabilized exhaust emission test portions shall be conducted according to the procedures of § 86.135 through § 86.137.

(4) Within one minute after the end of the stabilized exhaust emission test, the vapor loss measurement system shall be disconnected from the vehicle and the inlets and outlets sealed.

(5) Within one hour from the end of the running loss measurement, weigh the vapor collection traps.

§ 86.135–78 Dynamometer procedure.

(a) The dynamometer run consists of two tests, a "cold" start test after a minimum 12-hour and a maximum 36-hour soak according to the provisions of §§ 86.132 and 86.133 and a "hot" start test following the "cold" start test by 10 minutes. Engine startup (with all accessories turned off), operation over the driving schedule, and engine shutdown make a complete cold start test. Engine startup and operation over the first 505 seconds of the driving schedule complete the hot start test. The exhaust emissions are diluted with ambient air and a continuously proportional sample is collected for analysis during each phase. The composite samples collected in bags are analyzed for hydrocarbons (except diesel hydrocarbons which are analyzed continuously), carbon monoxide, carbon dioxide, and oxides of nitrogen. A parallel sample of the dilution air is similarly analyzed for hydrocarbon, carbon monoxide, carbon dioxide, and oxides of nitrogen.

(b) During dynamometer operation, a fixed speed cooling fan shall be positioned so as to direct cooling air to the vehicle in an appropriate manner with the engine compartment cover open. In the case of vehicles with front engine compartments, the fan shall be squarely positioned within 12 inches of the vehicle. In the case of vehicles with rear engine compartments (or if special designs make the above impractical), the cooling fan shall be placed in a position to provide sufficient air to maintain vehicle cooling. The fan capacity shall normally not exceed 5,300 cfm (2.50 m^3/s). If, however, the manufacturer can show that during field operation the vehicle receives additional cooling, and that such additional cooling is needed to provide a

representative test, the fan capacity may be increased or additional fans used if approved in advance by the Administrator.

(c) The vehicle speed as measured from the dynamometer rolls shall be used. A speed vs. time recording, as evidence of dynamometer test validity, shall be supplied on request of the Administrator.

(d) Practice runs over the prescribed driving schedule may be performed at test points, provided an emission sample is not taken, for the purpose of finding the minimum throttle action to maintain the proper speed-time relationship, or to permit sampling system adjustments.

NOTE.—When using two-roll dynamometers a truer speed-time trace may be obtained by minimizing the rocking of the vehicle in the rolls. The rocking of the vehicle changes the tire rolling radius on each roll. This rocking may be minimized by restraining the vehicle horizontally (or nearly so) by using a cable and winch.

(e) The drive wheel tires may be inflated up to a gauge pressure of 45 psi (310 kPa) in order to prevent tire damage. The drive wheel tire pressure shall be reported with the test results.

(f) If the dynamometer has not been operated during the 2-hour period immediately preceding the test it shall be warmed up for 15 minutes by operating at 30 mph (48 km/h) using a non-test vehicle or as recommended by the dynamometer manufacturer.

(g) If the dynamometer horsepower must be adjusted manually, it shall be set within 1 hour prior to the exhaust emissions test phase. The test vehicle shall not be used to make the adjustment. Dynamometers using automatic control of preselectable power settings may be set anytime prior to the beginning of the emissions test.

§ 86.136–78 Engine starting and restarting.

(a) *Gasoline fueled vehicles.* This paragraph (a) applies to gasoline fueled vehicles.

(1) The engine shall be started according to the manufacturer's recommended starting procedures. The initial 20 second idle period shall begin when the engine starts.

(2) *Choke operation:* (i) Vehicles equipped with automatic chokes shall be operated according to the manufacturer's operating instructions or owner's manual, including choke setting and "kick-down" from cold fast idle.

(ii) Vehicles equipped with manual chokes shall be operated according to the manufacturer's operating instructions or owner's manual.

(3) The transmission shall be placed in gear 15 seconds after the engine is started. If necessary, braking may be employed to keep the drive wheels from turning.

(4) The operator may use the choke, accelerator pedal, etc. where necessary to keep the engine running.

(5) If the manufacturer's operating instructions or owner's manual does not specify a warm engine starting procedure, the engine (automatic and manual choke engines) shall be starated by depressing the accelerator pedal about half way and cranking the engine until it starts.

(b) *Diesel fueled vehicles.* The engine shall be started according to the manufacturer's recommended starting procedures. The initial 20-second-idle period shall begin when the engine starts. The transmission shall be placed in gear 15 seconds after the engine is started. If necessary, braking may be employed to keep the drive wheels from turning.

(c) If the vehicle does not start after 10 seconds of cranking; cranking shall cease and the reason for failure to start shall be determined. The gas flow measuring device (or revolution counter) on the constant volume sampler (and the hydrocarbon integrater when testing diesel vehicles, see § 86.137, Dynamometer test runs) shall be turned off and the sample selector valves placed in the "standby" position during this diagnostic period. In addition, either the CVS should be turned off or the exhaust tube disconnected from the tailpipe during the diagnostic period.

(1) If failure to start is an operational error, the vehicle shall be rescheduled for testing from a cold start. If failure to start is caused by vehicle malfunction, corrective action of less than 30 minutes duration may be taken and the test continued. The sampling system shall be reactivated at the same time cranking is started. When the engine starts, the driving schedule timing sequence shall begin. If failure to start is caused by vehicle malfunction and the vehicle cannot be started, the test shall be voided, the vehicle removed from the dynamometer, corrective action taken, and the vehicle rescheduled for test. The reason for the malfunction (if determined) and the corrective action taken shall be reported.

(d) If the engine "false starts," the operator shall repeat the recommended starting procedure (such as resetting the choke, etc.).

(e) *Stalling:* (1) If the engine stalls during an idle period, the engine shall be restarted immediately and the test continued. If the engine cannot be started soon enough to allow the vehicle to follow the next acceleration as prescribed, the driving schedule indicator shall be stopped. When the vehicle restarts, the driving schedule indicator shall be reactivated.

(2) If the engine stalls during some operating mode other than idle, the driving schedule indicator shall be stopped, the vehicle shall then be restarted and accelerated to the speed required at that point in the driving schedule and the test continued. During acceleration to this point, shifting shall be performed in accordance with § 86.128.

(3) If the vehicle will not restart within 1 minute, the test shall be voided, the vehicle removed from the dynamometer, corrective action taken, and the vehicle rescheduled for test. The reason for the malfunction (if determined) and the corrective action taken shall be reported.

§ 86.137–78 Dynamometer test runs.

(a) The vehicle shall be allowed to stand with the engine turned off for a period of not less than 12 hours or more than 36 hours before the cold start exhaust emission test. The cold start exhaust test shall follow the diurnal breathing loss test by not more than 1 hour. The vehicle shall be stored prior to the emission test in such a manner that precipitation (e.g. rain or dew) does not occur on the vehicle. The complete dynamometer test consists of a cold start drive of 7.5 miles (12.1 km) and simulates a hot start drive of 7.5 miles (12.1 km). The vehicle is allowed to stand on the dynamometer during the 10 minute time period between the cold and hot start tests. The cold start test is divided into two periods. The first period, representing the cold start "transient" phase, terminates at the end of the deceleration which is scheduled to occur at 505 seconds of the driving schedule. The second period, representing the "stabilized" phase, consists of the remainder of the driving schedule including engine shutdown. The hot start test similarly consists of two periods. The period, representing the hot start "transient" phase, terminates at the same point in the driving schedule as the first period of the cold start test. The second period of the hot start test, "stabilized" phase, is assumed to be identical to the second period of the cold start test. Therefore, the hot start test terminates after the first period (505 seconds) is run.

(b) The following steps shall be taken for each test:

(1) Place drive wheels of vehicle on dynamometer without starting engine.

(2) Open the vehicle engine compartment cover and position the cooling fan.

(3) With the sample selector valves in the "standby" position connect evacuated sample collection bags to the dilute exhaust and dilution air sample collection systems.

(4) Start the Constant Volume Sampler (if not already on), the sample pumps, the temperature recorder, the vehicle cooling fan and the heated hydrocarbon analysis recorder (diesel only). (The heat exchanger of the constant volume sampler, if used, diesel hydrocarbon analyzer continuous sample line and filter (if applicable) should be preheated to their respective operating temperatures before the test begins.)

(5) Adjust the sample flow rates to the desired flow rate (minimum of 10 cfh, 0.28 m^3/hr) and set the gas flow measuring devices to zero.

NOTE.—CFV–CVS sample flowrate is fixed by the venturi design.

(6) Attach the flexible exhaust tube to the vehicle tailpipe(s).

(7) Start the gas flow measuring device, position the sample selector valves to direct the sample flow into the "transient" exhaust sample bag and the transient" dilution air sample bag (turn on

the diesel hydrocarbon analyzer system integrator and mark the recorder chart, if applicable) and start cranking the engine.

(8) Fifteen seconds after the engine starts, place the transmission in gear.

(9) Twenty seconds after the engine starts, begin the initial vehicle acceleration of the driving schedule.

(10) Operate the vehicle according to the dynamometer driving schedule (§ 86.115).

(11) At the end of the deceleration which is scheduled to occur at 505 seconds, simultaneously switch the sample flows from the "transient" bags to the "stabilized" bags, switch off gas flow measuring device No. 1 (and the diesel hydrocarbon integrator No. 1, mark the diesel hydrocarbon recorder chart) and start gas-flow measuring device No. 2 (and diesel hydrocarbon integrator No. 2). As soon as possible transfer the "transient" exhaust and dilution air samples to the analytical system and process the samples according to § 86.140 obtaining a stabilized reading of the exhaust sample on all analyzers within 20 minutes of the end of the sample collection phase of the test.

(12) Turn the engine off 2 seconds after the end of the last declaration (at 1,369 seconds).

(13) Five seconds after the engine stops running, simultaneously turn off gas flow measuring device No. 2 (and the diesel hydrocarbon integrator No. 2, mark the hydrocarbon recorder chart, if applicable) and position the sample selector valves to the "standby" position. As soon as possible transfer the "stabilized" exhaust and dilution air samples to the analytical system and process the samples according to § 86.140 obtaining a stabilized reading of the exhaust sample on all analyzers within 20 minutes of the end of the sample collection phase of the test.

(14) Immediately after the end of the sample period turn off the cooling fan and close the engine compartment cover.

(15) Turn off the CVS or disconnect the exhaust tube from the tailpipe of the vehicle.

(16) Repeat the steps in paragraph (b) (2) through (10) of this section for the hot start test, except only one evacuated sample bag is required for sampling exhaust gas and one for dilution air. The step in paragraph (b) (7) of this section shall begin between 9 and 11 minutes after the end of the sample period for the cold start test.

(17) At the end of the deceleration which is scheduled to occur at 505 seconds, simultaneously turn off gas flow measuring device No. 1 (and diesel hydrocarbon integrator No. 1, mark the diesel hydrocarbon recorder chart, if applicable) and position the sample selector valve to the "standby" position. (Engine shutdown is not part of the hot start test sample period.)

(18) As soon as possible transfer the hot start "transient" exhaust and dilution air samples to the analytical system and process the samples according to § 86.140 obtaining a stabilized reading of the exhaust sample on all analyzers within 20 minutes of the end of the sample collection phase of the test.

(19) Disconnect the exhaust tube from the vehicle tailpipe(s) and drive vehicle from dynamometer.

(20) The constant volume sampler may be turned off, if desired.

(21) Vehicles to be tested for evaporative emissions will proceed according to § 86.138. For all others this completes the test sequence.

§ 86.138–78 Hot soak test.

The hot soak evaporative emission test shall be conducted immediately following the hot transient exhaust emission test.

(a) Prior to the completion of the hot start transient exhaust emission sampling period, the evaporative emission enclosure shall be purged for several minutes.

(b) The FID hydrocarbon analyzer shall be zeroed and spanned immediately prior to the test.

(c) If not already on, the evaporative enclosure mixing fan shall be turned on at this time.

(d) Upon completion of the hot transient exhaust emission sampling period, the vehicle engine compartment cover shall be closed, the cooling fan shall be moved, the vehicle shall be disconnected from the dynamometer and exhaust sampling system, and then driven at minimum throttle to the vehicle entrance of the enclosure.

(e) The vehicle's engine must be stopped before any part of the vehicle enters the enclosure. The vehicle may be pushed or coasted into the enclosure.

(f) The test vehicle windows and luggage compartments shall be opened, if not already open.

(g) The temperature recording system shall be started and the time of engine shut off shall be noted on the evaporative emission hydrocarbon data recording system.

(h) The enclosure doors shall be closed and sealed within two minutes of engine shutdown and within seven minutes after the end of the exhaust test.

(i) The 60±0.5 minute hot soak begins when the enclosure doors are sealed. The enclosure atmosphere shall be analyzed and recorded. This is the initial (time=0 minutes) hydrocarbon concentration, C_{HCi}, for use in calculating evaporative losses, see § 86.143.

(j) The test vehicle shall be permitted to soak for a period of one hour in the enclosure.

(k) The FID hydrocarbon analyzer shall be zeroed and spanned immediately prior to the end of the test.

(l) At the end of the 60±0.5 minute test period, again analyze the enclosure atmosphere and record time. This is the final (time=60 minutes) hydrocarbon concentration, C_{HCf}, for use in calculating evaporative losses, see § 86.143. This operation completes the evaporative emission measurement procedure.

§ 86.139–78 [Reserved]

§ 86.140–78 Exhaust sample analysis.

The following sequence of operations shall be performed in conjunction with each series of measurements:

(a) Zero the analyzers and obtain a stable zero reading. Recheck after tests.

(b) Introduce span gases and set instrument gains. In order to avoid corrections, span and calibrate at the same flow rates used to analyze the test sample. Span gases should have concentrations equal to 75 to 100 percent of full scale. If gain has shifted significantly on the analyzers, check the calibrations. Show actual concentrations on chart.

(c) Check zeros; repeat the procedure in paragraphs (a) and (b) of this section if required.

(d) Check flowrates and pressures.

(e) Measure HC, CO, CO_2 and NO_x concentrations of samples.

(f) For diesel vehicles, continuously record (integrate electronically if desired) dilute hydrocarbon emission levels during test. Background samples are collected in sample bags and analyzed as above.

(g) Check zero and span points. If difference is greater than 2 percent of full scale, repeat the procedure in paragraphs (a) through (f) of this section.

§ 86.141–78 [Reserved]

§ 86.142–78 Records required.

The following information shall be recorded with respect to each test:

(a) Test number.

(b) System or device tested (brief description).

(c) Date and time of day for each part of the test schedule.

(d) Instrument operator.

(e) Driver or operator.

(f) Vehicle: Make—Vehicle identification number—Model year—Transmission type—Odometer reading—Engine displacement — Engine family — Evap. family—Idle rpm—Fuel system (fuel injection, nominal fuel tank(s) capacity, fuel tank(s) location, number of carburetors, number of carburetor barrels)—Inertia loading—Actual curb weight recorded at 0 miles—Actual road load at 50 mph (80 km/h) and drive wheel tire pressure, as applicable.

(g) Indicated road load power absorption at 50 mph (80 km/h) and dynamometer serial number. As an alternative to recording the dynamometer serial number, a reference to a vehicle test cell number may be used, with the advance approval of the Administrator, provided the test cell records show the pertinent information.

(h) All pertinent instrument information such as tuning—gain—serial number—detector number—range. As an alternative, a reference to a vehicle test cell number may be used, with the advance approval of the Administrator, provided test cell calibration records show the pertinent instrument information.

(l) Recorder charts: Identify zero, span, exhaust gas, and dilution air sample traces.

(j) Test cell barometric pressure, ambient temperature and humidity.

NOTE.—A central laboratory barometer may be used: *Provided*, That individual test cell barometric pressures are shown to be within ±0.1 percent of the barometric pressure at the central barometer location.

(k) Fuel temperatures, as prescribed.

(l) Pressure of the mixture of exhaust and dilution air entering the CVS metering device, the pressure increase across the device, and the temperature at the inlet. The temperature may be recorded continuously or digitally to determine temperature variations.

(m) The number of revolutions of the positive displacement pump accumulated during each test phase while exhaust samples are being collected. The number of standard cubic feet metered by a critical flow venturi during each test phase would be the equivalent record for a CFV-CVS.

(n) The humidity of the dilution air.

NOTE.—If conditioning columns are not used (see § 86.122 and § 86.144) this measurement can be deleted. If the conditioning columns are used and the dilution air is taken from the test cell, the ambient humidity can be used for this measurement.

(o) Temperature set point of the heated sample line and heated hydrocarbon detector temperature control system (for diesel vehicles only).

§ 86.143–78 Calculations; evaporative emissions.

The calculation of the net hydrocarbon mass change in the enclosure is used to determine the diurnal and hot soak mass emissions. The mass is calculated from initial and final hydrocarbon concentrations in ppm carbon, initial and final enclosure ambient temperatures, initial and final barometric pressures, and net enclosure volume using the following equation:

$$M_{HC} = kV_n \times 10^{-4}\left[\frac{C_{HCf}P_{Bf}}{T_f} - \frac{C_{HCi}P_{Bi}}{T_i}\right]$$

Where:

M_{HC} = hydrocarbon mass, g.

C_{HC} = hydrocarbon concentration as ppm carbon.

V_n = net enclosure volume, ft³ (m³) as determined by subtracting 50 ft³ (1.42 m³) (volume of vehicle with trunk and windows open) from the enclosure volume. A manufacturer may use the measured volume of the vehicle (instead of the nominal 50 ft³) with advance approval by the Administrator: *Provided*, The measured volume is determined and used for all vehicles tested by that manufacturer.

P_B = barometric pressure, in. Hg (kPa).

T = enclosure ambient temperature, R (K).

k = .208 (12+H/C)

for SI units, k = 1.2 (12+H/C).

Where:

H/C = Hydrogen-carbon ratio.

H/C = 2.33 for diurnal emissions.

H/C = 2.2 for hot soak emissions.

i = indicates initial reading.

f = indicates final reading.

§ 86.144–78 Calculations; exhaust emissions.

The final reported test results shall be computed by use of the following formula:

(a) For light duty vehicles and light duty trucks:

$$Y_{wm} = (0.43\ Y_{ct} + 0.57\ Y_{ht} + Y_s)/7.5$$

Where:

Y_{wm} = Weighted mass emissions of each pollutant, i.e., HC, CO, or NOx, in grams per vehicle mile.

Y_{ct} = Mass emissions as calculated from the "transient" phase of the cold start test, in grams per test phase.

Y_{ht} = Mass emissions as calculated from the "transient" phase of the hot start test, in grams per test phase.

Y_s = Mass emissions as calculated from the "stabilized" phase of the cold start test, in grams per test phase.

(b) The mass of each pollutant for each phase of both the cold start test and the hot start test is determined from the following:

(1) Hydrocarbon mass:

$$HC_{mass} = V_{mix} \times Density_{HC} \times (HC_{conc}/1{,}000{,}000)$$

(2) Oxides of nitrogen mass:

$$NOx_{mass} = V_{mix} \times Density_{NO_2} \times K_H \times (NOx_{conc}/1{,}000{,}000)$$

(3) Carbon monoxide mass:

$$CO_{mass} = V_{mix} \times Density_{CO} \times (CO_{conc}/1{,}000{,}000)$$

(4) Carbon dioxide mass:

$$CO_{2mass} = V_{mix} \times Density_{CO_2} \times (CO_{2conc}/100)$$

(c) Meaning of symbols:

(1) HC_{mass} = Hydrocarbon emissions, in grams per test phase.

$Density_{HC}$ = Density of hydrocarbons is 16.33 g/ft³ (.5767 kg/m³), assuming an average carbon to hydrogen ratio of 1:1.85, at 68° F (20° C) and 760 mm Hg (101.3 kPa) pressure.

HC_{conc} = Hydrocarbon concentration of the dilute exhaust sample corrected for background, in ppm carbon equivalent, i.e., equivalent propane × 3.

$HC_{conc} = HC_e - HC_d(1-1/DF)$

Where:

HC_e = Hydrocarbon concentration of the dilute exhaust sample or, for diesel, average hydrocarbon concentration of the dilute exhaust sample as calculated from the integrated HC traces, in ppm carbon equivalent.

HC_d = Hydrocarbon concentration of the dilution air as measured, in ppm carbon equivalent.

(2) NOx_{mass} = Oxides of nitrogen emissions, in grams per test phase.

Density $_{NO_2}$ = Density of oxides of nitrogen is 54.16 g/ft³ (1.913 kg/m³), assuming they are in the form of nitrogen dioxide, at 68° F (20° C) and 760 mm Hg (101.3 kPa) pressure.

NOx_{conc} = Oxides of nitrogen concentration of the dilute exhaust sample corrected for background, in ppm.

$NOx_{conc} = NOx_e - NOx_d\ (1-1/DF)$

Where:

NOx_e = Oxides of nitrogen concentration of the dilute exhaust sample as measured, in ppm.

NOx_d = Oxides of nitrogen concentration of the dilute air as measured, in ppm.

(3) CO_{mass} = Carbon monoxide emissions, in grams per test phase.

$Density_{CO}$ = Density of carbon monoxide is 32.97 g/ft³ (1.164 kg/m³), at 68° F (20°C) and 760 mm Hg (101.3 kPa) pressure.

CO_{conc} = —Carbon monoxide concentration of the dilute exhaust sample corrected for background, water vapor, and CO_2 extraction, in ppm.

$CO_{conc} = CO_e - CO_d\ (1-1/DF)$

Where:

CO_e = Carbon monoxide concentration of the dilute exhaust sample volume corrected for water vapor and carbon dioxide extraction, in ppm. The calculation assumes the carbon to hydrogen ratio of the fuel is 1:1.85.

$CO_e = (1-0.01925\ CO_{2e} - 0.000323\ R)\ CO_{em}$

Where:

CO_{em} = Carbon monoxide concentration of the dilute exhaust sample as measured, in ppm.

CO_{2e} = Carbon dioxide concentration of the dilute exhaust sample, in percent.

R = Relative humidity of the dilution air, in per cent (see § 86.142(n)).

CO_d = Carbon monoxide concentration of the dilution air corrected for water vapor extraction, in ppm.

$CO_d = (1-0.000323\ R)\ CO_{dm}$

Where:

CO_{dm} = Carbon monoxide concentration of the dilution air sample as measured, in ppm.

NOTE.—If a CO instrument which meets the criteria specified in § 86.111 is used and the conditioning column has been deleted, CO_{em} can be substituted directly for CO_e and CO_{dm} can be substituted directly for CO_d.

(4) CO_{2mass} = Carbon dioxide emissions, in grams per test phase.

$Density_{CO_2}$ = Density of carbon dioxide is 51.85 g/ft³ (1.843 kg/m³), at 68° F (20° C) and 760 mm Hg (101.3 kPa) pressure.

CO_{2conc} = Carbon dioxide concentration of the dilute exhaust sample corrected for background, in percent.

$CO_{2conc} = CO_{2e} - CO_{2d}\ (1-1/DF)$

Where:

CO_{2d} = Carbon dioxide concentration of the dilution air as measured, in percent.

(5) $DF = 13.4/[CO_{2e} + (HC_e + CO_e)\ 10^{-4}]$

K_H = Humidity correction factor.

$K_H = 1/[1-0.0047(H-75)]$

for SI units $= 1/[1-0.0329(H-10.71)]$

Where:

H = Absolute humidity in grains (grams) of water per pound (kilogram) of dry air.

$H = [(43.478)R_a \times P_d]/[P_B - (P_d \times R_a/100)]$

for SI units, $H = [(6.211)R_a \times P_d]/P_B - (P_a \times R_a/100)]$

R_a = Relative humidity of the ambient air, in percent.

P_d = Saturated vapor pressure, in mm Hg (kPa) at the ambient dry bulb temperature.

P_B = Barometric pressure, in mm Hg (kPa).

V_{mix} = Total dilute exhaust volume in cubic feet per test phase corrected to standard conditions (528 R) (293 K) and 760 mm Hg (101.3 kPa)).

For PDP–CVS, V_{mix} is:

$$V_{mix}=V_o\times\frac{N(P_B-P_A)\ (528\ R)}{(760\ \text{mm Hg})\ (T_p)}$$

for SI units,

$$V_{mix}=V_o\times\frac{N(P_B-P_A)\ (293.15\ K)}{(101.325\ \text{kPa})\ (T_p)}$$

Where:

V_o=Volume of gas pumped by the positive displacement pump, in cubic feet (m^3) per revolution. This volume is dependent on the pressure differential across the positive displacement pump.

N=Number of revolutions of the positive displacement pump during the test phase while samples are being collected.

P_B=Barometric pressure, in mm Hg (kPa).

P_A=Pressure depression below atmospheric measured at the inlet to the positive displacement pump, in mm Hg (kPa) (during an idle mode).

T_p=Average temperature of dilute exhaust entering positive displacement pump during test, R(K).

(d) Example calculation of mass values of exhaust emissions using positive displacement pump:

(1) For the "transient" phase of the cold start test assume the following: V_o=0.29344 ft^3/revolution; N=10,485; R=48.0%; R_a=48.2%; P_B=762 mm Hg; P_d=22.225 mm Hg; P_A=70 mm Hg; T_p=570 R; HC_e=105.8 ppm, carbon equivalent; NOx_e=11.2 ppm; CO_{em}=306.6 ppm; CO_{2e}=1.43%; HC_d=12.1 ppm; NOx_d=0.8 ppm; CO_{dm}=15.3 ppm.

Then:

V_{mix}=(0.29344) (10,485) (762–70) (528)/(760) (570)=2595.0 ft^3 per test phase.

H=(43.478) (48.2) (22.225)/[762 − (22.225×48.2/100)]

K_H=1/[1−0.0047(62−75)]=0.9424

CO_e=[1−0.01925 (1.43)−0.000323 (48)] 306.0=293.4 ppm

CO_d=[1−0.000323 (48)] 15.3=15.1 ppm

DF=13.4/[1.43+(105.8+293.4) ×10^{-4}]=9.116

HC_{conc}=105.8−12.1(1−1/9.116)=95.03 ppm.

HC_{mass}=(2595) (16.33) (95.03/1,000,000) =4.027 grams per test phase.

NOx_{conc}=11.2–0.8 (1–1/9.116)=10.49 ppm

NOx_{mass}=(2595) (54.16) (10.49/1,000,000) (0.9424)=1.389 grams per test phase.

CO_{conc}=293.4–15.1 (1–1/9.116)=280.0 ppm

CO_{mass}=(2595) (32.97) (280/1,000,000)= 23.96 grams per test phase.

(2) For the stabilized portion of the cold start test assume that similar calculations resulted in the following:

HC_{mass}=0.62 grams per test phase

NOx_{mass}=1.27 grams per test phase

CO_{mass}=5.98 grams per test phase

(3) For the "transient" portion of the hot start test assume that similar calculations resulted in the following:

HC_{mass}=0.51 grams per test phase

NOx_{mass}=1.38 grams per test phase

CO_{mass}=5.01 grams per test phase

(4) Weighted mass emission results:

HC_{wm}=[(0.43) (4.027)+(0.57) (0.51+0.62]/7.5=0.352 grams per vehicle mile.

NOx_{wm}=[(0.43) (1.389)+(0.57) (1.38)+1.27]/7.5=0.354 grams per vehicle mile.

CO_{wm}=[(0.43) (23.96)+(0.57) (5.01)+5.98]/7.5=2.55 grams per vehicle mile.

§ 86.145–78 [Reserved]

§§ 86.177–1 through 86.177–4 [Deleted]

13. Sections 86.177–1, 86.177–2, 86.177–3 and 86.177–4 are deleted.

[FR Doc.76–24255 Filed 8–20–76;8:45 am]

federal register

MONDAY, AUGUST 23, 1976



PART III:

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

■

COMMITTEE MANAGEMENT

Interim Regulations

Title 45—Public Welfare

SUBTITLE A—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, GENERAL ADMINISTRATION

PART 11—COMMITTEE MANAGEMENT

Interim Regulations

On January 23, 1975 a document was published in the FEDERAL REGISTER (40 FR 3712) proposing regulations implementing the Federal Advisory Committee Act, Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. I et seq. and Office of Management and Budget Circular A–63, 39 FR 12389, April 5, 1974. Comments were received from thirty persons or organizations.

One commentator criticized the exclusion of certain groups from the provisions of the regulation such as committees composed wholly of full time officers or employees of the Federal government, operational groups, local civic groups, and state and local committees. See § 11.2(b)(3). This provision reflects section 4(c) of the Federal Advisory Committee Act (Pub. L. 92–463) which provides the Act shall not apply to such groups and has not been changed.

The language in § 11.2(b)(1)(i)–(v) listing several factors to be utilized in determining when a group is an advisory committee has been modified in response to a suggestion that the proposed wording ought to be clarified to indicate that the absence of one, or even several of the factors did not foreclose existence of a committee.

In response to one commentator's suggestion that the provisions of § 11.4(g) and (i) relating to the balancing of membership and assuring the selection of individuals representing diverse points of view were confusing and ought to be combined and clarified, and that subsection (h) should be stricken as unnecessarily redundant, we have combined § 11.4(g) and (i) and modified subsection (h) to clearly underscore the intent behind the latter section.

Several persons commented on the requirement established for a quorum. One commentator suggested that the quorum requirement of § 11.5(a)(1)(ii) was too harsh, and that a fairer rule would provide that a quorum consist of a majority of appointed, rather than the authorized membership. Another writer suggested that two-thirds of a committee membership ought to constitute a quorum. We agree with neither in light of the fact that a committee's charter can be written to provide a standard different from the general rule. One minor amendment has been made in this provision to clarify the fact ex-officio members are to be included in determining the number of members required for a quorum, and that such members shall have full voting rights.

Several commentators suggested that the notice requirements contained in § 11.5(a)(2) which provides for at least fifteen days advance notice in the FEDERAL REGISTER was insufficient. We disagree, however, we will continue to endeavor to give the maximum possible notice of all meetings. Department employees are encouraged to give as much advance notice of meetings as possible.

One commentator suggested that the words "to the extent practicable" be stricken from § 11.5(a)(2)(ii)(c) and that certain other mandatory forms of notice be added as requirements. We decline to strike the aforementioned phrase, but have added an additional notice requirement. Executive secretaries will be responsible for maintaining lists of persons and organizations requesting notices of meetings, and notifying them by mail in advance of any meeting.

Section 11.5(a)(2)(iii) has been amended in response to a comment that indicated that the regulation should clearly state that meetings should be held only in emergencies unless at least fifteen day notice was given.

Many commentators expressed concern with the provisions relating to the openness of committee meetings and records. Several commentators were particularly concerned that the regulations will inhibit free exchange of ideas and information among committee members by placing members in a position to be unduly influenced by observers reactions. Several members of the research community indicated a concern that the best ideas will not be submitted to the Department because potential submitters of ideas will be left without any protection or privacy. The closing of committee meetings requires a careful balancing of interests, the need for the greatest possible public disclosure of the advisory process, the encouragement of the free exchange of ideas, and the right of privacy of individuals submitting their ideas. One writer likened the committee process to that of the jury in the American judicial system and suggested that an individual's ideas are entitled to protection. The availability of an exemption does not require the closing of meetings, and the Department has exercised restraint in closing meetings. It will continue to do so.

One writer argued that exemption 5 of the Freedom of Information Act, 5 U.S.C. 552(b)(5) was inapplicable to advisory committee records and discussions. We disagree. In the case of Washington Research Project, Inc., v. Department of Health, Education, and Welfare, 504 F. 2d 238 (D.C. Cir. 1974) the Court concluded that records of advisory committee meetings were exempt from mandatory disclosure under the Freedom of Information Act at least insofar as they reflected the views of advisory committee members. In the case of Aviation Consumer Action Project, et al v. Washburn, et al, ____ F. 2d ____, C.A.D.C. 1976, the Court also held that exemption five was available for use in the closing of committee meetings. Thus, § 11.5(a)(6)(ii) remains as proposed.

Section 11.5(a)(6)(f) has been amended to provide that requests for closing a meeting (or portion) shall be submitted sixty, rather than thirty days, in advance of any meeting. This requirement will provide additional time for consideration of closing requests by officials responsible for making such determinations.

In response to one commentator's suggestion, § 11.5(b)(3) has been modified to specify the procedures adhered to by the Department in maintaining advisory committee records,

Several commentators have suggested that a verbatim transcript be kept of all closed sessions. The Act does not require the keeping of such a transcript, and to do so by regulation would result in the Department incurring unwarranted and great expense. In any event, detailed minutes of all meetings provide a meaningful record for later use and review.

Several persons indicated the Department should be able to decide for itself whether a committee ought to be established or renewed without OMB consultation and concurrence. The Federal Advisory Committee Act, however, requires consultation with the OMB before a committee is established, and OMB Circular A–63, Transmittal Memorandum No. 1 requires that the Department obtain OMB concurrence prior to renewing a committee. Likewise, one commentator's conclusions that annual review, two year renewals, and retention of authority to adjourn committee meetings in stated circumstances will cause an upheaval of the committee mechanism ignore the fact that these matters are statutory requirements.

One commentator suggested that the Department maintain and disclose to the public even more complete committee records than those specified in these rules, such as a list of all persons who declined an invitation to serve on a committee and more data on members' personal and financial affairs. Responsibility for avoiding conflict of interest lies with the Department and we find that no useful purpose would be served by such disclosures. The Department will continue to provide maximum feasible disclosure of such matters within the constraints of the Privacy Act.

Another person suggested that the Department should publish the vote of members on a decision to close a meeting. We disagree. Any decision as to whether to close a meeting is not made by a committee's membership, but by a Department official.

Sections 11.7, 11.8, 11.9 as published have been deleted. These sections related to internal administrative matters which are a subject for inclusion in the Department's General Administration Manual.

Various editorial changes have also been made in the interest of clarity. 45 CFR Part 11 is revised as set forth below.

Interested persons are invited to submit written comments, suggestions, or objections concerning the new Part 11 on or before September 22, 1976.

Comments should be addressed to: Department Committee Management Officer, Department of Health, Education, and Welfare, Room 4036 North Building, 330 Independence Avenue, SW., Washington, D.C. 20201.

All comments received in timely response will be considered, and will be available for public inspection at the

above address during regular business hours. Following the close of the comment period, the regulations will be revised as warranted by the public comments received. It is intended that any revision of the regulations will be published within 90 days following the close of the comment period. The regulations, as set forth below, will be applicable and effective on August 23, 1976.

Effective date: This regulation shall become effective August 23, 1976, as an interim final rule.

Approved: August 13, 1976.

MARJORIE LYNCH,
Acting Secretary.

Sec.

11.1 Scope.
11.2 Definitions.
11.3 General policies.
11.4 Guidelines for the creation and renewal of advisory committees.
11.5 Operation of advisory committees.
11.6 Administrative remedies.
11.7 Department committee management officer.

AUTHORITY: 86 Stat. 770, 5 U.S.C. App. I et seq. and Office of Management and Budget Circular A–63, 39 FR 12389, April 5, 1974.

§ 11.1 Scope.

(a) This part contains the Department's regulations implementing the Federal Advisory Committee Act.

(b) The regulations provided under this part apply to all advisory committees providing advice to the Department or any of its officials except to the extent that statutory provisions governing an advisory committee may specifically provide otherwise.

§ 11.2 Definitions.

(a) "Act" means the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. I et seq).

(b) "Advisory committee," subject to exclusions described in paragraph (b)(3) of this section means any committee, board, commission, council, conference, panel, task force, or other similar group or any subcommittee or other subgroup thereof which is established by statute or reorganization plan; or established or utilized by the Department in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government.

(1) Although no single factor is determinative in deciding whether a group is an advisory committee, the following factors will be considered:

(i) Fixed membership including at least one person who is not a full-time Federal employee;

(ii) Establishment by a Federal official or law; or if not Federally established, the initiative for its use as an advisory body for the Federal Government comes from a Federal official rather than from a private group;

(iii) A purpose of providing advice regarding a particular subject or particular subjects;

(iv) An organizational structure (e.g.), officers and a staff;

(v) Regular or periodic meetings.

(2) The functions of an advisory committee are to be solely advisory. Where a group provides some advice to the Department, but the group's advisory function is incidental and inseparable from other (e.g., operational) functions, the provisions of this part do not apply. However, if the advisory function is separable, the group is subject to this part to the extent that the group operates as an advisory committee.

(3) Groups excluded from the effect of the provisions of this part include:

(i) Any committee which is composed wholly of full-time officers or employees of the Federal Government;

(ii) Any committee which is exclusively operational in nature (e.g., has functions which include making or implementing decisions, as opposed to the offerings of advice or recommendations);

(iii) Any local civic group whose primary function is that of rendering a public service with respect to a Federal program;

(iv) Any state or local committee or similar group established to advise State or local officials or agencies;

(v) The term "advisory committee" is not intended to include persons or organizations which have contractual relationships with the Department except in those cases where the criteria described in paragraph (b)(1) of this section are present:

(c) "Department" means the Department of Health, Education, and Welfare.

(d) "Secretary" means the Secretary of Health, Education, and Welfare, or his designee.

(e) "OMB Secretariat" is the office within the Office of Management and Budget to administer the provisions of OMB Circular A–63.

(f) "Presidential advisory committee" means an advisory committee which advises the President.

(g) "Statutory advisory committee" is one established by the Congress or required to be established by the Congress.

(h) "Non-statutory advisory committee" is one established by the President or other Federal officer, including a committee which was authorized by, but not established by or required to be established by statute.

§ 11.3 General policies.

(a) In interpreting this part, Department officials shall be guided by the Act and the intent of Congress in enacting the Act. These considerations include:

(1) Limiting the number of advisory committees to those that are essential and terminating any committee not fulfilling its purpose;

(2) Insuring effective use of advisory committees and their recommendations, while assuring that decisionmaking authority is retained by the responsible Department officers;

(3) Providing clear goals, standards and uniform procedures with respect to creation, operation, and duration of committees;

(4) Insuring that adequate information is provided to the President, the Congress and the public regarding advisory committees;

(5) Insuring adequate opportunities for access by the public to advisory committee meetings, and

(6) Providing uniform requirements for advisory committee reports and their availability to the public.

(b) Department officials shall be guided by the HEW Standards of Conduct (45 CFR 73.735), the Federal Personnel Manual, and the Federal Conflict of Interest statutes (18 U.S.C. 201 et seq.), in preventing conflicts of interest or appearance of conflicts of interest on the part of Department employees concerned with advisory committees, advisory committee members and staff, and consultants and experts concerned with advisory committees.

§ 11.4 Guidelines for the creation and renewal of advisory committees.

(a) Advisory committees shall be established by the Department only when they are determined to be essential. Their number shall be kept to the minimum necessary. They shall be terminated when they are no longer carrying out the purposes for which they were established or such purposes are no longer regarded as necessary to the operation of the department.

(b) No advisory committee shall be established or renewed unless such establishment or renewal is specifically authorized by statute, or established by statute or the President, or determined as a matter of formal record by the Secretary (after consultation with the OMB Secretariat) to be in the public interest in connection with the performance of duties imposed on the Department by law. In seeking such determination by the Secretary, the responsible official requesting establishment or continuance of an advisory committee shall make a request in writing to the Secretary. The request shall describe the nature or purpose of the proposed committee; the reasons why it is needed, including an explanation of why the functions of the proposed committee cannot be performed by Department employees, by an existing committee, or by some other means; and a description of the plan to attain balanced membership on the proposed committee in terms of the points of view to be represented, functions to be performed, and expected participation by women and minorities.

(c) No advisory committee shall meet or take any action until:

(1) In the case of establishment or renewal, in appropriate instances, the OMB Secretariat has been consulted.

(2) A formal charter has been approved by the Secretary;

(3) Public announcement of its establishment or renewal has been made in the FEDERAL REGISTER, at least fifteen days prior to the filing of the committee's charter.

(d) Copies of the charter shall be provided by the Department to the appro-

priate standing committees of the Senate and House of Representatives and to the Library of Congress. In the case of Presidential Committees a copy of the charter shall also be provided to the Office of Management and Budget. The charter shall be in a form prescribed by the Department Committee Management Officer and shall contain the following information:

(1) The committee's official designation;

(2) The committee's objectives and the scope of its activity;

(3) The period of time necessary for the committee to carry out its purpose;

(4) The official to whom the committee reports;

(5) The person responsible for providing the necessary support for the committee;

(6) A description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions;

(7) The estimated annual operating costs in dollars and man-years for such committee;

(8) The estimated number and frequency of committee meetings;

(9) The committee's termination date, if less than two years from the date of the committee's establishment; and

(10) The date the charter is approved by the Secretary.

(e) With regard to subgroups, if all of its members are members of the parent committee, requisite information may be set forth in the charter of the parent committee. In the event a subgroup includes members who are not all drawn from the parent committee, it shall be separately chartered. In addition, if not incorporated in the charter of the parent committee, subgroups shall be separately chartered.

(f) No advisory committee shall be created if its functions could otherwise be performed effectively within the Department or by an existing committee.

(g) The membership of an advisory committee shall be fairly balanced in terms of the points of view represented and the committee's functions. Appropriate safeguards shall be taken to assure that an advisory committee's advice and recommendations will not be inappropriately influenced by any special interest, but shall instead be the result of the advisory committee's independent judgment.

(h) In the selection of committee members, there shall be no discrimination on the basis of race, color, national origin, religion, age, sex, or handicap.

(i) Each advisory committee shall prepare an annual report describing its membership, functions, recommendations and other actions. A copy of the report shall be submitted to the Department Committee Management Officer who shall make copies of them available to the public, upon request. In addition, a copy of the report shall be filed with the Department's Library and made available to the public. Notice of the availability of the Annual Report shall be published in the FEDERAL REGISTER no later than sixty days after its completion. Such notice shall indicate its availability to the public.

(j) Unless specifically provided otherwise by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. For purposes of this provision, "Presidential directive" refers to an executive order, executive memorandum or an OMB directive.

(k) Decisions regarding actions or policies relating to matters dealt with by a Department advisory committee shall be made solely by Department officials.

(l) Except for committees created by Congress with a duration in excess of two years, no Department advisory committee shall continue in existence for a period of more than two years from its establishment unless renewed prior to the date of its scheduled termination by action of the Congress, the President, or the Secretary as appropriate. In the case of a committee continued by the Congress or the President beyond its scheduled termination date, a charter shall be approved by the Secretary and the requirements set forth in paragraph (c) of this section complied with before any meeting is held. To renew a committee the Secretary shall determine that such renewal is necessary and inform the OMB Secretariat of his determination and the reasons for it. Renewal determinations shall be made not more than sixty days before the scheduled date of termination. If the OMB Secretariat concurs, the Department Committee Management Officer shall notify the responsible Department officials who shall publish notice of the renewal in the FEDERAL REGISTER. A new charter shall also be approved by the Secretary.

(m) Any advisory committee which is renewed may continue for no more than a two-year period unless prior to the expiration of that period it is renewed for another two-year period in accord with the above provisions.

§ 11.5 Operation of advisory committees.

(a) *Meetings.* The provisions of this section shall apply to meetings of all Department advisory committees and all subgroups.

(1) *Calling of meetings and agenda.* (i) No advisory committee shall hold any meetings except at the call of or with the advance approval of the designated Department official.

(ii) No meeting shall be held in the absence of a quorum. Unless otherwise established in the charter of the committee, a quorum shall consist of a majority of the committee's authorized membership, including ex officio members. In addition, such members shall have full voting rights.

(iii) Each meeting of an advisory committee shall be conducted in accordance with an agenda approved by the designated Department official. Ordinarily, copies of the agenda shall be distributed to the members of the committee prior to the date of the meeting. The agenda shall list the matters to be considered at the meeting and shall indicate whether any part of the meeting is concerned with matters which are within the exemptions of the Freedom of Information Act, 5 U.S.C. 552(b).

(2) *Notice of meeting.* (i) Except when the Director of the Office of Management and Budget determines otherwise for reasons of national security, or except as otherwise provided herein, notice of each advisory committee meeting shall be published in the FEDERAL REGISTER at least fifteen days prior to the meeting. The fact that a meeting is closed to the public pursuant to paragraph 10(d) of Pub. L. 92–463 shall not affect the foregoing requirement.

(*a*) The notice shall state the name of the advisory committee, the time and place of the meeting, and the purposes of the meeting and shall include a summary of the agenda.

(*b*) The notice shall state the extent to which the public will be permitted to attend or participate in the meeting. If the meeting will be closed to the public, the notice shall also state the reasons for closing, including appropriate citation to the Freedom of Information Act.

(ii) In addition to notice in the FEDERAL REGISTER, the Executive Secretary of each advisory committee shall maintain a list of persons and organizations who have requested to be notified of all meetings and notify them by mail in advance of any meeting. Other forms of notice, such as press releases and notices in professional journals shall be used to the extent practicable.

(iii) Meetings may be held only in emergency situations unless notice of the meeting has been published in the FEDERAL REGISTER at least fifteen days prior to the meeting. Such meetings shall be kept to a minimum, and whenever feasible, rescheduled for a later date. When a meeting must be called without fifteen days notice being given, the following steps shall be taken, to the extent possible:

(*a*) Advance notice shall be published in the FEDERAL REGISTER.

(*b*) Other forms of notice shall be utilized whenever practicable.

(*c*) In the case of meeting notices published in accordance with paragraphs (a)(2)(iii) and (a) and (b) of this section, the notice shall contain an explanation for the failure to give fifteen days notice.

(3) *Public participation at meetings.* (i) Subject to the exceptions described in paragraph (a)(6) of this section each advisory committee meeting shall be open to the public, and interested persons shall be permitted to attend, appear before, or file statements with any advisory committee.

(ii) The Executive Secretary of each committee shall, with respect to any advisory committee meeting, all or part of which is open to the public, assure compliance with the following rules:

(*a*) Meetings shall be held at reasonable times and places that are reasonably accessible to members of the public. Whenever feasible, Government facilities shall be used and meetings held in

places involving the least expense to the Department.

(b) The size of the meeting room shall be reasonable, considering such factors as the size of the advisory committee, the number of members of the public expected to seek to attend, and the resources and facilities available to the Department.

(c) Any member of the public who wishes to do so shall be permitted to file a written statement with the committee, before or after a meeting.

(d) To the extent that the time available for a meeting permits, interested persons may be permitted to present oral statements. Any person seeking to present an oral statement to a committee may be required to obtain advance approval for such participation from the committee chairman or the committee's Executive Secretary.

(e) Participation by members of the public at committee meetings or questioning of committee members or other participants shall only be permitted with the authorization of the committee chairman.

(4) *Minutes and transcripts of meetings.* (i) Detailed minutes shall be kept of each meeting of each advisory committee, including meetings of formal and informal subgroups. The Executive Secretary of each advisory committee shall keep the minutes or designate some person to keep the minutes. Minutes need not be kept if a verbatim transcript is made.

(ii) The minutes shall include at least the following: The time and place of the meeting; a list of advisory committee members and staff and full-time Federal employees present at the meeting; a detailed summary of matters discussed, including different positions advanced by members and conclusions reached by the committee; copies of all reports received, issued, or approved by the advisory committee; an explanation of the extent to which the meeting was open to the public; and explanation of the extent of public participation, including a list of members of the public who presented oral or written statements; and an estimate of the number of members of the public who attended the meeting.

(iii) Within a reasonable time after the meeting the minutes shall be completed and submitted to the chairman of the advisory committee.

(iv) Within a reasonable time after receipt of the minutes the chairman of the advisory committee shall certify to the accuracy of the minutes and submit them to the Executive Secretary for submission to the official advised by the committee.

(5) *Designated Department employee.* (i) Each advisory committee meeting shall be attended by a Department employee designated by the Department official responsible for the Committee. Ordinarily, the employee so designated shall serve the advisory committee on a continuing basis.

(ii) No advisory committee shall conduct a meeting in the absence of the designated Department employee. If simultaneous subgroup meetings are to be held, each subgroup shall have a designated Department employee in attendance.

(iii) The designated Department employee is authorized to adjourn any advisory committee meeting, whenever he determines adjournment to be in the public interest. Inter alia, the designated Department employee shall adjourn the meeting in the event of unwarranted departure from a meeting's agenda.

(6) *Closing advisory committee meetings.* (i) Subsection 10(d) of the Act provides that the provisions concerning open meetings and public participation shall not apply to any advisory committee which the President, or the head of the department to which the advisory committee reports, determines is concerned with matters listed in 5 U.S.C. 552(b). The Department's regulation implementing that Act is found at 45 CFR Part 5. Department officials shall be guided by the policies set forth in that regulation in making determinations to close meetings. In applying the provisions of 5 U.S.C. 552(b) to advisory committee meetings, liberal interpretations shall be assumed with respect to the openness of such meetings. Any determination to close a meeting (or portion) shall restrict such closing to the shortest reasonable time.

(ii) In applying the Freedom of Information Act exemptions to advisory committee meetings, the following rules shall be followed:

(a) If a meeting (or portion) will have the express purposes of discussing an existing document which is within one of the exemptions set forth in 5 U.S.C. 552(b), the meeting (or portion) may be closed to the public.

(b) Meetings closed solely on the basis that a document exempt from mandatory disclosure under exemption (5) (concerning intra-agency and inter-agency memoranda and letters) is to be discussed, may only be closed if the Secretary determines that it is essential to close such meeting (or portion) to protect the free exchange of internal views of committee members and avoid undue interference with Department or committee operation.

(c) A meeting (or portion) involving solely the internal expression of views and judgments of committee members, and not the discussion of an exempt document may be closed if a finding is made that is essential to close the meeting (or portion) to protect the free exchange of members views and avoid undue interference with Department or committee operations, and such views if reduced to writing would be protected from mandatory disclosure under section 552(b)(5) of Title 5 U.S.C. When feasible, the public shall be given an opportunity to present relevant information and views to the committee. Concurrence for closing such a meeting shall be obtained from the Office of the General Counsel and the Office of Public Affairs.

(d) If a meeting (or portion) will have the express purpose of discussing a matter which is within one of the exemptions set forth in 5 U.S.C. 552(b), other than exemption (5), the meeting (or portion) may be closed to the public even though no specific exempt document is to be discussed.

(e) If the subject of a meeting will be such that paragraphs (a)(6)(ii) (a) through (d) inclusive above do not furnish a basis for closing it, the meeting shall be open to the public.

(f) When a advisory committee seeks to have a meeting (or portion) closed, the Executive Secretary shall make a request in writing for a determination by the Secretary. Such a request shall set forth the reasons why the meeting (or portion) should be closed. Whenever practical, the request shall be submitted at least sixty days before the scheduled date of the meeting.

(g) If the Secretary finds the request to be warranted and in accord with the policy of the Act and the Freedom of Information Act, the request shall be granted. The determination made by the Secretary shall be in writing and contain specific reasons for closing the meeting (or portion). Determinations made by authorized designees must be reviewed and approved by the Office of the General Counsel and the Office of Public Affairs.

(h) If a meeting is to be held for the consideration of several separable matters, not all of which are within the exemptions of 5 U.S.C. 552(b), only the portion of the meeting dealing with exempt matters may be closed.

(i) When part of a meeting is to be closed, the agenda shall be arranged to facilitate attendance by the public at the open portion of the meeting.

(j) When a meeting (or portion) is closed, only members of the committee, its staff, and Federal employees shall be permitted to attend.

(k) When a meeting (or portion) is closed, members of the advisory committee shall not disclose the matters discussed except to other members of the advisory committee, the staff of the advisory committee or Department employees.

(l) The Department Committee Management Officer may review, after the meeting, the appropriateness of any determination to close a meeting (or portion) and require that corrective action be taken with respect to the particular advisory committee or general procedures concerning the closing of meetings.

(m) When a meeting (or portion) is closed, and detailed minutes are not to be made available in their entirety to the public, the advisory committee shall prepare and make available to the public within fourteen days of the close of the meeting a summary of its activities and related matters which are informative to the public consistent with the policy of 5 U.S.C. 552(b). Notice of the availability of such a summary shall be incorporated in the notice of the meeting published in the FEDERAL REGISTER.

(b) *Access to records.* (1) All records, reports, and other documents of each advisory committee shall be available for public inspection and copying pursuant to the Department's public information

regulation. Documents referred to herein include the records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda or other documents which were made available to or prepared for or by each advisory committee.

(2) Advisory committee records determined to be available for public inspection are to be made available for inspection and copying at a single location in the offices of the advisory committee or the Department organizational component to which the advisory committee reports. The advisory committee or appropriate Department organizational component shall make available to any person copies of transcripts of committee proceedings or meetings at cost determined in accordance with the appropriate fee schedule.

(3) Advisory committee records are maintained and disposed of according to procedures prescribed in the Department's Records Management Manual.

§ 11.6 Administrative remedies.

(a) Any person whose request for access to an advisory committee document is denied may seek administrative review in accord with the Department's Freedom of Information Act regulation.

(b) Any person whose request for access to an advisory committee meeting is denied after publication of the notice of the meeting in the FEDERAL REGISTER may appeal to the appropriate official designated at 45 CFR 5.82. If the decision on appeal is adverse to the request-or concurrence of the Assistant Secretary for Public Affairs or his designee, shall be obtained.

§ 11.7 Department committee management officer.

The Secretary shall designate a Department employee to implement this part and consult with the Office of Management and Budget on his behalf.

[FR Doc.76-24468 Filed 8-20-76;8:45 am]

federal register

MONDAY, AUGUST 23, 1976



PART IV:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Assistant Secretary for Housing FHA Commissioner

■

REVIEW OF APPLICATIONS FOR HOUSING ASSISTANCE; ALLOCATION OF HOUSING ASSISTANCE FUNDS

Title 24—Housing and Urban Development

CHAPTER VIII—LOW INCOME HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-76-388]

PART 891—REVIEW OF APPLICATIONS FOR HOUSING ASSISTANCE; ALLOCATION OF HOUSING ASSISTANCE FUNDS

On May 5, 1976, the Department of Housing and Urban Development (HUD) published, for comment, in the FEDERAL REGISTER at page 18626 a proposed amendment to Chapter VIII of Title 24 of the Code of Federal Regulations by adding a new Part 891, "Review of Applications for Housing Assistance; Allocation of Housing Assistance Funds."

Part 891 sets forth the regulations which apply to the review and approval of applications for housing assistance and to the allocation of housing assistance funds pursuant to Section 213 of the Housing and Community Development Act of 1974 (42 U.S.C. 5301). The provisions of this Part apply to applications for housing assistance under the United States Housing Act of 1937 (42 U.S.C. 1437), Sections 235 and 236 of the National Housing Act (12 U.S.C. 1715z, 1715z-1), Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s), and Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), these provisions do not apply to applications for assistance with respect to low income housing modernization under the United States Housing Act of 1937 (42 U.S.C. 1437) which will be covered in a notice of proposed rulemaking under 24 CFR, Part 863, nor to operating subsidy assistance (42 U.S.C. 1437g), which are not subject to the requirements of Section 213 of the Housing and Community Development Act of 1974 (42 U.S.C. 1437).

Subpart A identifies the housing assistance programs subject to these regulations and defines the terms used. Subpart B describes the policies and procedures governing reviews and determinations with respect to applications for housing assistance to be located in areas with approved housing assistance plans (HAPs) and Subpart C describes such policies and procedures for areas without HAPs. Subpart D provides the policies and procedures governing the allocation of housing assistance funds. Subpart E contains the policies and procedures governing supplemental allocations of housing assistance funds for use in jurisdictions covered by a HAP and participating in an approved Areawide Housing Opportunity Plan. Subpart E was published separately for final effect on June 23, 1976, but has been incorporated with this publication to provide the necessary convenience and continuity for these regulations.

HUD received over 20 responses to the May 5, 1976, publication. All of these comments have been carefully considered, and certain changes have been made in the regulations as a result of these comments and other pertinent considerations. The following is a discussion of the principal comments and changes.

1. The definitions contained in § 891.102 have been expanded to include those terms applicable to the policies and procedures for supplemental allocations based upon Areawide Housing Opportunity Plans pursuant to Subpart E of this Part 891, and the definitions are now presented in alphabetical order.

2. The definition of the term Chief Executive Officer in § 891.102(e) has been modified to conform with the definition contained in the regulations governing the Community Development Block Grant program (24 CFR, Part 570). The reference in the proposed regulations to the delegation of responsibility for review of applications, by the Chief Executive Officer, has been deleted because Section 213(a) of the Housing and Community Development Act of 1974 (Act) merely requires notification of the Chief Executive Officer who must serve, therefore, as the point of contact on behalf of the local government having the review responsibility.

3. It was suggested that the Field Officer Director notify local governments pursuant to § 891.202 within ten days from "actual" receipt of an application for housing assistance, rather than after HUD's initial screening or preliminary evaluation. The concern was that initial screening could cause delays. Although this comment was seriously considered, it was not accepted. However, the language in § 891.102(1) has been revised to clarify that the purpose of initial screening or preliminary evaluation of an application is to determine its acceptability for processing. Notifications prior to this initial step would result in local governments being asked to comment on applications for housing assistance which were incomplete or were otherwise unacceptable and could not, therefore, be considered for approval by the Field Office Director.

4. Several comments suggested changes in § 891.202(a) to clarify which units of local government should be notified by the Field Office Director. The suggestion that special provisions be incorporated for Section 8 Existing Housing was adopted, and are included in § 891.202 (a)(3). A related comment with respect to the Section 8 Existing Housing program suggested that language be included which would exempt a statewide Public Housing Agency (PHA) from having to notify all local governments within the State. While an exemption cannot be provided, the language in this subsection has been changed to provide for notification of those local governments identified as primary areas from which families to be assisted will be drawn. This provision will ensure that those local governments in which housing assistance will be provided in a concentrated manner will be notified.

5. One comment suggested that the Field Office Director notify the Public Housing Agency, in addition to the local government, that an application for the Section 8 Existing Housing Program or an application for the Section 8 Housing Assistance Payments Program-Special Allocations is under consideration. Since Section 213(a) of the Act specifically provides that the local government be notified, and makes no reference to a Public Housing Agency, this comment was not accepted.

6. It was suggested that a provision requiring review of all housing assistance applications by Areawide Planning Organizations be added to this regulation. This comment was not accepted, since provisions with respect to reviews by Areawide Planning Organizations are contained in the regulations for each housing assistance program, as well as in OMB Circular A-95.

7. Minor changes have been made in § 891.202(b) to clarify that the Chief Executive Officer is invited to provide relevant comments on behalf of the local government, and to provide examples of the type of comments which might be provided.

8. Several comments suggested that Field Office Directors encourage recommendations by local governments, as well as written objections. Section 891.204(a) provides for the submission of other comments with respect to an application when there is no objection to the approval of such application. However, since approval of a specific application, by the Field Office Director must be based upon several criteria, such as project feasibility, compliance with Departmental standards, comments by Areawide Planning Organizations pursuant to OMB Circular A-95, in addition to local government comments, the Field Office Director will not be able, in all cases, to accept a local government's positive recommendation that an application be approved.

9. Section 891.204(a)(2) contains the language formerly in § 891.205(c)(2), with respect to a major variation (i.e. where the units in the application exceed the annual goal by more than twenty percent or twenty units, whichever is greater), and the statement to be submitted by the Chief Executive Officer on behalf of the local government in such cases. Several comments recommended changes to provide additional flexibility, since the variations as previously defined in § 891.205(c)(2), were viewed as too restrictive. Accordingly, in order to provide the added flexibility, the content of the statement required, when there is no objection to a major variation, has been modified to include only information with respect to need and availability of public services and facilities in addition to a statement that there is no objection to approval of the application.

10. Several comments suggested changes with respect to the reasons set forth in § 891.204(b), which may serve as a basis for local government objection to approval of an application for housing assistance. One comment requested that the prior reference to housing assistance goals specify that objections may be based on the three-year housing assistance goals. Because local governments may, for valid reasons, intend to limit the total amount of housing assistance to be provided in any one year, this comment was not accepted with respect to the total number of dwelling units or households

to be assisted. However, the language with respect to a minor variation, previously in § 891.205(c)(2), has been changed and now is incorporated in § 891.204(b)(1), which states that a minor variation (i.e. one which exceeds the total number of units in the annual goal by no more than twenty percent or twenty units, whichever is greater), by itself, shall not be a basis for an objection.

In addition, a new § 891.204(b)(5) has been added which provides that an objection to an application for assistance under certain programs not specifically referred to in a HAP may be made on the basis that the application is inconsistent with the housing needs and housing assistance strategy of the locality.

11. Section 891.204(b)(2) now provides that an objection based upon the number of dwelling units or households to be assisted, by household type (elderly and/or handicapped, family, large family), must be based on the three-year housing assistance goal. The three-year time frame with respect to assistance by household type relates to the requirement in the HAP regulations, at § 570.303(c)(3)(iv), that the three-year total housing assistance goals must address the needs of the three household types generally in proportion to housing assistance needs.

12. One comment suggested that, if a local government objects on the ground that the proposed assistance is in different locations from those specified in the HAP, it should be required to demonstrate that the proposed units would be detrimental. In response to this comment § 891.204(b)(4) has been revised to require that local government objections, on the basis that the proposed location is inconsistent with the general locations specified in the applicable HAP, must be accompanied by a statement of the specific reasons why the location is objectionable.

13. One comment suggested that the inclusion in § 891.204(b)(4) of language permitting objections based on any other reasons that the local government deems appropriate without further definition, would defeat the purpose of Section 213 of the Act. Therefore, the language which now appears at § 891.204(b)(6) has been changed to permit objections only on the ground that it is inconsistent with "other limiting factors set forth in the HAP, in addition to information in the HUD-prescribed tables."

14. One comment noted that § 891.205(c) did not provide the Field Office Director any guidelines or review factors to measure an objection. This comment was accepted, and this subsection now makes it clear that the Field Office Director's finding of consistency or inconsistency must be based on the same factors as those applicable to the local government's objection, i.e. the factors set forth in § 891.204(b) (1) through (6).

15. As suggested by comments with respect to § 891.205(c), a follow-up process has been added for the Field Office Director to contact the local government when there is a major variation and no response is received during the thirty day comment period. If no subsequent response is received from the local government, an application which constitutes a major variation may not be approved by the Field Office Director.

16. The three levels of variation set forth in § 891.205(c)(2) of the proposed Regulation have been changed to eliminate the middle level of substantial variation, in response to comments stating that the variations were overly restrictive. A minor variation is now defined to include applications for assistance which exceed the annual goal by no more than twenty percent or twenty units, whichever is greater.

17. The language in § 891.205(c)(4) with respect to applications for Section 8 assistance pursuant to 24 CFR, Part 886, or an application for Section 202 or Section 235 assistance has been changed to clarify that the absence of specific reference to such assistance in the HAP shall not be a basis, "by itself and in the absence of a local government objection," for an independent finding of inconsistency by the Field Office Director.

18. A new § 891.205(c)(5) has been added to clarify that, even though a specific application may be determined consistent, it is not to be approved by the Field Office Director unless the written statement with respect to a major variation is received, if the particular application, taken into consideration with other applications previously approved, would constitute a major variation.

19. It was suggested that § 891.302 should, more appropriately, state that the Field Office Director is to determine the need for housing assistance and the availability of public facilities prior to issuing a Section 8 Invitation for Applications or Notification of Fund Availability. In response to this suggestion § 891.302 was modified to require the Field Office Director to make a determination of need for housing assistance prior to receiving applications. However, since the Field Office Director cannot make a determination of the adequacy of public facilities and services until the proposed location is known, this determination will be made prior to approval of the application for housing assistance.

20. One comment recommended the addition of language which would require that approved areawide housing plans reflecting a coordinated regional housing needs assessment be used as the only basis for determination of housing need and adequate public facilities and services. While the Department encourages the preparation and use of such plans as a basis for providing housing assistance, Section 213(c) of the Act specifically provides for local government comments which are relevant to the Field Office Director's determination. An areawide plan cannot be used as the only basis for the Field Office Director's determination, and this comment, therefore, was rejected.

21. In reference to § 891.303(a), one comment suggested that the notification procedure be the same for areas with HAPs and those without. Because Section 213 affords only local governments having HAPs the opportunity to object on the basis of such HAPs, and affords other communities an opportunity only to provide information or comments on the proposed applications, the notification procedures cannot be the same in both cases.

22. The reference to comments by the Chief Executive Officer in § 891.303(b)(2) and § 891.304(a) have been changed to clarify that such comments are submitted on behalf of the local government.

23. One comment suggested that the modifications to the statistical data elements used in determining housing needs on a program-by-program basis be clarified. Section 891.402(a) has been revised to indicate that the age and income as well as other relevant characteristics of the prospective program participants will be considered in making these modifications.

24. Several comments suggested that the "carry-over" contract authority referred to in Section 891.403(a) should be reallocated to the same Field Office Director without being subject to the national allocation formula. This comment was not accepted because Section 213(d) of the Act specifies that assistance be allocated on the basis of relative housing needs. Accordingly, since the needs factors used in allocating such assistance are adjusted annually to reflect changes in housing needs, the reallocation of "carryover" funds to the same Field Office Director might result in an allocation that is unrelated to need.

25. A suggestion that the Regional Administrator be permitted to retain a reserve of contract authority for unforeseen demands was not accepted. In the interest of flexibility, the reserve will be maintained at the national level or portions may be transferred to the Regional Administrators, as determined by the Secretary. To establish Regional Office reserves in addition to the reserve held by the Secretary, would be duplicative and would reduce the amount of contract authority initially allocated to areas and localities.

26. It was suggested that the Regional Administrator and Field Office Director be required to allocate all contract authority within fifteen working days, rather than the thirty days stated in the proposed regulations, so that more time would be available to sponsors, developers, and Public Housing Agencies. Although it is desirable to minimize the time for making allocations, a fifteen-day limitation may force the Regional Administrator and Field Office Director to compromise their determination of an equitable allocation in order to meet their short deadline and, therefore, this suggestion was not accepted. The Department intends to allocate contract authority as soon as possible with thirty days considered the maximum time allowable for Regional Administrators to suballocate such authority and for the Field Office Directors to determine the amount of contract authority to be allo-

cated to specific geographic areas within their jurisdiction.

27. It was suggested that the contract authority, retained by the Secretary for special purposes, that is not used within ninety days prior to the end of the fiscal year be allocated to Regional Administrators in accordance with the formula used in the initial allocation. This suggestion was not accepted on the basis that allocation of the contract authority retained must be left to the discretion of the Secretary or the very purpose of the set-asides for special housing needs would be defeated. It is the Department's intent to allocate unused contract authority as soon as possible. However, these funds will be allocated in increments so that some portion of the reserve is retained to meet unforeseeable demands such as natural disaster housing requirements.

28. One comment suggested that a reserve be established for large metropolitan areas (over 500,000 population) which contain substantial proportions of lower and very low-income households and substandard housing. The comment indicates a misunderstanding of the purpose of the reserve which is to maintain a small amount of contract authority to satisfy special or unforeseen needs that were not reflected in the statistical factors used in making the initial allocation to the Field Office Directors.

29. It was suggested that allocations should be consistent with the policies for promoting Areawide Housing Opportunity Plans through the use of supplemental allocations and with the policies regarding the housing elements for the 701 planning program. The allocation procedures in these regulations are, in fact, consistent with these policies and are based on housing needs identified in HAPs which take into consideration housing needs according to type of family and location.

30. It was suggested that the Field Office Director be required to use available areawide or State housing plans in determining the relative housing needs. The suggestion was not accepted in its entirety but Section 891.404 was modified to provide greater use of areawide or State housing plans in determining relative housing needs.

31. Another comment suggested that the Field Office Director allocate contract authority to metropolitan areas and geographic regions, rather than to individual counties. This comment indicates a misunderstanding of Section 891.404(a). Although the housing assistance needs percentage factors for allocating contract authority is determined from census data on a county-by-county basis, the Field Office Director may subsequently group counties and/or cities to establish regional allocation areas as indicated in Section 891.404(a)(3).

32. Numerous objections were received to the provision that the amount of HFDA set-aside contract authority shall be established by the Field Office Director. Among the objections were (a) the Secretary could better appraise the needs and examine performance of all HFDAs, (b) set-asides established by the Field Office Director might result in inequities and low level of housing production due to differences in local policy, and (c) the procedure is inconsistent with the Department's past policy of making HFDA set-aside determinations at Headquarters level.

Section 891.404(b) has also been revised to indicate that the Field Office Director and the HFDA shall coordinate their respective efforts to assure an equitable distribution among allocation areas and, if an agreement cannot be reached, the Regional Administrator shall resolve any differences.

33. It was suggested that the regulations clearly indicate that priority for future approvals shall be given to those localities that did not receive housing assistance, provided that acceptable applications are received. This suggestion was accepted and Section 891.404(d) has been modified to reflect the recommendation.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A finding that this regulation is not subject to inflation impact statement requirements has also been made in accordance with HUD procedures. A copy of these findings will be available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10245, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, D.C.

Accordingly, Title 24 is amended as follows: A new Part 891, is added to Chapter VIII to read as set forth hereinafter.

Subpart A—General Provisions

891.101 Applicability and Scope
891.102 Definitions

Subpart B—Applications for Housing Assistance in Areas With Housing Assistance Plans

891.201 General
891.202 Notification of Local Government
891.203 Review and Comment Period
891.204 Local Government Response
891.205 HUD Review of Applications for Housing Assistance
891.206 Notification of HUD Determinations

Subpart C—Applications for Housing Assistance in Areas Without Housing Assistance Plans

891.301 General
891.302 Finding of Need for Housing Assistance
891.303 Notification of Local Government
891.304 Review and Comment Period
891.305 HUD Review of Applications for Housing Assistance

Subpart D—Allocation of Housing Assistance Funds

891.401 General
891.402 Determinations of Lower Income Housing Needs
891.403 Initial Allocation to HUD Offices
891.404 Initial Allocation to Areas and Localities
891.405 Reallocation of Uncommitted Contract Authority

Subpart E—Supplemental Allocations Based Upon Areawide Housing Opportunity Plans

891.501 Applicability and Scope
891.502 General Criteria for Acceptable Plans
891.503 Criteria for Priority Plans
891.504 Contents of Requests for Supplemental Allocations
891.505 Review and Selection of Plans

AUTHORITY: Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)) unless otherwise noted.

Subpart A—General Provisions

§ 891.101 Applicability and scope.

(a) The policies and procedures contained herein apply to the allocation of contract authority and the review and approval of applications for housing assistance under the United States Housing Act of 1937 (42 U.S.C. 1437), sections 235 and 236 of the National Housing Act (12 U.S.C. 1715z, 1715z–1), section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s), and section 202 of the Housing Act of 1959 (12 U.S.C. 1701q). These provisions do not apply to applications for low income housing modernization or operating subsidy assistance.

(b) This part covers the policies and procedures relating to the role and responsibilities of HUD and local governments, under section 213 of the Housing and Community Development Act of 1974 (42 U.S.C. 5301), in reviewing and making determinations with respect to applications for housing assistance made available under the programs specified in § 891.101(a), determinations of lower-income housing needs, allocation of contract authority for metropolitan and nonmetropolitan areas, retention of a reserve of contract authority funds for special lower-income housing needs or programs, and supplemental allocations based upon areawide housing opportunity plans.

§ 891.102 Definitions.

(a) *Act.* The Housing and Community Development Act of 1974.

(b) *Application for housing assistance.* For the purpose of this part, the following definitions establish the documentation which constitutes an application for housing assistance within the meaning of section 213 of the Act.

(1) *Section 8 new construction and substantial rehabilitation.* A preliminary proposal containing the elements listed in § 880.205 of the regulations governing the section 8 Housing Assistance Payments Program—New Construction (24 CFR, Part 880) or the elements listed in § 881.205 of the regulations governing the section 8 Housing Assistance Payments Program—Substantial Rehabilitation (24 CFR, Part 881).

(2) *Section 8 existing housing.* An application containing the elements listed in § 882.204 of the regulations governing the section 8 Housing Assistance Payments Program—Existing Housing (24 CFR, Part 882) submitted by a Public Housing Agency (PHA), including a State Housing Finance and Development Agency (HFDA). In cases where no PHA has been organized or where the PHA is unable or unwilling to implement the program, and where HUD determines to perform such function itself, its determination to that effect shall be consid-

ered an application for the purposes of this part.

(3) *Section 8 housing finance and development agencies—new construction and substantial rehabilitation.* A housing finance and development agency's application for assignment of portion of set-aside to specific project, if a specific site is designated. If the site is not designated, the first new construction or substantial rehabilitation proposal submitted by the HFDA pursuant to the regulations governing the section 8 Housing Assistance Payments Program—State Housing Finance and Development Agencies (24 CFR, Part 883).

(4) *Section 8 housing assistance payments program—special allocations.* (i) An application containing the elements listed in § 886.105 of the regulations governing the section 8 Housing Assistance Payments Program—Additional Assistance Program for Projects with HUD-Insured and HUD-Held Mortgages (24 CFR Part 886, Subpart A).

(ii) A preliminary proposal containing the elements listed in § 886.207 of the regulations governing the section 8 Housing Assistance Payments Program—Additional Assistance Program for the Disposition of HUD-Owned Projects (24 CFR Part 886, Subpart B).

(5) *Low-Income housing (including Indian Housing) by public housing agencies under the Housing Act of 1937 (other than under section 8).* If a specific site is designated, an Application for a Low-Income Housing Program, for the construction or acquisition of housing, submitted by a PHA or Indian Housing Authority; or, if the site is not designated, the preliminary site report submitted by the PHA.

(6) *Section 235 mortgage insurance and assistance payments for homeownership and project rehabilitation.* A request for preliminary reservation of contract authority submitted by a builder or seller.

(7) *Section 236 mortgage insurance and interest reduction payments for rental projects.* The first application for Project Mortgage Insurance, either for Site Appraisal and Market Analysis (SAMA), Conditional Commitment, or Firm Commitment.

(8) *Section 101 rent supplement payments.* The first Application for Project Mortgage Insurance, either for SAMA, Conditional Commitment, or Firm Commitment.

(9) *Section 202 housing for the elderly or handicapped.* A preliminary proposal containing the elements listed in § 885.310 of the regulations governing the Construction Loans for Housing for the Elderly and Handicapped (24 CFR, Part 885).

(c) *Areawide Housing Opportunity Plan (Plan).* A plan, developed by an Areawide Planning Organization, which addresses areawide housing assistance needs and goals and provides for the promotion of a greater choice of housing opportunities for lower income households outside of areas containing an undue concentration of low income households.

(d) *Areawide Planning Organization (APO).* An organization authorized by law or local agreement to undertake planning for a multi-county area (including county-municipality combinations) under section 701 of the Housing Act of 1954 (40 U.S.C. 461) and/or OMB Circular A-95.

(e) *Chief executive officer of a unit of general local government (Chief Executive Officer).* The elected official, or the legally designated official, who has the primary responsibility for the conduct of that unit's governmental affairs. Examples of the "Chief Executive Officer" of a unit of local government may be: The elected mayor of a municipality; the elected county executive of a county; the chairman of a county commission or board in a county that has no elected county executive; the official designated pursuant to law by the governing body of the unit of local government; or the chairman, governor, chief, or president (as the case may be) of an Indian tribe or Alaskan native village.

(f) *Field office director.* The HUD official responsible for the execution of programs and activities assigned to the field office. This term is applicable to (i) Area Office Directors, who are responsible for approving Housing Assistance Plans, as defined in § 891.102(g)(1), and applications for housing assistance; (ii) Insuring Office Directors, who are responsible for approving Housing Assistance Plans, as defined in § 891.102(g)(2), and applications for housing assistance; and (iii) Insuring Office Directors, who are responsible only for approving applications for housing assistance.

(g) *Housing Assistance Plan (HAP).* (1) A HAP meeting the requirements of § 570.303(c) of the Community Development Block Grant (CDBG) regulations (24 CFR, Part 570), which is submitted by a local government as part of the block grant application, and is approved by the Field Office Director.

(2) A HAP, meeting the requirements of § 570.303(c), submitted by a local government not participating in the CDBG Program and approved by the Field Office Director.

(h) *HUD.* The Department of Housing and Urban Development.

(i) *Metropolitan area.* A standard metropolitan statistical area (SMSA) as established by the Office of Management and Budget.

(j) *New communities.* HUD approved New Community developments under Title IV of the Housing and Urban Development Act of 1968 (42 U.S.C. 3901) or Title VII of the Housing and Urban Development Act of 1970 (42 U.S.C. 4501).

(k) *Participating jurisdiction.* A jurisdiction, whether or not it is covered by a HAP (including counties and other local governments), with which an APO has reached agreement on numerical goals for the distribution of lower-income housing assistance as well as the implementation of the Plan.

(l) *Receipt of an application for housing assistance.* An application for housing assistance shall be deemed to have been received after the Field Office Director completes the screening or preliminary evaluation to determine acceptability of the application for processing.

(m) *Regional administrator.* The HUD official responsible for the execution of programs and activities assigned to the Regional Office and field offices within the jurisdiction of the Regional Office.

(n) *Secretary.* The Secretary of the Department of Housing and Urban Development.

(o) *Unit of general local government (Local Government).* Any city, county, town, township, parish, village, or other general purpose political subdivision of a State, Guam, the Virgin Islands, and American Samoa or a general purpose political subdivision thereof; a combination of such political subdivisions recognized by the Secretary; the District of Columbia; the Trust Territory of the Pacific Islands; and Indian Tribes, bands, groups, and nations, including Alaska Indians, Aleuts, and Eskimos of the United States. Such terms also include a State or local public body or agency (as defined in section 711 of the Housing and Urban Development Act of 1970), a community association or other entity, which is approved by the Secretary for the purpose of providing public facilities or services to a new community as part of a program meeting the eligibility standards of section 712 of the Housing and Urban Development Act of 1970 (42 U.S.C. 4501) or Title IV of the Housing and Urban Development Act of 1968 (42 U.S.C. 3901).

Subpart B—Applications for Housing Assistance in Areas With Housing Assistance Plans

§ 891.201 General.

This subpart describes the policies and procedures governing reviews and determinations pursuant to sections 213 (a) and (b) of the Act with respect to applications for housing assistance, under the programs identified in § 891.101(a), to be provided in areas for which a HAP is applicable. This Subpart does not apply to the following applications for housing assistance and the Field Office Director is not required to submit such applications for local government review and comment:

(a) Applications for assistance involving twelve or fewer units in a single project or development.

(b) Applications for assistance with respect to housing in New Communities where the Secretary determines are necessary to meet the housing requirements in such developments.

(c) Applications for assistance with respect to housing financed by loans or loan guarantees from a State or agency thereof (including loans which also have Federal mortgage insurance or co-insurance), unless the local government in which the assistance is to be provided objects in its HAP to the exemption provided in this subparagraph.

§ 891.202 Notification of local government.

(a) The Field Office Director shall notify the Chief Executive Officer of the local government having a HAP, no later than ten working days after receipt of an application, that an application for housing assistance to be provided in that jurisdiction has been received and is under consideration.

(1) When the application is for housing assistance in an area which is covered by more than one HAP (e.g., a municipality which has a HAP and is located in a county which also has a HAP covering such municipality), the Field Office Director shall notify each Chief Executive Officer.

(2) When the application is for housing assistance in several non-overlapping different political jurisdictions (e.g., a scattered site project), the Field Office Director shall notify the Chief Executive Officer of each local government having a HAP.

(3) For section 8 Existing Housing applications pursuant to 24 CFR, Part 882, the Field Office Director shall notify the Chief Executive Officers of the localities identified in the Application for Existing Housing as primary areas from which families to be assisted will be drawn.

(b) The notification to the Chief Executive Officer shall:

(1) Advise him that the Field Office Director has received and is considering an application for housing assistance, identify the housing program (e.g., section 8, section 235), the type of housing (e.g., new construction, substantial rehabilitation, or existing housing), the number of units by bedroom size, the number of units by household type (elderly and/or handicapped, family, large family), and the proposed location.

(2) Advise him that the local government, for a period of thirty calendar days, has the opportunity to object to the approval of the application on the ground that it is inconsistent with the applicable HAP.

(3) Invite him to submit any other comments on behalf of the local government which are relevant to a determination by the Field Office Director concering approval of the proposed housing assistance (e.g., site-related comments; whether the project is approvable under local codes and zoning ordinances).

§ 891.203 Review and comment period.

(a) The Chief Executive Officer shall have a thirty-day comment period, beginning on the date of the notification letter described in § 891.202, to submit, on behalf of the local government, a written objection to the Field Office Director's approval on the ground that the application is inconsistent with its HAP, and the reasons therefor. The Field Office Director shall consider the comment period closed when such written objection or other comments are received. In no case shall the Field Office Director be obligated to consider subsequent objections unless the initial response indicated that additional comments would be provided prior to the expiration of the thirty-day comment period.

(b) The Chief Executive Officer, on behalf of the local government, may submit comments to the Field Office Director simultaneously with the application for housing assistance. In such cases the Field Office Director shall consider that the provisions of § 891.202 have been met.

(c) Any amendment to a HAP shall not be applicable to section 202 or section 8 proposals submitted in response to a previously issued invitation for preliminary proposals or notification of fund availability unless the local government makes a determination that, because of special circumstances, the public interest requires that the amendment be applicable to such proposals. These special circumstances shall be specified in the local government determination and such determination shall be approved by the Field Office Director.

§ 891.204 Local government response.

(a) *No objection.* If the local government determines that it does not want to object to the application on the ground that the application is inconsistent with the applicable HAP, the Field Office Director may be notified of this determination at any time within the thirty-day comment period.

(1) In addition, the Chief Executive Officer may submit, on behalf of the local government, in writing and within the thirty-day period, other comments with respect to the application which are relevant to a determination by the Field Office Director concerning the proposed housing assistance.

(2) When the application for housing assistance exceeds the total number of units in the annual goal by more than twenty percent or twenty units, whichever is greater, such application represents a major variation from the statement of the annual goal, as defined further in § 891.205(c)(2). If there is no objection to such application, the Chief Executive Officer shall provide a written statement, on behalf of the local government, that (i) there is a need for the assistance proposed, (ii) there are or will be available in the area sufficient public facilities and services to serve the excess units (except with respect to an application for Section 8 Existing Housing pursuant to 24 CFR, Part 882), and (iii) there is no objection to the approval of such application for housing assistance.

(b) *Objection.* The Chief Executive Officer, on behalf of the local government, may submit within the thirty-day comment period, a written objection to the approval of an application for housing assistance on the ground that the application is inconsistent with the applicable HAP, and the reasons therefor. Objections by the local government may be based on the following:

(1) The number of dwelling units or households to be assisted under a specific housing program is inconsistent with the information in the applicable HAP with respect to the housing assistance needs and housing assistance goals. A minor variation, defined as an application which exceeds the total number of units in the annual goal by no more than twenty percent or twenty units, whichever is greater, by itself, shall not be a basis for an objection.

(2) The number of dwelling units or households to be assisted, by household type (elderly and/or handicapped, family, large family), is inconsistent with the information in the applicable HAP with respect to the three-year housing assistance goals.

(3) The type of housing proposed (new construction, substantial rehabilitation, or existing housing) is not included in the types of housing assistance identified in the annual housing assistance goals.

(4) The proposed location of newly constructed or substantially rehabilitated units is inconsistent with the general locations specified in the applicable HAP, and is objectionable to the local government for reasons which are specified.

(5) The application is for section 8 assistance pursuant to 24 CFR Part 886, for section 202 or section 235 assistance or for assistance for low income housing by PHAs other than under section 8, there is not a specific reference to such assistance in the housing assistance goals of the applicable HAP, and the application is inconsistent with the housing needs and housing assistance strategy which are the basis of the HAP of the locality.

(6) The proposed housing assistance is inconsistent with other limiting factors set forth in the HAP, in addition to information in the HUD-prescribed tables.

(c) *No response.* The local government may choose not to comment with respect to an application for housing assistance. In such instances, if no response is received within the thirty-day comment period, the Field Office Director shall make an independent determination as to whether the application is inconsistent with the applicable HAP.

§ 891.205 HUD review of applications for housing assistance.

(a) *Review period.* The Field Office Director shall review each application for housing assistance to determine if it is consistent or inconsistent with the applicable HAP for the area in which the proposed housing is to be located. The Field Office Director's determination shall be completed within thirty calendar days after the close of the comment period specified in § 891.203(a) or within thirty calendar days after the receipt of the comments of the local government, whichever is earlier.

(b) *Review process.* The Field Office Director's finding of consistency or inconsistency shall be based on the information provided in the HAP, the application for housing assistance, and an analysis of the comments of the local government.

(1) *HUD review when response indicates no objection.* The Field Office Director may approve the application unless he makes an independent determination that it is inconsistent with the applicable HAP. The Field Office Direc-

tor shall give consideration to other comments provided by the local government, if any, which are relevant to a determination concerning approval of the application for housing assistance.

(2) *HUD review when objection is received.* The Field Office Director shall concur in an objection by the local government unless he makes an independent determination of consistency, based on substantial evidence, that the application is consistent with the applicable HAP.

(3) *HUD review when no response is received.* The Field Office Director may approve the application unless he makes an independent determination that it is inconsistent with the applicable HAP.

(c) *Review factors.* The Field Office Director's determination shall be based on the following factors:

(1) The factors set forth in § 891.204(b) (1) through (6).

(2) In the case of an application which exceeds the total number of units in the annual goal by more than twenty percent or twenty units, whichever is greater, such an application represents a major variation from the annual goal in the HAP. The Field Office Director shall not approve the application unless the local government provides a written statement that (i) there is a need for the assistance proposed, (ii) there are or will be available in the area sufficient public facilities and services to serve the excess units (except with respect to an application for Section 8 Existing Housing pursuant to 24 CFR, Part 882), and (iii) there is no objection to the approval of such application for housing assistance. Accordingly, if no response has been received during the thirty-day comment period and the Field Office Director has determined that the application is otherwise approvable, he shall inform the Chief Executive Officer of this determination and will also advise him that, unless the above-cited written statement is received within ten days, the application will not be approved.

(3) A minor variation, defined as an application which exceeds the total number of units in the annual goal by no more than twenty percent or twenty units, whichever is greater, shall not be a basis for an independent finding of inconsistency by the Field Office Director.

(4) With respect to an application for section 8 assistance pursuant to 24 CFR, Part 886, an application for section 202 or section 235 assistance, an application for assistance for low income housing by PHAs other than under Section 8, the absence of specific reference to such assistance in housing assistance goals shall not be a basis, by itself and in the absence of a local objection, for a finding of inconsistency by the Field Office Director.

(5) Although a specific application may be determined consistent on the basis of the review factors set forth in § 891.204(b) (1) through (5), the Field Office Director shall not approve the application if such application, taken into consideration with other applications previously approved, exceeds the total number of units in the annual goal by more than twenty percent or twenty units, whichever is greater, unless the local government has submitted the written statement required by § 891.205(c) (2).

§ 891.206 Notification of HUD determinations.

The Field Office Director shall notify the Chief Executive Officer and the applicant, in writing, of the finding made with respect to the consistency or inconsistency of the application with the HAP. This notification shall be made within thirty calendar days after the close of the comment period indicating the reasons for the determination and, as appropriate, state that the Field Office Director will, or will not, continue to process the application for housing assistance.

Subpart C—Applications for Housing Assistance in Areas Without Housing Assistance Plans

§ 891.301 General.

This subpart describes the policies and procedures governing reviews and determinations, pursuant to Section 213(c) of the Act, with respect to applications for housing assistance, under the programs identified in § 891.101(a), to be provided in areas for which a HAP is not applicable.

§ 891.302 Finding of need for housing assistance.

With respect to each application for housing assistance to be provided in an area which does not have a HAP, the Field Office Director is required to make a determination as to whether there is a need for such housing and whether there is or will be available in the area public facilities and services adequate to serve the proposed housing.

(a) The determination of need for housing assistance within a geographic area is made prior to receipt of an application as part of the allocation process pursuant to § 891.404. In making such a determination, the Field Office Director shall give consideration to the contents of any applicable state or areawide housing plans proposing housing assistance in the area as well as generally available data with respect to population, poverty, housing overcrowding, housing vacancies, amount of substandard housing, other objectively measurable tions pertaining to lower income housing needs.

(b) The determination of the adequacy of public facilities and services shall be made as part of the application review process and after considering any comments received from the local government.

(c) The Field Office Director shall afford the local government in which the proposed assistance is to be provided the opportunity, during a thirty-day period, to provide comments relevant to the required determinations by the Field Office Director with respect to the need for housing assistance and the adequacy of public facilities and services.

§ 891.303 Notification of local government.

(a) The Field Office Director shall notify the Chief Executive Officer no later than ten working days after receipt of an application, that an application for housing assistance to be provided in that jurisdiction has been received and is under consideration.

(1) When the application is for housing assistance within the overlapping jurisdictions of more than one local government (e.g., a municipality which is also within a county), the Field Office Director shall notify the Chief Executive Officer of the local government having the smallest geographic area of coverage.

(2) When the application is for housing assistance in several non-overlapping different political jurisdictions (e.g., a scattered site project), the Field Office Director shall notify the Chief Executive Officer of each local government, having the smallest geographic area of coverage, where housing assistance is proposed.

(3) For section 8 Existing Housing applications pursuant to 24 CFR, Part 882, the Field Office Director shall notify the Chief Executive Officers of the localities identified in the Application for Existing Housing as primary areas from which families to be assisted will be drawn.

(b) The notification to the Chief Executive Officer shall:

(1) Advise him that the Field Office Director has received and is considering an application for housing assistance, identify the housing program (e.g., section 8, section 235), the type of housing (e.g., new construction, substantial rehabilitation, or existing housing), the number of units by bedroom size, the number of units by household type (elderly and/or handicapped, family, large family), and the proposed location.

(2) Invite him, on behalf of the local government to provide comments with respect to the application within a period of thirty calendar days, which are relevant to a determination by the Field Office Director concerning the proposed housing assistance.

§ 891.304 Review and comment period.

(a) The Chief Executive Officer shall have a thirty-day comment period, beginning on the date of the notification letter described in § 891.303, to submit, on behalf of the local government, written comments relevant to a determination by the Field Office Director concerning the proposed application for housing assistance. The Field Office Director shall consider the comment period closed when such written comments are received. In no case shall the Field Office Director be obligated to consider subsequent comments unless the initial response indicated that additional comments would be provided prior to the expiration of the thirty-day comment period.

(b) The Chief Executive Officer, on behalf of the local government, may submit comments to the Field Office Director simultaneously with the application

for housing assistance. In such cases the Field Office Director shall consider that the provisions of § 891.303 have been met.

§ 891.305 HUD review of applications for housing assistance.

(a) The Field Office Director shall not approve an application for housing assistance prior to either (1) receipt of comments, or (2) expiration of the thirty-day comment period, whichever occurs earlier.

(b) In determining whether an application will be approved, the Field Office Director shall consider the comments provided by the local government.

(c) The Field Office Director shall promptly notify the Chief Executive Officer and the applicant of his determination with respect to the approval or disapproval of the application for housing assistance.

Subpart D—Allocation of Housing Assistance Funds

§ 891.401 General.

This Subpart describes the policies and procedures governing the allocation of contract authority, pursuant to section 213(d) of the Act, for housing assistance under the programs identified in § 891.101(a). It describes, in sequence, the actions to be taken by the Secretary in allocating contract authority to regional administrators, the actions to be taken by regional administrators in suballocating contract authority to Field Office Directors, and the actions to be taken by Field Office Directors in allocating contract authority to geographic areas within their jurisdictions.

§ 891.402 Determinations of lower income housing needs.

(a) Prior to allocating contract authority for the housing assistance programs identified in § 891.101(a), the Secretary shall determine on a program-by-program basis, the relative need for lower income housing assistance in each HUD field office jurisdiction. The determination of housing needs shall be based, so far as practicable, on the most recent U.S. Census data available relating to population, poverty, housing overcrowding, or other objectively measurable conditions pertaining to lower income housing needs. The actual statistical data elements used in determining housing needs for a specific housing program may be modified to meet the objectives of that program by taking into consideration the ages, incomes, or other relevant characteristics of the prospective program participants.

(b) On the basis of the factors specified in § 891.402(a), the Secretary shall develop a separate housing needs percentage, for each field office jurisdiction, on a program-by-program basis. This housing needs percentage shall be adjusted to reflect the relative cost of providing housing among field office jurisdictions so that the amount of contract authority allocated conforms to the number of housing units available for each field office jurisdiction.

§ 891.403 Initial allocation to HUD offices.

(a) The Secretary shall determine the amount of contract authority to be allocated by considering as available any uncommitted "carry-over" contract authority from the prior fiscal year as well as any newly authorized contract authority for each program. The Secretary shall consider contract authority to be "committed" for the purpose of this paragraph when the Field Office Director has signed the notification letter approving the application defined in § 891.102 (b), or in the case of the Low-Income Housing Program, when the Field Office Director has signed the Annual Contributions Contract List.

(b) A portion of the contract authority available during any fiscal year for the housing programs listed in § 891.101(a) may be retained by the Secretary for subsequent allocations to specific areas and communities. This contract authority, not to exceed twenty percent, may be used for:

(1) Housing needs which were unforeseeable, or for other reasons that could not practicably be measured by the formula described in § 891.402, such as natural disaster housing requirements or unanticipated relocation needs.

(2) Activities designed to meet lower-income housing needs as described in HAPs submitted by local governments or combinations of such local governmental units, including but not limited to, activities carried out under areawide plans pursuant to Subpart E.

(3) Applications for assistance with respect to housing in New Communities.

(c) Contract authority, except that set-aside pursuant to § 891.403(b), shall be allocated, so far as practicable, on a program-by-program basis to each Regional Administrator in accordance with § 891.402. Of these amounts, at least twenty percent, but not more than twenty-five percent, shall be allocated on a nationwide basis for use in nonmetropolitan areas. However, each Regional Administrator's allocation will be based upon the proportion of nonmetropolitan housing need within his jurisdiction, which need not be in the same proportion as the nationwide ratio.

(d) The Regional Administrator shall suballocate all the contract authority to each Field Office Director within thirty days from receipt of such allocations from the Secretary.

In making these suballocations, the Regional Administrator shall consider the demand for housing assistance as reflected in HAPs, the characteristics of particular housing programs, and, as far as practicable, relevant housing needs data based on the factors specified in § 891.402.

§ 891.404 Initial allocation to areas and localities.

(a) In determining the amount of contract authority to be allocated to geographic areas within their jurisdiction, Field Office Directors shall use the following procedures as far as practicable:

(1) Determine the relative housing assistance needs on a county-by-county basis based on the most recent U.S. Census data available and relevant HAPs. In making this determination, consideration shall also be given to areawide or State housing plans that reflect a coordinated regional housing assessment of local housing needs.

(2) Develop for each county, on a program-by-program basis, a separate housing assistance needs percentage factor. The factor developed for each county in a SMSA should represent that county's proportion of the total needs within all metropolitan counties in the field office's jurisdiction; similarly, the factor developed for each county not in a SMSA should represent the county's proportion of the total needs within all nonmetropolitan counties. In the case of a county in a SMSA, the factor shall be applied to the total contract authority allocated for metropolitan areas. In the case of a county not in a SMSA, the factor shall be applied to the total contract authority allocated for nonmetropolitan areas.

(NOTE.—In the New England States, SMSA boundaries are drawn along town and city lines instead of counties.) In both cases, the resulting contract authority shall be converted to estimates of the number of units which can be assisted.

(3) Establish regional or other allocation areas, such as SMSAs or groups of rural counties, broad enough to support economically feasible housing programs. In establishing such allocation areas, consideration should be given to state, county and other planning district boundaries, topographical barriers, or established commuting patterns. In addition, consideration should be given to housing plans developed by an HFDA or APO.

(b) The Secretary may direct that contract authority be set aside for use by an HFDA, or authorize Regional Administrators or Field Office Directors to do so. In any case in which there is such a set aside, the Field Office Director and the HFDA shall coordinate their respective efforts to assure an equitable distribution among allocation areas. Accordingly, the Field Office Director shall schedule a meeting with the HFDA for the purpose of reaching an agreement on an allocation plan for the HFDA which complements the allocation program of the field office. If agreement cannot be reached at this meeting, the Field Office Director shall notify the Regional Administrator, who shall resolve the differences. Appropriate adjustments in the allocation plan developed by the Field Office Director pursuant to § 891.404(a) may be made if the needs of an allocation area will be met by the HFDA.

(c) Field Office Directors shall complete the actions set forth in subsections (a) and (b) above within thirty days from receipt of their suballocations from the Regional Administrator.

(d) In developing its HAP goals, each local government may consider as being available to it the entire amount allo-

cated for the allocation area in which it is located. It should be understood that this is not a commitment to provide such amounts to the locality, since Field Office Directors may approve the best applications for housing assistance within the allocation area. However, priority for future approvals shall be given to acceptable applications for assistance in localities which did not previously receive housing assistance.

§ 891.405 Reallocation of uncommitted contract authority.

(a) If the Field Office Director determines that the contract authority for a particular allocation area is not likely to be utilized during the fiscal year, he may reallocate some or all of the contract authority to another area where it is likely to be utilized.

(b) If the Regional Administrator determines that the contract authority suballocated to a Field Office Director, or allocated for a particular allocation area, is not likely to be utilized during the fiscal year, the Regional Administrator may reallocate some or all of the contract authority to another Field Office Director or allocation area where it is likely to be utilized.

(c) Any reallocations must satisfy the requirements of § 891.403(c) with respect to nonmetropolitan allocations and the program-by-program allocations of contract authority, but should take into account the demands for housing assistance contained in the goals of approved HAPs and any additional HUD requirements.

(d) Only the Secretary may reallocate contract authority among Regional Administrators.

Subpart E—Supplemental Allocations Based Upon Areawide Housing Opportunity Plans

§ 891.501 Applicability and scope.

(a) This Subpart describes the policies and procedures governing supplemental allocations of contract authority for the housing assistance programs identified in § 891.101(a) for use in jurisdictions covered by a HAP and participating in an approved Plan. The Plan, developed by an APO, shall provide for the promotion of a greater choice of housing opportunities for lower income households outside of areas containing undue concentration of low income households. The role of the APO under the provisions of this Subpart includes, but need not be limited to, (i) development of the Plan and the allocation procedure as described in § 891.502, and (ii) submission of requests to the Secretary for supplemental allocations in accordance with Sec. 891.504. The participation of the APO will provide a determination of the housing assistance needs on an areawide basis as well as the development of numerical goals for housing assistance in participating jurisdictions.

(b) The Secretary, after considering all the pertinent factors under section 213(d) of the Act, will determine the amount of contract authority to be used as the housing assistance program(s) available in any fiscal year for which such allocations will be made.

(c) The amount of the supplemental allocation provided on the basis of any approved Plan shall not be less than twenty percent nor more than fifty percent of the contract authority for the applicable housing assistance program otherwise made during the same fiscal year to Participating Jurisdictions in accordance with Subpart D.

(d) The Secretary shall announce, through a Notice in the FEDERAL REGISTER, the amount of contract authority to be made available for supplemental allocations during any fiscal year; the housing assistance program(s) under which these allocations shall be made; any additional or special criteria which may be established for specific housing assistance programs; and the closing date and address for submission of requests for the supplemental allocations.

(e) In order to be approved as a basis for a supplemental allocation under this subpart, a Plan must meet the criteria for acceptability set forth in § 891.502. If, however, the number of Plans meeting the acceptability criteria would require supplemental allocations in excess of the amount made available by the Secretary, priority shall be given to those Plans which also meet the criteria set forth in § 891.503.

§ 891.502 General criteria for acceptable plans.

(a) In addition to any special criteria in the Notice published pursuant to § 891.501(d), a Plan, to be acceptable, shall be a system for allocating contract authority which provides for greater housing opportunities for lower income households outside areas of undue concentrations of low income households. The Plan shall contain, but need not be limited to, the following elements:

(1) An assessment of the housing assistance needs of lower income households on an areawide basis and for each jurisdiction within the area served by the APO (whether or not it is a Participating Jurisdiction), including households displaced or to be displaced by governmental action and an estimate of households expected to reside in each jurisdiction as a result of existing or planned employment facilities pursuant to § 570.303(c)(2) of the CDBG regulations. This assessment shall indicate housing assistance needs by (i) household type (elderly and/or handicapped, family, large family), (ii) present form of housing tenure (owner and renter), (iii) female heads-of-households and (iv) minority households. If the Plan does not include such assessment for households expected to reside or for any of the elements specified under (i), (ii), (iii), or (iv) of this subparagraph, it shall include a work plan acceptable to the Secretary for the preparation of that portion of the assessment, with a specific timetable for its completion.

(2) Numerical goals, on an annual basis, for the distribution of lower income housing assistance to each Participating Jurisdiction which reflect the needs identified in § 891.502(a)(1). These numerical goals and the needs identified in any HAPs applicable to Participating Jurisdictions must be generally consistent.

(3) Evidence of agreement between the APO and each Participating Jurisdiction on numerical goals for the distribution of lower income housing assistance and on the implementation of the Plan. This agreement shall be evidenced by (i) individual written agreements or other confirmation from the Chief Executive Officer or local government of the Participating Jurisdiction, (ii) support of the Plan in the HAPs of Participating Jurisdictions covered by HAPs; or (iii) an equivalent provision acceptable to the Secretary.

(4) A procedure for allocating contract authority in a reasonable manner which is in accordance with the objectives of the Plan and this Subpart.

(5) Provision for the Plan to be used in A–95 review of applications for community development and housing assistance programs.

(b) The Plan shall also meet the following conditions:

(1) The Plan shall apply to and include as Participating Jurisdictions at least fifty percent of the jurisdictions in the area served by the APO, wherein Participating Jurisdictions represent at least seventy five percent of the population of the area.

(2) The Plan shall have been approved by the executive board of the APO.

(3) The APO shall demonstrate that the Plan can be implemented and that an additional allocation of contract authority can be committed within a reasonable time within the Participating Jurisdictions consistent with the Plan. Satisfactory assurances of implementation include, but are not limited to, (i) the availability of sites which meet all applicable program standards and criteria (including adequate zoning and water and sewer capacity) in those Participating Jurisdictions in which the Plan proposes the use of newly-constructed or rehabilitated housing under the programs specified in Sec. 891.101(a), and developer/sponsor-owner interest (e.g. as evidenced by responses to recent invitations for housing applications under these programs); (ii) the willingness and ability of established PHAs to administer or otherwise participate in the program in those Participating Jurisdictions in which the Plan proposes the use of a program specified in Sec. 891.101(a) which requires the participation of a PHA, or actions taken by such Participating Jurisdictions to establish PHAs or to negotiate agreements with existing PHAs to perform this function; and (iii) contract authority currently allocated to Participating Jurisdictions has been committed or satisfactory progress has been made in committing such contract authority.

(4) The data used in making the assessment of housing assistance needs in § 891.502(a)(1) is available for use by Participating Jurisdictions in preparing their HAPs.

§ 891.503 Criteria for priority plans.

(a) In order for an Acceptable Plan to qualify for priority consideration, it must meet one or more of the following criteria:

(1) The APO has completed all elements of the assessment required in § 891.502(a)(1).

(2) The APO presently administers or takes part in a program which provides housing information and referrals or related counseling and assistance to lower income and minority households desiring housing assistance outside areas which contain undue concentrations of low income or minority households.

(3) To the extent that the Section 8 Existing Housing Program is used by Participating Jurisdictions, eligible families currently are permitted to use their Section 8 certificates of family participation in all participating jurisdictions (e.g., through use of an areawide, regional, or state public housing agency, or through cooperation or other local agreements).

(4) The APO has endorsed and/or has become involved in the development of a voluntary areawide affirmative fair housing marketing plan which is currently operative.

(b) If the number of Plans meeting the priority criteria will require supplemental allocations in excess of the amount available, preference shall be given to those Plans which apply to and include as Participating Jurisdictions the greatest percent of the jurisdictions in the area served by the APO.

§ 891.504 Contents of Requests for Supplemental Allocations.

Each request for supplemental allocation shall consist of (a) a letter of transmittal; (b) an index of all materials submitted with the request, including graphs, maps, or other illustrative material; (c) a list of all jurisdictions within the area served by the APO, identification of Participating Jurisdictions and identification of Participating Jurisdictions covered by HAPs; (d) a copy of the Plan; (e) a statement with specific references to the Plan, where appropriate, which responds to each of the acceptability criteria contained in § 891.502 and the priority criteria contained in § 891.503, and discusses how the Plan conforms to these criteria; (f) a discussion of the methodology used in assessing areawide housing assistance needs under Sec. 891.502(a)(1); (g) a description of the housing allocation procedure required under § 891.502(a)(4) and the extent to which this procedure promotes greater housing opportunities for lower income households outside areas containing undue concentration of low income households; and (h) a tentative plan, showing type of households to be assisted and type of housing proposed for the Participating Jurisdiction covered by a HAP, for using supplemental allocations of twenty, thirty, forty and fifty percent of the contract authority for the applicable program(s) otherwise allocated to Participating Jurisdictions for the current fiscal year in accordance with subpart D.

§ 891.505 Review and selection of plans.

(a) The Secretary shall review all Plans submitted to identify (1) Acceptable Plans under § 891.502 and (2) Priority Plans under § 891.503. Field Office Directors and Regional Administrators shall be consulted in this evaluation.

(b) On the basis of the evaluation conducted in accordance with paragraph (a) of this section, and in accordance with § 891.501, the Secretary shall select, from among all acceptable plans, those plans on the basis of which supplemental allocations shall be awarded.

(c) The amount of the supplemental allocation for each of the selected plans shall be determined by the Secretary after considering the following factors:

(1) The overall quality of the plan with respect to each of the criteria in §§ 891.502 and 891.503.

(2) The type of households (elderly and/or handicapped, family, large family) and type of housing (new construction, substantial rehabilitation, or existing housing) proposed to be assisted with the supplemental allocation.

(3) The amount of housing assistance available for supplemental allocations and the number of Plans selected.

(4) The amount of housing assistance currently allocated to Participating Jurisdictions that is committed.

(d) After the total amount of the supplemental allocations for all the selected Plans is determined, the allocation will be distributed to the appropriate Field Office Directors for reallocation among Participating Jurisdictions covered by a HAP. The Field Office Directors will consult with APOs to determine the actual distribution and program mix of units on the basis of the Plan and other applicable administrative or statutory requirements.

(It is hereby certified that the economic and inflationary impacts of this regulation have been carefully evaluated in accordance with OMB Circular A-107.)

Effective date: This regulation shall be effective October 1, 1976.

Issued at Washington, D.C., August 15, 1976.

JAMES YOUNG,
Assistant Secretary for Housing—
Federal Housing Commissioner.

[FR Doc.76-24582 Filed 8-20-76;8:45 am]

federal register

MONDAY, AUGUST 23, 1976



PART V:

DEPARTMENT OF COMMERCE

Economic Development Administration

■

LOCAL PUBLIC WORKS CAPITAL DEVELOPMENT AND INVESTMENT PROGRAM

Final Rulemaking

Title 13—Business Credit and Assistance

CHAPTER III—ECONOMIC DEVELOPMENT ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 316—LOCAL PUBLIC WORKS CAPITAL DEVELOPMENT AND INVESTMENT PROGRAM

The Economic Development Administration, pursuant to Title I of the Public Works Employment Act of 1976, hereby publishes these regulations to amend Title 13 of the Code of Federal Regulations by adding a new Part 316. These regulations describe procedures by which eligible applicants may receive financial assistance for the construction (including demolition and other site preparation activities), renovation, repair, or other improvement of local public works projects and for the completion of plans, specifications, and estimates for local public works projects.

STATEMENT OF OBJECTIVES

LEGISLATIVE OBJECTIVES

On the basis of an in-depth study of the Local Public Works Capitol Development and Investment Act of 1976 and its legislative history, it has been determined that the purpose of this legislation is to provide:

a. Employment opportunities in areas of high unemployment through the expeditious construction or renovation of useful public facilities; and

b. A countercyclical stimulus to the national economy.

EDA PROGRAM OBJECTIVES

Analyses of past public works programs and the Economic Development Administration's (EDA) experience in operating such programs have revealed certain characteristics about the extent and nature of employment generated by public works construction. Of these, the most relevant to the objectives of the Local Public Works Capital Development and Investment Act are the preponderance of skilled construction jobs and the relatively high cost of creating a job through such an approach. Between 68 and 81 percent of the costs of a public works project are for materials, equipment, overhead, and contractor profits, leaving between 19 and 32 percent for on-site wages. Consequently, even the most labor intensive public works projects generate a limited amount of direct employment per dollar of project cost. Public works projects do, however, result in useful end products and are commonly believed to provide general economic stimulation, particularly to the construction and construction-related industries.

In recognition of these characteristics of public works construction projects, as well as other considerations deriving from the legislation and EDA's experience, the following objectives for implementing the Local Public Works Act have been established:

a. To insure that consideration is given to the relative needs of the various sections of the country;

b. Within those sections, to fund projects that maximize immediate employment opportunities and, wherever possible, that maximize employment opportunities for unemployed residents of the project area;

c. To fund locally oriented projects that provide useful public facilities in areas of high unemployment and low income;

d. To fund projects that advance local plans and contribute to long-term development;

e. To fund facilities that could not have been constructed in the absence of the Local Public Works grant (i.e., facilities for which Federal funds are not merely replacing or reducing local, State or other Federal monies that have been specifically provided or set aside); and

f. To carry out a comprehensive evaluation of both the direct employment impact and the indirect or stimulative impact of the projects funded.

Because these regulations pertain to a grant program administered by the Economic Development Administration, the relevant provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation and delay in effective date are inapplicable. In addition, Section 107 of the Public Works Employment Act of 1976 requires implementing regulations to be prescribed within thirty days after date of enactment.

However, in accordance with the spirit of the public policy set forth in 5 U.S.C. 553, interested persons may submit written comments or suggestions to the Assistant Secretary for Economic Development, U.S. Department of Commerce, Room 7800B, Washington, D.C. 20230 by September 24, 1976. This is a new and widespread program, and all suggestions received will be carefully considered. If a sufficient number of valid comments raising significant issues are received, these regulations may be amended and republished. Until such time as further changes are made, however, 13 CFR Part 316 shall remain in effect, thus permitting the public business to proceed more expeditiously.

The application form, necessary to carry out the Public Works Employment Act of 1976, as provided in Section 107 therein, has been prescribed and submitted to the Office of Management and Budget for clearance as required by OMB Circular No. A-40, as revised on February 10, 1976. When clearance has been received, EDA will publish the application form, which will then be available through EDA and its Regional Offices.

Interested persons should take notice that it is the policy of the Economic Development Administration that no applications for financial assistance pursuant to Title I of the Public Works Employment Act of 1976 will be accepted until the funds to implement the program have actually been appropriated and apportioned to and made available for use by the agency.

Consideration has been given as to whether matters set forth in these regulations constitute a major proposal with an inflationary impact within the meaning of OMB Circular A-107 and interpretative guidelines as issued by the Department of Commerce. A determination has been made that these regulations do not extend or go beyond the statute, and therefore, there is no inflationary impact of these regulations beyond the statute.

Accordingly, the regulations shall read as follows:

Sec.

316.1 Purpose.
316.2 Definitions.
316.3 Applicants.
316.4 Direct grants.
316.5 Supplemental grants.
316.6 Limitations on grants.
316.7 Priority of projects.
316.8 Allocation of program resource levels to regional offices.
316.9 Determination of unemployment rates.
316.10 General considerations and requirements for financial assistance.
316.11 Compliance with other Federal requirements.
316.12 Acceptance of applications.
316.13 Environmental considerations.
316.14 Final determination.
316.15 Termination.

AUTHORITY: Title I, Pub. L. 94-369 (July 22, 1976); 42 U.S.C. 6701 *et seq.*; 90 Stat. 999; and Department of Commerce Organization Order 10-4 (September 30, 1975), as amended (40 FR 56702, as amended at 40 FR 58878).

§ 316.1 Purpose.

The purpose of this part is to set forth the requirements and procedures pursuant to which eligible applicants may receive grants under Title I of the Public Works Employment Act of 1976, which is entitled the "Local Public Works Capital Development and Investment Act of 1976."

§ 316.2 Definitions.

"Assistant Secretary" means the Assistant Secretary of Commerce for Economic Development or his delegate.

"Indian tribe" means the governing body of a tribe, nonprofit Indian corporation (restricted to Indians), Indian authority or other tribal organization or entity or Alaskan native village.

"Initiation of construction" means that a contract has been awarded for construction of the project or notice to proceed or its equivalent has been issued or on-site labor has begun, whichever is earlier.

"Local Public Works Act" means the "Local Public Works Capital Development and Investment Act of 1976," which is Title I of the Public Works Employment Act of 1976.

"Local government" means any city, county, town, parish, or other political subdivision of a State (including local school districts), and any Indian tribe.

"Maintenance costs" means costs that are incurred for any necessary repairs or upkeep of property which neither adds to the permanent value of the property or appreciably prolongs its intended life, but rather keeps it in an efficient operating condition.

"Political subdivision of a State" means the agencies, instrumentalities and authorities established or authorized by State law including, but not limited to, special districts and regional authorities formed by local governments.

"Public works" means public facilities including, but not limited to, municipal offices, courthouses, libraries, schools, police and fire stations, detention facilities, water and sewer lines, streets and roads (including curbs), sidewalks, lighting, recreational facilities, convention centers, civic centers, museums, and health, education and social service facilities.

"State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa.

§ 316.3 Applicants.

A State or a local government, as defined in § 316.2 of this part, is eligible for assistance under the Local Public Works Act.

§ 316.4 Direct grants.

(a) The Assistant Secretary may make direct grants to any State or local government for construction (including demolition and other site preparation activities), renovation, repair, or other improvement of local public works projects, including those for which Federal financial assistance is authorized under provisions of law other than the Local Public Works Act. Such grants may include funds for the completion of plans, specifications and estimates where additional architectural and engineering work or related planning is required to permit construction of the project under this section.

(b) Applications under this section will be approved only if the applicant submits with its application, if applicable, a written certification from the other Federal agency/agencies that the project meets all applicable Federal statutory and regulatory requirements.

(c) The Federal share of any project for which a grant is made under this section shall be 100 per centum of the cost of the project.

§ 316.5 Supplemental grants.

(a) The Assistant Secretary may make supplemental grants for the purpose of increasing the Federal contribution to 100 percent of the project cost for any Federally-assisted public works project authorized by any Federal law other than the Local Public Works Act if the applicant submits with its application:

(1) A written certification from the other Federal agency/agencies that:

(i) Federal financial assistance for the project has been approved and the funds are immediately available for the project;

(ii) The project meets all applicable Federal statutory and relevant related requirements; and

(2) Its written certification that actual construction of the project has not yet been initiated because of lack of funding for the non-Federal share.

(b) The Assistant Secretary also may make grants in an amount necessary to provide all or part of the required State or local share (but not both shares) of the cost of any public works project for which financial assistance is authorized by State or local law requiring such contribution if the applicant submits with its application a written certification from the appropriate authority that:

(1) The share of financial assistance not applied for has been properly approved and is immediately available for the project;

(2) The project meets all applicable statutory and other relevant requirements of law; and

(3) Construction of the project has not yet been initiated.

(c) Grants under this section may include funds for the completion of plans, specifications, and estimates where additional architectural and engineering work or related planning is required to permit construction of the project under this section.

§ 316.6 Limitations on grants.

(a) *Canals and watercourses.* No grant shall be made under this part for any project having as its principal purpose and permanent effect:

(1) The channelization, damming, diversion, or dredging of any natural watercourse, or

(2) The construction or enlargement of any canal except a canal or raceway designated for maintenance as an historic site.

(b) *Real property.* No part of any grant made under this part shall be used for the acquisition of any interest in real property.

(c) *Maintenance.* No part of any grant made under this part shall be used for the payment of maintenance costs in connection with a project constructed (in whole or in part) with Federal financial assistance under the Local Public Works Act.

§ 316.7 Priority of projects.

(a) *Allocation of funds.* (1) In making grants under this part, when the average national unemployment rate for the three most recent consecutive months for which data is available from the United States Department of Labor, has been at least 6½ percent:

(i) Seventy percent of all amounts appropriated to carry out the Local Public Works Act shall be allocated for project applications submitted by State or local governments whose average unemployment rate for the three most recent consecutive months for which information is available exceeds the average national unemployment rate for the same period of time. The Assistant Secretary shall expedite and give priority to applications in this category.

(ii) The remaining thirty percent of all amounts appropriated to carry out the Local Public Works Act shall be available for distribution according to priority as listed below:

(A) Project applications submitted by State or local governments whose average unemployment rate for the three most recent consecutive months for which information is available is more than 6½ percent but not more than the average national unemployment rate for the same period of time, and

(B) Project applications submitted by State or local governments whose average unemployment rate for the three most recent consecutive months for which information is available is 6½ percent or less. These project applications will be considered only when funding of such projects is necessary to fulfill the minimum funding level required for each State or if funds are available in the 30 percent category.

(b) *State limitations:* Not less than one-half of one percent or more than twelve and one-half percent of all amounts appropriated to carry out the Local Public Works Act shall be granted for local public works projects within any one State, except that not less than one-half of one percent of the total of all funds appropriated for this part shall be granted for public works projects in Guam, the Virgin Islands, and American Samoa, in the aggregate.

§ 316.8 Allocation of program resource levels to regional offices.

(a) *Regional allocations.* To assist in the orderly utilization of program resources, the Assistant Secretary will assign to each regional office a target level of anticipated project assistance for the total of all areas served by that regional office. Such regional allocations of program resources shall be based on appropriation apportionments available to EDA and shall be calculated on a formula basis reflecting the relative numbers of unemployed persons in the States served by the regional office and the level of unemployment rates in those States.

(b) *State planning ceilings.* Regional offices shall observe with respect to each State served by it a ceiling on project approval recommendations. The allocation of funds to regions and States will be made after the funds have been apportioned to EDA and will be based on unemployment data available at that time. EDA will announce the date on which the funds are apportioned and the allocation is made. The formula by which the planning ceiling for each State will be established is as follows:

Subject to program administrative costs and statutory minimum and maximum amounts allocated to individual States by the legislation, 65 percent of the funds will be set aside as planning ceilings for individual States based on the share of unemployed workers residing in a State of the total national unemployed; 35 percent of the funds will be set aside as planning ceilings to individual States based on the relative severity of unemployment for each State above the national unemployment rate.

(c) It is to be understood that the planning ceiling assigned to each State is not to establish an entitlement to any minimum level of project assistance within that State (unless such is the statutory maximum or minimum) but is adopted only for the purpose of furthering the objective of assuring that ade-

quate consideration is given to the relative needs of various sections of the country. Where the planning ceiling calculated on the formula basis is less than the statutory minimum assured for each State the statutory minimum shall be the planning ceiling, and where the planning ceiling calculated on the formula basis is greater than the statutory maximum for any State the statutory maximum shall be the planning ceiling.

(d) 120 days after the date on which funds are first apportioned for program assistance under the Act and at any time thereafter the Assistant Secretary may reconsider the regional allocations and State ceilings previously established and make such adjustments as are determined to be reasonable in achieving the purposes of the Act.

§ 316.9 Determination of unemployment rates.

(a) The average unemployment rate for the three most recent consecutive months for which data is available for a State or local government applicant under this part may be determined from information obtained in the following order:

(1) *The United States Department of Labor.* (i) EDA's Qualification Division has provided to EDA's Regional Offices and Economic Development Representatives a list, prepared by the United States Department of Labor, which shows the average unemployment rate for the three most recent consecutive months for:

(A) the entire nation;

(B) each State; and

(C) where available, "identifiable" local governments.

(ii) On or before September 15, 1976, EDA's Qualification Division will provide to EDA's Regional Offices and Economic Development Representatives a list, prepared by the United States Department of Labor, which will show the average unemployment rate for the three most recent consecutive months for approximately 1,000 counties throughout the nation.

(iii) The above lists will be updated and expanded if and when more information is obtained from the United States Department of Labor.

(2) If not available from the United States Department of Labor the average unemployment rate for the three most recent consecutive months for which information is available shall be obtained from the State employment security agency.

(3) Indian tribes shall submit information from the Bureau of Indian Affairs of the United States Department of Interior or other appropriate sources acceptable to the Assistant Secretary.

(b) If requested by an applicant, the unemployment rate of a local government shall be based upon the unemployment rate of any community or neighborhood (defined without regard to political or other subdivisions or boundaries) within the jurisdiction of such local government, except that any grant made to a local government based upon the unemployment rate of a community or neighborhood within its jurisdiction must be for a project of direct benefit to, or provide employment for, unemployed persons who are residents of that community or neighborhood. The applicant shall apply to the State employment security agency for the average unemployment rate for the three most recent consecutive months for which data is available. The data obtained from the State employment security agency will be accepted by the Assistant Secretary.

(c) If requested by an applicant, in determining the unemployment rate of a local government, unemployment in those adjoining areas from which the labor force for a project may be drawn shall be taken into consideration.

(d) The Assistant Secretary has obtained from all State employment security agencies their cooperation to provide all applicants, other than Indian tribes, with unemployment data.

(e) EDA will not accept an unemployment rate determination that is based on data obtained for a time period which is longer than twelve months prior to the date of the application as stated therein.

(f) The unemployment rate established by one of the procedures above, will determine whether the area qualifies for the 70 percent or 30 percent category as described in § 316.7 above.

(g) No data regarding unemployment rates for time periods after the date of the application as stated therein, may be changed.

§ 316.10 General considerations and requirements for financial assistance.

(a) *Project selection procedure*—(1) *Considerations.* In line with the purposes and objectives of the Act, EDA's goal of choosing projects having the greatest potential for furthering these purposes and objectives, the relative importance of various factors in determining this potential, and the availability and consistency of data specified in the Act, the following project selection procedures have been adopted.

(2) *Project selection formula.* The ranking procedure developed for selecting projects within each State's planning allocation uses those project and area factors that will contribute most to achieving substate equity in the distribution of planning funds and insures that the relatively more economically efficient projects are selected. All factors will be standardized for comparability purposes and assigned policy weights to reflect their importance in the ranking procedure.

(i) *Basic rank.* The basic rank of a project will be determined by the following factors:

(A) The number of unemployed workers in the project area averaged over the three most recent months for which data is available. An area characterized as having a high unemployment rate overall is generally characterized as having a high unemployment rate in the construction industry. Similarly, an area characterized as having a large number of unemployed overall is generally characterized as having a relatively large number of unemployed construction workers as a share of the overall unemployed. Therefore, this factor gives consideration to construction unemployment. This factor will constitute 30 percent of a project's basic rank.

(B) Severity and duration of unemployment, as measured by the unemployment rate prevailing in the project area averaged over the last three months for which data is available. This factor will constitute 25 percent of a project's basic rank.

(C) The cost per person-month of employment, defined as the ratio of the total cost of the project to the total number of person-months of employment to be generated. In formulating project proposals, applicants should bear in mind the intent of the Act to reduce unemployment generally, and to give due consideration to the amount of unemployment and underemployment in the construction and construction-related industries. As previously indicated, projects eligible for funding would include, but are not limited to, such local public works projects as municipal offices, courthouses, libraries, schools, police and fire stations, detention facilities, water and sewer lines, streets and roads, civic centers, museums, health, education and social service facilities, convention centers, and the upgrading of existing facilities through renovation, repair, and other related improvements. Finally, it should be emphasized that supplemental assistance provided for under the Act will be considered as part of total project costs; the latter is defined as funds from all sources, whether Federal, State, or local. The cost per person-month of employment factor will constitute 30 percent of a project's basic rank.

(ii) *Additional considerations.* A project's basic rank will be increased if the project meets one or more of the following criteria:

(A) Exhibits potential for providing long-term benefits. The basic rank of a project will be increased up to a maximum of 10 percent if it meets this criterion. The amount of increase will be determined by the nature and extent of the long-term benefit(s) to be provided by the project.

(B) Is sponsored by a general purpose unit of local government, as defined in § 316.2 above. Projects meeting this criterion will have their basic ranks increased by five percent.

(C) Relates to existing approved plans and programs of a local community development or regional development nature or promotes or advances longer range plans and programs. The basic rank of a project meeting this criterion will be increased by five percent.

(iii) *Final rank.* The final rank of a project is to be determined by summing the basic rank and increases attributable to the additional considerations defined above.

(3) *Application of project selection formula*—(i) *Geographic considerations.* Projects will be ranked and assessed relative to other projects submitted from the *same* State until such time as the Assist-

ant Secretary determines, pursuant to paragraph (a)(2) above, that comparison of projects submitted from different States is required to either further the purposes and objectives of the Act or to comply with statutory requirements.

(ii) *Priority considerations.* Within each State, projects submitted from areas with an unemployment rate exceeding the national average for the most recent consecutive three months will be ranked and compared only with projects submitted from other areas in this priority category. Similiarly, projects submitted by areas with an unemployment rate below the national average for the most recent consecutive three months will be ranked and compared only with projects submitted from other areas in the same priority category. Applicants who anticipate the project labor requirements will draw upon the unemployed and underemployed labor resources of other jurisdictions outside the immediate project area (such as a multi-county area) will be given priority consideration on the basis of the unemployment rate prevailing in the extended geographical (labor market) area. Similarly, the basic rank computations discussed above will be computed in aggregate on data provided for the extended geographical area.

(iii) *Project selection.* Within each State and priority category, projects will be selected on the basis of their final ranks until the State planning allocation for each priority category has been exhausted or until such time as the Assistant Secretary determines that the remaining funds made available under the Act must be reallocated among the States.

(b) An application shall be rejected unless:

(1) It is properly prepared on appropriate forms prescribed by the Assistant Secretary.

(2) It contains one of the following:

(i) Information showing that the area conforms to an area for which United States Department of Labor unemployment statistics are available; or

(ii) Unemployment information from the appropriate State unemployment security agency.

(3) It contains a certification by the applicant that construction on the project has not yet been initiated;

(4) It contains assurances, satisfactory to the Assistant Secretary, that onsite labor can begin within ninety days of project approval;

(5) Where applicable, it relates the proposed project to existing approved plans and programs of a local community development or regional development nature so as to avoid harmful or costly inconsistencies or contradictions;

(6) It contains evidence, where feasible, that the proposed project will promote or advance longer range plans and programs;

(7) It contains adequate assurances that all laborers and mechanics employed by contractors or subcontractors on the proposed project will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a–5).

(8) It contains adequate assurance by the applicant and by any "other parties" as defined in 15 CFR Subtitle A, Part 8, that no person shall, on the grounds of race, color, sex, or national origin, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under the proposed project; and an assurance that it is not involved in any civil rights litigation or if it is involved in a lawsuit or Federal administrative action alleging discrimination it shall state the name of the case, the court where filed, or the name of the agency involved in the administrative action.

(9) It contains certification, by the properly authorized official of the Federal agency or State or local government, that no funds budgeted and available or otherwise specifically committed for the project applied for in its application shall be reduced, diminished, or replaced by funds requested under this part.

(c) Applicants should be advised that false representations and/or certifications in connection with applications for assistance under this part may be the basis for criminal liability under title 18 of the United States Code.

(d) No cost overruns for public works projects previously funded under this part will be approved.

(e) Project costs for administration, plans, specifications, estimates and other A/E costs, which have been incurred prior to the date of application, will not be funded.

(f) Applications will not normally be approved where any of the following conditions exist:

(1) The project site, including easements and rights-of-way, has not been obtained, clear of any encumbrances; or

(2) The project request is for a supplemental to another Federal, State or local grant which has not been approved by the applicable grant agency.

(g) The maximum amount of financial assistance made available under this part should not exceed $5 million for each project; however, the Assistant Secretary may, in his discretion, waive this policy for good cause.

(h) Projects which cannot be completed within two years after date of approval will not be considered; however, the Assistant Secretary may, in his discretion, waive this policy for good cause.

§ 316.11 Compliance with other Federal requirements.

Each applicant shall, as a condition to its receipt of a grant under this part, comply with the following relevant Federal requirements:

(a) All labor standards including those relating to the payment of wages, working conditions, anti-kickback prohibitions and equal employment as provided 13 CFR 309.6;

(b) Those concerning relocation and related payments to all persons displaced as a result of the development of a public works project with funds received under this part, as provided for in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 *et seq.*, and 13 CFR Part 310;

(c) If the project involves a detention facility, those sections of Part E of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, found at 42 U.S.C. 3750 b(1) and (4)–(9);

(d) The provisions of OMB Circular A–95, except during the first ninety days after EDA begins receiving applications when the following procedures shall apply:

(1) Applicants must submit their full applications or notifications of intent to apply to the appropriate clearinghouse as early as possible.

(2) Upon submission of an application to EDA, the applicant must certify that he has submitted the full application to the appropriate clearinghouse.

(3) EDA may begin processing the application upon its receipt but will make no final approval of an application until 30 days after its receipt unless clearinghouse response is received before 30 days have elapsed.

(4) Clearinghouse comments will be submitted directly to EDA; EDA will consider such comments until it has finished processing the application.

(e) All environmental requirements, to the maximum extent possible, as determined by the Assistant Secretary, including, but not limited to:

(1) The National Environment Policy Act of 1969, as amended (42 U.S.C. § 4321 *et seq.*); and EDA's requirements found in § 316.13 below;

(2) The Clean Air Act, as amended (42 U.S.C. 1857–1858a);

(3) The Federal Water Pollution Control Act, as amended (33 U.S.C. 1251–1376);

(4) The National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) and EDA's requirements found in § 316.13 below;

(5) The Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271–1287) and EDA's requirements found in § 316.13 below;

(6) The Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*);

(7) The Historical and Archeological Data Preservation Act, as amended (16 U.S.C. 469 *et seq.*); and

(8) The Fish and Wildlife Coordination Act of March 10, 1934, as amended (16 U.S.C. 661–666c).

(f) 13 CFR 309.9, entitled "Records and Audit;"

(g) 13 CFR 309.27, entitled "Land use near Federal airfields;"

(h) 13 CFR 309.14, entitled "Design, construction, and alteration of buildings to accommodate the physically handicapped;"

(i) 13 CFR 309.26, entitled "Project modification;"

(j) 13 CFR Part 314, entitled, "Property management standards;"

(k) The National Flood Insurance Program and EDA's requirements re-

garding flood hazards found at 13 CFR 309.15; and

(l) Other laws affecting this program.

§ 316.12 Acceptance of applications.

(a) Applications for assistance under this part shall only be submitted to the appropriate EDA Regional Office, as provided in 13 CFR 301.31.

(b) Applications shall be recorded and deemed received upon their arrival at the appropriate EDA Regional Office.

(c) EDA shall endeavor, within five working days from the date the application is actually received by the appropriate Regional Office, to determine whether the application has been completely and properly prepared, and contains accurate unemployment rates. An application may be rejected (denied) unless it contains full and accurate information including the requirements of Section 316.10 above. By the end of the fifth working day after the date the application was received, the Regional Director should notify the applicant if the application has been rejected, and state what is needed to properly complete the application. However, EDA reserves the right during the 60 day period after receipt of an application to reject an application for substantially being incomplete, improperly prepared, or otherwise failing to meet the requirements of this part.

§ 316.13 Environmental considerations.

(a) *The National Environmental Policy Act.* (1) Since the Local Public Works Act requires applications to be processed within 60 days of their acceptance, EDA will not be able to prepare environmental impact statements for those projects which may significantly affect the quality of the human environment. However, to the fullest extent possible within this time period, EDA will analyze a project's potential environmental impacts and give appropriate consideration to environmental impacts in making its final decision.

(2) In order that EDA may conduct its environmental analysis of proposed projects, applicants shall include the following materials with their application, except with respect to subsections C and D if such materials are not available in which case the applicant must so certify:

(i) a description of those elements of the proposed project which will have an impact on the environment, the nature of the environment which will be affected; and data on the expected environmental impact;

(ii) alternatives to the proposed project;

(iii) any environmental analysis previously conducted by local, State, federal agencies; and

(iv) evidence of public reaction to the project, such as transcripts of local public hearings held on the proposal.

(3) EDA will independently review and analyze environmental information submitted by applicants.

(i) Where appropriate, EDA, within the 60 day limit, may seek the views of other government agencies which have jurisdiction by law or special expertise with respect to any environmental impact involved.

(ii) If a project appears to be highly controversial for environmental reasons and there is a need to further understand the basis of the controversy, EDA may, within the 60 day limit, request the views of concerned residents through a newspaper notification or a public information meeting held near the project site.

(4) EDA shall deny an application if, after consideration of the benefits of a project against any environmental costs, it concludes that the environmenal costs exceed the benefits. EDA may deny any application solely on the basis that its environmental impact analysis discloses that unacceptable adverse impacts will or are likely to result. EDA, where necessary, may condition approval of a project upon the adoption of specified measures designed to mitigate any adverse environmental impacts.

(b) *The National Historic Preservation Act.* (1) Applicants shall include with their applications either a statement of their State Historic Preservation Officer's views of the proposed project or shall certify that their State Historic Preservation Officer was provided with a detailed project description and request for comments prior to application's submission to EDA.

(2) If necessary, EDA will attempt to complete the coordination of proposed projects with the Advisory Council on Historic Preservation. EDA will use the results of this coordination process, even though completion of this process may not be possible, as a factor in making a final decision on the project.

(c) *The Wild and Scenic Rivers Act.* (1) If required, EDA will coordinate its processing of a proposed project with either the Department of Interior or the Department of Agriculture.

(2) EDA will use the results of this coordination process, even though completion of the process may not be possible, as a factor in making a final decision on the project.

§ 316.14 Final determination.

(a) All applications for assistance under this part shall be processed by the appropriate EDA Regional Office.

(b) The Regional Director shall notify the applicant, in writing, when its application has been rejected and state the reasons therefor.

(c) The Regional Director shall forward to the Assistant Secretary in Washington, D.C., all applications which he deems are properly completed and eligible for assistance under this part.

(d) The Assistant Secretary shall review all applications received from the Regional Directors and make the final determination.

(e) If no determination has been made by the end of the sixtieth day after the application was received as determined in § 316.12 above, the application will be deemed to be approved.

§ 316.15 Termination.

(a) An appropriate official of the grantee may request EDA to cancel or terminate a public works project approved under this part. This request must be accompanied by a certified resolution or ordinance authorizing the requesting party to make such request. Before agreeing to such request, EDA will determine the legal sufficiency of such request.

(b) EDA may initiate a cancellation or termination of a project approved under this part for failure by the grantee to adhere to the requirements of the grant.

(c) EDA may initiate a cancellation or termination of a project approved under this part whenever it determines that such cancellation or termination is in the best interest of the government. Cancellation or termination shall be effected by delivering a notice to the grantee specifying the extent of the cancellation or termination and the date upon which it becomes effective.

Effective date: These regulations become effective on August 23, 1976.

JOHN W. EDEN,
Assistant Secretary for Economic Development.

AUGUST 20, 1976.

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