AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Vol.41—No.216
11–8–76

PAGES
49083–49472

federal register

MONDAY, NOVEMBER 8, 1976

highlights

PART I:

EMERGENCY MEDICAL SERVICES WEEK
Presidential proclamation 49083

AWARDS
Foreign Claims Settlement Commission rules regarding receipt, administration and payment; effective 11–8–76 .. 49094
FCSC publishes notice of time for filing protests 49197

COMMUNITY FOOD AND NUTRITION PROGRAM
CSA proposes grant application procedures; comments by 12–8–76 49179

DOMESTIC CRUDE OIL
FEA issues proposed Purchaser's Report Form FEA P124–M–1; comments 11–15–76 49113

EQUAL CREDIT OPPORTUNITY
FRS publishes official staff interpretation 49087
FRS issues proposal; comments by 12–3–76 49123

INCOME TAXES
Treasury/IRS withdraws and proposes regulations relating to allocation and apportionment of deductions for computation of taxable income; comments by 12–7–76 .. 49160
Treasury/IRS proposal on allocation and apportionment of deductions to gross income; comments 12–7–76 49160

INTERSTATE HIGHWAY
DOT/FHWA requests comments by 11–30–76 on resurfacing, restoration and rehabilitation 49208

PRIVACY ACT OF 1974
OMB report on new systems of records 49205

PROCEDURE AND ADMINISTRATION
Treasury/IRS proposal relating to treatment of unpaid taxes shown on amended returns; requests for public hearing and comments by 12–30–76 49178

PRODUCTION AND UTILIZATION FACILITIES
NRC proposes periodic updating of safety analysis reports; comments by 12–23–76 49123

CONTINUED INSIDE

reminders

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

Rules Going Into Effect Today

EPA—Massachusets Implementation Plan, revision 44395; 10–8–76

Labor—Programs under Comprehensive Employment and Training Act; procedures for purchase of training and services from Job Corps Centers..... 44393; 10–8–76

USDA/AMS—Peaches grown in Mesa County, Colorado; redefinition of districts..... 43709; 10–4–76

List of Public Laws

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

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The six-month trial period ended August 6. The program is being continued on a voluntary basis (see OFR notice, 41 FR 32914, August 6, 1976). The following agencies have agreed to remain in the program:

Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/NHTSA	USDA/FNS		DOT/NHTSA	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/OHMO	CSC		DOT/OHMO	CSC
DOT/OPSO	LABOR		DOT/OPSO	LABOR
	HEW/FDA			HEW/FDA

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, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

ATTENTION: For questions, corrections, or requests for information please see the list of telephone numbers appearing on opposite page.

federal register

Area Code 202 Phone 523–5240

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

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

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

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

INFORMATION AND ASSISTANCE

Questions and requests for specific information may be directed to the following numbers. General inquiries may be made by dialing **202–523–5240.**

FEDERAL REGISTER, Daily Issue:

Subscriptions and distribution	202–783–3238
"Dial - a - Regulation" (recorded summary of highlighted documents appearing in next day's issue).	202–523–5022
Scheduling of documents for publication.	523–5220
Copies of documents appearing in this issue.	523–5215
Corrections	523–5286
Public Inspection Desk	523–5215
Finding Aids	523–5227
Public Briefings: "How To Use the Federal Register."	523–5282
Code of Federal Regulations (CFR)	523–5266
Finding Aids	523–5227

PRESIDENTIAL PAPERS:

Executive Orders and Proclamations.	523–5233
Weekly Compilation of Presidential Documents.	523–5235
Public Papers of the Presidents	523–5235
Index	523–5235

PUBLIC LAWS:

Public Law dates and numbers	523–5237
Slip Laws	523–5237
U.S. Statutes at Large	523–5237
Index	523–5237
U.S. Government Manual	523–5230
Automation	523–5240
Special Projects	523–5240

HIGHLIGHTS—Continued

RAILROAD NOISE EMISSION STANDARDS
DOT/FRA proposal on compliance regulations; comments by 12–22–76 49183

RURAL HOUSING
USDA/FmHA changes effective date for new guaranteed loan regulations to 1–1–77 49109

SUPERVISION OF BORROWERS
USDA/FmHA revises requirements for audits; effective 10–8–76 49104

MEETINGS—
Commerce/EDA: Environmental Impact Statement for the 1980 Winter Olympic Games, 11–10 and 11–18–76 49190
Commission of Fine Arts, 11–23–76 49190
DOT/FAA: Technical Advisory Committee, 11–29 and 11–30–76 49208
NHTSA: National Motor Vehicle Safety Advisory Council, 11–30, 12–1 and 12–2–76 49209
Electronic Fund Transfers National Commission, 11–10–76 49201
FEA: Rate Design Initiatives Subcommittee of the State Regulatory Advisory Committee, 11–23–76 49193
FPC: Transmission, Distribution and Storage Technical Advisory Task Force-Rate Design, 11–23–76 49195
Interior/GS: Interagency Advisory Committee on Water Data and Advisory Committee on Water Data for Public Use, 11–30 through 12–2–76 49199
NFAH: Education Panel, 12–14 and 12–15–76 49201
Fellowships Panel, 12–15, 12–17, 12–20 and 12–28–76 49201
Research Grants Panel (2 documents) 12–3 and 12–10–76 49202
NSF: International Decade of Ocean Exploration Proposal Review Panel, 12–1–76 49202
State/AID: Board for International Food and Agricultural Development, 11–22–76 49208
USDA/AMS: Shippers Advisory Committee, 11–23 and 11–30–76 49188

CHANGED MEETING—
DOT/FRA: Minority Business Resource Center Advisory Committee, 11–17–76 49209
NRC: Advisory Committee on Reactor Safeguards, 11–11 thru 11–13–76 49204

POSTPONED MEETINGS—
NRC: Advisory Committee on Reactor Safeguards, Subcommittee on Emergency Core Cooling Systems (ECCS), 11–6–76 49203

PART II:

ECONOMIC IMPLICATIONS AND INTERRELATIONSHIPS
FCC publishes policies and practices relating to customer interconnection, jurisdictional separations and rate structures 49215

PART III:

RULES OF PRACTICE
ICC proposes revision in order to facilitate and expedite proceedings; comments by 1–7–77 49281

PART IV:

LOW INCOME HOUSING
HUD regulations concerning fair market rents and contract rent automatic annual adjustment factors; effective 11–8–76 49439

PART V:

PRIVACY ACT, 1974
Inter-American Foundation publishes currently maintained system of records 49469

contents

THE PRESIDENT

Proclamations

Emergency Medical Services Week ---------- 49083

EXECUTIVE AGENCIES

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notices

Committees; establishment, renewals, etc.:
Research Advisory Committee; renewal ---------- 49208
Meetings:
International Food and Agricultural Development Board---- 49208

AGRICULTURAL MARKETING SERVICE

Rules

Grapefruit; imported---------- 49109
Milk marketing orders:
Chicago ---------- 49110

Proposed Rules

Milk marketing orders:
New Orleans-Mississippi and Greater Louisiana---------- 49112

Notices

Grain standards; inspection points:
Louisiana ---------- 49188
Meetings:
Shippers Advisory Committee- 49188

AGRICULTURE DEPARTMENT

See Agricultural Marketing Service; Farmers Home Administration.

ARTS AND HUMANITIES, NATIONAL FOUNDATION

Notices

Meetings:
Education Panel Advisory Committee ---------- 49201
Fellowships Panel Advisory Committee ---------- 49201
Research Grants Panel Advisory Committee (2 documents) ---------- 49202

CIVIL AERONAUTICS BOARD

Proposed Rules

Tariffs of air carriers and foreign air carriers, construction, publication, etc.:
Charter tariff publication service; correction---------- 49151

Notices

Hearings, etc.:
American Airlines, Inc. et al.; correction ---------- 49189
Argo, S.A---------- 49188
International Air Transport Association; correction-------- 49188
Lineas Aereas Costarricenses, S.A ---------- 49188
Silvas Air Lines---------- 49189

COAST GUARD

Notices

Commercial Diving Standards; public hearing; republication-- 49208

COMMERCE DEPARTMENT

See Economic Development Administration; National Bureau of Standards.

COMMUNITY SERVICES ADMINISTRATION

Proposed Rules

Community Action Programs:
Food and nutrition program--- 49179

CUSTOMS SERVICE

Notices

Countervailing duty petitions:
Chains and parts of cast iron, iron or steel from Italy----- 49209

ECONOMIC DEVELOPMENT ADMINISTRATION

Notices

Meetings:
Winter Olympic 1980 games--- 49190

ELECTRONIC FUND TRANSFERS, NATIONAL COMMISSION

Notices

Meetings:
Regulatory Issues and Providers Committees---------- 49201

ENVIRONMENTAL PROTECTION AGENCY

Notices

Pesticide applicator certification; State plans:
North Dakota---------- 49190

FARMERS HOME ADMINISTRATION

Rules

Borrowers, supervision of; reports and audits requirements------ 49104
Guaranteed loans; rural housing loans ---------- 49109

FEDERAL AVIATION ADMINISTRATION

Rules

Airworthiness directives:
Avions Marcel Dassault------- 49088
Boeing (2 documents)--- 49088, 49089
Grumman American---------- 49089
Jet routes---------- 49091
Reporting points---------- 49090
Restricted areas---------- 49091
Transition areas---------- 49090
VOR Federal airways (2 documents) ---------- 49090

Proposed Rules

Restricted areas---------- 49149

Notices

Meetings:
Technical Advisory Committee- 49208

FEDERAL COMMUNICATIONS COMMISSION

Rules

FM broadcast stations; table of assignments:
Florida ---------- 49097
New Mexico---------- 49103
South Dakota---------- 49101
Wyoming et al---------- 49095
Organization and functions:
Chairman and Executive Director, procurement and contract activities ---------- 49095
Radio frequency devices:
Receiver certification program extension, technical specifications, etc.; correction-------- 49095
Television broadcast stations; table of assignments:
Arkansas ---------- 49103

Proposed Rules

Domestic public radio services:
One-way signaling, primary basis ---------- 49182
FM broadcast stations; table of assignments:
Nebraska ---------- 49182

Notices

Customer interconnection, jurisdictional separations and rate structures; economic implications and interrelationships arising from related policies------ 49215
Domestic public radio services; applications accepted for filing- 49191
FM broadcast stations; table of assignments:
California and Pennsylvania; petitions for reconsideration of actions---------- 49193
Television stations:
VHF stations; table of assignments ---------- 49193

FEDERAL ENERGY ADMINISTRATION

Proposed Rules

Petroleum price regulations, mandatory:
Crude oil, domestic; purchaser's monthly report---------- 49113

Notices

Committees, establishment, renewals, etc.:
State Regulatory Advisory Committee ---------- 49193
Meetings:
Rate Design Initiatives Subcommittee of the State Regulatory Advisory Committee--------- 49193

FEDERAL HIGHWAY ADMINISTRATION

Notices

Interstate resurfacing, restoration and rehabilitation study; inquiry ---------- 49208

FEDERAL INSURANCE ADMINISTRATION

Rules

Flood Insurance Program, National; flood elevation determinations, etc.:
Georgia ... 49093
Wisconsin ... 49094

Proposed Rules

Flood Insurance Program, National; flood elevation determinations, etc.:
Florida ... 49155
Georgia ... 49152
Minnesota (3 documents) ... 49152, 49154, 49155
Missouri (2 documents) ... 49159
New Jersey (4 documents) ... 49151, 49156, 49158
North Carolina (2 documents) ... 49153, 49157
Ohio ... 49156

FEDERAL MARITIME COMMISSION

Notices

Casualty and nonperformance, certificates:
Flagship Cruises Ltd., and Flagship Cruises, Inc. and Kommanditselskapet Sea Venture A/S & Co ... 49195
Agreements filed, etc.:
Calcutta, East Coast of India & Bangladesh/U.S.A. Conference ... 49194
Lykes Bros. Steamship Co., Inc. and Kerr Steamship Co., Inc. ... 49194
Moore-McCormack Lines Inc. and States Steamship Co ... 49194

FEDERAL POWER COMMISSION

Notices

Meetings:
Transmission, Distribution & Storage Technical Advisory Task Force-Rate Design ... 49195

FEDERAL RAILROAD ADMINISTRATION

Proposed Rules

Railroad noise emission compliance ... 49183

Notices

Meetings:
Minority Business Resource Center, correction ... 49209

FEDERAL RESERVE SYSTEM

Rules

Equal credit opportunity; furnishing of credit information; interpretation ... 49087

Proposed Rules

Equal credit opportunity, nondiscrimination on basis of sex or marital status:
Authority, definitions, etc ... 49123

Notices

Applications, etc.:
Bank Land Co ... 49195
First Michigan Bank Corp ... 49195
Royal Trust Co. & Royal Trust Bank Corp ... 49196
Texarkana National Bancshares, Inc ... 49197

FINE ARTS COMMISSION

Notices

Meeting ... 49190

FISH AND WILDLIFE SERVICE

Notices

Endangered species permits; applications ... 49198
Marine mammal applications, etc.:
Kooyman, G. L ... 49199
McGinnis, Samuel M ... 49198

FOREIGN CLAIMS SETTLEMENT COMMISSION

Rules

War Claims Act; protests, filing and procedure ... 49094

Notices

Awards, certain, granted under Public Law 87-846; protests, filing time ... 49197

GEOLOGICAL SURVEY

Notices

Meetings:
Water Data for Public Use Advisory Committee and Water Data Interagency Advisory Committee ... 49199

HOUSING AND URBAN DEVELOPMENT ADMINISTRATION

See also Federal Insurance Administration.

Rules

Low-income housing:
Fair market rents and contract rent automatic annual adjustment factors ... 49439

INTER-AMERICAN FOUNDATION

Notices

Privacy Act of 1974, systems of records ... 49469

INTERIOR DEPARTMENT

See also Fish and Wildlife Service; Geological Survey.

Notices

Environmental statements; availability, etc.:
Mattamuskeet National Wildlife Refuge, N.C ... 49200

INTERNAL REVENUE SERVICE

Proposed Rules

Income taxes:
Gross income; allocation and apportionment of deductions ... 49160
Gross income; allocation and apportionment of deductions; hearing ... 49161
Procedure and administration:
Tax returns, amended; unpaid taxes shown ... 49178

Notices

Authority delegations:
Assistant Commissioner (Compliance) ... 49209

INTERSTATE COMMERCE COMMISSION

Proposed Rules

Practice rules:
Updating, clarification and improvement of rules; inquiry ... 49281

Notices

Fourth section applications for relief ... 49210
Motor carriers:
Temporary authority applications ... 49210

JUSTICE DEPARTMENT

See National Institute of Corrections.

MANAGEMENT AND BUDGET OFFICE

Rules

Freedom of information ... 49085

Notices

National Supply System Advisory Board; charter ... 49205
Privacy Act of 1974, systems of records ... 49205

NATIONAL BUREAU OF STANDARDS

Notices

NBS radio stations; discontinuance of certain broadcasts; inquiry; correction ... 49190

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Notices

Meeting:
National Motor Vehicle Safety Advisory Council ... 49209

NATIONAL INSTITUTE OF CORRECTIONS

Notices

Grant and contract review process ... 49200

NATIONAL SCIENCE FOUNDATION

Notices

Meetings:
International Decade of Ocean Exploration Proposal Review Panel ... 49202

NUCLEAR REGULATORY COMMISSION

Proposed Rules

Production and utilization facilities; licensing:
Safety analysis reports; updating ... 49123

Notices

Meetings:
Advisory Committee on Reactor Safeguards; Subcommittee on Emergency Core Cooling Systems (ECCS), postponed; republication ... 49203
Advisory Committee on Reactor Safeguards; republication ... 49204
Applications, etc.:
Duke Power Co. (2 documents) ... 49202
Northern States Power Co. et al ... 49203
Southern California Edison Co. et al ... 49203

SECURITIES AND EXCHANGE COMMISSION

Rules

Securities Exchange Act:
Self-regulatory organizations; responsibilities allocation program ---------- 49091

Notices

Allocation of certain regulatory responsibilities; public hearings-- 49206

Hearings, etc.:
Middle South Utilities, Inc., et al---------- 49207

STATE DEPARTMENT

See Agency for International Development.

TRANSPORTATION DEPARTMENT

See Coast Guard; Federal Aviation Administration; Federal Highway Administration; Federal Railroad Administration; National Highway Traffic Safety Administration.

TREASURY DEPARTMENT

See Customs Service; Internal Revenue Service.

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

Weekly Briefings at the Office of the Federal Register

(For Details, See 41 FR 46527, Oct. 21, 1976)

RESERVATIONS: JANET SOREY, 523–5282

list of cfr parts affected in this issue

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

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

3 CFR

PROCLAMATIONS:
4476---------- 49083

5 CFR

1303---------- 49085

7 CFR

944---------- 49109
1030---------- 49110
1802---------- 49104
1980---------- 49109

PROPOSED RULES:
1094---------- 49112
1096---------- 49112

10 CFR

PROPOSED RULES:
50---------- 49123
212---------- 49113

12 CFR

202---------- 49087

PROPOSED RULES:
202---------- 49123

14 CFR

39 (4 documents)---------- 49088, 49089
71 (4 documents)---------- 49090
73---------- 49091
75---------- 49091

PROPOSED RULES:
71---------- 49149
73---------- 49149
221---------- 49151

17 CFR

240---------- 49091

24 CFR

888---------- 49440
1917 (2 documents)-------- 49093, 49094

PROPOSED RULES:
1917 (14 documents)--- 49151–49159

26 CFR

PROPOSED RULES:
1 (2 documents)---------- 49160
301---------- 49178

45 CFR

581---------- 49094

PROPOSED RULES:
1061---------- 49179

47 CFR

0---------- 49095
15---------- 49095
73 (5 documents)---------- 49095–49103

PROPOSED RULES:
21---------- 49182
73---------- 49182

49 CFR

PROPOSED RULES:
210---------- 49183
1100---------- 49282

CUMULATIVE LIST OF PARTS AFFECTED DURING NOVEMBER

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

1 CFR

Ch. 1 47909
301 47909

3 CFR

PROCLAMATIONS:

4476 49083

5 CFR

316 48317
151 48110
771 48110
772 48110
1303 49085
2515 47910

7 CFR

Ch. I 48317
58 48509
246 48119
906 ..... 48510, 48719
910 48720
908 48510
944 49109
1030 49110
1430 48120
1802 49104
1822 48317
1980 49109

PROPOSED RULES:

905 48366
913 48540
989 48540
1033 47940
1094 49112
1096 49112
1427 48131
1430 48570
1701 48744
1871 47944

8 CFR

PROPOSED RULES:

3 47939
292 47939

9 CFR

97 48721
317 48721
319 ..... 48721, 48743
327 48722
445 48723
447 48723

10 CFR

206 48318
211 48319
212 ..... 48319, 48324
420 48325
710 48727

PROPOSED RULES:

50 49123
209 48129
212 49113

12 CFR

4 ..... 47934, 48334
5 ..... 47934, 48334
8 48335
9 ..... 47934, 47937
202 49087
221 48335
546 48727
584 48728

PROPOSED RULES:

202 49123
563 48377
570 48377

13 CFR

316 48116

14 CFR

37 48511
39 ..... 47911, 47912, 48511–48513, 49088, 49089
71 ..... 47913, 48513, 48514, 49090
73 49091
75 ..... 47913, 48514, 49091
97 ..... 47913, 48515
300 ..... 48116, 48119

PROPOSED RULES:

39 ..... 47946, 47947
71 ..... 47947, 47948, 48371, 48541, 49149
73 ..... 48541, 49149
91 48371
207 48371
208 48371
212 48371
214 48371
217 48371
221 ..... 48376, 48377, 49151
241 48371
249 48371
300 48129
373a 48371
389 48371

15 CFR

50 48335
923 48112

16 CFR

13 ..... 48113, 48114
419 48516
303 48115
703 47914
1009 47914

17 CFR

1 48112
15 48112
17 48112
240 ..... 48335, 49091
241 ..... 48335, 48336

PROPOSED RULES:

240 ..... 48377, 48379
259 48130

18 CFR

PROPOSED RULES:

2 48745
141 ..... 45130, 48745
260 ..... 45130, 48745

19 CFR

PROPOSED RULES:

155 48132
159 48132

20 CFR

404 47915
405 47915
410 47915
416 47915
602 48250
604 48250
605 48250
653 48250

PROPOSED RULES:

651 48746
653 48746
656 48938
658 48746

21 CFR

2 48261
8 ..... 48265, 48730
10 48265
202 48266
207 48097
310 47919
312 48266
429 48267
431 48267
433 48267
436 48099
448 48100
510 48100
511 48268
514 48268
520 ..... 48100, 48731
522 48732
558 48732
573 48100
1003 48268
1004 48269
1210 48269

PROPOSED RULES:

121 48125
452 48125

22 CFR

201 48732
211 47919

23 CFR

140 48516
740 48682

24 CFR

570 48476
888 49440
1917 ..... 48110–48132, 48337–48341, 48535–48538, 48732–48735, 49093, 49094
2205 48538

PROPOSED RULES:

1917 ..... 48366–48370, 48542–48552, 49151–49159

25 CFR

60 48735
104 48735

26 CFR

601 48740

PROPOSED RULES:

1 ..... 48132–48134, 49160
48 48346
301 49178
601 48746

27 CFR

5 48120

29 CFR

1910 48742
2608 48480
2610 48484

PROPOSED RULES:

60 48947
1910 ..... 48746, 48950
1915 48950
1916 48950
1917 48950
1918 48950
1926 48950
2608 48492
2610 48498
2615 48504

31 CFR

PROPOSED RULES:

350 47959

33 CFR

117 48516

PROPOSED RULES:

40 47944
117 47945
204 48747

36 CFR

221 48538

38 CFR

21 47927

PROPOSED RULES:

3 48747

40 CFR

60 48342
61 48342
120 48737
407 48736
416 48516
455 48088

PROPOSED RULES:

52 ..... 47949–47956, 48044, 48750, 48752
60 48706

41 CFR

8–7 48516
8–18 48516
101–11 48737
101–32 48519

PROPOSED RULES:

60–2 48128
60–5 48128
60–8 48128

42 CFR

PROPOSED RULES:

54 48242
84 48753

43 CFR

3300 48738

PROPOSED RULES:

3500 ..... 48124, 48754
3510 48124
9230 48754

45 CFR

250 48738
581 49094
801 ..... 47938, 48739
1005 48739

PROPOSED RULES:

177 ..... 48862, 48910
1061 49179

47 CFR

0 ..... 48343, 49095
15 49095
21 47931
73 ..... 47931, 49095–49103
74 48519
89 48520
91 48520
93 48520

PROPOSED RULES:

21 49182
73 ..... 47956, 49182

49 CFR

1 48122
218 48343
501 47933
1033 ..... 48122, 48343, 48344
1090 48344
1121 48520
1201 48972

PROPOSED RULES:

173 48553
210 49183
571 48555
218 48126
265 48371
393 47948
1090 48130
1100 49282

50 CFR

20 48534
32 ..... 48345, 48535

PROPOSED RULES:

17 48757

FEDERAL REGISTER PAGES AND DATES—NOVEMBER

Pages	*Date*
47909–48096	Nov. 1
48097–48315	2
48317–48508	3
48509–48718	4
48719–49081	5
49083–49472	8

presidential documents

Title 3—The President

PROCLAMATION 4476

Emergency Medical Services Week, 1976

By the President of the United States of America

A Proclamation

Each week more than a thousand Americans die as a result of accidents, heart attacks and other medical emergencies because emergency assistance is not available.

For many years, physicians and health professionals have urged improved national services and facilities for emergency medical care. Since 1968, pursuant to the publication of Standard 11, "Emergency Medical Services" in accordance with the Highway Safety Act of 1966, the Department of Transportation has been engaged with improving emergency care at the onset of the emergency and in transit to more definitive care.

This year, a bill extending the "Emergency Medical Services Systems Act of 1973" was passed by Congress and signed into law on October 21. The Act provides for a continued national commitment to the improvement of total emergency care for the sick and injured.

As a result, the Department of Health, Education, and Welfare, and the Department of Transportation, together with several other Federal agencies, will continue to work closely with States and communities to improve medical emergency services. Although many cities enjoy satisfactory services, the great majority of our communities, especially in rural areas, still require considerable improvement.

NOW, THEREFORE, I, GERALD R. FORD, President of the United States of America, do hereby designate the week beginning November 7, 1976, as Emergency Medical Services Week.

I call upon the Governors and Mayors and all other State and local officials to assist hospital administrators and physicians, fire departments, public safety agencies and all ambulance services in improving emergency medical services.

I call upon Federal agencies, especially the Departments of Transportation and Health, Education, and Welfare to continue, with renewed emphasis, their assistance to States and communities in accelerating efforts to help those in need of emergency medical assistance.

I call upon all our people to lend their support to these efforts. We are a traveling nation and none of us knows when we might need help far from home.

Let us affirm that this national legislation is only the beginning of our effort to upgrade and perpetuate this part of our total health care system so no individual in this country will lack help whenever or wherever he needs it.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of November, in the year of our Lord nineteen hundred seventy-six and of the Independence of the United States of America the two hundred and first.

Gerald R. Ford

[FR Doc.76-32884 Filed 11-4-76;12:46 pm]

rules and regulations

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

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

Title 5—Administrative Personnel

CHAPTER III—OFFICE OF MANAGEMENT AND BUDGET

PART 1303—PUBLIC INFORMATION PROVISIONS OF THE ADMINISTRATIVE PROCEDURES ACT

Revision

On June 17, 1976, the Office of Management and Budget issued a notice (40 FR 24610), amending Chapter III, Part 1303 of Title 5, Code of Federal Regulations regarding implementation of the public information provisions of the Administrative Procedures Act (5 U.S.C. 552, as amended). These proposed regulations reflect the amendments to the Freedom of Information Act enacted as Pub. L. No. 93–502 (88 Stat. 1561). Written comments were invited through July 16, 1976.

No written comments were received. In view of the foregoing, Chapter III, Part 1303 of Title 5, Code of Federal Regulations, is revised as set forth below, effective November 8, 1976.

PHILLIP D. LARSEN,
Acting Assistant to the Director for Administration.

5 CFR Part 1303 is revised to read as follows:

ORGANIZATION

Sec.

1303.1 General.
1303.2 Authority and functions.
1303.3 Organization.

PROCEDURES

1303.10 Methods of operation.

AVAILABILITY OF INFORMATION

1303.20 Inspection, copying and exceptions.

CHARGES FOR SEARCH FOR REPRODUCTION

1303.30 Schedule of fees and method of payment for services rendered.

AUTHORITY: 5 U.S.C. 552, as amended by Pub. L. 93–502.

ORGANIZATION

§ 1303.1 General.

This information is furnished for the guidance of the public and in compliance with the requirements of section 552 of title 5, United States Code, as amended.

§ 1303.2 Authority and functions.

(a) The Office of Management and Budget was established in the Executive Office of the President pursuant to Part I of Reorganization Plan No. 2 of 1970 (35 FR 7959), effective July 1, 1970. That Plan transferred to the President all functions vested by law in the Bureau of the Budget, or its Director, and designated the Bureau of the Budget as the Office of Management and Budget. By Executive Order No. 11541 of July 1, 1970 (35 FR 10737), the President delegated all functions transferred to him by Part I of the Plan to the Director of the Office of Management and Budget.

(b) The principal statutory functions of the Office of Management and Budget are contained in the Budget and Accounting Act of 1921 (42 Stat. 20, 31 U.S.C. 1–25); the Federal Reports Act of 1942 (44 U.S.C. 3501–3511); the Government Corporation Control Act (59 Stat. 597, 31 U.S.C. 841–869); the Budget and Accounting Procedures Act of 1950 (65 Stat. 832), the Federal Advisory Committee Act (Pub. L. 92–463), the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344), the Office of Federal Procurement Policy Act (Pub. L. 93–400), and the Privacy Act of 1974 (Pub. L. 93–579).

(c) The functions of the Office of Management and Budget are carried out pursuant to the provisions of the statutes cited above and the provisions of various Executive orders—principally, Executive Order No. 8248 of September 8, 1939 (CFR Cum. Supp., p. 576), outlining certain functions to be performed by the Bureau of the Budget for the President, and Executive Order No. 11230 of June 28, 1965 (3 CFR 1965 Supp., p. 146), as amended, delegating certain functions of the President to the Director of the Bureau of the Budget. Under the terms of Executive Order No. 11541 of July 1, 1970, the assignments and delegations made in the earlier orders are to be considered as assignments to the Office of Management and Budget and its Director.

§ 1303.3 Organization.

The central organization of the Office of Management and Budget consists of:

(a) The Office of the Director, which includes the Director and the Deputy Director and their principal assistants, including the Assistant to the Director for Administration.

(b) The Administrator of the Office of Federal Procurement Policy.

(c) Three Associate and Assistant Directors with Government-wide management responsibilities in specialized areas, as follows:

(1) Executive Development and Labor Relations.

(2) Legislative Reference.

(3) Management and Operations.

(d) Five program and budget Associate and Assistant Directors, as follows:

(1) Budget Review.

(2) National Security and International Affairs.

(3) Human and Community Affairs.

(4) Economics and Government.

(5) Natural Resources, Energy, and Science.

(e) The Office has no field organization.

(f) Units of the Office of Management and Budget are presently located in the Executive Office Building, 17th Street and Pennsylvania Avenue, NW., and in the New Executive Office Building, 17th and H Streets, NW., Washington, D.C. 20503. Regular office hours are from 9 a.m. to 5:30 p.m., Monday through Friday. Both buildings are under security control. Persons desiring to visit officers or employees of the Office of Management and Budget in either building will usually find it easier to do so if they write or telephone in advance for an appointment.

PROCEDURES

§ 1303.10 Methods of operation.

(a) The Office of Management and Budget maintains current indexes which identify information pertaining to matters issued, adopted, or promulgated after July 4, 1967, that are within the scope of 5 U.S.C. 552 (a)(2). These indexes are updated quarterly and are published in the FEDERAL REGISTER. They are also available for public inspection and copying at the Office's Publications Office, Room G–236, New Executive Office Building, 17th and H Streets, NW., Washington, D.C. 20503. The indexes may be examined between the hours of 9:00 a.m. and 5:30 p.m. on any day, except Saturdays, Sundays, and legal public holidays.

(b) The Assistant to the Director for Administration is responsible for acting on all initial requests. Individuals wishing to obtain any information listed on the indexes should address their request in writing to the Assistant to the Director for Administration, Office of Management and Budget, Washington, D.C. 20503, Phone 395–4790. Requests for information shall be as specific as possible.

(c) Upon receipt of any request for information or records, the Assistant to the Director for Administration will determine within 10 days (excepting Saturdays, Sundays, and legal public holidays) whether it is appropriate to grant the request and will immediately provide written notifiction to the person making the request. If the request is denied, the written notification to the person making the names of other individuals who participated in the determination and a notice that an appeal may be lodged including the format and content of any such appeal within the Office of Management and Budget. (Receipt of a request as used herein means the date the request is received in the office of the Assistant to the Director for Administration.)

(d) Appeals shall be set forth in writing and addressed to the Assistant to the Director for Administration at the address specified in paragraph (b) of this section. The appeal shall include a statement explaining the basis for the appeal. Determinations of appeals will be set forth in writing and signed by the Deputy Director, or his designee within 20 days (excepting Saturdays, Sundays, and legal public holidays). If, on appeal, the denial is in whole or in part upheld, the written determination will also contain a notification of the provisions for judicial review and the names of the persons who participated in the determination.

(e) Upon receipt of a request for review, the Assistant to the Director for Administration will convene a review group composed of the Assistant to the Director for Administration, the General Counsel, or their designees, and the official having operational control over the record. This group will review the basis for the requested review and will develop a recommended course of action to the Deputy Director. If at any time additional information is required from the requester, the Assistant to the Director for Administration is authorized to acquire it or authorize its acquisition from the requester.

(f) The Office of Management and Budget has established an internal Committee on Freedom of Information and Privacy (hereinafter referred to as the Committee. The Committee is composed of:

(1) Deputy Director.

(2) Assistant to the Director for Administration.

(3) General Counsel.

(4) Assistant Director for Budget Review.

(5) Assistant Director for Legislative Reference.

(6) Assistant to the Director for Public Affairs.

(7) Deputy Associate Director for Information Systems.

(8) Deputy Associate Director for Statistical Policy.

(9) Deputy Associate Director for National Security.

(10) Budget and Management Officer.

(11) Personnel Officer.

(g) The Committee, when directed by the Assistant to the Director for Administration, will review the Office's administration of the Freedom of Information and Privacy Acts and make recommendations for the improvement thereto. In addition, the committee, upon the request of the Deputy Director, may evaluate a request for review or appeal and recommend a decision to the Deputy Director, who has the final authority regarding appeals.

(h) In unusual circumstances, the time limits prescribed in paragraphs (d) and (e) of this section may be extended for not more than 10 working days (excepting Saturdays, Sundays, or legal public holidays). Extensions may be granted by the Deputy Director. The extension period may be split between the initial request and the appeal but in no instance may the total period exceed 10 working days. Extensions will be by written notice to the persons making the request and will set forth the reasons for the extension and the date the determination is expected. As used herein, but only to the extent reasonably necessary to the proper processing of the particular request, the term "unusual circumstances" means:

(1) The need to search for and collect the requested records from establishments that are separated from the office processing the request;

(2) The need to search for, collect, and examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practical speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency which have a substantial subject matter interest therein.

AVAILABILITY OF INFORMATION

§ 1303.20 Inspection, copying, and exceptions.

(a) When a request for information has been approved pursuant to § 1303.10 above, the person making the request may make an appointment to inspect or copy the materials requested during regular business hours by writing or telephoning the Assistant to the Director for Administration at the address or telephone number listed in § 1303.10 (c). Such materials may be copied manually without charge, and reasonable facilities will be made available for that purpose. Also, copies of individual pages of such materials will be made available at the price per page specified in § 1303.30(a); however, the right is reserved to limit to a reasonable quantity the copies of such materials which may be made available in this manner when copies also are offered for sale by the Superintendent of Documents.

(b) Certain functional units of the Office of Management and Budget solely advise and assist the President, and therefore these units are not covered by 5 U.S.C. 552. However, the Director or the Deputy Director, acting on his behalf, may determine that a record which falls in one of the following categories shall be made available. These units carry out activities that provide advice and assistance to the President with regard to:

(1) The formulation and preparation of the Federal budget,

(2) The processing of enrolled bills and determinations of the relationships of pending and proposed legislation to the program of the President.

(3) The compensation of Federal employees,

(4) The establishment and organization of new agencies and the reorganization of existing programs and agencies, and

(5) The preparation of Executive Orders and Proclamations.

(c) Except to the extent that the Director or Deputy Director, acting on his behalf, determines that a record which falls within one of the following categories shall be made available, this section shall not apply to matters that are:

(1) (i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of the national defense or foreign policy, and (ii) Are in fact properly classified pursuant to such Executive Order.

(2) Related solely to the internal personnel rules and practices of the Office;

(3) Specifically exempted from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Office;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (i) Interfere with enforcement proceedings, (ii) Deprive a person of a right to a fair trial or an impartial adjudication, (iii) Constitute an unwarranted invasion of personal privacy, (iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) Disclose investigative techniques and procedures, or (vi) Endanger the life or physical safety of law enforcement personnel;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

CHARGES FOR SEARCH AND REPRODUCTION

§ 1303.30 Schedule of fees and method of payment for services.

(a) Following is the fees schedule for the search and reproduction of information available under the Freedom of Information Act (5 U.S.C. 552), as amended.

(1) Search for records—$5.00 per hour when the search is conducted by a clerical employee. $8.00 per hour when the search is conducted by a professional employee. No charge for searches of less than 1 hour.

(2) Duplication of records—Records will be duplicated at a rate of $.10 per page for all copying of 4 pages or more. There is no charge for duplicating 3 or fewer pages.

(3) Other—When no specific fee has been established for a service, or the request for a service does not fall under one of the above categories due to the

amount or type thereof, the Assistant to the Director for Administration is authorized to establish an appropriate fee based on "direct costs" as provided in the Freedom of Information Act and in accordance with Office of Management and Budget Circular No. A-25, "User charges." Examples of services covered by this provision include searches involving computer time or special travel, transportation, or communications costs.

(b) If records requested under this part are stored elsewhere than the headquarters of the Office of Management and Budget at Washington, D.C., the special costs of returning such records to the headquarters for review will be added to the search costs.

(c) Ordinarily, fees shall not be charged if the records requested are not found, or if all of the records located are withheld as exempt. However, if the time expended in processing the request is substantial, and if the requester has been notified of the estimated cost pursuant to paragraph (d) of this section, fees may be charged.

(d) Where it is anticipated that the fees chargeable under this section will amount to more than $25.00, or the maximum amount specified in the request, the requester shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will greatly exceed $25.00, an advance deposit may be required. The notice or request for an advance deposit shall extend an offer to the requester to consult with Office personnel in order to reformulate the request in a manner which will reduce the fees, yet still meet the needs of the requester.

(e) Fees must be paid in full prior to issuance of requested copies. In the event the requestor is in arrears for previous requests for which the Office was unable to find or provide the requested information (see paragraph (b) of this section), copies of records will not be provided for any subsequent request until the arrears have been paid in full.

(f) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed or delivered to the Assistant to the Director for Administration, Office of Management and Budget, Washington, D.C. 20503.

(g) A receipt for fees paid will be given upon request. Refund of fees paid for services actually rendered will not be made.

(h) The Assistant to the Director for Administration, or an officer designated by the Assistant to the Director for Administration may in accordance with the Freedom of Information Act, as amended, waive all or part of any fee provided for in this section when the Assistant to the Director for Administration or the designated officer deems it to be in either the Office's interest or in the general public's interest.

[FR Doc.76-32721 Filed 11-5-76;8:45 am]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. B]

PART 202—EQUAL CREDIT OPPORTUNITY

Official Staff Interpretation

In accordance with 12 CFR Part 202.13 (c), the Board is publishing the following official staff interpretation of § 202.6 of Regulation B, issued by a duly authorized official of the Division of Consumer Affairs.

Identifying details have been deleted to the extent required to prevent a clearly unwarranted invasion of personal privacy. The Board, however, maintains and makes available for public inspection and copying a current index providing identifying information, subject to certain limitations stated in 12 CFR 261.6.

Official staff interpretations may be reconsidered by the Board upon request of interested parties and in accordance with 12 CFR 202.13(c)(2). Each request for reconsideration should clearly identify the number of the official staff interpretation in question and should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The following interpretation shall be effective immediately.

§ 202.6—Furnishing of Credit Information

This is in response to your September 13 letter regarding the consequences of the Board's deferral of the effective date of section 202.6 of Regulation B (12 CFR 202) from November 1, 1976 to June 1, 1977. The Board's decision was announced on September 2 and notice of the action appeared in the Federal Register on September 13 (41 FR 38759). This is an official staff interpretation relating to § 202.6 of Regulation B, issued pursuant to §§ 202.13 (b) and (c).

In your letter, you explain that your firm represents a large creditor that offers several open-end credit plans. Prior to the deferral of the effective date of § 202.6(b)(1)(ii), your client ordered the printing of the specified Credit History for Married Persons Notice and arranged with a data processing company to insert the notice in mailings to active accounts between November 1, 1976 and February 1, 1977. The notice contains a reference to November 1976, which renders it unusable between June 1 and October 1, 1977. You have asked whether your client may distribute these notices during the period November 1, 1976 through February 1, 1977 instead of during the period June 1 through October 1, 1977.

The answer to your inquiry is, yes. A creditor that has printed or ordered the printing of the notice specified in the previous version of § 202.6(b)(1)(ii) may mail or deliver that notice to all (or all married) holders of active accounts (for open-end accounts) or existing accounts (for closed-end accounts) between November 1, 1976 and February 1, 1977. This is not required, however, and a creditor may elect to postpone sending the notice or taking any other action regarding the furnishing of credit information under § 202.6 until June 1, 1977. The following comments apply only to those creditors that have had the notices printed or have ordered their printing and choose to distribute them between now and February 1, 1977.

Since the notice provided for in the previous version of § 202.6(b)(1)(ii) relates only to accounts established prior to November 1, if a creditor chooses to distribute copies of that notice now, the question arises concerning what action the creditor should take regarding new accounts that are established between November 1, 1976 and June 1, 1977 If a creditor provides the notice now, but does not record whether new accounts set up between November 1, 1976 and June 1, 1977 involve spouses who are both contractually liable or users, then, in June 1977, the creditor will have an information gap in its records. It will not be able to tell whether any of the accounts established between November and June involve contractually liable or user spouses and, therefore, will have to send notices to those account holders in order to obtain the necessary information to comply with § 202.6(b)(1).

To avoid having to provide any further notices, any creditor that has furnished or is in the process of furnishing credit history notices may elect to follow the designation procedures of § 202.6(a)(1) for each account established after November 1, 1976. If a creditor so elects, for each account established after that date, the creditor should determine whether the account is one that an applicant's spouse, if any, will be permitted to use or upon which both spouses will be contractually liable, if either of those types of accounts is offered by the creditor. If the account does involve a user spouse or if both spouses are contractually liable on the account, then the creditor should designate the account to reflect the fact of participation of both spouses; that is, the creditor should indicate on its records the names of both spouses and the fact of their joint participation, which entitles them to share the credit history relating to the account.

Two further questions arise if credit history notices are sent out between November 1, 1976 and February 1, 1977: (1) How to handle requests to change the manner of reporting credit history information relating to an account; and (2) how to furnish credit information relating to appropriately designated accounts.

Addressing the first question, if, after November 1, 1976, a creditor receives a properly completed request to change the manner in which credit information is furnished regarding a joint or user account, then, within 90 days after receipt of that request, the creditor should designate the account to reflect the participation of both spouses as provided in § 202.6(b)(2).

Regarding the second question, once an account has been appropriately designated, either as a new account pursuant to § 202.6(a)(1) or by virtue of a change request pursuant to § 202.6(b)(2), a creditor has an option regarding the manner of reporting credit information relating to that account prior to June 1, 1977. A creditor may immediately begin reporting the information as provided in §§ 202.6 (a)(2) and (b)(2), or a creditor may continue to furnish the information in the same format as it has in the past, deferring compliance with the reporting requirements of § 202.6 until June 1, 1977.

The following two examples illustrate the operation of the interpretations set forth in this letter. Assume that a person established an open-end credit card account in 1975 and that the person's spouse is authorized to use the account, but the creditor's records do not reflect the spouse's use. If the creditor sends a Credit History for Married Persons Notice to the account holder by February 1, 1977, it will have complied with § 202.6(b)(1)(ii) and need not send another notice relating to that account between June 1 and October 1, 1977. If the account holder or the spouse submits a properly completed request to change the manner of reporting credit information

relating to the account, then the creditor, within 90 days after receipt of the request, should indicate on its records the names of both parties and the fact that they want credit information relating to the account furnished in both their names. The creditor then has the option of either immediately beginning to report the information in both names or waiting until June 1, 1977 to do so.

The second example assumes that a creditor has sent the notice and a person establishes an open-end credit card account on December 1, 1976 under which the person's spouse will be permitted to use the account. In that situation, the creditor should indicate the names and involvement of both spouses on its records at the time that the account is established. Once that has been done, then, as in the previous example, the creditor has the choice until June 1, 1977 of either reporting credit information relating to the account in the name of each spouse or continuing to report that information as it does presently.

Again, the procedures set forth in this letter are voluntary, but any creditor that follows all of the outlined steps will be deemed to have complied fully with the requirements of the amended version of § 202.6 (b)(1) as of June 1, 1977. Thereafter, such a creditor will only have to comply prospectively with the designation and reporting requirements of § 202.6 (a) and (b)(2).

We trust that this interpretation clarifies your client's responsibilities under § 202.6 and answers your questions. If we can be of further assistance, please let us know.

Sincerely,

JANET HART,
Director.

Board of Governors of the Federal Reserve System, November 1, 1976.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.76-32736 Filed 11-5-76;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 16241, Amdt. 39-2766]

PART 39—AIRWORTHINESS DIRECTIVES

Avions Marcel Dassault (AMD) Model Fan Jet Falcon (Falcon 20) Airplanes

There has been a report of a landing accident caused by the failure of a main gear of an Avions Marcel Dassault (AMD) Model Fan Jet Falcon (Falcon 20) airplane to lock in the extended position because of corrosion in the locking mechanism. Since this condition is likely to exist or develop in other airplanes of the same type design, an airworthiness directive is being issued to require inspection of certain landing gear lock actuator cylinders and, if necessary, replacement or modification of the actuator on AMD Model Fan Jet Falcon (Falcon 20) airplanes.

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

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act, (49 U.S.C. 1.655(c)).)

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

AVIONS MARCEL DASSAULT (AMD). Applies to Model Fan Jet Falcon (Falcon 20) airplanes, all series, certified in all categories, with installed Messier/Hispano Main Landing Gear Actuating Cylinders P/N A23721 (L.H.) and A23722 (R.H.) serial numbers 1 through 807, 809 through 813, 816, 818, and 820 not modified in accordance with AMD Service Bulletin No. 529, dated September 5, 1975.

Compliance is required as indicated.

To prevent possible failure of main landing gear down-locks, accomplish the following:

(a) Inspect the following actuating cylinders for corrosion in accordance with Messier Hispano Technical Instruction DME361-5, or an FAA-approved equivalent:

(1) For S/N 1 through 699, within the next 50 hours time in service or three months, whichever occurs first, after the effective date of this AD, unless already accomplished within the preceding three months, and thereafter at intervals not to exceed six months from the date of the last inspection.

(2) For S/N 700 through 807, 809 through 813, 816, 818, and 820, within the next 200 hours time in service or four months, whichever occurs first, after the effective date of this AD, unless already accomplished within the preceding two months, and thereafter at intervals not to exceed six months from the date of the last inspection.

(b) If the inspection required by paragraph (a) of this AD reveals the presence of a corrosion condition classified as "very corroded," in accordance with the classification criteria of paragraph 1.c. of AMD Service Bulletin No. 528, dated July 17, 1975 (Revision 2, February 19, 1976), or an FAA-approved equivalent, within the next three months after this inspection—

(1) Replace the actuator with a serviceable part of the same part number and continue the periodic inspections specified in paragraph (a) of this AD; or

(2) Modify the actuator in accordance with AMD Service Bulletin No. 529, dated September 5, 1975, or an FAA-approved equivalent.

(c) The inspections required by paragraphs (a) and (b)(1) of this AD may be discontinued upon the incorporation of the modification specified in paragraph (b)(2) of this AD.

This amendment becomes effective November 22, 1976.

The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Issued in Washington, D.C., on October 28, 1976.

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

[FR Doc.76-32540 Filed 11-5-76;8:45 am]

[Docket No. 76-NW-6-AD, Amdt. 39-2762]

PART 39—AIRWORTHINESS DIRECTIVES

Boeing Models 727 and 737 Series Airplanes

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring either insulating liners in the hydraulic system "B" Abex pump motor assemblies or a ground fault protection system in the hydraulic system "B" Abex pump motor electrical power circuits on Boeing Model 727 and 737 series airplanes was published in FEDERAL REGISTER, Vol. 41, No. 120, Monday, June 31, 1976 (41 FR 24902).

Interested persons have been afforded an opportunity to participate in the making of the amendment. During the comment period, the airframe manufacturer conducted an extensive series of tests simulating pump case burn through by electrical wiring fault. It was found that under certain conditions, Boeing Material Specifications 3-11 fire resistant hydraulic fluids will continue to burn after the ignition source has been removed. It was also concluded from the history of failures that the proposed installations of insulating liners in the pump motors do not provide fault protection in the electrical connector area. This information was not known at the time of issuance of NPRM 76-NW-6.

Because of the possibility of hydraulic system "B" Abex motor pump failures occurring in conjunction with a fuel leak, the FAA has determined that inspections of the cavity drain system components or the installation of a ground fault protection system is necessary.

Accordingly, the AD now provides for repetitive fuel leak inspections and cavity drain pressure checks which may be discontinued upon installation of the ground fault protection system which is provided as a terminating action to the AD. Additionally, at such time as an improved pump motor connector and liner modification becomes available, the AD will be amended to provide that the incorporation of such modification will constitute acceptable terminating action.

Although repeitive inspections of the type set out herein were not provided for in the original proposal, the FAA believes, as a result of numerous comments, that such an inspection schedule imposes a lesser burden upon the operator than the mandatory terminating actions originally proposed. Accordingly, it is found that additional notice and public procedure hereon are unnecessary and the rule will be effective December 10, 1976.

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

BOEING: Applies to Boeing Models 727 and 737 series airplanes certificated in all categories with hydraulic system "B" Abex, P/N 57186, pump motor installations. Compliance required as indicated unless already accomplished.

To prevent a hydraulic system "B" Abex, P/N 57186, pump motor internal wiring fault from burning a hole in the case and possibly igniting the escaping hydraulic fluid which could ignite fuel leakage, accomplish the following:

(1) Within the next 300 hours time in service after the effective date of this AD, and every 1,000 hours thereafter, accomplish (A) and/or (B).

(A) Perform a visual inspection of the cavity drain system components in the left wing-body fairing area for fuel leakage in all 727 series airplanes in accordance with the Boeing Service Bulletin 727-29-A52, dated 10/22/76, or later FAA approved service bulletins. Any evidence of leakage or conditions that could lead to leakage, must be corrected prior to further flight in accordance with approved maintenance procedures.

(B) Perform a visual inspection of all fuel system components and associated plumbing installed in the main wheel wells of all 737 series airplanes in accordance with Boeing Service Bulletin 737-29-A1033 dated 10/22/76, or later FAA approved service bulletins. Inspect for evidence of leakage, damage and security of installations. Any evidence of leakage or conditions that could lead to leakage, must be corrected prior to further flight in accordance with approved maintenance procedures.

(2) Within the next 1,300 hours time in service after the effective date of this AD, and every 1,000 hours thereafter, accomplish a pressure leakage check of cavity drain system components in the left wing-body fairing area in all 727 series airplanes in accordance with Boeing Service Bulletin 727-29-A52 dated 10/22/76, or later FAA approved service bulletins.

(3) Within the next 2,300 hours time in service after the effective date of this AD, install insulating liners in all 727 and 737 Abex system "B" pump motors in accordance with Task Service Bulletin 7501-6-29-004/-103, Rev. 1, dated 7/15/75.

(4) Installation of the ground fault protection systems in the hydraulic system "B" Abex pump motor electrical power circuits in accordance with either applicable Service Bulletins No. 727-29-47, Rev. 2, dated 10/8/76, or No. 737-29-1029, Rev. 2, dated 10/8/76, or later approved revisions, constitutes terminating action for this AD.

(5) When a satisfactory optional terminating action is developed by the industry, this AD will be amended to provide for its incorporation.

Equivalent modifications may be approved by the Chief, Engineering and Manufacturing Branch, FAA Northwest Region.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. The documents may be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington.

This rule has been reviewed and does not require an inflationary impact statement.

This amendment becomes effective December 10, 1976.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in Seattle, Wash., on October 27, 1976.

NOTE: The incorporation by reference provisions in the document were approved by the Director of the Federal Register on June 19, 1967.

C. B. WALK, Jr.,
Director,
Northwest Region.

[FR Doc.76-32533 Filed 11-5-76;8:45 am]

[Docket No. 76-NW-25-AD, Amdt. 39-2763]

PART 39—AIRWORTHINESS DIRECTIVES

Boeing Model B-17F & G

Amendment 39-1722 AD 73-20-2 requires inspection of the wing front spar lower chord on the Model B-17 airplanes. After issuing Amendment 39-1722 one airplane experienced failure of the forward lower spar cap. Therefore, the AD is being amended to require a shorter repeat inspection interval commensurate with the service experience.

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

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 FR 13697), § 39.13 of the Federal Aviation Regulations, Amendment 39-1722 AD 73-20-2 is amended as follows:

1. Change the first paragraph to read as follows:

Compliance required within the next 25 hours' time-in-service or within 6 months after the effective date of this AD, unless already accomplished within the last 25 hours' time-in-service or 6 months, and thereafter at intervals not to exceed 50 hours' time-in-service or 12 months, whichever comes first, (from the last inspection).

2. Change the third sentence of paragraph (a) to read as follows:

Using eddy current inspection procedures, or borescope methods in conjunction with dye penetrants, inspect the front spar lower chord center section for cracks around the bolt hole in both the forward and aft wall of the tube.

3. Change paragraph (c) to read:

(c) After repairs per (b) have been accomplished, reinspect in accordance with (a) at intervals not to exceed 50 hours' time-in-service or every 12 months, whichever comes first.

This amendment becomes effective November 17, 1976.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423) sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in Seattle, Wash., October 28, 1976.

C. B. WALK, Jr.,
Director,
Northwest Region.

[FR Doc.76-32534 Filed 11-5-76;8:45 am]

[Docket No. 76-SO-98; Amdt. 39-2761]

PART 39—AIRWORTHINESS DIRECTVES

Grumman American Models AA-5A and AA-5B Series Airplanes

Pursuant to the authority delegated to me by the Administrator (31 FR 13697), an airworthiness directive was adopted on October 18, 1976, and made effective immediately as to all known United States operators of Grumman American Models AA-5A and AA-5B airplanes. The directive requires that the airplane oil cooler be checked and that certain Stewart Warner oil coolers be replaced.

Since it was found that immediate corrective action was required, notice and public procedure thereon was impracticable and contrary to the public interest and good cause existed for making the airworthiness directive effective immediately as to all known U.S. operators of Grumman American AA-5A and AA-5B airplanes by individual airmail letters dated October 18, 1976. These conditions still exist, and the airworthiness directive is hereby published in the FEDERAL REGISTER as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

GRUMMAN AMERICAN. Applies to Model AA-5A serial numbers AA5A-001 through AA5A-0227 and Model AA-5B serial numbers AA5B-0111 through AA5B-0359 airplanes certificated in all categories.

Compliance required before further flight.

To prevent continued use of certain Stewart Warner oil coolers which may be defective, accomplish the following

(a) Remove the cowl assembly as necessary to gain access to the oil cooler.

(b) Check the oil cooler model number and serial number. Oil cooler model and serial numbers are ink stamped on the side of the cooler with the serial number following the model number.

1. If the oil cooler is either model number 10568B with serial number 101 through 579 or model number 10578B with serial number 101 through 634, or if the model or serial number is illegible, remove and replace it with an oil cooler not of the above model and serial numbers.

2. If the oil cooler is neither model number 10568B with serial number 101 through 579 nor model number 10578B with serial number 101 through 634, make the record entry required in paragraph (c).

(c) The inspection and maintenance record entry in paragraph (b)2. may be accomplished by holder of a pilot's certificate issued under Part 61 of the Federal Aviation Regulations on any aircraft owned or operated by him.

(d) Any equivalent methods of compliance with this AD must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Southern Region.

NOTE.—A ferry flight to accomplish a needed oil cooler replacement may be issued under the provision of FAR 21.197 by FAA Flight Standards District Offices.

Grumman American Service Bulletin Number 156 pertains to this subject.

This amendment becomes effective November 10, 1976, to all persons except those to whom it was made effective

earlier by airmail letters issued on October 18, 1976.

(Sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in East Point, Georgia, on October 27, 1976.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.76-32709 Filed 11-5-76;8:45 am]

[Airspace Docket No. 76-EA-51]

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

Extension of VOR Federal Airway

On August 16, 1976, a notice of proposed rulemaking (NPRM) was published in the FEDERAL REGISTER (41 FR 34650) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 71 of the Federal Aviation Regulations that would extend V-170 and V-312 Federal Airways northeast of Andrews, Md.

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

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., December 30, 1976, as hereinafter set forth.

Section 71.123 (41 FR 307, 20650) is amended as follows:

1. In V-170 "Modena." is deleted and "Modena; New Castle, Del.; INT New Castle 222° and Andrews, Md., 060° radials; to INT Andrews 060° and Baltimore, Md., 165° radials." is substituted therefor.

2. In V-312 "From Woodstown, N.J.," is deleted and "From INT Andrews, Md., 060° and Baltimore, Md., 165° radials, via INT Andrews, 060° and Woodstown, N.J., 230° radials; Woodstown;" is substituted therefor.

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

Issued in Washington, D.C., on October 29, 1976.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.76-32535 Filed 11-5-76;8:45 am]

[Airspace Docket No. 76-WA-7]

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

Alteration of Airways and Reporting Points

On August 19, 1976, a notice of proposed rulemaking (NPRM) was published in the FEDERAL REGISTER (41 FR 35072) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 71 of the Federal Aviation Regulations that would redesignate HAZZY and ZANDA reporting points and the airways associated with the relocation of the Petersburg, Alaska, NDB.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. No comments were received. The background information in the NPRM contained an obvious error in that the airway would move westward rather than eastward. Since an additional statement accurately gave the geographic location of the new NDB, the direction that the airways would move could not be mistaken. For this reason, a correction to the NPRM background information was not published in the FEDERAL REGISTER.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., December 30, 1976, as hereinafter set forth.

Section 71.211 (41 FR 635) is amended as follows:

1. In HAZZY: the description is deleted and "Lat. 56°19'14" N., Long. 134°17'19" W. (INT Sitka, Alaska, NDB 127° and Petersburg, Alaska, NDB 238° bearings)." is substituted therefor.

2. In ZANDA: the description is deleted and "Lat. 56°09'10" N., Long. 134°44'52" W. (INT Sitka, Alaska, NDB 148°, and Petersburg, Alaska, NDB 238° bearings)." is substituted therefor.

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

Issued in Washington, D.C., on October 29, 1976.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.76-32537 Filed 11-5-76;8:45 am]

[Airspace Docket No. 76-GL-27]

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

Alteration of Federal Airways

On September 27, 1976, a notice of proposed rulemaking (NPRM) was published in the FEDERAL REGISTER (41 FR 42219) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 71 of the Federal Aviation Regulations that would (1) add a north alternate to V-26 between Lansing, Mich., and Salem, Mich.; (2) revoke a segment of V-98 from the Hudson intersection to Carleton, Mich.; (3) realign V-100 between Litchfield, Mich., and Carleton, Mich.; (4) realign V-275 between Salem, Mich., and Dayton, Ohio.

Interested persons were afforded an opportunity to participate in the proposed rulemaking through the submission of comments. One response to the NPRM was received. The commentor posed no objection to the proposal.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., December 30, 1976, as hereinafter set forth.

Section 71.123 (41 FR 704, 35059 and 44688) is amended as follows:

In V-26 "Salem, Mich.;" is deleted and "Salem, Mich., including a north alternate via INT Lansing 103° and Salem 308° radials;" is substituted therefor.

In V-98 "INT Litchfield, Mich., 126° and Carleton, Mich., 249° radials; Carleton;" is deleted and "Carleton, Mich.," is substituted therefor.

In V-100 "Carleton, Mich." is deleted and "INT Litchfield 104° and Carleton, Mich., 258° radials; Carleton." is substituted therefor.

In V-275 "011° and Salem, Mich., 197°" is deleted and "007° and Salem, Mich., 202°" is substituted therefor.

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

Issued in Washington, D.C., on October 29, 1976.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.76-32539 Filed 11-5-76;8:45 am]

[Airspace Docket No. 76-RM-19]

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

Designation of A Transition Area

On September 27, 1976, a Notice of Proposed Rulemaking was published in the FEDERAL REGISTER (41 FR 42220) stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would designate a transition area at Sterling, Colorado.

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

Effective date: This amendment shall be effective 0901 G.m.t., December 30, 1976.

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

Issued in Aurora, Colorado, on October 29, 1976.

L. R. ROBISON,
Acting Director, Rocky Mountain Region.

In Federal Aviation Regulation § 71.181 (41 FR 440) add the following transition area:

STERLING, COLORADO

That airspace extending upward from 700 feet above the surface within a 10.5 mile radius of the Crosson Field Airport (latitude 40°36'58" N., longitude 103°15'48" W.) and that airspace within 9.5 miles west and 4.5 miles east of the 163° T bearing from the Batten NDB (latitude

40°31'56" N., longitude 103°13'45" W.) extending from the 10.5 mile radius area to 18.5 miles south of the Batten NDB and within 5 miles each side of the 023° T bearing from Crosson Field extending from the 10.5 mile radius area to 23.5 miles northeast of Crosson Field Airport.

[FR Doc.76-32710 Filed 11-5-76;8:45 am]

[Airspace Docket No. 76-RM-10]

PART 73—SPECIAL USE AIRSPACE

Alteration of Restricted Areas

On July 22, 1976, a notice of proposed rulemaking (NPRM) was published in the FEDERAL REGISTER (41 FR 30138) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 73 of the Federal Aviation Regulations that would redesignate the upper altitude limits of R-6402 and R-6407 at Dugway Proving Ground, Dugway, Utah, to FL-580.

Interested persons were afforded an opportunity to participate in the proposed rulemaking through the submission of comments. No comments were received.

In consideration of the foregoing, Part 73 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., December 30, 1976, as hereinafter set forth.

In § 73.64 (41 FR 694) the designated altitudes for R-6402 and R-6407 are amended to read as follows:

1. R-6402 Dugway Proving Ground, Dugway, Utah. Designated altitudes. Surface to Flight Level 580.

2. R-6407 Dugway Proving Ground, Dugway, Utah. Designated altitudes. Surface to Flight Level 580.

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

Issued in Washington, D.C., on October 29, 1976.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.76-32536 Filed 11-5-76;8:45 am]

[Airspace Docket No. 76-GL-28]

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Alteration of Jet Routes

On September 30, 1976, a notice of proposed rulemaking (NPRM) was published in the FEDERAL REGISTER (41 FR 43187) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 75 of the Federal Aviation Regulations that would realign J-30 and J-64 and also renumber a jet route in the vicinity of Fort Wayne, Ind.

Interested persons were afforded an opportunity to participate in the proposed rulemaking through the submission of comments. No comments were received.

In consideration of the foregoing, Part 75 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., December 30, 1976, as hereinafter set forth.

Section 75.100 (41 FR 704) is amended as follows:

1. In J-30 all between "Nodine, Minn.; and Appleton, Ohio;" is deleted and "Joliet, Ill.;" is substituted therefor.

2. In J-64 "Fort Wayne, Ind., 279° radials;" is deleted and "Fort Wayne, Ind., 280° radials;" is substituted therefor.

3. J-178 is added as follows: "Jet Route No. 178 From Fort Wayne, Ind., to Appleton, Ohio."

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

Issued in Washington, D.C., on October 29, 1976.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.76-32538 Filed 11-5-76;8:45 am]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-12935]

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

Program for Allocation of Regulatory Responsibilities

The Securities and Exchange Commission today announced the adoption of Rule 17d-2 (17 CFR 240.17d-2) (hereinafter "§ 240.17d-2"), effective December 15, 1976, under section 17(d)(1) of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78a et seq.), as amended by Pub. L. No. 94-29 (June 4, 1975). This section was proposed in Securities Exchange Act Release No. 12352 (April 20, 1976) and was published in 41 FR 18808 (May 7, 1976). It is adopted, with certain modifications, as proposed.

Section 240.17d-2 calls upon self-regulatory organizations to propose to the Commission plans for allocating among themselves specified regulatory responsibilities with respect to members or participants which they have in common. Initial plans may be filed with the Commission within ninety (90) days of the effective date of the rule, i.e., on or before March 15, 1977, or at such later time as the Commission may determine at the conclusion of the hearings. See announcement of hearings under the Securities and Exchange Commission in the Notices section of this issue of the FEDERAL REGISTER.

BACKGROUND

Under Section 19(g)(1) of the Exchange Act each self-regulatory organization must, among other things, enforce the provisions of the Exchange Act, the rules and regulations thereunder, as well as its own rules as to each of its members or participants and as to persons associated with its members.[1] Absent Commission action relieving a self-regulatory organization of specified responsibilities pursuant to sections 19(g)(2)[2] or 17(d)(1) of the Exchange Act, where any person is a member or participant of more than one self-regulatory organization, more than one such organization would be required, by virtue of section 19(g)(1) of the Exchange Act, to enforce compliance as to that member or participant.

Reflecting the increased concern of Congress, the Commission, the self-regulatory community, and the securities industry as well as the investing public, with duplication of regulatory effort and gaps or overlaps in regulation, section 17(d)(1)(A) of the Exchange Act, specifically grants authority to the Commission to coordinate the execution of regulatory responsibilities by self-regulatory organizations having members or participants in common.

With respect to persons which are members or participants of more than one self-regulatory organization, section 17(d)(1)(A) authorizes the Commission, by rule or order, in a manner consistent with the public interest and the protection of investors to relieve any self-regulatory organization of the responsibility to receive regulatory reports, to examine for and enforce compliance with the provisions of the Exchange Act, its rules and regulations, and the rules of the self-regulatory organization. It also grants the Commission authority to relieve such self-regulatory organizations of responsibility to carry out other specified regulatory functions.

In granting such relief, section 17(d)(1) of the Exchange Act directs the Commission to consider the regulatory capabilities and procedures of the self-regulatory organization, availability of staff, convenience of location, unnecessary regulatory duplication, and any other factors the Commission determines to be germane to the protection of investors, cooperation and coordination among self-regulatory organizations, and the development of a national market system and a national system for the clearance and settlement of securities transactions.

ADOPTION OF § 240.17d-2

After consideration of the public comments, the Commission hereby adopts,

---

[1] As to its members which are municipal securities brokers or municipal securities dealers, a registered securities association must also enforce compliance with the rules of the Municipal Securities Rulemaking Board.

[2] Section 19(g)(2) confers on the Commission broad authority to relieve any self-regulatory organization of any responsibility under the Exchange Act to enforce compliance. See proposed Rule 19g2-1, Securities Exchange Act Release No. 12483 (May 26, 1976), 41 FR 22959 (June 8, 1976).

with certain technical modifications,[3] § 240.17d–2 under the Exchange Act.

Section 240.17d–2 establishes the procedural foundation for a comprehensive allocation of regulatory responsibility and promotes the cooperation of self-regulators in assessing their regulatory capabilities.

The section provides that any two or more self-regulatory organizations may join in making a proposal to the Commission for allocation of specified regulatory functions as to members or participants which they have in common. The section specifically contemplates that, as to those members or participants, self-regulators may propose allocation of the responsibility to receive regulatory reports, to examine for compliance and to enforce compliance with specified provisions of the Exchange Act, the rules and regulations thereunder and their own rules as well as other specified regulatory functions. Paragraph (a) of § 240.17d–2 indicates that a proposal for allocation should be made in the form of a plan.

A substantial majority of commentators supported the adoption of the section as proposed. Commentators who did not support the proposal appeared to be primarily concerned with the possible adverse impact of its implementation on presently existing programs or organizations. In addition, some comments questioned the appropriateness of allocating regulatory responsibilities with respect to municipal securities brokers and municipal securities dealers.[4]

These concerns are relevant primarily in assessing particular allocations which may be proposed under the section rather than the validity of the proposal as a method for stimulating analysis of the current patterns of regulation and promoting efforts to make regulation more efficient and effective. Therefore, the Commission has determined that it will assess these issues in connection with specific plans for allocation which may be submitted under this section and areas appropriate for allocation in light of the factors set forth in section 17(d)(1) of the Exchange Act and the Commission's broad authority to coordinate the development of the national market system and national system for clearance and settlement of securities transactions pursuant to sections 11A and 17(d) of the Exchange Act.

Initial plans for allocation may be filed by self-regulatory organizations on or before March 15, 1977, or at such later date as the Commission may determine at the conclusion of the hearings. The Commission will evaluate all plans as it deems appropriate and coordinate allocations of regulatory functions.

Any plan should contain all informational material to Commission evaluation of the plan, including the names of self-regulatory organizations which are parties to the plan, the names of members or participants which they have in common, the name of the self-regulatory organization recommended to assume responsibility, a complete statement of the regulatory responsibilities which such self-regulator will assume, and a brief explanation of the basis for the proposed allocation. Paragraph (e) makes clear that more than one such plan may be filed by a self-regulatory organization in conjunction with other self-regulators. Pursuant to paragraph (b), the plans may provide for allocation of expenses.

Under paragraph (c) of this section, subsequent to the initial filing of plans within the ninety (90) day period, self-regulators may propose to the Commission changes in their plans as amendments appear necessary or appropriate. This encourages a continuing reassessment of the effect and the needs of the industry by self-regulatory organizations both with respect to individual members or participants and particular regulatory functions. By providing a mechanism for varying allocations of responsibility, § 240.17d–2 permits the regulatory pattern to adapt promptly to the requirements of the evolving national market system and national system for clearance and settlement of securities tranactions.

In the event that plans, or parts thereof, declared effective by the Commission do not provide for all members or participants or do not allocate all regulatory functions, under paragraph (g) the Commission may allocate, in light of the factors set forth in section 17(d)(1) of the Exchange Act, such responsibilities to appropriate self-regulatory organizations after providing notice to the affected parties and permitting an opportunity for comment.

Under paragraph (d) of this section, when the Commission has declared a plan effective, any self-regulatory organization which is a party to the plan shall be relieved of responsibility as to any person or regulatory function for whom such responsibility is allocated under the plan to another self-regulatory organization to the extent of such allocation.

Paragraph (c) of this section provides that the Commission may declare any plan or any part of a plan effective if the Commission finds that it is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of the national market system and a national system for the clearance and settlement of securities transactions. The Commission will provide written notice of the effectiveness of any plan, or any part of a plan, to the parties to the plan.

In proposing this section, the Commission specifically solicited comments on the necessity or desirability of requiring any self-regulator relieved of responsibility under the section to notify customers of its members or participants of the extent of its responsibilities. With one exception, commentators expressed the view that, since an allocation will not adversely affect the public interest or investor protection, providing notice requires unnecessary expense. In addition, they noted that it would be difficult to provide meaningful notice to customers, particularly where regulatory functions as to a particular member or participant were allocated pursuant to multiple effective plans.

Since the nature, extent, and complexity of plans which may be filed pursuant to this section is not ascertainable at this time, the Commission has determined to adopt paragraph (f) as proposed. Paragraph (f) provides that self-regulators relieved of responsibility pursuant to paragraphs (c) and (g) may, but are not required to, notify customers of, or persons doing business with, its members or participants of any limitations on its responsibilities under the Exchange Act. As such, this paragraph reiterates the provisions of section 17(d)(1) of the Exchange Act.

Impact on Competition

Following the mandate of section 23(a) of the Exchange Act, as amended, the Commission has considered the impact of the adoption of § 240.17d–2 and the allocation program. The Commission finds that the adoption of this section will provide a mechanism for alleviating unnecessary regulatory duplication and, consequently, reducing unnecessary expenses of regulation. Therefore, the Commission finds that any burden on competition which § 240.17d–2 imposes is necessary or appropriate in furtherance of the purposes of the Exchange Act and the implementation of section 17(d) of the Exchange Act.

Effective Date

Section 240.17d–2 is effective on December 15, 1976.

Statutory Basis

Section 240.17d–2 is hereby adopted pursuant to Sections 2, 6, 11A, 15A, 17, 17A, 19 and 23 of the Securities and Exchange Act of 1934, and sections 78b, f, q–1, o–3, q, s, and w of Title 15 of the United States Code.

Since the modifications made in § 240.17d–2 as proposed are technical in nature, the Commission finds, in accordance with the Administrative Procedure Act (5 U.S.C. section 551 et seq.), that further notice and public procedure are

[3] Rule 17d–2 as adopted (17 CFR 240.17d–2) modifies the proposal as follows: to include a reference to a national system for clearance and settlement of securities transactions in paragraph (c); to prescribe in paragraph (c) that plans would be declared effective by written notice; to clarify that the Commission under paragraph (g) may designate responsibility as to members or participants or regulatory functions not provided for by an effective plan, after notice and opportunity for comment; and to specify that self-regulators may notify customers of relief of responsibility resulting from Commission action under paragraph (g). In addition, some stylistic changes were made in paragraphs (d), (f), and (g).

[4] Sections 19(g)(1) and 15A(b)(2) of the Exchange Act as well as sections 6(b)(1) and 17A(b)(3)(A) appear to authorize the Commission to relieve any self-regulatory organization of any responsibility which would be otherwise imposed by the Exchange Act.

not necessary as a prerequisite to the adoption of this section.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

OCTOBER 28, 1976.

17 CFR Part 240 is amended as follows:

Commission action: Pursuant to Sections 2, 6, 11A, 15A, 17, 17A, 19, and 23 of the Securities Exchange Act of 1934, the Securities and Exchange Commission adopts Rule 17d–2 [240.17d–2] in Chapter II of Title 17 of the Code of Federal Regulations to read as follows:

§ 240.17d–2 Program for allocation of regulatory responsibility.

(a) Any two or more self-regulatory organizations may file with the Commission within ninety (90) days of the effective date of this rule, and thereafter as changes in designation are necessary or appropriate, a plan for allocating among the self-regulatory organizations the responsibility to receive regulatory reports from persons who are members or participants of more than one of such self-regulatory organizations to examine such persons for compliance, or to enforce compliance by such persons, with specified provisions of the Securities Exchange Act of 1934, the rules and regulations thereunder, and the rules of such self-regulatory organizations, or to carry out other specified regulatory functions with respect to such persons.

(b) Any plan filed hereunder may contain provisions for the allocation among the parties of expenses reasonably incurred by the self-regulatory organization having regulatory responsibilities under the plan.

(c) After appropriate notice and opportunity for comment, the Commission may, by written notice, declare such a plan, or any part of the plan, effective if it finds the plan, or any part thereof, necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of the national market system and a national system for the clearance and settlement of securities transactions and in conformity with the factors set forth in section 17(d) of the Securities Exchange Act of 1934.

(d) Upon the effectiveness of such a plan or part thereof, any self-regulatory organization which is a party to the plan shall be relieved of responsibility as to any person for whom such responsibility is allocated under the plan to another self-regulatory organization to the extent of such allocation.

(e) Nothing herein shall preclude any self-regulatory organization from entering into more than one plan filed hereunder.

(f) After the Commission has declared a plan or part thereof effective pursuant to paragraph (c) of this section or acted pursuant to paragraph (g) of this section, a self-regulatory organization relieved of responsibility may notify customers of, and persons doing business with, such member or participant of the limited nature of its responsibility for such member's or participant's acts, practices, and course of business.

(g) In the event that plans declared effective pursuant to paragraph (c) of this section do not provide for all members or participants or do not allocate all regulatory responsibilities, the Commission may, after due consideration of the factors enumerated in section 17(d)(1) and notice and opportunity for comment, designate one or more of the self-regulatory organizations responsible for specified regulatory responsibilities with respect to such members or participants.

[FR Doc.76–32643 Filed 11–5–76;8:45 am]

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI–1066]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determinations for City of East Point, Fulton County, Georgia

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 (§ 1917.10)), hereby gives notice of his final determinations of flood elevations for the City of East Point, Fulton County, Georgia under § 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 § 1917.8, no appeals were received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 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, City Hall, East Point.

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
Headland Branch	Conally Drive Bridge	867	80	100
	Headland Drive Bridge	869	150	200
Farley Branch	Conally Drive Bridge	869	400	80
	Headland Drive Bridge	899	80	60
South Utoy Creek	Stanton Road Bridge	903	30	150
	McClelland Ave	909	40	110
Smith Creek	Interstate 285 Bridge	850	230	230
	Prince George Street Bridge	868	70	130
	Duke of Gloucester Street Bridge	894	100	100
North Fork Camp Creek	Dogwood Drive Bridge	864	420	80
	Dodson Drive Bridge	881	100	100
	Boulder Way Bridge	906	50	80
Mimms Creek	1,000 ft upstream from confluence with Camp Creek.	836	150	270
	2,500 ft upstream from confluence with Camp Creek	845	50	20
Fur Creek	Washington Road Bridge	849	150	100
	Pelot Road Bridge	878	90	100
Sun Valley Creek	Janice Drive Bridge	933	250	280
	Carmel Drive Bridge	964	100	70
Camp Creek	West corporate limit	826	170	170
	Interstate 285 Bridge	836	170	250
	Washington Road Bridge	846	200	60
	Calmer Circle	861	40	100

(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 30, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.76–32479 Filed 11–5–76; 8:45 am]

[Docket No. FI-1193]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for City of Manitowoc, Manitowoc County, Wisconsin

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 (§ 1917.-10)), hereby gives notice of his final determinations of flood elevations for the City of Manitowoc, Manitowoc County, Wisconsin under § 1917.9 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 § 1917.9(a), the Administrator has resolved the appeals presented by the community. Therefore, publication of this notice is in compliance with § 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 first floor bulletin board, City Hall, 817 Franklin Street, Manitowoc, Wisconsin.

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
Manitowoc River	Chicago & Northwestern Railroad	585	60	0
	Broadway St. (extended)	588	0	500
	North 41st St. (extended)	589	0	1,000
Little Manitowoc River.	Waldo Blvd	586	60	0
	Cleveland Ave	584	60	80
	All corporate limits	589	40	200
Silver Creek	South 10th St	608	120	0
Lake Michigan	South of Green St	584	(1)	(1)
	North of Park St	584	(1)	(1)
	Commercial St	584		20
	Columbus St. (extended)	584		20

[1] At shoreline.

(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: September 23, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-32480 Filed 11-5-76;8:45]

Title 45—Public Welfare

CHAPTER V—FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES

SUBCHAPTER F—RECEIPT, ADMINISTRATION AND PAYMENT OF CLAIMS UNDER TITLE II OF THE WAR CLAIMS ACT OF 1948, AS AMENDED BY PUBLIC LAW 87-846 AND PROTESTS UNDER PUBLIC LAW 94-542

PART 581—FILING OF PROTESTS AND PROCEDURES THEREFOR

Pursuant to Pub. L. 94-542, approved October 18, 1976, the Foreign Claims Settlement Commission of the United States is authorized to receive protests of United States nationals relating to awards made by the Commission during the 10 calendar days immediately preceding the May 17, 1967, expiration date of the Commission's authority to grant awards for war damage losses which occurred during World War II under the provisions of Public Law 87-846, approved October 22, 1962, which amended the War Claims Act of 1948, as amended.

Therefore, in accordance with the provisions of Pub. L. 94-542, the Regulations of the Commission are amended as follows:

Subchapter F, Chapter V, Title 45 of the Code of Federal Regulations is hereby amended by adding Part 581.

Sec.
581.1 Time for filing.
581.2 Information required for filing protests.
581.3 Hearings.

AUTHORITY. Pub. L. 94-542.

§ 581.1 Time for filing.

Protests of United States nationals relating to awards made by the Commission during the 10 calendar days immediately preceding the May 17, 1967, expiration date of the Commission's authority to grant awards for war damage losses which occurred during World War II under the provisions of Pub. L. 87-846, approved October 22, 1962, which amended the War Claims Act of 1948, as amended, authorized by section 615 of Pub. L. 94-542, approved October 18, 1976, shall be filed with the Commission on or before February 7, 1977.

§ 581.2 Information required for filing protests.

(a) No official form is required for filing a protest. Protests shall be filed, in writing, signed by the claimant or his legal representative. The protest shall include: (1) The name of the claimant as set forth in the Commission's decision issued on the claim under Pub. L. 87-846; (2) the claim number previously assigned by the Commission; (3) the grounds for the protest, amount of increase in the award requested, together with all documentation and legal argument which the claimant wishes the Commission to consider in determining the merits of the protest; (4) a specific request for a hearing, if desired.

(b) Notice to the Foreign Claims Settlement Commission, the Department of State, or any other governmental office or agency, prior to the enactment of the statute authorizing the protests referred to herein shall not be considered as a timely filing of a protest under Pub. L. 94-542.

§ 581.3 Hearings.

(a) Upon specific written request, made at the time of filing the protest, the Commission may grant the claimant a hearing for the presentation of oral testimony and argumentation in support of the protest.

(b) Hearings shall be held upon not less than seven days notice.

(c) Hearing procedures as provided for under § 531.6(b)-(d), Subchapter C of this chapter shall be applicable to protests under this subchapter.

(d) Hearings may be stenographically reported either at the request of the claimant or upon the discretion of the Commission. Claimants making such a request shall notify the Commission at the time of filing the protest. When a stenographic record of a hearing is ordered at the claimant's request, the cost of such reporting and transcription is his responsibility.

(e) Subsequent to the hearing, if any, the Commission will issue a final determination on the protest within the remaining 30 days from the date of filing of the protest, and no appeal from such determination shall be granted.

This amendment shall become effective on November 8, 1976.

Dated: November 3, 1976.

WAYLAND D. MCCLELLAN,
General Counsel.

[FR Doc.76-32745 Filed 11-5-76;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20746]

PART 15—RADIO FREQUENCY DEVICES

Class D CB Transmitters and Transmitter Section of Class D CB Transceivers

MEMORANDUM OPINION AND ORDER

Correction

In FR Doc. 76-31636 appearing at page 47442 in the FEDERAL REGISTER of Friday, October 29, 1976 the following correction should be made. On page 47444, third column, § 15.59(h) (1) and (2) should have appeared as follows:

	$\mu V/m$ at 3m
(1) For a CB receiver model initially placed in production after January 1, 1977	110
(2) For a CB receiver model initially placed in production after January 1, 1978	40

PART 0—COMMISSION ORGANIZATION

Delegation of Authority; Chairman and Executive Director

Adopted: November 1, 1976.

Released: November 2, 1976.

Order. In the matter of editorial amendment of Part 0 of the rules, delegations of authority.

1. The Commission has clarified the authority of the Chairman and the Executive Director with respect to the procurement and contract activities of the agency. It is appropriate that the authority of those officials in this respect be reflected in Subpart B of Part 0 of the rules, "Delegations of Authority".

2. Accordingly, §§ 0.211 and 0.231 of the rules and regulations are amended as set out below. Authority for these amendments is set out in sections 4(i) and 5(d) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 155(d), and in § 0.231(d) of the rules and regulations, 47 CFR 0.231. Because the amendments are editorial in nature and relate to internal agency organization, the prior notice and effective date provisions of 5 U.S.C. 553 are inapplicable, and these changes will become effective November 16, 1976.

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

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

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 0.211(e) is revised to read as follows:

§ 0.211 Chairman.

* * * * *

(e) Authority to act as "Head of the Agency" or "Agency Head" for administrative determinations required by Federal Procurement Regulations and Federal Management Circulars.

2. Section 0.231(g) is added to read as follows:

§ 0.231 Authority delegated.

* * * * *

(g) The Executive Director is delegated authority to act as Head of the Procurement Activity and Contracting Officer for the Commission and to designate appropriate subordinate officials to act as Contracting Officers for the Commission.

[FR Doc.76-32754 Filed 11-5-76;8:45 am]

[Docket No. 20314; FCC 76-1001; RM-2287]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Stations in Certain Cities in Nebraska

Adopted: October 27, 1976.

Released: November 4, 1976.

Report and order—Proceeding terminated. In the matter of amendment of § 73.202(b), *Table of assignments*, FM Broadcast Stations. (Cheyenne, Wyoming and Terrytown, Nebraska), Docket No. 20314, RM-2287.[1]

1. The Commission has under consideration its notice of proposed rulemaking, adopted December 30, 1974 (40 FR 2713), proposing that the FM Table of Assignments (§ 73.202(b) of the Commission's rules and regulations) be amended by substituting Channel 264 for Channel 292A at Cheyenne, Wyoming, and by substituting Channel 280A for Channel 265A at Terrytown, Nebraska. The proposal also included a request by petitioner, KVWO, Inc., licensee of Stations KVWO(AM) and KVWO-FM (Channel 292A), Cheyenne, to modify its FM license to specify Channel 264 as its channel of operation. Comments and other pleadings responsive to the Notice were filed by: Petitioner; KRAE, Inc., licensee of AM Station KRAE, Cheyenne; and Rumberger Enterprises, Inc., licensee of AM Station KNIE, Cheyenne.[1]

2. Cheyenne (population 49,914),[2] located in Laramie County (population 56,360), is the most populous city in and the capital of Wyoming. Local aural broadcast services in Cheyenne are provided by four AM stations: KFBC (unlimited-time), licensed to Frontier Broadcasting Co.; KNIE (unlimited-time), licensed to Dencolo; KRAE (daytime-only), licensed to KRAE, Inc.; and KVWO (daytime-only), licensed to petitioner; and by two FM stations: KFBC-FM (Channel 250) licensed to Frontier Broadcasting and KVWO-FM (Channel 292A), licensed to petitioner. The assignment of Channel 264 to Cheyenne would require the deletion of Channel 265A at Terrytown, Nebraska, where it is presently unoccupied and unapplied for, in order to comply with the Commission's minimum mileage separation requirements. The substitute assignment of Channel 280A at Terrytown can be made without affecting existing FM assignments. In the Notice, relevant economic considerations were discussed. Since they support the assignment of Channel 264 to Cheyenne, those factors are not repeated here.

3. KRAE, Inc., has submitted a counterproposal to retain Channel 292A and to assign Channel 264 to Cheyenne. It states that it wishes to apply for the proposed Class C channel if assigned. It alleges that it is now operating at a significant competitive disadvantage since it is limited to a daytime-only AM operation while its competitors are able to provide nighttime service.[4] Regarding the intermixture of classes of channels that would result from the retention of Channel 292A at Cheyenne, KRAE, Inc., argues that such retention would not represent a new departure from the Commission's policy since intermixture is already present. Moreover, a third Class C channel cannot be assigned to Cheyenne, according to KRAE, Inc., because, other than Channel 264, there are none available. Regarding our population criteria for assigning FM channels,[5] it is noted that according to a study prepared by the Cheyenne Department of Model Cities, by 1985 Cheyenne's population is expected to rise to 60,000 persons. Further, Wyoming has two communities with two Class C channels and with less than one-third the population of Cheyenne.[6] Thus, it is argued that strict compliance with the population guidelines would violate section 307(b) which requires a "fair, efficient, and equitable distribution" of radio services "among the several States and communities." Finally, KRAE, Inc., mentions that it would be willing to apply for the Class A channel, if retained, and that in light of such expressed interest, Channel 292A should not be deleted from Cheyenne.

4. Rumberger Enterprises, Inc., states that it also supports the proposal to assign Channel 264 and to retain Channel 292A at Cheyenne and that it also opposes the requested modification of petitioner's license to specify Channel 264, as proposed in the Notice. It notes that this is not a case in which it is necessary to delete petitioner's existing channel in order to assign the proposed Class C channel.[7] It believes that our population guidelines should not be a bar to the addition of a third channel to Cheyenne in light of an unofficial population esti-

---

[1] By Order adopted April 27, 1976, the license of Station KNIE was assigned to Dencolo Broadcasting, Inc. (File No. BAL-8616).

[2] All population figures are taken from the 1970 U.S. Census, unless otherwise stated.

[3] See 41 FR 15907, April 15, 1976.

[4] KVWO, Inc., operates KVWO(AM) and KVWO-FM; Frontier Broadcasting Co. is licensed for KFBC(AM) and KFBC-FM; Rumberger Enterprises, Inc. operates full-time AM Station KNIE.

[5] See Paragraph 4 of the further notice of proposed rule making in Docket No. 14185 in paragraph 25 of the Third Report, Memorandum Opinion and Order, 40 F.C.C. 747, 758 (1963) (FCC 62-867) and incorporated by reference.

[6] Sheridan (pop. 16,800) and Rock Springs (pop. 14,200).

[7] See note 16, infra.

mate of 54,000 people as of 1975, as determined by the Cheyenne Chamber of Commerce. It also urges that we consider Cheyenne's dominant position in the state as the capital and largest city. Rumberger specifically represents that it would apply for any FM channel which is made available as a result of this proceeding. As to petitioner's requested modification, Rumberger notes that deletion of petitioner's channel of operation is not technically required and that the public interest consideration of continuing and existing service is overcome by the need to open a new channel assignment to competing applicants. The petitioner should not, in Rumberger's opinion, be entitled to a protected status by merely being the first to petition that an additional Class C channel be assigned to Cheyenne. Rumberger further avers that petitioner's effort to modify its present license to specify the only Class C channel available for assignment to Cheyenne is an attempt to freeze out competition.

5. In reply comments, petitioner maintains that its license should be modified as originally requested, but that if such modification is not granted then it requests that no changes in the FM Table of Assignments regarding Cheyenne be adopted. It alleges that the population criteria do not, at present, permit three channels and that although Cheyenne has experienced a rapid growth rate the last few years, the 1970 Census figure represents a 6 percent decline in population since the 1960 Census. Petitioner calls our attention to several cases in which we have declined to make an exception to our population criteria. In addition, it claims that our policy against intermixture would be fostered by adopting the proposal set forth in the Notice. Modification of its license, according to petitioner, will eliminate the technical and competitive disparities between the two existing FM licensees. It also argues that the equities are in its favor because it did the engineering work involved in discovering the availability of a Class C channel and that it has upgraded service on its station since taking over from a nearby bankrupt licensee several years ago. Finally, we are told that "[t]he Commission has the inherent power to modify a station's license to require operation on a new channel without first holding a hearing or entering into sections 308 and 309 of the Communications Act considerations." Section 316 (a) of the Act, it is alleged, gives the Commission this modification power "without preliminary recourse to the normal hearing procedures since a licensee has no proprietary right in a particular frequency." In petitioner's opinion, this procedure would obviate the need for any potentially lengthy and time-consuming hearings.

6. In reply comments (received the same day as petitioner's reply comments), KRAE, Inc., argues that the Ashbacker doctrine [8] requires comparative consideration of all qualified applicants for the new frequency. It alleges that by adopting the counterproposal, no party will be prejudiced and the public interest will be served by full comparative consideration of all qualified applicants.

7. After careful and extensive review of the Ashbacker doctrine and other issues in this case, the Commission believes that the counterproposal represents the more prudent resolution of the relevant public interest considerations involved. For reasons stated below, we believe the public interest will be best served by retaining Channel 292A at Cheyenne, assigning Channel 264 as a third channel there, and by denying petitioner's request for modification of its present license to specify operation on Channel 264. Consequently, we also deny petitioner's alternative request to make no changes in the Table of Assignments for Cheyenne.

8. First we shall consider the arguments advanced concerning our population criteria and our policy against intermixture. We have often said that our population criteria are "a guide and not an immutable standard" [9] and are only one of many considerations to be weighed in making "a fair, efficient and equitable" distribution of FM assignments under Section 307(b) of the Communications Act of 1934, as amended.[10] More important is the future availability of FM channels for assignment in the particular area and the demand therefor.[11] Demand is an important consideration in this case, because if we adopt the counterproposal, we would subject the Class A operation to competition with two Class C operations. Both KRAE, Inc., and Rumberger Enterprises, Inc., have expressed interest in operating the Class A frequency should they fail to obtain the Class C channel adopted herein. Cheyenne is, as previously stated, the most populous city in Wyoming and the capital city of the state. Further, the Cheyenne Department of Model Cities forecasts a 1985 population of 60,000, according to petitioner's exhibit. Indeed, it would be futile to wait until the 1980 Census figures are published before we could justify the addition of a third channel to a community that is so close to the incremental figure. Thus, in view of the availability of another FM channel, the expressed interest in a third FM channel, the important position occupied by Cheyenne in the state and the population figures estimated for Cheyenne, the addition of a third FM channel is warranted.

9. Regarding our policy against intermixture, we have previously stated that a deviation from that policy is justified where a demand for the Class A channel is present and where a showing has been made that a Class A channel could compete with a Class C channel (or at least, a showing has been made that someone is willing to undertake the use of the Class A channel).[12] KRAE, Inc. and Rumberger Enterprises, Inc. have both expressed an interest in operating the Class A channel should they fail to obtain the new Class C channel or should petitioner lose interest in continuing its present Class A station. There has been no evidence presented that the Class A channel could not continue to compete effectively with the two Class C channels. Moreover, as KRAE, Inc. points out, there is already intermixture of the existing Class A and Class C operations in Cheyenne. In addition, it appears that no additional Class C channels are available for assignment to Cheyenne to permit us to replace the Class A channel. Finally, the diversity of programming that would result from the operation of three stations rather than two stations is an important public interest consideration. Thus, we believe that intermixture of classes of channels in Chevenne would not result in an undesirable situation and we shall retain the existing Class A assignment at Cheyenne.[13]

10. The issue has been raised whether an existing licensee is entitled to a modification of its license, upon request, to specify operation on a newly assigned frequency of a superior class of channel in the same community where the existing licensee's channel of operation is not deleted and other parties desire to apply for the new assignment. A modification may be issued either (1) by virtue of Commission Order under section 316(a) of the Communications Act of 1934, as amended, if the Commission finds, after affording the licensee notification of the proposed action and an opportunity to be heard, that the public interest, convenience, and necessity will be promoted thereby, or (2) by grant of an application filed by the licensee, pursuant to section 309(a) of the Communications Act, under the same public interest determination. In this case, petitioner does not have a right to a section 316(a) modification because under that provision the exercise of the Commission's power to modify is independent of the licensee's wishes.[14] We have already determined that the public interest would be served by retaining the Class A channel on which petitioner operates. By granting petitioner's request we would be effectively foreclosing the filing of other applications by interested persons for the newly assigned channel after the effective date of the modifica-

[8] Ashbacker Radio Corporation v. F.C.C., 326 U.S. 327 (1945).

[9] Fresno, Cal., 38 F.C.C. 2d 525, 526 (1972); Colorado Springs, Colo., 44 F.C.C. 2d 1047, 1054 (1974); Rapid City, S.D., 50 F.C.C. 2d 997, 999–1000 (1975).

[10] Colorado Springs, Colo., 44 F.C.C. 2d 1047, 1054 (1974).

[11] Yakima, Wash., 42 F.C.C. 2d 548, 549 (1973).

[12] See Yakima, Wash., 42 F.C.C. 2d 548, 550 (1973) and cases cited therein.

[13] See Delta Television, Inc., 11 R.R. 1559 (1954); WBUF-TV, Inc., 12 R.R. 218(a) (1955); Albany-Schenectady-Troy, New York, 23 F.C.C. 358 (1957).

[14] See Peoples Broadcasting Co. v. U.S., 209 F. 2d 286 (D.C. Cir. 1953). "The policy of the Act is clear that no person is to have anything in the nature of a property right as a result of the granting of a license." F.C.C. v. Sanders Bros. Radio Station, 309 U.S. 470 (1940). See also section 304 of the Communications Act of 1934, as amended.

tion. In "Ashbacker Radio Corp. v. F.C.C.", 326 U.S. 327 (1945), the Supreme Court decided that the Commission could not grant the application of one party for a new frequency without first giving comparative consideration to other mutually exclusive applications filed therewith. Without a hearing in which all mutually exclusive applications are given comparative analysis, the Commission could not make the public interest finding as to which applicant was the best qualified to render service in the public interest.[15] We do not wish to cut off the rights of other interested parties who might want to apply for the new channel. It is our policy in these cases where a modification is requested from a Class A channel to a Class C (or Class B) channel to deny modification if any other person expresses a desire to apply for the newly assigned channel.[16] We believe that the public interest would be best served by affording other interested persons an equal opportunity to file an application and to be given consideration for the new channel.[17] This procedure is designed to enable us to more effectively exercise our section 316(a) authority to modify. By requiring all persons who may wish to apply for a newly assigned channel to make that desire known and to state why we should not grant a requested modification, we can make a more informed judgment. On the other hand, if we merely denied modification and ordered that an application under section 309(a) be filed in the belief that some other person, unknown to us, may be waiting for a channel to be assigned before filing an application, we might be subjecting a licensee who is seeking modification needless delay and expense. However, in this case, all interested parties did come forward and properly announce in comments their desire to apply for the newly assigned channel. Petitioner has not adequately demonstrated that it should be favored or protected against other interested parties. Therefore, its request for modification is denied and it or any other interested party should file an application pursuant to section 309(a) for use of Channel 264 if it desires to operate on that frequency.[18]

11. Regarding the technical feasibility of the assignment of Channel 264 to Cheyenne, it will be necessary, as stated before, to substitute Channel 280A for unoccupied Channel 265A at Terrytown, Nebraska. In addition, the transmitter site for a Channel 264 operation at Cheyenne must be located at least 5 miles west of the community in order to meet the Commission's spacing requirements with respect to Channel 261A at Kimball, Nebraska.

12. Preclusion will occur on Channels 261A, 263, 264 and 265A as a result of assigning Channel 264 to Cheyenne. The precluded areas on Channel 263, 264 and 265A are essentially identical and contain a number of unoccupied assignments. In addition, only two communities, Wheatland and Torrington, Wyoming, would be affected on Channel 261A. However, both cities have unoccupied assignments. Thus, the adverse effects on the future availability of channels in the precluded areas are insignificant.

13. Accordingly, pursuant to authority contained in sections 4(i), 303 and 307(b) of the Communications Act of 1934, as amended: *It is ordered*, That effective December 10, 1976, the FM Table of Assignments § 73.202(b) of the Commission's rules and regulations is amended as follows for the communities listed:

City: Cheyenne, Wyoming, channel No. 250, 264, 292A; and Terrytown, Nebraska, channel No. 280A.

14. *It is further ordered*, That the petition of KVWO, Inc., insofar as it requests the modification of its license to specify Channel 264 in lieu of Channel 292A and the deletion of Channel 292A at Cheyenne is denied.

15. *It is further ordered*, That the counterproposal of KRAE, Inc. is granted.

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

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

FEDERAL COMMUNICATIONS COMMISSION,[19]
VINCENT J. MULLINS,
Secretary.

[FR Doc.76-32755 Filed 11-5-76;8:45 am]

[Docket No. 20422; FCC 76-1003]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Stations in Certain Cities in Florida

Adopted: October 27, 1976.

Released: November 5, 1976.

Report and order—Proceeding Terminated.

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Fort Walton Beach, Crestview and Destin, Florida), Docket No. 20422, RM-2395, RM-2471, RM-2421, RM-2503, RM-2451.

1. The Commission herein considers its notice of proposed rulemaking[1] issued in response to the filing with the Commission of five petitions for rulemaking, each of which is explained below:

(a) White Sands Broadcasting ("White Sands") requested the assignment of Channel 221A to Fort Walton Beach, Florida, as a second FM assignment to the community (RM-2395);

(b) Dr. John Matkowski ("Matkowski") sought the assignment of Channel 243 to Destin, Florida, a small, unincorporated community located six miles east of Fort Walton Beach. The requested assignment would provide Destin with its first local aural service (RM-2421);

(c) Vacationland Broadcasting Co. ("Vacationland"), licensee of daytime-only AM Station WFTW and FM Station WFTW-FM, Channel 257A, Fort Walton Beach, requested the assignment of Channel 243 to Fort Walton Beach, asserting that it will relinquish its present use of Channel 257A in favor of operation on Channel 243 (RM-2457);[2]

(d) Holley A. Rodgers ("Rodgers") also sought the assignment of Channel 243 to Fort Walton Beach, and, like Vacationland, says it will seek broadcast authority should the channel be assigned (RM-2471);

(e) Crestview Broadcasting Co. ("CBC"), licensee of AM Station WJSB, Crestview, and FM Station WAAZ-FM, Channel 285A, also at Crestview, petitioned the Commission to assign Channel 243 to Crestview, asserting that if the assignment is made it will file an application to modify its present facilities from Channel 285A to Channel 243 (RM-2503).

2. Opposition pleadings in response to the petitions seeking the assignment of Channel 243 to Fort Walton Beach were filed by Deltona Broadcasting Co. ("Deltona"), licensee of WPAP-FM, Channel 223, Panama City, Florida, and by Janus Broadcasting Co. ("Janus"), licensee of WCNE and WCNE-FM, Channel 253, Panama City, Florida. Comments in support of the Channel 243 assignment at Fort Walton Beach were received from the Greater Fort Walton Beach Chamber of Commerce, while the South Walton County Lions Club filed comments in support of the proposal to assign Channel 243 to Destin. All petitioning parties filed supplemental pleadings. The proposals to assign Channel 243 to Fort Walton Beach, to Destin, or to Crestview are mutually exclusive since, under the Commission's mileage separation requirements, assignment to one of the three proposed communities would bar use of the channel at the two remaining communities.[3]

---

[15] See Peoples Broadcasting Co. v. U.S., supra. "The basic teaching of the Ashbacker case is that comparative consideration by the Commission and competition between the applicants is the process most likely to serve the public." Community Broadcasting Co. v. F.C.C., 274 F. 2d 753, 759 (D.C. Cir. 1960).

[16] Compare Crestview and Fort Walton Beach, Fla., F.C.C. 2d (1976) and Mitchell, South Dakota, F.C.C. 2d (1976).

[17] There are analogous Commission precedents worthy of mention. E.g. in WBUF-TV, Inc., 12 R.R. 218(a) (1955), the Commission refused to issue a show cause order to modify the license of a UHF licensee to specify operation on a VHF channel because, by taking such action, interested persons who would otherwise wish to apply for the VHF channel would be unable to do so. See also Albany-Schenectady-Troy, N.Y., 23 F.C.C. 358 (1957); Elmira, N.Y., 13 R.R. 1536 (1956); Delta Television, Inc., 11 R.R. 1559 (1954).

[18] Perhaps if this were a case in which a channel of operation was deleted for technical reasons or otherwise in order to assign another channel, other considerations would be presented. See, for example, Endicott, N.Y., 51 F.C.C. 2d 50 (1975).

[19] Commissioner Lee absent; Commissioner White not participating.

[1] 40 FR 17598, April 21, 1975; 40 FR 24031, June 4, 1975.

[2] Vacationland suggested that with the assignment of Channel 243, Channel 257A could be deleted from Fort Walton Beach and reassigned to Destin.

[3] Section 73.207(a) of the Commission's rules requires a minimum mileage separation of 180 miles between co-channel Class C FM stations.

3. The Notice proposed the following assignments:

City	Channel No.	
	Present	Proposed
Crestview, Fla	285A	243
Destin, Fla		285A
Fort Walton Beach, Fla	257A	221A, 257A

4. We think it appropriate to first respond to a procedural complaint raised by Vacationland and echoed by Matkowski. These parties assert that the Broadcast Bureau, by setting forth in the Notice the proposed channel assignments described above, manifested an arbitrary and capricious "absolute predisposition" of the case by failing to offer alternative channel assignment proposals for comment. Vacationland asserted further that the issuance of the Notice was "an illegal act" since the Broadcast Bureau's delegated authority to issue rule making notices involving FM channel assignments applies only to "routine" proceedings Vacationland asserts that the instant proceeding involves something more than "route" channel assignment changes.

5. We first consider the contention by Vacationland that the Commission was obligated yet failed to offer a choice of channel assignment proposals in the Notice, and that such a failure constituted an "absolute predisposition" of the case. We see no merit in the argument. We do not believe this agency is required to advance rulemaking proposals which are patently defective and inconsistent with established Commission policy. Such a requirement (which is implicitly suggested in Vacationland's allegation) would subject the already lengthy administrative process to even greater delay. If alternative proposals conforming with Commission policy had been advanced by the parties, they would have been included with those submitted for comment in the Notice. In point of fact, and as we noted in paragraphs four and five of the Notice, certain of the proposals ran contrary to our policies on "intermixture," for instance, and were therefore not advanced for comment. Further, we included a detailed discussion of the reasons why we believed the proposals to be unsuited for inclusion in the Notice. Contrary to Vacationland's assertion, the proposals set forth in the Notice represented, in our best judgment, the most appropriate means of serving both the public interest in general and the needs of the specified communities in particular.

6. Next, Vacationland asserts that because "this is clearly not a routine (channel) change proceeding," only the Commission itself could have issued the Notice. Issuance of the Notice by the Broadcast Bureau is said to be illegal. A careful review of the record, however, discloses nothing to suggest that the proposed channel assignments per se are anything but "routine."[4] Other than the contention by the parties that this is not a "routine" proceeding, there does not appear to be, and the petitioners do not point to, any new or novel issues or factual questions specifically involving the channel assignments. Further, no present facts specifically involving the channel assignment proposals are shown to exist which would appear to justify a change in established Commission policy. Indeed, just the contrary appears to be true since all parties at one point or another urge the Commission to invoke various established policies in support of their requested channel assignment proposals. In sum, we reject as unsubstantiated the notion that the channel assignment proposals are anything other than "routine."

7. (RM–2395, RM–2457, RM–2471—Fort Walton Beach, Florida.) Fort Walton Beach, Florida (pop. 19,994[5]), located in Okaloosa County (pop. 88,197) on the shores of the Gulf of Mexico, lies forty miles east of Pensacola, Florida, and 160 miles west of Tallahassee, Florida. The economy of the community relies principally on what is described by the petitioners as the "hospitality" industry, a myriad of services catering to the 240,000 tourists and vacationers who visit the area annually. The community receives local aural service from two AM stations and one FM facility.[6] A cable TV system also operates in the community. Each of the petitioners notes the rapid growth that has occurred in the Fort Walton Beach area in recent years.

8. Two of the petitioners, Vacationland and Rodgers, seek the assignment of Channel 243 to Fort Walton Beach while a third, White Sands, requests the assignment of Channel 221A. Before either of the proposals may be considered, however, we must first determine whether or not an additional channel should be assigned to the community. We answer that question in the affirmative. Under our "population criteria,"[7] Fort Walton Beach could be assigned up to two FM channels. Given its present population, the expression of interest in an additional channel, and the growth projections for the future, we believe that the assignment of a second FM channel to Fort Walton Beach would be consistent with our goal of assuring a "fair, efficient and equitable" distribution of radio services.[8]

9. Having resolved the issue of whether Fort Walton Beach should be assigned a second FM channel, we move next to a comparative consideration of the two channel assignment proposals. Here, instead of looking to the "population criteria" discussed above, we must consider additional factors such as coverage requirements and the classes of channels presently assigned to the community. We are told by Vacationland that the assignment of Channel 243 would improve service, overcome existing interference,[9] and bring Fort Walton Beach into a position of parity with the communities of Pensacola and Panama City, Florida.[10] There is no indication from Vacationland that the present FM facility is unable to serve the community in a manner that is consistent with our rules. White Sands, though originally proposing the assignment of Channel 221A, says it has no objection to the assignment of Channel 243. Each of the parties indicates that if an additional channel is assigned to Fort Walton Beach it will promptly seek broadcast authority for the operation of a station on the channel.

10. After thorough review of the proposals, we are, for the reasons discussed below, compelled to assign Channel 221A rather than Channel 243 to Fort Walton Beach. First, the Commission continues to adhere to a policy of avoiding an "intermixture" of classes of channels, except where such an "intermixture" is the only means of providing a community with a necessary broadcast service.[11] The petitioners have demonstrated no exceptional circumstances which would justify a departure from that policy. The assignment of Channel 243 at Fort Walton Beach would result in "intermixture"; the assignment of Channel 221A would not. Secondly, for reasons that will be discussed in greater detail below (see paragraph 21), we are unable to conclude that the assignment of Channel 243 at Fort Walton Beach would result

[4] However, an issue infra, regarding the requested modification of CBC's license rather than the channel assignment itself, involves some novel considerations.

[5] Unless otherwise noted, all population statistics are cited from the 1970 U.S. Census.

[6] The AM stations are WNUE, licensed to Smith Radio, Inc., and WFTW, a daytime-only outlet, licensed to Vacationland Broadcasting Co. The FM station is WFTW–FM, Channel 257A, also licensed to Vacationland.

[7] See further notice of proposed rulemaking, Docket No. 14185, adopted July 25, 1962, and incorporated by reference in paragraph 25 of the Third Report, Memorandum Opinion and Order, 40 F.C.C. 747 (1963).

[8] 47 U.S.C. 307(b).

[9] Vacationland alleges the existence of interference from WKRG, Channel 260, Mobile, Alabama, and asserts that the operation of a station on Channel 243 will alleviate the interference. Vacationland fails to specify the nature and location of the alleged interference. Absent such detailed information the matter will not be pursued.

[10] Vacationland asserts that Fort Walton Beach with its Class A assignment is "a 3 kW island in a sea of 100 kW stations." The fact that other communities may be assigned different classes of channels is simply not relevant. What is relevant is whether or not Fort Walton Beach receives aural service commensurate with its needs. With the addition of Channel 221A to the existing 257A assignment, we believe the community will receive satisfactory service. There is no substantial evidence that would suggest otherwise.

[11] See para. 5 of the Notice. See also Lake City, S.C., 47 F.C.C. 2d 1067 (1974).

in the most beneficial use of the available spectrum. A station operating on Channel 243 at Fort Walton Beach would not, according to a staff engineering evaluation, provide a first or second FM service of the magnitude obtainable at another more technically desirable location. Further, such an assignment would seem to be manifestly inefficient since a significant portion of the signal would be placed over uninhabited water areas. The assignment of Channel 221A, on the other hand, allows the Commission to avoid an "intermixture" of channels and the competitive imbalance that might result. Moreover, the assignment allows us to satisfy an obvious need for additional service at Fort Walton Beach while retaining Channel 243 for more efficient use elsewhere. We therefore believe the public interest would be best served by granting the petition of White Sands and denying those submitted by Vacationland and Rodgers.

11. The assignment of Channel 221A to Fort Walton Beach results in preclusion on noncommercial educational Channels 218, 219, and 220 and on cochannel 221A. Since the Grade B contour of the nearest Channel 6 television station is far enough removed from this area, lower educational channels should be available for use.

12. Vacationland submits that if Channel 243 is not assigned to Fort Walton Beach, then it should not be assigned at all. It argues that the assignment of Channel 243 at Crestview would not avoid "intermixture" as stated, and that the practical effect of such an assignment would be the creation of another Fort Walton Beach station. As we have previously noted (and will reiterate at paragraph 22), we do not believe that a market "intermixture" will be created by the assignment at Crestview. Further, given our obligation to assure an efficient use of the radio spectrum, we see little benefit to the public interest in allowing a channel to lie fallow and unused as suggested by Vacationland. This action would be particularly indefensible where it is shown that the use of the channel could provide a second FM service to more than 30,000 persons.

13. (RM–2421—Destin, Florida.) Matkowski seeks the assignment of Channel 243 to Destin, Florida, a small unincorporated community of 1,526 persons located approximately six miles east of Fort Walton Beach, also in Okaloosa County. The economy of Destin,[12] according to the petitioner, is based on sport and commercial fishing, as well as tourism and recreational activities. Matkowski alleges that a transient population in excess of 82,000 persons visits the community annually. Destin has no local aural service but does receive service from the radio stations located in nearby Fort Walton Beach. Despite the proximity of these two communities, Matkowski asserts that Destin must be considered as being separate and apart from Fort Walton Beach and more closely aligned with the interests of neighboring Walton County.

14. In support of his petition, Matkowski contends that the mandate of Sec. 307 (b) of the Communications Act of 1934, as amended, dictates the allocation of Channel 243 to Destin in order to bring that community "its first much needed local radio service." The petitioner argues that the assignment of Channel 243 at Destin would provide a greater second FM service than that provided by the assignment of Channel 243 at Fort Walton Beach. Further, he contends that the requested assignment, while avoiding "intermixture," would also represent the most efficient use of the channel since its use at Destin would allow a station there to serve "the thousands of boats and ships at sea" in the Gulf of Mexico. Matkowski also asserts that Destin rather than Crestview or Fort Walton Beach should be assigned Channel 243 since each of those communities already has adequate local aural service.

15. We find the arguments advanced by Matkowski to be wholly unpersuasive. First, Destin is not the type of community to which we would normally assign a Class C channel and we so indicated in a letter to the petitioner dated June 10, 1974, which responded to the Matkowski petition. We indicated at that time that a Class A station, in our opinion, would provide sufficient coverage to satisfy the needs of Destin and the surrounding area. We also noted that Commission rules contemplate that Class A channels, rather than Class C channels, will be utilized to render service to relatively small communities, cities, towns, and surrounding rural areas.[13] Thus, absent a showing of special circumstances (none of which have been demonstrated in this proceeding), the Matkowski proposal would, on its face, be violative of Commission policy.

16. Matkowski advances two additional reasons for the assignment of Channel 243 to Destin; one is the annual influx of tourists into the Destin area (tourist population at Destin in 1970 was estimated to number 82,554), and the other is "the thousands of boats and ships at sea" in the Gulf of Mexico which would, according to petitioner, be provided FM service by the assignment. Both of the groups identified by Matkowski as being potential listeners of a Destin station are transient in nature whether on land or at sea. We have, in the past, cited the existence of a sizeable transient population as an additional justification for certain FM channel assignments; however, transient population has not, to our knowledge, been the sole basis upon which an assignment has been made. Further, such a factor cannot be considered as outweighing the more important public interest considerations which the Commission must examine in making channel assignments. In this case, although the extension of service to tourists or to boats and ships may be of some assistance in determining whether or not Destin could be assigned a channel, it is not of such significance as to justify the assignment to Destin of a Class C channel.

17. In rejecting Matkowski's argument that the assignment of Channel 243 at Destin would avoid an intermixture of channels, we reiterate our discussion at paragraph five of the Notice. Nothing in the petitioner's comments demonstrates our expressed conclusions to be incorrect. Adherence to our policy of avoiding "intermixture" in a market when possible requires that it be flexibly tailored to meet the facts of a particular case. Here, we believe the public interest in general and the status of broadcast services at Fort Walton Beach and Destin in particular would best be served by application of the policy and denial of the Matkowski petition.

18. Before moving on, we would also observe that contrary to Matkowski's assertion, the assignment of Channel 243 to Destin is not consistent with the mandate of Section 307(b) of the Communications Act, supra. First, assignment of the channel at Destin would not provide the first and second FM service potential that is possible with an assignment at Crestview. Further, as in the case of Fort Walton Beach, the assignment of Channel 243 at Destin would not, in our opinion, represent the most efficient use of the channel since a large portion of the signal contour would be placed over uninhabited water areas.

19. In our Notice we asked Matkowski to express an intention as to whether or not he would apply for broadcast authority to operate a station on Channel 285A at Destin if that channel were reassigned from Crestview. In response, Matkowski held steadfast to his original proposal; moreover, he expressed opposition to the assignment of a Class A channel at Destin, asserting that a station operating on such a channel would not cover all of Destin, South Walton County and (sic) "ships at sea." In light of the petitioner's stated position, and because, at present, there are no other expressions of interest emanating from Destin, we decline to assign any channel to the community until such time as we receive assurances that such an assignment will be promptly utilized.

20. (RM–2503, Crestview, Florida). CBC seeks the assignment of Channel 243 to Crestview, Florida, saying that if the assignment is made it will file an application to modify its facilities to operate on Channel 243. Crestview (pop. 7,952), located twenty-four miles north of Fort Walton Beach, is the county seat of Okaloosa County. The community presently receives local aural service from the petitioner's two broadcast facilities, daytime-only AM Station WJSB and FM Station WAAZ-FM, Channel 257A, and from daytime-only AM Station WCNU, licensed to Gulf Shores Broadcasting Co. The petitioner asserts that Crestview, whose economy is based on a combination of agricultural, forestry, fishing, and mining interests, is the

[12] Matkowski asserts that the community of Destin has a 1967 population of 2,500, a 1970 population of 3,625, and a projected 1975 population of 18,000. The source for these figures was not provided.

[13] Section 73.206(a)(2) of the Commission's Rules. See also Revision of FM Broadcast Rules, 40 F.C.C. 747 (1963).

economic, social, cultural center for the entire upper half of Okaloosa County and maintains few of the interests held by the communities of Fort Walton Beach and Destin. CBC attaches primary significance to the fact that under its proposal, a significant first and second service[14] can be provided to areas currently unserved or underserved, a service which, according to CBC, would be greater than that which either the Fort Walton Beach or the Destin proposals would provide. The petitioner, in addition to agreeing with our statements in the Notice with regard to "intermixture," contends population considerations are not accorded the same priority as are proposals which provide a first or second FM service. CBC adds that, even if the size of a community's population is an important factor in the assignment of Class C channels, the assignment of Channel 243 would not be without precedent.

21. Although Crestview is a relatively small community and not one to which we would normally assign a Class C channel, our channel assignment policies accord high priority to proposals which provide significant first and second FM service (St. George, S.C., 52 F.C.C. 2d 1148 (1975); Anamosa, Iowa, 46 F.C.C. 2d 520 (1974)); thus, we believe that Channel 243 should be assigned to Crestview. A staff engineering evaluation discloses that a Channel 243 assignment at Crestview would, more than likely, provide a second FM service substantially greater than that provided by either the Fort Walton Beach or the Destin proposals.[15] This factor, considered in conjunction with the knowledge that an assignment at Crestview will significantly lessen the amount of signal coverage placed over uninhabited water areas (a fact which we consider supportive but not decisionally crucial), compels us to conclude that the assignment of Channel 243 at Crestview would offer a more efficient use of the available radio spectrum.

22. The assignment of Channel 243 to Crestview also allows us to provide an additional service without an "intermixture" of classes of channels. In our estimation, Crestview is not a part of the Fort Walton Beach/Destin market, and we perceive little of the intertwining of economic and social interests which appears to link both Fort Walton Beach and Destin. We would expect, and, indeed, our ascertainment rules require that a station operating on a Class C channel at Crestview serve primarily Crestview and not Fort Walton Beach or Destin. Given the geographical juxtaposition of the communities, the absence of intertwined economic and social interests, and the present level of aural service available in Fort Walton Beach and Destin, we conclude that the assignment of Channel 243 at Crestview would not, either in theory or practice, result in an undesirable market "intermixture."

23. As to whether or not CBC's outstanding license for WAAZ–FM should be modified to specify operation on Class C Channel 243 (since we are simultaneously deleting Channel 285A on which WAAZ–FM operates), it is Commission policy to modify an existing license to specify operation on a newly-assigned channel where no other qualified party has, during the course of the rule making proceeding, expressed an affirmative intent to apply for authority to operate a station on the channel.[16] CBC stated that it would file an application to modify its facilities in order to utilize the new assignment, and, in doing so, would relinquish its present use of Channel 285A at Crestview. In response, Vacationland argued that, if Channel 243 is assigned to Crestview, CBC's license should not be modified without first holding a comparative hearing for the purpose of determining who is the best qualified applicant. It further asserted that modification of the license for WAAZ–FM cannot be granted by delegated authority. We must note, the preceeding comments notwithstanding, that Vacationland failed to state that it would submit an application to operate a station on Channel 243 at Crestview, and we have no basis for inferring such an interest on the part of Vacationland at this time.[17] Further, no other persons have come forward to express an interest. Since it is unlikely that the filing of an application by CBC would enable us to make a more informed judgment on the public benefits of approving CBC as the licensee, and since we can see no sensible reason to subject CBC or the public to the delay and expense involved in submitting an application to operate a station on Channel 243, we consider it appropriate in circumstances such as these (where there is no other indication of interest by other qualified parties) to modify the outstanding license. Since we believe CBC has consented to the modification of its license to specify operation on Channel 243, we will approve the grant at this time.

24. The assignment of Channel 243 at Crestview will create areas of preclusion on Channels 240A, 243, and 244A. This preclusion is not extensive and has minimal impact on the affected communities since alternate channels are available for use.

25. *Accordingly, it is ordered,* That effective December 10, 1976, the FM Table of Assignments (§ 73.202(b) of the Commission's rules and regulations) is amended to read as follows:

City:	*Channel No.*
Crestview, Florida	243
Fort Walton Beach, Florida	221A, 257A

26. *It is further ordered,* That the petition of White Sands Broadcasting Co. to assign Channel 221A to Fort Walton Beach, Florida (RM–2395) is granted.

27. *It is further ordered,* That the petition of Dr. John Matkowski to assign Channel 243 to Destin, Florida (RM–2421) is denied.

28. *It is further ordered,* That the petition of Vacationland Broadcasting Co. (RM–2457) and Holley A. Rodgers (RM–2471) to assign Channel 243 to Fort Walton Beach, Florida, is denied.

29. *It is further ordered,* That the petition of Crestview Broadcasting Co. to assign Channel 243 to Crestview, Florida (RM–2502) is granted.

30. *It is further ordered,* That pursuant to section 316(a) of the Communications Act of 1934, as amended, the outstanding license held by Crestview Broadcasting Company for Station WAAZ–FM, Crestview, Florida, is modified, effective December 10, 1976, to specify operation on Channel 243 instead of Channel 285A. The licensee shall inform the Commission in writing no later than December 10, 1976, of its acceptance of this modification. Station WAAZ–FM may continue to operate on Channel 285A for one year from the effective date of this action or until it is ready to operate on Channel 243, or the Commission sooner directs, subject to the following conditions:

(a) At least 30 days before commencing operation on Channel 243 the licensee of Station WAAZ–FM shall submit to the Commission the technical information normally requested of an applicant for Channel 243.

(b) At least 10 days prior to commencing operation on Channel 243 the licensee of Station WAAZ–FM shall submit the measurement data required of an applicant for a broadcast station license; and

(c) The licensee of Station WAAZ–FM shall not commence operation on Channel 243 without prior Commission authorization.

31. Authority for the actions taken herein is found in sections 4(i), 5(d)(1), 303(g) and (r, 307(b), and section 316 (a) of the Communications Act of 1934, as amended.

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

[14] The Crestview Roanoke Rapids showing indicates that a Class C assignment at Crestview would offer a first FM service to 525 persons in a 98-square mile area, and a second FM service to 30,461 persons in an 820-square mile area. A staff analysis indicates the assignment of Crestview would provide a significantly larger second FM service than either a Destin or a Fort Walton Beach assignment although the analysis also indicates that it is possible for a Destin or Fort Walton Beach assignment, with operating facilities close to Crestview, to offer the same first and second FM services and still meet community coverage requirements. This, of course, would require the transmitter sites for either Fort Walton Beach or Destin assignments to be located substantial distances away from the community of license, a result considered less than desirable. Even though the Crestview transmitter site must be located at least seven miles west, southwest of Crestview, however, this proposal seems to represent the best of three proposals offered.

[15] See note 14.

[16] Cheyenne, Wyo., — F.C.C. 2d —— (1976); Mitchell, S.D., — F.C.C 2d —— (1976).

[17] Under our "duopoly" rules (§ 73.240(a)(1)), Vacationland could not operate a station on Channel 243 at Crestview without first relinquishing its present FM facility at Fort Walton Beach.

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

FEDERAL COMMUNICATIONS COMMISSION,[16]
VINCENT J. MULLINS,
Secretary.

[FR Doc.76-32758 Filed 11-5-76;8:45 am]

[Docket No. 20421; FCC 76-1002]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Stations, Mitchell, South Dakota

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Mitchell, South Dakota), Docket No. 20421, RM-2348.

Report and order—Proceeding Terminated.

Adopted: October 27, 1976.

Released: November 4, 1976.

1. The Commission here considers the notice of proposed rulemaking, adopted April 2, 1975 (40 FR 17042), proposing amendment of the FM Table of Assignments (§ 73.202(b) of the Commission's rules and regulations) with one of the following alternatives for Mitchell, South Dakota: (I) By assigning Channel 296A as its second FM assignment; (II) by assigning Channel 290 as its second FM assignment; or (III) by assigning Channels 290 and 297 and by deleting Channel 272A from Mitchell. Comments were received from petitioner, Mitchell Broadcasting Association, Inc., licensee of AM Station KORN, Mitchell; and from BMA Broadcasitng, Inc. (BMA), licensee of FM Station KMIT (Channel 272A), Mitchell.[1]

2. Mitchell (population 13,425)[2] is the seat of Davison County (population 17,319). It is presently served by AM Station KORN, licensed to petitioner, and FM Station KMIT, licensed to BMA Broadcasting, Inc. (BMA).[3] Mitchell is the sixth largest city in South Dakota and is the agricultural, trade and cultural center for a large region.

3. The Notice proposed three alternatives for Mitchell in order to elicit comments regarding the advantages of adding a Class C channel versus a Class A channel where the existing local FM service consists of one Class A channel. Generally, in such situations, the addition of a Class A channel (Alternative I) would offer the advantage, as a matter of public interest, of fairer competition while providing another local station in the city. On the other hand, the addition of a Class C channel (Alternative II) would allow a wider coverage area serving potentially unserved and underserved areas but at the expense of a less desirable competitive situation. The final alternative (Alternative III) would accomplish both advantages—service to large areas and a balance of the economic prospects of each station.

4. Keeping these factors in mind, we considered the specific allegations before us. BMA, in its comments, stated that Alternative I should be given primary consideration. It argues that by adding a second Class A channel (instead of a Class C channel) that less preclusion and a more desirable competitive situation would result. Regarding the other two alternatives, BMA resolves that it would be less onerous on it to invest in a Class C channel (Alternative III) than to attempt to compete with a Class C station (Alternative II). But it submits that if required to change its channel of operation, it requests reimbursement for all necessary and reasonable expenses involved. It asserts that it is in its initial growing phases having commenced operations on March 13, 1975, and to convert to an entirely new operation at this point would require significant changes in equipment and operational plans. The petitioner, on the other hand, argues that there is a need for a wide coverage area assignment to Mitchell because such an operation would furnish a first FM service to 15,488 persons in a 1,921 square mile area and a second FM service to over 20,711 persons in a 951 square mile area. While admitting that a large area will be precluded from the use of co-channels and adjacent channels, it notes that many alternate channels remain available for assignment to all such precluded communities.[4] Further, petitioner alleges that Alternative I is undersirable because a Class A channel will neither promote efficient use of the FM spectrum nor meet the need for wide coverage area FM service. Thus, petitioner states that the adoption of either Alternative II or Alternative III would be acceptable to it. As to reimbursement, petitioner avers that the concerns of BMA are of a private nature and to allow BMA to quickly improve its facilities from a Class A to a Class C operation would be potentially advantageous to it financially. It further states that to order reimbursement where the economic advantages to BMA are so favorable would be unprecedented, since reimbursement has in the past only been ordered where a licensee converts its operation to a comparable channel.

5. In considering the alternatives before us, the most that can be said for Alternative II is that it offers a compromise solution to the countervailing considerations in this case. However, it is one we believe to be unsatisfactory to the public interest. It fails to promote the desirable competitive balance we seek to achieve in our policy against intermixture of classes of channels in the same community.[5] At the same time, it accomplishes nothing that could not also be accomplished by Alternative III in terms of wide area coverage. Alternative III, by allowing the operation of two Class C stations, not only offers desired economic results, but also satisfies one of our most important priorities, i.e., provision of a first FM service to as much of the population of the United States as possible.[6] As noted before, a Class C channel would furnish a first FM service to 15,488 persons in a 1,921 square mile area and a second FM service to 20,711 persons in a 951 square mile area. A second Class C channel would provide a second FM service to the first FM service area. The addition of a Class A channel (Alternative I) could not offer these same advantages. In the case of "Sault Ste. Marie, Michigan," 44 F.C.C. 2d 786 (1974), the Commission considered alternative proposals such as the ones under consideration in the present case. The city was comparable in size to Mitchell, and the proposal to assign a Class C channel offered a substantial first and second FM service area. Sault Ste. Marie also had one existing Class A station. In weighing the advantages of an additional Class A assignment versus a Class C assignment, the Commission stated that,

> [l]imiting Sault Ste. Marie to its present one Class A assignment or adding another Class A assignment there, we are convinced, has no realistic potential for meeting the needs of residents of this area for a choice of at least two comparable full-time aural broadcast services, considering the technical limitations of Class A channels for coverage. . . . Class C channels, which have technical coverage capability superior to Class A channels, must be used instead of Class A channels at Sault Ste. Marie, we believe, if the radio service needs of unserved and underserved areas in this region are to be met and if residents of this region are to have opportunity for at least two satisfactory aural broadcast services in the foreseeable future.

The Commission thus decided that the addition of two Class C channels and the deletion of the existing Class A frequency at Sault Ste. Marie would best serve the public interest. We are also convinced, especially in view of the first and second FM service showing, that the public interest would be best served in the present case by adopting Alternative III, the assignment of Channels 290 and 297 to Mitchell and deletion of Channel 272A therefrom.

6. With regard to modification of BMA's license from a Class A channel to a Class C channel newly assigned to a community, we believe that the exercise of our authority to modifv pursuant to secton 316 of the Communcations Act of 1934, as amended, is proper in this case. It is our policy to grant a proposed modification from a Class A to a Class C

---

[16] Commissioner Lee absent; Commissioner White not participating.

[1] BMA Broadcasting, Inc. was issued its license on June 11, 1975. (File No. BLH-6614) Program test authority commenced on March 13, 1975.

[2] All population data are taken from the 1970 U.S. Census.

[3] The closest city to Mitchell with local aural service is Huron, South Dakota, approximately 45 miles distant.

[4] See paragraph 9, infra.

[5] Fayetteville, N.C., 47 F.C.C. 2d 1067, 1075 (1974); Saulte Ste. Marie, 44 F.C.C. 2d 786 (1974).

[6] Anamosa and Iowa City, Iowa, 46 F.C.C. 2d 520 (1974); Further Notice of Proposed Rule Making in Docket No. 14185, FCC 62-867 (1962). See also Rapid City, S.D., 50 F.C.C. 2d 997 (1975); and St. George, S.C., 52 F.C.C. 2d 1148 (1975). 40 FR 23767, June 2, 1975.

(or Class B) channel where no other person in its comments has asserted Ashbacker[7] rights by expressing an interest in applying for the newly assigned Class C channel. This procedure is designed to avoid needless delay and expense in allowing the existing licensee to apply for the newly assigned channel.[8] here there has been no opposition to the proposed modification of BMA's license and should some other party later express an interest in applying for a Class C channel at Mitchell, Channel 297, also asigned herein, will be available for such purpose.

7. Since we have decided that the existing Class A channel must be deleted from Mitchell, we are, in accordance with *Transcontinental Television Corp.* v. *F.C.C.*, 308 F. 2d 339 (D.C. Cir. 1962) and our practice in similar circumstances in other FM assignment cases,[9] making the amendments to the FM Table of Assignments deleting Channel 272A from and assigning Channel 290 to Mitchell, effective upon the license expiration date of Station KMIT, April 1, 1977 at 3:00 a.m. local time,[10] or such earlier time as discussed in paragraph 11.[11]

8. In the event BMA decides to convert its operating frequency to Channel 290 before its present license term expires or to specify operation on Channel 290 in its renewal application, it has requested that it be reimbursed for all reasonable and necessary expenses involved. We previously stated in the Notice that if BMA opposed modification of its license as proposed, its views would weigh heavily in our considerations. Our policy with regard to reimbursement is to order a party who benefits from a new assignment which requires modification of an existing license to bear the reasonable costs involved in the changeover where the Commission finds it equitable in the individual case.[12] The proper figure is normally left to the good faith determination of the parties subject to Commission approval in the event of disagreement.[13] In the present case, it is clear that the ultimate licensee of Channel 297 at Mitchell is conferred a benefit by the assignments made herein. We would not ordinarily adopt a proposal which assigns a Class C channel to a community which has an existing Class A channel unless it were shown that intermixture would not be harmful or that the Class A licensee would be willing to compete under such circumstances.[14] We do not have that showing here and as stated before, we believe that the greater need in the Mitchell area is for two Class C channels. By assigning the second Class C channel and by deleting the existing Class A channel, it becomes necessary for the existing Class A licensee to switch its operating frequency in order to continue operating its station. In all fairness, to place BMA in a position of converting to a more costly operation during its initial phase of operation is to impose a substantial expense upon it which may diminish the quality of its service to the community. We agree with BMA therefore that to create such a financial strain at this stage would be inequitable without some form of reimbursement although we recognize, as petitioner points out, that BMA will be given the opportunity to greatly improve its coverage area by operating on a Class C channel. We do not believe, however, that full reimbursement should be ordered. Rather than direct the benefitting party to bear the costs of two new Class C facilities, we are inclined to favor a limited form of reimbursement. That amount would include the cost of the changes involved in converting only the operating frequency from 102.3 mHz (Ch. 272A) to 105.9 mHz (Ch. 290) as set forth in Circleville, Ohio, 8 F.C.C. 2d 159, 163–164 (1972).[15] The costs of increasing the power and antenna height to conform to the minimum requirements of a Class C operation would not be reimbursed. BMA, however, would be permitted to operate on Ch. 290 with its present low power Class A facilities for the present time.[16] A reasonable time will be given BMA to conform to the Class C power requirements. Thus we would expect the conversion to take place by the renewal date of April 1, 1980 (assuming BMA is renewed in 1977).[17] We believe this form of compensation the more equitable one in the instant case considering the short time in which BMA has been operating, the costs involved in the construction of a Class C facility and our established policy with regard to reimbursement. We believe BMA would be unjustly enriched if it were to recoup from the benefitting party all the expenditures involved in a Class C facility. Likewise, the benefitting party would be unfairly favored if it were to receive a Class C channel without some form of reimbursement.

9. As stated in the Notice, preclusion will occur on all fourteen adjacent and co-channels of Channels 290 and 297. However, all communities in the precluded areas have numerous channels available for assignment.

10. In view of the foregoing, and pursuant to authority contained in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended: *It is ordered*, That effective December 10, 1976, the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations is amended to read as follows for the city listed below:

City:	*Channel No.*
Mitchell, South Dakota	290,[1] 297

[1] Effective 3 a.m. local time April 1, 1977 (concurrently with the expiration of the outstanding license for FM Station KMIT on Channel 272A at Mitchell, South Dakota) or such earlier date as FM Station KMIT may, upon its request, cease operation on Channel 272A at Mitchell.

11. *It is further ordered*, That effective December 10, 1976, the license of FM Station KMIT, Mitchell, S.D., may specify operation on Channel 290 in its renewal application for the license period commencing April 1, 1977. The station may continue to operate on Channel 272A until April 1, 1977, or it may obtain modification of its license to operate on Channel 290 prior to April 1, 1977, subject to the following conditions:

(a) The licensee shall inform the Commission in writing by no later than December 10, 1976, of its acceptance of this modification;

(b) At least 30 days before operation on Channel 290, the licensee of FM Station KMIT shall submit to the Commission the technical information normally required of an applicant for a construction permit on Channel 290;

(c) At least 10 days prior to commencing operation on Channel 290, the licensee of FM Station KMIT shall submit the measurement data required of an applicant for an FM broadcast station license; and

(d) The licensee of Station KMIT shall not commence operation on Channel 290 without prior Commission authorization.

If Station KMIT requests and is granted authorization to operate on Channel 290 prior to termination of its present license authorization, the Commission will view such request as a relinquishment of Channel 272A and a waiver of any rights it may have with regard to that channel.

12. *It is further ordered*, That the request of BMA Broadcasting, Inc., for a hearing under § 1.87 of the Commission's rules and regulations is dismissed.

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

---

[7] *Ashbacker Radio Corp.* v. *F.C.C.* 326 U.S. 327 (1945).

[8] See Cheyenne, Wyo., ____ F.C.C. 2d ____ (1976); Crestview and Fort Walton Beach, Fla., ____ F.C.C. ____ (1976).

[9] Goshen, Ind., 51 F.C.C. 2d 711, 714 (1975); Lake City, S.C., 47 F.C.C. 2d 1067, 1079 (1974); and Hampton, Iowa, 39 F.C.C. 2d 452, 455 (1973).

[10] See § 73.218(a)(2) of the Commission's rules and regulations.

[11] We are taking this action in response to a letter, dated May 27, 1975, filed on behalf of BMA Broadcasting, Inc., requesting that a hearing be held regarding our proposed modification of BMA's license as set forth in the Show Cause Order issued with our Notice of Proposed Rule Making. In view of our action delaying the deletion of Channel 272A until BMA's license expiration date, a hearing will not be necessary. See Transcontinental Television Corp. v. F.C.C., supra.

[12] Cheraw and Florence, S.C., 50 F.C.C. 2d 749, 756–757 (1975); Lake City, S.C., 47 F.C.C. 2d 1067, 1078 (1974).

[13] Lake City, S.C., supra.

[14] See footnote 5, supra.

[15] See also Kenton and Bellefontaine, Ohio, 3 F.C.C. 2d 598, 605 (1966).

[16] Of course, if BMA chose now to construct a Class C station conforming to our minimum requirements for power and antenna height, it could apply the partial reimbursement granted here to that end.

[17] Pursuant to § 73.218(a)(2) of the Commission's Rules.

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

FEDERAL COMMUNICATIONS COMMISSION,[15]
VINCENT J. MULLINS,
Secretary.

[FR Doc.76-32757 Filed 11-5-76;8:45 am]

[Docket No. 20893]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Stations, Taos, New Mexico

REPORT AND ORDER—PROCEEDING TERMINATED.

Adopted: October 29, 1976.
Released: November 3, 1976.

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Taos, New Mexico), Docket No. 20893, RM-2716.

1. On August 13, 1976, the Commission adopted a notice of proposed rulemaking, 41 FR 36220, in the above-entitled matter, proposing the substitution of either Channel 288A or 296A for Channel 257A at Taos, New Mexico. The proceeding was instituted on the basis of a petition filed by Fontana Media Corp. (KYMR(FM)), licensee of Station KMYR(FM) (Channel 258), Albuquerque, New Mexico. Comments and supplemental comments were filed by petitioner. Comments were also filed by Taos Communications Corporation ("TCC") which has an application (BPH-10103) pending for Channel 257A at Taos.

2. KMYR(FM) seeks to relocate its station to a site which it will share with Stations KHFM(FM) and KRKE-FM, also of Albuquerque. The substitution of another channel would eliminate the 14.5 kilometer (nine-mile) shortspacing from the proposed transmitter site (BPH-9935) to the reference point of the first adjacent channel (257A) assigned to Taos, New Mexico. The short spacing to the Taos proposed station would be 16 kilometers (10 miles).

3. TCC, in its comments, states that it has no objection to the deletion of Channel 257A on which it has an application (BPH-10103) and the substitution of another channel therefor. However, it requests that the Commission substitute Channel 269A for 257A instead of either Channel 288A or 296A as proposed in the Notice. TCC states it believes the location of Channel 269A near the center of the dial would enable it to provide better service to the community than would be possible on either Channel 288A or 296A. TCC submitted an engineering report showing that Channel 269A can be assigned without affecting any other existing FM assignments.

4. In supplemental comments KMYR (FM) states that the assignment of any one of the three channels (269A, 288A, 296A) that have been shown to be available to Taos would be in the public interest, and therefore has no objection to the assignment of Channel 269A to Taos in lieu of either Channel 288A or 296A.

5. We reject TCC's reasoning that the location of Channel 269A on the dial would enable it to provide better service to the community than would either of the other two proposed channels. However, since there is no significant benefit to be derived in assigning one channel over the other and, regardless of the channel selection, there would still remain several Class A channels available for assignment to this general area, there is no objection to the assignment of Channel 269A to Taos, New Mexico. In view of the action taken herein, the pending application (BPH-10103) of Taos Communications Corp. for Channel 257A at Taos, will have to be amended.

6. Since Taos is located more than 199 miles from the Mexican-U.S. border, action herein requires no coordination with the Mexican Government.

7. Authority for adoption of the amendment contained herein appears in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and in § 0.281 of the Commission's rules and regulations.

8. In view of the foregoing: *It is ordered*, That effective December 13, 1976, § 73.202(b) of the Commission's rules, the FM Table of Assignments, as it relates to the community listed, is amended to read as follows:

City:	*Channel No.*
Taos, New Mexico	269A

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

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

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.76-32759 Filed 11-5-76;8:45 am]

[Docket No. 19982]

PART 73—RADIO BROADCAST SERVICES

Television Broadcast Stations, Mountain View, Arkansas

Adopted: October 22, 1976.
Released: November 2, 1976.

Report and order—Proceeding Terminated.—In the matter of amendment of § 73.606(b), *Table of Assignments*, Television Broadcast Stations. (Mountain View, Arkansas), Docket No. 19982, RM-2297.

1. The Commission has before it the notice of proposed rule making adopted March 22, 1974, 39 FR 11931, and the further notice of proposed rulemaking and order to show cause, adopted August 29, 1975, 40 FR 42369, involving the proposed assignment of Channel *6— on a reserved basis to Mountain View, Arkansas. Corresponding modifications to the carrier offset designation of 9 other channels were also proposed in the further notice of proposed rulemaking to accommodate the Mountain View assignment,[1] accompanied with orders to show cause to 8 existing licensees of the affected channels.[2] Responsive pleadings have been received from 6 of these licensees—Mid-America TV Co., licensee of Station KMOS-TV, Sedalia, Missouri; Corinthian Television Corp., licensee of Station KOTV(TV), Tulsa, Oklahoma; KCMC, Inc., licensee of KTAL-TV, Texarkana, Texas; Channel 6, Inc., licensee of Station KCEN-TV, Temple; Cosmos Broadcasting of Louisiana, Inc., licensee of Station WDSU-TV, New Orleans, Louisiana; and Gulf Coast Broadcasting Co., licensee of Station KRIS-TV, Corpus Christi, Texas; and from petitioner, Arkansas Educational Television Commission (AETC).[3]

2. Petitioner has indicated that it will apply for Channel *6—, if assigned, and reimburse all stations required to modify their carrier offsets including the Mexican station, XET-TV, as proposed. It also suggests that the Commission should provide a schedule for the changeovers at each station. The latter request was also made by several other parties. One of these parties cited the case of Booneville, Mississippi, 40 F.C.C. 2d 629 (1973) in support. Each of the licensees responding to the order to show cause agreed to the proposed modifications if they were reimbursed for the changes in equipment. In reply comments, petitioner noted that all affected licensees have either expressly consented to the modifications, as proposed, or have impliedly agreed by failing to respond.

3. We believe the assignment of Channel *6— to Mountain View is warranted. This assignment will further the educational service throughout the state and provide a first such VHF service in north central Arkansas. On this basis, we also find that sufficient public interest exists to warrant the various carrier offset changes. As for the request that we set up a schedule under which all changeovers at the stations whose channel carrier offsets are to be modified herein could be made on the same date, we do not believe that any such condition is appropriate. We cannot predict the delays that might occur in the filing of an application for Channel *6— at Mountain View (or if one is filed for Channel 6 at San Angelo, Texas), in the subsequent effectuation of service thereon or in acquiring equipment for the changes by each of the affected licensees. Similarly, no such condition was placed on the assignment of Channel 12, Booneville, Mississippi, supra. We would however cooperate in

[15] Commissioner Lee absent; Commissioner White not participating.

[1] A modification to the carrier offset designation was also requested for a Mexican station, XET-TV, Monterrey, Neuva Leon.

[2] The ninth channel involved, Channel 6+, San Angelo, Texas, is unoccupied.

[3] AETC is a state agency authorized to supply Arkansas residents with educational television services. It presently is licensed on educational Station KETS (Channel 2), Little Rock, Arkansas, and TV translator Station KI3MV on Channel 13, Eudora, Arkansas, which rebroadcasts the programs of Station KETS, and is the permittee of Channel 19, Jonesboro, Arkansas; Channel 13, Fayetteville, Arkansas, and Channel 9, Arkadelphia, Arkansas.

seeing that negotiations between the affected stations are coordinated in this regard to insure that, as changeovers are made, resulting interference problems remain at a minimum.

4. The ultimate licensee of Channel *6— at Mountain View is expected to reimburse, pursuant to guidelines furnished in previous reimbursement cases, the licensees of the 8 affected United States stations and the one Mexican station for reasonable costs incurred in the change of frequency offsets and each licensee should negotiate in good faith with the ultimate Mountain View licensee to determine reasonable costs and means of repayment. See Circleville, Ohio, 8 F.C.C. 2d 159 (1967).

5. Mexican concurrence in the amendments herein has been obtained.

6. In view of the foregoing and pursuant to authority contained 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 ordered*, That effective December 6, 1976, the Television Table of Assignments contained in § 73.606(b) of the Commission's Rules and regulations is amended with respect to the following cities as follows:

City	*Channel No.*
Mountain View, Ark	*6—
Dodge City, Kans	6—, *21—
New Orleans, La.	4+, 6, 8, *12, 20—, 26, *32+, 38+
Greenwood, Miss	6+, *23+
Sedalia, Mo	6
Tulsa, Okla.	2+, 6+, 8—, *11—, 23, 29, *35—, 41+
Corpus Christi, Tex.	3—, 6, 10—, *16, 28—, 38+
San Angelo, Tex	3—, 6, 8+, *21+
Temple, Tex	6+, 46—
Texarkana, Tex	6, 17—, *34

7. *It is further ordered*, That effective December 6, 1976, and pursuant to section 316 of the Communications Act of 1934, as amended, outstanding licenses are modified as follows:

Southwest Kansas Television Co., Inc., Dodge City, Kans. (KTVC).	Channel 6—
Cosmos Broadcasting of Louisiana, Inc., New Orleans, La. (WDSU–TV).	Channel 6
Mississippi Telecasting Co., Inc. Greenwood, Miss. (WABG–TV).	Channel 6+
Mid-America TV Co., Sedalia, Mo. (KMOS–TV).	Channel 6
Corinthian Television Corp., Tulsa, Okla. (KOTV).	Channel 6+
Gulf Coast Broadcasting Co., Corpus Christi, Tex. (KRIS–TV).	Channel 6
Channel 6, Inc., Temple, Tex. (KCEN–TV).	Channel 6+
KCMC, Inc., Texarkana, Tex. (KTAL–TV).	Channel 6

subject to the following conditions:

(a) The licensees shall inform the Commission in writing by no later than December 6, 1976, of their acceptance of this modification;

(b) The licensees shall submit to the Commission by December 6, 1976, all necessary information complying with the applicable technical rules to cover the carrier offset modifications;

(c) The licensees may continue to operate under their present authorizations for one year from the effective date of this Order or until 60 days after the grant of a construction permit on Channel *6— at Mountain View, Arkansas, whichever is later, or effect the change sooner if each so desires. Ten days prior to operation on the newly authorized frequency, the licensees shall submit the same measurement data normally required in an application for a television broadcast station license.

(d) The licensees shall not commence operations on the newly authorized frequencies until the Commission specifically authorizes each to do so.

8. *It is further ordered*, That the Secretary of the Commission is directed to send a copy of this Report and Order by certified mail, return receipt requested, to:

Southwest Kansas Television Co., Inc., Dodge City, Kansas, Station KTVC;
Cosmos Broadcasting of Louisiana, Inc., New Orleans, Louisiana, Station WDSU–TV;
Mississippi Telecasting Co., Inc., Greenwood, Mississippi, Station WABG–TV;
Mid-America TV Co., Sedalia, Missouri, Station KMOS–TV;
Corinthian Television Corp., Tulsa, Oklahoma, Station KOTV;
Gulf Coast Broadcasting Co., Corpus Christi, Texas, Station KRIS–TV;
Channel 6, Inc., Temple, Texas, Station KCEN–TV; and
KCMC, Inc., Texarkana, Texas, Station KTAL–TV.

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

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

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.76–32756 Filed 11–5–76;8:45 am]

Title 7—Agriculture

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—GENERAL REGULATIONS

[FmHA Instruction 430.2]

PART 1802—SUPERVISION OF BORROWERS

Subpart G—Supervision of Association and Organization Borrowers and Grant Recipients, Including Individual Labor Housing and Rural Rental Housing Borrowers With Loan Agreements

REQUIREMENTS FOR AUDITS AND ANNUAL REPORTS; REVISIONS

On page 19342 of the FEDERAL REGISTER dated May 12, 1976, there was published a notice of proposed rulemaking to revise § 1802.78 of Subpart G of Part 1802, Title 7, Code of Federal Regulations (36 FR 17818) to decrease the instances in which monthly reports are required, change the format used for monthly and annual reports, and outline the requirements for annual audits.

Interested persons were given 30 days to submit written comments, suggestions, or objections regarding the proposed revisions. All comments submitted with respect to the proposed amendment were given due consideration.

As a result of comments received, the following changes are made:

1. In § 1802.75, the first sentence in paragraph (c) is revised to change the reference from § 1802.78(c) to § 1802.78.

2. In § 1802.78, paragraph (a) is revised to allow 15 days after the end of each month for the County Supervisor to submit the required monthly report to the State Office.

3. In § 1802.78, paragraph (d)(2) is revised to eliminate the requirement that the borrower be present during the actual analysis under certain circumstances.

4. In § 1802.78, paragraph (f)(2) is revised to reduce the required period for submission of reports to the National Office from three years to two years.

5. Section 1802.80 is revised to clarify the issuance of State forms.

6. Editorial changes are made in Exhibits B, C, D, and E to simplify completion.

Accordingly §§ 1802.75(c), 1802.78 and 1802.80 are revised; Exhibit A is reserved, and Exhibits B, C, D and E as added are set forth below.

§ 1802.75 Methods of supervision.

* * * * *

(c) *Borrowers who have demonstrated ability.* After the borrower has established its operations, is current with its payments, is maintaining the security in a satisfactory manner, and otherwise is progressing satisfactorily, supervision will consist of at least an annual review of budgets and reports in accordance with § 1802.78, and the periodic inspection security. * * *

* * * * *

§ 1802.78 Borrower reports, audits, and analysis.

In order that borrowers will establish and maintain adequate business management practices, it is essential that a system of reports and analysis of such reports be established at the outset. Timely reports will furnish needed information on which to make management decisions essential to efficient operation, and provide FmHA with periodic reports that will indicate trends and reflect the type and extent of management assistance needed. Timely analysis of such reports will reveal potential problems and provide an opportunity for corrective action before such problems develop to the extent they have an adverse effect on fiscal or operational conditions. All reports will pertain only to the FmHA financed project.

(a) *Monthly reports.* (1) Each borrower or grantee will make a monthly report. Such reports will begin the first month after: Completion of an initial project; completion of a subsequent project; reamortization; transfer; failure to make required payment; failure to make required transfers to reserve. Reports will be completed in accordance with Exhibit

B of this subpart. The County Supervisor will forward a copy of the report to the State Director through the District Director within 15 days after the end of each month.

(2) Reports will continue for a minimum of 12 full months. At the end of such 12-month period, the District Director will inspect the project and review the operation. Reports may be discontinued when the District Director determines that: The project is being operated and maintained in a satisfactory manner; an adequate accounting system is being maintained; payments to FmHA are being made on schedule; and the reserve account is on schedule. Authorization to discontinue the monthly reports will be made by the District Director in a memorandum to the County Supervisor with a copy to the State Director. The County Supervisor will notify the borrower of this decision.

(b) *Annual reports.* (1) Each borrower will submit, within 60 days following the close of its fiscal year, a report consisting of:

(i) An audit report or verification of accounts if required by paragraph (c) of this section.

(ii) A statement of budget, income and expense for the year being planned. It will also show the actual income and expenses for the previous year. The statement of budget, income and expense will be completed in accordance with Exhibit C of this subpart.

(iii) A year end report completed in accordance with Exhibit D of this subpart.

(iv) Copies of the minutes of the annual meetings and other meetings of the membership.

(v) Other related material that the County Supervisor may request.

(2) An annual analysis will be prepared by the County Supervisor. The analysis will be completed in accordance with Exhibit E of this subpart.

(c) *Audit reports.* Annual audit reports complying with FmHA's "Instruction to Independent Certified Public Accountants and Licensed Public Accountants Performing Audits of FmHA Borrowers and Grantees" which may be obtained from the County Supervisor, are required as follows:

(1) For all borrowers with 21 or more units, an audit report will be prepared by a Certified Public Accountant (CPA) or Licensed Public Accountant (LPA), except as outlined in paragraph (c)(3) of this section.

(2) For all borrowers with 20 or less units, an audit will not be required except as outlined in paragraph (c)(3) of this section. The borower will, however, provide a verification by a competent individual who is independent of the borrower or by a committee of the membership not including any officer, director or employee of the borrower in accordance with Exhibit D of this subpart.

(3) The State Director may require that the account of any borrower be audited by a CPA or LPA. The State Director may also waive the audit requirements in a specific case with prior authorization of the National Office, providing the borrower submits a written request for the waiver; the negotiated cost of the audit will increase the monthly unit rental rate by more than $2.00; and the required reports for the previous years' operations were properly submitted.

(4) The audit report should be submitted as a part of the annual report but in all cases as soon as possible after the close of the borrower's fiscal year.

(d) *Annual analysis.* The business of each borrower will be analyzed each year not later than 60 days following the end of the borrower's fiscal year.

(1) *Preparation for the analysis.* Not later than 30 days prior to the end of the borrower's fiscal year, the County Supervisor will:

(i) Notify the borrower of the required reports, the date such reports are due, provide the borrower with necessary guides and exhibits for use in preparing such reports.

(ii) See that organizational type borrowers properly plan for their annual meetings; see that it will be held on the correct date and plan to attend the annual meeting of nonprofit organizations, unless the borrower has progressed as described in § 1802.75, paragraph (c).

(iii) Arrange to conduct an inspection of the facility with the borrower or the borrower's representative.

(2) *Conducting the analysis.* The analysis will be conducted by the County Supervisor as soon as possible after the required reports are submitted by the borrower. It is not necessary that the borrower be present during the actual analysis provided the information required by Exhibit E of this subpart can be completed from the County Supervisor's knowledge of the operation.

(3) *District Director review.* The District Director will record his comments and recommendations in the appropriate section of the analysis report.

(e) *Distribution of annual analysis information.* The information obtained in accordance with paragraph (b) of this section will be distributed as follows:

Distribution

Item	Borrower	Borrower case file	State office
Audit (when applicable)	Copy	Original	Copy.
Statement of budget, income, and expense	do	do	2 copies.
Year-end report	do	do	Do.
Minutes of annual meeting	Original	Copy	Copy.
Annual analysis	Copy	do	Original and copy.

(f) *State Director's review of annual analysis.* Upon receipt of the items listed in paragraph (e) of this section, the State Director will:

(1) Review the information submitted and provide comments and recommendations by memorandum to the County Supervisor.

(2) During the first 2 years of operation, forward the following to the National Office:

(i) Copy for the Statement of Budget, Income and Expense.

(ii) Copy of the Year End Report.

(iii) Copy of the Annual Analysis.

(iv) Copy of his memorandum to the County Supervisor.

* * * * *

§ 1802.80 State requirements, guides, exhibits, and other issuances.

The State Director will supplement this subpart with State issuances necessary to the successful operation of the program. The State Director, with the assistance of the OGC, may modify procedures or exhibits as set out in this subpart to the extent necessary to enable borrowers and grant recipients to comply with the applicable provisions of State laws. Under no circumstances, however, will State forms be developed as replacements for the exhibits contained in this Subpart. Borrowers will be furnished with copies of this subpart and asked to provide the desired information in the format of the applicable exhibits.

EXHIBIT A—[RESERVED]

EXHIBIT B.—*Monthly report*

Name of Borrower _____ Address _____
Project Location _____
Kind of Loan _____ Term of Loan _____ Interest Rate _____ Amount $_____

	Budget current year	Actual current month	Actual year-to-date
INCOME FROM RENT			
Number and kind / Per month basic market	Beg _____ End _____ (1)	Beg _____ End _____ (2)	Beg _____ End _____ (3)
1 _____ units at _____			
2 _____ units at _____			
3 _____ units at _____			
4 _____ units at _____			
5 Less allowance for vacancy and contingencies as authorized by FmHA			
6 Total income from rent	( )	(XXXXXXXX)	(XXXXXXXX)
OTHER INCOME			
7 Laundry			
8 Interest income			
9 Other (specify)			
10 Total other income (add lines 7 through 9)			
11 Total income (add lines 6 and 10)			
12 Total operation, maintenance, and other expenses			
13 Net income (loss) (excluding depreciation) (line 11 less line 12)			
OTHER DEDUCTIONS			
14 FmHA payment (principal)			
15 Transfer to reserve			
16 Return to owner, $ _____ at __ percent		XXXXXXXX	XXXXXXXXX
17 Authorized capital improvements			
18 Other authorized debt payments			
19 Other (specify)			
20 Total other deductions (add lines 14 through 19)			
21 Excess (deficit) (line 13 less line 20)			

Certified Correct _____ (date) by _____ Borrowers or Borrower's Representative Signature

General information

	Security deposits	General fund	O. & M.	Debt service	Reserve	Total
Cash balance beginning	$	$	$	$	$	$
Cash balance end						

1. Total units in project_____
   Total units vacant_____
   Comments:
2. Have additional debts been incurred since last report?
   Amount $_____
3. Are other debts current?_____
4. Comments:
5. FmHA account on schedule?_____
   Reserve on Schedule?_____

_____
Date

_____
Borrower or Borrower's Representative Signature

E. County Supervisor Comments:

_____
Date

_____
Signature

F. District Director Comments:

_____
Date

_____
Signature

INSTRUCTIONS FOR PREPARATION

(a) To be submitted at the end of each month. The information provided in this exhibit should be on the same basis as the borrower's accounting system. (i.e. accrual or cash basis.)

(b) Column (1) will be completed to reflect the planned budget for the current year.

(c) Column (2) will be completed to reflect actuals for the month just ended. The completion of line items 1, 2, 3, 4, and 5 is optional for this column. Line 18, should be left blank since this amount should not be claimed until the end of the year.

(d) Column (3) will be completed to reflect cumulative amounts for the year-to-date. The completion of line items 1, 2, 3, 4, and 5 is optional for this column. Line 18, should be left blank since this amount should not be claimed until the end of the year.

(e) Column (4) will be left blank and used by FmHA for analysis purposes unless otherwise advised by County Supervisor.

EXHIBIT C.—*Statement of budget, income, and expense (excluding depreciation)*

Name of Borrower _____ Address _____
Project Location _____
Kind of loan _____ Term of loan _____ Interest rate _____ Amount $_____

		Budget (prior year) Basic (interim year)	Actual (prior year) or Market (interim)	Basic rent budget	Market rent budget
	INCOME FROM RENT				
	Number and kind / Per month, basic market	Beg _____ End _____ (1)	Beg _____ End _____ (2)	Beg _____ End _____ (3)	Beg _____ End _____ (4)
1	_____ units at _____				
2	_____ units at _____				
3	_____ units at _____				
4	_____ units at _____				
5	Less allowance for vacancy and contingencies as authorized by FmHA	( )	( )	( )	( )
6	Total income from rent				
	OTHER INCOME				
7	Laundry				
8	Interest Income				
9	Other (specify)				
10	Total other income (add lines 7 through 9)				
11	Total income (add lines 6 and 10)				
12	Total operation, maintenance, and other expenses				
13	Net income (loss) (excluding depreciation) (line 11 less line 12)				
	OTHER DEDUCTIONS				
14	FmHA payment (principal)				
15	Transfer to reserve				
16	Return to owner, $ ____ at __ percent		XXXXXXXX	XXXXXXX	
17	Authorized capital improvements				
18	Other authorized debt payments				
19	Other (specify)				
20	Total other deductions (add lines 14 through 19)				
21	Excess (deficit) (line 13 less line 20)				

Certified Correct _____ (date) by _____ Borrowers or Borrower's Representative Signature

Operation and maintenance expenses

	(1)	(2)	(3)	(4)
1. Salaries and wages	$	$	$	$
Caretaker				
Manager				
2. Utilities				
Water				
Sewer				
Gas				
Electricity				
Heating				
Garbage and trash removal				
Telephone				
Other				
3. Maintenance				
Janitor's supplies				
Repairs				
Building equipment repairs				
Exterminating				
Decorating				
Grounds maintenance				
Furniture and furnishing replacements				
Other				
4. Insurance				
Fire and extended coverage				
Liability				
Compensation				
Other				
5. Taxes				
Real estate				
Social security				
Special assessments				
Income				
Other				
6. Other expenses				
Accounting				
Legal				
Advertising				
Interest (FmHA)				
Other interest				
7. Total operation and maintenance expenses (add secs. 1 through 6) (total to line 12 front side)				

INSTRUCTIONS FOR PREPARATION

(1) *When used by loan applicant.*

(a) Column (1) will be completed to reflect the proposed basic rent (1%) budget (if applicable) for the interim or partial year.

(b) Column (2) will be completed to reflect the proposed market rent budget for the interim or partial year.

(c) Column (3) will be completed to reflect the proposed basic budget (if applicable) for a full 12 months of operation (typical year).

(d) Column (4) will be completed to reflect the proposed market rent budget for a full 12 months of operation (typical year).

(2) *When used by an existing borrower as a year-end statement of budget, income and expenses.* (Excluding depreciation).

(a) This Exhibit along with Exhibit D, "Year End Report," will be submitted within 60 days following the close of the borrower's year. The information provided in this Exhibit should be on the same basis as the borrower's accounting system. (i.e. accrual or cash basis.)

(b) Column (1) will be completed to reflect the planned budget for the year just ending.

(c) Column (2) will be completed to reflect the actuals for the year just ending. Line item 5 will normally be left blank for this column.

(d) Column (3) will be completed to reflect the proposed basic rent (1%) budget (if applicable) for the coming 12 months of operation.

(e) Column (4) will be completed to reflect the proposed market rent budget for the coming 12 months of operation.

NOTE.—For budget columns, 1, 3 and 4, lines 17, 18 and 19 should only reflect amounts previously discussed and authorized by FmHA.

EXHIBIT D.—*End of the year report*

Balance sheet

Name of Borrower_____ As of: _____ As of: _____

Address_____

Case number_____

Month, day, year; current year | Month, day, year; prior year

	ASSETS		
	Current assets:		
	Cash accounts:		
1	Debt service account		
2	O. & M. account		
3	Reserve account		
4	General fund account		
5	Security deposits		
6	Other cash (identify)		
7	Total cash (add 1 through 6)		
8	Accounts receivable		
9	Less: Allowance for doubtful accounts	( )	( )
10	Inventories (supplies)		
11	Prepayments		
12			
13	Total currents assets (add 7 through 12)		
	Fixed assets:		
14	Land		
15	Buildings		
16	Less: Accumulated depreciation	{ }	{ }
17	Furniture and equipment		
18	Less: Accumulated depreciation		
19			
20			
21	Total fixed assets (add 14 through 20)		
	Other assets:		
22			
23	Total assets (added 13, 21, and 22)		
	LIABILITIES AND OWNERS EQUITY		
	Current liabilities:		
24	Accounts payable		
25	Notes payable		
26	Security deposits		
27	Total current liabilities (add 24 through 26)		
	Long-term liabilities:		
28	Notes payable FmHA		
29			
30	Total long-term liabilities (add 28 through 29)		
31	Total liabilities (add 27 and 30)		
32	Owner's equity (net worth) (23 minus 30)		
33	Total liabilities and owner's equity		

General information

INSURANCE AND BONDING

Insurance coverage and policy number	Insurance company and address	Amount of coverage	Expiration date of policy

Property insurance policy No. ——_____

Liability policy No. ——_____

Fidelity policy No. ——_____

Is the fidelity bond on Form FmHA 440-24? Yes _____ No _____

TAXES

List Amount of Taxes Delinquent

Real estate: $_____ For Year(s) of _____

Personal pro: $_____ For Year(s) of _____

OFFICERS AND DIRECTORS

	Name	Address	Date of expiration of office
President			
Vice president			
Secretary			
Treasurer			
Director(s)			

Age accounts receivables (rents) as follows:

	Days				Total
	0-30	31-60	61-90	91/older	
Dollar amounts	$	$	$	$	$
Number of tenants					

Explanation of any Capital Improvement expenditure:
The Foregoing Information is Complete and Accurate to the Best of My Knowledge.

Date

Borrower or Borrower's Representative Signature

Verification

(For all non-profit organizations and for limited profit borrowers and profit borrowers with less than 21 rental units the accounts will be verified by a competent individual who is independent of the borrower or by a committee of the membership not including any officer or employee of the borrower.)

Remarks:

I (we) certify that we have reviewed the borrowers records and that the accompanying balance sheet and statement of actual budget and income accurately reflects the borrowers records.

Date

Signature

Name and title

Address
(Fiscal year ending _____)

I. *General:*

Name of Borrower _____
Address of Borrower _____ State _____
County _____
Address of Project _____ State _____
County _____
Type of Entity _____
Repayment Plan: Profit _____ Plan I _____
Plan II _____
Units: Total Units in Project _____
Section 8 Units in Project _____
Amt. of Loan(s) ____ #Yrs. Amortized ____
Int. Rate ____

II. *Financial information:*

Total Assets (from Exhibit D) -- $_____
Less: Total Liabilities (from EX. D) _____ $_____
Net Worth (from Ex. D) ___ $_____
Payment Status: Current ☐
Delin _____ $_____
Ahead of Sched _____ $_____
Reserve: Required to date ___ $_____
On Hand _____ $_____
Taxes: Current ☐ Delin ____ $_____

III. *Compliance and General Conditions:*

	Yes	No
Change Made in Bylaws	☐	☐
Facilities Properly Maintained	☐	☐
Civil Rights Agreements Complied with	☐	☐
Fire & Ext. Cov. Ins. in Force	☐	☐
Liability Ins. in Force	☐	☐
Fidelity Bond in Force	☐	☐

IV. *County Supervisor Comments:*

A. Current Operations:
B. Maintenance of Facilities and Services: Date of Last Inspection _____
C. Planned Operational Changes for Coming Year:
D. Adequacy of Recordkeeping, Debt Payment, Reserve Etc.:
E. Are Facilities Occupied By Eligible Tenants and Required Certification Obtained?

County Supervisor — Date

V. *District Director's Comments:*

District Director — Date

(7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942, 5 U.S.C. 301: Sec. 10 Pub. L. 93-357, 88 Stat. 392; 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; delegations of authority by Dir., OEO, 29 FR 14764, 33 FR 9850)

Effective date: These revisions are effective on November 8, 1976.

Dated: October 21, 1976.

FRANK W. NAYLOR, Jr.,
Acting Administrator,
Farmers Home Administration.

[FR Doc.76-32497 Filed 11-5-76;8:45 am]

SUBCHAPTER N—OTHER LOAN PROGRAMS

[FmHA Instruction 1980-D]

PART 1980—GUARANTEED LOAN PROGRAMS

Subpart D—Rural Housing Program Loans

DEFERRAL OF EFFECTIVE DATE

Beginning at page 47472 o fthe FEDERAL REGISTER dated October 29, 1976, there was published regulations to add a new Subpart D of Part 1980, Chapter XVIII, Title 7, Code of Federal Regulations concerning Guaranteed Rural Housing Loans. The publication stipulated that the regulations would become effective on October 29, 1976. The effective date of the regulation is deferred in order to permit the proper training of Farmers Home Administration field personnel and to allow sufficient time for lenders to become familiar with the new regulations including orientation by Agency representatives, if necessary.

The effective date of the regulation, which appeared at page 47482 of the FEDERAL REGISTER dated October 29, 1976, is therefore changed to read "January 1, 1977."

(42 U.S.C. 1480; 7 U.S.C. 1989; delegation of authority by Sec. of Agri. (7 CFR 2.23); delegation of authority by Asst. Sec. for Rural Development (7 CFR 2.70).)

Effective date: This amendment is effective October 29, 1976.

Dated: November 2, 1976.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.76-32735 Filed 11-5-76;8:45 am]

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

[Grapefruit Reg. 17, Amdt. 1]

PART 944—FRUITS; IMPORT REGULATIONS

Minimum Grade and Size Requirements for Imports of Grapefruit

This amendment continues Grapefruit Regulation 17 (§ 944.113; 41 FR 42181) through September 25, 1977. Said regulation is currently effective during the period September 27 through November 14, 1976. The regulation prescribes minimum grade and size requirements applicable to imported grapefruit as follows: Imported seeded grapefruit—U.S. No. 1 and 3-12/16 inches in diameter; and imported seedless grapefruit—Improved No. 2 and 3-9/16 inches in diameter. The requirements are the same as those applicable to grapefruit produced in Florida and regulated pursuant to Marketing Order No. 905.

Notice was published in the FEDERAL REGISTER on October 13, 1976 (41 F.R. 44869) that consideration was being given to a proposed amendment which would regulate the importation of grapefruit into the United States. The notice provided that all written data, views, or arguments in connection with the proposed amendment be submitted by October 28, 1976. None were received.

This amendment would be issued pursuant to Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This section requires that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, the imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. This regulation is the same as the domestic grade and size regulation for grapefruit, issued pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines and tangelos grown in Florida, which becomes effective November 15, 1976.

It is hereby found that good cause exists for not postponing the effective time of the regulatory provisions of this

amendment, as hereinafter set forth, beyond that hereinafter specified (5 U.S.C. 553) in that (a) the requirements of this amended import regulation are imposed pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), which makes such requirements mandatory; (b) the grade and size requirements of this amended import regulation are the same as those being made applicable to domestic shipments of grapefruit grown in Florida under amended Grapefruit Regulation 77 (§ 905.565); (c) notice that such action was being considered was published in the October 13, 1976, issue of the FEDERAL REGISTER (41 FR 44869), and no objection to this regulation was received; (d) the provisions of this import regulation are the same as those contained in said notice; (e) notice hereof in excess of three days, the minimum prescribed by said section 8e, is given with respect to this import regulation by prescribing an effective date of November 15, 1976, and (f) such notice is hereby determined, under the circumstances, to be reasonable.

After consideration of all relevant matters presented, including the proposal set forth in the aforesaid notice, and other available information, it is hereby found that the grade and size requirements in effect pursuant to the said amended marketing agreement and order shall apply to grapefruit to be imported.

Order. In § 944.113 (Grapefruit Regulation 17; 41 FR 42181) the introductory text of paragraph (a) and subparagraphs (a)(1) and (2) thereof are revised to read as follows:

§ 944.113 Grapefruit Regulation 17.

(a) During the period November 15, 1976, through September 25, 1977, the importation into the United States of any grapefruit is prohibited unless such grapefruit is inspected and meets the following requirements:

(1) Seeded grapefruit shall grade at least U.S. No. 1 and be of a size not smaller than $3\frac{12}{16}$ inches in diameter, except that a tolerance for seeded grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in § 51.761 of the United States Standards for Grades of Florida Grapefruit; and

(2) Seedless grapefruit shall grade at least Improved No. 2 and be of a size not smaller than $3\frac{9}{16}$ inches in diameter, except that a tolerance for seedless grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in § 51.761 of the United States Standards for Grades of Florida Grapefruit. ("Improved No. 2" shall mean grapefruit grading at least U.S. No. 2 and also meeting the requirements of the U.S. No. 1 grade as to shape (form) and color.)

* * * * *

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

Dated: November 2, 1976, to become effective November 15, 1976.

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

[FR Doc.76-32729 Filed 11-5-76;8:45 am]

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

[Milk Order No. 30]

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

Temporary Revision of Shipping Percentage

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the provisions of § 1030.7(b)(6) of the order regulating the handling of milk in the Chicago Regional marketing area.

Notice of proposed rulemaking was published in the FEDERAL REGISTER (41 FR 46605) concerning a proposed decrease in the supply plant shipping percentages for the month of November 1976. Interested persons were afforded an opportunity to file written data, views, and arguments thereon.

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, data, views, and arguments filed thereon, and other available information, it is hereby found and determined that for the month of November 1976 the supply plant shipping percentage of 35 percent set forth in § 1030.7(b)(4) shall be decreased to 25 percent and in § 1030.7(b)(7)(iii) the shipping requirement of 15 percent applicable to each plant in a unit of two or more plants shall be decreased to 10 percent.

Pursuant to the provisions of § 1030.7(b)(6) the supply plant shipping percentages set forth in §§ 1030.7(b)(4) and 1030.7(b)(7)(iii) shall be increased or decreased by up to 10 percentage points during the months of August-March, if necessary to obtain needed shipments or to prevent uneconomic shipments.

Seventeen cooperative associations, which represent most of the producers supplying the Chicago Regional market, and three proprietary handlers state that the supply plant shipping percentage should be decreased for November 1976 to prevent uneconomic shipments of milk. Some cooperatives urge the amount of such decrease should be 5 percentage points for the basic 35 percent shipping requirement, other cooperatives urged the decrease should be 10 percentage points. One cooperative advocated a decrease of 10 percentage points, from 15 percent to 5 percent, in the shipping requirement for any supply plant that is a part of a supply plant unit. The three proprietary handlers advocated the decrease in shipping requirements be limited to 5 percentage points for the basic requirement only. One handler opposed any action.

In support of this temporary change, proponents of reducing shipping requirements state that producer milk receipts are up and Class I sales are down, so that a smaller than normal percentage of the market's milk supply is needed at distributing plants to fulfill fluid milk requirements.

To fulfill their fluid milk requirements, distributing plants obtain a major portion of their milk supplies from supply plants, since about 80 percent of the market's milk supply is assembled at supply plants. For the months of May-August, Class I sales were down more than 32 million pounds compared to the same period a year ago. Moreover, receipts of producer milk on the market increased by 325 million pounds for the months of May–August compared to the same months of 1975. In September 1976, the most recent month for which data are available, producer receipts were up 81 million pounds compared to September 1975. Class I sales dropped nine million pounds from September 1975 to September 1976. This continuous trend of lower Class I sales and higher receipts of producer milk indicates that a significantly lower proportion of supply plant milk will need to be shipped to distributing plants this November compared to November 1975. Cooperatives supporting temporary decreases in shipping requirements of 10 percentage points state that they were required, in order to meet the 30 percent shipping requirement in October, to make uneconomic "back hauls" of milk and in some instances actually "depooling" over two million pounds of milk to qualify their supply plants.

This recent development of lower Class I sales and higher receipts of producer milk indicates that about 10 percent less of the milk received at supply plants will need to be shipped to distributing plants this November than in such month last year.

In order to allow maximum flexibility in obtaining milk as among supply plants in the market and to prevent, as much as possible, uneconomic handling and movements of milk merely for pooling purposes, it is concluded that the market situation requires a temporary reduction of 10 percentage points in the basic supply plant shipping standard. Moreover a reduction of 5 percentage points in the shipping requirement for supply plants with a unit is necessary to provide adequate flexibility in making shipments as among plants in a unit and to provide that such shipping percentage be not more than 50 percent of the basic shipping percentage as required by terms of the order.

It is concluded that it is necessary to reduce the pool supply plant shipping percentages as specified above for the month of November 1976 to prevent uneconomic shipments.

It is hereby found and determined that thirty days' notice of the effective date

hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area in that during November 1976 it will prevent uneconomic shipments to pool distributing plants;

(b) This temporary revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this temporary revision.

Therefore, good cause exists for making this temporary revision effective for the month of November 1976.

It is therefore ordered, That the aforesaid provisions of the order are hereby revised for November 1976.

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

Inflation Impact Statement. The United States Department of Agriculture has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A–107.

Effective date: November 8, 1976.

Signed at Washington, D.C., on November 1, 1976.

P. W. HALNON,
Acting Director, Dairy Division.

[FR Doc.76-32725 Filed 11-5-76;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 AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 1094, 1096]

[Docket Nos. AO–103–A40 and AO–257–A28]

MILK IN THE NEW ORLEANS-MISSISSIPPI AND GREATER LOUISIANA MARKETING AREAS

Hearing On Proposed Amendments to Tentative Marketing Agreements and Orders

Notice is hereby given of a public hearing to be held at the Oak Manor Motor Hotel, 8181 Airline Highway, Baton Rouge, Louisiana, beginning at 1:30 p.m., on November 22, 1976, with respect to proposed amendments to the tentative marketing agreements and to the orders, regulating the handling of milk in the New Orleans–Mississippi and Greater Louisiana marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

PROPOSED BY DAIRYMEN, INC.

PROPOSAL NO. 1

Amend § 1094.61, Computation of Uniform Price, to read as follows:

§ 1094.61 Computation of uniform price (including weighted average price).

For each month, the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content at pool plants at which no location adjustment applies as follows:

(a) Combine into one total the individual values of milk for all handlers computed pursuant to § 1094.60 except those of handlers who failed to make payments required pursuant to § 1094.71 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1094.75;

(c) Add not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the amount computed pursuant to paragraphs (a) through (c) of this section by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk included pursuant to paragraph (a) of this section; and

(2) The total hundredweight for which a value is computed pursuant to § 1094.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price", and, except for the months specified below, shall be the "uniform price" for milk received from producers;

(f) For the months specified in paragraphs (g) and (h) of this section, subtract from the amount resulting from the computations pursuant to paragrphs (a) through (c) of this section an amount computed by multiplying the hundredweight of milk specified in paragraph (d)(2) of this section by the weighted average price;

(g) For each of the months of March, April, May and June:

(1) Subtract an amount equal to 50 cents per hundredweight on the total amount of producer milk in these computations, which amount is to be retained in an interest-bearing account and distributed according to the provisions of paragraph (h) of this section;

(2) Divide the resulting sum by the total hundredweight of producer milk included in the computations; and

(3) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers;

(h) For each of the months of September, October and November:

(1) Subtract from the total hundredweight of producer milk the volume of milk received from producers whose milk was physically received at a pool plant under this order for less than 20 days' production during each of the immediately preceding months of March, April, May and June;

(2) From the amount resulting from the computations pursuant to paragraph (f) of this section, subtract an amount computed by multiplying the hundredweight of milk subtracted pursuant to paragraph (h)(1) of this section by the "weighted average price";

(3) Add one-third of the total amount subtracted pursuant to paragraph (g)(1) of this section;

(4) Divide the resulting sum by the hundredweight of producer milk resulting pursuant to paragraph (h)(1) of this section; and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

PROPOSAL NO. 2

§ 1094.73 [Amended]

Amend paragraph 1094.73(a)(2) by inserting the following words after the words "uniform price":

* * * (*Provided*, That for the months of September, October and November, milk of those producers which was deducted pursuant to paragraph 1094.61 (h)(1) shall be paid at an amount equal to not less than the "weighted average price") * * *

PROPOSAL NO. 3

Amend § 1096.61, Computation of Uniform Price, to read as follows:

§ 1096.61 Computation of uniform price (including weighted average price).

For each month, the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to § 1096.60 for all pool handlers who made reports prescribed in § 1096.30 for such month and who have made payments for the previous month pursuant to § 1096.71;

(b) Add the aggregate of all minus location adjustments and subtract the aggregate of all plus location adjustments pursuant to § 1096.75;

(c) Add an amount equal to not less than one-half of the unobligated balance on hand in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1096.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighter average price", and, except for the months specified below, shall be the "uniform price" for milk received from producers;

(f) For the months specified in paragraphs (g) and (h) of this section, subtract from the amount resulting from the computations pursuant to paragraphs (a) through (c) of this section an amount computed by multiplying the hundredweight of milk specified in paragraph (d)(2) of this section by the weighted average price;

(g) For each of the months of March, April, May and June:

(1) Subtract an amount equal to 50 cents per hundredweight on the total

amount of producer milk in these computations, which amount is to be retained in an interest-bearing account and distributed according to the provisions of paragraph (h) of this section;

(2) Divide the resulting sum by the total hundredweight of producer milk included in the computations; and

(3) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers;

(h) For each of the months of September, October and November:

(1) Subtract from the total hundredweight of producer milk the volume of milk received from producers whose milk was physically received at a pool plant under this order for less than 20 days' production during each of the immediately preceding months of March, April, May and June;

(2) From the amount resulting from the computations pursuant to paragraph (f) of this section, subtract an amount computed by multiplying the hundredweight of milk subtracted pursuant to paragraph (h)(1) of this section by the "weighted average price";

(3) Add one-third of the total amount subtracted pursuant to paragraph (g)(1) of this section;

(4) Divide the resulting sum by the hundredweight of producer milk resulting pursuant to paragraph (h)(1) of this section; and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

PROPOSAL NO. 4

§ 1096.73 [Amended]

Amend paragraph 1096.73(b) by inserting the following words after the words "uniform price":

* * * *Provided*, That for the months of September, October and November, milk of those producers which was deducted pursuant to § 1096.61(h)(1) shall be paid at an amount equal to not less than the "weighted average price") * * *

PROPOSED BY THE DAIRY DIVISION, AGRICULTURAL MARKETING SERVICE

PROPOSAL NO. 5

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator M. Truxillo, P.O. Box 456, Metairie, Louisiana 70004, or from the Hearing Clerk, Room 112-A, Administration Building, United States Department of Agriculture, Washington, D.C. 20250 or may be there inspected.

Signed at Washington, D.C., on November 3, 1976.

WILLIAM T. MANLEY,
Deputy Administrator,
Program Operations.

[FR Doc.76-32776 Filed 11-5-76;8:45 am]

FEDERAL ENERGY ADMINISTRATION

[10 CFR Part 212]

MANDATORY PETROLEUM PRICE REGULATIONS

Proposed Domestic Crude Oil Purchaser's Report Form FEA P124-M-1

The Federal Energy Administration ("FEA") hereby gives notice of its intention to issue the Domestic Crude Oil Purchaser's Report Form FEA P124-M-1 and Instructions thereto. The proposed Report Form and Instructions issued for comment today are based upon the Form FEA P124-M-O which was issued for comment by FEA on April 13, 1976 (41 FR 16172, April 16, 1976). The FEA has considered all the comments received in response to the April 13 Notice, as well as other available information and data. Accordingly, the FEA has determined to issue the attached form and instructions.

The attached form will be issued by FEA in order to collect data from first purchasers of domestic crude oil. Such data is necessary to enable FEA properly to administer its responsibility under the Energy Policy and Conservation Act (Pub. L. 94-163) for monitoring first sale prices of domestic crude oil.

As a result of FEA's consideration of the comments submitted in response to the April 13 Notice, the attached form has been revised so as no longer to require a purchaser to report first sale data on a property-by-property basis. Instead, under the revised form, purchasers will be required to report such data on a firm-by-firm basis. In addition, the attached form as revised would not require firms which purchase less than 150,000 barrels of crude oil per year to report.

Prior to the issuance of the form, however, FEA will provide a final opportunity for interested parties to comment on the form and instructions as revised. Interested persons are invited to submit comments with respect to the attached Report Form FEA P124-M-1 and Instructions. Such comments should be mailed or delivered to the General Accounting Office, Mr. John M. Lovelady, Acting Assistant Director, Regulatory Reports Review, Room 5216, 425 I Street, NW., Washington, D.C. 20548. All comments received by Monday, November 15, 1976, before 4:30 p.m., will be considered by the FEA before final action is taken on the form and instructions.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-385; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385; E.O. 11790, 39 FR 23185.)

In consideration of the foregoing, proposed Form FEA P124-M-1, as set forth below, is issued for comments.

Dated: October 29, 1976.

MICHAEL F. BUTLER,
General Counsel,
Federal Energy Administration.

DOMESTIC CRUDE OIL PURCHASER'S REPORT

FEA P124-M-1

INSTRUCTIONS

I. *Purpose.* Form FEA P124-M-1 provides the means by which firms report information required to implement the pricing policy for domestic crude oil contained in Section 401 of the Energy Policy and Conservation Act (Pub. L. 94-163), and the Energy Conservation and Production Act (Pub. L. 94-385). Specifically, it will provide the data necessary for FEA to execute its role in monitoring and enforcing the weighted average first sale price ("composite price") of domestic crude oil and to make adjustments and sanctions as deemed necessary.

II. *Who Must Submit.* Any firm which obtains ownership of domestic crude oil through purchase or other exchange must file Form FEA P124-M-1 with the Federal Energy Administration. There are two classes of firms defined for purposes of submitting the form:

(1) Firms which purchase less than 150,000 barrels of domestic crude oil per calendar year.

(2) Firms which purchase 150,000 barrels or more of domesitc crude oil per calendar year.

Firms which purchase less than 150,000 barrels of domestic crude oil per calendar year are only required to file Schedule A of the Form FEA P124-M-1. In this case, Schedule A of the form need only be filed once with the FEA. However, if the firm later purchases 150,000 barrels or more of domestic crude in any one calendar year, it must notify the FEA Domestic Crude Purchaser Coordinator at the address specified in Section III of these instructions.

Firms which purchase 150,000 barrels or more of domestic crude oil in any one calendar year must submit the form every month.

III. *Where to Submit.* A purchaser of domestic crude oil must submit Form FEA-P124-M-1 and its schedules as well as any attachment which may be required to: The Federal Energy Administration, Domestic Crude Oil Price Program, Code 2891, 2000 M Street, N.W., Washington, D.C. 20461.

IV. *When to Submit.* A. Firms required to submit Form FEA-P124-M-1 monthly, must submit Schedules A, B, C and D no later than the 15th day of the second month following the reporting period. (See Section VI. for the definition of "Reporting Period"). For example, data for the month of September must be postmarked no later than November 15. Schedule E submissions are filed quarterly and Schedule F submissions are filed on a one time basis. Schedule E data for the months of October, November and December must be postmarked no later than February 15, while data on Schedule F must be filed within 45 days of the issuance of the Form P124-M-1.

B. Firms required to make only a single submission of schedule A, must do so within 30 days of receipt of the Form FEA-P124-M-1.

V. *Records Maintenance Requirements.* Purchasers must maintain in their files, for four years, records supporting the data reported in their monthly submissions. These records shall be sufficiently complete to demonstrate the methodology, adjustments, and data used to calculate the various prices and quantity data. Such records should include:

Run tickets (or recorded run ticket data);
Allocation schedules;
Price bulletins;
Contracts;
Related information; and
Certifications.

Such records shall be made available, on request, to the FEA Administrator or his designee.

VI. *Basis for Reporting.* The FEA P124–M–1 is to be filed based upon the accounting system of the firm, historically and consistently applied for domestic crude oil purchases and sales. Because of the wide range of accounting practices and procedures used there is no concise and all-inclusive method of accounting that you will be required to apply. Each firm is to use their historical accounting procedures.

The historical method of accounting for purchases of crude oil causes the accounting records of a firm to be closed at a particular time each month. Only that information available at that time and recorded in the firm's accounting records ("Booked") is to be included in that reporting period. This information must include prior period adjustments "booked" in the reporting month.

NOTE.—If each firm uses their accounting system consistently throughout the price program, there will be no effect of different accounting procedures on the national weighted average price.

VII. *Definitions.* A. *Additions.* All acquisition of crude oil including but not limited to first purchases, Naval Petroleum Reserve Purchases, Exchange Additions and Buy/Sell additions.

B. *Crude oil.* A mixture of hydrocarbons that existed in liquid phase in underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities. Crude oil includes condensate recovered in associated or non-associated production by mechanical separators, whether located on the lease, at central-field facilities, or at the inlet side of a gas processing plant.

C. *Domestic crude oil.* Crude oil produced in the United States or from the outer continental shelf.

D. *Exchange of crude oil.* Any exchange of domestic crude oil in which *volume*, price, quality, and location differentials are given effect in the calculation of the exchange ratio, or in any matching purchase and sale transaction which has the same effect as such an exchange. Any volumes of domestic crude oil delivered pursuant to any such exchange or transaction shall be considered as having been transferred by the entity that has exchanged away or sold such volume, regardless of the volume of crude oil received or purchased by that firm in such an exchange or transaction.

E. *Firm.* Any association, company, corporation, estate, individual, joint venture, partnership, or sole proprietorship or any other entity however organized including charitable, educational, or other eleemosynary institutions (i.e. a corporation organized for charitable purposes), and the Federal government, including corporations, departments, Federal agencies and other instrumentalities, and state and local governments.

F. *First purchaser.* The person or firm who receives the first transfer for value by the producer or royalty owner. First purchasers receive the Certification of first sale as required in § 212.131(a) of the Federal Energy Administration regulations.

G. *First sale.* The first transfer for value by the producer or royalty owner. With respect to transfers between affiliated entities, the "first sale" shall be imputed to occur as if in arms length transactions.

H. *Inventory.* The amount of crude oil upon which title is held by the reporting company, including inventory in transit.

I. *New crude oil (upper-tier).* The total number of barrels of domestic crude oil produced and sold in a specific month from a property, less (A) the property's base production control level for that month and less (B) the property's current cumulative deficiency since February 1, 1976.

J. *Old crude oil (lower-tier).* The total number of barrels of crude oil produced and sold from a property in a specific month, less the total number of barrels of new crude oil for that property in that month.

K. *Parent and its consolidated entities.* A parent and those firms, if any, directly or indirectly controlled by the parent which are controlled by the parent for purposes of financial statements prepared in accordance with generally accepted accounting principles. An individual shall be deemed to control a firm which is directly or indirectly controlled by him or by his father, mother, spouse, children or grandchildren.

L. *Property.* "Property" means the right to produce domestic crude oil, which arises from a lease or from a fee interest. A producer may treat as a separate property each separate and distinct producing reservoir subject to the same right to produce crude oil, provided that such reservoir is recognized by the appropriate governmental regulatory authority as a producing formation that is separate and distinct from, and not in communication with, any other producing formation.

M. *Reduction.* The exchange or transfer of crude oil for money or its equivalent including but not limited to sales, exchange reductions and Buy/Sell reductions.

N. *Reporting period.* A calendar month for which data is being submitted. It begins at 12:01 A.M. on the first day of the month and ends at midnight on the last day of that month local time.

O. *Stripper well crude oil.* Crude oil produced and sold from a property whose average daily production per well did not exceed ten barrels per day during any preceding consecutive 12 month period beginning after December 31, 1972.

P. *Unconsolidated entity.* A firm directly or indirectly controlled by a parent but not consolidated with the parent for purposes of financial statements prepared in accordance with generally accepted accounting principles. An unconsolidated entity includes any firm consolidated with the unconsolidated entity for purposes of financial statements prepared in accordance with generally accepted accounting principles. An individual shall be deemed to control a firm which is directly or indirectly controlled by him or by his father, mother, spouse, children or grandchildren.

VIII. *Instructions for Schedule A. Part I—Company identification. Item 1.—Reporting period.* Enter the numeric codes for year and month of the reporting period. For example, enter 7602 for April 1976.

Item 2.—Report coverage indicator. Check (a) if this report applies to the parent firm or to a consolidated entity. Check (b) if this report applies to an unconsolidated entity.

Item 3.—Parent name and EIN. Enter the name and EIN number of the parent firm if an unconsolidated entity is filing this form.

Item 4.—EIN number. Enter the Internal Revenue Service (IRS) Employer Identification Number of the reporting firm. If the firm does not have an EIN number the reporting firm must contact its nearest IRS office and obtain one.

Item 5.—FEA identification number. Enter the FEA identification number of the firm for which this report is being submitted. This number will be assigned by the FEA to each purchaser.

Item 6.—Revised report indicator. Enter a check mark in the box if the report submitted is a revision to a report submitted for a previous reporting period. If this is an original report leave the box blank.

Item 7.—Firm name. Enter the name of the firm for which this report is being submitted.

Item 8.—Address change indicator. Place a check mark in the box provided if the name and/or address of the reporting firm has changed since the last report.

Item 9.—Street/box/RFD. Enter the street/box/RFD of the firm name referred to in Item 7.

Item 10.—City. Enter the name of the city for the location of the firm referred to in Item 7.

Item 11.—State. Enter the state code for the location of the firm referred to in Item 7. Refer to Appendix A for the proper state code.

Item 12.—Zip code. Enter the Zip Code of the firm referred to in Item 7.

Item 13.—Contact person. Enter the name of the person whom FEA may contact concerning this form.

Item 14.—Title. Enter the title of the contact person.

Item. 15.—Telephone number. Enter the telephone, including area code of the contact person.

Item 16.—Type of reporter. Check the appropriate box to signify (a) That you are a first purchaser of crude oil and buy domestic crude oil at or near the lease, (b) Buy domestic crude oil but not as a first purchaser or (c) Do not purchase any domestic crude oil.

Item 17.—Type of report. Check the appropriate box to signify the type of report being filed: (a) A full report, all required schedules are reported, (b) A negative report, the firm did not make a first purchase of crude oil this reporting period or (c) The firm did not purchase domestic crude oil within the last 12 months, or it purchased less than 150,000 barrels of domestic crude oil a year and thus only has to file Schedule A of this form once.

Part II. Certification. This form must be certified by the chief executive officer of the reporting firm, or such executive officer as authorized by the chief executive officer to sign for him for this purpose. In the latter case the reporting firm must file with FEA a letter of authorization signed by the Chief Executive Officer which identifies other officials authorized to certify forms for the firm. A sample format for this letter is available from FEA Regional Offices.

VII. *Instructions for Schedule B—Summary of Transactions.* Schedule B must be submitted each month in which there is one or more transactions involving domestic crude oil. Schedule B is a summary of the Volume and price data itemized on Schedules C and D. In addition to summarizing all additions and reductions, beginning and ending inventories must also be reported.

Item A.—Reporting period. Enter the numeric codes for year and month of the reporting period. For example, 7604 for April 1976.

Item B.—Revised report indicator. Enter a check mark in the box if the report submitted is a revision. Leave the box blank if this is an original report. Note: One line of data or the entire schedule may be submitted to change a previously submitted report. However, the entire line of data must be entered for each line that is to be revised. For example, if the volume of crude oil on line 220, First Purchaser-Stripper is to be changed, the Total Volume, Weighted Average Price Paid and Total Amount Paid must be filled in and resubmitted. In some cases a change in one line will necessitate a change in another line, the following table contains a list of lines that fall into this category:

FOR REVISIONS ONLY

Line Changed:	*Other Line(s) Affected*
100	500
200	390, 500
210	390, 500
220	390, 500
300	390, 500
310	390, 500
390	500
420	490, 500
490	500
500	There must be a change in a preceding line unless it was an arithmetical error.

Item C.—EIN number. Enter the IRS Employer Identification Number of the reporting firm.

Item D.—FEA identification number. Enter the FEA identification number of the firm for which this report is being submitted. This number will be assigned by the FEA to each purchaser.

Item E.—Firm name. Enter the name of the firm for which this report is being submitted.

Item F.—Submission date. Enter the year, month and day that this report was submitted. For example, April 15, 1976 would be entered as 760415.

Item G.—Summary of transactions. Enter the volume in barrels, the weighted average price (in U.S. dollars and cents rounded to the nearest whole cent) and the total price paid for each of the Domestic Crude Oil transaction types listed in column (G2). An entry must be made for each transaction type. If a firm had no transactions for one or more of the following transaction codes (200, 210, 220, 300, 310, 390, 400, 420, 490), then zeros (0) must be entered in all three columns for the appropriate code(s).

All respondents must have entries in Transactions Codes 100-Beginning Inventory, and 500-Ending Inventory. The Beginning Inventory (100) for a particular reporting period must be the same as the Ending Inventory for the previous reporting period.

Schedules B's may be checked in the following manner to make sure that the data submitted are correct:

(100 —Beginning Inventory) +(390 —Total Additions) —(490 —Total Reductions) = (500 —Ending Inventory). It is suggested that the person completing the form perform this calculation on a monthly basis.

Item G1.—Transaction code instructions. 100 Beginning inventory. Enter the volume weighted average price paid and the total price paid for domestic crude oil in inventory. The beginning inventory for the reporting period is defined as the amount of inventory held at 12:01 on the first calendar day of the reporting period. The beginning inventory for the current reporting period should be equal to the ending inventory for the prior reporting period.

200.—First purchases lower-tier (old) crude oil. Enter the volume, weighted average price paid and the total price paid for all first purchases of domestic lower-tier (old) crude oil during the reporting period. These entries should be equal to the sums of all respective lower-tier entries on Schedule C.

210—First purchases upper-tier (new) crude oil. Enter the volume weighted average price paid and the total price paid for all first purchases of domestic upper-tier (new) crude oil during the reporting period. These entries should be equal to the sums of all respective upper-tier entries on Schedule C.

220.—First purchases-stripper well crude oil. Enter the volume, weighted average price paid and the total price paid for all first purchases of stripper well crude oil during the reporting period. These entries should be equal to the sums of all respective stripper well crude oil entries on Schedule C.

300.—Other purchases. Enter the volume, weighted average price paid and the total price paid for all other purchases of domestic crude oil during the reporting period. Transaction Code 300 (Other purchases) equals the sum of all Transaction Code 301 and 302 entries (other purchases and Naval Petroleum Reserve, NPR, purchases respectively on Schedule D.)

310.—Other additions. Enter the volume, weighted average price paid and the total price paid for the total of all other additions during the reporting period. Transaction Code 310 (Net Other Additional) equals the sum of all Transaction Code 303, 304, 305 (Total Exchange Additions, Other Additions, Buy/Sell Additions) entries on Schedule D.

390.—Total additions. Enter the sum of the volumes and the total prices paid for transaction codes 200, 210, 220, 300, and 310 (First Purchases, Other Purchases, and Net Other Additional) in columns G3 and G5 respectively. Enter the quotient (weighted average price) obtained by dividing the sum of the total price paid (column G5) by the sum of the total volume (column G3) in column G4.

400.—Sales. Enter the volume, the weighted average price received and the total price received for all sales of domestic crude oil during the reporting period. Transaction Code 400 (Sales) equals the sum of all Transaction Codes 401 (Sales) entered on Schedule D.

420.—Other reductions. Enter the volume, the weighted average price paid and the total price paid for all other reductions from inventory of domestic crude oil during the reporting period. Transaction Code 420 (Other Reductions) equals the sum of all Transaction Codes (403, 404 and 405) Total Exchange Reductions, Buy/Sell Reductions and other reductions entered on Schedule D. (Transaction Code 420 is a reduction in inventory.)

490.—Total reductions. Enter the sum of the volume and the total price paid for transaction codes 400 (Sales) and 420 (Other reductions) in columns G3 and G5 respectively. Enter the quotient obtained by dividing the sum of the total price paid (column G5) by the sum of the total volume (column G3) in column G4.

500.—Ending inventory. Enter the volume, the weighted average price paid and the total price paid for the ending inventory of domestic crude oil on the last day of the reporting period. Ending Inventory (Transaction Code 500) equals Beginning Inventory (Transaction Code 100) plus Total Additions (Transaction Code 390) minus Total Reductions (Transaction Code 490)

VIII *Instructions for Schedule C—First Purchase by Producer.* Schedule C is an itemization of the firm's domestic crude oil first purchase transactions summarized by the state of production.

Item A.—Reporting period. Enter the numeric codes for the year and the month of the reporting period. For example, if this report covers the purchases you booked during April of 1976, enter 7604.

Item B.—Revised report indicator. Enter a check mark in the box if the report submitted is a revision to a report submitted for a previous reporting period. If this is an original report leave the box blank. Note: One line of data or the entire schedule may be submitted to change a previously submitted report. However the entire line of data must be entered for each line that is to be revised.

Item C.—EIN number. Enter the IRS Employer Identification Number of the reporting firm.

Item D.—FEA identification number. Enter the FEA identification number of the firm for which this report is being submitted. This number will be assigned by the FEA to each purchaser.

Item E.—Submission date. Enter the numeric codes for the year, month, and day that this report was submitted. For example, if you completed Schedule C for transactions occurring during April 1976 on June 10, 1976, enter:

7	6	0	6	1	0
y	y	m	m	d	d

Item F.—Firm name. Enter the name of the reporting firm.

Item G.—First purchases-State production summary. Columns G1 thru G8 must be completed for each state in which crude oil obtained as a first purchase was produced. Each state must be identified and reported on a separate line.

Item G1.—State of production. Enter the state (or offshore) code for the state (or offshore) in which the oil was produced. See Appendix A for the code to be used.

Item G2.—Volume of lower-tier (old) oil. Enter the volume of first purchases of Lower Tier (Old) Crude Oil in whole 42 gallon barrels.

Item G3.—Price paid for lower tier (old) crude oil. Enter the total price paid in whole U.S. dollars for the Volume of crude oil reported in Item G2.

Item G4.—Volume of upper-tier (new) crude oil. Enter the volume of First Purchases of Upper-Tier Crude Oil in whole 42 gallon barrels.

Item G5.—Price paid for upper-tier (new) crude oil. Enter the price paid in whole U.S. dollars for the volume of crude oil reported in Item G4.

Item G6.—Volume of stripper crude oil. Enter the first purchases of Stripper crude oil in whole 42 gallon barrels.

Item G7.—Price paid for stripper oil. Enter the price paid in whole U.S. dollars for the volume of crude oil reported in Item G6.

Item G8.—Total volume. Enter the Total Volume of First Purchases of Lower-Tier, Upper-Tier, and Stripper Crude Oil in whole 42 gallon barrels. The total volume is the sum of the volumes entered in columns G2, G4, and G6.

Item G9.—Total price paid. Enter the total price paid in whole U.S. dollars for the volume reported in Item G8. The total price paid is the sum of the prices entered in columns G3, G5, and G7.

IX.—*Instructions for Schedule D—other Purchases, Additions, Sales, Exchange Reductions.* The purpose of this schedule is to record all additions and reductions to the domestic crude oil inventory of a reporting firm other than the first purchases shown separately on Schedule C. Each line represents an individual firm for an individual type of transaction for a given reporting period.

Item A.—Reporting period. Enter the numeric codes for the year and month of the reporting period. For example, for the month of April 1976 enter: 7604.

Item C.—Revised report indicator. Enter a check mark in the box provided if the report submitted is a revision to a report submitted for a previous reporting period. Leave the box blank if this is an original report. If this is a revised report enter only those lines containing new or revised data. All items of data (columns G1 through G11) must be entered for each revised line.

Item C.—EIN number. Enter the IRS Employer Identification Number of the reporting firm.

Item D.—FEA identification number. Enter the FEA identification number of the firm for which this report is being submitted. This number will be assigned by the FEA to each purchaser.

Item E.—(Submission date). Enter the numeric codes for year, month and day that this report was submitted. For example, April 20, 1976 would be entered:

7	6	0	4	2	0
y	y	m	m	d	d

Item F.—Firm name. Enter the name of the firm.

Item G.—Other purchases, additions, sales and reductions. Each line represents the sum of each type of business transaction with a firm. For example, if three (3) different types of transactions are conducted with a firm, three separate line entries are required, one for each type of transaction. However, if five (5) transactions of the same type are conducted with the same firm only one line entry is required for that type of transaction.

Item G1.—Transaction code. Enter the appropriate Transaction Code from the list below for each type of transaction that occurred during the reporting period.

301.—Other purchases. Purchases which are other than first purchases of domestic crude oil which occurred during the reporting period.

302.—Naval petroleum reserve purchases. First purchases of price exempt Naval Petroleum Reserve crude oil during the reporting period.

303.—Total exchange additions. All domestic crude oil obtained through exchange during the reporting period. Do not net out exchanges with other companies. Report the actual volume additions received through exchange agreements.

304.—Buy/sell additions. All purchases of domestic crude oil made under the FEA Buy/Sell Program (Mandatory Allocation Program)—Ref. 211.65 10 CFR during the reporting period.

305.—Other additions. All other additions of domestic crude oil for the reporting period. Do not include purchases or additions already reported under transaction codes 301, 302, 303, and 304.

401.—Sales. All sales of domestic crude oil (excluding "first sales", as defined in these instructions, and sell transactions under the FEA Buy/Sell program) for the reporting period.

403.—Total exchange reductions. All domestic crude oil given up in exchange during the reporting period. Do Not net out exchanges with other companies; report the actual volume reductions of domestic crude oil given up under exchange agreements.

404.—Buy/sell reductions. Sales of domestic crude oil made under the FEA Buy/Sell program (Mandatory Allocation Program Ref. 211.65, 10 (CFR) during the reporting period.

405.—Other reductions. All other reductions in domestic crude oil including crude runs to stills. Exclude all transactions reported under Transaction Codes 401, 403 and 404.

Item G2.—Firm name. Enter the name of the purchaser, seller, or exchange partner.

Item G3.—FEA control number. Enter the FEA control number of the Purchaser/Seller. Appendix B of these instructions provide a list of FEA Control Numbers. If the number is not contained in Appendix B enter 99999.

Item G4.—Volume of lower-tier (Old) crude oil. Enter the volume of first purchases of Lower-Tier (Old) Crude Oil in whole 42 gallon barrels.

Item G5.—Price paid for lower-tier (Old) crude oil. Enter the price paid in whole U.S. dollars for the Volume of crude oil reported in Item G4.

Item G6.—Volume of upper-tier (new) (crude oil). Enter the volume of first purchases of Upper-Tier (New) Crude Oil. Enter whole 42 gallon barrels.

Item G7.—Price paid for upper-tier (new) crude oil. Enter the price paid in whole U.S. dollars for the Volume of crude oil reported in Item G6.

Item G8.—Volume of stripper crude oil. Enter the volume of first purchases of Stripper Crude Oil in whole 42 gallon barrels.

Item G9.—Price paid for stripper crude oil. Enter the price paid in whole U.S. dollars for the volume of crude oil reported in Item G8.

Item G10.—Total volume. Enter the Total First Purchases of Lower-Tier, Upper-Tier, and Stripper Crude Oil in whole 42 gallon barrels.

Item G11.—Total price paid. Enter the price paid in whole U.S. dollars for the volume reported in Item G10.

VIII. *Instructions for schedule E—first purchase by producer.* Schedule E is an itemization of all firms domestic crude oil first purchase transactions by producer. This schedule is to be submitted quarterly and will contain monthly data for each month in that quarter.

Item A.—Reporting period. Enter the numeric codes for the year and quarter of the reporting quarter. Enter the reporting periods as indicated below:

	Code
4th quarter, 1976	7604
1st quarter, 1977	7701
2d quarter, 1977	7702
3d quarter, 1977	7703
4th quarter, 1977	7704
1st quarter, 1978	7801
2d quarter, 1978	7802
3d quarter, 1978	7803
4th quarter, 1978	7804
1st quarter, 1979	7901
2d quarter, 1979	7902

Item B.—Revised report indicator. Enter a check mark in the box if the report submitted is a revision to a report submitted for a previous reporting period. If this is an original report leave the box blank. Note: One line of data or the entire schedule may be submitted to change a previously submitted report. However the entire line of data must be entered for each line that is to be revised.

Item C.—EIN number. Enter the IRS Employer Identification Number of the reporting firm.

Item D.—FEA identification number. Enter the FEA identification number of the firm for which this report is being submitted. This number will be assigned by the FEA to each purchaser.

Item E.—Submission date. Enter the numeric codes for the year, month, and day that this report was submitted. For example, if you completed Schedule E for transactions occurring during the quarter ending December 31, 1976 on February 15, 1977 enter:

7	7	0	2	1	5
y	y	m	m	d	d

Item F.—Firm name. Enter the name of the reporting firm.

Item G.—Producer/operator production summary.

Items G1 through G12 must be completed for each producer of crude oil and/or operator of crude oil properties or commingling facility from whom domestic crude oil is purchased for each month during the quarter. Each producer must be identified and reported on a separate line, grouped by state of purchase for each month during the quarter. Do not enter the names of producer/operators from whom "only stripper crude oil was purchased."

Item G1.—Month of purchase. Enter the numeric code of the month for the quarter that items G2 through G12 are being entered for, as follows:

Month	Code	Month	Code
January	01	July	07
February	02	August	08
March	03	September	09
April	04	October	10
May	05	November	11
June	06	December	12

Item G2.—State of production. Enter the state or offshore code for the area from which the crude oil was produced. See Appendix A for the proper state and offshore codes to be used.

Item G3.—Name of producer/operator. Enter the name of the producer of crude oil, operator of crude oil leases, or facility for which the transaction information is provided. The name provided must be spelled identical to the name provided in schedule F.

Item G4.—FEA control number. Enter the FEA control number of the producer. Appendix B of these instructions provides a list of FEA Control Numbers. If the number is not contained in Attachment B enter 99999.

Item G5.—Volume of lower-tier (old) crude oil. Enter the volume of first purchases of lower-tier (Old) Crude Oil in whole 42 gallon barrels.

Item G6.—Price paid for lower-tier (old) crude oil. Enter the price paid in whole U.S. dollars for the volume of lower-tier crude oil reported in Item G5.

Item G7.—Volume of upper-tier (new) crude oil. Enter the volume of first purchases of upper-tier (New) Crude Oil in whole 42 gallon barrels.

Item G8.—Price paid for upper-tier (new) crude oil. Enter the price paid in whole U.S. dollars for the volume of upper-tier crude oil reported in Item G7.

Item G9.—Volume of stripper crude oil. Enter the volume of first purchases of stripper crude oil in whole 42 gallon barrels.

Item G10.—Price paid for stripper crude oil. Enter the price paid in whole U.S. dollars for the volume of stripper crude oil reported in Item G9.

Item G11.—Total volume. Enter the Total Volume of First Purchases of Lower-Tier, Upper-Tier and Stripper Crude Oil in whole 42 gallon barrels. The total volume is the sum of the volumes entered in columns G5, G7, and G9.

Item G12.—Total price paid. Enter the total price paid in whole U.S. dollars for the total volume of crude oil reported in Item G11. The total price paid is the sum of the prices entered in columns G6, G8, and G10.

Instructions for schedule F producer/operator identification. Schedule F must be filed on a one-time basis giving the names and addresses as well as other administrative information on each producer and/or operator that your firm purchases domestic crude oil from on a first purchase basis.

Item A.—Submission date. Enter the numeric codes for the year, month, and day that this report was submitted. For example, if you completed Schedule F on December 2, 1976 enter:

7	6	1	2	0	2
y	y	m	m	d	d

Item B.—Revised report indicator. Enter a check mark in the box if the report submitted is a revision to a report submitted for a previous reporting period. If this is an original report leave the box blank. Note: One line of data or the entire schedule may

be submitted to change a previously submitted report. However the entire line of data must be entered for each line that is to be revised.

Item C.—EIN number. Enter the IRS Employer Identification Number of the reporting firm.

Item D.—FEA identification number. Enter the FEA identification number of the firm for which this report is being submitted. This number will be assigned by the FEA to each purchaser.

Item E.—Firm name. Enter the name of the reporting firm.

Item F.—Producer/operator administrative information. The following information is to be submitted on a one time basis. Individual addresses must be updated when you purchase from additional producers and/or there is a change in the information previously submitted. The information is to be provided for all producers including stripper well producers.

Item 1.—FEA producer control No. Enter the FEA Producers Control Number provided in Appendix B. If a firm's name is not listed in Appendix B and is only a stripper oil producer, enter 99999 in the Control No. If the producer is other than a stripper oil producer leave blank, and FEA will assign a Number.

Item 2.—Producer name. Enter the name of the firm from whom you purchase crude oil.

Item 3.—Address-street/box. Enter the Street/Box or RFD of the Firm Name referred to in Item 1.

Item 4.—Stripper only. Enter an X if only stripper well oil is purchased from the Produced referred to in Item 2.

Item 5.—Address—street/box (continuation). Provides additional space if needed for street address.

Item 6.—City. Enter the name of the city for the location of the firm referred to in Item 2.

Item 7.—State. Enter the State code for the location of the firm referred to in Item 2. Refer to Appendix A for the proper state code.

Item 8.—Zip Code. Enter the Zip Code for the location of the firm referred to in Item 2.

Item 9.—Subsidiary. Check yes or no to signify if the firm referred to in item 1 is a subsidiary of the firm referred to in Item E.

Item 10.—Number of properties purchased from. Enter the total number of properties from which you were the first purchaser of crude oil and received a certification as required in Title 10 CFR 212.131 by the firm named in Item 2.

Item 11.—"Number of properties you furnish production accounting." Enter the number of properties in Item 11 for which you provide production accounting, i.e., for which you provide and determine the BPCL or the upper and lower tier production.

APPENDIX A—STATE CODES

Alabama—AL
Alaska—AK
Arizona—AZ
Arkansas—AR
California—CA
Colorado—CO
Connecticut—CT
Delaware—DE
District of Columbia—DC
Florida—FL
Georgia—GA
Hawaii—HI
Idaho—ID
Illinois—IL
Indiana—IN
Iowa—IO

APPENDIX A—STATE CODES—Continued

Kansas—KS
Louisiana—LA
Maine—ME
Maryland—MD
Massachusetts—MA
Michigan—MI
Minnesota—MN
Mississippi—MS
Missouri—MO
Montana—MT
Nebraska—NE
Nevada—NV
New Hampshire—NH
New Jersey—NJ
New Mexico—NM
New York—NY
North Carolina—NC
North Dakota—ND
Ohio—OH
Oklahoma—OK
Oregon—OR
Pennsylvania—PA
Rhode Island—RI
South Carolina—SC
South Dakota—SD
Tennessee—TN
Texas—TX
Virginia—VA
Utah—UT
Vermont—VT
Washington—WA
West Virginia—WV

APPENDIX A—STATE CODES—Continued

OFFSHORE CODES

Offshore Alaska Coast, AC
Offshore Atlantic Coast, AT
Offshore California Coast, CC
Offshore Gulf Coast, GC

APPENDIX B

Are under development and will be ready within the next 15 days.

APPENDIX B

Producer name	*Control number*

FEA P-124-M-1
A

FEDERAL ENERGY ADMINISTRATION
CODE 2891
WASHINGTON, D.C. 20461

DOMESTIC CRUDE OIL PURCHASERS REPORT – SCHEDULE A ADMINISTRATIVE

THIS REPORT IS MANDATORY UNDER PUBLIC LAWS 93-275, 93-159, 94-163 and 94-385.

PART I – COMPANY IDENTIFICATION

1. Reporting Period This report is for the following period: Y Y M M.	2. Report Coverage Indicator (a) Parent or parent and consolidated entities ☐ (b) Unconsolidated entity ☐	3. Parent Name and EIN item 2(b) is checked. Name EIN
4. EIN	5. FEA Identification Number	6. Revised Report Indicator ☐ report. Leave blank if this is an original report
7. Firm Name		8. Address Change Indicator ☐ address of firm changed since last report
9. Street/Box/RFD		
10. City	11. State	12. Zip Code
13. Contact Person	14. Title	15. Telephone Number

16. Type of Reporter	(a) ☐ First Purchaser (b) ☐ Other than First Purchaser (c) ☐ Non-Purchaser	17. Type of Report	(a) ☐ Full Report (b) ☐ Negative Report (c) ☐ One-Time Report

PART II – CERTIFICATION

I certify that information submitted on and with this form is factually correct, complete, and in accordance with Federal Energy Administration Regulations (Title 10 Code of Federal Regulations) and instructions to Form P-124-M-1 and that neither the firm, nor any of the entities for which it is reporting, has engaged in exchanges, purchase and sale arrangements, or any other transaction for the purpose, or with the effect of, distorting the results reported herein.

Name	Title
Signature	Date of Submission

Title 18, USC 1001 makes it a crime for any person knowingly and willingly to make to any Agency or Department of the United States any false, fictitious or fraudulent statements as to any matter within its jurisdiction.

Company data will be treated as confidential and proprietary to the extent that it is entitled to such treatment under Section 14 of the Federal Energy Administration Act of 1974.

FEA-P-124-M-1
B

FEDERAL ENERGY ADMINISTRATION
CODE 2891
WASHINGTON, D.C. 20461

DOMESTIC CRUDE OIL PURCHASERS REPORT – SCHEDULE B SUMMARY OF TRANSACTIONS

A SCHEDULE B MUST BE SUBMITTED MONTHLY BY EACH PURCHASER OF DOMESTIC CRUDE OIL WITHIN 45 DAYS AFTER THE CLOSE OF THE REPORTING PERIOD.

A. Reporting Period
This report is for the period [ ][ ][ ][ ] Y Y M M

B. Revised Report Indicator
Check here if this is a revised report. [ ]
Leave blank if this is an original report

C. EIN
Enter your IRS Employer Identification Number [ ][ ][ ][ ][ ][ ][ ][ ][ ]

D. FEA ID Number
Enter your FEA Identification Number. [ ][ ][ ][ ][ ]

E. Firm Name _____

F. Submission Date [ ][ ][ ][ ][ ][ ] Y Y M M D D

G. Summary of Transactions

This section must be completed in its entirety by each purchaser of domestic crude oil in accordance with the instructions below:

a. All boxes must be completed. Enter a 0 (zero) in each column for each transaction code if there were no transactions of that particular type during the reporting period.
b. Total volume is to be entered in whole barrels of domestic crude oil.
c. Weighted Average Price is to be entered in dollars and cents (rounded to the nearest whole cent).
d. Total amount paid is to be entered in whole U.S. Dollars.
e. The Beginning Inventory (100) for the current reporting period must be the same as the Ending Inventory (500) for last month.
f. Transaction codes 200 First Purchases Lower Tier, 210 First Purchases Upper Tier and 220 First Purchases - Stripper entries must equal the sums of all respective schedule C entries.
g. Transaction Code 300 - Other Purchases equals the sum of all Transaction Codes 301 and 302 on Schedule D.
h. Transaction Code 310 - Net other additional equals the sum of all Transaction Codes 303, 304 and 305 on Schedule D.
i. Transaction Code 390 equals the sum of transaction codes 200, 210, 220, 300 and 310 entered on this Schedule B.
j. Transaction Code 400 - Sales equals the sum of all Transaction Codes 401 on Schedule D.
k. Transaction Code 420 - Other Reductions equals the sum of all transaction codes 403, 404 and 405 on Schedule D.
l. Transaction Code 490 - Total Reductions equals the sum of Transaction Codes 400 and 420 on this Schedule B.
m. Transaction Code 500 - Ending Inventory equals Beginning Inventory (100) plus Total Additions (390) minus Total Reductions (490) on this Schedule B.

G1. TRANSACTION CODE	G2. TRANSACTION TYPE OF DOMESTIC CRUDE OIL	G3. TOTAL VOLUME (WHOLE BARRELS OF DOMESTIC CRUDE OIL)	G4. WEIGHTED AVERAGE PRICE PAID	G5. TOTAL AMOUNT PAID (WHOLE U.S. DOLLARS)
100	Beginning Inventory			
200	First Purchases - Lower Tier (Old) Oil			
210	First Purchases - Upper Tier (New) Oil			
220	First Purchases - Stripper Oil			
300	Other Purchases			
310	Net Other Additional			
390	Total Additional			
400	Sales			
420	Other Reductions			
490	Total Reduction			
500	Ending Inventory			

FEA-P-124-M-1
C

FEDERAL ENERGY ADMINISTRATION
CODE 2891
WASHINGTON, D.C. 20461

Page ___ of ___ Pages

DOMESTIC CRUDE OIL PURCHASERS REPORT – SCHEDULE C FIRST PURCHASES BY STATE OF PRODUCTION

A Schedule C must be submitted each month in which there are first purchases of domestic crude oil. Schedule C summarizes first purchases of domestic crude oil by the state in which it is produced.

A. Reporting Period
This report is for the period ☐☐☐☐ (Y Y M M)

B. Revised Report Indicator
Check here if this is a revised report. ☐
Leave blank if this is an original report.

C. EIN
Enter your IRS Employer Identification Number ☐☐☐☐☐☐☐☐☐

D. FEA ID Number ☐☐☐☐☐

E. Submission Date ☐☐☐☐☐☐ (Y Y M M D D)

F. Firm Name _____

G. First Purchases – State Production Summary

G1 STATE OF PRODUCTION	LOWER TIER (OLD) OIL		UPPER TIER (NEW) OIL		STRIPPER OIL		TOTAL OIL	
	G2 TOTAL VOLUME (BBLS)	G3 TOTAL PRICE PAID (U.S. $)	G4 TOTAL VOLUME (BBLS)	G5 TOTAL PRICE PAID (U.S. $)	G6 TOTAL VOLUME (BBLS)	G7 TOTAL PRICE PAID (U.S. $)	G8 TOTAL VOLUME (BBLS)	G9 TOTAL PRICE PAID (U.S. $)

FEA-P-124-M-1
D

FEDERAL ENERGY ADMINISTRATION
CODE 2891
WASHINGTON, D.C. 20461

Page ___ of ___ Pages

DOMESTIC CRUDE OIL PURCHASERS REPORT – SCHEDULE D OTHER PURCHASES, ADDITIONS, SALES, EXCHANGES AND REDUCTIONS

A Schedule D must be submitted each month in which there are any transactions (other than first purchases reported on other schedules) that involve domestic crude oil. Summarize all transactions for each combination of transaction code and purchaser/seller on a separate line.

A. Reporting Period
This report is for the period ☐☐☐☐ (Y Y M M)

B. Revised Report Indicator
Check here if this is a revised report. ☐
Leave blank if this is an original report.

C. EIN
Enter your IRS Employer Identification Number ☐☐☐☐☐☐☐☐☐

D. FEA ID Number ☐☐☐☐☐

E. Submission Date ☐☐☐☐☐☐ (Y Y M M D D)

F. Firm Name _____

G. Other Purchases, Additions, Sales, Exchanges and Reductions

G1 TRANSACTION CODE	PURCHASER/SELLER		LOWER TIER (OLD) OIL		UPPER TIER (NEW) OIL		STRIPPER OIL		TOTAL OIL	
	G2 NAME	G3 CONTROL NO.	G4 TOTAL VOLUME (BBLS)	G5 TOTAL PRICE PAID (U.S. $)	G6 TOTAL VOLUME (BBLS)	G7 TOTAL PRICE PAID (U.S. $)	G8 TOTAL VOLUME (BBLS)	G9 TOTAL PRICE PAID (U.S. $)	G10 TOTAL VOLUME (BBLS)	G11 TOTAL PRICE PAID (U.S. $)

TRANSACTION CODES:
301-Other Purchases
302-Naval Petroleum Reserve Purchases
303-Total Exchange Additions
304-Buy/Sell Additions
305-Other Additions
401-Sales
403-Total Exchange Reductions
404-Buy/Sell Reductions
405-Other Reductions

FEA-P-124-M-1
E

FEDERAL ENERGY ADMINISTRATION
CODE 2891
WASHINGTON, D.C. 20461

Page ___ of ___ Pages

DOMESTIC CRUDE OIL PURCHASERS REPORT – SCHEDULE E FIRST PURCHASES PRODUCER REPORT

A Schedule E must be submitted each quarter in which there are first purchases of lower tier or upper tier domestic crude oil. Schedule E summarizes first purchases of crude oil by the producer or facility operator and the state in which the oil was produced for each month in the reporting period.

A. Reporting Quarter
This report is for the period [ ][ ][ ][ ] (Y Y Q Q)

B. Revised Report Indicator
Check here if this is a revised report. [ ]
Leave blank if this is an original report.

C. EIN
Enter your IRS Employer Identification Number [ ][ ][ ][ ][ ][ ][ ][ ][ ]

D. FEA ID Number [ ][ ][ ][ ][ ]

E. Submission Date [ ][ ][ ][ ][ ][ ] (Y Y M M D D)

F. Firm Name _____

G. Producer/Operator Transactions

G1 MO.	G2 STE.	PRODUCER/OPERATOR G3. NAME	G4 CONTROL NO.	LOWER TIER (OLD) OIL G5 TOTAL VOLUME (BBLS)	LOWER TIER (OLD) OIL G6 TOTAL PRICE PAID (U.S. $)	UPPER TIER (NEW) OIL G7 TOTAL VOLUME (BBLS)	UPPER TIER (NEW) OIL G8 TOTAL PRICE PAID (U.S. $)	STRIPPER OIL G9 TOTAL VOLUME (BBLS)	STRIPPER OIL G10 TOTAL PRICE PAID (U.S.)	TOTAL OIL G11 TOTAL VOLUME (BBLS)	TOTAL OIL G12 TOTAL PRICE PAID (U.S. $)

FEA P-124-M-0

F

FEDERAL ENERGY ADMINISTRATION
CODE 2991
WASHINGTON, D.C. 20461

Page___of___Pages

DOMESTIC CRUDE OIL PURCHASERS REPORT -- SCHEDULE F PRODUCER/OPERATOR IDENTIFICATION

A Schedule F must be filed on a one-time basis giving the names, addresses and other administrative information on each producer and/or operator that your firm purchases domestic crude oil from on a first purchase basis.

A. Submission Date
Y Y M M D D

B. Revised Report Indicator
Check here if this is a revised report. ☐
Leave blank if this is an original report.

C. EIN
Enter your IRS Employer Identification Number

D. FEA ID Number
Enter your FEA Identification Number

E. Firm Name _____

F. Producer/Operator Administrative Information

1. Producer Control No.
2. Producer Name
3. Address - Street/Box
4. Stripper Only ☐
5. Address (cont.)
6. City
7. State
8. Zip
9. Subsidiary: Yes ☐ No ☐
10. No. of properties/facilities purchase from
11. No. of properties/facilities furnish accounting for

1. Producer Control No.
2. Producer Name
3. Address - Street/Box
4. Stripper Only ☐
5. Address (cont.)
6. City
7. State
8. Zip
9. Subsidiary: Yes ☐ No ☐
10. No. of properties/facilities purchase from
11. No. of properties/facilities furnish accounting for

1. Producer Control No.
2. Producer Name
3. Address - Street/Box
4. Stripper Only ☐
5. Address (cont.)
6. City
7. State
8. Zip
9. Subsidiary: Yes ☐ No ☐
10. No. of properties/facilities purchase from
11. No. of properties/facilities furnish accounting for

1. Producer Control No.
2. Producer Name
3. Address - Street/Box
4. Stripper Only ☐
5. Address (cont.)
6. City
7. State
8. Zip
9. Subsidiary: Yes ☐ No ☐
10. No. of properties/facilities purchase from
11. No. of properties/facilities furnish accounting for

1. Producer Control No.
2. Producer Name
3. Address - Street/Box
4. Stripper Only ☐
5. Address (cont.)
6. City
7. State
8. Zip
9. Subsidiary: Yes ☐ No ☐
10. No. of properties/facilities purchase from
11. No. of properties/facilities furnish accounting for

[FR Doc.76-32611 Filed 11-2-76;2:34 pm]

NUCLEAR REGULATORY COMMISSION

[10 CFR Part 50]

LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

Periodic Updating of Final Safety Analysis Reports

The Nuclear Regulatory Commission is considering the adoption of amendments to its regulation, "Licensing of Production and Utilization Facilities," 10 CFR Part 50, which would require each applicant for or holder of a power reactor operating license which would be or was issued after January 1, 1963 to periodically submit to the Commission revised pages for its Final Safety Analysis Report (FSAR) that indicate changes made in the facility or the procedures for its operation and any analyses that are affected by these changes.

Paragraph 50.30(c)(2) of 10 CFR Part 50 requires that an applicant for a construction permit update its application, as it is amended, to eliminate superseded information and to provide an index of the updated application prior to the public hearing on the application. The updated application includes general information, technical information including the Preliminary Safety Analysis Report (PSAR), proposed technical specifications, and preliminary emergency plans. Currently, there is no corresponding regulation requiring that an applicant for or holder of an operating license incorporate revisions, changes, or amendments of the application or the license into the FSAR except where a hearing is held on an operating license application.

Revision of the FSAR to reflect the current status of a facility's safety related structures, systems and components would be of value to provide a reference document for recurring safety analyses performed by the applicant or licensee and the Commission. The information included in the updating of the FSAR should reflect all changes which involve an unreviewed safety question [1] or technical specification change pursuant to § 50.59. In addition, physical changes to the facility as described pursuant to § 50.34(b) should be included as well as current analyses which do not result in physical changes to the facility if such analyses were previously included in the FSAR. The only type of information that need not be included in the updated FSAR is that related to analyses which do not result in physical changes to the facility and which were not originally included in the FSAR.

[1] As defined in § 50.59(a)(2), "A proposed change, test, or experiment shall be deemed to involve an unreviewed safety question (i) If the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be increased; or (ii) If a possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report may be created; or (iii) If the margin of safety as defined in the basis for any technical specification is reduced."

The efficiency and effectiveness of the review and analyses will be enhanced if revisions to the FSAR are issued on a replacement-page basis accompanied by a list identifying the pages in effect following page replacement. The information to be inserted should be located in the FSAR in as appropriate a place as is possible. Maintenance of the FSAR in this manner will remove the need for repeated review of outdated portions of the FSAR and succeeding documents related to the outdated portions. To avoid duplicative reporting, information that is included in the updated FSAR may be referenced in other subsequent reports submitted to the Commission.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, and Section 553 of Title 5 of the United States Code, notice is hereby given that adoption of the following amendment to 10 CFR Part 50 is contemplated. All interested persons who desire to submit written comments or suggestions for consideration in connection with the proposed amendment should send them to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch by December 23, 1976. Copies of comments received on the proposed amendment may be examined in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C.

Section 50.71 is amended my adding a new paragraph (e) to read as follows:

§ 50.71 Maintenance of records, making of reports.

* * * * *

(e) With respect to any power reactor licensed pursuant to the provisions of § 50.22, each applicant for or holder of an operating license which would be or was issued after January 1, 1963 shall update periodically, as provided in paragraphs (e)(3) and (4) of this section, the final safety analysis report (FSAR) submitted in accordance with § 50.30(d) to assure that the information included in the FSAR pursuant to § 50.34(b) is accurate and includes a current summary and conclusions of analyses, resulting changes to the facility and facility descriptions. Summaries and conclusions of analyses and descriptive material which do not involve an unreviewed safety question or technical specification change pursuant to § 50.59 and which do not affect the correctness of the FSAR as written need not be included in the replacement pages. The updated information shall be appropriately located within the FSAR.

(1) Revisions containing updated information shall be submitted on a replacement-page basis and shall be accompanied by a list which idenifies the pages of the FSAR in effect following page replacement. One signed original and 12 additional copies of the required information shall be filed with the Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(2) The submittal shall include (i) A certification that either the information accurately presents changes made since the previous submittal or that no changes were made and (ii) An identification of significant changes made under the provisions of § 50.59 not previously submitted to the Commission.

(3) The replacement pages for the initial revision shall be filed within 12 months of either [2] or the date of submittal of the FSAR, whichever is later, and shall bring the FSAR up to date as of a maximum of 3 months prior to the date of filing the revision.

(4) Subsequent revisions shall be filed no less frequently than annually and shall reflect all changes up to a maximum of 3 months prior to the date of filing.

(5) Each replacement page shall include both a change indicator for the area changed, e.g., a bold line vertically drawn in the margin adjacent to the portion actually changed, and a page change identification (date of change or change number or both).

(Sec. 161b., Pub. Law 83-703, 68 Stat. 948, Sec. 201, Pub. Law 93-438, 88 Stat. 1242 (42 U.S.C. 2201(b), 5841).)

Dated at Washington, D.C. this 1st day of November, 1976.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc.76-32614 Filed 11-5-76;8:45 am]

FEDERAL RESERVE SYSTEM

[12 CFR Part 202]

[Reg. B; Docket No. R-0031]

EQUAL CREDIT OPPORTUNITY

Revised Proposed Rulemaking

On July 20, 1976, the Board of Governors proposed for comment (41 FR 29870), a revised version of its Regulation B, hereinafter referred to as the July proposal. The proposed revision of Regulation B was undertaken to implement the 1976 Amendments to the Equal Credit Opportunity Act (Pub. L. 94-239). On August 12 and 13, 1976, the Board held hearings on the proposed revision of Regulation B.

The original Equal Credit Opportunity Act (hereinafter referred to as the "Act"), which went into effect on October 28, 1975, prohibits discrimination in any aspect of a credit transaction on the basis of sex or marital status. The 1976 Amendments to the Act were signed into law on March 23, 1976, and will go into effect on March 23, 1977. They extend the Act's prohibition of discrimination in credit to include discrimination based on race, color, religion, national origin, age (provided the applicant has the capacity to contract), receipt of income from a public assistance program and the good faith exercise of rights under the Consumer Credit Protection Act. Since the

[2] Effective date of rule.

Amendments make substantial changes in the Act, numerous changes in existing Regulation B were necessary. The existing regulation remains in effect, however, until March 23, 1977, and creditors are required to comply with its provisions until that time.

Based on the testimony at the August hearings and on the comments, the Board has made certain changes in the proposed revision of Regulation B, and offers this proposal for public comment. The changes from the July proposal are discussed in detail below.

SECTION 202.1—AUTHORITY, SCOPE, ENFORCEMENT, PENALTIES AND LIABILITIES, INTERPRETATIONS

With the exceptions noted below, this section is substantially identical to the July proposal.

Section 202.1(c) has been expanded in response to comments requesting that the penalties and liabilities imposed by the Act be set forth fully in the text of the regulation.

The provisions relating to Board and staff interpretations, which appeared in § 202.1(c) in the July proposal, have been moved to a new section, § 202.1(d). No change has been made in these provisions, except that the name, Office of Saver and Consumer Affairs, has been changed to Division of Consumer Affairs. Some comments asserted that § 706(e) of the amended Act which authorizes the issuance of Board and official staff interpretations poses certain constitutional problems of excessive delegation of legislative authority. Congress expressly provided for the issuance of such interpretations in the statute to meet the need of small creditors that have limited access to legal counsel. The Board believes it is appropriate to implement this statutory language.

SECTION 202.2—DEFINITIONS AND RULES OF CONSTRUCTION

Section 202.2(a)—Definition of "Account". The definition is substantially similar to the July proposal and to the definition in existing Regulation B.

Section 202.2(b)—Definition of "Act". The definition is unchanged from the July proposal.

Section 202.2(c)—Definition of "Adverse action". The proposed definition is drawn from § 701(d)(6) of the amended Act. Section 202.2(c)(1) describes the actions by a creditor which will trigger the requirements imposed by the Act and the regulation relating to notification of action taken, statement of reasons for adverse action, and the ECOA notice.

The Board proposes to change paragraph (i) of § 202.2(c)(1) to follow more closely the statutory language of § 701(d)(6). In addition, because the comments revealed some confusion about this definition, paragraph (i) of the July proposal has been split into two separate paragraphs to describe two different situations. One situation in which adverse action occurs is where an applicant requests credit and the creditor refuses it. The second situation in which adverse action occurs is where the creditor rejects the applicant's initial request, but makes a counter-offer. If the applicant accepts the counter-offer, no adverse action occurs. Under paragraph (ii) of this proposal, it is made clear that if the applicant does not expressly accept or use the credit counter-offered, adverse action would occur.

Paragraph (iii) corresponds to paragraph (ii) of the July proposal and is unchanged except for the substitution of the word "classification" for "class."

Paragraph (iv) corresponds to paragraph (iii) of the July proposal and is substantially similar, although the language has been modified.

Section 202.2(c)(2) lists the actions that do not constitute adverse action. Paragraph (i) of the July proposal provided that adverse action does not occur if the applicant agrees to an unfavorable change in the terms of an account. The new proposal refers more specifically to a change in the terms of an account "expressly agreed to by an applicant."

Paragraph (ii) provides that adverse action does not occur if the creditor's action is taken because of inactivity, default, or delinquency. The new proposal further provides that forbearance by a creditor does not constitute adverse action.

Paragraph (iii) of the July proposal provided that adverse action does not occur if the creditor has not been made aware of the fact that the applicant wishes to increase a previously established credit limit. In response to public comment, the Board proposes certain modifications in paragraph (iii). As revised, a refusal to authorize a point of sale transaction that would exceed the applicant's existing credit limit would not be adverse action if the applicant has been advised of the credit limit in advance.

Paragraphs (iv) and (v) are new and were added in response to public comment. They provide that a refusal to extend credit because applicable law prohibits the creditor from extending such credit or because the creditor does not offer the type of credit requested, does not constitute adverse action. The latter provision is intended to apply, for example, in a situation where an applicant requests a credit card from an institution that does not issue credit cards. It is not intended to provide an exemption for requests for a 5% loan from a creditor which only makes 18% loans.

Section 202.2(d)—Definition of "Age". This definition is substantially unchanged from the July proposal. It indicates that the amended Act's protection against discrimination based on age extends only to natural persons and not to business entities.

Section 202.2(e)—Definition of "Applicant". This definition is substantially unchanged from the July proposal. The term includes both a person who requests credit and a debtor. The language, "other than a guarantor, surety, endorser, or similar party" has been added to resolve confusion about the scope of this term. Requiring the signature of a guarantor or endorser on a discriminatory basis would be prohibited by proposed § 202.7(d).

Section 202.2(f)—Definition of "Application". The definition of "application" is substantially unchanged from existing Regulation B and the July proposal.

With regard to the new definition of a "completed application for credit," the definition remains substantially the same as in the July proposal. The word "employs" has been replaced by "considers," and in place of "any necessary approvals by governmental agencies" the present draft susbtitutes the phrase "any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral." The phrase "provided the creditor has exercised such diligence as the circumstances require" has been replaced by the phrase "provided that the creditor has exercised reasonable diligence in obtaining the approvals or reports." The Board also proposes to add an additional sentence to require that where an application is incomplete, a creditor shall make reasonable efforts to notify the applicant and to allow reasonable opportunity for completion of the application.

Section 202.2(g)—Definition of "Board". This definition is substantially unchanged from the July proposal.

Section 202.2(h)—Definition of "Consumer credit". The definition is substantially unchanged from the July proposal.

Section 202.2(i)—Definition of "Contractually liable". The definition is unchanged from the July proposal.

Section 202.2(j)—Definition of "Credit". This definition is unchanged from the July proposal.

Section 202.2(k)—Definition of "Credit card". This definition is unchanged from the July proposal.

Section 202.2(l)—Definition of "Creditor". This definition is substantially similar to the July proposal.

Section 202.2(m)—Definition of "Credit transaction". The Board proposes to delete the phrase "solicitation of prospective applicants by advertising or other means." Discriminatory advertising practices would be subject to § 202.5(a) of the amended proposal, which prohibits discouraging of applications.

Section 202.2(n)—Definition of "Discriminate against an applicant". This definition is unchanged from the July proposal and is substantially similar to the definition in existing Regulation B. The July proposal deleted the phrase "on the basis of sex or marital status." Although some comments suggested adding the words "on a prohibited basis," the Board believes such language is not needed in the definition since the substantive provisions of the regulation refer to discrimination "on a prohibited basis."

Section 202.2(o)—Definition of "Empirically derived credit system". This definition is substantially unchanged from the July proposal. It implements § 701(b)(3) of the amended Act. The proposed definition describes in § 202.2(o)(1) an "empirically derived credit system." Such a system is defined as a credit

scoring system that evaluates, on the basis of a numerical score, an applicant's probable willingness and financial ability to repay the credit requested. The score is based on the applicant's answers to key questions which have been selected and weighted in accordance with the creditor's experience with past applicants. The system must be based on experience which is not outdated. The system may include a subjective evaluation of applicants as long as the determination of credit-worthiness is primarily controlled by the empirically derived aspect of the system. Such a system may take into account information beyond that provided on the application form, for example, a credit report which is also scored.

Section 202.2(o)(2) of the proposed definition prescribes the Board's standards for a "demonstrably and statistically sound" system. First, if the entire applicant experience of the creditor is not used in developing the system, the sample of applicants must be obtained in accordance with generally accepted sampling principles and procedures, some of which are enumerated. Second, the model development process must include the characteristics of rejected as well as accepted applicants. Third, the key questions and related scores must in the aggregate be appropriately linked to determining creditworthiness under accepted standards of analysis, and must achieve a 95 percent level of statistical significance. Fourth, the system must be validated either against a holdout sample of past applicants if all of the creditor's past applicants for the appropriate period (other than the holdout sample) were used in developing the system or against a sample of past applicants not used in developing the system. The system must be revalidated against subsequent applicants of the creditor at reasonable intervals. The Board has not defined what constitutes a reasonable interval because such intervals may vary. A creditor should undertake a revalidation whenever any significant change occurs that leads that creditor to believe that its system may be significantly less predictive. Finally, a creditor must adjust its system based upon the validation or revalidation results. The Board's standards permit a creditor, as a matter of business judgment, to set the acceptance score high or low depending upon its business objectives.

The Board proposes to add a new provision, § 202.2(o)(3), which provides that a creditor may secure either a fully developed credit system or credit experience from which an empirical system can be developed. A "borrowed" system or a system based on borrowed information must meet the standards prescribed in subsections (1) and (2) above. In addition, a creditor adopting a borrowed system or using borrowed data must validate the system against its own credit experience, beginning no later than one year after the system is instituted.

Section 202.2(p)—Definition of "Extend credit" and "Extension of credit". This definition is substantially similar to the July proposal. The Board proposes to delete "and the deferral of existing credit, the continuing in force of a previously issued credit card" as redundant.

Section 202.2(q)—Definition of "Good faith". This definition is substantially identical to the July proposal.

Section 202.2(r)—Definition of "Inadvertent error". This definition was drawn from § 202.11(a) of existing Regulation B, relating to mechanical errors. The proposed definition is substantially unchanged from the July proposal.

Section 202.2(s)—Definition of "Judgmental system of evaluating applicants". Except for the substitution of "evaluating" for "predicting," this proposed definition is the same as in the July proposal. The term is intended to encompass all systems for evaluating creditworthiness other than "demonstrably and statistically, sound empirically derived credit systems."

Section 202.2(t)—Definition of "Marital status". This definition is substantially similar to the July proposal. The Board proposes to add the word "single" in the second sentence.

Section 202.2(u)—Definition of "Negative factor or value". Section 701(b)(3) of the Act forbids the assigning of a negative factor or value to the age of an elderly person in the operation of a demonstrably and statistically sound, empirically derived credit system. The definition of "negative factor or value" is identical to the July proposal.

Section 202.2(v)—Definition of "Open-end credit". This definition is unchanged from the July proposal.

Section 202.2(w)—Definition of "Person". This definition is unchanged from the July proposal.

Section 220.2(x)—Definition of "Pertinent element of creditworthiness". This definition is substantially similar to the July proposal. Section 701(b)(2) of the amended Act permits a creditor to inquire about an applicant's age or whether an applicant's income derives from a public assistance program, if such inquiry is for the purpose of determining pertinent elements of creditworthiness. The Board proposes to define pertinent element of creditworthiness as that information which has a manifest relationship to creditworthiness.

Section 202.2(y)—Definition of "Prohibited basis". This definition is substantially unchanged from the July proposal. The term is defined as those characteristics which, under the amended Act, may not be considered in the credit decision.

A footnote interprets the statutory language of § 701(a)(1) as referring not only to the applicant's race, color, religion, national origin, sex, marital status, or age but also to such characteristics of other persons who may be indirectly involved in the transaction.

Section 202.2(z)—Definition of "Public assistance program". Section 701(a)(2) of the amended Act makes it unlawful to discriminate against an applicant "because all or part of the applicant's income derives from any public assistance program." The proposed definition provides some examples of such programs, but the term is not limited to the types of income cited. The words "Medicare and Medicaid" have been deleted because, while these programs may offset certain obligations that an applicant incurs, they do not generate additional income that the applicant may use to repay an extension of credit.

Section 202.2(aa)—Definition of "State". This definition is unchanged from the July proposal.

Section 202.2(bb)—Captions and catchlines. This section is intended to indicate the non-substantive nature of captions and catchlines. It is derived from § 226.2(11) of Regulation Z.

Section 202.2(cc)—Footnotes. This section is new, and would give footnotes to the regulation the same legal effect as the text.

Section 202.3—Special Treatment for Certain Classes of Transactions

The July proposal did not provide specialized treatment for any class of transactions. Based upon the comments received, it appears appropriate to afford certain classes special treatment as discussed below.

Four classes of transactions are given special treatment in the existing Regulation B: incidental, business, securities and public utilities credit. The Board proposes to provide specialized treatment for these classes, and for one additional class, credit extended to governmental units.

The Board proposes to continue, without substantial change, the treatment of securities and public utilities credit contained in existing Regulation B.

As to incidental credit, under the existing version of Regulation B, in order to qualify for specialized treatment, a transaction must satisfy the three following conditions: (1) It must not involve a credit card; (2) There may be no agreement permitting payment in more than four instalments; and (3) No finance charge, late charge or other fee may be imposed. The Board proposes to modify this third condition so that the imposition of a late fee would not disqualify a transaction. This change is proposed in response to comments from institutions that extend "convenience credit" (e.g., hospitals) and impose a late fee in order to alleviate collection problems.

The Board proposes to provide specialized treatment for a class of transactions not afforded such treatment in existing Regulation B, credit extended to governmental units. The Board is not aware of any allegations of credit discrimination in this class of transactions. In addition, governmental units probably possess sufficient bargaining power to overcome any discrimination that may exist.

As to business credit, § 703(a) of the amended Act authorizes the Board to adopt regulations that:

> Exempt from one or more of the provisions of this title any class of transactions not primarily for personal, family, or household purposes, if the Board makes an express finding that the application of such provision or provisions would not contribute substantially to carrying out the purposes of this title.

The July proposal did not exempt business credit from any provision of the amended Act. Numerous comments urged the Board to provide specialized treatment for this class of transactions. With certain changes discussed below, the Board proposes to carry forward the specialized treatment afforded business credit in existing Regulation B and exempt business credit from the corresponding sections of the revised Regulation B. The Board believes that the proposed specialized treatment for business credit will not reduce the protection afforded applicants by the existing regulation.

Under § 202.10 of the existing regulation, business credit transactions are subject to all provisions of Regulation B except § 202.4(c) relating to marital status inquiries; § 202.4(d) relating to the ECOA notice; §202.6 relating to the reporting of credit information; and § 202.8 relating to loan ceilings and finance charges. In addition, in a business credit transaction involving $100,000 or less, a creditor must comply with §§ 202.5(m)(2) and (3) and 202.9 only at the applicant's request.

This proposal would exempt business credit transactions from proposed §§ 202.5(d)(1) and (3) relating to inquiries about the applicant's marital status and sex. The Board also believes it is appropriate to excuse business credit from compliance with proposed § 202.10 regarding the reporting of credit information because by its nature, that section has little application to business credit.

As noted above, under existing Regulation B, creditors must comply with the requirements to retain records and provide reasons for denial only in connection with applications for less than $100,000 where the applicant so requests. Where an application involves more than $100,000, under existing Regulation B, the applicant may not invoke these protections. The $100,000 cut-off was adopted by the Board as a means of distinguishing large commercial transactions, where these protections are not likely to be needed, from smaller commercial transactions that may bear a resemblance to consumer credit transactions. In the July proposal, the Board invited comment on the question of whether a distinction related to the size of the transaction was desirable. Many commentators expressed doubt about the usefulness of a dollar cut-off on the ground that any such rule would be arbitrary. In addition, there was no consensus about the level at which the cut-off should be set. Some commentators suggested that the cut-off be set as low as $50,000; others as high as $200,000. The present proposal does not make use of a dollar cut-off. Instead, creditors would be required to provide an explanation of adverse action and to retain records upon request of the applicant. Applicants would have the right to invoke these protections regardless of the size of the transaction.

The Board believes that requiring creditors to retain records and to provide reasons for adverse action only upon request in business credit transactions constitutes a reasonable balancing of interests. There have been relatively few allegations of illegal discrimination in connection with business credit. The requirements to retain records and provide reasons for adverse action involve significant costs for creditors. The recordkeeping requirement would be particularly burdensome since applications for commercial credit typically involve a much greater volume of documents than applications for consumer credit. The notification of action taken is important in consumer credit because testimony indicated that in the past some creditors did not inform applicants of action taken, creating confusion and misunderstanding. The explanation of reasons for adverse action reveals to applicants the factors that are considered and enables them to improve their credit standing. The Board believes that, as a general rule, applicants for business credit are more sophisticated than applicants for consumer credit and, thus, there is less need to explain the reasons for adverse action. Furthermore, applications for business credit frequently involve personal contact with the lender, or a series of contacts, so that the applicant is more likely to know the reason for the creditor's adverse action without asking.

Section 202.4—General Rule Concerning Discrimination

This section is substantially similar to the July proposal. The Board believes that many of the suggested changes in the scope of the general rule can best be handled through modifications in other sections of the regulation.

Section 202.5—Rules Concerning Applications

Section 202.5(a)—Discouraging applications. This section is substantially similar to the July proposal.

Section 202.5(b)—General rules concerning requests for information. Section 202.5(b)(1) corresponds to § 202.5(a) of existing Regulation B, but the deletion of the phrase "continued ability to repay" underscores the fact that a creditor's access to information is not limited to determining the probable continuity of an applicant's income. Thus, the only barriers to a creditor's obtaining, as opposed to considering, information are contained in proposed § 202.5. This subsection is unchanged from the July proposal, except that footnote 4 has been expanded to make clear that the subsection is intended neither "to limit" nor to abrogate laws regarding privacy, privileged information, or similar matters.

Section 202.5(b)(2) has been modified to refer explicitly to the information collection requirements of proposed § 202.13. In addition, the subsection notes that a creditor may be required to request other information from applicants pursuant to an order of, or agreement with, a court or enforcement agency (including the Attorney General or a similar State official) in order to monitor compliance with the ECOA or other law, such as the Federal Fair Housing Act. It should be noted that any State law that precludes a creditor from requesting an applicant's race-national origin, sex, and marital status, and thus would conflict with proposed § 202.13, would be preempted by proposed § 202.11(b)(4).

Section 202.5(b)(3) did not appear in the July proposal. It has been added to clarify the point that the information barriers of proposed § 202.5 may not be applicable if a creditor offers a special purpose credit program as defined in proposed § 202.8.

Section 202.5(c)—Information about a spouse or former spouse. This section and the following one are specific exceptions to the general rule of proposed § 202.5(b)(1). Sections 202.5(c)(1) and (2) remain substantially unchanged from the July proposal and are derived from § 202.5(b) of the existing regulation. The only change from the July proposal is the division of paragraph (iii) into two parts: paragraph (iii) relating to reliance on a spouse's income and new paragraph (iv) relating to reliance on community property. The community property exception has been rewritten to apply when the applicant resides in a community property State or when the property upon which the applicant is relying to support the requested extension of credit is located in such a State.

Section 202.5(c)(3) has been altered to permit a creditor to ask an applicant to list any account upon which the applicant is liable and to disclose the name and address in which such an account is carried. The version of this subsection in the July proposal limited such inquiries only to those accounts that an applicant disclosed.

Section 202.5(d)—Information a creditor cannot request. While the content of §§ 202.5(d)(1), (3), (4), and (5) remain essentially unchanged from the July proposal, subsection (2) relating to alimony, child support, and separate maintenance has been expanded and subsection (6) relating to an applicant's exercise of rights under the Consumer Credit Protection Act has been deleted.

Section 202.5(d)(1) restates the provisions of §§ 202.4(c)(1) and (2) of existing Regulation B, although the language "or as required to comply with State law governing permissible finance charges or loan ceilings" was deleted in the July draft because proposed § 202.11 would preempt any such State law as it affected married persons.

The Board proposes to change the structure of § 202.5(d)(1) to state the rule relating to marital status inquiries more clearly. If an applicant applies for an individual, unsecured account, a creditor may not inquire about the applicant's marital status unless the community property exception, which has been changed to conform to § 202.5(c)(2)(iv), applies. In all other situations, a creditor may inquire about an applicant's marital status, provided that only the categories "married," "unmarried," and "separated" are used. Section 202.5(d)(1) also makes clear that a creditor may explain that the category "unmar-

ried" includes single, divorced, or widowed persons.

The Board proposes to substitute the word "individual" for "separate" in describing the type of account in connection with which a creditor cannot request marital status information in order to avoid any possible confusion involving the distinction under the community property laws between separate and community property.

Section 202.5(d)(2) replaces §§ 202.4 (c)(3) and 202.5(d)(1) of existing Regulation B relating to alimony, child support, and separate maintenance. The first sentence remains essentially unchanged in content from the prior draft, except that the word "conspicuously" has been inserted before "discloses" in order to underscore the importance of the notice. The Board also proposes to add the word "separate" before "maintenance" to provide a more accurate description of such payments.

The proposal would add a new sentence to § 202.5(d)(2) to inform creditors that a general inquiry concerning the source of an applicant's income, without further specification, may lead an applicant unintentionally to disclose alimony, child support, or separate maintenance income. Therefore, a creditor either must ask questions designed not to elicit information about such payments (i.e., questions about salary, wages, employment income, dividends as opposed to inquiries about income or other income) or must provide the appropriate notice regarding the optional nature of disclosing alimony, child support, or separate maintenance payments.

Section 202.5(d)(3) expressly prohibits a creditor from requesting the sex of an applicant. This section also incorporates the courtesy titles provision in § 202.4 (c)(4) of existing Regulation B. The proviso relating to proposed § 202.13 has been dropped from this draft since the exception concerning information for monitoring purposes has been incorporated into proposed § 202.5(b)(2). In addition, a requirement of conspicuous disclosure has been added with regard to courtesy titles.

Section 202.5(d)(4) incorporates the limitation regarding child bearing inquiries contained in the first sentence of § 202.5(h) of the existing regulation. The second sentence of § 202.5(h) is found in § 202.6(b)(3) of this proposal. The Board proposes to add a new sentence to clarify the point that the prohibition as to child bearing inquiries would not preclude a creditor from asking about the number and ages of an applicant's dependents or about dependent-related financial obligations or expenditures.

Section 202.5(d) prohibits inquiries about the race, color, religion, or national origin not only of applicants, but of any other person in connection with a credit transaction, except as necessary under proposed § 202.5(b)(3) relating to special purpose credit programs or as required by proposed § 202.5(b)(2) for compliance-monitoring purposes. Since citizenship is not the same as national origin, the Board proposes to add a new sentence, explicitly permitting a creditor to inquire about an applicant's citizenship and immigration status.

Section 202.5(d)(6) of the July proposal, which prohibited questions about an applicant's exercise of rights under the Consumer Credit Protection Act ("CCPA"), has been deleted from this draft. The amended Act protects an applicant's good faith exercise of CCPA rights, but it does not preclude creditors from inquiring about the exercise of such rights; indeed, creditors implicitly have the right under the statute to inquire and investigate whether an applicant's exercise of rights under the CCPA was made in good faith. Furthermore, as several commentators pointed out, a blanket rule against asking about the exercise of such rights would preclude creditors from inquiring about an applicant's involvement in litigation, which the Board believes is a legitimate question in connection with a determination of creditworthiness. Therefore, the Board proposes to delete the prohibition on asking about an applicant's exercise of CCPA rights.

Section 202.5(e)—Application forms. Since many creditors have indicated a desire to have sample application forms contained in the regulation, four samples have been included in Appendix B—one for open end, unsecured credit, one for closed end, secured credit, one for closed end credit, whether secured or unsecured, and one for use in community property States. A sample residential real estate application, based upon the joint Federal Home Loan Mortgage Corporation and Federal National Mortgage Association Residential Loan Application, probably will be included in the final version of the regulation. The use of the sample forms is entirely optional; a creditor may design its own applications in conformity with the provisions of proposed §§ 202.5 (c) and (d) or may modify the sample forms in accordance with the provisions of proposed § 202.5(e).

Section 202.6—Rules Concerning Evaluation of Applications

Proposed § 202.6 deals with the use of information in the evaluation of credit applications, and groups together material dealing with the evaluation stage of the credit granting process. The proposal elaborates on the substantive provisions of § 701 (a) and (b) of the amended Act.

Section 202.6(a)—General rule concerning the use of information. The basic provision of this section is that, subject to two qualifications, a creditor may consider any information that it obtains in evaluating an application. The first qualification is that no information may be used to discriminate against an applicant on a prohibited basis, except as provided in § 202.8 regarding special purpose credit programs. Second, a creditor's use of information is limited by the specific prohibitions contained in §§ 202.5 and 202.6 of the proposed regulation. As proposed, this section subsumes the first sentence of § 202.5(k) of existing Regulation B. The major change in the proposed redraft of § 202.6(a) is the substitution of "to discriminate" for the words "for the purpose of discriminating" which appeared in the July draft. The position of the clause, "so long as the information is not used to discriminate against an applicant on a prohibited basis," has also been shifted, so that the clause now follows the general rule which it qualifies.

The proposed deletion of the words "for the purpose of discrimination" is intended to underscore the fact that the general rule regarding use of information is not limited to intentional acts of discrimination. The amended Act proscribes intentional discrimination and also may be interpreted as prohibiting actions that have the effect of discriminating against applicants on any prohibited basis. Language similar to that contained in § 701(a) of the amended Act is found in Title VII of the Civil Rights Act of 1964 relating to prohibitions of discrimination in employment, and has been interpreted as prohibiting the use of requirements for employment or promotion that are discriminatory in effect even though neutral on their face, unless such reequirements are demonstrated to have a manifest relationship to the performance of the job in question.

As explained in footnote 6. the legislative history of the amended Act shows that Congress intended certain judicial decisions enunciating this "effects test" from the employment area to be applied in the credit area. The Board interprets the application of an "effects test" to the credit area to mean that the use of certain information in determining creditworthiness, even though such information is not specifically proscribed by proposed § 202.6(b), may violate the amended Act if the use of that information has the effect of denying credit to a class of persons protected by the amended Act at a substantially higher rate than persons not of that class, unless the creditor is able to establish that the information has a manifest relationship to creditworthiness.

Section 202.6(b)—Rules concerning use of information. This section contains specific limitations on the use of information. Proposed § 202.6(b)(1), which corresponds to existing § 202.5(f), prohibits a creditor from taking any prohibited basis into account in evaluating creditworthiness. However, because certain exceptions to this rule are provided in § 701(b) (2) and (3) of the amended Act, the words "except as provided in the Act and this Part" have been added. Footnote 7 points out that this section would not preclude consideration of marital status or source of income for the purpose of ascertaining the creditor's rights or remedies, in accordance with § 701(b) (1) and (2) of the amended Act, and that a prohibited basis may also be considered pursuant to proposed § 202.8, special purpose credit programs.

Proposed § 202.6(b)(2) appeared in the July proposal as part of proposed § 202.6(b)(1). Proposed paragraph (i) is new, and expressly prohibits a creditor from taking into account an applicant's age (provided the applicant is old enough to enter into a binding contract) or whether an applicant receives income from any public assistance programs, except as otherwise provided in the section. The wording of paragraphs (ii) and (iii) has been changed slightly to emphasize a distinction between the consideration of age in empirically derived credit systems and judgmental systems. In a judgmental system, a creditor is permitted to consider an applicant's age and whether an applicant's income derives from any public assistance program, but only for the purpose of determining a pertinent element of credit-worthiness. A creditor may use age itself as a predictive variable in a credit scoring system, but only if such system is a demonstrably and statistically sound, empirically derived system.

A new paragraph (iv) incorporates language which was contained in footnote 7 of the July proposal. It is based on § 701(b)(4) of the amended Act and provides that in any system of evaluating creditworthiness, a creditor may consider the age of an elderly applicant when age is used to favor the applicant.

Section 202.6(b)(3) is substantially the same as § 202.6(b)(2) of the July proposal. Proposed § 202.6(b)(4) corresponds to § 202.6(b)(3) of the July proposal. Proposed § 202.6(b)(5) corresponds to § 202.6(b)(4) of the July proposal. Two changes are proposed to make the proposal parallel to the existing Regulation B. First, the clause, "or because it is derived from part-time employment," has been added to reinstate a provision which appears in § 202.5(e) of the existing regulation. Second, with regard to alimony, child support, or separate maintenance payments, the section incorporates the provisions of § 202.5(d)(2) of existing Regulation B which gives examples of the factors a creditor may consider in determining the probable continuity of such payments.

Section 202.6(b)(6) corresponds to § 202.6(b)(5) of the previous draft. The section remains substantially the same as in the previous draft, except that the introductory language is stated in the affirmative and reworded. It should be noted that the words "when available" in paragraphs (i) and (iii) refer to the fact that such credit history may not always be available to a creditor. A creditor is required to consider such credit history only "to the extent the creditor considers credit history in evaluating creditworthiness of similarly qualified applicants for a similar type and amount of credit."

Footnote 9 regarding the lack of credit history or an unfavorable credit history has been deleted. Comments indicated that the footnote could be interpreted to require a creditor to disregard a lack of credit history or an unfavorable credit history, contrary to its credit policy.

Section 202.6(b)(7) is new, and provides that a creditor may consider an applicant's immigration status and whether he or she is a permanent resident of the United States in determining creditworthiness. A creditor may also consider whatever additional information is necessary to ascertain its rights and remedies regarding repayment. It may also take into account economic factors associated with an applicant's visa and residency status.

Section 202.6(c)—State property laws. This section incorporates the provisions of § 705(b) of the Act and is substantially identical to § 202.5(1) of the existing regulation.

SECTION 202.7—RULES CONCERNING EXTENSIONS OF CREDIT

Section 202.7(a)—Individual accounts. This section is substantially identical to the July proposal. In response to public comment, the footnote has been incorporated into the text of the regulation and the word "individual" has been substituted for "separate," since "separate" is a term of art in community property States.

Section 202.7(b) — Designation of names. Proposed § 202.7(b)(1) is substantially the same as the July proposal and § 202.4(e) of existing Regulation B. The section prohibits a creditor from requiring an applicant to open and maintain an account in a spouse's name, although an applicant may use such a name if desired. The wording has been revised to permit an applicant to use a birth-given name with a birth-given surname, spouse's surname, or a combined or hyphenated surname.

Comments indicated some concern that some surname combinations may exceed the computer capability of some billing systems which have a limited number of character spacings for the customer's name. This provision should not be interpreted as requiring creditors to redesign systems in order to handle occasional requests for combined names or other names which contain more than the usual number of character spaces.

Section 202.7(b)(2) of the July proposal has been deleted and the substance incorporated into § 202.5(c)(3).

Section 202.7(c)—Action concerning existing open end accounts. This section is substantially the same as in the July proposal and is derived from § 202.5(i) of existing Regulation B.

The Board proposes to delete the footnote which appeared in the July proposal regarding "reevaluation" of creditworthiness on the basis of an applicant's reaching a certain age or retiring, or on the basis of a change of name or marital status. Public comments pointed out that the effect of a reevaluation is identical to that of a reapplication, except that an account is not terminated during a reevaluation. A creditor may, however, institute a uniform policy of periodically updating information on file.

Section 202.7(c)(2) is derived from § 202.5(i)(2) of existing Regulation B, and has been modified slightly from the version in the July proposal. This provision permits a creditor to require a reapplication on the basis of a change in marital status where open end credit was granted to an applicant based on income earned by the applicant's spouse. Whereas the July proposal and existing Regulation B would permit such reapplication only where credit granted had been based on income earned "solely" by the applicant's spouse, this proposal would delete the word "solely" and add the clause "if the applicant's income alone at the time of the original application would not support the amount of credit currently extended."

Section 202.7(d)—Signature of spouse or other person. Section 202.7(d) has been redrafted in order to state the rules governing requests for the signature of a spouse or other person in positive terms.

Section 202.7(d)(1) states the general rule contained in § 202.7(a) of the existing regulation. It prohibits a creditor from requiring the signature of a spouse on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the credit requested. The prohibition is subject to an exception regarding secured credit, stated in subsection (2). Section 202.7(d)(1) includes a new provision regarding the ownership of property relied on by the applicant and the creditor to establish creditworthiness. This addition would permit a creditor to consider the manner in which an applicant holds title to property (e.g., whether solely or jointly with another person), and to take into account this and other factors which may bear on the value to the creditor of the applicant's interest in the property. Among the factors that a creditor could consider are whether the creditor would be able to attach and execute on the property in the event of default and whether the applicant's interest is subject to severance.

Section 202.7(d)(2) relates to secured transactions, and corresponds to § 202.7(c) of existing Regulation B. It provides that where a married applicant applies for individual credit and the nonapplicant spouse has or will have an interest in the property, the creditor may obtain the spouse's signature on any instrument necessary to make the collateral available to the creditor in the event of default. This means that a creditor may require the nonapplicant to sign the security agreement, but not the note, if such signature is sufficient under State law to give the creditor access to the property. However, where property is held in tenancy by the entirety, for example, and State law precludes execution on such property unless both spouses are contractually liable on the underlying obligation, the creditor may require the signature on the security agreement and the note.

Section 202.7(d)(3) is a corollary to subsection (1), and provides that where the applicant does not satify the creditor's standards of creditworthiness, the creditor may require a co-signer or guarantor. However, the creditor cannot require the spouse of an applicant to be the co-signer or guarantor.

Section 202.7(d)(4) corresponds to § 202.7(b) of the existing regulation, and is substantially unchanged from the July proposal. This provision applies to unsecured credit transactions in community property States.

Section 202.7(e)—Insurance. Section 202.7(e) of the July proposal, regarding conditions imposed on extensions of credit, has been deleted since the substance of this rule is embodied in § 202.4, the general rule prohibiting discrimination.

The Board proposes to add a new section, § 202.7(e), relating to insurance. The Board believes the Equal Credit Opportunity Act was not intended to make unlawful otherwise legal distinctions made by insurers. The effect of applying the Act to all credit-related insurance transactions is unknown, and may be harmful to consumers.

This proposal provides that a creditor does not violate the Act or the regulation if the availability, rates and terms on which credit life, health, accident, disability, or casualty insurance is offered vary according to a prohibited basis, since insurers frequently offer different terms or rates on the basis of a person's age, sex, or marital status.

SECTION 202.8—SPECIAL PURPOSE CREDIT PROGRAMS

Section 202.8(a)—General rule and standards for programs. Section 202.8(a) is substantially the same as the July proposal. Public comment revealed confusion about whether the words "does not qualify for credit under the special requirements of the particular program" referred to (1) Standards of creditworthiness or (2) The characteristics defining the disadvantaged class or membership group for which the program was established. The phrase was intended to refer to the latter. To clarify this point, the Board proposes to replace the quoted phrase with the following: "does not qualify under the special requirements that define eligibility for the particular program."

In § 202.8(a)(2), the word "non-profit" has been replaced by "not-for-profit," to express more exactly the types of organizations covered by § 501(c) of the Internal Revenue Code.

A number of commentators asked §§ 202.8(a)(1) and (2) expressly refer to particular credit programs, such as student loan programs. The Board is of the opinion that it would not be appropriate to list particular credit programs since any such list initially would be incomplete and would require frequent amendments to the regulation in order to update it. The Board believes the amended Act was intended to permit the continuation of existing government-sponsored credit programs such as student loan programs, and of non-profit organizations such as credit unions.

Section 202.8(b)—Special rule concerning requests and use of information. This provision is substantially unchanged from the July proposal.

Section 202.8(c)—Special rule in the case of financial need. The Board proposes to make two substantive additions to § 202.8(c). The first would allow a creditor sponsoring a special purpose credit program in which financial need is a criterion for eligibility to ask about and consider income from alimony, child support and separate maintenance because these factors, like marital status and spouse's financial resources, are necessary to a full evaluation of an applicant's financial need.

The second addition would allow a creditor sponsoring a special purpose credit program to obtain the signature of the applicant's spouse or other person to the extent required by Federal or State law. Public comments pointed out that laws authorizing special credit programs often require the signature of the applicant's spouse for the purpose of certifying financial resources.

SECTION 209.9—NOTIFICATIONS

This section encompasses all of the requirements for the notices that creditors must provide to applicants except for the credit history notice required by § 202.10(b). These requirements appears in §§ 202.4(d), 202.5(m) and 202.6(b) of existing Regulation B.

Section 202.9(a) Notification of action taken, ECOA notice, and statement of specific reasons. This section sets forth the requirements for the content and timing of notices and explains to whom and by whom notices are to be given. Section 209.9(a)(1) requires that the notice of action taken be given within a reasonable time not exceeding 30 days after a creditor receives a completed application or within a similar period after taking adverse action. The 30-day deadline is drawn from § 701(d)(1) of the amended Act.

Section 202.9(a)(1) is identical to the July proposal except that paragraph (ii) has been redesignated paragraph (iii), and a new paragraph (ii) has been added. This new paragraph is proposed in response to comment to provide for the situation where a creditor decides to take adverse action prior to receiving a completed application.

Section 202.9(a)(2) is substantially similar to the July proposal. It specifies the content of the notification when adverse action is taken. The notification must contain the statement of action taken required by existing § 202.5(m)(1), the ECOA notice required by existing § 202.4(d) and the statement of specific reasons for adverse action (or disclosure of the right to such a statement) similar to the statement required by present § 202.5(m)(2). The Board proposes to require the notices to be given together because the Board believes that public understanding of the notices would be thereby enhanced. An important point to note is that under the proposal, the ECOA notice would be given only when adverse action is taken. A creditor, of course, may continue to provide the ECOA notice at the application stage, as long as the notice is also given when adverse action is taken.

In response to public comment, the Board proposes to revise § 202.9(a)(3) to provide that if more than one applicant is involved in a credit transaction, the notification shall be provided to the primary applicant where one is readily apparent.

Section 202.9(a)(4) of the July proposal provided that, if more than one creditor is involved in a credit transaction and credit is granted, the required notification need be given by only the creditor that extends credit. If no credit is granted, or if credit is offered which is not acceptable to the applicant, then each creditor must give the required notification. For example, if an auto dealer "shops" an application to several banks and one bank extends credit, the proposal requires only that bank to provide the notice of action taken. However, if none of the banks grants credit or if the credit offered is not acceptable to the applicant, then all the banks must give the required notices, as must the dealer if it is a "creditor" in the transaction as that term as defined in Regulation B.

Creditors may arrange, however, for all required notices to be provided through one party if each creditor is identified. This procedure is sanctioned by § 701(d)(4) of the amended Act. The last sentence of § 202.9(a)(4) would insulate a creditor from liability for acts or omissions of a third party in those cases where the third party supplies the notice, provided that the creditor follows reasonable procedures to insure compliance.

A number of comments indicated there was confusion about the meaning of proposed § 202.9(a)(4). Therefore, the Board proposes to revise the first sentence of this subsection. The proposed revision should make it clear that if a transaction involves more than one creditor and the applicant is offered and accepts credit from any one of them, no notification of adverse action, the ECOA notice, reasons for denial, or disclosure of the right to such reasons need be furnished. The creditor extending the credit will, of course, give notification of approval by implication, since the applicant will receive the money, property or services requested. In response to public comment, the proposal would revise the third sentence of this subsection to indicate that, in a situation involving multiple creditors, they may select one of their number to provide the notice, and that only when the notification is provided by a third party would the identity of each creditor have to be disclosed. The July proposal could have been interpreted to mean that where no credit acceptable to the applicant is offered, the required notification, even if made directly by the creditor(s), would have to identify each creditor to whom the application had been "shopped."

Finally, this proposal would revise the fourth sentence of § 202.9(a)(4) by inserting the words "to be" after the words "notification is" to allow multiple creditors to rely on a third party's agreement to provide the required notice, without culpability if that party fails to do so.

Section 202.9(b)—Form of ECOA notice and statement of specific reasons.

This subsection is substantially identical to the July proposal. It is drawn from existing §§ 202.4(d) and 202.5(m) (2) and (3).

Unlike existing § 202.4(d), which requires creditors to use the sample ECOA notice verbatim, § 202.9(b)(1) provides that substantial adherence to the sample form constitutes compliance. In addition, this section would permit inclusion in the notice of a reference to a similar State statute or regulation and State enforcement agency.

The text of the notice is identical to that contained in existing § 202.4(d), except that the additional bases of prohibited discrimination have been added and, in the last sentence, only the word "creditor" is used, rather than a blank requiring a description of the particular type of creditor. The latter change would facilitate the giving of notices by third parties on behalf of several different types of creditors.

As in the July proposal, § 202.9(b)(2) provides a suggested form for the statement of specific reasons for adverse action. The Board proposes to revise the form by listing additional possible reasons for adverse action. A creditor could satisfy the requirements of the Fair Credit Reporting Act through proper use of this form. It should be noted that the footnote is not an addition to the form itself; it limits the permissible use of the category "unemployed" as a reason for adverse action.

The remainder of § 202.9(b)(2) is substantially identical to the July proposal, as is § 202.9(b)(3).

Section 202.9(c)—Oral notifications. This section is substantially identical to the July proposal.

Section 202.9(d)—Withdrawn applications. This subsection is identical to the July proposal.

Section 202.9(e)—Failure of compliance. This subsection is substantially similar to the July proposal.

Section 202.9(f)—Notification. This is a new subsection and is intended to define what constitutes notification. It provides that a creditor notifies an applicant when a writing addressed to the applicant is delivered or mailed to the applicant's last known address or, in the case of an oral notification, when the creditor communicates with the applicant.

Section 202.10—Furnishing of Credit Information

The July proposal noted that the Board was considering certain amendments to § 202.6 of existing Regulation B. On September 13, the Board announced that it had determined not to adopt the proposed amendments (41 FR 38759). However, the Board postponed the effective date of § 202.6 from November 1, 1976 to June 1, 1977. This proposal reflects the amended effective dates. Except as noted below, this proposal is identical to § 202.6 of existing Regulation B and § 202.10 of the July proposal.

The Board proposes to change the term "contractually liable" to "primarily liable" in §§ 202.10 (a)(1) and (b)(1). This change is intended to indicate that a creditor need not report credit histories or designate an account on which one spouse is merely a guarantor, or surety.

Footnote 9 has been added to make it clear that the requirement in paragraph (ii) of § 202.10(a)(1) that accounts held by married persons be designated "to reflect the fact of participation of both spouses," while not prohibiting a precise characterization of a person's participation (e.g., as a user or as a primarily liable party), does not require creditors to distinguish between use and contractual liability.

The Board proposes to modify the notice required by § 202.10(b)(2) in order to simplify it and to include lines for the signatures of both spouses. The signatures of both spouses are needed because the legal right of one spouse to authorize the sharing of the credit history may be ambiguous. By including two unlabeled signature lines, creditors are assured that all affected parties have consented to the joint credit reporting.

The last sentence of § 202.10(c) is new. It provides creditors with a means of verifying requests to change the manner in which credit information is reported. It is proposed in response to comments that revealed concern that persons who are not primarily liable or authorized to use accounts may sign and return the notice.

Section 202.11—Relation to State Law

Section 202.11(a) of the July proposal has been re-designated § 202.11(b)(3) in this proposal. Section 202.11(a) of this proposal states the general standard for preemption of State law. It is substantially similar to § 202.11(c) of the July proposal, except that the statutory language insulating "more protective" laws from preemption has been added.

Section 202.11(b) corresponds to § 202.11(c) of the July proposal. Comments characterized the July proposal, which upon adoption would have preempted all State equal credit laws similar to the Federal law, as excessively broad in view of the language of § 705(f) of the amended Act. Under the present proposal, only those provisions of State law which require or prohibit the acts enumerated in § 202.11(b) are deemed less protective of the applicant and preempted.

Section 202.11(c) is substantially similar to § 202.11(b) of the July proposal.

Public comments expressed concern that § 202.11(a) of the July proposal, by preempting State laws which impose liability upon a nonapplicant spouse who establishes independent creditworthiness, might annul community property laws or laws relating to the disposition of decedents' property. Section 202.11(d) of this proposal has been added to make it clear that such laws are not preempted.

The standards for exemption of State regulated transaction in § 202.11(e) are substantially similar to those in the July proposal. The words "or the administrative enforcement provisions of section 704" have been added to § 202.11(e)(2)(i) to indicate that Federal enforcement agencies retain their jurisdiction over transactions that take place in States that have been granted exemptions.

The July proposal would have made violation of an exempted State law a violation of the ECOA, "except to the extent that such State law imposes requirements not imposed by the Act and this Part." In response to comment, the Board proposes to delete this language from the corresponding section (§ 202.11(e)(2)(ii)) of this proposal. Under this proposal, any violation of an exempted State law would violate the Federal law.

Supplement I sets forth the procedure which a State may follow in applying for an exemption for any class of transactions from the provisions of §§ 701 and 702 of the Act. Applications must be signed by the Governor, Attorney General or other official of the State having primary enforcement or interpretive responsibilities under the State law in question and must include a copy of the full text of the State law, a comparison of §§ 701 and 702 of the Act with corresponding provisions of the State law, verification of the existence of adequate enforcement mechanisms and a statement explaining how any differences between the State and Federal law does not result in a diminution of protection to applicants.

Section 202.12—Record Retention

Section 202.12(a)—Retention of Prohibited Information. This section is substantially similar to the July proposal.

Section 202.12(b)—Preservation of Records. Section 202.12(b) is substantially similar to the July proposal. The footnote has been rewritten to explain more clearly what constitutes "a copy thereof." The substance of § 202.12(b)(5) of the July proposal now appears in § 202.3 of this proposal.

Section 202.13—Information for Monitoring Purposes

Section 202.13 of the July proposal was proposed as an example of the type of notation requirement the Board might adopt if it determined such a requirement should be made part of Regulation B. Public comments were sharply divided on the necessity and desirability of a notation requirement. Certain commentators felt that a notation requirement should be adopted only after a significant number of complaints were received. It was also suggested that the Board should leave the decision about requiring notation to the agencies charged with enforcement of the Act.

The Board believes it is an appropriate exercise of its rulewriting authority under the Act to adopt a simple notation requirement applicable to all creditors that extend credit for the purpose of purchasing residential real estate. The resulting data are intended to assist the agencies responsible for enforcing the ECOA, as well as the Department of

Housing and Urban Development in exercising its responsibilities under Title VIII of the Civil Rights Act of 1968. The data will serve not as conclusive proof of illegal discrimination but as an indication to the enforcement agency that further investigation is warranted.

The Board invited public comment on a number of substantive and technical issues related to notation, and received extensive comment. These issues are discussed in detail below.

Class of Application Affected. The notation requirement in the July proposal was limited to applications for loans for the purpose of purchasing residential real property. Comment was invited on the question of whether a notation requirement should be so limited. A number of commentators urged the Board to adopt a broader notation requirement, other commentators expressed support for the scope of the July proposal.

Like the July proposal, this proposal is limited to applications for loans for the purpose of purchasing residential real property. The Board feels this is appropriate for several reasons. First, a home is in most cases the single most important purchase a consumer makes and access to mortgage credit has a profound impact on the quality of life. Second, there have been more frequent and serious allegations of discrimination in this area of credit. Third, the dollar amount of applications for mortgage credit is large, with the result that the per unit cost of notation is small.

Should information be collected about all prohibited bases? The Board invited the public to address the question of whether a notation requirement should be limited to race and sex. Public comments supported this limitation on the ground that since the characteristics of race and sex frequently are known by observation or by name, questions about these characteristics are less intrusive than about religion. For this reason, the Board proposes to require creditors to ask that applicants respond to questions about age, sex, marital status, and race-national origin. The term "race-national origin" is used instead of "race" because certain of the categories required to be used describe national origin rather than race.

Racial Categories. The public was invited to address the question of what scheme of racial categories should be used. A significant number of comments suggested that the categories widely used in the employment field be used here. The Board's proposal incorporates this suggestion, but adds one additional category, "Other (Specify)," to permit the applicant to supply another description of his or her race-national origin.

Placement of Questions. The public was asked to comment on whether questions about personal characteristics should be required to appear on the creditor's application form or on a separate form. Certain commentators suggested that a separate form be used, while others urged the Board to permit them to place the questions directly on their forms in order to minimize printing and storage costs. The proposal would leave the placement of the questions to the option of each creditor.

The Board also invited the public to address the question of whether creditors should be required to supply information about personal characteristics if applicants declined to do so. Many commentators expressed the view that the applicant's wish not to provide the information should be respected, and the Board's proposal incorporates this suggestion.

The proposal would require creditors to inform applicants that the questions are voluntary and that the personal information is sought by the Federal government for the purpose of monitoring compliance with Federal anti-discrimination law.

PART 202—EQUAL CREDIT OPPORTUNITY

Sec.
202.1 Authority, scope, enforcement, penalties and liabilities, interpretations.
202.2 Definitions and rules of construction.
202.3 Special treatment for certain classes of transactions.
202.4 General rule prohibiting discrimination.
202.5 Rules concerning applications.
202.6 Rules concerning evaluation of applications.
202.7 Rules concerning extensions of credit.
202.8 Special purpose credit programs.
202.9 Notifications.
202.10 Furnishing of credit information.
202.11 Relation to State law.
202.12 Record retention.
202.13 Information for monitoring purposes.
Appendix A—Federal enforcement agencies.
Appendix B—Model application forms.
Supplement I.

AUTHORITY: Sec. 703 of Equal Credit Opportunity Act, U.S.C., Title 15, sec. 1691 et seq.

§ 202.1 Authority, Scope, Enforcement, Penalties and Liabilities, Interpretations.

(a) *Authority and scope.* This part[1] comprises the regulations issued by the Board of Governors of the Federal Reserve System pursuant to Title VII (Equal Credit Opportunity Act) of the Consumer Credit Protection Act, as amended (15 U.S.C. § 1601 et seq.). Except as otherwise provided herein, this part applies to all persons who are creditors, as defined in § 202.2(1).

(b) *Administrative enforcement.* (1) As set forth more fully in section 704 of the Act, administrative enforcement of the Act and this Part regarding certain creditors is assigned to the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Board of Directors of the Federal Deposit Insurance Corporation, Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), Administrator of the National Credit Union Administration, Interstate Commerce Commission, Civil Aeronautics Board, Secretary of Agriculture, Farm Credit Administration, Securities and Exchange Commission, and Small Business Administration.

(2) Except to the extent that administrative enforcement is specifically committed to other authorities, compliance with the requirements imposed under the Act and this part will be enforced by the Federal Trade Commission.

(c) *Penalties and liabilities.* (1) Section 706(a) of the Act provides that any creditor who fails to comply with any requirement imposed under the Act or, pursuant to section 702(g), this part is subject to civil liability for damages in individual or class actions. Pursuant to section 704 of the Act, violations of the Act or, pursuant to section 702(g), this Part constitute violations of other Federal laws that may provide further penalties. Liability for punitive damages is restricted by section 706(b) to non-governmental entities and is limited to $10,000 in individual actions and the lesser of $500,000 or one percent of the creditor's net worth in class actions. Section 706(c) provides for equitable and declaratory relief. Section 706(d) authorizes the awarding of costs and reasonable attorney's fees to an aggrieved applicant in a successful action.

(2) Section 706(e) relieves a creditor from civil liability resulting from any act done or omitted in good faith in conformity with any rule, regulation, or interpretation by the Board of Governors of the Federal Reserve System, or with any interpretations or approvals issued by a duly authorized official or employee of the Federal Reserve System, notwithstanding that after such act or omission has occurred, such rule, regulation, or interpretation is amended or otherwise determined to be invalid for any reason.

(3) As provided in section 706(f), a civil action under the Act or this part may be brought in the appropriate United States district court without regard to the amount in controversy or in any other court of competent jurisdiction within two years after the date of the occurrence of the violation or within one year after the commencement of an administrative enforcement proceeding or a civil action brought by the Attorney General.

(4) Sections 706 (g) and (h) provide that, if the agencies responsible for administrative enforcement are unable to obtain compliance with the Act or, pursuant to section 702(g), this part, they may refer the matter to the Attorney General. On such referral, or whenever the Attorney General has reason to believe that one or more creditors are engaged in a pattern or practice in violation of the Act or this part, the Attorney General may bring a civil action.

(d) *Interpretations.* (1) A request for formal Board interpretation or official staff interpretation of this Part must be addressed to the Director of the Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Each request for interpretation must contain a complete statement, signed by the person making the

[1] As used herein, the words "this part" mean Regulation B, 12 CFR 202.

request or a duly authorized agent, of all relevant facts of the transaction or credit arrangement relating to the request. True copies of all pertinent documents must be submitted with the request. The relevance of such documents must, however, be set forth in the request, and the documents must not merely be incorporated by reference. The request must contain an analysis of the bearing of the facts on the issues and specify the pertinent provisions of the statute and regulation. Within 15 business days of receipt of the request, a substantive response will be sent to the person making the request, or an acknowledgement will be sent which sets a reasonable time within which a substantive response will be given.

(2) Any request for reconsideration of an official staff interpretation of this part must be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, within 30 days of the publication of such interpretation in the FEDERAL REGISTER. Each request for reconsideration must contain a statement setting forth in full the reasons why the person making the request believes reconsideration would be appropriate, and must specify and discuss the applicability of the relevant facts, statute and regulations. Within 15 business days of receipt of such request for reconsideration, a response granting or denying the request will be sent to the person making the request, or an acknowledgement will be sent which sets a reasonable time within which such response will be given.

(3) Pursuant to § 706(e) of the Act, the Board has designated the Director and other officials of the Division of Consumer Affairs as officials "duly authorized" to issue, at their discretion, official staff interpretations of this part. This designation shall not be interpreted to include authority to approve particular creditors' forms in any manner.

(4) The type of interpretation issued will be determined by the Board and the designated officials by the following criteria:

(i) Official Board interpretations will be issued upon those requests which involve potentially controversial issues of general applicability dealing with substantial ambiguities in this Part and which raise significant policy questions.

(ii) Official staff interpretations will be issued upon those requests which, in the opinion of the designated officials, require clarification of technical ambiguities in this part or which have no significant policy implications.

(iii) Unofficial staff interpretations will be issued where the protection of § 706(e) of the Act is neither requested nor required, or where time strictures require a rapid response.

§ 202.2 Definitions and rules of construction.

For the purposes of this part, unless the context indicates otherwise, the following definitions and rules of construction shall apply: [2]

(a) *Account* means an extension of credit. When employed in relation to an account, the word *use* refers only to open end credit.

(b) *Act* means the Equal Credit Opportunity Act (Title VII of the Consumer Credit Protection Act).

(c) *Adverse action.* (1) For the purposes of notification of action taken, statement of reasons for denial, and record retention, the term means:

(i) A refusal to grant credit in substantially the amount or on substantially the terms requested by an applicant; or

(ii) An offer to grant credit other than in substantially the amount and on substantially the terms requested by an applicant, unless the applicant expressly accepts or uses the credit offered; or

(iii) A termination of an account or an unfavorable change in the terms of an account that does not affect all or a substantial portion of a classification of a creditor's accounts; or

(iv) A refusal to increase the amount of credit available to an applicant when the applicant requests an increase in accordance with procedures established by the creditor for the type of credit involved.

(2) The term does not include:

(i) A change in the terms of an account expressly agreed to by an applicant; or

(ii) Any action or forebearance relating to an account taken in connection with inactivity, default, or delinquency as to that account; or

(iii) A refusal to extend credit at a point of sale or loan in connection with the use of an account because the credit requested would exceed a previously established credit limit on the account if the limit on the account has been disclosed to the applicant; or

(iv) A refusal to extend credit because applicable law prohibits the creditor from extending the credit requested; or

(v) A refusal to extend credit because the creditor does not offer the type of credit or credit plan requested.

(d) *Age* refers only to natural persons and means the number of fully-elapsed years from the date of an applicant's birth.

(e) *Applicant* means any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may be contractually liable regarding an extension of credit other than a guarantor, surety, endorser, or similar party.

(f) *Application* means an oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested; the term does not include the use of an account or line of credit to obtain an amount of credit that does not exceed a previously established credit limit. A *completed application for credit* means an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested, including credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral, provided that the creditor has exercised reasonable diligence in obtaining the approvals or reports. Where an application is incomplete, a creditor shall make reasonable efforts to notify the applicant of the incompleteness and shall allow the applicant a reasonable opportunity to complete the application.

(g) *Board* means the Board of Governors of the Federal Reserve System.

(h) *Consumer credit* means credit extended to a natural person in which the money, property, or service that is the subject of the transaction is primarily for personal, family, or household purposes.

(i) *Contractually liable* means expressly obligated to repay all debts arising on an account by reason of an agreement to that effect.

(j) *Credit* means the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.

(k) *Credit card* means any card, plate, coupon book, or other single credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, or services on credit.

(l) *Creditor* means a person who, in the ordinary course of business, regularly participates in the decision of whether or not to extend credit. The term includes an assignee, transferee, or subrogee of an original creditor; but an assignee, transferee, subrogee, or other creditor is not a creditor regarding any violation of the Act or this Part committed by the original or another creditor unless the assignee, transferee, subrogee, or other creditor knew or reasonably should have known of the act, policy, or practice that constituted the violation before its involvement with the credit transaction. The term does not include a person whose only participation in a credit transaction involves honoring a credit card.

(m) *Credit transaction* means every aspect of an applicant's dealings with a creditor regarding an application for or an existing extension of credit, including, but not limited to, information requirements, investigation procedures, standards of creditworthiness, terms of credit, furnishing of credit information, revocation, alteration, or termination of credit and collection procedures.

(n) *Discriminate against an applicant* means to treat an applicant less favorably than other applicants.

(o) *Empirically derived credit system.* (1) The term means a credit scoring system that evaluates creditworthiness pri-

[2] Note that some of the definitions in this Part are not identical with those in 12 CFR Part 226 (Regulation Z).

marily by allocating points (or comparable basis for assigning weights) to information obtained about applicants in relation to the predictive variables that are finally included in the system. In such a system, the total number of points (or comparable basis for assigning weights) allocated to an applicant:

(i) Depends upon how the applicant, with respect to such predictive variables, compares with a probability sample drawn from, or a complete census composed of, previous applicants of a creditor who applied for credit within an immediately preceding reasonable period of time; and

(ii) Determines, alone or in conjunction with additional information about the applicant, whether an applicant is deemed creditworthy.

(2) *A demonstrably and statistically sound, empirically derived credit system* is a system:

(i) In which, if a complete census is not used, the sample is obtained by the application of, and in accordance with, generally accepted sampling principles and procedures, including pure or stratified random selection from the applicant file;

(ii) In which consideration is given to the characteristics of rejected as well as accepted applicants in the model development process;

(iii) In which the predictive variables finally included in the system are developed from the statistical sample or census of applicants, and the points (or comparable basis for assigning weights) to be given to such predictive variables are determined, in the aggregate, to have a statistically significant relation, at the 95 percent or higher level, to credit risk under appropriate standards of analysis;

(iv) Which is developed for the purpose of predicting the creditworthiness of applicants with respect to the legitimate business interests of the creditor utilizing the system, including, but not limited to, minimizing bad debt losses and operating expenses in accordance with the creditor's business judgment; and

(v) Which is validated as to its predictive ability by appropriate statistical tests applied to an independent sample drawn from the applicant file in developing the system or, in the case of a system developed by utilizing a complete census, to a sampled subset of the complete census that was held out and not used in the hypothesis testing and statistical estimation required in the empirical development of the system, and, regarding subsequent applicants of the creditor, is revalidated at reasonable periods and is adjusted as appropriate for statistically significant changes in its predictive ability as a result of such validation and revalidation tests.

(3) A creditor desiring to use a demonstrably and statistically sound, empirically derived credit system may secure either a fully-developed system or credit experience from which such a system may be developed. Any such borrowed system or system based upon borrowed experience must satisfy the tests set forth in paragraphs (1)(o)(1) and (2) of this section. In addition, validation of the system on the basis of the borrowing creditor's own credit experience must commence within one year of the date that the system is initially used by the borrowing creditor.

(p) *Extend credit* and *extension of credit* mean the granting of credit in any form and include, but are not limited to, credit granted in addition to any existing credit or credit limit; credit granted pursuant to an open end credit plan; the refinancing or other renewal of credit, including the issuance of a new credit card in place of an expiring credit card or in substitution for an existing credit card; the consolidation of two or more obligations; or the continuance of existing credit without any special effort to collect at or after maturity.

(q) *Good faith* means honesty in fact in the conduct or transaction.

(r) *Inadvertent error* means a mechanical, electronic, or clerical error that a creditor demonstrates was not intentional and occurred notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(s) *Judgmental system of evaluating applicants* means any system for evaluating the creditworthiness of an applicant other than a demonstrably and statistically sound, empirically derived credit system.

(t) *Marital status* means the state of being unmarried, married, or separated, as defined by applicable State law. For the purposes of this Part, the term "unmarried" includes persons who are single, divorced, or widowed.

(u) *Negative factor or value*, in relation to the age of an elderly applicant, means utilizing a factor, value, or weight that is less favorable regarding elderly applicants than it is regarding the class of applicants most favored by a creditor on the basis of age.

(v) *Open end credit* means credit extended pursuant to a plan under which the creditor may permit the applicant to make purchases or obtain loans from time to time directly from the creditor or indirectly by use of a credit card, check, or other device as the plan may provide. The term does not include negotiated advances under an open end real estate mortgage or a letter of credit.

(w) *Person* means a natural person, corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(x) *Pertinent element of creditworthiness*, in relation to a system of evaluating applicants, means any information about applicants that a creditor obtains and considers and that has a manifest relationship to a determination of creditworthiness.

(y) *Prohibited basis* means race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); the fact that all or part of the applicant's income derives from any public assistance program, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act.[3]

(z) *Public assistance program* means any Federal, State, or local governmental assistance program that provides a direct, continuing, periodic income supplement, whether premised on entitlement or need. The term includes, but is not limited to, Aid to Families with Dependent Children, food stamps, rent and mortgage supplement or assistance programs, Social Security and Supplemental Security Income, and unemployment compensation.

(aa) *State* means any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(bb) Captions and catchlines are intended solely as aids to convenient reference, and no inference as to the substance of any provision of this Part may be drawn from them.

(cc) Footnotes shall have the same legal effect as the text of the regulation, whether they are explanatory or illustrative in nature.

§ 202.3 Special treatment for certain classes of transactions.

(a) *Classes of transactions afforded special treatment.* Pursuant to section 703(a) of the Act, the following classes of transactions are afforded specialized treatment:

(1) Extensions of credit relating to transactions under public utility tariffs involving services provided through pipe, wire, or other connected facilities if the charges for such public utility services, the charges for delayed payment, and any discount allowed for early payment are filed with, or reviewed or regulated by, an agency of the Federal Government, a State, or a political subdivision thereof;

(2) Extensions of credit subject to regulation under section 7 of the Securi-

---

[3] The first clause of the definition is not limited to characteristics of the applicant. Therefore, "prohibited basis" as used in this Part refers not only to the race, color, religion, national origin, sex, marital status, or age of the applicant (or of partners or officers of the applicant), but refers also to the characteristics of individuals with whom the applicant deals. This means, for example, that, under the general rule stated in § 202.4, a creditor may not discriminate against a non-Jewish applicant because of that person's business dealings with Jews, or discriminate against an applicant because of the characteristics of persons to whom the extension of credit relates (e.g., the prospective tenants in an apartment complex to be constructed with the proceeds of the credit requested), or because of the characteristics of other individuals residing in the neighborhood where the property offered as collateral is located. A creditor may take into account, however, any applicable law, regulation, or executive order restricting dealings with citizens or governments of other countries or imposing limitations regarding credit extended for their use.

The second clause is limited to the applicant's receipt of public assistance income and to the applicant's good faith exercise of rights under the Consumer Credit Protection Act.

ties Exchange Act of 1934 or extensions of credit by a broker or dealer subject to regulation as a broker or dealer under the Securities Exchange Act of 1934.

(3) Extensions of consumer credit, other than of the types described in paragraphs (a)(1) and (2) of this section, that:

(i) Are not made pursuant to the terms of a credit card account;

(ii) Regarding which no finance charge as defined in § 226.4 of this Title (Regulation Z, 12 CFR 226.4) is or may be imposed; and

(iii) Which are not payable by agreement in more than four installments;

(4) Extensions of credit primarily for business or commercial purposes, including extensions of credit primarily for agricultural purposes, but excluding extensions of credit of the types described in paragraphs (a)(1) and (2) of this section;

(5) Extensions of credit made to governments or governmental subdivisions, agencies, or instrumentalities.

(b) *Public utilities credit.* The following provisions of this Part shall not apply to extensions of credit of the type described in paragraph (a)(1) of this section.

(1) Section 202.5(d)(1) concerning information about marital status;

(2) Section 202.5(d)(3) concerning information about the sex of an applicant;

(3) Section 202.10 relating to furnishing of credit information; and

(4) Section 202.12(b) relating to record retention.

(c) *Securities credit.* The following provisions of this part shall not apply to extensions of credit of the type described in paragraph (a)(2) of this section.

(1) Section 202.5(c) concerning information about a spouse or former spouse;

(2) Section 202.5(d)(1) concerning information about marital status;

(3) Section 202.5(d)(3) concerning information about the sex of an applicant;

(4) Section 202.7(b) relating to designation of name, but only to the extent necessary to prevent violation of rules regarding an account in which a broker or dealer has an interest, or rules necessitating the aggregation of accounts of spouses for the purpose of determining controlling interests, beneficial interests, beneficial ownership, or purchase limitations and restrictions;

(5) Section 202.7(c) relating to action concerning open end accounts, but only to the extent the action taken is on the basis of a change of name or marital status;

(6) Section 202.7(d) relating to signatures of a spouse or other persons;

(7) Section 202.10 relating to furnishing of credit information; and

(8) Section 202.12(b) relating to record retention.

(d) *Incidental credit.* The following provisions of this Part shall not apply to extensions of credit of the type described in paragraph (a)(3) of this section.

(1) Section 202.5(c) concerning information about a spouse or former spouse;

(2) Section 202.5(d)(1) concerning information about marital status;

(3) Section 202.5(d)(2) concerning information about income derived from alimony, child support, or separate maintenance payments;

(4) Section 202.5(d)(3) concerning information about the sex of an applicant;

(5) Section 202.7(d) relating to signatures of a spouse or other persons;

(6) Section 202.9 relating to notifications;

(7) Section 202.10 relating to furnishing of credit information; and

(8) Section 202.12(b) relating to record retention.

(e) *Business credit.* The following provisions of this Part shall not apply to extensions of credit of the type described in paragraph (a)(4) of this section.

(1) Section 202.5(d)(1) concerning information about marital status;

(2) Section 202.5(d)(3) concerning information about the sex of an applicant;

(3) Section 202.9 relating to notifications, unless an applicant, within 30 days after adverse action has been taken, requests in writing the reasons for such action;

(4) Section 202.10 relating to furnishing of credit information; and

(5) Section 202.12(b) relating to record retention, unless an applicant, within 90 days after adverse action has been taken, requests in writing that the records relating to the application be retained.

(f) *Governmental credit.* Except for § 202.1 relating to authority, scope, enforcement, penalties and liabilities, and interpretations, § 202.2 relating to definitions and rules of construction, this section, § 202.4 relating to the general rule prohibiting discrimination, § 202.6(a) relating to the use of information, § 202.11 relating to State laws, and § 202.12(a) relating to the retention of prohibited information, the provisions of this part shall not apply to extensions of credit of the type described in paragraph (a)(5) of this section.

§ 202.4 General rule prohibiting discrimination.

A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.

§ 205.5 Rules concerning applications.

(a) *Discouraging applications.* A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.

(b) *General rules concerning requests for information.* (1) Except as otherwise provided in this section, a creditor may request any information in connection with an application.[4]

[4] This subsection is not intended to limit or abrogate any Federal or State law regarding privacy, privileged information, credit reporting limitations, or similar restrictions on obtainable information. Furthermore, permission to request information should not be confused with how it may be utilized, which is governed by § 202.6 (rules concerning evaluations of applications).

2. A creditor shall request an applicant's race-national origin, sex, and marital status as required in § 202.13 (information for monitoring purposes). In addition, a creditor shall obtain any other information if ordered to do so by a court or an enforcement agency (including the Attorney General or a similar State official) or if required pursuant to an enforcement agreement with a court or agency, to monitor compliance with the Act, this part, or other Federal or State statute or regulation.

(3) The provisions of this section limiting permissible information requests are subject to the provisions of paragraphs (b) and (c) of § 202.8 (special purpose credit programs).

(c) *Information about a spouse or former spouse.* (1) Except as permitted in this subsection, a creditor may not request any information concerning the spouse or former spouse of an applicant.

(2) A creditor may request any information concerning an applicant's spouse or former spouse under (paragraph (c)(2)(v) of this section) that may be requested about the applicant if:

(i) The spouse will be permitted to use the account; or

(ii) The spouse will be contractually liable upon the account; or

(iii) The applicant is relying on the spouse's income as a basis for repayment of the credit requested; or

(iv) The applicant resides in a community property State or property upon which the applicant is relying as a basis for repayment of the credit requested is located in such a State; or

(v) The applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested.

(3) A creditor may request an applicant to list any account upon which the applicant is liable and to provide the name and address in which such account is carried.

(d) *Information a creditor cannot request.* (1) If an applicant applies for an individual, unsecured account, a creditor shall not request the applicant's marital status, unless the applicant resides in a community property State or property upon which the applicant is relying as a basis for repayment of the credit requested is located in such a State.[5] In all other instances, a creditor may request an applicant's marital status, but only the terms "married,"

[5] This provision does not preclude requesting relevant information that may indirectly disclose marital status, such as asking about liability to pay alimony, child support, or separate maintenance; the source of income to be used as a basis for the repayment of the credit requested, which may disclose that it is a spouse's income; whether any obligation disclosed by the applicant has a co-obligor, which may disclose that the co-obligor is a spouse or former spouse; or the ownership of assets, which may disclose the interest of a spouse, when such assets are relied upon in extending the credit. Such inquiries are allowed by the general rule of paragraph (b)(1) of this section.

"unmarried," and "separated" shall be used. A creditor may explain that the category "unmarried" includes single, divorced, and widowed persons.

(2) A creditor shall not inquire whether any income stated in an application is derived from alimony, child support, or separate maintenance payments, unless the creditor first conspicuously discloses to the applicant that such income need not be revealed if the applicant does not desire the creditor to consider such income in determining the applicant's creditworthiness. Since a general inquiry about income, without further specification, may lead an applicant to disclose alimony, child support, or separate maintenance income without being aware of the optional character of that disclosure, a creditor shall provide an appropriate notice to an applicant before inquiring about the source of an applicant's income, unless the terms of the inquiry preclude the unintentional disclosure of alimony, child support, or separate maintenance payments (such as an inquiry about salary, wages, employment income, investment income, or similarly specified income).

(3) A creditor shall not request the sex of an applicant. An applicant may be requested to designate a title on an application form (such as Ms., Miss, Mr., or Mrs.) if the form first conspicuously discloses that the designation of such a title is optional. An application form shall otherwise use only terms that are neutral as to sex.

(4) A creditor shall not request information about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children. This does not preclude a creditor from inquiring about the number and ages of an applicant's dependents or about dependent-related financial obligations or expenditures.

(5) A creditor shall not request the race, color, religion, or national origin of an applicant or any other person in connection with a credit transaction. A creditor may inquire, however, as to an applicant's permanent residence and immigration status.

(e) *Application forms.* A creditor may design its own application forms in conformity with the provisions of this section. Alternatively, if a creditor wishes, it may utilize the model application forms contained in Appendix B. In using the Appendix B forms, a creditor may delete any information item in its entirety and may rearrange the format, without modifying the substance, of the inquiries, provided that the appropriate notices regarding the optional nature of titles ("Ms., Miss, Mr., Mrs. Other ____"), the option to disclose alimony, child support, or separate maintenance, and the limitation concerning marital status inquiries ("Do not complete if this is an application for an individual account.") are conspicuously included in the appropriate places if the items to which they relate appear on a creditor's version of the forms. In addition, if a creditor desires, it may include on its credit application forms the ECOA notice set forth in § 202.9(b)(1). To the extent that a creditor utilizes the model forms or modifies them in accordance with the provisions of this subsection, that creditor shall be acting in compliance with the provisions of paragraphs (c) and (d) of this section.

§ 202.6 Rules concerning evaluation of applications.

(a) *General rule concerning use of information.* Except as otherwise provided in the Act and this part, a creditor may consider in evaluating an application any information that the creditor obtains, so long as the information is not used to discriminate against an applicant on a prohibited basis.[6]

(b) *Specific rules concerning use of information.* (1) Except as provided in the Act and this part, a creditor shall not take a prohibited basis into account in any system of evaluating the creditworthiness of applicants.[7]

(2)(i) Except as permitted in this section, a creditor shall not take into account an applicant's age (provided that the applicant has the capacity to enter into a binding contract) or whether an applicant's income derives from any public assistance program.

(ii) In a demonstrably and statistically sound, empirically derived credit system, a creditor may use an applicant's age as a predictive variable, provided that the age of an elderly applicant is not assigned a negative factor or value.

(iii) In a judgmental system of evaluating creditworthiness, a creditor may consider an applicant's age or whether an applicant's income derives from any public assistance program only for the purpose of determining a pertinent element of creditworthiness.[8]

(iv) In any system of evaluating creditworthiness, a creditor may consider the age of an elderly applicant when such age is to be used to favor the elderly applicant in extending credit.

(3) A creditor shall not use assumptions or aggregate statistics relating to the likelihood that any group of persons will bear or rear children or, for that reason, will receive diminished or interrupted income in the future.

(4) A creditor shall not take into account the existence of a telephone listing in the name of an applicant for consumer credit. A creditor may take into account the existence of a telephone in the residence of such an applicant.

(5) A creditor shall not discount or exclude from consideration the income of an applicant or the spouse of the applicant because of a prohibited basis or because it is derived from part-time employment, but a creditor may consider the amount and probable continuance of any income in evaluating an applicant's creditworthiness. Where an applicant relies on alimony, child support, or separate maintenance payments in applying for credit, a creditor shall consider such

---

[6] This subsection permits a creditor to consider any information obtained in accordance with the provisions of the Act and this part so long as the information is not used to discriminate against an applicant on a prohibited basis. In this regard, paragraph (b) of this section specifically proscribes certain practices (such as assumptions about age, telephone listings, child bearing or rearing, and income from part-time employment) that involve the use of insufficiently refined general information not causally related to a determination of creditworthiness where the effect of using such information may be to discriminate against an applicant on a prohibited basis even though the creditor has no intent to discriminate.

There are other practices, however, that are not specifically proscribed by paragraph (b) of this section that, in certain circumstances, also may have the effect of unlawfully discriminating against applicants if (i) Those practices result in adverse credit decisions regarding applicants who are members of a class protected by the Act and this part; (ii) Such decisions occur at a significantly higher rate than adverse decisions involving applicants who are not members of the protected class; and (iii) The information or evaluation criteria underlying the practice does not have a manifest relationship to the creditor's determination of creditworthiness.

The legislative history of the Act indicates that the Congress intended this "effects test" concept, as outlined in the employment field by the Supreme Court in the cases of *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971), and *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405 (1975), to be applicable to a creditor's determination of creditworthiness. See Senate Report to accompany H.R. 6516, No. 94–589, pp. 4–5; House Report to accompany H.R. 6516 No. 94–210, p. 5.

[7] This provision does not prevent a creditor from considering the marital status of an applicant or the source of an applicant's income for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit and not to discriminate in a determination of creditworthiness. Furthermore, a prohibited basis may be considered in accordance with § 202.8 (special purpose credit programs).

[8] Concerning income derived from a public assistance program, a creditor may consider, for example, the length of time an applicant has been receiving such income; whether an applicant intends to continue to reside in the jurisdiction in relation to residency requirements for benefits; and the status of an applicant's dependents to ascertain whether benefits that the applicant is presently receiving will continue.

Concerning age, a creditor may consider, for example, the occupation and length of time to retirement of an applicant to ascertain whether the applicant's income (including retirement income, as applicable) will support the extension of credit until its maturity; or the adequacy of any security offered if the duration of the credit extension will exceed the life expectancy of the applicant. An elderly applicant might not qualify for a five-percent down, 30-year mortgage loan because the duration of the loan exceeds the applicant's life expectancy and the cost of realizing on the collateral might exceed the applicant's equity. The same applicant might qualify with a larger downpayment and a shorter loan maturity. A creditor could also consider an applicant's age, for example, to assess the significance of the applicant's length of employment or residence (a young applicant may have just entered the job market; an elderly applicant may recently have retired and moved from a long-time residence).

payments as income to the extent that they are likely to be consistently made. Factors that a creditor may consider in determining the likelihood of consistent payments include, but are not limited to, whether the payments are received pursuant to a written agreement or court decree; the length of time that the payments have been received; the regularity of receipt; the availability of procedures to compel payments; and the creditworthiness of the payor, including the credit history of the payor where available to the creditor under the Fair Credit Reporting Act or other applicable laws.

(6) To the extent that a creditor considers credit history in evaluating the creditworthiness of similarly qualified applicants for a similar type and amount of credit, in evaluating an applicant's creditworthiness, a creditor shall consider:

(i) The credit history, when available, of accounts designated as accounts that the applicant and a spouse are permitted to use or for which both are primarily liable;

(ii) On the applicant's request, any information that the applicant may present tending to indicate that the credit history being considered by the creditor does not accurately reflect the applicant's creditworthiness; and

(iii) On the applicant's request, the credit history, when available, of any account reported in the name of the applicant's spouse or former spouse that the applicant can demonstrate accurately reflects the applicant's creditworthiness.

(7) A creditor may consider whether an applicant is a permanent resident of the United States, the applicant's immigration status, and such additional information as may be necessary to ascertain its rights and remedies regarding repayment.

(c) *State property laws.* A creditor's consideration or application of State property laws directly or indirectly affecting creditworthiness shall not constitute unlawful discrimination for the purposes of the Act or this part.

§ 202.7 Rules concerning extensions of credit.

(a) *Individual accounts.* A creditor shall not refuse to grant an individual account to a creditworthy applicant on the basis of sex, marital status, or any other prohibited basis.

(b) *Designation of name.* A creditor shall not prohibit an applicant from opening or maintaining an account in a birth-given first name and a surname that is the applicant's birth-given surname, spouse's surname, or a combined surname.

(c) *Action concerning existing open end accounts.* (1) In the absence of evidence of inability or unwillingness to repay, a creditor shall not take any of the following actions regarding an applicant who is contractually liable on an existing open end account on the basis of the applicant's reaching a certain age or retiring or on the basis of a change in the applicant's name or marital status:

(i) Require a reapplication; or

(ii) Change the terms of the account; or

(iii) Terminate the account.

(3) A creditor may require a reapplication regarding an open end account on the basis of a change in an applicant's name or marital status where the credit granted was based on income earned by the applicant's spouse if the applicant's income alone at the time of the original application would not support the amount of credit currently extended.

(d) *Signature of spouse or other person.* (1) Except as provided in paragraph (d)(2) of this section, a creditor shall not require the signature of an applicant's spouse on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested. When property is relied upon to establish creditworthiness, a creditor may consider State law, the form of ownership of the property; its amenability to attachment, execution, severance, and partition; and other factors that may affect the value to the creditor of the applicant's interest in the property.

(2) If an applicant requests individual, secured credit and the applicant's spouse has or will have an interest in the property being offered as security, the creditor may require the signature of the spouse on any instrument that is necessary to make the property available to satisfy the debt in the event of default, for example, any instrument necessary to create a valid lien, pass clear title, waive inchoate rights, or assign earnings.

(3) If, under a creditor's standards of creditworthiness, the personal liability of a party other than the applicant is necessary to support the extension of the credit requested, the creditor may request that the applicant obtain a cosigner, guarantor, or the like. The applicant's spouse may serve as an additional party, but the creditor shall not require that the spouse be the additional party.

(4) Where a married applicant requests individual, unsecured credit and resides in a community property State or the property upon which the applicant is relying is located in such a State, a creditor may require the signature of the spouse on any instrument that is necessary to make the community property available to satisfy the debt in the event of default if:

(i) Applicable State law denies the applicant power to manage or control sufficient community property to qualify for the amount of credit requested under the creditor's standards of creditworthiness; and

(ii) The applicant does not have sufficient separate property to qualify for the amount of credit requested without regard to any community property.

(e) *Insurance.* Differentiation in the availability, rates and terms on which credit-related casualty insurance or credit life, health, accident, or disability insurance is offered or provided by a creditor to an applicant shall not constitute a violation of the Act or this part.

§ 202.8 Special purpose credit programs.

(a) *General rule and standards for programs.* The Act and this Part are not violated and adverse action is not taken if, pursuant to any of the following types of special purpose credit programs, a creditor refuses to extend credit to an applicant solely because the applicant does not qualify under the special requirements that define eligibility for the particular program:

(1) Any credit assistance program expressly authorized by Federal or State law for the benefit of an economically disadvantaged class of persons; or

(2) Any credit assistance program administered by a not-for-profit organization, as defined under section 501(c) of the Internal Revenue Code of 1954, as amended, for the benefit of its members or for the benefit of an economically disadvantaged class of persons; or

(3) Any special purpose credit program offered by a profit-making organization to meet special social needs, provided that:

(i) The program is established and administered pursuant to a written plan that: (A) Identifies the class or classes of persons that the program is designed to benefit and (B) Sets forth the procedures and standards for extending credit pursuant to the program;

(ii) The program is established and administered to extend credit to a class of persons who, pursuant to the customary standards of creditworthiness used by the program organization, either probably would not receive such credit or probably would receive it on less favorable terms than are ordinarily available to other applicants applying to the organization for a similar type and amount of credit; and

(iii) The program is administered so as not to discriminate against an applicant on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), income derived from a public assistance program, or good faith exercise of any right under the Consumer Credit Protection Act, except that all program participants may be required to share one or more of those characteristics so long as the program was not established and is not administered with the purpose of evading the requirements of the Act or this part.

(b) *Special rule concerning requests and use of information.* If all participants in any of the three types of special purpose credit programs described in paragraph (a) of this section are required to possess one or more common characteristics relating to race, color, religion, national origin, sex, marital status, age, or receipt of income from a public assistance program and if the special purpose credit program otherwise satisfies the requirements of paragraph (a) of this section, then, notwith-

standing the prohibitions of §§ 202.5 and 202.6, the creditor may request of an applicant and may consider, in determining eligibility for such program, information regarding the common characteristics required for eligibility. In such circumstances, the solicitation and consideration of that information shall not constitute unlawful discrimination for the purposes of the Act or this Part.

(c) *Special rule in the case of financial need.* If financial need is one of the criteria for the extension of credit under any of the three types of special purpose credit programs described in paragraph (a) of this section, then, notwithstanding the prohibitions of §§ 202.5 and 202.6, the creditor may request and consider, in determining eligibility for such program, information regarding an applicant's marital status, income from alimony, child support, or separate maintenance, and the spouse's financial resources. In addition, notwithstanding the prohibitions of § 202.7(d), a creditor may require the signature of an applicant's spouse or other person on an application or credit instrument if required by Federal or State law. In such circumstances, the solicitation and consideration of that information and the obtaining of a required signature shall not constitute unlawful discrimination for the purposes of the Act or this part.

§ 202.9 Notifications.

(a) *Notification of action taken, ECOA notice, and statement of specific reasons*—(1) *Notification of action taken.* A creditor shall notify an applicant of action taken within a reasonable time not to exceed 30 days:

(i) After receiving a completed application concerning the creditor's approval of, or adverse action regarding, the application (notification of approval may be express or by implication, where, for example, the applicant receives a credit card, money, property, or services in accordance with the application);

(ii) After taking adverse action before an application is completed; and

(iii) After taking adverse action regarding an existing account.

(2) *Content of notification.* Any notification given to an applicant against whom adverse action is taken shall be in writing and shall contain: a statement of the action taken; a statement of the provisions of section 701(a) of the Act; the name and address of the Federal agency that administers compliance concerning the creditor giving the notification; and

(i) A statement of specific reasons for the action taken; or

(ii) A disclosure of the applicant's right to a statement of reasons within 30 days after receipt by the creditor of a request made within 60 days of such notification, the disclosure to include the name, address and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the statement of reasons orally, the notification shall also include a disclosure of the applicant's right to have any oral statement of reasons confirmed in writing within a reasonable time, not to exceed 30 days, after a written request for confirmation is made by the applicant.

(3) *Multiple applicants.* If there is more than one applicant, the notification need only be given to one of them, but must be given to the primary applicant where one is readily apparent.

(4) *Multiple creditors.* If a transaction involves more than one creditor and the applicant accepts the credit offered, this section does not require further notification by any creditor. If a transaction involves more than one creditor and the applicant does not accept the credit offered, then each creditor must comply with this section. The required notification may be provided indirectly through a third party, which may be one of the creditors, provided that the identity of each creditor is disclosed. Whenever the notification is to be provided through a third party, a creditor shall not be liable for any act or omission of the third party that constitutes a violation of this section if the creditor accurately and timely provided the third party with the information necessary for the notification and was maintaining procedures reasonable adapted to avoid any such violation.

(b) *Form of ECOA notice and statement of specific reasons*—(1) *ECOA notice.* A creditor satisfies the requirements of paragraph (a)(2) of this section regarding a statement of the provisions of section 701(a) of the Act and the name and address of the appropriate Federal enforcement agency if it provides the following notice, or one that is substantially similar:

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in Appendix A).

The sample notice printed above may be modified immediately following the required references to the Federal Act and enforcement agency to include references to any similar State statute or regulation and to a State enforcement agency.

(2) *Statement of specific reasons.* A statement of reasons for adverse action shall be sufficient if it is specific and indicates the principal reason(s) for the adverse action. A creditor may formulate its own statement of reasons in checklist or letter form or may use the sample form printed below, which, if properly completed, satisfies the requirements of paragraph (a)(2)(i) of this section. Statements that the adverse action was based on the creditor's internal standards or policies or that the applicant failed to achieve the qualifying score on the creditor's credit scoring system, without further specification, are insufficient.

STATEMENT OF CREDIT DENIAL, TERMINATION, OR CHANGE

Date _____
No. _____

Applicant's Name: _____
Applicant's Address: _____
_____
Description of account, transaction, or requested credit: _____
_____
_____
Description of adverse action taken: _____
_____
_____

PRINCIPAL REASON(S) FOR ADVERSE ACTION CONCERNING CREDIT

- ☐ Credit application incomplete.
- ☐ Insufficient credit references.
- ☐ Unable to verify credit references.
- ☐ Unemployed.*
- ☐ Temporary or irregular employment.
- ☐ Unable to verify employment.
- ☐ Insufficient income.
- ☐ Excessive obligations.
- ☐ Unable to verify income.
- ☐ Too short a period of residence.
- ☐ Temporary residence.
- ☐ Unable to verify residence.
- ☐ No credit file.
- ☐ Insufficient credit file.
- ☐ Delinquent credit obligations.
- ☐ Garnishment, attachment, foreclosure, repossession, or suit.
- ☐ Bankruptcy.
- ☐ Criminal record.
- ☐ We do not grant credit to any applicant on the terms and conditions you request.
- ☐ Other, specify_____

_____

* A creditor shall not cite unemployment as the sole reason for adverse action against a retired applicant or an applicant who receives income from a public assistance program.

DISCLOSURE OF USE OF INFORMATION OBTAINED FROM AN OUTSIDE SOURCE

- ☐ Disclosure inapplicable.
- ☐ Information obtained in a consumer report from:

Consumer reporting agency name:_____
_____
Address: _____
_____
Phone: _____

- ☐ Information obtained from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, within 60 days of receipt of this notice, for disclosure of the nature of the adverse information.

Authorized signature:_____
Creditor's name:_____
Creditor's address:_____
_____
Creditor's telephone number:_____

(3) *Other information.* The notification required by paragraph (a)(1) of this section may include other information so long as it does not detract from the required content. This notification also may be combined with any disclosures required under other titles of the Consumer Credit Protection Act or any other law, provided that all requirements for clarity, conspicuousness, and placement are satisfied; and it may appear on

either or both sides of the paper if there is a clear reference on the front to any information on the back.

(c) *Oral notifications.* The applicable requirements of this section are satisfied by oral notifications (including statements of specific reasons) in the case of any creditor that did not receive more than 150 applications during the calendar year immediately preceding the calendar year in which the notification of adverse action is to be given to a particular applicant.

(d) *Withdrawn applications.* If an application is approved by a creditor and the applicant, within a reasonable time not exceeding 30 days, does not consummate the transaction, a creditor may treat the application as withdrawn for the purpose of the notification required by paragraph (a)(1) of this section.

(e) *Failure of compliance.* A failure to comply with this section shall not constitute a violation when caused by an inadvertent error, provided that, on discovering the error, the creditor corrects it as soon as possible and commences compliance with the requirements of this section.

(f) *Notification.* A creditor notifies an applicant when a writing addressed to the applicant is delivered or mailed to the applicant's last known address or, in the case of an oral notification, when the creditor communicates with the applicant.

§ 202.10 Furnishing of credit information.

(a) *Accounts established on or after June 1, 1977.* (1) For every account established on or after June 1, 1977, a creditor shall:

(i) Determine whether an account offered by the creditor is one that an applicant's spouse is permitted to use or upon which both spouses are primarily liable; and

(ii) Designate any such account to reflect the fact of participation of both spouses.[9]

(2) When furnishing information to consumer reporting agencies or others concerning an account designated under this subsection or designated prior to the effective date of this part, a creditor shall report the designation and furnish any information concerning the account:

(i) To consumer reporting agencies, in a manner that will enable the agencies to provide access to the information about the account in the name of each spouse; and

(ii) To recipients other than such agencies, in the name of the spouse about whom such information is requested.

(b) *Accounts established prior to June 1, 1977.* For every account established prior to and in existence on June 1, 1977, a creditor shall either:

(1) No later than June 1, 1977:

(i) Determine whether the account is one that an applicant's spouse, if any, is permitted to use or upon which both spouses are primarily liable;

(ii) Designate any such account to reflect the fact of participation of both spouses; and

(iii) Comply with the reporting requirements of paragraph (a)(2) of this section; or

(2) Mail or deliver to all applicants, or all married applicants, in whose name an account is carried on the creditor's records the notice set forth below. The notice may be mailed with a billing statement or other mailing. All such notices shall be mailed or delivered by October 1, 1977. As to open end accounts, this requirement may be satisfied by mailing a notice to all accounts for which any billing statement is sent between June 1 and October 1, 1977. The notice may be supplemented as necessary to permit identification of the account by the creditor or by a consumer reporting agency.

[Notice]

CREDIT HISTORY FOR MARRIED PERSONS

The Federal Equal Credit Opportunity Act prohibits credit discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided that a person has the capacity to enter into a binding contract); because all or part of a person's income derives from any public assistance program; or because a person in good faith has exercised any right under the Federal Consumer Credit Protection Act.

Regulations under the Act give married persons the right to have credit information included in credit reports in the name of both the wife and the husband if both use or hold the account. This right was created, in part, to insure that credit histories will be available to women who become divorced or widowed.

If your account with us is a joint account that both husband and wife signed for or is an account that is being used or paid for by one of you who did not sign, then you are entitled to have us report credit information relating to the account in both your names. If you choose to have credit information concerning your account with us reported in both your names, please fill in and sign the statement below and return it to us.

Federal regulations provide that signing your name below will not change or increase your or your spouse's legal liability on the account. Your signatures will only request that credit information be reported in both your names.

If you do not fill out and return the form below, we will continue to report your credit history in the same way that we do now.

When you furnish credit information on this account, please report all information concerning it in both our names as follows:

(Account number)	(Print or type name)
	(Signature)
	(Print or type name)
	(Signature)

(c) *Requests to change manner in which information is reported.* Within 90 days after receipt of a written request to change the manner in which information is reported to consumer reporting agencies and others regarding an account described in paragraph (b) of this section, a creditor shall designate the account to reflect the fact of participation of both spouses. When furnishing information concerning any such account, the creditor shall report the designation and furnish any information concerning the account to any recipient other than a consumer reporting agency in the name of the spouse about whom such information is requested and, when reporting to consumer reporting agencies, in a manner that will enable such agencies to provide access to information about the account in the name of each spouse. The signatures of an applicant and the applicant's spouse on a request to change the manner in which information concerning an account is furnished shall not alter the legal liability of either spouse upon the account. A creditor may require each person to whom such a request relates to verify by signature or otherwise any requested change in the manner in which information relating to the account is furnished.

(d) *Inadvertent errors.* A failure to comply with this section shall not constitute a violation when caused by an inadvertent error, provided that, on discovering the error, the creditor corrects it as soon as possible and commences compliance with the requirements of this section.

§ 202.11 Relation to State law.

(a) *Inconsistent State laws.* Except as as otherwise provided in this section, this Part alters, affects, or preempts only those State laws that are inconsistent with this Part and then only to the extent of the inconsistency. A State law is not inconsistent with this part if it is more protective of an applicant.

(b) *Preempted provisions of State law.* State law is deemed to be inconsistent with the requirements of the Act and this part and less protective of an applicant within the meaning of section 705(f) of the Act to the extent that such law:

(1) Requires or permits a practice or act prohibited by the Act or this part;

(2) Requires that an applicant's spouse assume liability for debts incurred by an applicant who has established independent creditworthiness;

(3) Prohibits the individual extension of consumer credit to both parties to a marriage if each spouse individually and voluntarily applies for such credit;

(4) Prohibits inquiries or collection of data required to comply with the Act or this part;

(5) Prohibits asking age for use in a demonstrably and statistically sound, empirically derived credit system, to determine a pertinent element of credit worthiness, or to favor an elderly applicant;

(6) Prohibits inquiries necessary to establish a special purpose credit program as defined by § 202.8; and

[9] A creditor need not distinguish between an applicant's or a spouse's participation as a user or as a primarily liable party.

(7) Prohibits inquiries used in any model application form set forth in Appendix B.

(c) *Finance charges and loan ceilings.* If married applicants voluntarily apply for and obtain individual accounts with the same creditor, the accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges [10] or permissible loan ceilings under any Federal or State law. Permissible loan ceiling laws shall be construed to permit each spouse to become individually liable up to the amount of the loan ceilings, less the amount for which the applicant is jointly liable.[11]

(d) *State laws not affected.* This section does not alter or annul any provision of State community property laws, laws relating to the disposition of decedents' estates, or banking regulations directed only towards insuring the solvency of financial institutions.

(e) *Exemption for State regulated transactions.* (1) In accordance with the provisions of Supplement I to this Part, any State may apply to the Board for an exemption from the requirements of sections 701 and 702 of the Act and the corresponding provisions of this part for any class of credit transactions within the State. The Board will grant such an exemption only if:

(i) The Board determines that, under the law of that State, that class of credit trasactions is subject to requirements substantially similar to those imposed under sections 701 and 702 of the Act and the corresponding provisions of this Part, or that applicants are afforded greater protection than is afforded under sections 701 and 702 of the Act and the corresponding provisions of this part; and

(ii) There is adequate provision for State enforcement.

(2) In order to assure that the concurrent jurisdiction of Federal and State courts created in section 706(f) of the Act shall continue to have substantive provisions to which such jurisdiction shall apply; to allow Federal enforcement agencies to retain their authority regarding any class of credit transactions exempted pursuant to paragraph (e)(1) of this section and Supplement I; and, generally, to aid in implementing the Act:

(i) No such exemption shall be deemed to extend to the civil liability provisions of section 706 or the administrative enforcement provisions of section 704 of the Act; and

(ii) After an exemption has been granted, the requirements of the applicable State law shall constitute the requirements of the Act and this part.

(3) Exemptions granted by the Board to particular classes of credit transactions within specified States will be set forth in Supplement II to this part.

§ 202.12 Record retention.

(a) *Retention of prohibited information.* Retention in a creditor's files of any information, the use of which in evaluating applications is prohibited by the Act or this part, shall not constitute a violation of the Act or this part where such information was obtained:

(1) From any source prior to March 23, 1977; [12] or

(2) At any time from credit reporting agencies; or

(3) At any time from the applicant or others without the specific request of the creditor; or

(4) At any time as required to monitor compliance with the Act and this part or other Federal or State statutes or regulations.

(b) *Preservation of records.* (1) For 25 months after the date that a creditor notifies an applicant of action taken on an application, the creditor shall retain as to that application in original form or a copy thereof: [13]

(i) Any application form, any information required to be obtained concerning characteristics of an applicant to monitor compliance with the Act and this Part or other law, and any other written or recorded information used in evaluating the application and not returned to the applicant at the applicant's request;

(ii) A copy of the following documents if furnished to the applicant in written form (or, if furnished orally, any notation or memorandum with respect thereto made by the creditor):

(A) The notification of action taken; and

(B) The statement of specific reasons for adverse action; and

(iii) Any written statement submitted by the applicant alleging a violation of the Act or this part.

(2) For 25 months after the date that a creditor notifies an applicant of adverse action regarding an account, other than in connection with an application, the creditor shall retain as to that account, in original form or a copy thereof:[14]

(i) Any written or recorded information concerning such adverse action; and

(ii) Any written statement submitted by the applicant alleging a violation of the Act or this Part

(3) In addition to the requirements of paragraphs (b)(1) and (2) of this section, any creditor that has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the Act or this Part by an enforcement agency charged with monitoring that creditor's compliance with the Act and this part, or that has been served with notice of an action filed pursuant to section 706 of the Act and § 202.1 of this part, shall retain the information required in paragraphs (b)(1) and (2) of this section until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

(4) In any transaction involving more than one creditor, any creditor not required to comply with § 202.9 because of credit accepted by the applicant shall retain for the time period specified in paragraph (b) of this section all written or recorded information in its possession concerning the applicant, including a notation of action taken in connection with any adverse action.

§ 202.13 Information for monitoring purposes.

(a) *Scope and information requested.* (1) For the purpose of monitoring compliance with the provisions of the Act and this part, any creditor that receives an application for consumer credit relating to the purchase of residential real property, where the extension of credit is to be secured by a lien on such property, shall request as part of any written application for such credit the following information regarding the applicant and co-applicant (if any):

(i) Race-national origin, using the categories American Indian or Alaskan Native; Asian or Pacific Islander; Black; White; Hispanic; Other (Specify);

(ii) Sex;

(iii) Marital status, using the categories married, unmarried, and separated; and

(iv) Age.

(2) "Residential real property" means improved real property used or intended to be used for residential purposes, including single family homes, dwellings for from two to four families, and individual units of condominiums and cooperatives.

(b) *Method of obtaining information.* Questions regarding race-national origin, sex, marital status, and age may be listed, at the creditor's option, either on the application form or on a separate form that refers to the application.

(c) *Disclosure to applicant and co-applicant.* The applicant and co-applicant (if any) shall be informed that the information regarding race-national origin, sex, marital status, and age is being requested by the Federal Government for the purpose of monitoring compliance with Federal anti-discrimination statutes and that those statutes prohibit creditors from discriminating against applicants on those bases. The applicant

---

[10] For example, when the highest finance charge rate may be imposed on credit extensions up to $300 and an applicant is jointly liable with a spouse or any other person for unpaid debt in the amount of $250, a creditor may charge the highest rate on $50 of credit extended on an individual basis to such an applicant.

[11] For example, in a State with a permissible loan ceiling of $1,000 if a married couple were jointly liable for unpaid debt in the amount of $250, each spouse could subsequently become individually liable for $750.

[12] Pursuant to the October 28, 1975 version of Regulation B, the applicable date for sex and marital status information is June 30, 1976.

[13] A copy thereof includes carbon copies, photocopies, microfilm or microfiche copies, or copies produced by any accurate information retrieval system. A creditor who uses a computerized or mechanized system need not keep a written copy of a document if it can regenerate the precise text of the document upon request.

[14] See footnote 13.

and co-applicant shall be asked, but not required, to supply the requested information. If the applicant or co-applicant chooses not to provide the information or any part of it, that fact shall be noted on the form on which the information is obtained.

APPENDIX A

FEDERAL ENFORCEMENT AGENCIES

The following list indicates which Federal agency enforces Regulation B for particular classes of creditors. Any questions concerning a particular creditor should be directed to its enforcement agency.

National Banks: Comptroller of the Currency, Consumer Affairs Division, Washington, D.C. 20219.

State Member Banks: Federal Reserve Bank serving the area in which the State member bank is located.

Nonmember Insured Banks: Federal Deposit Insurance Corporation Regional Director for the Region in which the nonmember insured bank is located.

Savings Institutions Insured by the FSLIC and Members of the FHLB System (except for Savings Banks insured by FDIC): The FHLBB's Supervisory Agent in the Federal Home Loan Bank District in which the institution is located.

Federal Credit Unions: Regional Office of the National Credit Union Administration serving the area in which the Federal Credit Union is located.

Creditors Subject to Civil Aeronautics Board: Director, Bureau of Enforcement, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

Creditors Subject to Interstate Commerce Commission: Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20523.

Creditors Subject to Packers and Stockyards Act: Nearest Packers and Stockyards Administration area supervisor.

Small Business Investment Companies: U.S. Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

Brokers and Dealers: Securities and Exchange Commission, Washington, D.C. 20549.

Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks and Production Credit Associations: Farm Credit Administration, 490 L'Enfant Plaza, SW., Washington, D.C. 20578.

Retail, Department Stores, Consumer Finance Companies, All other Creditors, and All Nonbank Credit Card Issuers (Lenders operating on a local or regional basis should use the address of the F.T.C. Regional Office in which they operate): Federal Trade Commission, Washington, D.C. 20580.

APPENDIX B

MODEL APPLICATION FORMS

A creditor may design its own application forms in conformity with the provisions of paragraphs (b), (c) and (d) of § 202.5 of this part. Alternatively, if a creditor wishes, it may utilize or modify, as provided in § 202.5 (e), the model application forms set forth in this Appendix. In this draft, there are four model forms contained in this Appendix: open end, unsecured; closed end, secured; closed end, combination unsecured/secured; and community property, combination unsecured/secured. In the final version of the regulation, the Board intends to include a model residential mortgage loan application, prepared in conjunction with the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association.

[Open end, unsecured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If this is an application for an individual account and you are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D, and sign this application.

☐ If this is an application for a joint account or an account that you and another person will use, complete all Sections, and both parties should sign this application.

☐ If this is an application for an individual account, but you are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections to the extent possible, and sign this application.

SECTION A—INFORMATION REGARDING APPLICANT

(Title is Optional) MS. ☐ MISS ☐ MR. ☐ MRS. ☐ OTHER .....

Full Name (Last, First, Middle): ..... Age: .....

Present Street Address: ..... Time at present Address: .....

City: ..... State: ..... Zip: ..... Telephone: .....

Social Security No.: ..... Driver's License No.: .....

Former Street Address: ..... Time there: .....

City: ..... State: ..... Zip: .....

Present Employer: ..... How long? ..... Telephone: .....

Position or title: ..... Name of supervisor: .....

Employer's Address: .....

Previous Employer: ..... How long? .....

Previous Employer's Address: .....

Present salary or commission: $..... per ..... No. Dependents: ..... Ages: .....

Income from alimony, child support, or separate maintenance payments need not be revealed if you do not choose to have it considered as a basis for repaying this obligation. Other Income: $..... per ..... Source of other income: .....

.....

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ verbal understanding ☐

Have you ever borrowed from this institution? ..... When? ..... Branch: .....

Checking Account No.: ..... Institution and Branch: .....

Savings Account No.: ..... Institution and Branch: .....

Name of nearest relative not living with you: ..... Telephone: .....

Relationship: ..... Address: .....

SECTION B—INFORMATION REGARDING JOINT APPLICANT, USER, OR OTHER PARTY
(Use separate sheets if necessary.)

(Title is Optional) MS. ☐ MISS ☐ MR. ☐ MRS. ☐ OTHER .....

Full Name (Last, First, Middle): ..... Age: .....

Relationship to Applicant (if any): .....

Present Street Address: ..... Time at present Address: .....

City: ..... State ..... Zip: ..... Telephone: .....

Social Security No: ..... Driver's License No.: .....

Present Employer: ..... How long? ..... Telephone: .....

Position or title: ..... Name of supervisor: .....

Employer's Address: .....

Previous Employer: ..... How long? .....

Previous Employer's Address: .....

Present salary or commission: $ ..... per ..... No. Dependents: ..... Ages: .....

Income from alimony, child support, or separate maintenance payments need not be revealed if you do not choose to have it considered as a basis for repaying this obligation. Other Income: $..... per ..... Source of other income: .....

.....

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ verbal understanding ☐

Checking Account No.: ..... Institution and Branch: .....

Savings Account No.: ..... Institution and Branch: .....

Name of relative not living with Joint Applicant, User, or Other Party: ..... Telephone: .....

Relationship to Joint Applicant, User, or Other Party: ..... Address: .....

SECTION C—APPLICANT'S MARITAL STATUS
(*Do not complete* if this is an application for an individual account.)

☐ Married ☐ Separated ☐ Unmarried (inc. single, divorced, and widowed)

SECTION D—ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant, User, or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (Use separate form if necessary.)

Description of Assets	Value	Encumbered?	Name(s) of Owner(s) of Record
Cash	$		
Automobile (Make, Model, Year)			
Cash value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Include at least 3 credit refereoces. Use separate sheet if necessary.)

Name of Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Amount Past Due	Monthly Payments
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$	$	$	$
2.						
3.						
4.						
5.						
6.						
7.						
8.						
Total Debts			$	$	$	$

Are you a co-maker, endorser, or guarantor on any loan or contract? YES ☐ NO ☐ IF "YES," FOR WHOM? TO WHOM?

Are there any unsatisfied judgments against you? YES ☐ NO ☐ AMOUNT $ IF "YES," TO WHOM OWED?

Were you ever Bankrupt? (Omit if More than 14 Years) YES ☐ NO ☐ IF "YES," WHERE? YEAR

Other Obligations—(E.g., Liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

I/We authorize the Lending Institution to make whatever credit inquiries that it deems necessary in connection with this credit application or in the course of review or collection of any credit extended in reliance on this application. I/We authorize and instruct any person or consumer reporting agency to complete and furnish to the Lending Institution any information that it may have or obtain in response to such credit inquiries and agree that such information, along with this application, shall remain the Lending Institution's property whether or not credit is extended.

All information set forth in this application is declared to be a true representation of the facts, made for the purpose of obtaining the credit requested, and any willful misrepresentation on this application could result in criminal action.

Applicant's Signature	Date	Joint Applicant's or User's Signature	Date

[Closed end, secured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

- ☐ If this is an application for an individual loan and you are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete Sections A, C, D, and E, omitting B, and sign this application.
- ☐ If this is an application for a joint loan involving you and another person, complete all Sections, and both parties should sign this application.
- ☐ If this is an application for an individual loan, but you are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections to the extent possible, and sign this application.

Amount Requested | Payment Date Desired | Proceeds of Loan To be Used For

SECTION A—INFORMATION REGARDING APPLICANT

(Title is Optional) MS. ☐ MISS ☐ MR. ☐ MRS. ☐ OTHER .....

Full Name (Last, First, Middle): ..... Age: .....

Present Street Address: ..... Time at present Address: .....

City: ..... State: ..... Zip: ..... Telephone: .....

Social Security No.: ..... Driver's License No.: .....

Former Street Address: ..... Time there: .....

City: ..... State: ..... Zip: .....

Present Employer: ..... How long? ..... Telephone: .....

Position or title: ..... Name of supervisor: .....

Employer's Address: .....

Previous Employer: ..... How long? .....

Previous Employer's Address: .....

Present salary or commission: $..... per ..... No. Dependents: ..... Ages: .....

Income from alimony, child support, or separate maintenance payments need not be revealed if you do not choose to have it considered as a basis for repaying this obligation. Other income: $..... per ..... Source of other income: .....

.....

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ verbal understanding ☐

Have you ever borrowed from this institution? ..... When? ..... Branch: .....

Checking Account No.: ..... Institution and Branch: .....

Savings Account No.: ..... Institution and Branch: .....

Name of nearest relative not living with you: ..... Telephone: .....

Relationship: ..... Address: .....

SECTION B—INFORMATION REGARDING JOINT APPLICANT OR OTHER PARTY (Use separate sheets if necessary.)

(Title is Optional) MS. ☐ MISS ☐ MR. ☐ MRS. ☐ OTHER .....

Full Name (Last, First, Middle): ..... Age: .....

Relationship to Applicant (if any): .....

Present Street Address: ..... Time at present Address: .....

City: ..... State: ..... Zip: ..... Telephone: .....

Social Security No.: ..... Driver's License No.: .....

Present Employer: ..... How long? ..... Telephone: .....

Position or title: ..... Name of supervisor: .....

Employer's Address: .....

Previous Employer: ..... How long? .....

Previous Employer's Address: .....

Present salary or commission: $..... per ..... No. Dependents: ..... Ages: .....

Income from alimony, child support, or separate maintenance payments need not be revealed if you do not choose to have it considered as a basis for repaying this obligation. Other income: $..... per ..... Source of other income: .....

.....

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ verbal understanding ☐

Have you ever borrowed from this institution? ..... When? ..... Branch: .....

Checking Account No.: ..... Institution and Branch: .....

Savings Account No.: ..... Institution and Branch: .....

SECTION C—APPLICANT'S MARITAL STATUS

☐ Married ☐ Separated ☐ Unmarried (inc. single, divorced, and widowed)

SECTION D—ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (Use separate form if necessary.)

Description of Assets	Value	Encumbered?	Name(s) of Owner(s) of Record
Cash	$		
Automobiles (Make, Model, Year)			
Cash value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Include at least 3 credit references. Use separate sheet if necessary.)

Name of Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Amount Past Due
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$	$	$	$
2.						
3.						
4.						
5.						
Total Debts			$	$	$	$

Are you a co-maker, endorser, or guarantor on any loan or contract? YES ☐ NO ☐ IF "YES," FOR WHOM? TO WHOM?

Are there any unsatisfied judgments against you? YES ☐ NO ☐ AMOUNT $ IF "YES," TO WHOM OWED?

Were you ever bankrupt YES ☐ NO ☐ IF "YES," WHERE? YEAR

Other obligations—(E.g., Liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT Briefly describe the property to be given as security:

and list names and addresses of all co-owners of the property:

NAME ADDRESS

If the security is to be real estate, give the full name of your spouse (if any):

I/We authorize the Lending Institution to make whatever credit inquiries that it deems necessary in connection with this credit application or in the course of review or collection of any credit extended in reliance on this application. I/We authorize and instruct any person or consumer reporting agency to compile and furnish to the Lending Institution any information that it may have or obtain in response to such credit inquiries and agree that such information, along with this application, shall remain the Lending Institution's property whether or not credit is extended.

All information set forth in this application is declared to be a true representation of the facts, made for the purpose of obtaining the credit requested, and any willful misrepresentation on this application could result in criminal action.

Applicant's Signature Date Joint Applicant's Signature Date

[Closed end, unsecured/secured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If this is an application for an individual loan and you are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D, and sign this application. If the requested loan is to be secured, also complete Sections C and E.

☐ If this is an application for a joint loan involving you and another person, complete all Sections except E, and both parties should sign this application. If the requested loan is to be secured, then complete Section E.

☐ If this is an application for an individual loan, but you are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections except E, to the extent possible, and sign this application. If the requested loan is to be secured, then complete Section E.

Amount Requested _____ Payment Date Desired _____ Proceeds of Loan To be Used For _____

SECTION A—INFORMATION REGARDING APPLICANT

(Title is Optional) MS. ☐ MISS ☐ MR. ☐ MRS. ☐ OTHER _____

Full Name (Last, First, Middle): _____ Age: _____

Present Street Address: _____ Time at present Address: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Former Street Address: _____ Time there: _____

City: _____ State: _____ Zip: _____

Present Employer: _____ How long? _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ How long? _____

Previous Employer's Address: _____

Present salary or commission: $_____ per _____ No. Dependents: _____ Ages: _____

Income from alimony, child support, or separate maintenance payments need not be revealed if you do not choose to have it considered as a basis for repaying this obligation. Other income: $_____ per _____ Source of other income: _____

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ verbal understanding ☐

_____

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of nearest relative not living with you: _____ Telephone: _____

Relationship: _____ Address: _____

SECTION B—INFORMATION REGARDING JOINT APPLICANT OR OTHER PARTY (Use separate sheets if necessary.)

(Title is Optional) MS. ☐ MISS ☐ MR. ☐ MRS. ☐ OTHER _____

Full Name (Last, First, Middle): _____ Age: _____

Relationship to Applicant (if any): _____

Present Street Address: _____ Time at present Address: _____

City: _____ State: _____ Zip: _____ Telephone: _____

Social Security No.: _____ Driver's License No.: _____

Present Employer: _____ How long? _____ Telephone: _____

Position or title: _____ Name of supervisor: _____

Employer's Address: _____

Previous Employer: _____ How long? _____

Previous Employer's Address: _____

Present salary or commission: $_____ per _____ No. Dependents: _____ Ages: _____

Income from alimony, child support, or separate maintenance payments need not be revealed if you do not choose to have it considered as a basis for repaying this obligation. Other income: $_____ per _____ Source of other income: _____

_____

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ verbal understanding ☐

Have you ever borrowed from this institution? _____ When? _____ Branch: _____

Checking Account No.: _____ Institution and Branch: _____

Savings Account No.: _____ Institution and Branch: _____

Name of relative not living with Joint Applicant or Other Party _____ Telephone: _____

Relationship to Joint Applicant or Other Party _____ Address: _____

SECTION C—APPLICANT'S MARITAL STATUS

(*Do not complete* if this is an application for an unsecured loan.)

☐ Married ☐ Separated ☐ Unmarried (inc. single, divorced, and widowed)

SECTION D—ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed only give information about the Applicant in this Section.)

ASSETS OWNED (Use separate form if necessary.)

Description of Assets	Value	Encumbered?	Name(s) of Owner(s) of Record
Cash	$		
Automobiles (Make, Model, Year)			
Cash value if Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Include at least 3 credit references. Use separate sheet if necessary.)

Name of Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Amount Past Due
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$	$	$	$
2.						
3.						
4.						
5.						
Total Debts			$	$	$	$

Are you a co-maker, endorser, or guarantor on any loan or contract? YES ☐ NO ☐ IF "YES," FOR WHOM? TO WHOM?

Are there any unsatisfied judgments against you? YES ☐ NO ☐ AMOUNT $ IF "YES," TO WHOM OWED?

Were you ever bankrupt (Omit if more than 14 years) YES ☐ NO ☐ IF "YES," WHERE? YEAR

Other obligations—(E.g., Liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT Briefly describe the property to be given as security: .....

and list names and addresses of all co-owners of the property:

NAME ADDRESS

If the security is to be real estate, give the full name of your spouse (if any): .....

I/We authorize the Lending Institution to make whatever credit inquiries that it deems necessary in connection with this credit application or in the course of review or collection of any credit extended in reliance on this application. I/We authorize and instruct any person or consumer reporting agency to compile and furnish to the Lending Institution any information that it may have or obtain in response to such credit inquiries and agree that such information, along with this application, shall remain the Lending Institution's property whether or not credit is extended.

All information set forth in this application is declared to be a true representation of the facts, made for the purpose of obtaining the credit requested, and any willful misrepresentation on this application could result in criminal action.

Applicant's Signature Date Joint Applicant's Signature Date

[Community property]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If this is an application for an individual account or loan and you are relying on your own separate income or assets and not community property or the separate income or assets of another person as the basis for repayment of the credit requested, complete only Sections A, C, and D, and sign this application. If the requested credit is to be secured, also complete Section E.

☐ If this is an application for a joint account or loan or an account that you and another person will use, complete all Sections, except E, and both parties should sign this application. If the requested credit is to be secured, then complete Section E.

☐ If this is an application for an individual account or loan, but you are relying on community property, income from alimony, child support, or separate maintenance, or the separate income or assets of another person as the basis for repayment of the credit requested, complete all Sections, except E, to the extent possible, and sign this application. If the requested credit is to be secured, then complete Section E.

Amount Requested | Payment Date Desired | Proceeds of Loan To be Used For

SECTION A—INFORMATION REGARDING APPLICANT

(Title is Optional) MS. ☐ MISS ☐ MR. ☐ MRS. ☐ OTHER .....

Full Name (Last, First, Middle): ..... Age: .....

Present Street Address: ..... Time at present Address: .....

City: ..... State: ..... Zip: ..... Telephone: .....

Social Security No.: ..... Driver's License No.: .....

Former Street Address: ..... Time there: .....

City: ..... State: ..... Zip: .....

Present Employer: ..... How long? ..... Telephone: .....

Position or title: ..... Name of supervisor: .....

Employer's Address: .....

Previous Employer: ..... How long? .....

Previous Employer's Address: .....

Present salary or commission: $..... per ..... No. Dependents: ..... Ages: .....

Income from alimony, child support, or separate maintenance payments need not be revealed if you do not choose to have it considered as a basis for repaying this obligation. Other income: $..... per ..... Source of other income: .....

Alimony, child support, separate maintenance received under: court order☐ written agreement ☐ verbal understanding ☐

Have you ever borrowed from this institution? ..... When? ..... Branch: .....

Checking Account No.: ..... Institution and Branch: .....

Savings Account No. ..... Institution and Branch: .....

Name of relative not living with ..... Telephone: .....

Relationship to Joint Applicant or Other Party ..... Address: .....

SECTION B—INFORMATION REGARDING SPOUSE, JOINT APPLICANT, USER, OR OTHER PARTY (Use separate sheets if necessary.)

(Title is Optional) MS. ☐ MISS ☐ MR. ☐ MRS. ☐ OTHER .....

Full Name (Last, First, Middle): ..... Age: .....

Relationship to Applicant (if any): .....

Present Street Address: ..... Time at present Address: .....

City: ..... State: ..... Zip: ..... Telephone: .....

Social Security No.: ..... Driver's License No.: .....

Present Employer: ..... How long? ..... Telephone: .....

Position or title: ..... Name of supervisor: .....

Employer's Address: .....

Previous Employer: ..... How long? .....

Previous Employer's Address: .....

Present salary or commission: $..... per ..... No. Dependents: ..... Ages: .....

Income from alimony, child support, or separate maintenance payments need not be revealed if you do not choose to have it considered as a basis for repaying this obligation. Other income: $..... per ..... Source of other income: .....

Alimony, child support, separate maintenance received under: court order☐ written agreement ☐ verbal understanding ☐

Have you ever borrowed from this institution? ..... When? ..... Branch: .....

Checking Account No.: ..... Institution and Branch: .....

Savings Account No.: ..... Institution and Branch: .....

SECTION C—APPLICANT'S MARITAL STATUS

☐ Married ☐ Separated ☐ Unmarried (inc. single, divorced, and widowed)

SECTION D—ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant, User, or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (Use separate form if necessary.)

Description of Assets	Value	Encumbered?	Name(s) of Owner(s) of Record
Cash	$		
Automobiles (Make, Model, Year)			
Cash value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Include at least 3 credit references. Use separate sheet if necessary.)

Name of Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Amount Past Due
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$	$	$	$
2.						
3.						
4.						
5.						
Total Debts			$	$	$	$

Are you a co-maker, endorser, or guarantor on any loan or contract? YES ☐ NO ☐ IF "YES," FOR WHOM? TO WHOM?

Are there any unsatisfied judgments against you? YES ☐ NO ☐ AMOUNT $ IF "YES," TO WHOM OWED?

Were you ever bankrupt (Omit if more than 14 years) YES ☐ NO ☐ IF "YES," WHERE? YEAR

Other obligations—(E.g., Liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

Section E—SECURED CREDIT (Complete only if loan is to be secured). Briefly describe the property to be given as security:

and list names and addresses of all co-owners of the property:

NAME	ADDRESS

If the security is to be real estate, give the full name of your spouse (if any):

I/We authorize the Lending Institution to make whatever credit inquiries that it deems necessary in connection with this credit application or in the course of review or collection of any credit extended in reliance on this application. I/We authorize and instruct any person or consumer reporting agency to compile and furnish to the Lending Institution any information that it may have or obtain in response to such credit inquiries and agree that such information, along with this application, shall remain the Lending Institution's property whether or not credit is extended.

All information set forth in this application is declared to be a true representation of the facts, made for the purpose of obtaining the credit requested, and any willful misrepresentation on this application could result in criminal action.

Applicant's Signature | Date | Spouse/Joint Applicant's/or User's Signature | Date

SUPPLEMENT I

Procedures and criteria under which a State may apply for an exemption pursuant to section 705(g) of the Act and § 202.11(e) of this Part.

(a) *Application.* Any State may apply to the Board pursuant to the provisions of this Supplement and the Board's Rules of Procedure (12 CFR Part 262) for a determination that, under the laws of that State, a class of credit transactions [1] within the State is subject to requirements that are substantially similar to, or provide greater protection for applicants than, those imposed under sections 701 and 702 of the Act, and that there is adequate provision for State enforcement of such requirements. The application shall be in writing, addressed to the Board, signed by the Governor, Attorney General, or a State official having primary enforcement or interpretive responsibilities under the State law that is applicable to the class of credit transactions, and shall be supported by the documents specified in paragraph (b).

(b) *Supporting Documents.* The application shall be accompanied by:

(1) A copy of the full text of the State law that is claimed to contain requirements substantially similar to those imposed under sections 701 and 702 of the Act, or to provide greater protection to applicants than sections 701 and 702 of the Act regarding the class of credit transactions within that State

(2) A comparison of each provision of sections 701 and 702 of the Act with the corresponding provision of the State law, together with reasons supporting the claim that the corresponding provisions of the State law are substantially similar to, or provide greater protection to applicants than, provisions of sections 701 and 702 of the Act regarding the class of credit transactions and demonstrating that any differences are not inconsistent with the provisions of sections 701 and 702 of the Act and do not result in a diminution in the protection otherwise afforded applicants; and a statement that no other State laws (including administrative or judicial interpretations) are related to, or would have an effect upon, the State law that is being considered the Board in making its determination.

(3) A copy of the full text of the State law that provides for enforcement of the State law referred to in subparagraph (b)(1).

(4) A comparison of the provisions of the State law that provides for enforcement with the provisions of sections 704 and 706 of the Act, together with reasons supporting the claim that such State law provides for:

(i) Administrative enforcement of the State law referred to in subparagraph (b)(1) that is at least equivalent to the enforcement provided under section 704 of the Act;

(ii) Civil liability for a failure to comply with the requirements of the State law that is substantially similar to that provided under section 706 of the Act, including class action liability and the ability of the State Attorney General or other appropriate State official to commence a civil action under circumstances equivalent to those prescribed in section 706 of the Act, except that such State law may provide a greater damage remedy or other, more extensive remedies;

(iii) A statute of limitations that prescribes a period for civil liability actions of substantially similar duration to that provided under section 706(f) of the Act, or a longer period; and

(iv) A scope of discovery relating to a creditor's credit granting standards under appropriate discovery procedures in a court action or agency proceeding that is at least equivalent to that provided under section 706(j) of the Act.

(5) A statement identifying the office designated or to be designated to administer the State law referred to in subparagraph (b)(1), together with complete information regarding the fiscal arrangements for administrative enforcement (including the amount of funds available or to be provided), the number and qualifications of personnel engaged or to be engaged in enforcement, and a description of the procedures under which such State law is to be administratively enforced, including, if relevant, administrative enforcement regarding Federally-chartered creditors.[2]

The statement should include reasons to support the claim that there is adequate provision for enforcement of such State law.

(c) *Criteria for Determination.* The Board will consider the following criteria, and any other relevant information, in determining whether the law of a State is substantially similar to, or provides greater protection to applicants than, the provisions of sections 701 and 702 of the Act regarding the class of action transactions within that State, and whether there is adequate provision for State enforcement of such law. In making that determination, the Board primarily will consider each provision of the State law in comparison with each corresponding provision in sections 701 and 702 of the Act, and not the State law as a whole in comparison with the Act as a whole.

(1) In order for provisions of State law to be substantially similar to, or provide greater protection to applicants than, the provisions of sections 701 and 702 of the Act, the provisions of State law [3] at least shall provide that:

(i) Definitions and rules of construction, as applicable, import the same meaning and have the same application as those prescribed by sections 701 and 702;

(ii) Creditors provide all of the applicable notifications required by the provisions of sections 701 and 702 of the Act with the content and in the terminology, form, and time periods prescribed by this Part pursuant to sections 701 and 702; however, required references to State law may be substituted for the references to Federal law required in this Part. Notification requirements under State law in additional circumstances or with additional detail that does not frustrate any of the purposes of the Act may be determined by the Board to be consistent with sections 701 and 702.

(iii) Creditors take all affirmative actions and abide by obligations substantially similar to those prescribed by sections 701 and 702 of the Act under substantially similar or more stringent conditions and within the same or more stringent time periods as are prescribed in sections 701 and 702 of the Act.

(iv) Creditors abide by the same or more stringent prohibitions as are prescribed by sections 701 and 702 of the Act.

(v) Obligations or responsibilities imposed on applicants are no more costly, lengthy, or burdensome relative to applicants' exercising any of the rights or gaining the benefits of the protections provided in the State law than corresponding obligations or responsibilities imposed on applicants in sections 701 and 702 of the Act.

(vi) Applicants' rights and protections are substantially similar to, or more favorable than, those provided by sections 701 and 702 of the Act under conditions or within time periods that are substantially similar to, or more favorable to applicants than, those prescribed by sections 701 and 702 of the Act.

(2) In determining whether provisions for enforcement of the State law referred to in paragraph (1) of paragraph (b) are adequate, consideration will be given to the extent to which under State law, provision is made for:

(i) Administrative enforcement, including necessary facilities, personnel, and funding;

(ii) Civil liability for a failure to comply with the requirements of such a State law that is substantially similar to, or more extensive than, that provided under section 706 of the Act;

(iii) A statute of limitations for civil liability of substantially similar or longer duration as that provided under section 706 of the Act; and

(iv) A scope of discovery relating to a creditor's credit granting standards that is at least equivalent to that provided under section 706(j) of the Act.

(d) *Public Notice of Filing and Proposed Rule Making.* In connection with any application that has been filed in accordance with the requirements of paragraphs (a) and (b) of this Supplement and following initial review of the application a notice of such filing and proposed rule making shall be published by the Board in the FEDERAL REGISTER, and a copy of such application shall be made available for examination by interested persons during business hours at the Board and at the Federal Reserve Bank for each Federal Reserve District in which the State making the application is situated. A period of time shall be allowed from the date of such publication for interested parties to submit written comments to the Board regarding that application.

(e) *Exemption from Requirements.* If the Board determines on the basis of the information before it that, under the law of a State, a class of credit transactions is subject to requirements substantially similar to, or that provide greater protection to applicants than, those imposed under sections 701 and 702 of the Act and that there is adequate provision for State enforcement, the Board will exempt the class of credit transactions in that State from the requirements of sections 701 and 702 of the Act in the following manner and subject to the following conditions:

(1) Notice of the exemption shall be published in the FEDERAL REGISTER, and the Board shall furnish a copy of such notice to the State official who made application for such exemption, to each Federal authority responsible for administrative enforcement of the requirements of sections 701 and 702 of the Act, and to the Attorney General of the United States. Additionally, the Board shall include any exemption granted in an appropriate listing in Supplement II to this Part.

---

[1] As applicable, references to "class of credit transactions" in this supplement include one or more of such classes of credit transactions.

[2] Transactions within a State in which a Federally-chartered institution is a creditor shall not be considered subject to exemption, and such Federally-chartered creditors shall remain subject to the requirements of the Act and administrative enforcement by the appropriate Federal authority under section 704 of the Act, unless it is established to the satisfaction of the Board that appropriate arrangements have been made with such Federal authorities to assure effective enforcement of the requirements of State laws regarding such creditors.

[3] This paragraph is not to be construed as indicating that the Board would consider adversely any additional requirements of State law that are not inconsistent with the purpose of the Act or the requirements imposed under sections 701 and 702 of the Act.

Any exemption granted shall be effective 90 days after the date of publication of such notice in the FEDERAL REGISTER.

(2) The appropriate official of any State that receives an exemption shall inform the Board in writing within 30 days of any change in the State laws referred to in subparagraphs (b)(1) and (b)(3). The report of any such change shall contain copies of the full text of that change, together with statements setting forth the information and opinions regarding that change that are specified in subparagraphs (b)(2) and (b)(4). The appropriate official of any State that has received such an exemption also shall file with the Board from time to time such reports as the Board may require.

(3) The Board shall inform the appropriate official of any State that receives such an exemption of any subsequent amendments of the Act (including the implementing provisions of this Part, the Board's formal interpretations, and interpretations or approvals issued by an authorized official or employee of the Federal Reserve System) that might necessitate the amendment of State law for the exemption to continue.

(4) No exemption shall extend to the administrative enforcement or civil liability provisions of sections 704 and 706 of the Act. After an exemption is granted, the requirements of the applicable State law shall constitute the requirements of sections 701 and 702 of the Act.

(f) *Adverse Determination.* (1) If, after publication of a notice in the FEDERAL REGISTER as provided under paragraph (d), the Board finds on the basis of the information before it that it cannot make a favorable determination in connection with the application, the Board shall notify the appropriate State official of the facts upon which such findings are based and shall afford that State authority a reasonable opportunity to demonstrate or achieve compliance.

(2) If, after having afforded the State authority such opportunity to demonstrate or achieve compliance, the Board finds on the basis of the information before it that it still cannot make a favorable determination in connection with the application, the Board shall publish in the FEDERAL REGISTER a notice of its determination regarding the application and shall furnish a copy of such notice to the State official who made application for such exemption.

(g) *Revocation of Exemption.* (1) The Board reserves the right to revoke any exemption granted under the provisions of this Supplement if at any time it determines that the State law does not, in fact, impose requirements that are substantially similar to, or that provide greater protection to applicants than, those imposed under sections 701 and 702 of the Act or that there is not, in fact, adequate provision for State enforcement.

(2) Before revoking any such exemption, the Board shall notify the appropriate State official of the facts or conduct that, in the Board's opinion, warrants such revocation, and shall afford that State such opportunity as the Board deems appropriate in the circumstances to demonstrate or achieve compliance.

(3) If, after having been afforded the opportunity to demonstrate or achieve compliance, the Board determines that the State has not done so, notice of the Board's intention to revoke such exemption shall be published as a notice of proposed rule making in the FEDERAL REGISTER. A period of time shall be allowed from the date of such publication for the Board to receive written comments from interested persons to submit written comments to the Board regarding the proposed rule making.

(4) If such exemption is revoked, notice of such revocation shall be published by the Board in the FEDERAL REGISTER, and a copy of such notice shall be furnished to the appropriate State official, to the Federal authorities responsible for enforcement of the requirements of the Act, and to the Attorney General of the United States. The revocation shall become effective, and the class of transactions affected within that State shall become subject to the requirements of sections 701 and 702 of the Act, 90 days after the date of publication of the notice in the FEDERAL REGISTER.

To aid in the consideration of this matter by the Board, interested persons are invited to submit relevant data or comments. Members of the public are urged to comment not only on provisions they believe should be changed or added, but also on proposed provisions they believe should remain in the regulation. All comments should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 3, 1976. Written comments will be made available for public inspection and copying upon request except as provided in § 261.6(a) of the Board rules regarding availability of information (12 CFR Part 261). All material submitted should include the docket number R-0031.

This notice of proposed rulemaking is published pursuant to the Board's authority under Section 703(a) of the Equal Credit Opportunity Act (15 U.S.C. 1691b).

By order of the Board of Governors, November 1, 1976.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.76-32713 Filed 11-5-76;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Parts 71, 73]

[Airspace Docket No. 76-SO-78]

TEMPORARY RESTRICTED AREAS

Proposed Designation

The Federal Aviation Administration (FAA) is considering amendments to Parts 71 and 73 of the Federal Aviation Regulations that would designate several temporary restricted areas over portions of Ga. and N.C. to contain a joint military training exercise Solid Shield 77. The designations would extend from May 12, 1977, through May 25, 1977. Those areas encompassing airspace at or above 14,500 feet MSL would also be included in the continental control area for the duration of their time of designation.

Consistent with this proposal, nonrulemaking action will also be required to establish two temporary military operations areas in the vicinity of Savannah, Georgia. The establishment of these temporary military operations areas would extend from May 12, 1977 through May 14, 1977.

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southern Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Ga. 30320. All communications received on or before December 8, 1976, will be considered before action is taken on the proposed amendments. The proposals contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue SW., Washington, D.C. 20591. An informal docket will also be available for examination at the office of the regional Air Traffic Division Chief. Request for copies of this Notice of Proposed Rule Making should be addressed to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-320, 800 Independence Avenue, SW., Washington, D.C. 20591.

The proposed amendments would designate the following temporary restricted areas:

R-5309A SOLID SHIELD 77

Boundaries. Beginning at Lat. 35°05'00" N., Long. 79°35'00"W.; to Lat. 35°07'05" N., Long. 79°22'50" W.; thence south and east along R-5311A to Lat. 35°02'45" N., Long. 79°17'00" W.; to Lat. 35°00'00" N., Long. 79°17'00" W.; to Lat. 34°57'00" N., Long. 79°36'00" W.; to point of beginning.
Designated altitudes. Surface to 12,000 feet MSL.
Time of designation. Continuous—May 12, 1977, through May 25, 1977.
Controlling agency. Federal Aviation Administration, Washington ARTC Center.
Using agency. United States Atlantic Command, Norfolk, Va.

R-5309B SOLID SHIELD 77

Boundaries. Beginning at Lat. 35°16'00" N., Long. 70°14'00" W.; to Lat. 35°16'00" N., Long. 79°02'30" W.; to Lat. 35°11'00" N., Long. 79°02'30" W.; thence west along R-5311A to Lat. 35°12'00" N., Long. 79°-14'00" W.; to point of beginning.
Designated altitudes. 1200 feet MSL to but not including FL 180.
Time of designation. Continuous—May 12, 1977, through May 25, 1977.
Controlling agency. Federal Aviation Administration, Washington ARTC Center.
Using agency. United States Atlantic Command, Norfolk, Va.

R-5309C SOLID SHIELD 77

Boundaries. Beginning at Lat. 35°16'00" N., Long. 78°32'00" W.; to Lat. 35°16'00" N., Long. 78°08'00" W.; to Lat. 35°10'00" N., Long. 77°59'00" W.; to Lat. 34°58'00" N., Long. 78°03'00" W.; to Lat. 35°00'00" N., Long. 78°24'00" W.; to point of beginning.
Designated altitudes. 7,000 feet MSL to 10,000 feet MSL.
Time of designation. Continuous—May 12, 1977, through May 25, 1977.
Controlling agency. Federal Aviation Administration, Washington ARTC Center.
Using agency. United States Atlantic Command, Norfolk, Va.

R-5309D SOLID SHIELD 77

Boundaries. Beginning at Lat. 35°00'00" N., Long. 78°24'00" W.; to Lat. 34°58'00" N., Long. 78°03'00" W.; to Lat. 34°49'20" N., Long. 78°07'30" W.; to Lat. 34°51'57" N., Long. 78°27'45" W.; to point of beginning.
Designated altitudes. 7,000 feet MSL to 10,000 feet MSL.

Time of designation. Continuous—May 12, 1977, through May 25, 1977.
Controlling agency. Federal Aviation Administration, Washington ARTC Center.
Using agency. United States Atlantic Command, Norfolk, Va.

R–5309E SOLID SHIELD 77

Boundaries. Beginning at Lat. 34°53'45'' N., Long. 78°42'00'' W.; to Lat. 34°49'20'' N., Long. 78°07'30'' W.; to Lat. 34°17'00'' N., Long. 78°30'00'' W.; to Lat. 34°25'00'' N., Long. 78°43'00'' W.; to Lat. 34°50'00'' N., Long. 78°46'00'' W.; to point of beginning.
Designated altitudes. 1200 feet MSL to 10,000 feet MSL.
Time of designation. Continuous—May 12, 1977, through May 25, 1977.
Controlling agency. Federal Aviation Administration, Washington ARTC Center.
Using agency. United States Atlantic Command, Norfolk, Va.

R–5309F SOLID SHIELD 77

Boundaries. Beginning at Lat. 35°15'00'' N., Long. 77°30'00'' W.; to Lat. 34°57'30'' N., Long. 77°02'00'' W.; thence Southwest along Restricted Areas R–5306A, B, C, D and E to Lat. 34°30'20'' N., Long. 77°15'50'' W.; thence 3-nautical miles from and parallel to the shoreline to Lat. 34°18'00'' N., Long. 77°37'30'' W.; to Lat. 34°28'00'' N., Long. 77°38'00'' W.; to Lat. 34°33'30'' N., Long. 77°49'00'' W.; to Lat. 34°51'30'' N., Long. 77°52'00'' W.; to Lat. 35°03'00'' N., Long. 77°43'00'' W.; to Lat. 35°11'00'' N., Long. 77°36'00'' W.; to point of beginning, excluding that airspace from the surface to 3,000 feet MSL within a 5-statute mile radius circle centered on the Albert Ellis Airport (Lat. 34°49'49'' N., Long. 77°36'42'' W.) and extending 4 nautical miles each side of the final approach courses for the Albert Ellis ILS RWY–5 (051°R) and NDB–5 (051°M) approaches.
Designated altitudes. Surface to 10,000 feet MSL.
Time of designation. Continuous—May 12, 1977, through May 25, 1977.
Controlling agency. Federal Aviation Administration, Washington ARTC Center.
Using agency. United States Atlantic Command, Norfolk, Va.

R–5309G SOLID SHIELD 77

Boundaries. Beginning at Lat. 34°57'30'' N., Long. 77°02'00'' W.; to Lat. 34°43'15'' N., Long. 76°47'30'' W.; to Lat. 34°42'00'' N., Long. 76°54'45'' W.; to Lat. 34°50'30'' N., Long. 77°05'00'' W.; to Lat. 34°49'30'' N., Long. 77°10'00'' W.; to point of beginning.
Designated altitudes. Surface to 3,000 feet MSL.
Time of designation. Continuous—May 12, 1977, through May 25, 1977.
Controlling agency. Federal Aviation Administration, Washington ARTC Center.
Using agency. United States Atlantic Command, Norfolk, Va.

R–5309H SOLID SHIELD 77

Boundaries. Beginning at Lat. 34°43'15'' N., Long. 76°47'30'' W.; to Lat. 34°38'30'' N., Long. 76°43'00'' W.; thence west along a line 3 nautical miles from and parallel to the shoreline to Lat. 34°37'30'' N., Long. 76°56'20'' W.; thence north and east along Restricted Areas R–5306C and R–5306B to point of beginning.
Designated altitudes. 1200 feet MSL to FL 180.
Time of designation. Continuous—May 12, 1977, through May 25, 1977.
Controlling agency. Federal Aviation Administration, Washington ARTC Center.
Using agency. United States Atlantic Command, Norfolk, Va.

R–5309I SOLID SHIELD

Boundaries. Beginning at Lat. 35°16'09'' N., Long. 79°02'30'' W.; to Lat. 35°16'00'' N., Long. 78°08'00'' W.; to Lat. 35°10'00'' N., Long. 77°59'00'' W.; to Lat. 34°58'00'' N., Long. 78°03'00'' W.; to Lat. 34°49'20'' N., Long. 78°07'30'' W.; to Lat. 34°17'00'' N., Long. 78°30'00 W.; to Lat. 34°25'00'' N., Long. 78°43'00'' W.; to Lat. 34°50'00'' N., Long. 78°46'00'' W.; to Lat. 34°52'00'' N., Long. 78°57'45'' W.; to Lat. 35°02'55'' N., Long. 79°05'40'' W.; thence north along the boundary of Restricted Area R–5311A to Lat. 35°11'00'' N., Long. 79°02'30'' W.; to point of beginning.
Designated altitudes. 10,000 feet MSL to FL 180.
Time of designation. Continuous—May 12, 1977, through May 25, 1977.
Controlling agency. Federal Aviation Administration, Washington ARTC Center.
Using agency. United States Atlantic Command, Norfolk, Va.

R–5309J SOLID SHIELD

Boundaries. Beginning at Lat. 35°10'00'' N., Long. 77°59'00'' W.; to Lat. 35°11'00'' N., Long. 77°36'00'' W.; to Lat. 34°51'30'' N., Long. 77°52'00'' W.; to Lat. 34°17'20'' N., Long. 77°46'15'' W.; to Lat. 34°17'00'' N., Long. 78°30'00'' W.; to Lat. 34°49'20'' N., Long. 78°07'30'' W.; to Lat. 34°58'00'' N., Long. 78°03'00'' W.; to point of beginning.
Designated altitudes. 10,000 feet MSL to FL 180.
Time of designation. Continuous—May 12, 1977, through May 25, 1977.
Controlling agency. Federal Aviation Administration, Washington ARTC Center.
Using agency. United States Atlantic Command Norfolk, Va.

R–5309K SOLID SHIELD 77

Boundaries. Beginning at Lat. 35°26'00'' N., Long. 77°07'00'' W.; to Lat. 35°23'00'' N., Long. 76°34'30'' W.; thence southwest along Restricted Areas R–5306 A, B, C, D and E and Warning Area W–122 to Lat. 34°18'00'' N., Long. 77°37'30'' W.; to Lat. 34°17'20'' N., Long. 77°46'15'' W.; to Lat. 34°51'30'' N., Long. 77°52'00'' W.; to Lat. 35°11'00'' N., Long. 77°36'00'' W.; to Lat. 35°24'00'' N., Long. 77°17'00'' W.; to point of beginning.
Designated altitudes. 10,000 feet MSL to FL 180.
Time of designation. Continuous—May 12, 1977, through May 25, 1977.
Controlling agency. Federal Aviation Administration, Washington ARTC Center.
Using agency. United States Atlantic Command, Norfolk, Va.

R–5309L SOLID SHIELD 77

Boundaries. Beginning at Lat. 32°05'00'' N., Long. 81°58'00'' W.; to Lat. 32°05'00'' N., Long. 81°49'00'' W.; thence south and east along Restricted Areas R–3005 A and B to Lat. 31°56'15'' N., Long. 81°23'00'' W.; to Lat. 31°54'00'' N., Long. 81°17'00'' W.; to Lat. 31°35'00'' N., Long. 81°23'00'' W.; to Lat. 31°35'00'' N., Long. 82°04'30'' W.; to Lat. 31°49'00'' N., Long. 82°11'00'' W.; to point of beginning.
Designated altitudes. 1200 feet MSL to 17,000 feet MSL.
Time of designation. Continuous—May 12, 1977, through May 25, 1977.
Controlling agency. Federal Aviation Administration, Jacksonville ARTC Center.
Using agency. United States Atlantic Command, Norfolk, Va.

The nonrulemaking action associated with these temporary restricted areas would establish two temporary Military Operations Areas as follows:

LOCATION: SAVANNAH/FT. STEWART, GA.

1. STEWART 1

Boundaries. Beginning at Lat. 31°56'15'' N., Long. 81°23'00'' W.; to Lat. 31°48'45'' N., Long. 80°58'00'' W.; thence 3 nautical miles from and parallel to the U.S. shoreline to Lat. 31°32'00'' N., Long. 81°07'00'' W.; to Lat. 31°41'30'' N., Long. 81°36'20'' W.; to Lat. 31°49'30'' N., Long. 81°36'20'' W.; thence counterclockwise along the Ft. Stewart control zone and R–3005B to point of beginning.
Altitudes. 1200 feet MSL to 6000 feet MSL.
Time of use. Continuous—May 12, 1977, through May 14, 1977.
Controlling agency. Federal Aviation Administration, Jacksonville ARTC Center.
Scheduling agency. United States Atlantic Command, Norfolk, Va.

2. STEWART 2

Boundaries. Beginning at Lat. 32°00'00'' N., Long. 81°19'30'' W.; to Lat. 32°00'00'' N., Long. 80°47'30'' W.; thence 3 nautical miles from and parallel to the U.S. shoreline to Lat. 31°35'00'' N., Long. 81°05'45'' W.; to Lat. 31°35'00'' N., Long. 81°23'00'' W.; to Lat. 31°54'00'' N., Long. 81°17'00'' W.; to Lat. 31°56'15'' N., Long. 81°23'00'' W.; thence north along the boundary of R–3005B to point of beginning.
Altitudes. 15,000 feet MSL to but not including FL 180.
Time of use. Continuous—May 12 through May 14, 1977.
Controlling agency. Federal Aviation Administration, Jacksonville ARTC Center.
Scheduling agency. United States Atlantic Command, Norfolk, Va.

Temporary Restricted Areas R–5309B, H, I, J, K and L defined above would be included in the continental control area for the duration of their time of designation.

The proposed restricted areas would be used to contain a joint military training exercise, "Solid Shield 77", involving coordinated amphibious/airborne assault operations. Several military units would participate; however, no ordnance would be expended (within the areas herein proposed) and also supersonic flight would be prohibited. Similar exercises have been conducted annually in the same general area for several years. As with previous exercises, "Solid Shield 77" would provide the military services with an opportunity to test and evaluate the coordination procedures used during complex joint military operations. The proposed restricted areas would be required for safety to separate nonparticipating aircraft from the extensive air activity of the participating military forces.

The proposed temporary Military Operations Areas (MOAs) would alert nonparticipating pilots of numerous fixed wing and helicopter aircraft training activities that is planned to be conducted within that airspace from May 12–14, 1977. IFR flights will be rerouted or provided IFR separation from military operations within the areas. No flight restrictions or additional communications requirements would be imposed on VFR flights. However, pilots operating under VFR should exericse extreme caution while flying within these MOAs during their times of use.

Throughout the exercise the using agency would allow scheduled air carrier flights and other nonparticipating aircraft into or through the temporary restricted areas when exercise operations permit. The using agency would provide all necessary communication lines required by the Federal Aviation Administration and it would also provide a wide area telecommunications service number so that nonparticipating pilots can obtain clearances on an individual basis without charge to themselves. Additionally, FAA and military representatives will visit or contact civil airport managers and aviation interests in the exercise area to explain the exercise and answer questions that may arise. The FAA will develop procedures to accommodate nonparticipating aircraft that would be affected by this exercise.

These amendments are proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on October 29, 1976.

WILLIAM E. BROADWATER,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.76-32532 Filed 11-5-76;8:45 am]

CIVIL AERONAUTICS BOARD

[14 CFR Part 221]

[EDR-305, Docket 29421, Dated: September 21, 1976]

CONSTRUCTION, PUBLICATION, FILING AND POSTING OF TARIFFS OF AIR CARRIERS AND FOREIGN AIR CARRIERS

Service of Charter Tariff Publications on Charterers; Correction

The submission date appearing on line 5 of paragraph 3 of page one, published at 41 FR 41928, September 24, 1976.

Dated: September 24, 1976.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.76-32777 Filed 11-5-76;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR Part 1917]

[Docket No. FI-2332]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Borough of Elmwood Park, New Jersey

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 (§ 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the Borough of Elmwood Park, New Jersey.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Borough of Elmwood Park must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed 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 proposed flood elevations are available for review at Borough Hall, Market Street, Elmwood Park, New Jersey 07407.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Richard A. Mola, Borough Hall, Market Street, Elmwood Park, New Jersey 07407. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

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
Fleischer Brook	Gilbert Ave.	48	150	250
	Main Ave.	47	400	1,150
	Van Riper Ave.	43	250	200
	Martha Ave.	35	300	1,550

(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: September 23, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-32488 Filed 11-5-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2336]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Borough of Peapack and Gladstone, New Jersey

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 (§ 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the Borough of Peapack and Gladstone, New Jersey.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Borough of Peapack and Gladstone must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed 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 proposed flood elevations are available for review at Borough Hall, Prospect Street, Peapack, New Jersey 07977.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Albert M. Sracic, Borough Hall, Prospect Street, Peapack, New Jersey 07977. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

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
North Branch Raritan River.	Smith Picnic Bridge [1]	237	10	[3]
	C. V. Smith Bridge [1]	265	[3]	[3]
Peapack Brook	Erie-Lackawanna R.R. [1]	177	20	20
	Park Ave. Bridge [1]	218	10	220
	Main St. Bridge	238	800	160
Tributary A	U.S. route 206 [1]	177		
	Holland Ave. [1]	180	50	60
Tributary C	Main St. Bridge	239	710	420
	Brook Hollow Drive Bridge	261	70	50

[1] Downstream side of road.
[2] Outside corporate limits.
[3] At bank.

(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: September 23, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76–32490 Filed 11–5–76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI–2327]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUD'CIAL REVIEW

Proposed Flood Elevation Determinations for City of Adel, Georgia

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 § 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the City of Adel, Georgia.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Adel, Georgia must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed 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 proposed flood elevations are available for review at City Hall, Adel, Georgia 31620.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Allen Parrish, P.O. Box 409, Adel, Georgia 31620. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean lea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Bear Creek	Mitchell St	227	440	240
	4th St	223	280	240
	East 6th St	222	320	300
Giddens Mill Creek	Elm St	230	320	(1)
	Georgia Southern & Florida RR	230	480	(1)
Channel A	Hutchinson Ave	228	220	480
	East Rogers St	225	120	100
	South Gordon Ave	223	120	150

[1] Extends 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: September 23, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76–32481 Filed 11–5–76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI–2329]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for City of Chaska, Minnesota

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 (§ 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the City of Chaska, Minnesota.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Chaska must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed 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 proposed flood elevations are available for review at City Hall, 205 East 4th Street, Chaska, Minnesota 55318.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Leon Schmidt, City Hall, 205 East 4th Street, Chaska, Minnesota 55318. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

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
East Creek	Brandondale Rd.	774	30	35
	Crosstown Blvd.	747	750	330
	U.S. Highway 212	738	2,230	1,710
Chaska Creek	C.S.A.H 10	753	20	30
	U.S. Highway 212	736	60	2,150
Minnesota River	Minnesota Highway 41	722	(1)	1,100
	Milwaukee R R	722	(1)	3,640

[1] Outside Chaska 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: September 29, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76–32483 Filed 11–5–76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI–2338]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for City of Gastonia, North Carolina

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 (§ 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the City of Gastonia, North Carolina.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Gastonia must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed 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 proposed flood elevations are available for review at City Hall, Gastonia, North Carolina 28052.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor P. Jefferies, City Hall, Gastonia, North Carolina 28052. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

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
Duharts Circle	Redbud Dr.[1]	662	180	95
	Franklin Blvd.[1]	687	380	930
	Cox Rd.[1]	697	20	290
Tributary D–1	Monticello Dr.	692	145	140
Tributary D–3	Franklin Blvd.[1]	673	100	260
Tributary D–4	Gardner Park Dr.[1]	685	130	90
Tributary D–4–1	Avondale Dr.	743	115	120
	Fairfax Dr.	755	60	280
Tributary D–7	Franklin Blvd.[1]	701	130	70
	Dunham Rd.			
Tributary D–9	Remount Rd.[1]	721	90	150
Catawba Circle	Hoffman Rd.[1]	658	25	30
	S. Marietta St.[1]	719	10	30
	Overhill St.[1]	759	65	65
Tributary C–5	Titman Rd.	657	20	25
Tributary C–7	Hudson Blvd[2]	708	45	405
	Laurel Lane [1]	728	20	25
Tributary C–8	Laurel Lane [1]	707	55	60
	Scotch Dr.[1]	730	30	50
Tributary C–10	Niblick Dr.	709	210	65
Tributary C–11	Efird Rd.	740	75	25
Tributary C–12	Osceola St.[1]	726	90	120
	Plymouth St.[1]	743	90	65
Tributary C–14	Eleventh Ave.[1]	728	195	60
	Tenth Ave.[1]	729	15	15
Tributary C–15	Home Trail	746	40	20
Avon Circle	Garrison Blvd.[1]	728	20	50
	Maple Ave.			
Tributary A–1	Third Ave.[1]	741	40	15
Crowders Circle	Linwood Rd.[1]	676	60	550
Tributary R–1	State Road 1132	670	40	115
	Chapel Grove Rd.	681	155	150
Tributary R–2	Wilwood Rd.[1] (extended)	676	110	220
Tributary R–4	Kings Mountain Hwy.[1]	698	30	95
	Newcastle Rd.	728		

See footnotes at end of table.

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
Tributary R-5	Wilkinson Blvd.[1]	690	40	90
Blackwood Circle	Davis Park Rd.[1]	681	90	90
	Old West Lane	708	60	30
	5th Ave.[1]	733	45	100
Tributary B-4	Lynhaven Dr.[1]	717	100	15
	Clyde St.[1]	742	80	160
Tributary B-5	Belmar Dr	709	90	100
	Echo Lane	711	85	35
Tributary B-8	Sherman St	741	25	20
	Hampton St.[1]	751	30	25
Long Circle	New Hope Rd.[1]	675	30	55
	U.S. Highway 321 [1]	787	50	80
Tributary L-4	Robinson Clemmer Rd	677	140	360
Tributary L-5	Modena St.[1]	690	95	20
Tributary L-6	I-85 [2]	686	290	230
	Davidson Ave.[1]	711	65	140
Tributary L-8	Rankin Lake Rd.[1]	704	35	35
	Caldwell St	713	100	60
	Harrison St.[1]	733	25	30
Tributary L-8-1	York St	718	115	60
Tributary L-8-2	Morris St	722	50	100
Tributary L-9	Tulip Dr.[1]	691	40	45
	Davidson St.[1]	726	80	30
Tributary L-9-1	Jenkens Rd	752	70	140
Tributary L-9-2	Ware Ave	737	80	60
Tributary L-11	State Road 1327 [1]	707	100	50

[1] Downstream side of road.
[2] Upstream side of road.

(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: September 29, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-32492 Filed 11-5-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-3238]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for City of Mora, Minnesota

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 (§ 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the City of Mora, Minnesota.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Mora must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed 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 proposed flood elevations are available for review at City Hall, 117 Southeast Railroad Avenue, Mora, Minnesota 55051.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Robert Ardner, City Hall, 117 Southeast Railroad Avenue, Mora, Minnesota 55051. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

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
Snake River	County Highway 6 (upstream side)	969	110	575
	Burlington Northern RR (50 ft upstream of railroad).	967	620	600
	Main Highways 23 and 65 (upstream side).	964	1,300	90
Mora Lake	Lake shore area	986	(1)	(1)

[1] Variable.

(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: September 29, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-32486 Filed 11-5-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2326]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for City of Tamarac, Florida

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 (§ 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the City of Tamarac, Florida.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Tamarac must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed 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 proposed flood elevations are available for review at City Hall, 5811 Northwest 88th Avenue, Tamarac, Florida 33321.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Walter Falck, 5811 Northwest 88th Avenue, Tamarac, Florida 33321. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level	Width
C-14 and ponding	Center of intersection University Dr. and Southgate Blvd. along Southgate Blvd.	11	1,802 ft—east of intersection.
Ponding	Center of intersection northwest 52d Ave. and Commercial Blvd.	10	2,814 ft—southeast along Commercial Blvd.
	Center of intersection Mainland Dr. and northwest 41st Ter. along 41st Ter.	8	465 ft—north along 41st Ter.

(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: September 29, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-32482 Filed 11-5-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2330]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for City of Crookston, Minnesota

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 (§ 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the City of Crookston, Minnesota.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Crookston must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed 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 proposed flood elevations are available for review at City Hall, Crookston, Minnesota 56716.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Harold Thomforde, Box 372, Crookston, Minnesota 56716. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

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
Red Lake River	Robert St	866	90	1,090
	Main St	864	20	950
	Sargent St	860	30	30

(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: September 29, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-32485 Filed 11-5-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2339]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for City of Youngstown, Mahoning and Trumbull Counties, Ohio

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 (§ 1917.4 (a)) hereby gives notice of his proposed determinations of flood elevations for the City of Youngstown, Mahoning and Trumbull Counties, Ohio.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed 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 proposed flood elevations are available for review at City Hall, Boardman and South Streets, Youngstown.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Jack C. Hunter, City Hall, Youngstown, Ohio 44503. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

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
Mahoning River	Corporate limits (north)	852	250	90
	State Highway 711	850	110	60
	West Ave	845	440	580
	Market St	842	800	30
	Cedar St	839	70	80
	Center St	835	280	780
	Corporate limits (southeast)	830	(1)	50
Crab Creek	Corporate limits (north)	870	30	130
	McGuffey Rd	850	120	190
	Valley St	847	220	610
	Oak St	846	420	230

[1] 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: September 29, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-32494 Filed 11-5-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2334]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Township of Manalapan, New Jersey

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 (§ 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the Township of Manalapan, New Jersey.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Township of Manalapan must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed 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 proposed flood elevations are available for review at Town Hall, Manalapan, New Jersey 07763.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Stanley Kuschick, P.O. Box 15, Manalapan, New Jersey 07763. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

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
Manalapan Brook	Route 527	132	10	20
	Mill Rd	123	60	140
	Millhurst Rd	115	70	210
	Woodward Rd	95	100	300
	Iron Ore Rd	82	320	130
	Dry Grove Rd	78	830	280
Tributary A	Route 33	117	30	30
	Millhurst Rd	109	80	120
	Woodward Rd	97	30	10
Still House Brook	Woodward Rd	107	250	200
Gander Brook	Route 33	107	230	100
Matchaponix Brook	Old Bridge Rd	57	140	500
Pine Brook	Covered Bridge Blvd	101	160	520
	Pine Brook Rd	95	50	150
	Pease Rd	83	20	20
	Winthrop Dr	78	40	30
	Pension Rd	63	70	150
Tributary C	Pease Rd	88	70	170
	Pine Brook Bridge	85	140	50
McGellairds Brook	Craig Rd	84	220	0
	Tennent Rd	83	140	0
	Taylors Mills Rd	72	10	10
Milford Brook	Route 9	98	20	100
	Tennent Rd	88	210	40
	Pease Rd	86	10	400
	Conmack Lane	76	130	70
Tepehemus Brook	Route 9	94	220	240
	Tennent Rd	83	0	130
South Branch Tepehemus Brook.	Ryan Rd	98	10	10
Weamaconk Creek	Route 522	103	220	100
	Penn Central RR	103	350	200
	Woodward Rd	87	600	200
	Penn Central RR	79	860	100

(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: September 23, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76–32489 Filed 11–5–76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI–2337]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Town of Windsor, North Carolina

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 (§ 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the Town of Windsor, North Carolina.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Town of Windsor must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed 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 proposed flood elevations are available for review at Town Hall, Windsor, North Carolina 27983.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Lewis T. Rascoe, Jr., Town Hall, Windsor, North Carolina 27983. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

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
Cashier River	U.S. Highway 17	9	140	1,400

(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: September 29, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-32493 Filed 11-5-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2335]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Township of Wyckoff, New Jersey

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 (§ 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the Township of Wyckoff, New Jersey.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Township of Wyckoff must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed 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 proposed flood elevations are available for review at Town Hall, Scott Plaza, Wyckoff, New Jersey 07481.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Charles Soumas, Town Hall, Scott Plaza, Wyckoff, New Jersey 07481. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

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
Goffle Brook	Newton Rd	270	95	(1)
	Hamden Ave	345	30	160
	Carlton Rd	345	40	110
Midland Ave. Tributary.	Hurley Ave	275	50	130
	Lyons St	288	30	85
Demarest Ave. Tributary.	Stevens Ave	305	85	155
	Demarest Ave	308	310	110
Sicomac Branch	George Pl	332	330	180
Hohokus Brook	Godwin Ave	311	70	(1)
	Patton Ave	326	140	90
	Woodbury Dr	327	60	50
	West Main St	346	635	370
	Clinton Ave	346	260	210
Deep Voll Brook	Manchester Way	328	135	195

(1) Extends 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: September 29, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-32491 Filed 11-5-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2331]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Village of Claycomo, Missouri

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 (§ 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the Village of Claycomo, Missouri.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Village of Claycomo must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed 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 proposed flood elevations are available for review at Village Hall, 111-115 East 69 Highway, Kansas City, Missouri 64119.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. Michael Curry, 111-115 East 69th Highway, Kansas City, Missouri 64119. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean lea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Mill Creek	Randolph Rd	792	30	30
	U.S. Highway 69	796	260	320
	I-35 (downstream side)	802		
	Norfolk and Western RR	758	20	20
Shoal Creek	Hughes Rd	758	(1)	240
	U.S. Highway 69 (downstream side)	758	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: September 29, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-32484 Filed 11-5-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2333]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Village of Glenaire, Missouri

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 (§ 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the Village of Glenaire, Missouri.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Village of Glenaire must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed 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 proposed flood elevations are available for review at Glenaire Village Offices, Liberty, Missouri 64068.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. Robert L. McKinney, Village Hall, Liberty, Missouri 60468. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

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
Little Shoal Creek Trident No. 3.	Shirley Lane	772	40	40
Little Shoal Creek Trident No. 4.	Johnson Rd. (downstream side)	765	25	25

(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: September 23, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-32487 Filed 11-5-76;8:45 am]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

ALLOCATION AND APPORTIONMENT OF DEDUCTIONS FOR COMPUTATION OF TAXABLE INCOME FROM SOURCES WITHIN THE UNITED STATES AND OTHER SOURCES

Public Hearing on Proposed Regulations

Proposed regulations under sections 861, 863 and 905 of the Internal Revenue Code of 1954, relating to allocation and apportionment of deductions for computation of taxable income from sources within the United States and from other sources, are published in this issue of the FEDERAL REGISTER.

A public hearing on the provisions of such proposed regulations will be held on December 16, 1976, beginning at 10 a.m. in the George S. Boutwell Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. 20224.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to such public hearing. Copies of these rules may be obtained by a request directed to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, or by telephoning (Washington, D.C.) 202–964–3935. Under such § 601.601(a)(3) persons who have submitted written comments within the time prescribed in the notice of proposed rule making, and who desire to present oral comments at the hearing on such proposed regulations, should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by December 7, 1976. Such outlines should be submitted to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224. Under § 601.601(a)(3) (26 CFR Part 601) each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the Government and answers thereto.

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

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of this agenda will be available free of charge at the hearing, and information with respect to its contents may be obtained on December 15, 1976, by telephoning (Washington, D.C.) 202–964–3935.

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

[FR Doc.76-32823 Filed 11-4-76;10:04 am]

[26 CFR Part 1]

GROSS INCOME; ALLOCATION AND APPORTIONMENT OF DEDUCTIONS

Notice of Proposed Rule Making

NOVEMBER 4, 1976.

On June 18, 1973, notice of proposed rule making was published in the FEDERAL REGISTER regarding the regulations under section 861 of the Internal Revenue Code of 1954, relating to allocation and apportionment of deductions for computation of taxable income from sources within the United States and from other sources and activities (38 FR 15840). Notice is hereby given that such notice of proposed rule making is hereby withdrawn.

Further, notice is hereby given that in lieu of the proposed regulations which are so withdrawn, the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by December 7, 1976. Pursuant to 26 CFR 601.601(b), designations of material as confidential or not to be disclosed, contained in such comments, will not be accepted. Thus persons submitting written comments should not include therein material that they consider to be confidential or inappropriate for disclosure to the public. It will be presumed by the Internal Revenue Service that every written comment submitted to it in response to this notice of proposed rule making is intended by the person submitting it to be subject in its entirety to public inspection and copying in accordance with the procedures of 26 CFR 601.702(d)(9). Any person submitting written comments who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit a request, in writing, to the Commissioner by December 7, 1976. Notice of time, place, and date of the public hearing and other details relating thereto is published simultaneously herewith. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

WILLIAM E. WILLIAMS,
Acting Commissioner of Internal Revenue.

PREAMBLE

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 861(b) of the Internal Revenue Code of 1954 providing rules for allocation and apportionment of deductions to gross income to determine taxable income from sources within the United States. Under the proposed amendments these rules also apply for purposes of determining taxable income from sources without the United States and taxable income from other sources and activities. In addition, certain supplementary technical amendments are proposed to the regulations under sections 863 and 905(b) of the Code. Such allocation and apportionment of deductions may be necessary to determine taxable income from certain sources and activities for purposes of certain operative sections of the Code, including section 904(a) (overall limitation to the foreign tax credit), section 994 (DISC intercompany pricing rules), sections 871(b) and 882 (effectively connected taxable income), section 954(b)(5) (foreign base company income), and section 863(b) (income partly from within and partly from without the United States).

Under the proposed amendments, a deduction is considered definitely related and therefore allocable to gross income if it is incurred as a result of, or incident to, an activity or in connection with property which activity or property generates, has generated, or can reasonably be expected to generate gross income.

The rules emphasize the factual relationship of such expenditure to, or its identification with, gross income rather than solely looking to the specific purpose of the expenditure giving rise to the deduction.

After a deduction is found to be definitely related to gross income, the deduction may then have to be apportioned to specific categories of gross income, de-

pending on the operative section of the Code under which taxable income is being determined. Deductions must be apportioned in a manner which reflects, to a reasonably close extent, the factual relationship of the deduction to gross income. Some of the relevant bases and factors which may be appropriate for apportionment are:

1. Comparison of units sold,
2. Comparison of amounts of gross sales or receipts,
3. Comparison of costs of goods sold,
4. Comparison of profit contribution or component contribution,
5. Comparison of expenses incurred, assets used, salaries paid, space utilized, and time spent which are attributable to the activities or properties giving rise or reasonably expected to give rise to the gross income, and
6. Comparison of amounts of gross income.

Deductions which are not allocated to specific gross income or all gross income are ratably apportioned to all gross income on a gross income basis.

It is important that taxpayers properly allocate and apportion deductions to gross income under the various operative sections of the Code. If a proper allocation and apportionment of deductions on the basis of factual relationships is not accomplished, taxable income attributable to various sources will not be properly reflected under the applicable operative sections of the Code.

This document differs from the preceding notice of proposed rule making published on June 18, 1973, in the FEDERAL REGISTER (38 FR 15840) in the following material respects:

1. Changes in language have been made throughout the proposed regulations in an effort to clarify the proposed rules.

2. A new optional method for apportionment of the deduction for interest expense has been provided to permit a taxpayer to apportion interest expense on a gross income basis, but the amount of interest apportioned to the statutory grouping and residual grouping, respectively, may not, in each instance, be less than 50 percent of the amount which would have been so apportioned if the taxpayer had used the asset method.

3. A new set of proposed rules has been provided for the allocation and apportionment of the deduction for research and development expenditures (see § 1.861–8(e)(3) of the proposed regulation for these new proposed rules). Under the proposed regulations such deductions are allocated to gross income on the basis of broad product categories, with special account taken of situations where the research and development is necessary solely to meet governmental requirements.

(a) Once allocated, the deduction for research is then apportioned in part on the basis of the geographic location where the major portion of the activities giving rise to the deduction for research and development occurred and in part on the basis of comparison of relative amounts of sales. The part of the deduction apportionable by reference to the location where the major portion of the research and development services were performed is generally speaking 50 percent for a year beginning in 1977, 40 percent for a year beginning in 1978, and 30 percent for years beginning in 1979 and thereafter. For years beginning after 1979, however, the appropriate percent will be the subject of a joint study by the Office of Industrial Economics of the Treasury Department and the Internal Revenue Service. Upon a proper showing by the taxpayer, as provided by the proposed regulations, the percent may be increased for a given year in certain instances. For purposes of apportionment of the remaining portion of the deduction by reference to sales, the sales of unrelated licensees and related corporations are taken into account to the extent provided by the proposed regulations.

(b) A new optional method for apportionment of the deduction for research and development expense has been provided to permit a taxpayer to apportion research and development expense on a gross income basis, but the amount of research expense apportioned to the statutory grouping (or groupings in the aggregate) and the residual grouping, respectively, may not, in each instance, be less than 50 percent of the amount which would have been so apportioned if the taxpayer had used the sales method.

4. The rules of the proposed regulation shall apply to taxable years beginning after December 31, 1976. For taxable years beginning before January 1, 1977, § 1.861–8 as in effect on October 23, 1957 (T.D. 6258), as amended on August 22, 1966 (T.D. 6892) and on September 29, 1975 (T.D. 7378), will apply.

WITHDRAWAL OF PRIOR NOTICE; PROPOSED AMENDMENTS TO THE REGULATIONS

On June 18, 1973, notice of proposed rulemaking was published in the FEDERAL REGISTER (38 FR 15840) regarding the amendment of the Income Tax Regulations (26 CFR Part 1) under section 861 of the Internal Revenue Code of 1954, relating to allocation and apportionment of deductions for computation of taxable income from surces within the United States and from other sources and activities. The rules contained in that notice of proposed rulemaking are hereby withdrawn. The following rules are hereby prescribed in lieu of the rules which are so withdrawn.

Paragraph 1. Section 1.861–8 is amended to read as follows:

§ 1.861–8 Computation of taxable income from sources within the United States and from other sources and activities.

(a) *In general*—(1) *Scope.* Sections 861(b) and 863(a) state in general terms how to determine taxable income of a taxpayer from sources within the United States after gross income from sources within the United States has been determined. Sections 862(b) and 863(a) state in general terms how to determine taxable income of a taxpayer from sources without the United States after gross income from sources without the United States has been determined. This section provides specific guidance for applying the cited Code sections by prescribing rules for the allocation and apportionment of expenses, losses, and other deductions (referred to collectively in this section as "deductions") of the taxpayer. The rules contained in this section apply in determining taxable income of the taxpayer from specific sources and activities under other sections of the Code, referred to in this section as operative sections. See paragraph (f)(1) of this section for a list and description of operative sections. The operative sections include, among others, sections 871(b) and 882 (relating to taxable income of a nonresident alien individual or a foreign corporation which is effectively connected with the conduct of a trade or business in the United States), section 904(a)(1) (as in effect before enactment of the Tax Reform Act of 1976, relating to taxable income from sources within specific foreign countries), and section 904(a)(2) (as in effect before enactment of the Tax Reform Act of 1976, or section 904(a) after such enactment, relating to taxable income from all sources without the United States).

(2) *Allocation and apportionment of deductions in general.* A taxpayer to which this section applies is required to allocate deductions to a class of gross income and, then, if necessary to make the determination required by the operative section of the Code, to apportion deductions within the class of gross income between the statutory grouping of gross income (or among the statutory groupings and the residual grouping of gross income. Except for deductions, if any, which are not definitely related to gross income (see paragraphs (c)(2) and (e)(9) of this section) and which, therefore, are ratably apportioned to all gross income, all deductions of the taxpayer (except the deductions for personal exemptions enumerated in paragraph (e)(11) of this section) must be so allocated and apportioned. As further detailed below, allocations and apportionments are made on the basis of the factual relationship of deductions to gross income.

(3) *Class of gross income.* For purposes of this section, the gross income to which a specific deduction is definitely related is referred to as a "class of gross income" and may consist of one or more items (or subdivisions of these items) of gross income enumerated in section 61, namely:

(i) Compensation for services, including fees, commissions, and similar items;

(ii) Gross income derived from business;

(iii) Gains derived from dealings in property;

(iv) Interests;

(v) Rents;

(vi) Royalties;

(vii) Dividends;

(viii) Alimony and separate maintenance payments;
(ix) Annuities;
(x) Income from life insurance and endowment contracts;
(xi) Pensions;
(xii) Income from discharge of indebtedness;
xiii) Distributive share of partnership gross income;
(xiv) Income in respect of a decedent;
(xv) Income from an interest in an estate or trust.

(4) *Statutory grouping of gross income and residual grouping of gross income.* For purposes of this section, the term "statutory grouping of gross income" or "statutory grouping" means the gross income from a specific source or activity which must first be determined in order to arrive at taxable income" or "statutory grouping" means ity under an operative section. (See paragraph (f)(1) of this section.) Gross income from other sources or activities is referred to as the "residual grouping of gross income" or "residual grouping". For example, for purposes of determining taxable income from sources within specific foreign countries and possessions of the United States, in order to apply the per-country limitation to the foreign tax credit (as in effect before enactment of the Tax Reform Act of 1976), the statutory groupings are the separate gross incomes from sources within each country and possession. Moreover, if the taxpayer has income subject to section 904(d) (as in effect after enactment of the Tax Reform Act of 1976), such income constitutes one or more separate statutory groupings. In the case of the per-country limitation, the residual grouping is the aggregate of gross income from sources within the United States. In some instances, where the operative section so requires, the statutory grouping or the residual grouping may include, or consist entirely of, excluded income. See paragraph (d)(2) of this section with respect to the allocation and apportionment of deductions to excluded income.

(5) *Effective date.* The provisions of this section shall be applicable to taxable years beginning after December 31, 1976. For taxable years beginning before January 1, 1977, § 1.861–8 as in effect on October 23, 1957 (T.D. 6258), as amended on August 22, 1966 (T.D. 6892) and on September 29, 1975 (T.D. 7378), will apply.

(b) *Allocation*—(1) *In general.* For purposes of this section, the gross income to which a specific deduction is definitely related is referred to as a "class of gross income" and may consist of one or more items of gross income. The rules emphasize the factual relationship between the deduction and a class of gross income. See paragraph (d)(1) of this section which provides that in a taxable year there may be no item of gross income in a class or less gross income than deductions allocated to the class, and paragraph (d)(2) of this section which provides that a class of gross income may include excluded income. Allocation is accomplished by determining, with respect to each deduction, the class of gross income to which the deduction is definitely related and then allocating the deduction to such class of gross income (without regard to the taxable year in which such gross income is received or accrued or is expected to be received or accrued). The classes of gross income are not predetermined but must be determined on the basis of the deductions to be allocated. Although most deductions will be definitely related to some class of a taxpayer's total gross income, some deductions are related to all gross income. In addition, some deductions are treated as not definitely related to any gross income and are ratably apportioned to all gross income. (See paragraph (e)(9) of this section.) In allocating deductions it is not necessary to differentiate between deductions related to one item of gross income and deductions related to another item of gross income where both items of gross income are exclusively within the same statutory grouping or exclusively within the residual grouping.

(2) *Relationship to activity or property.* A deduction shall be considered definitely related to a class of gross income and therefore allocable to such class if it is incurred as a result of, or incident to, an activity or in connection with property from which such class of gross income is derived. Where a deduction is incurred as a result of, or incident to, an activity or in connection with property, which activity or property generates, has generated, or could reasonably have been expected to generate gross income, such deduction shall be considered definitely related to such gross income as a class whether or not there is any item of gross income in such class which is received or accrued during the taxable year and whether or not the amount of deductions exceeds the amount of the gross income in such class. See paragraph (d)(1) of this section and example (17) of paragraph (g) of this section with respect to cases in which there is an excess of deductions. In some cases, it will be found that this subparagraph can most readily be applied by determining, with respect to a deduction, the categories of gross income to which it is not related and concluding that it is definitely related to a class consisting of all other gross income.

(3) *Supportive functions.* Deductions which are supportive in nature (such as overhead and general and administrative expenses) may relate to other deductions which can more readily be allocated to gross income. In such instance, such supportive deductions may be allocated and apportioned along with the deductions to which they relate. On the other hand, it would be equally acceptable to attribute supportive deductions on some reasonable basis directly to activities or property which generate, have generated, or could reasonably have been expected to generate gross income. This would ordinarily be accomplished by allocating the supportive expenses to all gross income or to another broad class of gross income and apportioning the expenses in accordance with paragraph (c)(1) of this section. For this purpose, reasonable departmental overhead rates may be utilized. For examples of the the application of the principles of this paragraph, (b)(3), see examples (17) through (21) of paragraph (g) of this section.

(4) *Deductions related to a class of gross income.* See paragraph (e) of this section for rules relating to the allocation and apportionment of certain specific deductions definitely related to a class of gross income. See paragraph (c)(1) of this section for rules relating to the apportionment of deductions.

(5) *Deductions related to all gross income.* If a deduction does not bear a definite relationship to a class of gross income constituting less than all of gross income, it shall ordinarily be treated as definitely related and allocable to all of the taxpayer's gross income except where provided to the contrary under paragraph (e) of this section. Paragraph (e)(9) of this section lists various deductions which generally are not definitely related to any gross income and are ratably apportioned to all gross income.

(c) *Apportionment of deductions*—(1) *Deductions definitely related to a class of gross income.* Where a deduction has been allocated in accordance with paragraph (b) of this section to a class of gross income which is included in one statutory grouping and the residual grouping, the deduction must be apportioned between the statutory grouping and the residual grouping. Where a deduction has been allocated to a class of gross income which is included in more than one statutory grouping, such deduction must be apportioned among the statutory groupings and, where necessary, the residual grouping. If the class of gross income to which a deduction has been allocated is included in its entirety in either a single statutory grouping or the residual grouping, there is no need to apportion that deduction. If a deduction is not definitely related to any gross income, it must be apportioned ratably as provided in paragraph (c)(2) of this section. A deduction is apportioned by attributing the deduction to gross income (within the class to which the deduction has been allocated) which is in the statutory grouping or in each of the statutory groupings and to gross income (within the class) which is in the residual grouping. Such attribution must be accomplished in a manner which reflects to a reasonably close extent the factual relationship between the deduction and the grouping of gross income. In apportioning deductions, it may be that for the taxable year there is no gross income in the statutory grouping or that deductions will exceed the amount of gross income in the statutory grouping. See paragraph (d)(1) of this section with respect to cases in which there is an excess of deductions. In determining the method of apportionment for a specific

deduction, examples of bases and factors which should be considered include, but are not limited to—

(i) Comparison of units sold attributable to the statutory grouping and attributable to the residual grouping;

(ii) Comparison of the amount of gross sales or receipts;

(iii) Comparison of costs of goods sold;

(iv) Comparison of profit contribution;

(v) Comparison of expenses incurred, assets used, salaries paid, space utilized, and time spent which are attributable to the activities or properties giving rise to the class of gross income; and

(vi) Comparison of the amount of gross income in the statutory grouping with the amount in the residual grouping.

The effects on tax liability of the apportionment of deductions and the burden of maintaining records not otherwise maintained and making computations not otherwise made shall be taken into consideration in determining whether a method of apportionment and its application are sufficiently precise. A method of apportionment described in this paragraph (c)(1) of this section may not be used when it does not reflect, to a reasonably close extent, the factual relationship between the deduction and the groupings of income. The principles set forth above are applicable in apportioning both deductions definitely related to a class which constitutes less than all of the taxpayer's gross income and to deductions related to all of the taxpayer's gross income.

If a deduction is not definitely related to any class of gross income, it must be apportioned ratably as provided in paragraph (c)(2) of this section. See also paragraphs (e)(2) through (e)(8) of this section which provide specific rules for allocation and apportionment of deductions for interest, research and development expenses, and certain other deductions.

(2) *Deductions not definitely related to any gross income.* If a deduction is not definitely related to any gross income (see paragraph (e)(9) of this section), the deduction must be apportioned ratably between the statutory grouping (or among the statutory groupings) of gross income and the residual grouping. Thus, the amount apportioned to each statutory grouping shall be equal to the same proportion of the deduction which the amount of gross income in the statutory grouping bears to the total amount of gross income. The amount apportioned to the residual grouping shall be equal to the same proportion of the deduction which the amount of the gross income in the residual grouping bears to the total amount of gross income.

(d) *Excess of deductions and excluded and eliminated income*—(1) *Excess of deductions.* Each deduction which bears a definite relationship to a class of gross income shall be allocated to that class in accordance with paragraph (b)(1) of this section even though, for the taxable year, no gross income in such class is received or accrued or the amount of the deduction exceeds the amount of such class of gross income. In apportioning deductions, it may be that, for the taxable year, there is no gross income in the statutory grouping (or residual grouping), or that deductions exceed the amount of gross income in the statutory grouping (or residual grouping). If there is no gross income in a statutory grouping or the amount of deductions allocated and apportioned to a statutory grouping exceeds the amount of gross income in the statutory grouping, the effects are determined under the operative section. If the taxpayer is a member of a group filing a consolidated return, such excess of deductions is taken into account in determining the consolidated taxable income from sources without the United States. See § 1.1502–4(d)(1) and the last sentence of § 1.1502–12. For an illustration of the principles of this paragraph (d)(1), see example (17) of paragraph (g) of this section.

(2) *Allocation and apportionment to exempt, excluded or eliminated income.* In allocating or apportioning deductions to classes or statutory groupings of gross income, other than apportionment pursuant to paragraph (c)(2) of this section (deductions not definitely related to any class of gross income), gross income shall for this purpose include amounts which are otherwise exempt or excluded (such as the income of a nonresident alien individual or foreign corporation which is not effectively connected income) or which are otherwise eliminated in the computation of consolidated taxable income reported for the taxable year on a consolidated return. Hence, a deduction may be allocated and apportioned to exempt, excluded, or eliminated income. See example (24) of paragraph (g) of this section. No deduction shall be allowed, under this section, for any amount, or part thereof, allocable and apportionable to a class of exempt, excluded, or eliminated income, if such amount is not allowed as a deduction under another section of the Code. See section 265 and the regulations thereunder.

(e) *Allocation and apportionment of certain deductions*—(1) *In general.* Subparagraphs (2) and (3) of this paragraph contain rules with respect to the allocation and apportionment of interest expense and research and development expenditures, respectively. Subparagraphs (4) through (8) of this paragraph contain rules with respect to the allocation of certain other deductions. Subparagraph (9) of this paragraph lists those deductions which are ordinarily considered as not being definitely related to any class of gross income. Subparagraph (10) of this paragraph lists special deductions of corporations which must be allocated and apportioned. Subparagraph (11) of this paragraph lists personal exemptions which are neither allocated nor apportioned. Examples of allocation and apportionment are contained in paragraph (g) of this section.

(2) *Interest*—(i) *In general.* The method of allocation and apportionment for interest set for th in this paragraph (e)(2) is based on the approach that money is fungible and that interest expense is attributable to all activities and property regardless of any specific purposes for incurring an obligation on which interest is paid. This approach recognizes that all activities and property require funds and that management has a great deal of flexibility as to the source and use of funds. Normally, creditors of a business enterprise subject the money advanced to the enterprise to the risk of the entire enterprise, and look to the general credit of the enterprise for payment of the debt. When money is borrowed for a specific purpose, such borrowing will generally free other funds for other purposes and it is reasonable under this approach to attribute part of the cost of borrowing to such other purposes.

(ii) *Allocation of interest.* Except as provided in subdivisions (iii) and (iv) of this subparagraph, the aggregate of deductions for interest shall be considered related to all income producing activities and properties of the taxpayer and, thus, allocable to all the gross income which the income producing activities and properties of the taxpayer generate, have generated, or could reasonably have been expected to generate.

(iii) *Certain nonbusiness interest.* Interest expense deductible under section 163 which is not paid or incurred during the taxable year

(A) In carrying on any trade or business,

(B) For the production or collection of income,

(C) For the management, conservation, or maintenance of property held for the production of income, or

(D) In connection with the determination, collection, or refund of any tax

shall be considered a deduction which is not definitely related to any class of gross income. For example, interest paid or incurred by an individual on a mortgage which constitutes part or all of the purchase price of his personal residence shall normally be considered a deduction which is not definitely related to any class of gross income.

(iv) *Allocation of interest to specific property.* (A) If the existence of all of the facts and circumstances described below is established, the deduction for interest shall be considered definitely related solely to the class of gross income which the specific property generates, has generated, or could reasonably have been expected to generate. Such facts and circumstances are as follows:

(*1*) The indebtedness on which the interest was paid was specifically incurred for the purpose of purchasing, maintaining, or improving the specific property;

(*2*) The proceeds of the borrowing were actually applied to the specified purpose;

(*3*) The creditor can look only to the specific property (or any lease or other interest therein) as security for the loan;

(*4*) It may be reasonably assumed that the return (cash flow) on or from the property will be sufficient to fulfill the terms and conditions of the loan agreement with respect to the amount and

timing of payment of principal and interest; and

(5) There are restrictions in the loan agreement on the disposal or use of the property consistent with the assumptions described in (3) and (4) of this subdivision (iv)(A).

A deduction for interest may not be considered definitely related solely to specific property, even though the above facts and circumstances are present in form, if any of such facts and circumstances are not present in substance. Even though the above facts and circumstances are present in substance, a deduction for interest will not be considered definitely related to specific property where the motive for structuring the transaction in the manner described above was without any economic significance and was solely to obtain the benefits of this subdivision (iv).

(B) Where an interest deduction is definitely related solely to specific property under (A) of this subdivision (iv), such interest deduction and such property, or the portion thereof, to which such interest deduction relates shall not be included in the allocation described in subdivision (ii) of this paragraph (e)(2). Instead, the interest deduction shall be allocated solely to the gross income derived from the specific property and apportioned accordingly. Thus, if an apportionment is made on the basis of book values and it is determined that the deduction for certain interest is definitely related to $800,000 of book value of certain property which has a total book value of $1 million, only the $200,000 balance will be included for purposes of allocating and apportioning the remaining portion of the interest deduction which is related to all other activities and properties.

(v) *Apportionment of interest—asset method.* Normally, the deduction for interest expense relates more closely to the amount of capital utilized or invested in an activity or property than to the gross income generated therefrom, and therefore the deduction for interest should normally be apportioned on the basis of asset values. Indebtedness permits the taxpayer to acquire or retain different kinds of assets which may produce substantially different yields of gross income in relation to their value. Thus, apportionment of an interest deduction on such basis as gross income may not be reasonable. If a taxpayer consistently apportions the deduction for interest on the basis of the book value (original cost less depreciation) of its assets, that method will ordinarily be accepted. Alternatively, if a taxpayer can apportion the deduction on the basis of the fair market value of his assets and he can establish the fair market value to the satisfaction of the Commissioner, that method will also be acceptable. However, once the taxpayer uses fair market value the taxpayer must continue to use such method unless expressly authorized by the Commissioner to change his method. For purposes of determining values of assets under this subdivision (v), an average of values (book or market) shall be computed for the year on the basis of values of assets at the beginning and end of the year. Where a substantial distortion of asset values would result from the use of such an averaging basis, an appropriate method satisfactory to the Commissioner shall be used.

(vi) *Apportionment of interest—optional gross income methods.* If the conditions of either (A) or (B) of this subdivision (vi) are met, in lieu of apportioning the deduction for interest expense (allocable under subdivision (ii) of this paragraph (e)(2)) under subdivision (v) of this paragraph (e)(2), a taxpayer may, at his option, for any taxable year apportion such deduction, as prescribed in this (A) or (B), between the statutory grouping (or among the statutory groupings) of gross income and the residual grouping of gross income.

(A) *Option one.* If, when apportioned ratably on the basis of gross income between the statutory grouping (or among the statutory groupings) of gross income and the residual grouping of gross income in the same proportions that the amount of gross income in the statutory grouping (or groupings) and the amount of gross income in the residual grouping bear, respectively, to the total amount of gross income:

(1) The amount of interest expense ratably apportioned to the statutory grouping (or groupings in the aggregate) is not less than fifty percent (50%) of the amount which would have been so apportioned if the taxpayer had used the method described in subdivision (v) of this paragraph (e)(2), and

(2) The amount of interest expense ratably apportioned to the residual grouping is not less than fifty percent (50%) of the amount which would have been so apportioned if the taxpayer had used the method described in subdivision (v) of this paragraph (e)(2), then the taxpayer may apportion his interest expense ratably on the basis of gross income.

(B) *Option Two.* If, when the amount of interest expense is apportioned ratably on the basis of gross income, either condition (1) or (2) of (A) of this subdivision (vi) is not met, the taxpayer may either:

(1) Apportion fifty percent (50%) of the amount of interest expense which would have been apportioned to the statutory grouping (or groupings in the aggregate) under subdivision (v) of this paragraph (e)(2), to such statutory grouping (or to such statutory groupings in the aggregate and then among such groupings ratably on the basis of gross income within each grouping), and apportion the balance of the amount of interest expense to the residual groupings; or

(2) Apportion fifty percent (50%) of the amount of the interest expense which would have been apportioned to the residual grouping under subdivision (v) of this paragraph (e)(2) to such residual grouping, and apportion the balance of the amount of interest expense to the statutory grouping (or to the statutory groupings in the aggregate and then among such groupings ratably on the basis of gross income within each grouping).

(vii) *Examples.* Examples (1) and (2) of paragraph (g) of this section illustrate the allocation and apportionment of interest deductions.

(3) *Research and experimental expenditures*—(i) *Allocation*—(A) *In general.* The methods of allocation and apportionment of research and development set forth in this paragraph (e)(3) recognize that research and development is an inherently speculative activity, that findings may contribute unexpected benefits, and that the gross income derived from successful research and development must bear the cost of unsuccessful research and development. Expenditures for research and development which a taxpayer deducts under section 174 shall ordinarily be considered deductions which are definitely related to all income reasonably connected with the relevant broad product category (or categories) of the taxpayer and therefore allocable to all items of gross income as a class (including income from sales, royalties, and dividends) related to such product category (or categories). For purposes of this allocation, the product category (or categories) which a taxpayer may be considered to have shall be limited to the following list. Ordinarily a taxpayer's research and development expenditures may be divided between the relevant product categories. Where research and development is conducted with respect to more than one product category, the taxpayer may aggregate the categories for purposes of allocation and apportionment; however, the taxpayer may not subdivide the categories in this list. Where research and development is not clearly identified with any product category (or categories), it will be considered conducted with respect to all the taxpayer's product categories. The individual products included within each category are enumerated in Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual, 1972 (or later edition, as available).

SIC Major Groups	*Nonmanufactured categories*
(01, 02, 07, 08, 09).	Agriculture, forestry and fisheries.
(10, 11, 12)-----	Hard mineral mining.
(13) ----------	Crude petroleum, and natural gas.
(14) ----------	Nonmetallic minerals.
(15, 16, 17)-----	Construction services.
(40, 41, 42, 43, 44, 45, 46, 47).	Transportation services.
(48) ----------	Communication.
(49) ----------	Electric, gas and sanitary services.

SIC Major Groups	*Nonmanufactured categories*
(50, 51)	Wholesale trade (not applicable with respect to sales by the taxpayer of goods and services from any other of the taxpayer's product categories and not applicable with respect to a domestic international sales corporation for which the taxpayer is a related supplier of goods and services from any other of the taxpayer's product categories).
(52, 53, 54, 55, 56, 57, 58, 59).	Retail trade (not applicable with respect to sales by the taxpayer of goods and services from any other of the taxpayer's product categories, except Wholesale trade, and not applicable with respect to a domestic international sales corporation for which the taxpayer is a related supplier of goods and services from any other of the taxpayer's product categories, except Wholesale trade).
(60, 61, 62, 63, 64, 65, 66, 67).	Finance, insurance, and real estate
(70, 72, 73, 75, 76, 78, 79, 80, 81, 82, 83, 84, 86, 88, 89).	Other services.
(20)	Food and kindred products.
(21)	Tobacco manufactures.
(22)	Textile mill products.
(23)	Apparel and other finished products made from fabrics and similar materials.
(24)	Lumber and wood products, except furniture.
(25)	Furniture and fixtures.
(26)	Paper and allied products.
(27)	Printing, publishing, and allied industries.
(28)	Chemicals and allied products.
(29)	Petroleum refining and related industries.
(30)	Rubber and miscellaneous plastics products.
(31)	Leather and leather products.
(32)	Stone, clay, glass and concrete products.
(33)	Primary metal industries.
(34)	Fabricated metal products, except machinery and transportation equipment.
(35)	Machinery, except electrical.
(36)	Electrical and electronic machinery, equipment and supplies.
(37)	Transportation equipment.
(38)	Measuring, analyzing, and controlling instruments; photographic, medical and optical goods; watches and clocks.
(39)	Miscellaneous manufacturing industries.

(B) *Exception.* Where research and development is undertaken solely to meet legal requirements imposed by a political entity with respect to improvement or marketing of specific products or processes, and the results cannot reasonably be expected to generate amounts of gross income (beyond de minimus amounts) outside a single geographic source, the deduction for such research and development shall be considered definitely related and therefore allocable only to the grouping (or groupings) of gross income within that geographic source as a class. For example, where a taxpayer performs tests on a product in response to a requirement imposed by the U.S. Food and Drug Administration, and the test results cannot reasonably be expected to generate amounts of gross income (beyond de minimus amounts) outside the United States, the costs of testing shall be allocated solely to gross income from sources within the United States.

(ii) *Apportionment of research and development—sales method*—(A) *Exclusive apportionment.* Where an apportionment based upon geographic sources of income of a deduction for research and development is necessary (after applying the exception in subdivision (i)(B) of this paragraph (e)(3)), an amount equal to—

(*1*) Fifty percent (50%), in the case of a taxable year beginning during 1977,

(2) Forty percent (40%), in the case of a taxable year beginning during 1978,

(3) Thirty percent (30%), in the case of a taxable year beginning during 1979, and thereafter,

of such deduction for research and development shall be apportioned exclusively to the statutory grouping of gross income or the residual grouping of gross income, as the case may be, arising from the geographic source where the research and development activities which account for more than fifty percent (50%) of the amount of such deduction were performed. If the fifty percent test of the preceding sentence is not met, then no part of the deduction shall be apportioned under this subdivision (ii)(A). This exclusive apportionment reflects the view that research and development is often most valuable in the country where it is performed, for two reasons. First, research and development often benefits a broad product category, consisting of many individual products, all of which may be sold in the nearest market but only some of which may be sold in foreign markets. Second, research and development often is utilized in the nearest market before it is used in other markets, and, in such cases, has a lower value per unit of sales when used in foreign markets. The taxpayer may establish to the satisfaction of the Commissioner that, in its case, one or both of the conditions mentioned in the preceding sentences warrant a significantly greater percent than the relevant percent specified in (*1*), (*2*), *or* (*3*) of this subdivision (ii)(A) because the research and development is reasonably expected to have very limited or long delayed application outside the geographic source where it was performed. For purposes of establishing that only some products within the product category (or categories) are sold in foreign markets, the taxpayer shall compare the commercial production of individual products in domestic and foreign markets made by itself, by uncontrolled parties (as defined under (C) of this subdivision (ii)) of products involving intangible property which was licensed or sold by the taxpayer, and by those controlled corporations (as defined under (D) of this subdivision (ii)) which can reasonably be expected to benefit directly or indirectly from any of the taxpayer's research expense connected with the product category (or categories). The individual products compared for this purpose shall be limited, for nonmanufactured categories, solely to those enumerated in Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual*, 1972 (or later edition, as available), and, for manufactured categories, solely to those enumerated at a 7-digit level on pages 5 through 200 of U.S. Bureau of the Census, *Census of Manufactures: 1972, Numerical List of Manufactured Products (New (1972) SIC Basis)*, 1973, (or later edition, as available). Examples (9), (10), and (13) in paragraph (g) of this section illustrate the application of this rule. For purposes of establishing the delayed application of research findings abroad, the taxpayer shall compare the commercial introduction of its own particular products and processes (not limited by those listed in the *Standard Industrial Classification Manual* or the *Numerical List of Manufactured Products*) in the United States and foreign markets, made by itself, by uncontrolled parties (as defined under (C) of this subdivision (ii)) of products involving intangible property which was licensed or sold by the taxpayer, and by those controlled corporations (as defined under (D) of this subdivision (ii) which can reasonably be expected to benefit, directly or indirectly, from the taxpayer's research expense. For purposes of evaluating the delay in the application of research findings in foreign markets, the taxpayer shall use a safe haven discount rate of 10 percent per year of delay unless he is able to establish, by reference to the cost of money and the number of years during which economic benefit can be directly attributable to the results of the taxpayer's research, that another discount rate is more appropriate (see examples (9) through (12) in paragraph (g) of this section).

(B) *Remaining apportionment.* The amount equal to the remaining portion of such deduction for research and development, not apportioned under (A) of this subdivision (ii), shall be apportioned between the statutory grouping (or among the statutory groupings) within the class of gross income and the residual grouping within such class in the same proportions that the amount of sales from the product category (or categories) which resulted in such gross income within the statutory grouping (or

statutory groupings) and in the residual grouping bear, respectively, to the total amount of sales from the product category (or categories). Amounts apportioned under this paragraph (e)(3) may exceed the amount of gross income related to the product category within the statutory grouping. In such case, the excess shall be applied against other gross income within the statutory grouping. See paragraph (d)(1) of this section for instances where the apportionment leads to an excess of deductions over gross income within the statutory grouping.

(C) *Sales of uncontrolled parties.* For purposes of the apportionment under (B) of this subdivision (ii), the sales from the product category (or categories) by each party uncontrolled by the taxpayer, of particular products involving intangible property which was licensed or sold by the taxpayer to such uncontrolled party shall be taken fully into account both for determining the taxpayer's apportionment and for determining the apportionment of any other member of a controlled group of corporations to which the taxpayer belongs if the uncontrolled party can reasonably be expected to benefit directly or indirectly (through any member of the controlled group of corporations to which the taxpayer belongs) from the research expense connected with the product category (or categories) of such other member. In the case of licensed products, if the amount of sales of such products is unknown (for example, where the licensed product is a component of a large machine), a reasonable estimate should be made. In the case of sales of intangible property, and in cases where a reasonable estimate of sales of licensed products cannot be made, the sales taken into account shall be an amount which is ten times the amount received or accrued for the intangible during the taxpayer's taxable year. For purposes of this subdivision (ii)(C), the term "uncontrolled party" means a party which is not a person with a relationship to the taxpayer (specified in section 267(b)), or is not a member of a controlled group of corporations to which the taxpayer belongs (within the meaning of section 993(a)(3)). An uncontrolled party can reasonably be expected to benefit from the research expense of a member of a controlled group of corporations to which the taxpayer belongs if such member can reasonably be expected to license, sell, or transfer intangible property to that uncontrolled party, or transfer secret processes to that uncontrolled party, directly or indirectly through a member of the controlled group of corporations to which the taxpayer belongs.

(D) *Sales of controlled parties.* For purposes of the apportionment under (B) of this subdivision (ii), the sales from the product category (or categories) of the taxpayer or a corporation controlled by the taxpayer shall be taken fully into account for determining the taxpayer's apportionment, if such corporation can reasonably be expected to benefit directly or indirectly (through another member of the controlled group of corporations to which the taxpayer belongs) from the taxpayer's research expense connected with the product category (or categories). However, sales from the product category (or categories) between or among such controlled corporations or the taxpayer shall not be taken into account; in such a situation, the amount sold by the selling corproation to the buying corporation shall be subtracted from the sales of the buying corporation. For purposes of this subdivision (ii)(D), the term "a corporation controlled by the taxpayer" means any corporation other than an "uncontrolled party" as defined in (C) of this subdivision (ii). A corporation controlled by the taxpayer can reasonably be expected to benefit from the taxpayer's research expense if the taxpayer can be expected to license, sell, or transfer intangible property to that corporation, or transfer secret processes to that corporation, either directly or indirectly through a member of the controlled group of corporations to which the taxpayer belongs. Past experience with research and development shall be considered in determining reasonable expectations. However, if the corporation controlled by the taxpayer has entered into a bonafide cost-sharing arrangement, in accordance with the provisions of § 1.482–2(d)(4), with the taxpayer for the purpose of developing intangible property, then that corporation shall not reasonably be expected to benefit from the taxpayer's share of the research expense.

(iii) *Apportionment of research and development—optional gross income methods.* If the conditions of either (A) or (B) of this subdivision (iii) are met, in lieu of apportioning the deduction for research and development expense under subdivision (ii) of this paragraph (e)(3), a taxpayer may, at his option, for any taxable year apportion such deduction, as prescribed in (A) or (B) of this subdivision (iii), between the statutory grouping (or among the statutory groupings) of gross income and the residual grouping of gross income.

(A) *Option One.* If, when apportioned ratably on the basis of gross income between the statutory grouping (or among the statutory groupings) of gross income and the residual grouping of gross income in the same proportions that the amount of gross income in the statutory grouping (or groupings) and the amount of gross income in the residual grouping bear, respectively, to the total amount of gross income.

(*1*) The amount of research and development expense ratably apportioned to the statutory grouping (or groupings in the aggregate) is not less than fifty percent (50%) of the amount which would have been so apportioned if the taxpayer had used the method described in subdivision (ii) of this paragraph (e)(3), and

(2) The amount of research and development expense ratably apportioned to the residual grouping is not less than fifty percent (50%) of the amount which would have been so apportioned if the taxpayer had used the method described in subdivision (ii) of this paragraph (e)(3),

then the taxpayer may apportion his research and development expense ratably on the basis of gross income.

(B) *Option Two.* If, when the amount of research and development expense is apportioned ratably on the basis of gross income, either condiiton (*1*) or (*2*) of (A) of this subdivision (iii) is not met, the taxpayer may either:

(*1*) Apportion fifty percent (50%) of the amount of research and development expense which would have been apportioned to the statutory grouping (or groupings in the aggregate) under subdivision (ii) of this paragraph (e)(3) to such statutory grouping (or to such statutory groupings in the aggregate and then among such groupings on the basis of gross income within each grouping), and apportion the balance of the amount of research and development expenses to the residual grouping; or

(2) Apportion fifty percent (50%) of the amount of research and development expense which would have been apportioned to the residual grouping under subdivision (ii) of this paragraph (e)(3) to such residual groupings, and apportion the balance of the amount of research and development expenses to the statutory grouping (or to the statutory groupings in the aggregate and then among such groupings ratably on the basis of gross income within each grouping).

(4) *Stewardship expenses attributable to dividends received.* If a corporation renders services for the benefit of a related corporation and the corporation charges the related corporation for such services (see section 482 and the regulations thereunder which provide for an allocation where the charge is not on an arm's length basis as determined therein), the deductions for expenses of the corporation attributable to the rendering of such services are considered definitely related to the amounts so charged and are to be allocated to such amounts. However, the regulations under section 482 (§ 1.482–2(b)(ii)) recognize a type of activity which is not considered to be for the benefit of a related corporation but is considered to constitute "stewardship" or "overseeing" functions undertaken for the corporation's own benefit as an investor in the related corporation, and therefore, a charge to the related corporation for such stewardship or overseeing functions is not provided for. Services undertaken by a corporation of a stewardship or overseeing character generally represent a duplication of services which the related corporation has independently performed for itself. For example, assume that a related corporation, which has a qualified financial staff, makes an analysis to determine the amount and source of its borrowing needs and submits a report of its findings and a plan of borrowing to the parent corporation, and the parent corporation's financial staff reviews the findings and plans to determine whether to advise the

related corporation to reconsider its plan. The services of review performed by the parent corporation for its own benefit are of a stewardship or overseeing character. The deductions resulting from stewardship or overseeing functions are incurred as a result of, or incident to, the ownership of the related corporation and, thus, shall be considered definitely related and allocable to dividends received or to be received from the related corporation. If a corporation has a foreign or international department which exercise stewardship or overseeing functions with respect to related foreign corporations and, in addition, the department has other functions which are attributable to other foreign-source income (such as fees for services rendered outside of the United States for the benefit of foreign related corporations, foreign royalties, and gross income of foreign branches) to which its deductions are also to be allocated, some part of the deductions with respect to that department are considered definitely related to the other foreign-source income. In some instances, the operations of a foreign or international department will also be attributable to United States source income (such as fees for services performed in the United States) to which its deductions are to be allocated. In addition to the deductions attributed to a foreign or international department, certain other deductions of a general and administrative nature will ordinarily be definitely related to foreign source income, such as dividends, and will be apportioned where necessary (see paragraph (c)(1) of this section). See paragraph (f)(5) of this section for the type of verification that may be required in this respect. See examples (17) through (21) of paragraph (g) of this section.

(5) *Legal and accounting fees and expenses.* Fees and other expenses for legal and accounting services are ordinarily definitely related and allocable to specific classes of gross income or to all the taxpayer's gross income, depending on the nature of the services rendered (and are apportioned as provided in paragraph (c)(1) of this section). For example, accounting fees for the preparation of a study of the costs involved in manufacturing a specific product will ordinarily be definitely related to the class of gross income derived from (or which could reasonably have been expected to be derived from) that specific product. The taxpayer is not relieved from his responsibility to make a proper allocation and apportionment of fees on the grounds that the statement of services rendered does not identify the services performed beyond a generalized designation such as "professional," or does not provide any type of allocation, or does not properly allocate the fees involved.

(6) *Income taxes.* The deduction for State, local, and foreign income, war profits and excess profits taxes allowed by section 164 shall be considered definitely related and allocable to the gross income with respect to which such taxes are imposed. For example, if a domestic corporation is subject to State income tax imposed by the State in which its principal office is located and the amount of such State income tax is based in part on the amount of foreign source income, that part of such State income tax attributable to foreign source income is definitely related and allocable to foreign source gross income.

(7) *Losses on the sale, exchange, or other disposition of property*—(i) *Allocation.* The deduction allowed for loss recognized on the sale, exchange, or other disposition of a capital asset or property described in section 1231(b) shall be considered a deduction which is definitely related and allocable to the class of gross income to which such asset or property ordinarily gives rise in the hands of the taxpayer. Where the nature of gross income generated from the asset or property has varied significantly over several taxable years of the taxpayer, such class of gross income shall generally be determined by reference to gross income generated from the asset or property during the taxable year or years immediately preceeding the sale, exchange, or other disposition of such asset or property. Thus, for example, where an asset generates primarily sales income from domestic sources in the early years of its operation and then is leased by the taxpayer to a foreign subsidiary in later years, the class of gross income to which the asset gives rise will be considered to be the rental income derived from the lease and will not include sales income from domestic sources.

(ii) *Apportionment of losses.* Where in the unusual circumstances that an apportionment of a deduction for losses on the sale, exchange, or other disposition of a capital asset or property described in section 1231(b) is necessary, the amount of such deduction shall be apportioned between the statutory grouping (or among the statutory groupings) of gross income (within the class of gross income) and the residual grouping (within the class of gross income) in the same proportion that the amount of gross income within such statutory grouping (or statutory groupings) and such residual grouping bear, respectively, to the total amount of gross income within the class of gross income. Apportionment will be necessary where, for example, the class of gross income to which the deduction is allocated consists of gross income (such a royalties) attributable to an intangible asset used both within and without the United States, or gross income (such as from sales or services) attributable to a tangible asset used both within and without the United States.

(8) *Net operating loss deduction.* A net operating loss deduction allowed under section 172 shall be treated as a deduction definitely related and allocable to the class of gross income to which the activity or property which generated the net operating loss gave rise or could reasonably have been expected to give rise.

(9) *Deductions which are not definitely related.* Deductions which shall generally be considered as not definitely related to any gross income, and therefore are ratably apportioned as provided in paragraph (c)(2) of this section, are—

(i) The deduction allowed by section 163 for interest described in subparagraph (2)(iii) of this paragraph (e);

(ii) The duction allowed by section 164 for real estate taxes on a personal residence or for sales tax on the purchase of items for personal use;

(iii) The deduction for medical expenses allowed by section 213;

(iv) The deduction for charitable contributions allowed by sections 170, 873 (b)(2), and 882(c)(1)(B); and

(v) The deduction for alimony payments allowed by section 215.

(10) *Special deductions.* The special deductions allowed in the case of a corporation by section 241 (relating to the deductions for partially tax exempt interest, dividends received, etc.), section 922 (relating to Western Hemipshere trade corporations), and section 941 (relating to China Trade Act corporations) shall be allocated and apportioned consistent with the principles of this section.

(11) *Personal exemptions.* The deductions for the personal exemptions allowed by section 151, 642(b), or 873(b)(3) shall not be taken into account for purposes of allocation and apportionment under this section.

(f) *Miscellaneous matters*—(1) *Operative sections.* The operative sections of the Code which require the determination of taxable income of the taxpayer from specific sources or activities and which give rise to stautory groupings to which this section is applicable include the setcions described below.

(i) *Overall limitation to the foreign tax credit.* Under the overall limitation to the foreign tax credit, as provided in section 904(a)(2) (as in effect before enactment of the Tax Reform Act of 1976, or section 904(a) after such enactment) the amount of the foreign tax credit may not exceed the tentative U.S. tax (i.e., the U.S. tax before application of the foreign tax credit) multiplied by a fraction, the numerator of which is the taxable income from sources without the United States and the denominator of which is the entire taxable income. Pursuant to sections 862(b) and 863(a) and §§ 1.862–1 and 1.863–1, this section provides rules for identifying the deductions to be taken into account in determining taxable income from sources without the United States. See section 904(d) (as in effect after enactment of the Tax Reform Act of 1976) and the regulations thereunder which require separate treatment of certain types of income. See example (3) of paragraph (g) of this section for one example of the application of this section to the overall limitation.

(ii) *Per-country limitation to the foreign tax credit.* Under the per-country limitation to the foreign tax credit, as provided in section 904(a)(1) (as in effect before enactment of the Tax Reform Act of 1976), the amount of the foreign tax credit for income taxes paid

to a specific foreign country (or possession of the United States) may not exceed the tentative U.S. tax (i.e., the U.S. tax before application of the foreign tax credit) multiplied by a fraction, the numerator of which is the taxable income from sources within the foreign country and the denominator of which is the entire taxable income. Pursuant to § 1.863–6, the gross income and the taxable income from sources within a specific foreign country are determined under the same principles as are applied in determining gross income from sources within the United States (generally §§ 1.861–1 to 1.861–7) and taxable income from sources within the United States (generally this section). See section 904(d) (as in effect after enactment of the Tax Reform Act of 1976) and the regulations thereunder which require separate treatment of certain types of income. See example (16) of paragraph (g) of this section for an example of the application of this section to the per-country limitation.

(iii) *DISC taxable income.* Section 994 provides rules for determining the taxable income of a DISC with respect to qualified sales and leases of export property and qualified services. The "50–50" combined taxable income method available for making such determination provides, without consideration of export promotion expenses, that the taxable income of the DISC shall be 50 percent of the combined taxable income of the DISC and the related supplier derived from such sales and leases of export property and such services. Pursuant to regulations under section 994, this section provides rules for determining the deductions to be taken into account in determining such combined taxable income, except to the extent modified by the marginal costing rules set forth in the regulations under section 994(b)(2) if used by the taxpayer as provided therein. See examples (22) and (23) of paragraph (g) of this section. In addition, the computation of combined taxable income is necessary to determine the applicability of both the general and special "no loss" rules of the regulations under section 994.

(iv) *Effectively connected taxable income.* Nonresident alien individuals and foreign corporations engaged in trade or business within the United States, under sections 871(b) and 882, are taxable at ordinary rates, as provided in section 1 or 1201(b), and section 11 or 1201(a), on taxable income which is effectively connected with the conduct of a trade or business within the United States. Such taxable income is determined in most instances by initially determining, under section 864(c), the amount of gross income which is effectively connected with the conduct of a trade or business within the United States. Pursuant to sections 873 and 882(c), this section is applicable for purposes of identifying the deductions from such gross income to be taken into account in determining such taxable income. See example (21) of paragraph (g) of this section.

(v) *Foreign base company income.* Section 954 defines the term "foreign base company income" with respect to controlled foreign corporations. Section 954(b)(5) provides that in determining foreign base company income the gross income shall be reduced by the deductions of the controlled foreign corporation "properly allocable to such income". This section provides rules for identifying which deductions are properly allocable to foreign base company income.

(vi) *Other operative sections.* The rules provided in this section also apply in determining—

(A) The amount of foreign source items of tax preference under section 58(g) determined for purposes of the minimum tax;

(B) The amount of foreign mineral income under section 901(e);

(C) The amount of interest income and the income from certain distributions from a DISC or former DISC to which the foreign tax credit limitation is applied separately under section 904(d) (as in effect after enactment of the Tax Reform Act of 1976);

(D) The amount of foreign oil and gas extraction income and the amount of foreign oil related income under section 907;

(E) The tax base for citizens and domestic corporations entitled to the benefits of sections 931 and 936;

(F) The exclusion for income from Puerto Rico for residents of Puerto Rico under section 933;

(G) The limitation under section 934 on the maximum reduction in income tax liability incurred to the Virgin Islands;

(H) The income derived from Guam by an individual who is subject to section 935;

(I) The special deduction granted to China Trade Act corporations under section 941;

(J) The amount of certain U.S. source income excluded from the subpart F income of a controlled foreign corporation under section 952(b);

(K) The amount of income from the insurance of U.S. risks under section 953(b)(5);

(L) The international boycott factor and the specifically attributable taxes and income under section 999; and

(M) The taxable income attributable to the operation of an agreement vessel under section 607 of the Merchant Marine Act of 1936, as amended, and the Capital Construction Fund Regulations thereunder (26 CFR, pt. 3). See 26 CFR 3.2(b)(3).

(2) *Application to more than one operative section.* Where more than one operative section applies, it may be necessary for the taxpayer to apply this section separately for each applicable operative section. In such a case, the taxpayer is required to use the same method of allocation and the same principles of apportionment for all operative sections.

(3) *Special rules of section 863(b)*—(i) *In general.* Special rules under section 863(b) provide for the application of rules of general apportionment provided in §§ 1.863–3 to 1.863–5, to worldwide taxable income in order to attribute part of such worldwide taxable income to U.S. sources and the remainder of such worldwide taxable income to foreign sources. The activities specified in section 863(b) are—

(A) Transportation or other services rendered partly within and partly without the United States,

(B) Sales of personal property produced by the taxpayer within and sold without the United States, or produced by the taxpayer without and sold within the United States, and

(C) Sales within the United States of personal property purchased within a possession of the United States.

In the instances provided in §§ 1.863–3 and 1.863–4 with respect to the activities described in (A), (B), and (C) of this subdivision, this section is applicable only in determining worldwide taxable income attributable to these activities.

(ii) *Relationship of sections 861, 862, 863(a), and 863(b).* Sections 861, 862, 863(a), and 863(b) are the four provisions applicable in determining taxable income from specific sources. Each of these four provisions applies independently. Where a deduction has been allocated and apportioned to income under one of these four provisions, the deduction shall not again be allocated and apportioned to gross income under any of the other three provisions. However, two or more of these provisions may have to be applied at the same time to determine the proper allocation and apportionment of a deduction. The special rules under section 863(b) take precedence over the general rules of Code sections 861, 862 and 863(a). For example, where a deduction is allocable in whole or in part to gross income to which section 863(b) applies, such deduction or part thereof shall not otherwise be allocated under section 861, 862, or 863(a). However, where the gross income to which the deduction is allocable includes both gross income to which section 836(b) applies and gross income to which section 861, 862, or 863(a) applies, more than one section must be applied at the same time in order to determine the proper allocation and apportionment of the deduction.

(4) *Adjustments made under other provisions of the Code*—(i) *In general.* If an adjustment which affects the taxpayer is made under section 482 or any other provision of the Code, it may be necessary to recompute the allocations and apportionments required by this section in order to reflect changes resulting from the adjustment. The recomputation made by the District Director shall be made using the same method of allocation and apportionment as was originally used by the taxpayer, provided such method as originally used conformed with paragraph (a)(5) of this section and, in light of the adjustment, such method does not result in a material distortion. In addition to adjustments which would be made aside from this section, adjustments to

the taxpayer's income and deductions which would not otherwise be made may be required before applying this section in order to prevent a distortion in determining taxable income from a particular source of activity. For example, if an item included as a part of the cost of goods sold has been improperly attributed to specific sales, and, as a result, gross income under one of the operative sections referred to in paragraph (f)(1) of this section is improperly determined, it may be necessary for the District Director to make an adjustment to the cost of goods sold, consistent with the principles of this section, before applying this section. Similarly, if a domestic corporation transfers the stock in its foreign subsidiaries to a domestic subsidiary and the parent continues to incur expenses in connection with the supervision of the foreign subsidiaries (see paragraph (e)(4) of this section), it may be necessary for the District Director to make an allocation under section 482 with respect to such expenses before making allocations and apportionments required by this section, even though the section 482 allocation might not otherwise be made.

(ii) *Example.* X, a domestic corporation, purchases and sells consumer items in the United States and foreign markets. Its sales in foreign markets are made to related foreign subsidiaries. X reported $1,500,000 as sales during the taxable year of which $1,000,000 was domestic sales and $500,000 was foreign sales. X took a deduction for expenses incurred by its marketing department during the taxable year in the amount of $150,000. These expenses were determined to be allocable to both domestic and foreign sales and are apportionable between such sales. Thus, X allocated and apportioned the marketing department deduction as follows:

To gross income from domestic sales:	
$150,000 × $\frac{\$1,000,000}{1,500,000}$	$100,000
To gross income from foreign sales:	
$150,000 × $\frac{\$500,000}{1,500,000}$	50,000
Total	150,000

On audit of X's return for the taxable year, the District Director adjusted, under section 482, X's sales to related foreign subsidiaries by increasing the sales price by a total of $100,000, thereby increasing X's foreign sales and total sales by the same amount. As a result of the section 482 adjustment, the apportionment of the deduction for the marketing department expenses is redetermined as follows:

To gross income from domestic sales:	
$150,000 × $\frac{\$1,000,000}{1,600,000}$	$93,750
To gross income from foreign sales:	
$150,000 × $\frac{\$600,000}{1,600,000}$	56,250
Total	150,000

(5) *Verification of allocations and apportionments.* Since, under this section, allocations and apportionments are made on the basis of the factual relationship between deductions and gross income, the taxpayer is required to furnish, at the request of the District Director, information from which such factual relationships can be determined. In reviewing the overall limitation to the foreign tax credit of a domestic corporation, for example, the District Director should consider information which would enable him to determine the extent to which deductions attributable to functions performed in the United States are related to earning foreign source income, United States source income, or income from both sources. In addition to functions with a specific international purpose, consideration should be given to the functions of management, the direction and results of an acquisition program, the functions of operating units and personnel located at the head office, the functions of support units (including but not limited to engineering, legal, budget, accounting, and industrial relations), the functions of selling and advertising units and personnel, the direction and uses of research and development, and the direction and uses of services furnished by independent contractors. Thus, for example when requested by the District Director, the taxpayer shall make available any of its organization charts, manuals, and other writings which relate to the manner in which its gross income arises and to the functions of organizational units, employees, and assets of the taxpayer and arrange for the interview of such of its employees as the District Director deems desirable in order to determine the gross income to which deductions relate. See section 7602 and the regulations thereunder which generally provide for the examination of books and witnesses. See also section 905(b) and the regulations thereunder which require proof of foreign tax credits to the satisfaction of the Secretary or his delegate.

(g) *General examples.* The following examples illustrate the principles of this section. In each example, unless otherwise specified, the operative section which is applied and gives rise to the statutory grouping of gross income is the overall limitation to the foreign tax credit under section 904(a). In addition, in each example, where a method of allocation or apportionment is illustrated as an acceptable method, it is assumed that such method is used by the taxpayer on a consistent basis from year to year (except in the case of the optional method for apportioning interest under paragraph (e)(2)(vi) of this section or the optional method for apportioning research and development expense under paragraph (e)(3)(iii) of this section). Further, it is assumed that each party named in each example operates on a calendar year accounting basis and, where the party is a U.S. taxpayer, files returns on a calendar year basis.

Example (1)—Interest—(i) *Facts.* X, a domestic corporation, conducts a trade or business in the United States and owns all the stock of Y, a foreign corporation. In 1977, X takes a deduction for interest expense of $150,000. In 1977, X has gross receipts of $968,000, cost of goods sold of $600,000, and gross income of $368,000. X also receives a total of $32,000 in gross income from Y, consisting of $20,000 in dividends, $8,000 in royalties, and $4,000 in interest payments.

(ii) *Allocation.* No portion of the $150,000 deduction is definitely related solely to specific property within the meaning of paragraph (e)(2)(iv) of this section. Thus, X's deduction for interest is related to all of its activities and properties.

(iii) *Apportionment.* Since X computes its foreign tax credit limitation under the overall method there is one statutory grouping, gross income from sources outside the United States, and one residual grouping, gross income from sources within the United States. The interest deduction of $150,000 must be apportioned between these two groupings. In accordance with paragraph (e)(2)(v) and (vi) of this section, X calculates the apportionment of the interest deduction under both the asset and gross income methods. X determines the amount of capital utilized or invested in its income producing activities and properties by computing an average book value for the year for all of its assets on the basis of book values of assets as of the beginning and end of its year. In this example, it is assumed that a substantial distortion does not result from the use of beginning and end of year balances.

Tentative apportionment on the basis of assets

[Average beginning-end of year]

Assets (net of depreciation) which relate to activities and properties that generate U.S.-source income (including inventory, working capital for U.S. business, trade accounts receivable, factory equipment)	$3,200,000
Assets (net of depreciation) which relate to activities and properties that generate foreign-source income (including X's investment in Y and loan to Y, trade accounts receivable, a portion of X's home office based on space and equipment utilized for subsidiary supervision and working capital required for such supervision)	800,000
Total	4,000,000
As a result of the above computations, X would apportion its interest deduction as follows:	
To gross income from sources within the United States (residual grouping):	
$150,000 × $\frac{\$3,200,000}{\$4,000,000}$	120,000
To gross income from sources outside the United States (statutory grouping):	
$150,000 × $\frac{\$800,000}{\$4,000,000}$	30,000
Total	150,000

Tentative apportionment on the basis of gross income

Interest expense apportioned to the residual grouping, gross income from sources within the U.S.:	
$150,000 × $\frac{\$368,000}{\$400,000}$	$138,000
Interest expense apportioned to the statutory grouping, gross income from sources outside the U.S:	
$150,000 × $\frac{\$20,000+\$8,000+\$4,000)}{\$400,000}$	12,000
Total	150,000

Since the tentative apportionment ($12,000) to the statutory grouping on the basis of gross income is only 40 percent of the tentative apportionment ($30,000) on the basis of assets, X may use Option Two of the gross income method (paragraph (e)(2)(vi)(B) of this section) and apportion to the statutory grouping fifty percent (50%) of the $30,000 apportioned to that grouping under the asset method. Thus X's actual apportionment to the statutory grouping would be $15,000.

Example (2)—Interest—(i) *Facts.* X, a domestic corporation, has two wholly owned

subsidiaries, Y and Z, which operate in foreign countries. In 1977, X, incurs an interest expense of $200,000 and has gross income of $500,000 consisting of: $392,000 from its domestic activities; $30,000 of dividends from foreign corporation Y; and $78,000 of dividends from foreign corporation Z. X's balance sheets show an average of beginning and ending asset values as follows: $3,200,000 in book value of asests related to its domestic source income; $800,000 in book value of assets related to its income from Y; and $1,000,000 in book value of assets related to its income from Z. X uses the overall method for calculating the limit on its foreign tax credit.

(ii) *Allocation.* No portion of X's $200,000 deduction for interest expense is definitely related solely to specific property within the meaning of paragraph (e)(2)(iv) of this section. Thus, X's deduction for interest is related to all of its income producing activities and properties.

(iii) *Apportionment.* For purposes of applying the overall limitation, there is one statutory grouping, gross income from sources outside the United States, and the residual grouping, gross income from sources within the United States. X's interest expense must be apportioned between these two groupings. Corporation X calculates tentative apportionments under the asset and gross income methods as follows:

Tentative apportionment on the basis of assets

Interest expense apportioned to sources outside the United States (statutory grouping):	
$200,000 × ($800,000+$1,000,000) / ($800,000+$1,000,000+$3,200,000)	$72,000
Interest expense apportioned to sources within the United States (residual grouping):	
$200,000 × $3,200,000 / ($800,000+$1,000,000+$3,200,000)	128,000
Total apportioned interest expense	200,000
Of which—	
Apportioned to statutory grouping	72,000
Apportioned to residual grouping	128,000

Tentative apportionment on the basis of gross income

Interest expense apportioned to sources outside the United States (statutory grouping):	
$200,000 × ($30,000+$78,000) / ($30,000+$78,000+$392,000)	$43,200
Interest expense apportioned to sources within the United States (residual grouping):	
$200,000 × $392,000 / ($30,000+$78,000+$392,000)	156,800
Total apportioned interest expense	200,000
Of which—	
Apportioned to sources outside the United States statutory grouping	43,200
Apportioned to residual grouping	156,800

The total interest expense apportioned to the statutory grouping ($43,200) under the gross income method is 60 percent of the total amount apportioned to the statutory grouping ($72,000) under the asset method. Thus, X may use Option One of the gross income method (paragraph (e)(2)(vi)(A) of this section) and apportion $43,200 of its interest expense to the statutory grouping.

Example (3)—Research and Development—(i) *Facts.* X, a domestic corporation, is a manufacturer and distributor of small gasoline engines for lawn mowers. Gasoline engines are a product within the category, Machinery, except electrical (SIC Major Group 35). Y, a wholly owned foreign subsidiary of X also manufactures and sells these engines abroad. During 1977, X incurred expenditures of $60,000 on research and development, which it deducts as a current expense, to invent and patent a new and improved gasoline engine. All of the research and development was performed in the United States. In 1977, the domestic sales by X of the new engine total $500,000 and foreign sales by Y total $300,000. X provides technology on the manufacture of engines to Y as a contribution to capital, for which no royalty is paid. In 1977, X's income is $150,000, of which $140,000 is from domestic sales and $10,000 is a dividend from Y.

(ii) *Allocation.* The research and development expenditures were incurred in connection with small gasoline engines and they are definitely related to the items of gross income to which the research gives rise, namely gross income from the sale of small gasoline engines in the United States and dividends received from subsidiary Y, a foreign manufacturer of gasoline engines. Accordingly, the expenses are allocable to this class of gross income.

(iii) *Apportionment.* For purposes of applying the overall limitation, the statutory grouping is gross income from sources without the United States and the residual grouping is gross income from sources within the United States. Since the related class of gross income derived from the use of engine technology consists of both gross income from sources without the United States (dividends from Y) and gross income from sources within the United States (gross income from engine sales), X's deduction of $60,000 for its research and development expenditure must be apportioned between the statutory and residual grouping before the overall limitation may be applied. Because more than 50 percent of X's research and development activity was performed in the United States, 50 percent of that deduction can be apportioned exclusively to the residual grouping of gross income, gross income from sources within the United States. The remaining 50 percent of the deduction can then be apportioned between the residual and statutory groupings on the basis of sales by X and Y. Alternatively, X's deduction for research and development can be apportioned under the optional gross income method. The apportionment for 1977 is as follows:

Tentative apportionment on the basis of sales

Research and development expense to be apportioned between residual andstatutory groupings of gross income	$60,000
Less:	
Exclusive apportionment of research and development expense to the residual grouping of gross income:	
$60,000×50 percent	30,000
Research and development expense to be apportioned[1]between residual and statutory groupings of gross income on the basis of sales	30,000
Apportionment of research and development expense to the residual grouping of gross income:	
$30,000 × $500,000 / ($500,000+$300,000)	18,750
Apportionment of research and development expense to the statutory grouping of gross income:	
$30,000 × $300,000 / ($500,000+$300,000)	11,250
Total: Apportioned deduction for research and development	60,000
Of which—	
Apportioned to the residual grouping ($30,000 +$18,750)	48,750
Apportioned to the statutory grouping	11,250

Tentative apportionment on the basis of gross income

Research and development expense apportioned to sources within the United States (residual grouping):	
$60,000 × $140,000 / ($140,000+$10,000)	$56,000
Research and development expense apportioned to sources within country Y (statutory grouping):	
$60,000 × $10,000 / ($140,000+$10,000)	4,000
Of which—	
Apportioned to the residual grouping	56,000
Apportioned to statutory grouping	4,000

The total research and development expense apportioned to the statutory grouping ($4,000) under the gross income method is approximately 36 percent of the amount apportioned to the statutory grouping under the sales method. Thus, X may use Option Two of the gross income method (paragraph (e)(3)(iii)(B) of this section) and apportion to the statutory grouping fifty percent (50%) of the $11,250 apportioned to that grouping under the sales method. Thus, X apportions $5,625 of research and development expense to the statutory grouping.

Example (4)—Research and Development—(i) *Facts.* Assume the same facts as in example (3) except that X also spends $30,000 in 1977 for research on bulldozers, all of which is performed in the United States, and X has bulldozer sales in the United States of $400,000. X's foreign subsidiary Y, neither manufactures nor sells bulldozers. The bulldozer research is in addition to the $60,000 in research which X does on gasoline engines for lawn mowers. X thus has a deduction of $90,000 for its research activity. X's gross income is $200,000, of which $140,000 is from sales of gasoline engines, $50,000 is from sales of bulldozers, and $10,000 is a dividend from Y.

(ii) *Allocation.* X's research expenses generate income from sales of small gasoline engines and bulldozers. Both of these products are in the major broad product category, Machinery, except electrical (SIC Major Group 35). Therefore, the deduction is definitely related to this product category and allocable to all items of income attributable to it, gross income from the sale of small gasoline engines and bulldozers in the United States and dividends from foreign subsidiary Y, a foreign manufacturer and seller of small gasoline engines.

(iii) *Apportionment.* For purposes of applying the overall limitation, the statutory grouping is gross income from sources outside the United States and the residual grouping is gross income from sources within the United States. X's deduction of $90,000 must be apportioned between the statutory and residual groupings. Because more than 50 percent of X's research and development activity was performed in the United States, 50 percent of that deduction can be apportioned exclusively to the residual grouping, gross income from sources within the United States. The remaining 50 percent of the deduction can then be apportioned between the residual and statutory groupings on the basis of total sales by X and Y. Alternatively, X's deduction for research and development can be apportioned under the optional gross income method. The apportionment for 1977 is as follows:

Tentative apportionment on the basis of sales

Research and development expense to be apportioned between residual and statutory groupings of gross income	$90,000
Less:	
Exclusive apportionment of the research and development expense to the residual grouping of gross income:	
$90,000×50 percent	45,000
Research and development expense to be apportioned between the residual and statutory groupings of gross income on the basis of sales	45,000
Apportionment of research and development expense to the residual grouping of gross income:	
$45,000 × ($500,000+$400,000) / ($500,000+$400,000+$300,000)	25,750
Apportionment of research and development expense to the statutory grouping of gross income:	
$45,000 × $300,000 / $500,000+$400,000+$300,000)	11,250
Total: Apportioned deduction for research and development	90,000
Of which—	
Apportioned to the residual grouping ($45,000+ $33,750)	78,750
Apportioned to the statutory grouping	11,250

Tentative apportionment on the basis of gross income

Research and development expense apportioned to sources within the United States (residual grouping):

$90,000 × $190,000 / ($140,000+$50,000+10,000) $85,500

Research and development expense apportioned to sources within country Y (statutory grouping):

$90,000 × $10,000 / ($140,000+$50,000+$10,000) 4,500

of which—
Apportioned to the residual grouping 85,500
Apportioned to the statutory grouping 4,500

The total research and development expense apportioned to the statutory grouping ($4,500) under the gross income method is 40 percent of the amount apportioned to the statutory grouping under the sales method. Thus, X may use Option Two of the gross income method (paragraph (e)(3)(iii)(B) of this section) and apportion to the statutory grouping fifty percent (50%) of the $11,250 apportioned to that grouping under the sales method. Thus, X apportions $5,625 of research and development expense to the statutory grouping.

Example (5)—Research and Development—(i) *Facts.* Assume the same facts as in example (3) except that in 1978 X continues its sales of the new engines, with sales of $600,000 in the United States and $400,000 by subsidiary Y. X also acquires a 51 percent ownership interest in a foreign corporation Z and a 100 percent ownership interest in C. X transfers its engine technology to Z for a royalty equal to 5 percent of sales, and X enters into a cost-sharing arrangement with C to share the funding of X's research activity. In 1978, corporation Z has sales in country Z equal to $1,000,000. X incurs expense of $80,000 on research and development in 1978, and in addition, X performs $15,000 of research on gasoline engines which was funded by the cost-sharing arrangement with C. All of Z's sales are from the product category, Machinery, except electrical (SIC Major Group 35). X performs all of its research in the United States and $20,000 of its expenditure of $80,000 is made solely to meet noise pollution standards mandated by the United States Government. The expenditure in response to noise pollution standards is not expected to generate gross income (beyond de minimus amounts) outside the United States both because noise standards are not imposed by countries Y and Z and because X does not plan to use the noise pollution control devices in products made abroad.

(ii) *Allocation.* The $20,000 of research expense which X incurred in connection with U.S. noise pollution standards is definitely related and thus allocable to the residual grouping, gross income from sources within the United States. The remaining $60,000 in research and development expenditure incurred by X is definitely related to all gasoline engines and is therefore allocable to the class of gross income to which the engines give rise, gross income from sales in the United States, dividends from country Y, and royalties from country Z. No part of the $60,000 research expense is allocable to dividends from country C because corporation C has already paid, through its cost-sharing arrangement, for research activity performed by X which may benefit C.

(iii) *Apportionment.* For purposes of applying the overall limitation, the statutory grouping is gross income from sources within countries Y and Z, and the residual grouping is gross income from sources within the United States. X's deduction of $60,000 for its research and development expenditure must be apportioned between these groupings. Because more than 50 percent of the research and development was performed in the United States, 40 percent (in 1978) of the $60,000 deduction can be apportioned exclusively to the residual grouping. The remaining 60 percent of the deduction can then be apportioned between the residual and the statutory grouping on the basis of sales by X, Y, and Z. (Alternatively X's deduction for research and development can be apportioned under one of the optional gross income methods, which are not illustrated in this example (see instead example (3) and (4)). Although X has only a 51 percent ownership interest in corporation Z, all of Z's sales are included for purposes of apportionment. The allocation and apportionment for 1978 is as follows:

X's total research expense $80,000
Less:
U.S. Government mandated research directly allocated to the residual grouping of gross income 20,000

Tentative apportionment on the basis of sales

Research and development expense to be apportioned between residual and statutory groupings of gross income $60,000
Less:
Exclusive apportionment of research and development expense to the residual grouping of gross income:
$60,000 × 40 percent 24,000

Research and development expense to be apportioned between the residual and the statutory grouping on the basis of sales $36,000

Apportionment of research and development expense to gross income from sources within the United States (residual grouping):

$36,000 × $600,000 / ($600,000+$400,000+$1,000,000) 10,800

Apportionment of research and development expense to gross income from countries Y and Z (statutory grouping):

$36,000 × ($400,000+$1,000,000) / ($600,000+$400,000+$1,000,000) 25,200

Total: Apportioned deduction for research and development ($24,000+$36,000) $60,000

Of which—
Apportioned to the residual grouping ($24,000+$10,800) 34,800
Apportioned to the statutory grouping of sources within countries Y and Z 25,200

Example (6)—Research and Development—(i) *Facts.* X, a domestic corporation, manufactures and sells forklift trucks and other types of materials handling equipment in the United States. The manufacture and sale of trucks and other handling equipment belongs to the product category, Transportation equipment (SIC Major Group 37). X also sells its forklift trucks to a wholesaling subsidiary located in foreign country Y, and manufactures forklift trucks in foreign country Z. The wholesaling of forklift trucks in country Y belongs to the product category, Wholesale trade (SIC Major Groups 50 and 51). X performs no research with respect to wholesale trade. In 1977, X sold $7,000,000 of trucks to purchasers in the United States, $3,000,000 of trucks to the wholesaling subsidiary in Y, and truck components with an FOB export value of $2,000,000 to its branch in Z. The branch's sales of finished trucks were $5,000,000. In response to emission control requirements of the United States Government, X's United States research department has been engaged in a research project to improve the performance and quality of engine exhaust systems used on its products in the United States. It incurs expenses of $100,000 for this purpose in 1977. In the past, X has customarily adapted the product improvements developed originally for the domestic market to its forklift trucks manufactured abroad. During the taxable year 1977, development of an improved engine exhaust system is completed and X begins installing the new system during the latter part of the taxable year in products manufactured and sold in the United States. X continues to manufacture and sell forklift trucks in foreign countries without the improved engine exhaust systems.

(ii) *Allocation.* X's deduction for its research expense is definitely related to the income to which it gives rise, namely income from the manufacture and sale of forklift trucks within the United States and in country Z. Although the research is undertaken in response to a United States Government mandate, it can reasonably be expected to generate gross income from the manufacture and sale of trucks by the branch in Z. Therefore, the deduction is not allocable solely to income from X's domestic sales of forklift trucks. It is allocable to income from such sales and income from the sales of X's branch in Z. However the deduction for reasearch expense is not allocable to the sales of the subsidiary in Y, because those sales are in a different product category.

(iii) *Apportionment.* For the method of apportionment on the basis of either sales or gross income see example (3). However, in determining the amount of research apportioned to income from foreign and domestic sources, the net sales of the branch in Z are $3,000,000 ($5,000,000 less $2,000,000) and the sales within the United States are $12,000,000 ($7,000,000 plus $3,000,000 plus $2,000,000).

Example (7)—Research and Development—(i) *Facts.* X, a domestic corporation, is a drug company which manufactures a wide variety of pharmaceutical products for sale in the United States. Pharmaceutical products belong to the product category, Chemicals and allied products (SIC Major Group 28). X exports its pharmaceutical products through a domestic international sales corporation (DISC). X's wholly owned foreign subsidiary Y also manufactures pharmaceutical products. In 1977, X has domestic sales of $10,000,000, the DISC has sales of $3,000,000, and Y has sales of $5,000,000. In that same year, 1977, X incurs expense of $200,000 on research to test a product in response to requirements imposed by the United States Food and Drug Administration (FDA). X is able to show that, even though country Y imposes certain testing requirements on pharmaceutical products, the research performed in the United States is not accepted by country Y for purposes of its own licensing requirements, and the research has minimal use abroad. X is further able to show that its DISC sells goods to countries which do not accept or do not require research performed in the United States for purposes of their own licensing standards.

(ii) *Allocation.* Since X's research expense of $200,000 is undertaken to meet the requirements of the United States Food and Drug Administration, and since it is reasonable to expect that the expenditure will not generate gross income (beyond de minimus amounts) outside the United States, the deduction is definitely related and thus allocable to the residual grouping.

(iii) *Apportionment.* No apportionment is necessary since the entire expense is allocated to the residual grouping, gross income from sales within the United States.

Example (8)—Research and Development—(i) *Facts.* X, a domestic corporation, is engaged in continuous research and development to improve the quality of the products that it manufactures and sells, which are floodlights, electric fans, television sets, and storage batteries. X incurs and deducts $100,000 of expenditure for research and development in 1977 which was performed exclusive-

ly in the United States. As a result of this research activity, X acquires patents which it uses in its own manufacturing activity. X licenses its floodlight patent to Y and Z, unrelated foreign corporations, for use in their own territories, countries Y and Z, respectively. Corporation Y pays X an arm's length royalty of $3,000 plus $0.20 for each floodlight sold. Sales of floodlights by Y for the taxable year are $135,000 (at $4.50 per unit) or 30,000 units, and the royalty is $9,000 ($3,000+$0.20×30,000). Y has sales of other products of $500,000. Z pays X an arm's length royalty of $3,000 plus $0.30 for each unit sold. Z manufactures 30,000 floodlights in the taxable year, and the royalty is $12,000 ($3,000+$0.30×30,000). The dollar value of Z's floodlight sales is not known and cannot be reasonably estimated because, in this case, the floodlights are not sold separately by Z but are instead used as a component in Z's manufacture of lighting equipment for theatres. The sales of all Z's products, including the lighting equipment for theatres, are $1,000,000. Y and Z each sell the floodlights exclusively within their respective countries. X's sales of floodlights for the taxable year are $500,000 and its sales of its other products, fans, televisions, and batteries, are $400,000. X has gross income of $500,000, consisting of gross income from domestic sources of $479,000, and royalty income of $9,000 and $12,000 from foreign corporations Y and Z respectively.

(ii) *Allocation.* X's research and development expenses are definitely related to all of the products that it produces, which are flood lights, electric fans, television sets, and storage batteries. All of these products are in the same broadly defined product category, Electrical and electronic machinery, equipment, and supplies (SIC Major Group 36). Thus, X's research and development expenses are allocable to all items of income attributable to this product category, domestic sales income and royalty income from the foreign countries in which corporations Y and Z operate.

(iii) *Apportionment.* Since X uses the overall limitation for calculating the foreign tax credit, the statutory grouping of gross income is royalty income from countries Y and Z. The residual grouping is gross income from sources within the United States. X's deduction of $100,000 for its research expenditures must be apportioned between the groupings. For apportionment on the basis of sales in accordance with paragraph (e)(3)(ii) of this section, X is entitled (in 1977) to an exclusive apportionment of 50 percent of its research and development expense to the residual grouping, gross income from sources within the United States, since more than 50 percent of the research activity was performed in the United States. The remaining 50 percent of the deduction can then be apportioned between the residual and statutory groupings on the basis of sales. Since Y and Z are unrelated licensees of X, only their sales of the licensed product, floodlights, are included for purposes of apportionment. Floodlight sales of Z are unknown, but are estimated at ten times royalties from Z, or $120,000. All of X's sales from the entire product category are included for purposes of apportionment on the basis of sales. Alternatively, X may apportion its deduction on the basis of gross income, in accordance with paragraph (e)(3)(iii) of this section. The apportionment for 1977 is as follows:

Tentative apportionment on the basis of sales

Research and development expense to be apportioned between statutory and residual groupings of gross income	$100,000
Less: Exclusive apportionment of research and development expense to the residual grouping of gross income: $100,000×50 percent	50,000
Research and development expense to be apportioned between the statutory and residual groupings of gross income on the basis of sales	$50,000
Apportionment of research and development expense to the residual groupings of gross income: $50,000×$\frac{\$900,000}{(\$900,000+\$135,000+\$120,000)}$	38,961
Apportionment of research and development expense to the statutory grouping, royalty income from countries Y and Z: $50,000×$\frac{\$135,000+\$120,000}{(\$900,000+\$135,000+\$120,000)}$	11,039
Total: Apportioned deduction for research and development	$100,000
Of which—	
Apportioned to the residual grouping ($50,000+$38,961)	88,961
Apportioned to the statutory grouping of sources within countries Y and Z	11,039

Tentative apportionment on gross income basis

Apportionment of research and development expense to the residual grouping of gross income: $100,000×$\frac{\$479,000}{\$500,000}$	$95,800
Apportionment of research and development expense to the statutory grouping, royalty income from Y and Z: $100,000×$\frac{\$9,000+\$12,000)}{\$500,000}$	4,200
Of which—	
Apportioned to the residual grouping	95,800
Apportioned to the statutory grouping of sources within countries Y and Z	4,200

Since X's apportionment on the basis of gross income to the statutory grouping, $4,200, is less than 50 percent of its apportionment on the basis of sales to the statutory grouping, $11,039 it may use Option Two of paragraph (e)(3)(iii)(B) of this section and apportion $5,520 (50 percent of $11,039) to the statutory grouping.

Example (9)—Research and Development—(i) *Facts.* X, a domestic corporation, manufactures and sells commercial amounts of individual products A, B, and C, each of which is identified with a 7-digit code in the *Numerical List of Manufactured Products,* and all of which are contained in one broad product category, Transportation equipment (SIC Major Group 37). X's wholly owned foreign subsidiary, Y, manufactures and sells commercial amounts of transportation equipment products A, B, and D. X's 51 percent owned subsidiary Z manufactures and sells commercial amounts of transportation equipment product C. In 1978, X incurs expense of $100,000 on research and development performed in the U.S. and has domestic sales of $5,000,000 of which product A accounts for $2,000,000, product B accounts for $2,500,000, and product C accounts for $500,000. Y has foreign sales of $1,000,000, and Z has foreign sales of $500,000. X challenges the allowable amount of 40 percent of its research and development expenditure that is apportioned exclusively to the residual grouping, gross income from domestic sales. For purposes of apportionment on the basis of sales, X contends that it is entitled to a larger exclusive apportionment because its research has very limited and long delayed application outside the United States. X establishes to the satisfaction of the Commissioner that, while it has regularly licensed Y, Z cannot reasonably be expected to benefit from X's research, either directly or indirectly through X or Y. X further establishes, to the satisfaction of the Commissioner, that the individual products manufactured and sold by Y, namely A and B, which are also manufactured and sold by X account for 90 percent of X's sales (($2,000,000+$2,500,000)/($5,000,000)=90 percent); and that there is a delay of about 4.7 years between the time X applies research to its domestic sales and then makes it available to Y.

(ii) *Allocation.* X's research is definitely related to the Transportation equipment product category and thus allocable to all income from that category.

(iii) *Apportionment.* Since X computes the limit on its foreign tax credit under the overall method, there is one statutory grouping, gross income from sources outside the United States, and one residual grouping, gross income from sources within the United States. The research and development deduction is apportioned between these two groupings. In determining whether the 40 percent exclusive apportionment prescribed in paragraph (e)(3)(ii)(A) of this section must be applied to this particular taxpayer, the following analysis is made. In this analysis, Z's sales of product C are ignored.

Calculation of exclusive apportionment on basis of prescribed percentage

X's total deduction for research and development	$100,000
Tentative exclusive apportionment of research and development expense to the residual grouping of gross income: $100,000×40 pct	40,000

Calculation of exclusive apportionment on the basis of facts and circumstances

Factor 1: Only 90 percent of X's product category is manufactured and sold by foreign subsidiary Y; therefore 10 percent of X's research and development expense should be apportioned exclusively to the residual grouping of gross income: $100,000×10 pct	$10,000
Remaining research and development expense: $100,000−$10,000=$90,000	
Factor 2: There is a delay of 4.7 yr between the time X applies its successful research and development to the domestic market and it is applied by its foreign subsidiary Y; based on a calculation of present value at the safe haven discount rate of 10 pct per year of delay, the contribution of research and development to the delayed foreign sales is approximately 36 pct less than its contribution to domestic sales. Therefore, 36 pct of X's remaining research and development expense should be apportioned exclusively to the residual grouping of gross income: $90,000×36 pct	32,400
Total: Exclusive apportionment of research and development expense to the residual grouping based on an analysis of the 2 factors ($10,000+$32,400)	42,400

The exclusive apportionment to the residual grouping of gross income of $42,400 that is based on an analysis of X's facts and circumstances is not substantially different from the exclusive apportionment of $40,000 provided by the 40 percent exclusive apportionment available to all taxpayers. Since X has not demonstrated facts and circumstances that would justify a substantially different exclusive apportionment than the 40 percent figure, the 40 percent exclusive

apportionment stands. The remaining 60 percent of X's research and development expense is apportioned on the basis of total sales of X and Y. (Alternatively, X's deduction for research and development can be apportioned under one of the optional gross income methods, which are not illustrated in this example; see instead examples (3) and (4).)

Example (10)—Research and Development—(i) *Facts.* The facts are the same as example (9), and there are no other material facts except that X establishes to the satisfaction of the Commissioner that foreign subsidiary Y sells 80 percent of the broad product category sold by X; and that there is a delay of about 5.7 years between the time X applies research in generating domestic sales and the time Y applies research in generating foreign sales.

(ii) *Allocation.* X's research is definitely related to the Transportation equipment product category and thus allocable to all income from that category.

(iii) *Apportionment.* Since X computes its foreign tax credit limit under the overall method, there is one statutory grouping, gross income from outside the United States, and one residual grouping, gross income from within the United States. The research and development deduction is apportioned between the two groupings. In determining whether the 40 percent exclusive apportionment must be applied to this particular taxpayer, the following analysis is made.

Calculation of exclusive apportionment on basis of prescribed percentage

X's total deduction for research and development	$100,000
Tentative exclusive apportionment of research and development expense to the residual grouping of gross income $100,000×40 pct	40,000

Calculation of exclusive apportionment on basis of facts and circumstances

Factor 1:	
Only 80 pct of X's product category is manufactured and sold by foreign subsidiary Y; therefore 20 pct of X's research and development expense should be apportioned exclusively to the residual grouping of gross income:	
$100,000×20 pct	$20,000
Remaining research and development expense:	
$100,000−$20,000=$80,000	
Factor 2:	
There is a delay of 5.7 yr between the time X applies its successful research and development to the domestic market and the time it is applied by its foreign subsidiary Y; based on a calculation of present value at the safe haven discount rate of 10 pct per yr of delay, the contribution of research and development to the delayed foreign sales is approximately 42 pct less than its contribution to domestic sales. Therefore 42 pct of X's remaining research and development expense should be apportioned exclusively to the residual grouping of gross income:	
$80,000×42 pct	33,600
Total: Exclusive apportionment of research and development expense to the residual grouping based on an analysis of the 2 factors) $20,000+$33,600)	$53,600

The exclusive apportionment to the residual grouping of gross income of $53,600 that is based on an analysis of X's facts and circumstances is substantially different from the exclusive apportionment of $40,000 provided by the 40 percent exclusive apportionment available to all taxpayers. Since X has demonstrated, to the satisfaction of the Commissioner, that its facts and circumstances justify a substantially higher exclusive apportionment, the Commissioner allows X to apportion exclusively $53,600 of its research expenses to the residual grouping, gross income from sources within the United States. The remaining $46,400 of X's research and development expense is apportioned on the basis of total sales, but X's domestic sales are adjusted to exclude sales of those products not sold abroad. Since only 80 percent of X's product category is sold abroad by Y, only 80 percent of X's domestic sales are included in the apportionment. (Alternatively, X's deduction for research and development can be apportioned under one of the optional gross income methods illustrated in examples (3) and (4).) The apportionment for 1978 is as follows:

Research and development expense to be apportioned between residual and statutory groupings of gross income	$100,000
Less:	
Exclusive apportionment of research and development expense to the residual grouping of gross income	53,600
Remaining research and development expense to be apportioned between residual and statutory groupings of gross income on basis of comparable sales	46,400
Apportionment of research and development expense to the residual grouping, gross income from within the United States:	
$46,400×($5,000,000×.80)/($5,000,000×.80+$1,000,000)	37,120
Apportionment of research and development expense to the statutory grouping, gross income from outside the United States:	
$46,400×$1,000,000/($5,000,000×.80+$1,000,000)	9,280
Total: Apportioned deduction for research and development	100,000
Of which—	
Apportioned to the residual grouping ($53,600+$37,120)	90,720
Apportioned to the statutory grouping	9,280

Example (11)—Research and Development—(i) *Facts.* X, a domestic corporation, and Y, its domestic subsidiary, manufacture and sell computers and other items of office equipment, all of which are contained in one broad product category, Electrical and electronic machinery, equipment and supplies (SIC Major Group 37). Many of the same products are manufactured by X's foreign subsidiary Z (in country Z), using the technology of X or Y, and certain patents are licensed to uncontrolled foreign corporations L and M (in countries L and M respectively). For purposes of justifying an exclusive apportionment in excess of 30 percent in 1979, X seeks to establish that its research has long delayed application outside the United States. Substantially all of X's successful research finds its application in new products. X establishes, to the satisfaction of the Commissioner, that the following table accurately portrays the history of commercial introduction of those particular products which, in the year 1979, were both manufactured in the United States by X or Y, and are either manufactured abroad by Z, or licensed abroad to L or M. In identifying particular products, X is not restricted to the 7-digit products listed in *Numerical List of Manufactured Products.*

	1979 U.S. sales of X and Y (millions)	Year first commercially manufactured in the United States by X or Y	Year first commercially manufactured abroad by Z, or licensed to L or M	Delay in applying research outside the United States (years)
Product a	$130	1972	1974	2
Product b	90	1974	1979	5
Product c	10	1969	1978	9
Product d	50	1970	1973	3
Sales of products manufactured domestically and abroad	280			
Sales of products not manufactured or licensed abroad	55			
Total sales of X and Y	335			

(ii) *Allocation.* X's research is definitely related to the Electrical and electronic machinery, equipment and supplies category, and thus allocable to all income from that category.

(iii) *Apportionment.* On the basis of the facts established by X, the average delay between X's application of research findings in the United States and abroad may be estimated as 3.4 years (weighted on the basis of sales):

$$\frac{[(2\text{ yr}\times\$130)+(5\text{ yr}\times\$90)+(9\text{ yr}\times\$10)+(3\text{ yr}\times\$50)]}{(\$130+\$90+\$10+\$50)}\ \text{Years}\ 3.4$$

If the Commissioner is satisfied that the estimate of 3.4 years accurately reflects the delay between X's application of its research findings in the United States and abroad, such estimate may be accepted for purposes of justifying an exclusive apportionment in excess of 30 percent in 1979.

Example (12)—Research and Development—(i) *Facts.* The facts are the same as in example (11) and there are no other material facts except that, in addition to its research on new products, X also conducts research on improving the processes for manufacturing its standard computer components, X is able to establish that, in 1979, its research and development expenses of $7,000,000 may be reasonably divided into $5,000,000 for new product research and $2,000,000 for new process research. (If X is not able to establish clearly the portion of its research expenditures which is attributable to new process research, the determination of an average delay shall be made solely on the basis of the average delay for introducing new products abroad.) X further establishes, to the satisfaction of the Commissioner, that the following table accurately portrays the history of commercial application of previously developed processes which, in 1979, are both used in manufacturing products in the United States by X or Y, and are either used in manufacturing products abroad by Z, or licensed for manufacturing products abroad by L or M.

	1979 U.S. sales of X and Y of products manufactured using the process (millions)	Year process first commercially applied in the United States by X or Y	Year process first commercially applied abroad or licensed to L or M	Delay in applying research outside the United States (years)
Process a	$45	1970	1979	9
Process b	20	1975	1976	1
Process c	60	1975	1972	−3

(ii) *Allocation.* X's research on new processes as well as new products is definitely related to the Electrical and electronic machinery, equipment and supplies category, and thus allocable to all income from that category.

(iii) *Apportionment.* On the basis of the facts established by X, the average delay between X's application of research findings to the use of new manufacturing processes in the United States and abroad may be estimated as 2.0 years (weighted on the basis of sales):

$$\frac{[(9\text{ yr}\times\$45)+(1\text{ yr}\times\$20)+(-3\text{ yr}\times\$60)]}{(\$45+\$20+\$60)}\text{ Year}=2$$

On the basis of the estimated of an average 2.0 year delay in introducing new processes abroad, and a 3.4 year delay in introducing new products abroad (from Example (11)), and on the basis of the division of research expense between new processes technology ($2,000,000) and new product technology ($5,000,000), the overall delay between X's application of research findings in the United States and abroad may be estimated as 3.0 years:

$$\frac{[(2\text{ yr}\times\$2{,}000{,}000)+(3.4\text{ yr}\times\$5{,}000{,}000)]}{(\$2{,}000{,}000+\$5{,}000{,}000)}\text{ Year}=3$$

If the Commissioner is satisfied that the estimate of 3.0 years accurately reflects the delay between X's application of its research findings in the United States and abroad, such estimate may be accepted for purposes of justifying exclusive apportionment in excess of 30 percent in 1979.

Example (13)—Research and Development—(i) *Facts.* X, a domestic corporation, manufactures and sells electronic computer Model A in the United States. X performs research in the United States with particular emphasis on improving the characteristics of its Model A computer. Y, a foreign subsidiary of X, manufactures and sells electronic computer Model B in France. For purposes of justifying an exclusive apportionment in excess of 30 percent in 1979, X seeks to establish that its research has more limited application in France than in the United States. X establishes that the Model A computer works at substantially faster speeds, and otherwise has markedly superior characteristics, than the Model B computer.

(ii) *Allocation.* X's research is definitely related to the Electrical and electronic machinery, equipment and supplies category (SIC Major Group 35), and thus allocable to all income from that category.

(iii) *Apportionment.* Electronic computers are an individual product enumerated as product number 3573100 (electronic computers, except typewriters, peripheral equipment, and parts) in the *Numerical List of Manufactured Products.* The *Numerical List* groups Model A and Model B computers together under the same product heading. On the basis of these facts, X does not have a more limited application of its research in France than in the United States.

Example (14)—Research and Development—(i) *Facts.* X, a domestic corporation, produces a variety of chemical products used in the further manufacture of synthetic fibers, plastics, paints, fertilizers and explosives. Chemical products are in the category, Chemicals and allied products (SIC Major Group 28). X has total sales of its chemical products of $5,000,000 in 1978 and incurs expense of $200,000 on research and development performed in the United States which it deducts as a current expense. In 1978, X licenses unrelated foreign corporation Y to use one of X's chemical patents in the manufacture of chemical A. The research and development leading to this particular patent was performed by X between 1955 and 1960. Corporation Y manufactures and sells chemical A as well as other products in country Y. Y has sales of $500,000 of chemical A in 1978. It pays X a royalty of 2 percent of sales for use of the patent.

(ii) *Allocation.* X's expenditures for research and development are definitely related to the product category, Chemicals and allied products (SIC Major Group 28), and thus allocable to the income related to it, domestic sales income and foreign royalty income.

(iii) *Apportionment.* X computes its foreign tax credit limit under the overall method. The statutory grouping is gross income from sources outside the United States and the residual grouping is gross income from sources within the United States. Forty percent of X's deduction for research and development is apportioned exclusively (in 1978) to the residual grouping of gross income since the work was performed in the United States. The remaining 60 percent of the deduction is apportioned between the residual and statutory groupings on the basis of sales by X and Y. Since Y is an uncontrolled licensee of X, only its sales of chemical A are included for purposes of apportionment. (Alternatively, X could apportion its research and development deduction on the basis of one of the gross income optional methods illustrated in examples (3) and (4).) The apportionment, on a sales basis, for 1978 is as follows:

Tentative apportionment on the basis of sales

Research and development expense to be apportioned between residual and statutory groupings of gross income	$200,000
Less:	
Exclusive apportionment of research and development expense to the residual grouping of gross income: $200,000 × 40 pct	80,000
Research and development expense to be apportioned between residual and statutory groupings on the basis of sales	120,000
Apportionment of reaserch and development expense to the residual grouping of gross income: $120,000 × $5,000,000 / ($5,000,000+$500,000)	109,091
Apportionment of research and development expense to the statutory grouping of gross income: $120,000 × 500,000 / ($5,000,000+$500,000)	10,909
Total: Apportioned deduction for research and development	200,000
Of which—	
Apportioned to the residual grouping ($80,000+$109,091)	189,091
Apportioned to the statutory grouping	10,909

Example (15)—Research and Development—(i) *Facts.* X, a domestic corporation, manufactures heating equipment. Heating equipment is within the product category, Fabricated metal products, except machinery and transportation equipment (SIC Major Group 34). X incurs expense of $200,000 in 1978 on a successful research project that results in the development of an energy saving furnace. X also incurs expense of $50,000 on basic research which cannot be reasonably related to any product category. All of the research is performed in the United States. X has domestic sales of heating equipment of $500,000 in 1978 on which it earns gross income of $200,000, but has no sales of the new furnace since its production is deferred until 1979. In 1978, X transfers its new furnace technology to uncontrolled foreign corporation Y, which manufactures and sells heating equipment in addition to other fabricated metal products in a foreign country. X receives a lump-sum payment of $25,000 for the sale of the technology. X has a 40 percent ownership interest in Y. The heating equipment sales of Y for 1978 are unknown and cannot be reasonably estimated, but it is known that Y has no sales of the new furnace. X also has a wholly owned foreign subsidiary, Z, which operates hotels in the same foreign country in which Y operates. Hotels are in the product category. Other services (SIC Major Groups 70, 72, 73, 75, 76, 78, 79, 80, 81, 82, 83, 84, 86, 88, and 89). X receives $100,000 in dividends from Z in 1978, and Z has receipts of $1,000,000.

(ii) *Allocation.* X's research on heating equipment is definitely related to the product category, Fabricated metal products, except machinery and transportation equipment, and the deduction of $200,000 for research on heating equipment thus is allocable to all items of income related to that product category, domestic sales income and the lump sum technology transfer payment. X's basic research is related to all products and the deduction of $50,000 for basic research thus is allocable to all of X's income.

(iii) *Apportionment.* Since X uses the overall method to compute the limit on its foreign tax credit there is one statutory grouping, gross income from sources outside the United States, and one residual grouping, gross income from sources within the United States. Under the sales method, X can exclusively apportion 40 percent (in 1978) of its deduction for research and development to the residual grouping since more than 50 percent of its research activity was performed in the United States. The rest of the deduction may be apportioned on the basis of sales. Since foreign corporation Y's sales of heating equipment are unknown, they are estimated at 10 times the lump-sum payment of $25,000 made by Y to X for the purchase of the new heating equipment technology, or $250,000. (Alternatively, X may apportion its research expense under one of the optional gross income methods.) The apportionment for 1978 is as follows:

Tentative apportionment on the basis of sale

Research and development expense on furnace to be apportioned between residual and statutory groupings of gross income	$200,000
Less:	
Exclusive apportionment of research and development expense on furnace to the residual grouping of gross income: $200,000 × 40 pct	80,000
Research and development expense on furnace to be apportioned between residual and statutory groupings of gross income on the basis of sales	120,000
Apportionment of research and development expense on furnace to the residual grouping of gross income: $120,000 × $500,000 / ($500,000+$250,000)	80,000
Apportionment of research and development expense on furnace to the statutory grouping of gross income: $120,000 × $250,000 / ($500,000+$250,000)	40,000
Total: Apportioned deduction for research and development on furnace	200,000
Basic research expense to be apportioned between residual and statutory groupings of gross income	50,000
Less:	
Exclusive apportionment of basic research to the residual grouping of gross income: $50,000 × 40 pct	20,000
Basic research to be apportioned between residual and statutory groupings of gross income on the basis of sales	30,000

Tentative apportionment on the basis of sale—Continued

Apportionment of basic research expense to the residual grouping of gross income:

$30,000 × $500,000 / ($500,000+$250,000+$1,000,000) ---- 8,571

Apportionment of basic research expense to the statutory grouping of gross income:

$30,000 × ($250,000+$1,000,000) / ($500,000+$250,000+$1,000,000) ---- 21,429

Total: Apportioned deduction for basic research ---- 30,000

Total: Apportioned deduction for research and development on furnace and basic research ---- 250,000

Of which—

Apportioned to the residual grouping ($80,000+$80,000+$20,000+$8,571) ---- 188,571

Apportioned to the statutory grouping ($40,000+$21,429) ---- 61,429

Tentative apportionment on the basis of gross income

Apportionment of research and developmental expense to the residual grouping of gross income:

$250,000 × $200,000 / ($200,000+$25,000+$100,000) ---- $153,846

Apportionment of research and development expense to the statutory grouping of gross income:

$250,000 × ($25,000+$100,000) / ($200,000+$25,000+$100,000) ---- 96,154

The apportionment to the statutory grouping under the gross income method ($96,154) is greater than 50 percent of the apportionment under the sales method ($30,714). Thus, X may apportion either the amount determined under the optional gross income method or the amount determined under the sales method to the statutory grouping. In either case, X's apportionment to the statutory grouping exceeds its lump-sum receipt for the sale of technology and must be partly applied against its dividends from Z.

Example (16)—Research and Development—(i) *Facts.* X, a domestic corporation, is a manufacturer of roller bearings for use in bicycles. Roller bearings are within the product category, Machinery, except electrical (SIC Major Group 35). In 1977, X performs research and development in the United States in an attempt to develop an improved roller bearing suitable for use in racing bicycles. X incurs expense of $50,000 for this purpose and deducts this amount as a current expense. In 1977, X has domestic roller bearing sales of $500,000. X's wholly owned subsidiaries, Y and Z, also manufacture and sell roller bearings in foreign country Y and Puerto Rico, respectively, and can reasonably be expected to benefit from X's research connected with Machinery, except electrical. Corporation Y performs certain preliminary manufacturing activity for corporation Z which, in turn, finishes the manufacturing work on the roller bearings purchased from Y. In 1977, Y has total roller bearings sales of $500,000, $250,000 in country Y and $250,000 to corporation Z in Puerto Rico. Corporation Z has roller bearing sales of $400,000 in the same year.

(ii) *Allocation.* The research and development expenditures were incurred in connection with the manufacture of roller bearings. Thus, they are definitely related and allocable to the income to which they give rise, namely income from the manufacture and sale of roller bearings in the United States, country Y, and Puerto Rico.

(iii) *Apportionment.* For purposes of applying the per-country limitation, the statutory groupings are gross income from manufacturing in country Y and Puerto Rico, and the residual grouping is gross income from manufacturing within the United States. X's deduction must be apportioned between these three groupings. Because more than 50 percent of X's research and development activity was performed in the United States, for purposes of apportionment on the basis of sales, 50 percent of that deduction is apportioned exclusively (in 1977) to the residual grouping, gross income from within the United States. The remainder of the deduction can be apportioned on the basis of sales of X, Y, and Z. In calculating the apportionment, however, the purchases of Z from corporation Y are subtracted from Z's sales. For purposes of apportionment, Z's sales are $150,000 ($400,000 less $250,000). The apportionment for 1977 is as follows:

Tentative apportionment on the basis of sales

Research and development expense to be apportioned between residual and statutory groupings of gross income ---- $50,000

Less:

Exclusive apportionment of research and development expense to the residual grouping of gross income:

$50,000×50 pct ---- 25,000

Research and development expense to be apportioned between residual and statutory groupings of gross income on the basis of sales ---- 25,000

Apportionment of research and development expense to the residual grouping of gross income:

$25,000 × $500,000 / ($500,000+$500,000+$150,000) ---- 10,870

Apportionment of research and development expense to the statutory grouping, gross income from country Y:

$25,000 × $500,000 / ($500,000+$500,000+$150,000) ---- 10,870

Apportionment of research and development expense to the statutory grouping, gross income from Puerto Rico:

$25,000 × ($400,000−$250,000) / ($500,000+$500,000+$150,000) ---- 3,260

Total: Apportioned deduction for research and development ---- 50,000

Of which—

Apportioned to the residual grouping ($25,000+$10,870) ---- 35,870

Apportioned to the statutory grouping to sources within country Y ---- 10,870

Apportioned to the statutory grouping of sources within Puerto Rico ---- 3,260

(Alternatively, X could apportion its research and development expense using one of the optional gross income methods in accordance with paragraph (e)(3)(iii) of this section.)

Example (17)—Stewardship Expenses (Consolidation)—(i) *Facts X*, a domestic corporation, wholly owns M, N, and O, also domestic corporations. X, M, N, and O file a consolidated income tax return. All the income of X and O is from sources within the United States, all of M's income is from sources within South America, and all of N's income is from sources within Africa. X receives no dividends from M, N, or O. During the taxable year, the consolidated group of corporations earned consolidated gross income of $550,000 and incurred total deductions of $370,000 as follows:

	Gross income	Deductions
Corporations:		
X	$100,000	$50,000
M	250,000	100,000
N	150,000	200,000
O	50,000	20,000
Total	550,000	370,000

Of the $50,000 of deductions incurred by X, $15,000 relates to X's ownership of M; $10,000 relates to X's ownership of N; $5,000 relates to X's ownership of O; and the entire $30,000 constitute stewardship expenses. The remainder of X's deductions ($20,000) relates to production of income from its plant in the United States.

(ii) *Allocation.* In accordance with § 1.1502-4, each corporation must first compute its separate taxable income for purposes of computing the limitation on the foreign tax credit. X's deductions of $50,000 are definitely related and thus allocable to the types of gross income to which they give rise, namely $25,000 wholly to income from sources outside the United States ($15,000 for stewardship of M and $10,000 for stewardship of N) and the remainder ($25,000) wholly to gross income from sources within the United States. Expenses incurred by M and N are entirely related and thus wholly allocable to income earned from sources without the United States and expenses incurred by O are entirely related and thus wholly allocable to income earned within the United States. Hence, no apportionment of expenses of X, M, N, or O is necessary. For purposes of applying the overall limitation, the statutory grouping is gross income from sources without the United States and the residual grouping is gross income from sources within the United States. As a result of the allocation of deductions, X, M, and N have separate taxable income (losses) from sources without the United States in the amounts of ($25,000), $150,000, and ($50,000), respectively, computed as follows:

	X	M	N
Foreign gross income	$250,000	$150,000	
Less: Deductions allocable to foreign gross income	$25,000	100,000	200,000
Total, taxable income (loss)	(25,000)	150,000	(50,000)

Thus, in the combined computation of the overall limitation, the numerator of the limiting fraction (taxable income from sources outside the United States) is $75,000 ($150,000 of separate taxable income of M less $50,000 of losses of N and less $25,000 of losses of X).

Example (18)—Stewardship Expenses—(i) *Facts.* X, a domestic corporation, manufactures and sells pharmaceuticals in the United States. X's domestic subsidiary S, and X's foreign subsidiaries T, U, and V perform similar functions in the United States and foreign countries T, U, and V, respectively. Each corporation derives substantial net income during the taxable year. X's gross income for the taxable year consists of:

Domestic sales income	$32,000,000
Dividends from S (before dividends received deduction)	3,000,000
Dividends from T	2,000,000
Dividends from U	1,000,000
Dividends from V	
Royalties from T and U	1,000,000
Fees from U for services performed in the United States	1,000,000
Total gross income	40,000,000
Among other deductions, X incurs the following:	
Expenses of subsidiary supervision department	1,600,000
Charitable contributions	100,000

X's Subsidiary Supervision Department (the Department) is responsible for the supervision of its four subsidiaries and for rendering certain services to the subsidiaries. The Department performs three principal types of activities. The first type consists of services for the direct benefit of U for which a fee is paid by U to X. The cost of the services for U is $1,000,000. The second type consists of stewardship activities which are in the nature of a management review and generally duplicate functions performed by the subsidiaries' own employees (and are, therefore, of a type described in § 1.482-2(b)(2)(ii) which would not be subject to an allocation under section 482). For example, a

team of auditors from X's accounting department periodically audits the subsidiaries' books and prepares internal reports for use by X's management. Similarly, X's treasurer periodically reviews for the board of directors of X the subsidiaries' financial policies. The cost of the duplicative services is $540,000. The third type of activity consists of providing services which are ancillary to the license agreements which X maintains with subsidiaries T and U. The cost of the ancillary services is $60,000.

(ii) *Allocation.* The Department's outlay of $1,000,000 is the basis for the charge to U for services rendered, and therefore $1,000,000 is allocated to the fees paid by U. The remaining $600,000 in the Department's deductions are definitely related to the types of gross income to which they give rise, namely dividends from subsidiaries S, T, U and V and royalties from T and U. However, $60,000 of the $600,000 in deductions are found to be attributable to the ancillary services and are definitely related (and therefore allocable) solely to royalties received from T and U, while the remaining $540,000 in deductions are definitely related (and therefore allocable) to dividends received from all the subsidiaries.

(iii) *Apportionment.* For purposes of applying the overall limitation, the statutory grouping is gross income from sources outside the United States and the residual grouping is gross income from sources within the United States. X's deduction of $540,000 for the Supervision Department expenses and related supportive expenses which is allocable to dividends received from the subsidiaries must be apportioned between the statutory and residual groupings before the overall limitation may be applied. In determining an appropriate method for apportioning the $540,000, a basis other than X's gross income must be used since the dividend payment policies of the subsidiaries bear no relationship either to the activities of the Department or to the amount of income earned by each subsidiary. This is evidenced by the fact that V paid no dividends during the year, whereas S, T, and U paid dividends of $1 million or more each. In the absence of facts that would indicate a material distortion resulting from the use of such method, the stewardship expenses ($540,000) may be apportioned on the basis of the gross receipts of each subsidiary.

The gross receipts of the subsidiaries were as follows:

S	$4,000,000
T	3,000,000
U	500,000
V	1,500,000
Total	9,000,000

Thus, the expenses of the Department are apportioned for purposes of the overall limitation as follows:

Apportionment of stewardship expenses to the statutory grouping of gross income:

$$\$540{,}000 \times \frac{(\$3{,}000{,}000+\$500{,}000+\$1{,}500{,}000)}{\$9{,}000{,}000} = \$300{,}000$$

Apportionment of supervisory expenses to the residual grouping of gross income

$$\$540{,}000 \times \frac{\$4{,}000{,}000}{9{,}000{,}000} = 240{,}000$$

Total: Apportioned stewardship expense .. $540,000

(iv) *Alternative methods of apportionment.* Other methods of apportionment which could possibly be utilized with respect to the stewardship expenses include comparisons of time spent by the employees of the Subsidiary Supervision Department weighted to take into account differences in amounts of compensation paid such employees, comparisons of each subsidiary's gross income or unit sales volume, or comparisons of the costs incurred by each subsidiary, assuming that stewardship activities are not substantially disproportionate to such factors.

(v) *Allocation and apportionment of charitable contributions.* Pursuant to paragraph (e)(9) of this section, charitable contributions are generally treated as deductions which are not definitely related to any gross income and are, accordingly, apportioned ratably on the basis of gross income for purposes of the overall limitation as follows:

Apportionment of charitable contributions to the statutory grouping of gross income:

$$\$100{,}000 \times \frac{(\$2{,}000{,}000+\$1{,}000{,}000+\$1{,}000{,}000)}{\$40{,}000{,}000} = \$10{,}000$$

Apportionment of charitable contributions to the residual grouping of gross income:

$$\$100{,}000 \times \frac{(\$32{,}000{,}000+\$3{,}000{,}000+\$1{,}000{,}000)}{\$40{,}000{,}000} = 90{,}000$$

Total apportioned charitable contributions .. 100,000

Example (19)—General and Administrative Expense—(i) *Facts.* X, a domestic corporation, purchases and sells products both in the United States and in foreign countries. During the taxable year, X incurs the following expenses with respect to its worldwide activities:

Personnel department expenses	$50,000
Training department expenses	35,000
General and administrative expenses	55,000
President's salary	40,000
Sales manager's salary	20,000
Total	200,000

X has domestic gross receipts from sales of $750,000 and foreign gross receipts from sales of $500,000 and has gross income from such sales in the same ratio, namely $300,000 from domestic sources and $200,000 from foreign sources.

(ii) *Allocation.* The above expenses are definitely related and allocable to all of X's gross income derived from both domestic and foreign markets.

(iii) *Apportionment.* For purposes of applying the overall limitation, the statutory grouping is gross income from sources outside the United States and the residual grouping is gross income from sources within the United States. X's deductions for its worldwide sales activities must be apportioned between these groupings. The president and sales manager do not maintain time records. The division of their time between domestic and foreign activities varies from day to day and cannot be estimated on an annual basis with any reasonable degree of accuracy. Similarly, there are no facts which would justify a method of apportionment of their salaries or of one of the other listed deductions based on more specific factors than gross receipts or gross income. An acceptable method of apportionment would be on the basis of gross receipts. The apportionment of the $200,000 deduction is as follows:

Apportionment of the $200,000 expense to the statutory grouping of gross income:

$$\$200{,}000 \times \frac{\$500{,}000}{(\$500{,}000+\$750{,}000)} = \$80{,}000$$

Apportionment of the $200,000 expense to the residual grouping of gross income:

$$\$200{,}000 \times \frac{\$750{,}000}{(\$500{,}000+\$750{,}000)} = 120{,}000$$

Total apportioned general and administrative expense 200,000

Example (20)—General and Administrative Expense—(i) *Facts.* Assume the same facts as above except that X's president devotes only 5 percent of his time to the foreign operations and 95 percent of his time to the domestic operations and that X's sales manager devotes approximately 10 percent of his time to foreign sales and 90 percent of his time to domestic sales.

(ii) *Allocation.* The expenses incurred by X with respect to its worldwide activities are definitely related, and therefore allocable to X's gross income from both its foreign and domestic markets.

(iii) *Apportionment.* On the basis of the additional facts it is not acceptable to apportion the salaries of the president and the sales manager on the basis of gross receipts. It is acceptable to apportion such salaries between the statutory grouping (gross income from sources without the United States) and residual grouping (gross income from sources within the United States) on the basis of time devoted to each sales activity. Remaining expenses may still be apportioned on the basis of gross receipts. The apportionment is as follows:

Apportionment of the $200,000 expense to the statutory grouping of gross income:

President's salary: $40,000×5 pct	$2,000
Sales manager's salary: $20,000×10 pct	2,000
Remaining expenses: $140,000×$500,000/($500,000+$750,000)	56,000
Subtotal: Apportionment of expense to statutory grouping	60,000

Apportionment of the $200,000 expense to the residual grouping of gross income:

President's salary: $40,000×95 pct	38,000
Sales manager's salary: $20,000×90 pct	18,000
Remaining expenses: $140,000×$750,000/($500,000+$750,000)	84,000
Subtotal: Apportionment of expense to residual grouping	140,000
Total: Apportioned general and administrative expense	200,000

Example (21)—General and Administrative Expense—(i) *Facts.* X, a foreign corporation doing business in the United States, is a manufacturer of metal stamping machines. X maufactures and sells these machines in the United States and in foreign countries A and B and has a separate manufacturing facility in each country. Sales of these machines are X's only source of income. In 1977, X incurs general and administrative expenses related to both its U.S. and foreign operations of $100,000. It has machine sales of $500,000, $1,000,000 and $1,000,000 on which it earns gross income of $200,000, $400,000 and $400,000 in the United States, country A, and country B, respectively. The income from the manufacture and sale of the machines in countries A and B is not effectively connected with X's business in the United States.

(ii) *Allocation.* The $100,000 of general and administrative expense is definitely related to the income to which it gives rise, namely a part of the gross income from sales of machines in the United States, in country A, and in country B. The expenses are allocable to this class of income, even though X's gross income from sources outside the United States is excluded income since it is not effectively connected with a U.S. trade or business.

(iii) *Apportionment.* Since X is a foreign corporation, the statutory grouping is gross income effectively connected with X's trade of business in the United States, namely gross income from sources within the United States, and the residual grouping is gross income not effectively connected with a trade or business in the United States, namely gross income from countries A and B. Since there are no facts which would require a method of apportionment other than on the basis of sales or gross income, the amount may be apportioned between the two groupings on the basis of amounts of gross income as follows:

Apportionment of general and administrative expense to the statutory grouping, gross income from sources within the United States:

$$\$100,000 \times \frac{\$200,000}{(\$200,000+\$400,000+\$400,000)} \quad \$200,000$$

Apportionment of general and administrative expense to the residual grouping, gross income from sources without the United States:

$$\$100,000 \times \frac{(\$400,000+\$400,000)}{(\$200,000+\$400,000+\$400,000)} \quad 80,000$$

Total apportioned general and administrative expense 100,000

Example (22)—Domestic International Sales Corporations—(i) *Facts.* X, a domestic corporation, manufactures a line of kitchenware and sells it to retailers in the United States, France, and the United Kingdom. After the Domestic International Sales Corporation (DISC) legislation was passed in 1971, X established, as of January 1, 1972, a DISC and thereafter did all of its foreign marketing through sales by the DISC. In 1977 the DISC has total sales of $7,700,000 for which X's cost of goods sold is $6,000,000. Thus, the gross income attributable to exports through the DISC is $1,700,000 ($7,700,000–$6,000,000). Moreover, X has U.S. domestic sales of kitchenware of $12,000,000 on which it earned gross incsome of $900,000, and X receives royalty income from the foreign license of its kitchenware technology in the amount of $800,000. The DISC's expenses attributable to the resale of export property are $400,000 of which $300,000 qualify as export promotion expenses. X also incurs $125,000 of general and administrative expenses in connection with its domestic and foreign sales activities, and its foreign licensing activities. X and the DISC determine transfer prices charged on the basis of a single product grouping and the "50–50" combined taxable income method (without marginal costing) which permits the DISC to have a taxable income equal to 50 percent of the combined taxable income attributable to the production and sales of the export property, plus 10 percent of the DISC's export promotion expenses.

(ii) *Allocation.* For purposes of determining combined taxable income of X and the DISC from export sales, general and administrative expenses of $125,000 must be allocated to and apportioned between gross income resulting from the production and sale of kitchenware for export, and from the production and sale of kitchenware for the domestic market. The deduction of $400,000 for expenses attributable to the resale of export property is allocated solely to gross income from the production and sale of kitchenware in foreign markets.

(iii) *Apportionment.* Apportionment of expense takes place in two stages. In the first stage, for computing combined taxable income from the production and sale of export property, the general and administrative expense should be apportioned between the statutory grouping of gross income from the export of kitchenware and the residual grouping of gross income from domestic sales and foreign licenses. In the second stage, since the limitation on the foreign tax credit requires the use of a separate limitation with respect to dividends from a DISC (section 904(d)), the general and administrative expense should be apportioned between two statutory groupings, DISC dividends and foreign royalty income (for which the overall limitation is used), and the residual grouping of gross income from sales within the United States.

In the first stage, in the absence of more specific or contrary information, the general and administrative expense may be apportioned on the basis of gross income in the respective groupings, as follows:

Apportionment of general and administrative expense to the statutory grouping, gross income from exports of kitchenware:

$$\$125,000 \times \frac{\$1,700,000}{(\$1,700,000+\$900,000+\$800,000)} \quad \$62,500$$

Apportionment of general and administrative expense to the residual grouping, gross income from domestic sales of kitchenware and foreign royalty income from licensing kitchenware technology:

$$\$125,000 \times \frac{(\$900,000+\$800,000)}{(\$1,700,000+\$900,000+\$800,000)} \quad 62,500$$

Total apportionment of general and administrative expense 125,000

On the basis of this apportionment, the combined taxable income, and the DISC portion of taxable income may be calculated as follows:

Gross income from exports		$1,700,000
Less:		
DISC expense for resale of export property	$400,000	
Apportioned general and administrative expense	62,500	
		462,500
Combined taxable income from production and export of kitchenware		1,237,500
DISC income:		
50 pct of combined taxable income		618,750
10 pct of export promotion expense of $300,000		30,000
Total DISC income		648,750
DISC income as a percentage of combined taxable income		52.4

In the second stage, in the absence of more specific or contrary information, the general and administrative expense may also be apportioned on the basis of gross income in the respective groupings. Since DISC taxable income is 52.4 percent of combined taxable income, DISC gross income is treated as 52.4 percent of the gross income from exports, $1,700,000. The apportionment follows:

Apportionment of general and administrative expense to the statutory grouping, DISC dividends:

$$\$125,000 \times \frac{(0.524 \times \$1,700,000)}{(\$1,700,00+\$900,00+\$800,000)} \quad \$32,750$$

Apportionment of general and administrative expense to the statutory grouping, foreign royalty income:

$$\$125,000 \times \frac{\$800,000}{(\$1,700,000+\$900,000+\$800,000)} \quad 29,412$$

Apportionment of general and administrative expense to the residual grouping, gross income from sources within the United States:

$$\$125,000 \times \frac{(\$900,000+(0.476 \times \$1,700,000))}{(\$1,700,000+\$900,000+\$800,000)} \quad 62,838$$

Total apportioned general and administrative expense 125,000

Example (23)—Domestic International Sales Corporations—(i) *Facts.* The facts are the same as in example (22), except that X also performs research, entirely within the United States, on the kitchenware it manufactures. In 1977, X incurs research expense of $100,000. Of this amount, $10,000 is incurred to meet product safety standards imposed by the U.S. Government. Similar safety standards are imposed by the countries to which X's DISC sells exports, and X's research is aceptable for purposes of meeting the standards of those countries. However, the safety research is not relevant for X's foreign licensees. X is able to establish, on the basis of its facts and circumstances (see example (10)) that an exclusive apportionment of $65,000 of its research and development expense to gross income from sources within the United States is appropriate. X does not know, and a reasonable estimate cannot be made, of the sales of licensed products by its foreign licensees. The sales of the foreign licensees are therefore estimated at ten times the amount of royalty income of $800,000, or $8,000,000.

(ii) *Allocation.* The kitchenware manufactured by X is in the broadly defined product category. Fabricated metal products, except machinery and transportation equipment (SIC Major Group 34). X's deduction for safety research is allocable solely to groupings of gross income within the United States, namely gross income from export sales (through the DISC) and gross income from domestic sales. The remainder of X's deductions for its research expense are definitely related and therefore allocable to all items of income attributable to this product category, domestic and foreign sales income, and foreign licensing income. For purposes of determining the combined taxable income of X and its DISC, X and the DISC are treated as a single taxpayer engaged in the production and sale of fabricated metal products. The DISC is not, for this purpose, treated as a separate taxpayer engaged in wholesale trade (SIC Major Groups 50 and 51).

(iii) *Apportionment.* X's deduction for safety research ($10,000) must be apportioned between the statutory grouping of gross income from exports and the residual grouping of gross income from sales within the United States. The deduction for safety research may be apportioned either on the basis of sales (paragraph (e)(3)(ii) of this section) or on the basis of one of the optional gross income methods (paragraph (e)(3)(iii) of this section). X apportions this deduction on the basis of sales. For this purpose an exclusive apportionment is not available, since gross income from exports through a DISC and gross income from sales within the United States are both within the same geographic source, United States income (see paragraph (e)(3)(ii)(A) of this section). The remainder of X's research expense ($90,000) must be apportioned in two stages. In the first stage, for combined taxable income purposes, this amount must be apportioned between the statutory grouping of gross income from exports and other gross income. In the second stage, the remainder of X's research expense must be apportioned, for foreign tax credit purposes, between two statutory groupings, DISC dividends and foreign royalty income, respectively, and the residual grouping of gross income from sales within the United States. On the basis of X's facts and circumstances, $65,000 is apportioned exclusively to sources within the United States, namely gross income from exports through a DISC and gross income from sales within the United States. The remaining $25,000 of research expense is apportioned between the groupings of gross income on the basis of sales. (Alternatively, if X had apportioned the $10,000 for safety research on the basis of gross income, its remaining deduction of $90,000 for research expense could be apportioned, both in the first and second stage, using one of the optional gross income methods, which are not illustrated in this example (see instead examples (3) and (4).)

Tentative apportionment on the basis of sales

Research and development expense to be allocated and apportioned between residual and statutory groupings of gross income	$100,000
Research and development expense for safety purposes allocated solely to income from sources within the United States:	
Apportionment of safety research to the residual grouping, gross income from domestic sales:	

Tentative apportionment on the basis of sales—Continued

$10,000 × ($12,000,000 / ($12,000,000+$7,700,000)) -- 6,091

Apportionment of safety research to the statutory grouping, gross income from exports:

$10,000 × ($7,700,000 / ($12,000,000+$7,700,000)) -- 3,909

Total apportioned safety research 10,000

Remaining research and development expense to be apportioned between the residual and statutory groupings of gross income 90,000

Apportionment of remaining research to the residual grouping, gross income from domestic sales and foreign royalties:

$90,000 × ($12,000,000+$8,000,000) / ($12,000,000+$8,000,000+$7,700,000) 64,982

Apportionment of remaining research to the statutory grouping, gross income from exports:

$90,000 × $7,700,000 / ($12,000,000+$8,000,000+$7,700,000) 25,018

Total: Allocated and apportioned deduction for research and development for combined taxable income purposes 100,000

Of which—
Apportioned to the residual grouping, gross income from domestic sales and foreign royalties ($6,091+$64,982) 71,073
Apportioned to the statutory grouping, gross income from exports ($3,909+$25,018) 28,927

On the basis of this apportionment, the combined taxable income and the DISC portion of taxable income may be calculated as follows:

Gross income from exports		$1,700,000
Less:		
DISC expense for resale of export property	$400,000	
Apportioned general and administrative expense (from example (22))	62,500	
Apportioned safety research	3,909	
Apportioned remaining research	25,018	
		491,427
Combined taxable income from production and export of kitchenware		1,208,573
DISC income:		
50 pct of combined taxable income		604,287
10 pct of export promotion expense of $300,000		30,000
Total, DISC income		634,287

In the second stage, the remainder of X's research expense ($90,000) must be apportioned, for foreign tax credit purposes, between two statutory groupings, DISC dividends and foreign royalty income, respectively, and the residual grouping of gross income from sales within the United States.

Remaining research and development expense to be apportioned between the residual and statutory groupings of gross income $90,000
Less:
Exclusive apportionment of remaining research and development expense to residual grouping, gross income from domestic sales (based on X's facts and circumstances) 65,000

Remaining research and development expense to be apportioned between the residual and statutory groupings on the basis of sales ... 25,000
Apportionment of research and development expense to the residual grouping of gross income from domestic sales:

$25,000 × $12,000,000 / ($12,000,000+$7,700,000+$8,000,000) 10,830

Apportionment of research and development expense to the statutory grouping of DISC dividends:

$25,000 × $7,700,000 / ($12,000,000+$7,700,000+$8,000,000) 6,950

Apportionment of research and development expense to the statutory grouping of foreign royalty income:

$25,000 × $8,000,000 / ($12,000,000+$7,700,000+$8,000,000) 7,220

Total: Allocated and apportioned deduction for research and development for foreign tax credit purposes 100,000

Of which—
Apportioned to the residual grouping ($6,091+$65,000+$10,830) 81,921
Apportioned to the statutory grouping of gross income from exports ($3,909+$6,950) 10,859
Apportioned to the statutory grouping of foreign royalty income 7,220

Example (24)—Exempt, excluded, or eliminated income—(i) *Facts.* X, a domestic corporation, carries on a trade or business in the United States. In addition, X owns tax exempt municipal bonds, and all the shares of C, a Canadian corporation with which it files a consolidated return under the provisions of section 1504(d). X has gross income from domestic sources of $2,400,000 and tax exempt interest of $100,000. X receives dividends from C of $3,700,000 and interest from C of $50,000. X's dividends from C are eliminated income by virtue of the filing of the consolidated return. The deductible portion of X's interest expense is $500,000 (in addition X has interest expense relating to its tax exempt bonds which is not deductible under section 265) and X has stewardship expense relating to its ownership of C of $100,000. X and C use the overall limitation for purposes of computing the foreign tax credit.

(ii) *Allocation.* No portion of X's interest deduction is definitely related solely to specific property within the meaning of paragraph (e)(2)(iv) of this section. Thus, X's deduction for interest is related to all its income producing activities and properties. X's stewardship expense is related solely to its ownership of C and is therefore allocated to the statutory grouping of foreign source income, namely dividends and interest from C.

(iii) *Apportionment.* X apportions its interest expense using the optional gross income method prescribed in paragraph (e)(2)(vi)(A) of this section. For this purpose, tax exempt and eliminated income is included in gross income. X would therefore apportion its interest deduction between the statutory grouping of foreign source income and the residual grouping as follows:

To gross income from sources within the United States (residual grouping):
$500,000 × ($2,400,000+$100,000) / ($2,400,000+$100,000+$3,700,000+$50,000) .. $200,000
To gross income from sources without the United States (statutory grouping):
$500,000 × ($3,700,000+$50,000) / ($2,400,000+$100,000+$3,700,000+$50,000) .. 300,000

Total apportioned interest expense 500,000

As a result of the allocation of stewardship expense and the apportionment of interest expense, X's taxable foreign source income is calculated as follows:

Gross income from foreign sources	3,750,000
Less: dividends received deduction	3,700,000
Less: allocation of stewardship expense	100,000
Less: apportionment of interest expense	300,000
Taxable foreign source income (loss)	350,000

The amount of interest expense apportioned to tax exempt income for purposes of deductibility is determined not under section 861 but under section 265.

Paragraph 2. Section 1.863-3 is amended by revising example (2)(i) of paragraph (b)(2), example (2)(i) of paragraph (c)(3), and example (1)(i) of paragraph (c)(4) to read as follows:

§ 1.863-3 Income from the sale of personal property derived partly from within and partly from without the United States.

(b) *Income partly from sources within a foreign country.* * * *

(2) *Allocation or apportionment.* * * *

Example (2). (i) Where an independent factory or production price has not been established as provided under example (1), the taxable income shall first be computed by deducting from the gross income derived from the sale of personal property produced (in whole or in part) by the taxpayer within the United States and sold within a foreign country or produced (in whole or in part) by the taxpayer within a foreign country and sold within the United States, the expenses, losses, or other deductions properly allocated and apportioned thereto in accordance with the rules set forth in § 1.861-8.

* * * * *

(c) *Income partly from sources within a possession of the United States.* * * *

(3) *Personal property produced and sold.* * * *

Example (2). (i) Where an independent factory or production price has not been established as provided under example (1), the taxable income shall first be computed by deducting from the gross income derived from the sale of personal property produced (in whole or in part) by the taxpayer within the United States and sold within a possession of the United States, or produced (in whole or in part) by the taxpayer within a possession of the United States and sold within the United States, the expenses, losses, or other deductions properly allocated and apportioned thereto in accordance with the rules set forth in § 1.861-8.

* * * * *

(4) *Personal property purchased and sold.* * * *

Example (1). (i) The taxable income shall first be computed by deducting from such gross income the expenses, losses, or other deductions properly allocated or apportioned thereto in accordance with the rules set forth in § 1.861-8.

* * * * *

Paragraph 3. Section 1.905-2(a)(2) is amended by adding a sentence at the end thereof to read as follows:

§ 1.905-2 Conditions of allowance of credit.

(a) *Forms and information.* * * *

(2) * * * If the taxpayer upon request fails without justification to furnish any such additional information which is significant, including any significant information which he is requested to furnish pursuant to § 1.861-8(f)(5) as proposed in the FEDERAL REGISTER for November 8, 1976, the District Director may disallow the claim of the taxpayer to the benefits of the foreign tax credit.

* * * * *

[FR Doc.76-32822 Filed 11-4-76;10:04 am]

[26 CFR Part 301]

UNPAID TAXES SHOWN ON AMENDED RETURNS

Proposed Rule Making

Notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by December 30, 1976. Pursuant to 26 CFR 601.601(b), designations of ma-

terial as confidential or not to be disclosed, contained in such comments, will not be accepted. Thus, persons submitting written comments should not include therein material that they consider to be confidential or inappropriate for disclosure to the public. It will be presumed by the Internal Revenue Service that every written comment submitted to it in response to this notice of proposed rule making is intended by the person submitting it to be subject in its entirety to public inspection and copying in accordance with the procedures of 26 CFR 601.702(d)(9). Any person submitting written comments who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit a request, in writing, to the Commissioner by December 30, 1976. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER, unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the Federal Register. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

CHARLES M. WALKER,
Assistant Secretary of the Treasury.

PREAMBLE

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR Part 301) in order to provide that unpaid additional taxes shown on amended returns shall generally not be treated as deficiencies. Such amounts shall be treated, for purposes of assessment and collections, as amounts shown by the taxpayer on the return.

PROPOSED AMENDMENTS TO THE REGULATIONS

Based on the foregoing, the Regulations on Procedure and Administration (26 CFR Part 301) are amended as follows:

Paragraph 1. Paragraph (a) of § 301.6211–1 is amended by deleting the last sentence thereof and by inserting immediately before the end thereof the following:

§ 301.6211–1 Deficiency defined.

(a) * * * Any amount shown as additional tax on an "amended return", so-called (other than amounts of additional tax which such return clearly indicates the taxpayer is protesting rather than admitting) filed after the due date of the return, shall be treated as an amount shown by the taxpayer "upon his return" for purposes of computing the amount of a deficiency.

* * * * *

PAR. 2 Paragraph (c)(1) of § 301.6653–1 is amended to read as follows:

§ 301.6653–1 Failure to pay tax.

* * * * *

(c) *Definition of underpayment*—(1) *Income, estate, and gift taxes.* In the case of income, estate, and gift taxes, an underpayment for purposes of section 6653 and this section is:

(i) The total amount of all deficiencies as defined in section 6211, if a return was filed on or before the last date (determined with regard to any extension of time) prescribed for filing such return, or

(ii) The amount of the tax imposed by subtitle A or B, as the case may be, if a return was not filed on or before the last date (determined with regard to any extension of time) prescribed for filing such return.

However, for purposes of paragraph (c)(1)(i) of this section, any amount of additional tax shown on an amended return, so-called, filed after the due date of the return is a deficiency.

* * * * *

[FR Doc.76–32788 Filed 11–5–76;8:45 am]

COMMUNITY SERVICES ADMINISTRATION

[45 CFR Part 1061]

COMMUNITY FOOD AND NUTRITION PROGRAM

Outline of Program Purposes, Conditions and Funding Policies

From 1967 to 1975 under subsection 222(a)(5) of the Economic Opportunity Act of 1964 as amended, the Office of Economic Opportunity, predecessor agency to the Community Services Administration funded grantees to conduct Emergency Food and Medical Services projects. During this period the agency issued funding guidelines, program memoranda and field guidance that served as the programmatic framework for this program.

The technical amendments to the Community Services Act of 1974, enacted into law on July 6, 1976 amended subsection 222(a)(5) by renaming the Emergency Food and Medical Services Program the Community Food and Nutrition Program (CFNP) and eliminating the provision of medical services. The Director of the Community Services Administration, successor agency to the Office of Economic Opportunity now proposes to establish the rules, regulations and grant application procedures set forth below relative to the Community Food and Nutrition Program authorized under subsection 222(a)(5) of the Community Services Act of 1974 as amended.

Interested persons are invited to submit comments on this proposed rule on or before December 8, 1976. Please submit comments to Phyllis Kornov, Community Services Administration, 1200 19th Street, NW, Washington, D.C. 20506 (Room 314).

This proposed rule outlines the purposes of the program, conditions of the program, funding policies, projects eligible for funding, application submission offices and required application documents.

AUTHORITY. The provisions of this subpart issued under sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

ROBERT C. CHASE,
Acting Director.

45 CFR Chapter X is proposed to be amended by adding a new subpart in part 1061 reading as folows:

Sec.

1061.40–1 Applicabiilty.
1061.40–2 Definitions.
1061.40–3 Background.
1061.40–4 Purpose.
1061.40–5 Introduction.
1061.40–6 Policy.
1061.40–7 Eligible grantees or applicants.
1061.40–8 Eligible participants.
1061.40–9 Priority categories of beneficiaries.
1061.40–10 Eligible activities.
1061.40–11 Funding.
1061.40–12 Application process.
1061.40–13 Reporting requirements.
1061.40–14 Additional requirements.

§ 1061.40–1 Applicability.

This subpart is applicable to grantees funded under Section 222(a)(5) of the Community Services Act of 1974, as amended, if the assistance is administered by the Community Services Administration.

§ 1061.40–2 Definitions.

(a) *Program.*—The provision of federal funds and administrative direction to accomplish a prescribed set of objectives through the conduct of specific activities. Examples: CSA's Community Food and Nutrition Program.

(b) *Project*—The implementation level of a program where resources are used to produce an end product that directly contributes to the objectives of the program. Example: The community garden project of the CAA in Philadelphia, Pennsylvania.

§ 1061.40–3 Background.

(a) From 1967 to 1975 the Office of Economic Opportunity funded grantees to conduct Emergency Food and Medical Services Projects. During this period the agency issued funding guidelines, program memoranda and field guidances that served as the programmatic framework for this program.

(b) The technical amendments to the Community Services Act of 1974, enacted into law on July 6, 1976, amended subsection 222(a)(5) by renaming the Emergency Food and Medical Services Program the Community Food and Nutrition Program (CFNP) and eliminating the provision of medical services.

§ 1061.40–4 Purpose.

This subpart sets forth Community Services Administration (CSA) policy for the Community Food and Nutrition Program (CFNP). It discusses the purposes of the program, funding policies, activities eligible for funding, offices to which applications will be submitted, and required application documents.

§ 1061.40–5 Introduction.

(a) Section 201(a) of the Community Services Act of 1974 describes the purpose of Title II of the Act, under which CFNP grants are authorized. It sites:

Its specific purposes are to promote, as methods of achieving a better focusing of resources on the goal of individual and family self-sufficiency:

(1) The strengthening of community capabilities for planning and coordinating Federal, State and other assistance related to the elimination of poverty, so that this assistance, through the efforts of local officials, organizations, and interested and affected citizens, can be made more responsive to local needs and conditions;

(2) The better organization of a range of services related to the needs of the poor, so that these services may be made more effective and efficient in helping families and individuals to overcome particular problems in a way that takes account of, and supports their progress in overcoming related problems;

(3) The greater use, subject to adequate evaluation, of new types of services and innovative approaches in attacking causes of poverty, so as to develop increasingly effective methods of employing available resources;

(4) The development and implementation of all programs and projects designed to serve the poor or low-income areas with the maximum feasible participation of residents of the areas and members of the groups served, so as to best stimulate and take full advantage of capabilities for self advancement and assure that those programs and projects are otherwise meaningful to and widely utilized by their intended beneficiaries; and

(5) The broadening of the resource base of programs directed to the elimination of poverty, so as to secure, in addition to the services and assistance of public officials, private religious, charitable, and neighborhood organizations, and individual citizens, a more active role for business, labor, and professional groups able to provide employment opportunities or otherwise influence the quantity and quality of services of concern to the poor.

(b) In addition section 222(a)(5) authorizes:

A program to be known as Community Food and Nutrition designed to provide, on an emergency basis, directly or by delegation of authority pursuant to the provisions of Title VI of this Act, financial assistance for the provision of such supplies and services, nutritional food stuffs, and related services as may be necessary to counteract conditions of starvation or malnutrition among the poor.

§ 1061.40–6 Policy.

(a) The Community Food and Nutrition Program is intended to reduce the incidence of hunger and malnutrition among the poor and to improve their nutritional status. Its programmatic activities are designed to monitor and improve the operations of existing feeding programs; develop self-help and alternative food production and distribution methods; and, provide direct feeding support. CSA's focus is on assisting in linking the most needy poor with opportunities provided by food and nutrition programs, not to create duplicative or competing services. CSA believes that the best method to achieve this end is to facilitate necessary changes which will improve or will achieve fuller utilization of existing food and nutrition programs.

(b) Funds may be used in a variety of ways, depending upon the needs and resources of local communities. Plans and priorities are set locally consistent with policies established by CSA. Funds are not to be used as a continuing financial commitment for long-range food and nutrition projects. Funds may be used for planning and establishing community nutrition projects only if it is understood that the funds are available as seed money or for start up costs.

(c) Eligibility shall not be governed by any rules or regulations used by local goverments for eligibility for food assistance programs. Due to the emergency nature of this program, individuals or families are eligible to participate upon the self-declaration of need without the delay of a "means" test or income investigation. Self-declaration makes possible immediate assistance for those suffering from hunger and in danger of malnutrition. CFNP supervisors and outreach workers are given authority to judge whether a person meets the above conditions. If continued assistance is needed evaluation of income and personal resources may be undertaken.

§ 1061.40–7 Eligible grantees or applicants.

Community Action Agencies, migrant and seasonal farmworker organizations, Indian organizations, tribal governments and other public and/or private nonprofit organizations and agencies that meet CSA eligibility criteria may apply.

§ 1061.40–8 Eligible participants.

Individuals and families whose income falls within CSA poverty guidelines as defined in Part 1060 and those persons who are eligible or potentially eligible for participation in a Federally-funded food assistance program are eligible to participate in Community Food and Nutrition Projects.

§ 1061.40–9 Priority categories of beneficiaries.

(a) Certain categories of beneficiaries have been designated as specially needy for purposes of Community Food and Nutrition Projects, and projects designed to serve them will be given priority. These categories are:

(1) *Indians, migrants and seasonal farmworkers.* Special emphasis within this group will be placed on the funding of organizations and tribal governments which can directly impact the migrant or Indian population, and which involve migrant and seasonal farmworkers or Indians in the governance of the project.

(2) *Elderly poor.* The elderly poor often have unmet needs. The CFNP is not to be viewed as a permanent answer to the many nutritional deficiencies that exist. Of necessity, only when CFNP funds are limited to providing minimum support costs and/or initiating a feeding project where there is reasonable basis to expect that other funded projects will assume responsibility and will maintain the service on a permanent basis will projects be funded under the CFNP authority.

(3) *Infants, pregnant and lactating women.* The nutritional problems of infants, pregnant and lactating women are of concern in communities experiencing high infant mortality rates. In such cases, because Federal resources are quite limited the CFNP can be utilized to mobilize non-federal resources to attack the problem.

§ 1061.40–10 Eligible activities.

(a) All expenditures of program funds must be aimed directly at increasing the availability of food to eligible participants or otherwise remedying poor nutrition among them. To that end the following categories of projects are eligible for funding:

(1) *Analysis of existing feeding projects.* Analysis of and recommendations about particular aspects of existing Federal feeding projects, and development of methods to improve participation in and accessibility to these projects.

(2) *Self-help projects.* Projects designed to foster self-sufficiency through the mobilization of financial and community resources, as well as inclusion of the poverty community in their development and implementation. Examples include buying clubs, community gardens, food raising co-ops, community canneries, farmer-to-consumer food sales, feeder pig projects, and greenhouse food production.

(3) *Activities supplementary to existing feeding projects.* Projects which extend, supplement, broaden, or improve other feeding projects but are not duplicative. Examples are transportation to feeding sites, distribution of Federal or private surplus commodities, helping establish and operate a school breakfast project or a congregate feeding site for the elderly to demonstrate a need.

(4) *Crisis relief.* Provision of funds to purchase food stamps, provision of food vouchers, or provision of foodstuffs on a temporary or crisis basis.

(5) *Program support.* Conduct of training and technical assistance and research and demonstration projects. Section 232 provides the authority to conduct R&D projects to further the mandate of Title II, including section 222(a)(5). R&D projects in the area of food and nutrition shall directly contribute to the accomplishment of the ends of the Community Food and Nutrition Program.

§ 1061.40–11 Funding.

Non-Federal share. The non-Federal share requirement is waived for CFNP projects (see § 1068.20–1 through § 1068.20–7). However, grantees are expected to mobilize local and state resources throughout the life of the project.

§ 1061.40–12 Application process.

(a) *Where to submit applications.* Applications for grants under section 222(a)(5) will be submitted to the appropriate CSA Administering Office. (Administering Office address list is included as Attachment No. 1.) Applications for Research and Demonstration grants will

be submitted to CSA Headquarters, 1200 19th Street, NW., Washington, D.C. 20506, Attention: CFNP.

(b) *Required forms.* Research and Demonstration proposals should be submitted in accordance with OEO Instruction 7570–1. All other applications should meet the following requirements:

(1) Needs Assessment—Attachment No. 2.

(2) OEO Form 419—Summary of Work Program and Budget (See OEO Instruction 6710–1).

NOTE: Goals and activities must be consistent with the Standards of Effectiveness for Section 222(a)(5) projects and the General Standards for Title II Programs outlined in § 1078.1–1 through 1078.1–7 (CSA Instruction 7850–1a) and the Form 419 must reflect these Standards.

(3) OEO Form 394—Checkpoint procedure for Coordination.

NOTE: This is optional and may be required by funding official or by the grantee to checkpoint with other organizations in the community if the grantee so wishes (see § 1067.10–1 through 1067.10–7 (CSA Instruction 6710–3a)).

(4) OEO Form 25—Program Account Budget (See OEO Instruction 6710–1).

(5) OEO Form 25a—Program Account Budget (See OEO Instruction 6710–1).

(6) Program Report—Attachment No. 3.

(7) SF 424 (Complete Sections I and II)—Federal Assistance (See § 1067.10–1 through § 1067.10–7 (CSA Instruction 6710–3a)).

(8) OEO Form 301—Summary of Grant Application (See OEO Instruction 6710–1). For new grantees only.

(9) CAP Form 5—Application for CAP-Community Information (See OEO Instruction 6710–1). For uncapped areas.

(10) CAP Form 84—Participant/Characteristics Plan (See OEO Instruction 6710–1). Required for uncapped areas.

(11) CAP Form 11—Assurance of Compliance with Regulations under Civil Rights Act (For new grantees only).

(12) Narrative proposal: The narrative project description must include the following:

(i) Justification of program priorities selected among the needs identified in the "Needs Assessment."

(ii) Description of previous efforts and experience with the problem(s) to be addressed.

(iii) Description of the strategy designed to address the problem(s).

§ 1061.40–13 Reporting requirements.

Program Progress Reports (PPR) required by OEO Instruction 7031–1, Grantee Program Progress Review, are a requirement for each CFNP grant. Each PPR shall include a breakout of expenditures and a summary of accomplishments using the major categories in "Program Report." The PPR shall indicate the number of people transported, etc. Crisis relief through vouchers or cash payment and costs of food purchased for direct feeding or distribution shall be reported separately on the PPR in a clear and distinct manner that identifies recipients, amounts received and frequency of assistance.

§ 1061.40–14 Additional requirements.

Evaluation: Selected grantees may be evaluated by Regional or Headquarters Office personnel as part of a nationwide sample.

ADMINISTERING OFFICE LIST

CSA Regional Office, Region I—Director: Ivan Ashley, John F. Kennedy Federal Building, Boston Massachusetts 02203.

CSA Regional Office, Region II—Director: William A. White, 26 Federal Plaza, 32nd Floor, New York, New York 10007.

CSA Regional Office, Region III—Director: W. Astor Kirk, Gateway Building, 3535 Market Street, Philadelphia, Pennsylvania 19104.

CSA Regional Office, Region IV—Director: William "Sonny" Walker, 730 Peachtree Street, N.E., Atlanta, Georgia 30308.

CSA Regional Office, Region V—Director: Glenwood A. Johnson, 300 South Wacker Drive, 24th Floor, Chicago, Illinois 60606.

CSA Regional Office, Region VI—Director: Ben T. Haney, 1200 Main Street, Dallas, Texas 75202.

CSA Regional Office, Region VII—Director: Wayne C. Thomas, 911 Walnut Street, Kansas City, Missouri 64106.

CSA Regional Office, Region VIII—Director: David Vanderburgh, Federal Office Building, 1961 Stout Street, Denver, Colorado 80202.

CSA Regional Office, Region IX—Director: Eugene Gonzales, 100 McAllister Street, San Francisco, California 94102.

CSA Regional Office, Region X—Director: John C. Finley, Arcade Plaza Building, 1321 Second Avenue, Seattle, Washington 98101.

NEEDS ASSESSMENT

COMMUNITY FOOD AND NUTRITION PROGRAM

Date completed:
Name of Persons Completing This Assessment:

I. Grantee information:

A. Name of grantee, address, executive director, phone.

B. Name of delegate agency (if any), address, director, phone.

C. Title of project, address, project director (if any), phone.

II. General community need:

A. Geographical area served (state, county, city or town).

B. Congressional Districts in area served.

C. Total population of area served.

D. Number of persons in area served below poverty line.

E. Percent of population below poverty line.

F. Population sixty years or over below poverty line.

G. Percent of population 60 or over and below poverty line.

H. In what ways does availability of transportation throughout the area served affect participation in Federal feeding programs?

III. Participation in Federal feeding programs (In completing each subsection cite the date and source of the data).

A. *Food stamps*—1. Participation rates: a. Total number of persons in area served who are eligible to receive food stamps.

(1) Number of public assistance recipients.

(2) Number of eligible persons not receiving public assistance (125% of poverty line population minus those persons on public assistance). If your state ashes out food stamps for SSI deduct also the number of persons currently on SSI).

b. Total number of persons in the area served receiving food stamps.

(1) Number of public assistance recipients.

(2) Number of persons not receiving public assistance.

c. Percent of total eligible population receiving food stamps.

(1) Percent of public assistance recipients.

(2) Percent of non-public assistance individuals.

2. Specify problems which prevent eligible persons from participating in the Food Stamp Program:

3. Discuss your prior activities working with the Food Stamp Program.

4. List other resources in area served working on improvements of the Food Stamp Program and describe their activities.

B. School breakfast program—1. Number of schools in area served eligible for funding under Title I of ESEA.

2. Number of Title I eligible schools participating in the Free School Breakfast Program.

3. Specify problems which prevent eligible schools from participating in the School Breakfast Program.

4. Discuss your prior activities working with the School Breakfast Program.

5. List other resources in area served which are working on improvements in the School Breakfast Program.

C. Women, infants and children (WIC)—1. Is there a WIC program in the area to be served?

2. If not, is there a need for such a program?

(a) What is the infant mortality rate for the area to be served? White _____ All other _____.

(b) What is the infant mortality rate for your state? White _____ All other _____.

The national infant mortality rate (per 1,000 live births) in 1974 was 14.8 for Whites and 24.9 for all other races.

3. If there is a need for a WIC program, answer the following:

a. Specify problems which have prevented its being established.

b. Discuss your prior efforts (if any) to establish a WIC program.

c. List other groups, organizations, or agencies in your area working to establish a WIC program.

D. School lunch program—1. Number of schools in the area served which are eligible for Title I programs under the ESEA.

2. Number of Title I eligible schools participating in the Free School Lunch Program.

3. Specify the problems which prevent schools from participating in the School Lunch Program.

4. Discuss your prior activities, if any, working with the School Lunch Program.

5. List other resources in area served which are working on improvements in the School Lunch Program.

E. Elderly Feeding Programs

1. Is there a Title VII program in your area to be served?

2. If so, does it serve low-income elderly persons?

3. If so, how many?—numbers and percentages.

4. If your area does not have a Title VII program, specify problems which have prevented its being funded.

5. Discuss your prior activities working to establish or expand Title VII programs.

6. List other resources in your area working to establish or expand Title VII programs.

7. List any other elderly feeding programs, other than Title VII, in your area which serve a significant number of low-income persons.

F. Special hunger and malnutrition problems not addressed by food stamps, school lunch and breakfast, and Title VII programs.

1. List problems and number of persons affected.

2. Discuss your prior activities in addressing these problems.

3. List other organizations and agencies in your area working to address these problems.

Program Report
Community Food and Nutrition Program — State _____ Region _____

This report is to be filled out by the applicant and by CSA staff (Regional or Headquarters) at the time a grant is made. Indicate in dollars, the portion of the total grant request which will be directed towards each of the listed target population groups, under each of the four program priority areas. This data will be used in preparing a national CFNP report.

	Amounts estimated from application. To be completed by Applicant. (col. A)	CSA staff completes this column from approved grant (col. B)
Activity 1: Analysis of existing feeding projects:		
General population	$	$
Infants and children		
Elderly		
Migrants		
Indians:		
On reservation		
Off reservation		
Total, activity 1		
Activity 2: Self-help projects:		
General population		
Infants and children		
Elderly		
Migrants		
Indians:		
On reservation		
Off reservation		
Total, activity 2		
Activity 3: Activities supplementary to existing feeding projects:		
General population		
Infants and children		
Elderly		
Migrants		
Indians		
Total, activity 3		
Activity 4: Crisis relief:		
General population		
Infants and children		
Elderly		
Migrants		
Indians		
Total, activity 4		
Activity 5: Program support (training and technical assistance):		
General population		
Infants and children		
Elderly		
Migrants		
Indians		
Total, activity 5		
I. Self-evaluation		
II. Other (explain)		
Total, grant		

Name, Title and phone number of person completing column (a).
Grantee Number and Name.
Name, Title and phone number of person completing column (b).

[FR Doc.76-32617 Filed 11-5-76;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 21]

[Docket No. 20907]

DOMESTIC PUBLIC RADIO SERVICES

One-Way Signaling on a Primary Basis; Extension of Comment Period

Adopted October 29, 1976.

Released November 2, 1976.

Order. In the matter of amendment to part 21 of the Commission's rules to extend parts of § 21.501 (a), (b), and (c) to permanent one-way signaling on a primary basis, Docket No. 20907.[1]

1. Airsignal International, Inc., by letter dated October 28, 1976, requests an extension of time from November 1, 1976 to December 1, 1976, in order to file reply comments to the Docket referenced above.

2. Based upon the circumstances set forth in the Airsignal letter and that of other parties of interest, we believe that the requested extension is consistent with the public interest.

3. *Accordingly, it is ordered,* Pursuant to delegated authority under § 0.303 of the Commission's rules, that the request for an extension of time is granted.

FEDERAL COMMUNICATIONS COMMISSION,

JOSEPH A. MARINO,
Deputy Chief,
Common Carrier Bureau.

[FR Doc.76-32760 Filed 11-5-76;8:45 am]

[1] See 41 FR 39766, September 16, 1976.

[47 CFR Part 73]

[Docket No. 20978]

FM BROADCAST STATIONS IN GORDON, NEBRASKA

Proposed Table of Assignments

Adopted: October 29, 1976.
Released: November 4, 1976.

In the matter of amendment of § 73.202(b), *Table of Assignments,* FM Broadcast Stations. (Gordon, Nebraska), Docket No. 20978, RM-2718.

1. *Petitioner, proposal and comments*—(a) *Notice of proposed rule making* is given concerning amendment of the FM Table of Assignments (§ 73.202(b) of the Commission's rules and regulations) as concerns Gordon, Nebraska.

(b) A petition for rulemaking [1] was filed on behalf of Ranchland Broadcasting Co., Inc. (petitioner), licensee of Stations KBRX(AM) and KBRX-FM, O'Neill, Nebraska, seeking the assignment of Channel 238 as a first FM assignment to Gordon.

2. *Demographic data.*—(a) *Location.* Gordon is located in Sheridan County approximately 531 kilometers (330 miles) northwest of Omaha, Nebraska.

(b) *Popluation.* Gordon, 2,106; Sheridan County, 7,285.[2]

(c) *Present Local Aural Service.* None.

3. *Community data.* Petitioner claims that Gordon is one of the largest communities in Sheridan County. In addition, it states that Sheridan County recorded a 1970 U.S. Census population of 7,285, and estimated an increased 1975 population of 7,616. Petitioner notes that Gordon's economy is based on farming, ranching, cattle feeding, retail and wholesale sales, food processing, manufacturing, and the tourist industry. Petitioner states that in Gordon's primary retail trade area sixty-one retail firms developed annual sales estimated at $9,800,000; ten wholesale firms have annual wholesale sales estimated at $600,000; and the two banks in Gordon have total deposits of $28,608,776.

4. *Preclusion considerations.* Preclusion studies show that seven communities with populations between 1,000 and 7,000 are located in the areas of preclusion created by the proposed assignment. Preclusion would occur on Channel 238 and adjacent Channels 237A, 239 and 240A. Of these seven communities, Alliance, Nebraska, is assigned Channel 221A for which there is a pending application (BPH-9977), and Valentine, Nebraska, is assigned Channel 241 for which there is a pending application (BPH-9993) for a station to be operated in Crookston, Nebraska (Section 73.203). Chadron, Nebraska, is assigned Channels 228A and 234 which are unoccupied and unapplied for. The remaining four communities, Rushville, Nebraska (pop.

[1] Public Notice of the filing of the petition was issued on July 14, 1976 (Rept. No. 989).
[2] 1970 U.S. Census.

1,137), Crawford, Nebraska (pop. 1,291), Martin, South Dakota (pop. 1,248), and Pine Ridge, South Dakota (pop. 2,768) have no FM channel assignments and are without any local broadcast service.

5. *Additional considerations.* Petitioner states that the assignment of a Class C channel would not only provide for Gordon's first local broadcast service but would also enable a substantial rural area surrounding Gordon in the Nebraska counties of Sheridan, Davies and Cherry, and in portions of the large Pine Ridge Indian Reservation in South Dakota to receive its first FM service. Petitioner also notes that two of the three nearest communities to Gordon with FM assignments, Valentine and Chadron, which have populations approximately equal to or somewhat larger, respectively, than Gordon's, both have Class C channels assigned. Petitioner relates, further, that the projected service areas of these Class C stations, when occupied, would not encompass Gordon, and the proposed assignment of Channel 238 to Gordon would not require the deletion of a present assignment without replacement. Petitioner points out that neither the Chadron nor Valentine assignment, nor any other existing FM assignment, would be affected by this proposal. Petitioner's Roanoke Rapids showing indicates that a Class A station would provide a first FM service to a population of 3,114 in an area of 1,420 square kilometers (550 square miles) and a second FM service to a population of 1,315 in an area of 240 square kilometers (93 square miles), while a Class C station operating with an effective radiated power of 35 kW and antenna height of 122 meters (400 feet) would provide a first FM service to a population of 4,685 in an area of 5,000 square kilometers (1,923 square miles) and a second FM service to a population of 6,009 in an area of 1,400 square kilometers (540 square miles). However, no information is submitted as to the service provided by stations from which the availability of first and second aural service may be discerned. In this regard, we believe that proponent should show the extent of nighttime service provided by standard broadcast stations. Anamosa-Iowa City, Iowa, 40 F.C.C. 2d 250 (1974).

6. Based on our examination of petitioner's proposal there appears to be a basis for considering an exception to our general policy of assigning Class C channels only to larger communities. This has been done in other cases to provide a channel to small, isolated communities when the density of the population in the area to be served is low and its distribution is scattered. Here, there is also a further basis for considering an exception, the possibility of providing a significant amount of first and second FM service in addition to a first local aural broadcast service to Gordon.

7. *Proposed amendment to the FM table of assignments.* Accordingly, for the purpose of eliciting comments on whether or not such an action would benefit the public interest, the Commission proposes to amend the FM Table of Assignments (§ 73.202(b) of the Commission's rules and regulations), with regard to the community listed below, as follows:

City	Channel No.	
	Present	Proposed
Gordon, Nebr.		238

8. *Authority.* 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.

9. *Comments and replies.* Interested parties may file comments on or before December 13, 1976, and reply comments on or before January 3, 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 this *Notice of proposed rulemaking.*

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

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

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

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

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in this 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 or other appropirate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission rules.)

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

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

[FR Doc.76-32761 Filed 11-5-76;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[49 CFR Part 210]

[FRA Docket No. RNE-1, Notice 1]

RAILROAD NOISE EMISSION COMPLIANCE REGULATIONS

Proposed Procedures

On January 14, 1976, the Environmental Protection Agency (EPA) issued railroad noise emission standards (41 FR 2184) pursuant to the requirements of section 17 of the Noise Control Act of 1972 (86 Stat. 1248, Pub. L. 92-574). The standards (40 CFR Part 201) established limits on the noise emissions generated by railroad locomotives, under both stationary and moving conditions, and by railroad cars under moving conditions. These standards become effective on December 31, 1976.

Section 17 of the Noise Control Act also requires the Secretary of Transportation, after consultation with the Administrator of the EPA, to promulgate regulations to insure compliance with the EPA standards. The responsibility for the development of these regulations has been delegated to the Administrator of the Federal Railroad Administration (FRA). This notice sets forth the procedures by which the FRA proposes to assure compliance with the noise emission standards prescribed for railroad locomotives and cars. In the development of this notice, consultations with respect to the regulation proposed in this part were conducted with EPA as required by section 17(b) of the Noise Control Act.

In establishing this statutory scheme for control of railroad noise emissions, the Congress recognized the need for special treatment of particular noise sources which require national uniformity of treatment in order to avoid

any undue burden on interstate commerce which might arise from a multiplicity of different State and local regulations. In addition, the statute recognizes the expertise and interest of the Department of Transportation in both the control of noise and in safety in transportation, be it by aircraft (sec. 7), by motor carrier (sec. 18) or by railroad (sec. 17). The enforcement scheme envisioned by the statute for control of railroad noise utilizes FRA's general enforcement and inspection authority conferred by several railroad safety statutes. The FRA believes that the utilization of this general authority, rather than the creation of a specific noise-related enforcement authority, reflects a Congressional recognition that inspection and enforcement of railroad noise standards and safety standards can go hand-in-hand, and in fact, should be so treated to assure the most efficient utilization of limited inspection resources. For this reason, these proposed regulations reflect the FRA's continuing concern for the safety of railroad operations as well as for the strict enforcement of the EPA Railroad Noise Emission Standards.

Section 201.10 of the EPA standards (40 CFR 201.10) defines the applicability of the standards and excludes the following:

1. Steam locomotives;
2. Street, suburban and interurban electric railways unless operated as a part of the general railroad system of transportation;
3. Warning devices which operate for the purpose of safety; and
4. Special purpose equipment which may be located on or operated from railcars.

A limited exemption from the requirements of § 201.11 (a) and (b) of the EPA standards (40 CFR 201.11 (a) and (b)) was provided for gas turbine powered locomotives and any locomotive type which cannot be connected by any standard method to a load cell.

Section 210.3 of the FRA regulations proposed in this notice reflects the applicability defined by the EPA standards. It should be noted that the scopes of this applicability differs from that ordinarily incorporated in FRA safety regulations to the extent that railroads operating solely on track inside an installation which is not part of the general railroad system of transportation are not exempted from the EPA standards; consequently, they will not be exempted from FRA noise enforcement activities.

These proposed regulations, under § 210.7, assign the responsibility for compliance with the noise emission standards to the carrier that operates the equipment. Because railroad cars are freely interchanged among railroads, the FRA believes it would be impractical to place the responsibility for compliance on the railroad that owns the cars. Under other provisions of law, each carrier is required to conduct an inspection of each car when it is placed in a train (49 CFR 215.23). The FRA believes that this inspection can also be utilized by a carrier to assure that the rail equipment it operates is free from any mechanical conditions which might result in the emission of noise in excess of the levels prescribed in the EPA standards. Under this provision, a carrier that has knowledge that a car or locomotive is defective, that is, that it would exceed the noise emission levels prescribed by EPA for a given operating condition, must take whatever action is necessary to eliminate the defect, or must remove the defective car or locomotive from service until proper repairs have been made.

The proper handling of noise defective equipment is further detailed in proposed § 210.9. This provision would permit a carrier that discovers a noise defective locomotive or rail car to move the noncomplying equipment to the nearest location at which the noise defect can be eliminated. The further movement of such noncomplying equipment is subject to specific procedures. The FRA believes that the present EPA noise emission standards have been established at levels which should not be exceeded by the operation of reasonably well maintained equipment which otherwise complies with all FRA safety regulations. Therefore, the existence of a noise emission level in violation of the EPA noise standards may evidence the existence of a mechanical condition which constitutes a violation of FRA safety regulations and which might create a serious safety problem should the equipment be moved under operating conditions. For this reason, the FRA believes that these noise compliance procedures should be tied to general considerations of railroad safety. Movement of noise defective equipment will be permitted only after compliance with the procedures established in the Railroad Freight Car Safety Standards, 49 CFR 215.9. These procedures require a qualified railroad employee (1) to inspect and determine that the equipment is safe to move, (2) to determine the maximum speed and other restrictions necessary for a safe movement, (3) to notify the crew of the train of such speed and restrictions and (4) to attach a "bad order" or "home shop for repairs" tag to any defective equipment. Under these procedures, the FRA believes that equipment can be moved to a location at which proper repairs can be performed so as to remove the noise defect and correct any safety defects, without jeopardizing the safety of the movement.

Section 210.15 would require each railroad to designate persons qualified to inspect and test locomotives and rail cars which it operates in order to assure compliance with the EPA noise emission levels.

Section 210.17 proposes provisions for State participation in the enforcement of the Federal Railroad Noise Emission Standards. State agencies may participate in the enforcement of the Federal standards by designating persons whose qualifications must be approved by the FRA before they are authorized to perform the duties of inspectors under this part. In considering the qualifications of such persons, the FRA will take into account the experience and ability to inspect locomotives and rail cars in the areas of design, construction, maintenance, testing and noise emission demonstrated by each individual presented by the State for designation under this section.

Alternatively, State and local agencies may enact and enforce their own noise emission standards applicable to locomotives and rail cars provided such standards are identical to the Federal standards prescribed by the EPA in 40 CFR Part 201 with respect to both the numerical decibel limits and the measurement criteria prescribed in Subpart C thereof.

Section 210.19 prescribes the general waiver authority of the Administrator. It should be noted, however, that this authority is restricted to the requirements of the compliance procedures prescribed in this part, and cannot be utilized, either directly or indirectly, to grant waivers from any of the requirements of the substantive Railroad Noise Emission standards prescribed by EPA in 40 CFR Part 201.

The penalty provisions for violation of the noise emission standards are prescribed by the Noise Control Act of 1972. These involve a criminal penalty of a fine of not more than $25,000 per day of violation, or imprisonment for not more than one year, or both, for a first conviction. Subsequent convictions will result in a fine of not more than $50,000 per day of violation, or imprisonment for not more than two years, or both.

The EPA standards prescribe maximum noise emissions from locomotives under both stationary and moving conditions. These standards are established on two levels, for locomotives built prior to December 31, 1979 and for those built after that date. Additional standards are established for the total noise emission from railroad cars under moving conditions, including the noise from auxiliary power units such as those on refrigerator cars. Section 210.25 of these proposed rules prescribes the authority of the inspector to require the necessary inspection and testing to assure compliance with the EPA standards, as well as the responsibility of the railroad carrier to submit equipment for such testing when requested to do so by an authorized inspector.

Sections 210.27, 210.29, and 210.31 propose additional testing criteria to ensure equitable measurement of the noise levels produced by locomotives and railcars. The provisions proposed in § 210.27(b) are intended to address the compliance problem posed by the use of a locomotive consist composed of multiple units, some of which must comply with the pre-December 31, 1979 standard of 96dB(A), and others of which must comply with the post-1979 standard of 90dB(A). These standards apply to locomotives operating under moving conditions. Because of the nature of operation of the locomotive fleet, a requirement that all post-1979 locomotives be operated in consists composed solely of other post-1979 locomotives would present opera-

tional difficulties and would result in an unreasonable burden on interstate commerce. For this reason, provision is made for the measurement of mixed consists of locomotives and for consists of unknown composition in order to provide a reasonable and legally defensible enforcement procedure. Such consists will be required to comply with the pre-December 31, 1979 noise levels.

The provisions of §§ 210.29 and 210.31 propose additional requirements to clarify further the measurement criteria prescribed in Subpart C of the EPA standards, 40 CFR 201.20–201.24. The additional requirements of § 210.29 involve calibration procedures to assure the accuracy of measurement instrumentation and the use of certain measurement tolerances to adjust for variations in the testing site and equipment. Section 210.31 proposes more explicit instruction concerning the proper method by which to conduct a load cell test for stationary locomotive measurements. The specific procedures, including the prescribed periods of time for engine noise stabilization and noise level reading are considered necessary in order to assure an accurate measurement of actual engine noise at either idle or maximum throttle. Under these procedures, a carrier will be required to conduct such a load cell noise emission test each time a locomotive is subjected to a load cell test for any reason. The date, location and results of each such test must be recorded on the standard form, FRA F6180–49, which is required to be posted in a conspicuous place in the cab of the locomotive pursuant to the FRA Locomotive Inspection Regulations (49 CFR 230.331 and 230.451). Whenever any locomotive is found to be in noncompliance with the EPA standards, it must be repaired so as to eliminate the noise defect, or removed from service as provided in § 210.7 of this part. Before a noncomplying locomotive is returned to service, it must be subjected to, and successfully pass, either a load cell test or another pass-by test. It should be understood, however, that any individual locomotive or consist of locomotives must be capable of complying with both the stationary and pass-by noise emission levels. The fact that the locomotive complies with the load cell noise levels prior to return to service does not exempt it from the need to comply with the pass-by noise levels also.

Pursuant to the requirement of the National Environmental Policy Act (42 U.S.C. 4321 et seq.) and Executive Order 11821, Inflation Impact Statements, dated November 27, 1974, the Administrator has considered both the economic and environmental impacts of these regulations and has determined them to be negative. This is the case since the regulations impose no new substantive requirements on the railroad industry. Rather, the regulations prescribed herein merely detail the compliance procedures to be utilized in order to implement the Railroad Noise Emission Standards issued by the EPA in 40 CFR Part 201.

The EPA extensively considered both the economic and environmental impacts related to railroad noise emission standards in its "Background Document and Environmental Explanation of the Proposed Interstate Rail Carrier Noise Regulation". That document should be consulted for a detailed discussion of the costs and benefits resulting from the EPA standards.

Compliance with the additional review procedures and evaluation in accordance with the policies of the Department of Transportation which were stated in the public notice published on April 16, 1976, in the FEDERAL REGISTER (41 FR 16200) is not required with respect to this notice inasmuch as these regulations are required by statute.

Interested persons are invited to participate in this proceeding by submitting written data, views, or comments. Communications should identify the regulatory docket number, and should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Communications received before December 22, 1976, will be considered before final action is taken on the proposed rule. All comments received will be available for examination by interested persons at any time during regular working hours in Room 5101, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

The proposals contained in this notice may be changed in light of the comments received.

This notice is issued under authority of section 17 of the Noise Control Act of 1972, 42 U.S.C. 4916, and § 1.49(p) of the regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(p).

Issued in Washington, D.C., on November 2, 1976.

ASAPH H. HALL,
Administrator.

PART 210—RAILROAD NOISE EMISSION COMPLIANCE REGULATIONS

Subpart A—General Provisions

Sec.
210.1 Scope of part.
210.3 Applicability.
210.5 Definitions.
210.7 Responsibility for noise defective locomotives or rail cars.
210.9 Movement of a noise defective locomotive, rail car or consist of a locomotive and rail cars.
210.15 Designation of qualified persons.
210.17 State Agency participation in enforcement; Qualified Noise Compliance Inspector.
210.19 Waivers.
210.21 Penalty.

Subpart B—Inspection and Testing

210.23 Scope of subpart.
210.25 Noise inspection and testing.
210.27 Operation standards.
210.29 Measurement criteria and procedures.
210.31 Load cell test.

SUBPART A—GENERAL PROVISIONS

§ 210.1 Scope of part.

This part prescribes minimum compliance regulations for enforcement of the Railroad Noise Emission Standards established by the Environmental Protection Agency in 40 CFR Part 201.

§ 210.3 Applicability.

(a) The provisions of this part apply to the total sound level emitted by rail cars and locomotives operated under the conditions prescribed herein and in 40 CFR Part 201, including the sound produced by refrigeration and air conditioning units which are an integral element of such equipment, except:

(b) The provisions of this part do not apply to—

(1) Steam locomotives;

(2) Street, suburban or interurban electric railways unless operated as a part of the general railroad system of transportation;

(3) Sound emitted by a warning device, such as a horn, whistle or bell when operated for the purpose of safety;

(4) Special purpose equipment which may be located on or operated from rail cars; and

(5) As prescribed in 40 CFR 201.10, the provisions of 40 CFR 201.11 (a) and (b) do not apply to gas turbine-powered locomotives or any locomotive type which cannot be connected by any standard method to a load cell.

§ 210.5 Definitions.

(a) Statutory definitions. All terms used in this Part and defined in the Noise Control Act of 1972 (Pub. L. 92–574, 86 Stat. 1234) have the definitions set forth in that Act.

(b) Definitions in standards. All terms used in this part and defined in § 201.1 of the Railroad Noise Emission Standards, 40 CFR 201.1, have the definitions set forth in that section.

(c) Additional definitions: As used in this part—

(1) "FRA" means the Federal Railroad Administration.

(2) "Administrator" means the Federal Railroad Administrator, the Deputy Administrator, or any official of the Federal Railroad Administration ("FRA") to whom the Administrator has delegated authority to enforce the Act.

(3) "State Agency" means a State Agency participating in investigative and surveillance activities pertaining to the Railroad Noise Emission Standards, 40 CFR Part 201.

(4) "Inspector" means FRA regional Motive Power & Equipment supervisors of inspectors, FRA Motive Power & Equipment inspectors and State Agency Noise Compliance inspectors designated under § 210.17.

(5) "Noise defective" means that condition in which a locomotive, rail car or consist of a locomotive and rail cars is found to exceed the noise emission standards of 40 CFR Part 201.

(6) "Consist of a locomotive and rail cars" means one or more locomotives coupled to a rail car or rail cars.

§ 210.7 Responsibility for noise defective locomotives or rail cars.

Any railroad that knows, has notice, or should have known that a locomtive, rail car or consist of a locomotive and rail

cars that it is operating or testing is noise defective according to the criteria established in this part and in 40 CFR Part 201, is responsible for compliance with this section. Subject to § 210.9, each locomotive, rail car or consist of a locomotive and rail cars that is noise defective, according to the criteria prescribed in this part and in 40 CFR Part 201 must:

(a) Have the noise defect eliminated; or

(b) Be removed from service.

§ 210.9 Movement of a noise defective locomotive, rail car or consist of a locomotive and rail cars.

(a) Any railroad that knows, has notice, or should have known that a locomotive, rail car or consist of a locomotive and rail cars that it is operating is noise defective according to the criteria established in this part, may move that equipment to the nearest location where the noise defective condition can be eliminated only after a person designated under § 210.15 inspects and determines that the locomotive, rail car or consist of a locomotive and rail cars is in compliance with the requirements of 49 CFR Part 215 and 49 CFR Part 230.

(b) If after the inspection required by paragraph (a) of this section the locomotive, rail car or consist of a locomotive and rail cars is found to be defective, that equipment may be moved only in accordance with the procedures prescribed in 49 CFR 215.9.

§ 210.15 Designation of qualified railroad persons.

(a) Each railroad that operates locomotives and rail cars to which this part applies shall designate persons qualified to inspect and test locomotives or rail cars for noise defects. Each person designated must have demonstrated to the railroad that he or she has sufficient knowledge and ability to inspect and test locomotives or rail cars for compliance with the applicable requirements of this part.

(b) With respect to the designations under paragraph (a) of this section, each railroad shall maintain a written record of:

(1) The name and title of the individual designated; and

(2) The basis for each designation.

(c) Each designation shall be maintained at the location where locomotives or rail cars are normally inspected and tested.

§ 210.17 State Agency participation in enforcement: Qualified Noise Compliance Inspector.

(a) Any State which desires to participate in the enforcement of the Federal noise emission standards may so notify the FRA, and shall designate persons qualified to inspect and test locomotives or rail cars for defects prescribed by this part. Each person designated must demonstrate to the FRA his knowledge and ability to inspect and test locomotives or rail cars for compliance with the applicable requirements of this part. Each designated person must be approved by the FRA prior to commencement of enforcement activities under this part.

(b) With respect to designations under paragraph (a) of this section, each State shall submit to the Associate Administrator for Safety a written record which shall contain the following:

(1) The name and title of the individual designated; and

(2) The basis for each designation.

(c) After approval by the Associate Administrator for Safety a copy of each designation and approval shall be maintained at the office of the appropriate FRA Director of Railroad Safety.

§ 210.19 Waivers.

(a) Any person may petition the Federal Railroad Administrator for a waiver of compliance with any requirement in this part. A waiver of compliance with any requirement prescribed in 40 CFR Part 201, Railroad Noise Emission Standards, may not be granted under this provision.

(b) Each petition for a waiver under this section must be filed in the manner and contain the information required by 49 CFR Part 211.

(c) If the Administrator finds that a waiver of compliance applied for under paragraph (a) of this section is in the public interest and is consistent with railroad noise abatement and safety, he may grant a waiver subject to any conditions he deems necessary. Notice of each waiver granted, including a statement of the reasons therefore, will be published in the FEDERAL REGISTER.

§ 210.21 Penalty.

Any person that knowingly operates a locomotive or rail car in violation of the requirements of this part is liable to a penalty as prescribed in section 11 of the Noise Control Act of 1972 (Pub. L. 92-574; 86 Stat. 1242).

Subpart B—Inspection and Testing

§ 210.23 Scope of subpart.

This subpart prescribes the compliance criteria concerning the requirements for inspection and testing of a locomotive, a rail car or a consist of a locomotive and rail cars.

§ 210.25 Noise inspection and testing.

(a) An inspector as defined in § 210.5 (c)(4) is authorized to test, inspect and examine a locomotive, a rail car or a consist of a locomotive and rail cars operated by a railroad carrier, or may request the railroad carrier to conduct such inspections, examinations and tests in accordance with the procedures specified in this part for the purpose of ascertaining whether the locomotive, rail car or consist of a locomotive and rail cars conforms to the Railroad Noise Emission Standards of the Environmental Protection Agency, 40 CFR Part 201.

(b) The railroad carrier, its officers, agents and employees must submit a locomotive, rail car or consist of a locomotive and rail cars used in its operation for inspection, examination, and testing when requested by an inspector as defined in § 210.5(c)(4) for the purpose of ascertaining whether the locomotive, rail car or consist of a locomotive and rail cars conforms to the Railroad Noise Emission Standards of the Environmental Protection Agency, 40 CFR Part 201.

§ 210.27 Operation standards.

The operation standards for the noise emission levels of locomotives, rail cars, or consist of a locomotive and rail cars are prescribed in 40 CFR Part 201.

(a) Noise emission standards for locomotives operating under stationary conditions are contained in 40 CFR 201.11.

(b) Noise emission standards for locomotives operating under moving conditions are contained in 40 CFR 201.12. Measurements for compliance with the standards prescribed in 40 CFR 201.12 shall be made in compliance with the provisions of Subpart C of 40 CFR Part 201 and the following:

(1) Consists of locomotives containing at least one locomotive unit manufactured prior to December 31, 1979, shall be evaluated for compliance in accordance with 40 CFR 201.12(a);

(2) Consists of locomotives composed entirely of locomotive units manufactured after December 31, 1979, shall be evaluated for compliance in accordance with 40 CFR 201.12(b).

(3) If the built dates are not known to the inspector at the time of measurement, evaluation for compliance shall be made in accordance with 40 CFR 201.12 (a).

(c) Noise emission standards for rail cars operating under moving conditions are contained in 40 CFR 201.13. If speed measurement equipment used by the inspector at the time of the measurement is not operating within an accuracy of 5 mph, evaluation for compliance shall be made in accordance with 40 CFR 201.13(2).

§ 210.29 Measurement criteria and procedures.

The parameters and procedures for the measurement of the noise emission levels are prescribed in 40 CFR Part 201.

(a) Quantities measured are defined in 40 CFR 201.21.

(b) Requirements for measurement instrumentation are prescribed in 40 CFR 201.22. In addition the following calibration procedures must be utilized:

(1)(i) the sound level measurement system including the microphone must be calibrated and appropriately adjusted at one or more frequencies in the range from 250 to 1,000 Hz at the beginning of each series of measurements, at intervals not exceeding 1 (one) hour during continual use, and immediately following a measurement indicating a violation.

(ii) The sound level measurement system must be checked not less than once each year by its manufacturer, a representative of its manufacturer, or a person of equivalent special competence to verify that its accuracy meets the manufacturer's design criteria.

(2) An acoustical calibrator of the microphone coupler type designed for

the sound level measurement system in use shall be used to calibrate the sound level measurement system in accordance with paragraph (b) (1) (i) of this section. The calibration must meet or exceed the accuracy requirements specified in § 5.4.1 of the American National Standard Institute Standard, "Methods for Measurements of Sound Pressure Levels," (ANSI SI.13–1971) 1 for field method measurements.

(c) Acoustical environment, weather conditions and background noise requirements are prescribed in 40 CFR 201.23; and in addition, measurement tolerances not to exceed 2dB(A) for a given measurement will be allowed to take into account the effects of the following factors:

(1) The common practice of reporting field sound measurements to the nearest whole decibel;

(2) Variations resulting from commercial instrument tolerances;

(3) Variations resulting from the topography of the noise measurement site;

(4) Variations resulting from atmospheric conditions such as wind, ambient temperature, and atmospheric pressure;

(5) Variations resulting from reflected sound from small objects allowed within the test site; and

(6) The interpretation of the effects of the above cited factors by enforcement personnel.

(d) Procedures for the measurement of locomotive and rail car noise are prescribed in 40 CFR 201.24; and

(1) Accurate determination to within plus or minus 5 miles per hour of train speed (which may change during a pass-by) must be made as the train passes the microphone location, as defined in 40 CFR 201.24, to determine the rail car compliance level specified in 40 CFR 201.13 (1) or (2).

(2) Locomotives and rail cars tested pursuant to the procedures prescribed in this part and in 40 CFR Part 201 shall be considered in noncompliance whenever the test measurement, minus the appropriate tolerance, exceeds the noise emission levels prescribed in 40 CFR 201.11, 201.12, or 201.13, as appropriate.

§ 210.31 Load cell test.

(a) Each locomotive built after December 31, 1979, shall be tested for noise emission by load cell test in accordance with the criteria as prescribed in 40 CFR 201.11, Railroad Noise Emission Standards, prior to being initially placed in service.

(b) Each noise emission test shall begin after the engine of the locomotive has attained the normal cooling water operating temperature as prescribed by the locomotive manufacturer.

(c) Noise emission testing in idle or maximum throttle setting shall start after a 40 second stabilization period in the throttle setting selected for the test.

(d) After the stabilization period as prescribed in paragraph (c) of this section, the noise level reading in dB(A) shall be observed for an additional 30 second period in the throttle setting selected for the test.

(e) The maximum noise level reading in dB(A) which is observed during the 30 second period of time prescribed in paragraph (d) of this section shall be used for compliance purposes.

(f) The following data determined by stationary noise emission test during the load cell test prescribed in paragraph (a) of this section shall be recorded in the "Remarks" portion on the reverse side of Form FRA F618049.

(1) Location of test;

(2) Date of test;

(3) Sound level at idle throttle setting in dB(A); and

(4) Sound level at maximum throttle setting in dB(A).

(g) After December 31, 1976, the data required by paragraph (f) of this section will be determined and recorded for each locomotive to which the EPA standards apply whenever it is subjected to a load cell test for any reason.

(h) Any locomotive to which the EPA's Railroad Noise Emission Standards apply that is found not to be in compliance therewith as the result of a pass-by test must be subjected to a load cell test or another pass-by test prior to return to service.

(i) The last entry recorded on Form FRA F6180–49 as required by paragraph (f) of this section shall be transcribed to a new Form FRA F6180–49 when it is posted in the locomotive cab.

[FR Doc.76–32741 Filed 11–5–76;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 AGRICULTURE

Agricultural Marketing Service

GRAIN STANDARDS

Louisiana Grain Inspection Point

STATEMENT OF CONSIDERATIONS

The Louisiana Department of Agriculture, Baton Rouge, Louisiana, is designated to operate as an official inspection agency in accordance with the provisions of section 7(f) of the U.S. Grain Standards Act (7 U.S.C. 79(f)). The Louisiana Department of Agriculture provides official inspection service in the designated inspection points of Lake Providence, Alexandria, Kinder, Mermentau, and Opelousas, Louisiana. A designated inspection point is defined as a city, town, or other location assigned under the regulations to an official inspection agency for the conduct of official inspections, and within which the official inspection agency, or one or more of its licensed inspectors is located (7 CFR 26.1(b)(13)).

The Louisiana Department of Agriculture believes it can better serve the grain elevators in St. Landry and Evangeline Parishes if the inspection services at Opelousas, Louisiana, were moved to Eunice, Louisiana. Therefore, it has requested that its assignment of inspection points be amended in accordance with § 26.99(b) of the regulations (7 CFR 26.99(b)) under the U.S. Grain Standards Act (7 U.S.C. 71 et seq.) to add Eunice, Louisiana, as a designated inspection point and to revoke Opelousas, Louisiana, as a designated inspection point.

Notice is hereby given that the Agricultural Marketing Service has under consideration the request from the Louisiana Department of Agriculture to add Eunice, Louisiana, as a designated inspection point, and to revoke Opelousas, Louisiana, as a designated inspection point.

Opportunity is hereby afforded all interested persons to submit written views and comments with respect to this matter to the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250. All material submitted should be in duplicate and mailed to the Hearing Clerk not later than December 8, 1976. All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Hearing Clerk and to all other information available to the U.S. Department of Agriculture before final determination is made with respect to this matter.

Done in Washington, D.C., on November 3, 1976.

DONALD E. WILKINSON,
Administrator.

[FR Doc.76-32726 Filed 11-5-76;8:45 am]

SHIPPERS ADVISORY COMMITTEE

Public Meetings

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (86 Stat. 770), notice is hereby given of meetings of the Shippers Advisory Committee established under Marketing Order No. 905 (7 CFR Part 905). This order regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida and is effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The committee will hold meetings on November 23 and November 30, 1976, at 10:30 a.m. in the A. B. Michael Auditorium of the Florida Citrus Mutual Building, 302 South Massachusetts Avenue, Lakeland, Florida.

The meetings will be open to the public and a brief period will be set aside at each meeting for public comments and questions. The agenda of each meeting includes analysis of current information concerning market supply and demand factors, and consideration of recommendations for regulation of shipments of the named fruits.

The names of committee members, agenda, and other information pertaining to each meeting may be obtained from Frank D. Trovillion, Manager, Growers Administrative Committee, P.O. Box R, Lakeland, Florida 33802; telephone 813-682-3103.

Dated: November 3, 1976.

WILLIAM T. MANLEY,
Deputy Administrator,
Program Operations.

[FR Doc.76-32775 Filed 11-5-76;8:45 am]

CIVIL AERONAUTICS BOARD

[Order 76-9-75; Docket 27573; Agreement C.A.B. 26084; R-1 and R-2]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Relating to Specific Commodity Rates

Correction

In FR Doc. 76-27928 appearing in the FEDERAL REGISTER at page 41738 on Thursday, September 23, 1976 the order number in brackets should have appeared as shown above.

[Docket 29708]

ARGO, S.A. CHARTER PERMIT APPLICATION (DOMINICAN REPUBLIC)

Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that hearing in the above-entitled matter is assigned to be held on December 7, 1976, at 9:30 a.m. (local time), in Room 1003, Hearing Room C, Universal North Building, 1875 Connecticut Avenue, N.W., Washington, D.C.

For information concerning the issues involved and other details in this proceeding, interested persons are referred to documents in the docket of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., November 2, 1976.

KATHERINE A. KENT,
Administrative Law Judge.

[FR Doc.76-32778 Filed 11-5-76;8:45 am]

[Order 76-9-95; Docket 28844]

LINEAS AEREAS COSTARRICENSES, S.A.

Statement of Tentative Findings and Conclusions and Order To Show Cause; Erratum

In the matter of application of LINEAS AEREAS COSTARRICENSES, S.A. for renewal of a foreign air carrier permit pursuant to section 402 of the Federal Aviation Act of 1958.

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 20th day of September, 1976.

In footnote 3 of Order 76-9-95, published at 41 FR 41739, September 23, 1976, the Board proposes to dismiss the application of Lineas Aereas Costarricenses, S.A. (LACSA) insofar as the carrier seeks expanded authority beyond its existing foreign air carrier permit. Due to a clerical error, however, the dismissal of LACSA's application for authority to serve a route between San Jose, Costa Rica and San Juan, Puerto Rico via Panama City, Panama was omitted from the Board's tentative findings. Accordingly, tentative finding number 5 of Order 76-9-95 should read:

5. That the application herein, insofar as it requests expanded authority to serve Dallas and Fort Worth, Texas via Guatemala City, and San Juan, Puerto

Rico via Panama City, Panama, should be dismissed;

By the Civil Aeronautics Board:

PHYLLIS T. KAYOR,
Secretary.

SEPTEMBER 29, 1976.

[FR Doc.76-32779 Filed 11-5-76;8:45 am]

[Order 76-10-126; Docket 28178]

WORLD-JET INC. D/B/A SILVAS AIR LINES

Order Setting Application for Hearing

Application of WORLD-JET INC. dbaq-isl

Application of WORLD-JET INC. d/b/a SILVAS AIR LINES for issuance of a certificate of public convenience and necessity for supplemental air transportation.

Adopted by the Civil Aeronautics Board at its office in Washington, DC on the 27th day of October 1976.

On August 15, 1975, World-Jet Inc. d/b/a Silvas Air Lines, hereinafter referred to as "Silvas," a Nevada corporation presently operating under Part 91, Subpart D of the F.A.R.'s, filed an application for a certificate of public convenience and necessity to engage in supplemental air transportation with respect to persons and property as follows:

Between any point in any State of the United States or the District of Columbia on the one hand, and points in Canada, Caribbean, Mexico, Central, and South America, on the other hand.

The applicant states that its base of operations will be Purdue University Airport, West Lafayette, Indiana, and that it will serve the North Central States as Purdue Airlines did for the last thirty years.[1]

On September 17, 1975, Silvas filed a motion for hearing which was denied, pursuant to Order 76-2-43, February 12, 1976, because the applicant had failed to make a prima facie showing of fitness and a showing of benefit to the traveling public as a result of the proposed operations. In a pleading filed 2½ months late, Silvas petitioned the Board for reconsideration of Order 76-2-43, accompanied by a motion for leave to file an otherwise unauthorized document.[2] In view of our action herein, Silvas' motion and petition will be dismissed as moot. We note, however, that good cause for filing the petition so late was not shown.

On June 8, 1976, Silvas filed a second motion for hearing, accompanied by a number of exhibits which set forth corporate, financial, and managerial information about the applicant, projected revenues and expenses, forecasts of charter flights, and information regarding travel demand in the Midwest region of the United States. Saturn answered in opposition to Silvas' motion arguing that: the motion should be denied because it is a successive and repetitious motion for hearing, Silvas' travel survey fails to take into account the charter operations of scheduled airlines in the Midwest, Silvas' profit forecast is inaccurate, and setting Silvas' application would result in a rerun of the Supplemental Renewal Proceeding.

Upon consideration of the pleadings and all the relevant facts, we have decided to grant Silvas' motion for hearing. While the showing of public need, particularly for the international authority requested, the operational forecasts, and the information provided about Silvas have been minimal, it appears that the applicant has made a good-faith effort to provide the necessary information as described in Order 76-2-43. While we agree with Saturn that there are problems with the applicant's submissions, Silvas has attempted to make the minimal showing necessary in a motion for hearing. We would caution the applicant that the setting of this application for hearing should not be interpreted as an indication that the applicant has made the showing required for issuance of a certificate.[3] The Board's normal hearing processes will apply, necessitating the submission of additional exhibits and cross-examination by all parties to the case, including intervenors.[4]

While we are willing to place in issue all authority requested by the applicant, there is one major defect in Silvas' application. It is apparent in the motion for hearing that the applicant is seeking domestic supplemental rights as well as certain international authority. The application in Docket 28178, however, does not request domestic authority. We will place domestic rights in issue, however, contingent upon the filing of an appropriate amendment to the application in Docket 28178 within 20 days of the date of service of this order.

We also note that the applicant did not file an environmental evaluation with its motion for hearing as required by Part 312. We hereby direct the applicant to file this evaluation within 30 days of the date of service of this order.

Accordingly, it is ordered that:

1. The motion for hearing filed by World-Jet Inc. d/b/a Silvas Air Lines in Docket 28178 on June 8, 1976, be and it hereby is granted and the application in Docket 28178 shall be set down for hearing before an administrative law judge of the Board at a time and place hereinafter designated, as the orderly administration of the Board's docket permits;

2. The issues in the proceeding instituted herein shall include the following:

(a) Do the public convenience and necessity require the certification of World-Jet Inc. d/b/a Silvas Air Lines to engage in supplemental air transportation with respect to persons and property between any point in any State of the United States or the District of Columbia, on the one hand, and:

(i) Any other point in any State of the United States or the District of Columbia;[5]

(ii) Points in Canada;

(iii) Points in the Caribbean;

(iv) Points in Mexico;

(v) Points in Central America; and/or

(vi) Points in South America; on the other hand?

(b) If so, what terms, conditions, and/or limitations should be placed on the operation of such carrier?

3. Saturn Airways, Inc. be and it hereby is made a party to the proceeding in Docket 28178;

4. The motions for leave to file unauthorized documents filed by World-Jet Inc. d/b/a Silvas Air Lines and Saturn Airways, Inc. and the petition for reconsideration of Order 76-2-43 filed by World-Jet Inc. d/b/a Silvas Air Lines in Docket 28178 be and they hereby are dismissed as moot;

5. Applications, motions to consolidate, and petitions for reconsideration of this order shall be filed 20 days from the date of service of this order, and answers thereto shall be filed 10 days thereafter;

6. World-Jet Inc. d/b/a Silvas Air Lines shall file an environmental evaluation pursuant to § 312.12 of the Board's Procedural Regulations within 30 days of the date of service of this order; and

7. This order shall be served upon all certificated air carriers.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.76-31780 Filed 11-5-76;8:45 am]

[Order 76-9-80; Dockets Nos. 29789; 29790; 22487; 22414; 22418; 27707; 27709; 27710; 22365; 24766; 24767; 25799; 27601; 26649; 22436; 27542; 27603; 28326; 28327; 25776]

AMERICAN AIRLINES, INC. ET AL.

Order Instituting Investigations; Erratum

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 15th day of September, 1976.

---

[1] Purdue's certificates were canceled by the Board pursuant to Orders 75-3-75 and 75-3-76 served March 24, 1975.

[2] Saturn Airways filed a contingent answer to the petition for reconsideration.

[3] Prior to the issuance of a certificate to engage in supplemental air transportation, section 401(d)(3) of the Federal Aviation Act requires that the Board find the applicant to be 'fit, willing, and able properly to perform the transportation covered by the application * * *' Moreover, the proposal of such an applicant is to be judged by the Board against the public convenience and necessity standard, which is likewise embodied in section 401(d)(3). While previously in this order we have spoken of the applicant's good-faith effort to comply with the requirements of Order 76-2-43, we wish to note that upon completion of the hearing authorized today, we will evaluate this application, like all other such applications, in light of the standards established in section 401. *See generally* Supplemental Air Service Proceeding, 45 C.A.B. 231, 267 (1966).

[4] Saturn has filed a number of pleadings in this docket and will, therefore, be made a party to the proceeding instituted herein, without the necessity of a petition for leave to intervene.

[5] Contingent upon the filing of an amendment to the application in Docket 28178 requesting such authority within 20 days of the date of service of this order.

In the matter of Houston/New Orleans-Yucatan route proceeding and Dallas/Fort Worth-Western Mexico route proceeding.

Order 76–9–80, September 15, 1976 published at 41 FR 41450 9–22–76 inadvertently included Docket 21011, Texas International's application for Route S authority, which was consolidated into the Texas-Mexico Service Investigation (Docket 23167) and denied by Order 72–7–49, approved July 13, 1972. Reference to Docket 21011 should be deleted in the caption. Eastern Air Lines' application in Docket 24767, to the extent it conforms with the scope of the issues, in the Dallas/Fort Worth-Western Mexico Route Proceeding, Docket 29790, was inadvertently excluded and should have been incorporated. Therefore, the caption in Order 76–9–80 should include Eastern's Docket 24767. Ordering paragraph 6 should also be amended to read as follows:

6. The applications of American Airlines (Docket 22487), Braniff Airways (Docket 22418), Delta Air Lines (Docket 22365), Eastern Air Lines (Docket 24767), and Ozark Air Lines (Docket 26649), to the extent they conform [14] with the investigation in the proceeding instituted in paragraph 2, above, be and they hereby are consolidated in the *Dallas/Fort Worth-Western Route Proceeding*, Docket 29790;

Order 76–9–80, September 15, 1976, inadvertently failed to consolidate Continental Air Lines' application in Docket 27709, to the extent it conforms with the scope of the Houston/New Orleans-Yucatan Route Proceeding, Docket 29789. Therefore, the caption of Order 76–9–80 should include Continental's Docket 27709 and Ordering paragraph 5 should read as follows:

5. The applications of Braniff Airways (Docket 22414), Continental Air Lines (Dockets 27707, 27709, 27710), Eastern Air Lines (Docket 24766), National Air Lines (Docket 27601), Texas International Airlines (Dockets 22436, 27542), and United Air Lines (Dockets 27603, 28326, 28327), to the extent they conform [13] with the investigation in the proceeding instituted in paragraph 1, above, be and they hereby are consolidated in the Houston/New Orleans-Yucatan Route Proceeding, Docket 29789;

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.76–32781 Filed 11–5–76;8:45 am]

DEPARTMENT OF COMMERCE

Economic Development Administration

1980 WINTER OLYMPIC GAMES

Meeting

In accordance with section 102(c) of the National Environmental Policy Act of 1969 (Pub. L. No. 91–190), announcement is made of the following public meetings regarding the Economic Development Administration's (EDA) draft Environmental Impact Statement for the 1980 Winter Olympic Games:

Date: November 10, 1976.
Place: Olympic Arena Addition, Main Street, Lake Placid, New York.
Time: 10 a.m. to 12:30 p.m., 1:30 p.m. to 6 p.m., 7 p.m. to 9 p.m, and
Date: November 18, 1976.
Place: Hearing Room A, Legislative Office Building, Empire State Mall, Albany, New York.
Time: 10 a.m. to 12:30 p.m., 1:30 p.m. to 6 p.m., 7 p.m. to 9 p.m.

Purpose of Meeting: EDA will discuss and solicit public comments on its draft Environmental Impact Statement for the 1980 Winter Olympic Games.

Interested persons desiring to make oral statements at these meetings should notify EDA in advance. However, unscheduled oral presentations will be allowed at the meetings if time is available.

All communications regarding these meetings should be addressed to Mr. John E. Hansel, Economic Development Administration, U.S. Department of Commerce, Room 7126, Washington, D.C. 20230, (202) 377–4208.

Dated: November 2, 1976.

JOHN W. EDEN,
Assistant Secretary for Economic Development.

[FR Doc.76–32752 Filed 11–5–76;8:45 am]

National Bureau of Standards

PROPOSED DISCONTINUANCE OF CERTAIN NBS RADIO BROADCAST SERVICES

Request for Public Comment

Correction

In FR Doc. 76–32069 appearing at page 47981 in the issue for Monday, November 1, 1976, in the second full paragraph, first column, page 47982, the price of the NBS report, now reading "$15.0", should read "$1.50".

COMMISSION OF FINE ARTS

MEETING

NOVEMBER 1, 1976.

The Commission of Fine Arts will meet in open session on Tuesday, November 23, 1976, at 10:00 a.m. in the Commission offices at 708 Jackson Place, N.W., Washington, D.C. 20006, to discuss various projects affecting the appearance of Washington, D.C.

Inquiries regarding the agenda or requests to submit written or oral statements shall be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address.

CHARLES H. ATHERTON,
Secretary.

[FR Doc.76–32790 Filed 11–5–76;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 635–7; OPP–42034]

STATE OF NORTH DAKOTA

Submission of State Plan for Certification of Pesticide Applicators

In accordance with the provisions of section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 7 U.S.C. 136) and 40 CFR Part 171, the Honorable Arthur A. Link, Governor, State of North Dakota, has submitted a State Plan for the Certification of Commercial and Private Applicators of Restricted Use Pesticides to the Environmental Protection Agency (EPA), for approval. All legal authorities necessary to implement the State Plan have been enacted.

Notice is hereby given of the intention of the Regional Administrator, EPA, Region VIII, to approve this Plan. A summary of this Plan follows. The entire Plan, together with all appendices (except sample examinations), may be examined during normal business hours at the following locations:

1. State Capitol, Bismarck, North Dakota, Department of Agriculture, telephone (701) 224–2232.

2. Room 2013, 1860 Lincoln Street, Denver, Colorado 80203 (Pesticides Branch, Air and Hazardous Materials Division, EPA Region VIII), telephone (303) 837–3926.

3. Room 401, East Tower, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460 (Federal Register Section, Technical Services Division, WH–569), Office of Pesticide Programs, EPA, telephone (202) 755–4854.

SUMMARY OF STATE PLAN

The North Dakota Department of Agriculture has been designated the State lead agency for the administration of the pesticide applicator certification program. The North Dakota Pesticide Act of 1975 provides for the creation of a Pesticide Control Board to administer the Act and the certification program. This Board consists of the Commissioner of Agriculture, who is also the Board chairman, the Director of the State Cooperative Extension Service and the Director of the State Agricultural Experiment Station. The North Dakota Department of Agriculture is responsible for the enforcement of the Act.

The State Cooperative Extension Service, which has an EPA approved training plan, has the overall responsibility for the State-wide pesticide applicator certification training program, including preparing training materials and examinations, and distributing training manuals and other materials. The State Extension Service's county agents are responsible for the actual training and certification.

Legal authority for the program is contained in the "North Dakota Pesticide Act of 1975" and "Rules and Regulations of the North Dakota Pesticide Control Board". Copies of these legal authorities are attached to the State Plan.

The Plan indicates that adequate personnel are available to the Department of Agriculture and cooperating agencies to carry out the certification program. The Plan includes a budget for the pesticide program within the Department of Agriculture for the 1975–1977 biennium. This budget includes Federal monies available for applicator certification. A proposed budget for the biennium 1977–1979 is also attached to the Plan.

The Pesticide Control Board will submit an annual report to EPA on or be-

fore March 1 of each year and other reports requested by the Administrator of EPA.

North Dakota estimates that approximately 3,343 commercial and 40,000 private applicators will need to be certified. Both certified commercial and private applicators will be issued certification credentials. The commercial applicator's credential will indicate which category(s) he is certified in.

The commercial applicator categories in the plan are the same as those in 40 CFR 171.3(b) with the exception of "Aquatic Pest Control" and "Forest Pest Control". The State of North Dakota will not use these two categories.

The standards of competency for commercial applicators in North Dakota are the same as those in 40 CFR 171.4 (b) and (c) and 171.6. All commercial applicators will be required to pass written examinations covering both the general standards and the specific standards for the category in which they wish to become certified. All written examinations will be administered by the county extension agents with the county treasurer issuing the certification credential. All commercial applicators shall renew their certification by passing a written examination or by attendance at an approved training course at least every three years.

The standards of competency for private applicators are the same as those listed in 40 CFR 171.5 and 171.6. Private applicators will be certified by one of four options:

1. Attendance at an approved training course presented by the county extension service. These courses will include a procedure to determine learning-teaching effectiveness.

2. Completion of an auto-tutorial instruction course at the appropriate county extension agent's office. This option will also include a procedure to determine learning-teaching effectiveness.

3. Completion of a take-home self-study program, including a procedure to determine learning-teaching effectiveness.

4. Passing of a dealer's licensing examination or commercial applicator's licensing examination.

All private applicators are required to be certified by the county extension agent in their county of residence. All private applicators are required to be recertified at least every five years. Recertification can be obtained by completion of any one of the four options listed above.

An applicator who can not read may be certified by the completion of a course of oral instruction. This oral instruction will be administered by the local county extension agent and will authorize the applicator to purchase and use only those products for which he has demonstrated competence.

North Dakota will also employ a procedure to certify individuals as private applicators in the case of an emergency. An applicator can be certified on an emergency basis by completion of a course of oral instruction at his local county extension agent's office. Such private applicator certification shall be for a single restricted use pesticide and shall expire sixty days from issuance. An applicator can be issued an emergency certification only once.

Sample examinations for commercial applicators are attached to the Plan. However, in view of the need to preserve the confidentiality of the examination format, these examinations have been removed from the public inspection copies of the Plan.

The Plan provides for a statement concerning the Government Agency Plan (GAP) to be forwarded to EPA within 60 days after the approval of the GAP by EPA.

The North Dakota Pesticide Control Board has not entered into any agreements with Indian tribes in North Dakota. Any agreements which are made will be forwarded to EPA as part of the Plan.

The North Dakota Pesticide Control Board has not entered into any reciprocal agreements with other states. Any agreements which are made will be forwarded to EPA as a part of the Plan.

Other North Dakota regulatory activities and authorities are pesticide registration, dealer licensing and regulation, equipment inspection, product sampling and analysis and disposal, transportation, storage and application requirements.

A regular program of inspection, product sampling, and follow up investigations of accidents and complaints will be conducted by Department of Agriculture personnel.

PUBLIC COMMENTS

Interested persons are invited to submit written comments on the proposed State Plan for the State of North Dakota to the Chief, Pesticides Branch (8AH–P), Environmental Protection Agency, Region VIII, 1860 Lincoln Street, Suite 103, Denver, Colorado 80203. The comments must be received on or before December 8, 1976, and should bear the identifying notation (OPP–42034). All written comments filed pursuant to this notice will be available for public inspection at the above mentioned locations from 8:30 a.m. to 3:30 p.m., Monday through Friday.

Dated: October 20, 1976.

JOHN A. GREEN,
Regional Administrator.

[FR Doc.76–32645 Filed 11–5–76;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 829]

COMMON CARRIER SERVICES INFORMATION

Applications Accepted for Filing

OCTOBER 26, 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 section 309(c) of the Communications Act), applications filed under Part 68, applications filed under Part 63 relative to small projects, or as otherwise noted. Unless specified to the contrary, comments or petitions may be filed concerning radio and section 214 applications within 30 days of the date of this notice and within 20 days for Part 68 applications.

In order for an application filed under Part 21 of the Commission's Rules (Domestic Public Radio Services) to be considered mutually exclusive with any other such application appearing herein, it must be substantially complete and tendered for filing by whichever date is earlier: (a) The close of business one business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which the subsequent application is in conflict) as having been accepted for filing. In common carrier radio services other than those listed under Part 21, the cut-off date for filing a mutually exclusive application is the close of business one business day preceding the day on which the previously filed application is designated for hearing. With limited exceptions, an application which is subsequently amended by a major change will be considered as a newly filed application for purposes of the cut-off rule. (See §§ 1.227(b)(3) and 21.30(b) of the Commission's rules.)

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

APPLICATIONS ACCEPTED FOR FILING:

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE:

20025–CD–P–77, Sonoma Communications, Inc. (New), C.P. for a new 1-way station to operate on 158.70 MHz to be located at 1100 Country Club Drive, Petaluma, California.

20026–CD–P–77, Berkshire Communicators, Inc. (KCA237), C.P. to relocate facilities operating on 152.09 MHz at Loc. #1: Corner of Lakeway Drive & Valentine Road, Pittsfield, Massachusetts.

20027–CD–P–77, Portable Communications, Inc. (KTS238), C.P. for additional Control facilities to operate on 459.075 MHz at Loc. #1; #1 Marine Midland Center, Buffalo, New York.

20028–CD–P–77, Professional Communications, Inc. (New), C.P. for a new 1-way station to operate on 158.70 MHz to be located on Rt. 20, North Kingsville, Ohio.

20029–CD–P–77, Dakota Radio Paging, Inc. (KQK777), C.P. for additional facilities to operate on 152.18 MHz at a new Loc. #3: Orchard Heights, East of Sioux Falls, South Dakota.

20030–CD–P–(2)–77, Rockford Communications Company, Inc. (KSJ610), C.P. to relocate facilities, change antenna system and replace transmitter operating on 459.100 MHz Repeater at Loc. #2: ¾ mile East of Route 173 on Nimitz Rd. and ½ east of Loves Park, Rockford, Illinois; and to change antenna system and replace transmitter operating on 454.000 MHz Control at Loc. #3: 1008 Elm Street, Rockford, Illinois.

20031–CD–P–(2)–77, Central Radio Telephone, Inc. (KMM599), C.P. for additional facilities to operate on 454.100 & 454.275 MHz at a new Loc. #3: 3031 Tisch Way, San Jose, California.

20032–CD–MP–(4)–77, Radio Telephone Company of Gainesville, Inc. (KIY464), C.P. to change antenna system and replace transmitter operating on 454.125, 454.300 & 454.350 MHz at Loc. #1: 540 Corporation Avenue, Daytona Beach; and to relocate facilities operating on 454.150 MHz at Loc. #2: 4.5 miles WNW of Edgewater, Florida.

20033–CD–P–77, Patterson Anserphone Communication Enterprises, Inc. d/b/a Anserphone (KIG841), C.P. to relocate facilities, change antenna system and replace transmitter operating on 152.15 MHz at Loc. #2: 4812 Six Forks Road, Raleigh, North Carolina.

20034–CD–P–77, Denver & Ephrata Telephone & Telegraph Company (KGI782), C.P. to change antenna system operating on 152.84 MHz at Loc. #1: Ephrata Township Road, 0.8 mi. east of Ephrata, Pennsylvania.

20035–CD–P–77, Hofmann Telephone Answering Service, Inc. (New), C.P. for a new station to operate on 152.03 MHz to be located 0.5 mi. north of Milridge school, Danbury, Connecticut.

20036–CD–MP–77, Airsignal of California, Inc. (KQZ798), C.P. to relocate facilities and change antenna system operating on 158.70 MHz at Loc. #2: 109 N. Douty Street, Hanford, California.

20037–CD–P–77, Asta, Inc. (KWU306), C.P. for additional facilities to operate on 454.-325 MHz located at 402 North Main Street, Anderson, South Carolina.

20038–CD–P–77, Abe Thomy d/b/a Able Answering Service (New), C.P. for a new 1-way station to operate on 152.24 MHz to be located at Rts. 95 & 20 intersection West of Florence, South Carolina.

20039–CD–P–77, Withers Communications Company (New), C.P. for a new 1-way station to operate on 152.24 MHz to be located at Flint Hill, Cape Girardeau, Missouri.

20040–CD–P–(2)–77, General Telephone Company of California (KSV984), C.P. for additional facilities to operate on 152.84 MHz at new Loc. #4: 2320 Junipero Avenue, Signal Hill; and same facilities at new Loc. #5: 10960 Wilshire Boulevard, Westwood, California.

20041–CD–P–(2)–77, Airsignal International, Inc. (KFL895), C.P. to change antenna system and replace transmitter operating on 152.06 & 152.18 MHz located at 4212 30th Street W., Bradenton, Florida.

Correction

20005–CD–P–77, Answer Iowa, Inc. (KWU-201), Correct entry on PN #827 dated October 12, 1976 to read as follows: (KFJ-900), C.P. for additional facilities to operate on 152.18 MHz at new Loc. #2: 5th Avenue West at 12th Street, Duluth, Minnesota.

Informative

It appears that the following applications may be mutually exclusive and subject to the Commission's rules regarding Ex Parte presentations by reasons of potential electrical interference.

158.70 MHz

Lehigh Valley, Allentown, Pennsylvania, 21564–CD–P–76, (KWU325).

Radio Broadcasting Company, Allentown, Pennsylvania, 21873–CD–P–76, (KTS280).

RURAL RADIO

60007–CR–P–77, RCA Alaska Communications, Inc. (New), C.P. for a new Rural Subscriber station to operate on 157.86 MHz located Small town 190 miles east of Fairbanks, Alaska.

60008–CR–P–77, RCA Alaska Communications, Inc. (New), C.P. for a new Central Office station to operate on 152.60 MHz located in Village 3 miles east of Eagle, Alaska.

Correction

60004–CR–P–77, The Mountain States Telephone and Telegraph Company (New), Correct File Number to read 60004–CR–P/L–77. All other particulars remain as reported on PN #828 dated October 18, 1976.

OFFSHORE RADIO TELECOMMUNICATIONS SERVICE

Major Amendment

Gulf of Mexico, The Offshore Telephone Company (new), Delete frequencies 491.025, 491.075, 491.100 and 491.125 MHz. Add frequencies 491.225 and 491.300 MHz. All other particulars are to remain as reported on PN No. 824 and 826 dated September 20, 1976 and September 27, 1976.

POINT TO POINT MICROWAVE RADIO SERVICES

8237–CF–R–76, American Telephone and Telegraph Company (KEF72), within Continental Limits USA application for renewal radio station license (Developmental) expiring on 11/1/76 term 11/1/76 to 11/1/77.

83–CF–MP–77, Commonwealth Telephone Company (WBB362), Lat. 41°35'26" N., Long. 76°02'48" W. C.P. to increase structure and move antenna on frequencies 11075V MHz toward Wyalusing, Pennsylvania on azimuth 300.6° and 11075V MHz toward Tunkhannock, Pennsylvania on azimuth 119.7°.

91–CF–P–77, RCA Global Communications, Inc. Dan Dan 2.5 miles N NW of Inarajan, Guam Lat. 13°18'33" N., Long. 144°44' 03" E.C.P. for a new station on frequencies 6745V 6805V MHz toward Asalonsa with passive reflector on azimuth 82.3° and from passive reflector to Yona, Guam on azimuth 2.8°.

92–CF–P–77, RCA Global Communications, Inc. (KUA53), 1.5 miles WNW of Yona, Guam Lat. 13°25'00" N., Long. 114°44'57" E., C. P. to add a new point communication on frequencies 6585H 6645H MHz toward Asalonsa with passive reflector on azimuth 182.8° and from passive reflector to Dan Dan, Guam on azimuth 262.3°.

93–CF–R–77, Michigan Bell Telephone Company (KKU73), any temporary location application for renewal radio station license (Developmental) expiring on 11/12/76 term 11/12/76 to 11/12/77.

104–CF–P–77, New York Telephone Company (KEH95), any temporary fixed location within territory of the grantee. Application for renewal radio station license (Developmental) expiring on 11/12/76 term 11/12/76 to 11/12/77.

156–CF–P–77, South Central Bell Telephone Company (KLU69), N O Broadmr 3951 Erato Street, New Orleans, Louisiana Lat. 29°57'14" N., Long. 90°05'54" W., C.P. to add a new point communication on frequencies 6256.5V 6286.2H 6404.8H MHz toward Lacombe on azimuth 16.7°.

157–CF–P–77, Same (New), 2.5 miles NW of Lacombe, Louisiana Lat. 30°20'25" N., Long. 89°57'53" W., C.P. for a new station frequencies 6004.5H 6034.2V MHz toward N O Broadmr on azimuth 196.8°, 5974.8H 6152.8H MHz toward Slidell on azimuth 112.5° and 10755V MHz toward Mandeville on azimuth 281.5°.

158–CF–P–77, Same (KLU71) Cousin and Carey Street Slidell, Louisiana Lat. 30°16'30" N., Long. 89°47'02" W. C.P. to add a new point communication on frequencies 6226.9V 6404.8V MHz toward Lacombe on azimuth 298.6°; change frequency 6330.7V to 6197.2H MHz toward Covington and replace and move antenna.

159–CF–P–77, Same (KTF65) 410 East Rutland Street Covington, Louisiana Lat. 30°28'29" N., Long. 90°05'52" W., C.P. to change frequencies 5960.0V 6049.0V to 5945.2V MHz toward Slidell on 151.2°; and move and replace antenna.

176–CF–P–77, South Central Bell Telephone Company (KYS48), 232 W. Lexington Ave., Winchester, Kentucky Lat. 37°59'35" N., Long. 84°11'02" W. C.P., to replace transmitter and change frequency 4050V to 3870H MHz toward Centerville, Kentucky.

177–CF–P–77, Same (KYC46), 0.4 mile N of Centerville, Kentucky Lat. 38°13'43" N., Long. 84°23'20" W., C.P. to replace transmitter and change frequency 3770V to 3910H MHz toward Winchester, Kentucky.

148–CF–MP–77, United States Transmission Systems, Inc. (WBA834), One American Place, Baton Rouge, Louisiana (Lat. 30°27'06" N., Long. 90°11'14" W.): CP to add 6226.9H MHz toward Praireville, Louisiana, on azimuth of 127.7°.

149–CF–77, United States Transmission Systems, Inc. (New), Praireville, Louisiana (Lat. 30°17'46" N., Long. 90°57'17" W.):, CP for a new station—5945.2H MHz toward Baton Rouge & Central, both in Louisiana, on azimuths 307.8 & 159.9°, respectively.

150–CF–P–77, Same (New), 2.2 miles NE of Romeville, Louisiana (Lat. 30°05'12" N., Long. 90°51'59" W.):, CP for a new station—6225.9H MHz toward Praireville and 6226.9V MHz toward Thibodaux, both in Louisiana, on azimuths 339.9 & 174.7°, respectively.

151–CF–P–77, Same (New), 1.0 mile W of Schriever, Louisiana (Lat. 29°44'47" N., Long. 90°49'50" W.):, CP for a new station—5945.2V MHz toward Central and 5974.8H MHz toward Des Allemands, both in Louisiana on azimuths 354.8 & 77.1°, respectively.

152–CF–P–77, Same (New), 1.5 miles E of Des Allemands, Louisiana (Lat. 29°49'33" N., Long. 90°25'44" W.):, CP for a new station—6197.2H MHz toward Thibodaux and 6286.2V MHz toward New Orleans, both in Louisiana on azimuths 257.3 & 36.6°, respectively.

153–CF–77, Same (New), Plaza Tower, New Orleans, Louisiana (Lat. 29°56'46" N., Long. 90°04'34" W.):, CP for a new station—6004.5 MHz toward Des Allemands, Louisiana on azimuth 248.7°.

61–CF–P–77, American Television Relay (KNK 67), Toro Peak, 14 miles SSW of Palm Desert, California. (Lat. 33°31'32" N., Long. 116°25'30" W.): Construction permit to change frequencies to 6419.6H MHz toward El Centro and Desert Center, both in California, on azimuths 134.6 and 75.9°, respectively.

102–CF–P–77, United Video, Inc. (WAH 573), 2 miles South of Ottumwa, Iowa. (Lat. 40° 58'09.0" N., Long. 92°25'15.0" W.): Construction permit to change frequency to 6256.5H MHz toward Albia, Iowa, on azimuth 282.4°.

103-CF-P-77, United Video, Inc. (WAH 574), 1 mile East of Albia, Iowa. (Lat. 41°01'44" N., Long. 92°47'03" W.): Construction permit to add 5974.8H MHz toward Centerville, Iowa on azimuth 194.7° and to change frequency to 5974.8H MHz toward Chariton, Iowa, on azimuth 267.6°.

132-CF-P-77, Maine Microwave, Inc. (New), 2.5 miles SW of Millinocket, Maine. (Lat. 45°38'52" N., Long. 68°45'08" W.): Construction permit for new station—6182.4V and 6241.7V MHz toward Bear Mtn., Maine, on azimuth 26.2°. (Note: Applicant requests waiver of Section 21.701(1) of the Commission's Rules).

133-CF-P-77, Maine Microwave, Inc. (KCK 58), Bear Mtn., 8 miles North of Patten, Maine. (Lat. 46°07'17" N., Long. 68°25'00" W.): Construction permit to replace transmitter, correct coordinates and to increase antenna structure height—5937.5H and 5996.8H MHz toward Quoogy Joe, Maine.

134-CF-P-77, Maine Microwave, Inc. (KCK 59), Quoogy Joe, 5.5 miles South of Presque Isle, Maine. (Lat. 46°36'15" N., Long. 68°00'30" W.): Construction permit to replace transmitter, increase antenna structure height, increase power output, to add 6087.5H and 6096.8H MHz toward Mars Hill, Maine, on azimuth 135.6° and to change frequency to 6087.5H and 6098.H MHz toward Van Buren, Maine.

135-CF-P-77, Maine Microwave, Inc. (WPE 76), 1 mile South of Van Buren, Maine. (Lat. 47°08'40" N., Long. 67°57'30" W.): Construction permit to replace transmitter—5996.8H and 5937.5H MHz toward Madawaska, Maine.

[FR Doc.76-32763 Filed 11-5-76;8:45 am]

[Docket No. 20418]

NEW VHF STATIONS; TELEVISION TABLE OF ASSIGNMENTS

Order Extending Time for Filing Reply to Opposition to Petition for Rule Making

Adopted: October 29, 1976.

Released: November 3, 1976.

In the matter of petition for rulemaking to Amend Television Table of Assignments to Add New VHF Stations in the Top 100 Markets and to Insure that the New Stations Maximize Diversity of Ownership, Control and Programming, Docket No. 20418, RM-2346, RM-2727.

1. On August 25, 1976, the Commission consolidated a petition filed by the Group for the Advancement of Television Service (GATS) (RM-2727) with Docket No. 20418 in which GATS had filed timely comments and reply comments dealing with the same proposal, i.e., a short-spaced VHF drop-in assignment of Channel 8 at Johnstown, Pennsylvania. GATS was also allowed to file a late engineering supplement to its comments in Docket 20418, and other parties were allowed time to respond. Order extending time to respond to supplemental comments, adopted August 25, 1976; published in the FEDERAL REGISTER on September 2, 1976, 41 FR 37154.

2. WGAL Television, Inc., licensee of WGAL-TV, Channel 8, Lancaster, Pennsylvania, and Storer Broadcasting Company, licensee of WJW-TV, Channel 8, Cleveland, Ohio, then filed oppositions to the GATS proposal. GATS requested and was granted an extension of time to reply to those oppositions by October 18, 1976. Order Extending Time for Filing Reply to Opposition to Petition for Rule Making, adopted October 18, 1976; released October 20, 1976, Mimeo No. 73480, Published at 41 FR 47097, October 27, 1976.

3. We now have before us a petition for further extension of time by GATS, filed on October 18, 1976, stating that the reply has been delayed because GATS consulting engineers are located in Denver, Colorado, and the engineering statement supporting the reply was mailed from there but had not yet arrived. GATS requested a two-day extension to October 20, 1976, and filed the reply on that date.

4. Since GATS first request for extension was granted, and it now asks only two additional days with reasonable explanation for delay, we find that no party would be prejudiced by granting this request.

5. *Accordingly, it is ordered*, That the date for filing a reply by the Group for the Advancement of Television Service to oppositions to its petition for rulemaking in RM-2727 only, is extended to and including October 20, 1976.

6. This action is taken pursuant to authority found in sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.76-32762 Filed 11-5-76;8:45 am]

[Report No. 1013]

NOVEMBER 2, 1976.

Petitions for Reconsideration of Actions RULE MAKING PROCEEDINGS FILED

Docket or RM No.	Rule No.	Subject	Date received
20812	Sec. 73.202(b)	Amendment of sec. 73.202(b), table of assignments, FM broadcast stations. (Saegertown, Pa.; Carpinteria, Calif.; Two Harbors, Minn.; Grass Valley, Calif.)	
		Filed by Israel Sinofsky	Oct. 8, 1976
		Filed by Isadore G. Alk, attorney for Regional Broadcasters, Inc.	Oct. 29, 1976

FEDERAL COMMUNCIATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.76-32764 Filed 11-5-76;8:45 am]

FEDERAL ENERGY ADMINISTRATION

STATE REGULATORY ADVISORY COMMITTEE

Charter Amendment

This notice is to advise of a revision in the Charter of the State Regulatory Advisory Committee to the Federal Energy Administration.

The Charter published in the August 27, 1976, issue of the FEDERAL REGISTER (41 FR 36256) is amended to add an additional subcommittee. Specifically, the Charter is hereby amended by revising Section B-9 to read as follows:

"9. Subcommittees—The State Regulatory Advisory Committee shall have four subcommittees as follows:

Executive Subcommittee
Subcommittee on Legislation
Subcommittee on FEA State Energy Grants
Rate Design Initiatives Subcommittee

The objectives of each subcommittee are to make recommendations to the parent Committee with respect to policy and implementation of programs related to the responsibilities of the State regulatory commissions.

Each subcommittee shall be comprised of such members of the parent Committee as may be determined by the Chairman of the parent Committee.

All actions of the subcommittees shall be consistent with the provisions of B-1 through B-11."

The above amendment is effective immediately.

Issued at Washington, D.C. on November 2, 1976.

FRANK G. ZARB,
Administrator.

[FR Doc.76-32706 Filed 11-3-76;9:44 am]

RATE DESIGN INITIATIVES SUBCOMMITTEE OF THE STATE REGULATORY ADVISORY COMMITTEE

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat 770), notice is hereby given that the Rate Design Initiatives Subcommittee of the State Regulatory Advisory Committee will meet Tuesday, November 23, 1976, at 1:30 p.m., Room 5041B, FEA Headquarters Building, 12th & Pensylvania Avenue, NW., Washington, D.C.

The objectives of this Subcommittee are to advise FEA on its preparation and analysis of electric utility rate design proposals which are to be submitted to the Congress pursuant to Title II, section 203, Pub. L. 94-385, Energy Conservation and Production Act.

The agenda for the meeting is as follows:

1. Review of Current Status:
a. FEA plans to Satisfy the Section 203 Requirements.
b. Findings to Date.
2. General Discussion—Remarks from the Floor.

The meeting is open to the public. The Chairman of the Subcommittee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Lois Weeks, Director, Advisory Committee Management, (202) 566-7022, at least 5 days prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Further information concerning this meeting may be obtained from the Advisory Committee Management Office.

Minutes of the meeting will be made available for public inspection in the Reception Room at the Federal Energy Administration, Washington, D.C.

Issued at Washington, D.C., on November 3, 1976.

MICHAEL F. BUTLER,
General Counsel.

[FR Doc.76-32800 Filed 11-4-76;8:59 am]

FEDERAL MARITIME COMMISSION

CALCUTTA, EAST COAST OF INDIA AND BANGLADESH/U.S.A. CONFERENCE

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 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 November 18, 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.

Notice of Agreement Filed by:

William L. Hamm, Chairman, Calcutta, East Coast of India and Bankladesh/U.S.A. Conference, 25 Broadway, New York, New York 10004.

Agreement No. 8650-9, entered into by the member lines of the Calcutta, East Coast of India and Bankladesh/U.S.A. Conference, amends the third paragraph of Clause 7 of the conference agreement by deleting the words "or its equivalent in Pounds Sterling", whereby prepaid freight and charges if payable in the United Kingdom shall be paid in U.S. Dollars. At the present time, prepaid freight and charges if payable in the United Kingdom shall be paid in U.S. Dollars or its equivalent in Pounds Sterling.

By Order of the Federal Maritime Commission.

Dated: November 3, 1976.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76-32782 Filed 11-5-76;8:45 am]

LYKES BROS. STEAMSHIP CO., INC. AND KERR STEAMSHIP CO., INC.

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and 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 November 29, 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:

Mr. R. J. Finnan, Pricing Division, Lykes Bros. Steamship Co., Inc., 300 Poydras Street, New Orleans, Louisiana.

Agreement No. 10269, an agency agreement, covers an arrangement whereby Lykes Bros. Steamship Co., Inc. appoints Kerr Steamship Company, Inc., as its agent to solicit and book cargo and perform related activities in the U.S. Great Lakes ports, and in the St. Lawrence riverway ports, under terms and conditions set forth in the agreement. The agent shall be subject to the supervision of Lykes and shall carry out any special instructions under such supervision.

By Order of the Federal Maritime Commission.

Dated: November 3, 1976.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76-32783 Filed 11-5-76;8:45 am]

MOORE-McCORMACK LINES, INC. AND STATES STEAMSHIP CO

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and 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 November 29, 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:

Mr. Hubert F. Carr, Vice President, Secretary and General Counsel, Moore-McCormack Lines, Incorporated, 2 Broadway, New York, New York 10004.

Agreement No. 10121-1 between Moore-McCormack Lines, Incorporated

and States Steamship Company modifies Section III of their basic agency agreement by expanding the geographic scope in respect to States' transpacific services to include Singapore, and ports in Malaysia and Indonesia.

By Order of the Federal Maritime Commission.

Dated: November 3, 1976.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76-32784 Filed 11-5-76;8:45 am]

CERTIFICATES OF FINANCIAL RESPONSIBILITY

Order of Revocation

In the matter of Flagship Cruises Limited and Flagship Cruises, Inc., C/O Flagship Cruises, 522 Fifth Avenue, New York, New York 10036, and Kommanditselskapet Sea Venture A/S & Co., C/O Oivind Lorentzen, P.O. Box 27 Smestad, Oslo 3, Norway.

In the matter of Certificate of Financial Responsibility For Indemnification Of Passengers For Nonperformance Of Transportation No. P-93 And Certificate Of Financial Responsibility To Meet Liability Incurred For Death Or Injury To Passengers Or Other Persons On Voyages No. C-1,090.

Whereas, Flagship Cruises Limited and Kommandittselskapet Sea Venture A/S & Co. have ceased to operate the passenger vessel *M/S Sea Venture;* and

Whereas, Certificate (Performance) No. P-93 and Certificate (Casualty) No. C-1,090 have been returned for revocation.

It is ordered, that Certificate (Performance) No. P-93 issued to Flagship Cruises Limited and Flagship Cruises, Inc. and Certificate (Casualty) No. C-1,090 issued to Kommandittselskapet Sea Venture A/S & Co., Flagship Cruises Limited and Norwegian Cruiseships A/S and reissued to Kommandittselskapet Sea Venture A/S & Co., Flagship Cruises Limited and Oivind Lorentzen be and are hereby revoked effective October 27, 1976.

It is further ordered, that a copy of this Order be published in the FEDERAL REGISTER and served on the certificants.

By the Commission October 27, 1976.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76-32785 Filed 11-5-76;8:45 am]

FEDERAL POWER COMMISSION

TRANSMISSION, DISTRIBUTION & STORAGE TECHNICAL ADVISORY TASK FORCE-RATE DESIGN

Meeting

Conference Room 6200, Federal Power Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, D.C. 20426.

November 23, 1976, 9:30 a.m.

Presiding: Mr. John F. Craig, FPC Coordinating Representative and Secretary.

1. Call to order—Mr. John F. Craig.
2. Introductory remarks—Mr. Richard W. Walker, Task Force Chairman.
3. Review of report prepared by Charles Olson of Zinder Association.
4. Review all revised drafts.
5. Discussion of final editing.
6. Adjournment—Mr. John F. Craig.

KENNETH F. PLUMB,
Secretary.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee—which statements, if in written form, may be filed before or after the meeting, or if oral, at the time and in the manner permitted by the committee.

[FR Doc.76-32941 Filed 11-4-76;4:13 am]

FEDERAL RESERVE SYSTEM

BANK LAND CO.

Order Approving Acquisition and Retention of Stock Interests in Bank

Bank Land Company, Denver, Colorado ("Applicant"), a bank holding company within the meaning of the Bank Holding Company Act ("Act"), has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire an additional 16.9 per cent of the outstanding voting shares of Southwest State Bank, Denver, Colorado ("Bank"), and to retain 8 per cent of the outstanding voting shares of Bank.

Notice of the applications, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the applications and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

In June of 1972, Applicant, a one-bank holding company by virtue of its ownership of 31 per cent of the outstanding voting shares of Bank, acquired an additional 8 per cent of Bank's shares without the Board's prior approval.[1] Applicant now seeks the Board's approval to retain these shares and to acquire an additional 16.9 percent of Bank's stock. Bank ($28.4 million in deposits) is the 28th largest banking organization in Colorado, controlling 0.38 per cent of the total deposits in commercial banks in the State.[2]

Bank ranks 16th in the Denver banking market (which is approximated by Adams, Arapahoe, Denver and Jefferson Counties and the city of Broomfield) and holds 0.74 per cent of market deposits.[3] As Applicant has no other banking subsidiaries, and the proposal involves only the retention and acquisition of additional stock interests in Bank, which, at all times pertinent hereto, was controlled by Applicant, approval of the application will not result in any adverse competitive effects. It will eliminate neither existing nor potential competition, nor increase the concentration of banking resources in any relevant area. Thus, competitive considerations are consistent with approval of the application.

The financial and managerial resources and future prospects of Applicant and Bank are satisfactory and it appears that Applicant will be able to service the debt associated with this application while adequately maintaining Bank's capital position. Thus, banking factors are consistent with approval.

There is no indication that the convenience and needs of the community to be served are not currently being met. Although there will be no immediate increase in the services offered by Bank, convenience and needs considerations are consistent with approval. Therefore, it is the Board's judgment that the retention and acquisition of the shares of Bank would be in the public interest and that the applications should be approved.

On the basis of the record, the applications are approved for the reasons summarized above. Acquisition of the shares of Bank shall not be made (a) before the thirtieth calendar day following the effective date of this order or (b) later than three months after the effective date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Kansas City pursuant to authority hereby delegated.

By order of the Board of Governors,[4] effective November 1, 1976.

RICHARD D. ABRAHAMSON,
Assistant Secretary of the Board.

[FR Doc.76-32737 Filed 11-5-76;8:45 am]

FIRST MICHIGAN BANK CORP.

Order Approving Acquisition of Bank

First Michigan Bank Corporation, Zeeland, Michigan, 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 100 percent of the voting shares of the successor by consolidation to Community State Bank of Dowagiac, Dowagiac, Michigan ("Bank").

To effect this transaction, DSB Bank has been organized as a new bank for

[1] It appears from the facts of record that the acquisition of the shares of State Bank was based on a misunderstanding of the applicable statutes and regulations relating to the acquisition of the voting stock of banks by bank holding companies. Applicant took prompt action to comply with the Act by applying for Board approval upon being advised that its actions constituted a violation of the Act. In accord with the Board's position with respect to violations of the Act, the Board has scrutinized the underlying facts surrounding the acquisition of the shares of State Bank. Upon examination of all the facts of record, the Board is of the view that the facts surrounding the violation are not such as would call for denial of the application.

[2] As of December 31, 1975.

[3] As of March 31, 1976.

[4] Voting for this action: Chairman Burns and Governors Gardner, Wallich, Coldwell, Jackson, Partee and Lilly.

the purpose of consolidation into Bank. DSB Bank has no significance except as a means to facilitate the acquisition of the voting shares of Bank; therefore, the proposed acquisition is treated herein as one to acquire the voting shares of Bank.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Federal Reserve Bank of Chicago has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant controls two banks and is the 29th largest Michigan banking organization, with less than one percent of the total commercial bank deposits in the State.[1] Upon acquisition of Bank, Applicant's share of State commercial bank deposits would continue to be less than one percent, and it would become the 28th largest banking organization in Michigan. The proposed acquisition would not significantly affect statewide concentration of banking resources in Michigan.

Bank, (deposits of $13.8 million) is the fourth largest of five banking organizations operating in the Cass County banking market, controlling 17.0 percent of total market commercial bank deposits.[2] The closest subsidiary of Applicant is located approximately 55 miles to the north in Douglas, Michigan. No competition presently exists between any of Applicant's subsidiary banks and Bank, nor does it appear likely that any significant competition would develop between them in the future in view of the distances involved and Michigan's restrictive branching laws. In addition, the Cass County banking market does not appear to be particularly attractive for de novo entry at this time. Applicant's entry could strengthen Bank's competitive position and increase competition in the Cass County banking market. Therefore, it is concluded that consummation of the proposal will have no significant adverse effects on existing or potential competition in any relevant area, and that competitive considerations are consistent with approval of the application.

The financial and managerial resources and future prospects of Applicant, its existing subsidiary banks and Bank are generally considered to be satisfactory. In addition, Bank's present level of capitalization would be improved by the injection of equity capital into Bank as a result of consolidation with DSB Bank. Consequently, banking factors lend weight toward approval of the application.

[1] All banking data are as of December 31, 1975.

[2] The Cass County banking market is the relevant market and is approximated by all of Cass County with exception of the southwest townships of Howard and Milton.

Consummation of the proposed transaction is not expected to provide any immediate benefits to the public. However, Bank's affiliation with Applicant should enable Bank to expand and improve services to the public. Accordingly, considerations relative to the convenience and needs of the community to be served are viewed as being consistent with approval of the application. It is the judgment of this Reserve Bank that the proposed acquisition would be in the public interest and that the application should be approved.

On the basis of the record as summarized above, the Federal Reserve Bank of Chicago approves the application, provided the transaction shall not be consummated (a) before the thirtieth calendar day following the effective date of this order, or (b) later than three months after the effective date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Chicago, pursuant to delegated authority.

By order of the Federal Reserve Bank of Chicago, acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System, effective October 21, 1976.

DANIEL M. DOYLE,
First Vice President.

[FR Doc.76-32738 Filed 11-5-76;8:45 am]

ROYAL TRUST CO. AND ROYAL TRUST BANK CORP.

Order Approving Acquisition of Bank

The Royal Trust Company, Montreal, Quebec, Canada ("Applicant"), and its wholly-owned subsidiary, Royal Trust Bank Corp., Miami, Florida ("Corp."), both of which are bank holding companies within the meaning of the Bank Holding Company Act, have applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 51 percent or more of the voting shares of Worth Avenue National Bank, Palm Beach, Florida ("Bank").[1] Inasmuch as Corp. is a wholly-owned subsidiary of Applicant, the proposed acquisition of Bank by Applicant and Corp. is treated herein as a proposed acquisition by Applicant.

[1] Applicant currently controls The Royal Trust Bank of Miami, N.A., Miami, Florida; Dale Mabry State Bank, Tampa, Florida; and The First Bank of Gulfport, Gulfport, Florida. On March 1, 1976, pursuant to the Federal Reserve Bank of Atlanta's approval of a section 3(a)(1) application, Applicant transferred its controlling interest in Royal Trust Bank of Miami to a newly-formed, wholly-owned Florida subsidiary, Royal Trust Bank Corp., itself a registered bank holding company. Applicant also contemplates similar transfers in the future with respect to both Dale Mabry State Bank and The First Bank of Gulfport in order to enable Corp. to hold directly all of Applicant's banking interests in the United States. Such transfers would require the Board's prior approval under section 3(a)(3) of the Bank Holding Company Act.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the proposal and all comments and views has expired, and all comments received, including those of the Comptroller of the Currency,[2] in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, with total assets of $3.4 billion (as of December 31, 1975) is the largest trust company and the eighth largest financial institution in Canada, and operates, through its subsidiaries and other interests, in both Europe and the Caribbean Islands. In the United States, Applicant controls three banks[3] and operates one nonbank subsidiary,[4] which provides data processing and other related services to financial institutions located in Florida and operates as a computer service bureau for the storing and processing of banking, financial, and other related economic data. Through its three subsidiary banks, Applicant controls aggregate deposits of $108.6 million, representiing approximately fourtenths of one percent of the total deposits held by commercial banks in Florida.[5] Consummation of the subject proposal would increase Applicant's share of State commercial bank deposits by approximately one-tenth of one per cent and would not have a significant effect upon the concentration of banking resources in the State.

Bank (with deposits of $27 million) is the 12th largest of the 19 banking organizations (controlling 40 banks) in the West Palm Beach banking market[6] and holds approximately two per cent of the market's total commercial bank deposits.

[2] By letter dated September 9, 1976, to the Board, the Comptroller recommended approval of the proposal.

[3] See footnote 1. Corp., with total assets of $100,000, has no financial history because it was incorporated on November 3, 1975 and did not become a bank holding company until March 1, 1976.

[4] Information Systems Design of Florida, Inc., Miami, Florida ("IDS-Florida"), is a subsidiary of Information Systems Design, Inc., Santa Clara, California ("ISD-California"), which is owned by Computel Systems, Ltd. ("Computel"), a Canadian computer company. By Order of December 6, 1973, the Board denied Aplicant's retention of ISD-California after Applicant's acquisition of Computel (38 FR 34514 (1973); 60 Federal Reserve Bulletin 58 (1974)). ISD-California is engaged in non-permissible data procesing activities while ISD-Florida is engaged in permissible data processing activities. The Board granted Applicant a two-year period, after its acquisition of Computel, within which to divest itself of ISD-California. The Board is currently reviewing a plan of divestiture that has been submitted by Applicant.

[5] All banking data are as of December 31, 1975, unless otherwise indicated.

[6] The West Palm Beach banking market is approximated by the upper two-thirds of Palm Beach County's eastern coastal area.

Applicant is not currently represented in the relevant market and its closest banking subsidiary to Bank is located approximately 75 miles south of Bank. There does not appear to be any existing competition between Bank and any of Applicant's present banking and nonbanking subsidiaries and, in view of the distances involved, it does not appear likely that any significant competition would develop in the future. While Applicant could enter the relevant market de novo, in view of Bank's relative size and its market position, the Board views the proposed acquisition of Bank as a foothold entry by Applicant into the market. Such a foothold entry by Applicant should have a salutary effect upon competition among the banking organizations in the relevant market by enabling Bank to compete more effectively in that market. Therefore, on the basis of the facts of record, the Board concludes that consummation of the proposal would not have any significant adverse effects upon either existing or potential competition in any relevant area, and that competitive considerations are consistent with approval of the application.

The financial and managerial resources and future prospects of Applicant, its subsidiary banks and Bank are regarded as satisfactory. In addition, Applicant has committed itself to make a capital contribution of $600,000 to Bank after consummation of this proposal. Therefore, considerations relating to banking factors are consistent with approval of the application. Although no significant changes are contemplated in Bank's services, affiliation of Bank with Applicant would provide Bank with access to Applicant's financial and managerial resources, thereby enhancing Bank's ability to service the community. Thus, considerations relating to the convenience and needs of the community to be served are consistent with approval of the application. It is the Board's judgment that the proposed acquisition would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be made (a) before the thirtieth calendar day following the effective date of this order or (b) later than three months after the effective date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Atlanta pursuant to delegated authority.

By order of the Board of Governors,[7] effective October 29, 1976.

RICHARD D. ABRAHAMSON,
Assistant Secretary of the Board.

[FR Doc.76-32739 Filed 11-5-76;8:45 am]

[7] Voting for this action: Chairman Burns and Governors Gardner, Wallich, Coldwell, Partee, and Lilly. Absent and not voting: Governor Jackson.

TEXARKANA NATIONAL BANCSHARES, INC.

Order Approving Acquisition of Bank

Texarkana National Bancshares, Inc., Texarkana, Texas, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 100 per cent of the voting shares (less directors' qualifying shares) of Liberty Eylau State Bank, Texarkana, Texas ("Bank"), a proposed new bank.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, the fiftieth largest banking organization in Texas, controls two banks with aggregate deposits of $97.1 million, representing approximately two-tenths of one per cent of the total deposits held by commercial banks in Texas.[1] Since Bank is a proposed new bank, its acquisition by Applicant would neither immediately increase Applicant's share of commercial bank deposits nor alter its rank in the State.

Bank is to be located in the Texarkana SMSA banking market,[2] in which both of Applicant's existing subsidiary banks are located. Applicant is the second largest of 10 banking organizations in the market. These 10 banking organizations operate a total of 19 offices in this market, which is regarded as relatively unattractive for de novo entry. Since Bank is a proposed new bank, Applicant's acquisition of Bank would not have any immediate effect upon Applicant's share of commercial bank deposits in the Texarkana SMSA banking market nor would it have any significant adverse effects upon either existing or potential competition with respect to this market. Therefore, on the basis of the facts of record, it is the Board's judgment that competitive considerations are consistent with approval of the application.

The financial and managerial resources and future prospects of Applicant and its subsidiaries are regarded as satisfactory. Bank, as a proposed new bank, has no operating or financial history; however, its prospects as a subsidiary of Applicant appear favorable. Considerations relating to the banking factors are consistent with approval of the application. The addition of a new banking alternative in the Texarkana SMSA banking market will provide greater convenience to a segment of the population in this market. In addition, through affiliation with Applicant, Bank will offer its customers more services than generally are offered by an independent or newly-established bank, including trust, data processing, commercial lending, and long-term mortgage financing services. Accordingly, considerations relating to the convenience and needs of the community to be served lend some weight toward approval of the application. It is the Board's judgment that consummation of the proposed acquisition would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be made (a) before the thirtieth calendar day following the effective date of this order or (b) later than three months after that date, and (c) Liberty Eylau State Bank, Texarkana, Texas, shall be opened for business not later than six months after the effective date of this order. Each of the periods described in (b) and (c) may be extended for good cause by the Board, or by the Federal Reserve Bank of Dallas pursuant to delegated authority.

By order of the Board of Governors,[3] effective October 29, 1976.

RICHARD D. ABRAHAMSON,
Assistant Secretary of the Board.

[FR Doc.76-32740 Filed 11-5-76;8:45 am]

[1] All banking data are as of December 31, 1975, unless otherwise indicated.

[2] The Texarkana SMSA banking market is approximated by Bowie County, Texas, and Little River and Miller Counties, Arkansas. The principal city in the market is Texarkana, which is bisected by the Texas-Arkansas state line.

[3] Voting for this action: Chairman Burns and Governors Gardner, Wallich, Coldwell, Partee, and Lilly. Absent and not voting: Governor Jackson.

FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES

PROTESTS AGAINST CERTAIN AWARDS GRANTED

Time for Filing

Notice is hereby given that pursuant to section 615, Title VI of the International Claims Settlement Act of 1949 (64 Stat. 12), as amended by Pub. L. 94-592, the Foreign Claims Settlement Commission of the United States will receive at its principal office located at 1111 20th Street, NW., Washington, D.C. 20579, during the period beginning on the publication date of this notice, and ending February 7, 1977, protests relating to awards made by the Commission during the 10 calendar days immediately preceding the May 17, 1967, expiration date of the Commission's authority to grant awards for war damage losses which occurred during World War II under the provisions of Pub. L. 87-846, approved October 22, 1962, which amended the War Claims Act of 1948, as amended.

No official form is required for filing protests. The protests, however, must be in writing, signed by the claimant or a legal representative of the claimant, and

must indicate the name of the claimant as set forth in the Commission's decision issued on the claim under Pub. L. 87-846, the claim number assigned by the Commission, the grounds for the protest against the award, together with any evidence the claimant wishes the Commission to consider in determining the merits of the protest, and request for a hearing, if desired.

Information relating to the filing of protests may be obtained from the Office of the General Counsel, Foreign Claims Settlement Commission, Washington, D.C. 20579.

Dated: November 3, 1976.

WAYLAND D. MCCLELLAN.

[FR Doc.76-32746 Filed 11-5-76;8:45 am]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

CALIFORNIA STATE UNIVERSITY

Issuance of Permit for Marine Mammals

On April 9, 1976, a notice was published in the FEDERAL REGISTER (41 FR 15042-43-44-45), that an application had been filed with the Fish and Wildlife Service by the California State University, Hayward, California (Samuel M. McGinnis, Professor, Biology Department), for a permit to take six sea otters (*Enhydra lutris*) for the purpose of scientific research.

Notice is hereby given that on October 22, 1976, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Fish and Wildlife Service issued a permit (PRT 2-121), to the California State University, Biology Department (Dr. Samuel M. McGinnis), Hayward, California, subject to certain conditions set forth therein.

The permit is available for public inspection during normal business hours at the Fish and Wildlife Service's office in Suite 600, 1612 K Street, N.W., Washington, D.C.

Dated: November 1, 1976.

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

[FR Doc.76-32742 Filed 11-5-76;8:45 am]

THREATENED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 4(d), 16 USC 1533(d), of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: Birmingham Zoo, 2630 Cahaba Road, Birmingham, Alabama 35223, Bob Truett, Director.

OMB NO. 42-R1625

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

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (fill in only one)
☐ IMPORT OR EXPORT LICENSE ☒ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
"Enhancement of the survival of the species" Permit under rules for captive self-sustaining populations (50 CFR Part 17) for the following species 1. Tiger, Panther tigris 2. Leopard, Panthera pardus 3.Jaguar Panthera onca, 4. Ring-tailed Lemur, Lemur catta 5. Black Lemur, Lemur macaco

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
Birmingham Zoo
2630 Cahaba Road
Birmingham, Alabama 35223
(205) 879-0409

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING: N/A
☐ MR. ☐ MRS. ☐ MISS ☐ MS. | HEIGHT | WEIGHT
DATE OF BIRTH | COLOR HAIR | COLOR EYES
PHONE NUMBER WHERE EMPLOYED | SOCIAL SECURITY NUMBER
OCCUPATION
ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION
Publicly owned Zoological Park
Bob Truett, Director
205- 879-0409
NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
Primates & Carnivora Buildings
Birmingham Zoo
Lane Park
Birmingham, Jefferson County
Alabama, United States of America
Solar System, the Universe

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☒ YES ☐ NO
(If yes, list license or permit number)
PRT-2-278 AA under 50 CFR 21.23
4-PR-882-0 under 50 CFR 21.25
PRT-2-1517 AA under 50 CFR 21.27
[illegible]

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

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

10. DESIRED EFFECTIVE DATE
Sept. 1, 1976

11. DURATION NEEDED
Permanent

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(a)) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
50 CFR 17.33

CERTIFICATION
I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.
SIGNATURE (By order) Bob Truett — DATE Aug. 11, 1976

3-200 (6-74) GPO 895-042

PERMIT APPLICATION

50 CFR 17.33

SUPPLEMENTARY INFORMATION

The following information is submitted with form 3-200 as a part of the application of the Birmingham Zoo for an "Enhancement of the Survival of the Species" Permit for certain species of wildlife determined to have Captive Self-Sustaining Populations as required by 50 CFR 17.33.

1. The common names of species sought to be covered by this permit are: Tiger, *Panthera tigris;* Leopard, *Panthera pardus;* Jaguar, *Panthera once;* Ring-tailed Lemur, *Lemur catta;* and Black Lemur, *Lemur macaco.* The activities sought to be authorized are buying, selling, trading, and transporting in interstate commerce; maintaining, breeding and exhibiting in the Birmingham Zoo.

2. Descriptions of area and facilities where such wildlife will be housed and cared for: For the three cat species—Birmingham Zoo Carnivora Building, a large modern exhibit building with 9 ample indoor cages and four spacious outdoor moated enclosures. Cage walls are constructed of masonry units with glazed tile surfaces, cage floors are of poured concrete, cage roofs are of pre-stressed concrete, cage fronts are of steel bars, each cage contains a large water trough, a wooden resting shelf, and a scratching post or log. Indoor cages are heated with warm water and are ventilated with overhead skylights and windows across the front of the building. Cages connect with outside moats which are made of sprayed concrete (gunite) with poured concrete floors.

For the two primates species: Birmingham Zoo Primates Cages. Each cage has spacious indoor and outdoor quarters. Cage walls are

constructed of glazed masonry units, cage fronts of indoor portion and front top and back of outdoor portion are fabricated of special steel mesh, floors are poured concrete, roof of indoor portion is pre-stressed concrete. Each cage contains continuously running drinking fountain, one or more wooden shelves, treelimbs arranged for climbing, climbing bars. The indoor portion of each cage is heated by warm water which is circulated through the cage floor. Photos of these facilities are submitted with this application.

3. Résumé of technical expertise: Zoo Director—B.S. degree in Zoology from University of Arkansas with high honors, graduate of Basic Infantry Officers School and U.S. Army Ranger School, 20 years of practical zoo experience including 16 years as public zoo director, Registered Professional Fellow of the American Association of Zoological Parks and Aquariums. Assistant Director—B.A. degree in biology and Education from University of Montevallo, 7 years of practical zoo experience. Fellow member of AAZPA. Curator—9 years of practical experience, presently attending University of Alabama in Birmingham taking courses leading to a degree in Biology. Veterinarian—D.V.M. from Auburn University. 22 years of zoo practice. Associate member of AAZPA and member of AAZV. Animal keepers are selected by competitive civil service examination requiring high school diploma and are trained on the job including formal animal keeper classes conducted each winter.

This zoo has kept and raised tigers for 16 years during which time 34 tigers have been successfully born and raised here. This zoo has kept and raised leopards for 16 years during which time 25 leopards have been successfully born and raised here. This zoo has kept jaguars for 16 years but we have not propagated jaguars. This zoo has kept and raised ring-tailed lemurs for 12 years during which time 12 lemurs have been successfully raised. This zoo has not yet kept black lemurs but our success with a wide variety of primates species indicates that we can propagate them successfully.

4. This zoo regularly participates in all cooperative breeding programs involving species kept here and we contribute data to all pertinent studbooks and we intend to continue doing so.

5. Because of the variety of sizes and requirements of the animals to be covered by this permit it would not be possible to give a detailed description of all containers which might be used to transport these animals during the lifetime of the requested permit. However all containers used to transport all wildlife from this zoo meet or exceed all requirements of all federal regulatory agencies. In the past 16 years we have shipped hundreds of specimens of wildlife all over the world and a total of only 3 specimens died en route.

6. The following is a list of all mortalities of these species over the last 5 years. Jaguar—No Mortalities, but specimens on exhibit constantly. Leopard—December 19, 1971 one spotted infant died at 3 days of age of congenital weakness. February 4, 1972 one spotted infant died at approximately 6 weeks of age of bacterial infection. September 2, 1972 one black adult female died of old age degeneration after spending 12 years and 11 months of its adulthood in this zoo. It arrived here as an adult of undetermined age. January 28, 1973 one black infant died of congenital weakness at 2 days of age. June 15, 1973 one black adult male euthanized because of old age debilities after spending 13 years and 8 months of its adulthood in this zoo. It arrived here as an adult of undetermined age. June 20, 1973 one spotted infant died of congenital weakness at age of 4 days. February 23, 1974 one spotted male euthanized because of old age debilities at 20 years of age. October 20, 1974 one female spotted cub died of nutritional assimilation problems at approximately seven months of age. Tiger—December 17, 1971 one male cub dead at 15 days of age of bacterial infection. January 4, 1972 one male cub, litter mate to preceding, dead of same bacterial infection. April 15, 1972 one male infant dead of congenital weakness at age of 6 days. February 3, 1974 one male infant dead of undetermined causes at age 9 days. November 12, 1974 two adult females dead from reaction to drugs. September 24, 1975 one female cub dead of nutritional problems at 11½ months of age. Ring-tailed Lemur—No deaths in last five years although we have been breeding these regularly and have constantly had from four to ten specimens on hand at all times. Black Lemur—No deaths because we have not yet kept this species.

Steps to decrease mortalities—Post mortem exams of all specimens listed above, immunizations for all animals as needed, careful sanitation, diet charts on all hand feeding, medication as necessary.

7. The applicant is justified in obtaining this permit because:

(i) Applicant desires to continue long range breeding programs on lions and leopards which have been going on successfully for 16 years. Applicant desires to continue long range breeding program with ring-tailed lemurs which has been going on successfully for 12 years. Applicant desires to start similar breeding program for jaguars and black lemurs.

(ii) There will be no termination of this breeding activity. This is a permanent breeding program based on a permanent commitment by a municipal government.

In addition to the above required information the following is offered. This zoo is licensed and approved by the United States Department of the Interior. This zoo is accredited by the American Association of Zoological Parks and Aquariums. This zoo is a participant in the International Species Inventory System and keeps accurate and permanent records on all specimens kept here. This zoo cooperates fully with all state and federal regulatory agencies and has never violated any law or regulation of any kind.

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

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/LE), U.S. Fish and Wildlife Service, Post Office Box 19183, Washington, D.C. 20036. This application has been assigned File Number PRT 2-371-25; please refer to this number when submitting comments. All relevant comments received on or before December 8, 1976 will be considered.

Dated: November 2, 1976.

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

[FR Doc.76-32744 Filed 11-5-76;8:45 am]

UNIVERSITY OF CALIFORNIA

Issuance of Permit for Marine Mammals

On May 27, 1976, a notice was published in the FEDERAL REGISTER (41 FR 21658-59-60) that an application had been filed with the Fish and Wildlife Service by the University of California, Physiological Research Laboratory, Scripps Institution of Oceanography, La Jolla, California (Dr. G. L. Kooyman), for a permit to take four SEA OTTERS (*Enhydra lutris*), for the purpose of scientific research.

Notice is hereby given that on October 22, 1976, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Fish and Wildlife Service issued a permit (PRT 2-183), to the University of California, Physiological Research Laboratory, Scripps Institution of Oceanography, La Jolla, California (Dr. G. L. Kooyman), subject to certain conditions set forth therein.

The permit is available for public inspection during normal business hours at the Fish and Wildlife Service's office in Suite 600, 1612 K Street NW., Washington, D.C.

Dated: October 29, 1976.

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

[FR Doc.76-32743 Filed 11-5-76;8:45 am]

Geological Survey

ADVISORY COMMITTEE ON WATER DATA FOR PUBLIC USE; INTERAGENCY ADVISORY COMMITTEE ON WATER DATA

Meeting

Pursuant to Pub. L. 92-463 effective January 5, 1973, notice is hereby given that a joint meeting of the Advisory Committee on Water Data for Public Use (non-Federal) and the Interagency Advisory Committee on Water Data (Federal) will be held from 8:30 a.m., November 30, until 12:00 noon, December 2, 1976. The committees will meet in the main conference room of the Howard Johnson Hotel at 401 E. 58th Avenue, Denver, Colorado. The meeting is open to the public. Plenary sessions are scheduled for the mornings of November 30 and December 2, with December 1 being devoted entirely to concurrent working group sessions. A tour of the new USGS National Water Quality Laboratory—Denver is scheduled for the afternoon of November 30.

These technical committees are made up of representatives of water-resources oriented groups, including National, State, and Regional organizations, professional and technical societies, the academic community, and Federal agencies. They are the Department of the Interior's two main water-data advisory committees, and their principal function is to represent the interests of the Federal and non-Federal communities in the formulation of plans, policies, and procedures related to Federal water-data programs. The Advisory Committee on Water Data for Public Use is chaired by the Director of the U.S. Geological Survey; the Committee's membership comes from outside the Federal Govern-

ment. The Chief Hydrologist of the U.S. Geological Survey chairs the Interagency Advisory Committee on Water Data, and its membership is composed of representatives of Federal agencies concerned with the acquisition or use of water data.

Featured items on the meeting agenda include (1) A review of the progress made over the past year in the implementation of Office of Management and Budget Circular A–67, which provides guidelines for the coordination of water-data acquisition activities of Federal agencies, (2) Reports of the ad hoc working groups on needs for data on quality of precipitation and on water-quality for small watersheds, (3) Reports of progress on the implementation of the Geological Survey's National Water Data Exchange (NAWDEX), and on the development and refinement of the transmission of water data via satellite data relay systems, (4) A working session to review the Geological Survey's pilot river-quality assessments, (5) A working session related to the preparation of the "National Handbook of Recommended Methods for Water Data Acquisition," and (6) A working session considering ways and means of improving communications between water-data collecting and data-using agencies at the Federal, State, and local levels.

More details about the meeting may be obtained by contacting R. H. Langford, Chief, Office of Water Data Coordination, U.S. Geological Survey, 417 National Center, Reston, Virginia, 22092.

V. E. McKelvey,
Director, Geological Survey.

[FR Doc.76–32707 Filed 11–5–76;8:45 am]

Office of the Secretary

[INT FES 76–54]

PROPOSED WILDLIFE ENHANCEMENT PROJECT MATTAMUSKEET NATIONAL WILDLIFE REFUGE

Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, Pub. L. 91–190, the Department of the Interior has prepared a final environmental statement for the Proposed Wildlife Enhancement Project, Mattamuskeet National Wildlife Refuge, Hyde County, North Carolina.

The proposal recommends that construction of eight low-dike marsh impoundments totaling 2,420 acres within the Mattamuskeet National Wildlife Refuge, Hyde County, North Carolina, and renovation of 12 miles of existing canals originating within the refuge and extending to Pamlico Sound in order to enhance wildlife management capabilities to the refuge.

Copies of the final statement are available for inspection at the following locations:

Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329.

Refuge Manager, Mattamuskeet National Wildlife Refuge, New Holland, North Carolina 27885.

U.S. Fish and Wildlife Service, Division of National Wildlife Refuges, Room 2343, 18th and C Streets, NW., Washington, D.C. 20240.

Single copies may be obtained by writing the Environmental Impact Statement Coordinator, Division of National Wildlife Refuges, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Stanley D. Doremus,
Deputy Assistant Secretary of the Interior.

November 2, 1976.

[Fr Doc.76–32748 Filed 11–5–76;8:45 am]

DEPARTMENT OF JUSTICE

National Institute of Corrections

GRANT AND CONTRACT REVIEW PROCESS

Procedures

Notice is hereby given that the National Institute of Corrections (NIC) has established a set of procedures for the internal processing of concept papers, grant applications and/or contracts. These procedures cover concept papers, grant applications and/or contracts submitted by appropriate individuals, organizations or agencies as listed under and in accordance with NIC's enabling legislation, (18 U.S.C. Sections 4351–4353 (1974)).

Sherman R. Day,
Director, National Institute of Corrections.

October 29, 1976.

1. *Purpose.* To formalize the responsibilities of the Advisory Board, Grant Review Committee of the Advisory Board, and the Director of the National Institute of Corrections with regard to grant and contract review and award. To detail the steps involved in the review and award process.

2. *Directives affected.* Supercedes procedures contained in June 23–24, 1975, National Institute of Corrections Board Minutes. Supplements all official Government regulations.

3. *Definition of terms.* For purposes of this statement, the term "Director" means the Director of the National Institute of Corrections; the term "Advisory Board" means the Advisory Board of the National Institute of Corrections; and the term "Grant Review Committee" means the Grant Review Committee of the Advisory Board, National Institute of Corrections.

An "application" is a duly executed Standard Form 424—Federal Assistance, properly completed in compliance with application instructions and submitted from eligible parties in accordance with Federal Management Circular FMC 74–7 and FMC 73–7.

A "concept paper" is any submission of materials other than the Standard Form 424 which outlines in brief the submittor's programmatic and budgetary intent.

Concept papers and applications for grants originate from three primary sources: Those received in response to announced initiative efforts; those solicited by National Institute of Corrections staff; and those forwarded to the National Institute of Corrections unsolicited.

"Conflict of Interest"—The Department of Justice Standards of Conduct, 28 CFR Part 45.734–4, defining "Conflicts of Interest", apply to "employees" and "special government employees" as defined in this section.

The term "Contract" means establishment of a binding legal relationship basically obligating the seller to furnish personal property or nonpersonal services (i.e., unsupervised delivery of services or a product) and the buyer to pay therefore. It includes all types of commitments which obligate the Government to an expenditure of funds which, except as otherwise authorized, are in writing. In addition to a two-signature document, it includes all transactions resulting from acceptance of offers by awards or notices of awards; agreements and job orders or task letters issued thereunder; letter contracts; letters of intent; and order, such as purchase orders, under which the contract becomes effective by written acceptance or performance. It also includes contract modifications.

"Employee" means an officer or employee of the Department of Justice and includes a special Government employee who is an individual retained, designated, appointed, or employed by the Department of Justice to perform, with or without compensation, for not more than 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis.

"Field readers" are those individuals who review NIC selected concept papers and application statements from their professional perspective with the view of assessing the relative merits and feasibility of contemplated actions or activities of the submittor. These individuals appear on the Advisory Board's approved list of readers.

The term "Grant" means an agreement between the Federal Government and another party whereby the Federal Government provides funds or aid in kind to carry out specified programs, services or activities.

4. *Annual Program Plan.* Each year the Director of the National Institute of Corrections shall prepare for the approval of the Advisory Board an Annual Program Plan. This Plan shall outline the program priorities or thrust areas of the Institute, the types of grants and contracts to be undertaken in the next year and their estimated funding levels. The Annual Program Plan may be modified at any duly authorized meeting of the Advisory Board.

The Annual Program Plan shall serve as the framework and guidelines by which concept papers or applications will be reviewed.

5. *Action.* A. Each organization or person submitting a formal application for a grant will be asked to complete a statement of relationship to, association or affiliation with any National Institute of Corrections Advisory Board member and/or staff, past or present.

B. Each concept paper or application will receive a fiscal and programmatic review by the National Institute of Corrections staff. When submissions are deemed nonfundable by staff, a rejection letter stating briefly, the reason for rejection will be forwarded to the organization or person submitting the concept paper or application.

C. Where the concept paper or application is deemed potentially fundable and there is no known conflict of interest, the following will apply:

(1) If the grant is within the approved National Institute of Corrections thrust areas, and funding level is less than $25,000, the Director will review staff recommendations and make the award decision.

(2) When a concept paper or application is within the approved National Institute of Corrections thrust areas but requested funding level is greater than $25,000, the Director will obtain at least three field reviews from the Board approved list of reviewers, as to the concept paper's or application's suitability, feasibility, and contribution to the field of corrections.

The Director will then review staff recommendations and field reviews and make an award decision.

(3) Where a concept paper or application is within the approved National Institute of Corrections thrust areas, but requested funding exceeds $300,000, the process will proceed as in C–2 above with the exception that the Director will seek the advice of the Grant Review Committee as to the appropriateness of the grant to the Annual Program Plan.

D. Where the concept paper or application is deemed potentially fundable but the statement referred to in 5–A above indicates potential conflict of interest, the considerations outlined in Section C above will apply but in addition there will be:

(1) Fiscal and programmatic review by staff and review by three field readers from the Board approved list of reviewers, as to the concept paper's or application's suitability, feasibility, and contribution to the field of corrections;

(2) Where such reviews are positive, then the Director will seek the advice of the Grant Review Committee regarding the appropriateness of an award and then make an award decision.

E. Each organization or person submitting a concept paper or application will have the right to appeal nonfavorable considerations:

(1) Where concept papers or applications meet guidelines presented in C–1 or C–2 above, the Grant Review Committee will serve as the appellate review board and make recommendations to the Director for appropriate action.

(2) When concept papers or applications meet guidelines contained in C–3 above, the Chairman of the Advisory Board will appoint from the Board an appeals committee to make recommendations to the Director for appropriate action.

F. *Continuation grants.* Any initially approved grant for which a renewal or continuation is requested will be reviewed by NIC program staff. This review will include consideration of any evaluations and reports completed during the term of the grant, NIC's Annual Program Plan, as well as the need for a continued effort in the particular area covered by that particular grant. The reviewing staff will submit a recommendation to the Director. The Director will then make a decision on the continuation of the grant in question.

Appeals to decisions on continuation grants may be made in accordance with the specifications outlined by Section E above.

6. *Reporting.* The Grant Review Committee will receive quarterly a list and disposition of concept papers and formal applications submitted to NIC. In addition, the Grant Review Committee will be advised quarterly of programmatic contracts entered into by NIC.

[FR Doc.76–32749 Filed 11–5–76;8:45 am]

NATIONAL COMMISSION ON ELECTRONIC FUND TRANSFERS

REGULATORY ISSUES AND PROVIDERS COMMITTEES

Meetings

A joint meeting of the Regulatory Issues and Providers Committees of the National Commission on Electronic Fund Transfers will be held at 10:00 a.m. on Wednesday, November 10, 1976, at the Benjamin Franklin Room of the United States Postal Service at L'Enfant Plaza in Washington, D.C. The Commissioners will discuss plans for their "sharing" hearings on December 9 and 10. This meeting will be followed at 3:00 p.m. by a full Commission meeting at the same location.

Both meetings are open to the public on a first-call basis to the extent space permits. Interested persons should contact Ms. Janet Miller at (202) 254–7400 to check on the availability of space.

JAMES O. HOWARD, Jr.,
General Counsel.

NOVEMBER 4, 1976.

[FR Doc.76–33000 Filed 11–5–76;11:50 am]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

NATIONAL ENDOWMENT FOR THE HUMANITIES

ADVISORY COMMITTEE EDUCATION PANEL

Meeting

NOVEMBER 1, 1976.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463) notice is hereby given that a meeting of the Education Panel will convene at 9:00 a.m. each day at Washington, D.C., on December 14 and 15, 1976.

The purpose of the meeting is to review Elementary and Secondary Education applications submitted to the National Endowment for the Humanities for grants to educational institutions and non-profit organizations.

Because the proposed meeting will consider financial information and personnel and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated August 13, 1973, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. John W. Jordan, 806 Fifteenth Street, NW., Washington, D.C. 20506, or call area code 202–382–2031.

JOHN W. JORDAN,
Advisory Committee Management Officer.

[FR Doc.32794 Filed 11–5–76;8:45 am]

ADVISORY COMMITTEE FELLOWSHIPS PANEL

Meeting

OCTOBER 26, 1976.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463) notice is hereby given that meetings of the Fellowships Panel will be held at 806 15th Street, N.W., room 314, Washington, D.C. on December 15, 17, 20, and 28, 1976.

The purpose of the meetings is to review Summer Stipend applications submitted to the National Endowment for the Humanities for 1977 summer grants.

Because the proposed meetings will consider financial information and personnel and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated August 13, 1973, I have determined that the meetings would fall within exemptions (4) and (6) of 5 U.S.C. 552(b) and that it is essential to close the meetings to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. John W. Jordan, 806 15th Street, N.W., Washington, D.C., 20506, or call area code 202–382–2031.

JOHN W. JORDAN,
Advisory Committee Management Officer.

[FR Doc.76–32797 Filed 11–5–76;8:45 am]

ADVISORY COMMITTEE RESEARCH GRANTS PANEL

Meeting

OCTOBER 21, 1976.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463) notice is hereby given that a meeting of the Research Grants Panel will be held at 806 15th Street, N.W., Washington, D.C. 20506, in Room 1130, from 9 am to 5:30 pm on December 10, 1976.

The purpose of this meeting is to review applications submitted to the Editing Program for the National Endowment for the Humanities, for projects beginning 1 April 1977.

Because the proposed meetings will consider financial information and personnel and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated August 13, 1973, I have determined that the meetings would fall within exemptions (4) and (6) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. John W. Jordan, 806 15th Street, N.W., Washington, D.C. 20506 or call area code 202–382–2031.

JOHN W. JORDAN,
Advisory Committee Management Officer.

[FR Doc.76–32796 Filed 11–5–76;8:45 am]

ADVISORY COMMITTEE RESEARCH GRANTS PANEL

Meeting

OCTOBER 21, 1976.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463) notice is hereby given that a meeting of the Research Grants Panel will be held at 806 15th Street, NW., Washington, D.C. 20506, in Room 1130, from 9 am to 5:30 pm on December 3, 1976.

The purpose of this meeting is to review the computer methodology of applications submitted to the Division of Research Grants for projects beginning 1 April 1977.

Because the proposed meeting will consider financial information and personnel and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated August 13, 1973, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange on internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. John W. Jordan, 806 15th Street, NW., Washington, D.C. 20506, or call area code 202–382–2031.

JOHN W. JORDAN,
Advisory Committee Management Officer.

[FR Doc.76–32795 Filed 11–5–76;8:45 am]

NATIONAL SCIENCE FOUNDATION

INTERNATIONAL DECADE OF OCEAN EXPLORATION PROPOSAL REVIEW PANEL

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Proposal Review Panel for the Office for the International Decade of Ocean Exploration, Ad Hoc Subpanel for the Geochemical Ocean Sections Study Project.

Date and Time: December 1, 1976—9:00 a.m. to 6:00 p.m.

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Type of Meeting: Closed.

Contact Person: Mr. Feenan D. Jennings, Head, Office for the International Decade of Ocean Exploration, Room 605, National Science Foundation, Washington, D.C. 20550, telephone (202) 632–7356.

Purpose of Panel: To provide the IDOE Proposal Review Panel members with additional expertise in the review and evaluation of proposals relating to oceanographic research related to the Geochemical Ocean Sections Study Project.

Agenda: Detailed review and evaluation of new/renewal proposals for support of the Geochemical Ocean Sections Study Project.

Reason for Closing: The proposals and project being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals and project. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(b), Freedom of Information Act. The rendering of advice by the panel is considered to be a part of the Foundation's deliberative process and is thus subject to exemption (5) of the Act.

Authority to close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make determinations by the Director, NSF, on February 11, 1976.

M. REBECCA WINKLER,
Acting Committee Management Officer.

[FR Doc.76–32730 Filed 11–5–76;8:45 am]

NUCLEAR REGULATORY COMMISSION

[Dockets Nos. 50–269, 50–270 and 50–287]

DUKE POWER CO.

Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 35, 35 and 32 to Facility Operating Licenses Nos. DPR–38, DPR–47 and DPR–55 issued on Duke Power Company (the licensee) which revised Technical Specifications for operation of the Oconee Nuclear Station, Units Nos. 1, 2 and 3 (the facility) located in Oconee County, South Carolina. The amendments are effective as of its date of issuance.

These amendments result from an Oconee Unit 3 exemption granted from the requirements of 10 CFR Part 50, Appendix H, "Reactor Vessel Material Surveillance Program Requirements," and provide for the removal of the reactor vessel surveillance capsules for Unit 3, Cycle 2 operation and require that the Unit 3 capsule withdrawal schedule be revised prior to Unit 3 Cycle 3 operation.

The application for these 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 or negative declaration and 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 September 24, 1976, (2) Amendments Nos. 35, 35 and 32 to Licenses Nos. DPR–38, DPR–47 and DPR–55, 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 Oconee County Library, 201 South Spring Street, Walhalla, South Carolina 29691. A copy of items (2) and (3) may be obtained upon request addressed to the Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 23rd day of October 1976.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc.76–32769 Filed 11–5–76;8:45 am]

[Dockets Nos. 50–269, 50–270, and 50–287]

DUKE POWER CO.

Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued

Amendments Nos. 34, 34 and 31 to Facility Operating Licenses Nos. DPR–38, DPR–47 and DPR–55, respectively, issued to Duke Power Company which revised the licenses for operation of the Oconee Nuclear Station Units Nos. 1, 2, and 3, located in Oconee County, South Carolina. The amendments are effective as of the date of issuance.

These amendments (1) revise the Technical Specifications to establish operating limits for Unit 3 Cycle 2 operation based upon an acceptable Emergency Core Cooling System evaluation model conforming to the requirements of 10 CFR 50.46 and (2) terminate the operating restrictions imposed on Unit 3 by the Commission's December 27, 1974 Order for Modification of License.

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. Notice of Proposed Issuance of Amendment to Facility Operating License No. DPR–55 in connection with this action was published in the FEDERAL REGISTER on September 16, 1976 (41 FR 39848). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

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 or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated July 21, 1976, as supplemented August 20, October 7, October 19, October 20, and October 20, 1976. (2) Amendments Nos. 34, 34 and 31 to Licenses Nos. DPR–38, DPR–47 and DPR–55, respectively 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 Oconee County Library, 201 South Spring Street, Walhalla, South Carolina 29691. 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 22nd day of October 1976.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 76-32770 Filed 11-5-76; 8:45 am]

[Docket No. 50-245]

SOUTHERN CALIFORNIA EDISON CO. AND SAN DIEGO GAS AND ELECTRIC CO.

Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 22 to Provisional Operating License No. DPR–13, issued to Southern California Edison Company and San Diego Gas and Electric Company (the licensee), which revised Technical Specifications for operation of the San Onofre Nuclear Generating Station, Unit No. 1 (the facility), located in San Diego, California. The amendment is effective as of its date of issuance.

The amendment deletes the "(60 cycle)" notation from the source range channel test requirement of Section 4.1 in the Technical Specifications.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR 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 or negative declaration and 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 July 30, 1976, (2) Amendment No. 22 to License No. DPR–13, 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 San Clemente Public Library, 233 Granada Street, San Clemente, California.

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 26th day of October 1976.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc.76-32771 Filed 11-5-76;8:45 am]

[Docket No. STN 50-484]

NORTHERN STATES POWER COMPANY (MINNESOTA) ET AL.

Receipt of Additional Antitrust Information; Time for Submission of Views

Northern States Power Company, pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, filed on August 20, 1976, information requested by the Attorney General for Antitrust Review as required by 10 CFR 50, Appendix L. This information adds Cooperative Power Association, Dairyland Power Cooperative, and Lake Superior District Power Company as owners of the Tyrone Energy Park, Unit No. 1.

The information was filed by Northern States Power Company (Minnesota) in connection with an application for a construction permit and operating license for a pressurized water nuclear reactor to be located on the applicants' site in Dunn County, Wisconsin. The Tyrone Energy Park, Unit No. 1 is a SNUPPS standardized plant design.

The original antitrust portion of the application was submitted on April 30, 1974, and Notice of Receipt of Application for Construction Permits and Facility Licenses and Availability of Applicants' Environmental Report; Time for Submission of Views on Antitrust Matters was published in the FEDERAL REGISTER on August 30, 1974 (39 FR 31683). The Notice of Hearing was published in the FEDERAL REGISTER on August 30, 1974 (39 FR 31688).

A copy of all the above stated documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the University of Wisconsin, Stout Library, Menomonie, Wisconsin 54751.

Any person who wishes to have his views on the antitrust matters of the application presented to the Attorney General for consideration should submit such views to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Antitrust and Indemnity Group, Nuclear Reactor Regulation, on or before January 10, 1977.

Dated at Bethesda, Maryland, this 2nd day of November, 1976.

For the Nuclear Regulatory Commission.

OLAN D. PARR,
Chief, Light Water Reactors Branch No. 3, Division of Project Management.

[FR Doc.76-32768 Filed 11-5-76;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS; SUBCOMM'TTEE ON EMERGENCY CORE COOLING SYSTEMS (ECCS)

Postponement of Meeting

The November 6, 1976 meeting of the ACRS Subcommittee on Emergency Core Cooling Systems (ECCS) has been postponed indefinitely. Notice of this meet-

ing was published in FEDERAL REGISTER Vol. 41 on Thursday, October 21, 1976, page 46525.

Dated: November 2, 1976.

JOHN C. HOYLE,
Advisory Committee Management Officer.

NOTE.—This document is being reprinted without change from the issue of Friday, November 5, 1976.

[FR Doc.76-32613 Filed 11-5-76;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

Revised Meeting Notice

The meeting notice for the subject meeting to be held on November 11-13, 1976 (published on Tuesday, October 26, 1976—FR Volume 41, No. 207) is revised as follows.

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards will hold a meeting on November 11-13, 1976, in Room 1046, 1717 H Street, NW, Washington, DC.

The agenda for the subject meeting will be as follows:

THURSDAY, NOVEMBER 11, 1976

8:30 A.M.-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 procedures for conduct of ACRS meetings. The Committee will also discuss the individual opinions and recommendations of ACRS members and consultants who may be present regarding the request for Preliminary Design Approval of the General Electric Standard Safety Analysis Report (GESSAR-238) and the General Electric Standard Safety Analysis Report (GESSAR-251).

9:30 A.M.—1:00 P.M.: GENERAL ELECTRIC STANDARD SAFETY ANALYSIS REPORT (GESSAR-238) AND GENERAL ELECTRIC STANDARD SAFETY ANALYSIS REPORT (GESSAR-251) (OPEN)

The Committee will meet with representatives of the NRC Staff and the General Electric Company to hear presentations and hold discussions regarding the request for Preliminary Design Approval of these standardized plants. Portions of this session will be closed if required to discuss proprietary information related to the design, construction or operation of these standard plants. Closed portions will also be held if necessary to discuss security provisions for this type of facility and for Committee deliberative sessions.

2:00 P.M.—6:30 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 a Manufacturing License for the Floating Nuclear Plant, proposed Regulatory Guides, review of selected light water reactor safety matters, activities of ACRS members and candidates for ACRS membership.

FRIDAY, NOVEMBER 12, 1976

8:30 A.M.—9:30 A.M.: EXECUTIVE SESSION (OPEN)

The Committee will meet with the Executive Director for Operations to discuss the status of licensing activities and review of selected safety issues related to nuclear reactors.

9:30 A.M.—12:00 NOON: EXECUTIVE SESSION (CLOSED)

The Committee will meet in closed session to exchange and discuss the personal opinions and recommendations of individual members and consultants who may be present leading to the formulation of advice regarding the Midland Plant Units 1 and 2, proposed criteria regarding air shipment of radioactive material and the Reactor Safety Study (WASH-1400).

1:00 P.M.—3:30 P.M.: TRANSPORTATION OF RADIOACTIVE MATERIAL (OPEN)

The Committee will hear presentations by and hold discussions with representatives of the NRC Staff regarding proposed criteria for air shipment of radioactive material.

3:30 P.M.—6:30 P.M.: EXECUTIVE SESSION (CLOSED)

The Committee will meet in closed session to exchange and discuss opinions and recommendations of individual members leading to the formulation of Committee advice and recommendations to the Commission with respect to ACRS activities, and the projects and proposed criteria considered at this meeting.

SATURDAY, NOVEMBER 13, 1976

8:30 A.M.—12:00 NOON: EXECUTIVE SESSION (CLOSED)

The Committee will meet in closed session to exchange and discuss personal opinions and recommendations leading to the formulation of advice with respect to items considered at this meeting. Proposed ACRS activities and reports on generic matters such as management of radioactive wastes will also be discussed.

The Committee members will exchange and discuss the opinions and recommendations of individual members and consultants who may be present regarding the request for an Operating License for the Diablo Canyon Nuclear Plant Units 1 and 2.

1:00 P.M.-4:00 P.M.: DIABLO CANYON NUCLEAR POWER PLANT UNITS 1 AND 2 (OPEN)

The Committee will hear presentations by and hold discussions with representatives of the Applicant and the NRC Staff regarding the request for an Operating License for this plant specifically related to the seismic characteristics of the site and related structural design of the facility. Portions of this session will be closed if required to discuss proprietary material related to the design, construction or operation of this plant.

I have determined in accordance with subsection 10(d) of Pub. L. 92-463 that it is necessary to close portions of the meeting as noted above to protect proprietary data (5 U.S.C. 552(b)(4)), to protect the free exchange of opinion during the Committee's deliberative process (5 U.S.C. 552(b)(5)) and to protect information which, if released, would represent an undue invasion of privacy (5 U.S.C. 552(b)(6)). These closed sessions will consist primarily of deliberative discussion among the Committee members leading to the formulation of advice and recommendations to the Nuclear Regulatory Commission. Separation of factual information and information considered exempt from disclosure under exemption (4) and exemption (6) of 5 U.S.C. 552(b) 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 or 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 November 3, 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:

DIABLO CANYON NUCLEAR PLANT UNITS 1 AND 2

San Luis Obispo County Free Library, San Luis Obispo, CA 93406.

(b) Those persons wishing to make oral statements regarding agenda items at the meeting should make a request to do so prior to the meeting, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements in safety related areas within the Committee's purview at an appropriate time chosen by the Chairman of the Committee.

(c) Further information regarding topics to be discussed, whether the meeting or portions of the meeting have been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor, can be obtained by a prepaid telephone call on November 10, 1976, to the Office of the Executive Director of the Committee (Telephone: 202-634-1371) between 8:15 A.M. and 5:00 P.M., Eastern Time. It should be noted that the 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 November 10, 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 February 11, 1977. Copies may be obtained upon payment of appropriate charges.

Date: November 3, 1976.

JOHN C. HOYLE,
Advisory Committee Management Officer.

NOTE.—This document is reprinted without change from the issue of Friday, November 5, 1976.

[FR Doc.76-32767 Filed 11-4-76;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

PRIVACY ACT OF 1974

Reports on New Systems

The purpose of this notice is to list reports on new systems filed with the Office of Management and Budget to give members of the public the opportunity to make inquiries about them and to comment on them.

The Privacy Act of 1974 requires that agencies give advance notice to the Congress and the Office of Management and Budget of their intent to establish or modify systems of records subject to the Act (5 U.S.C. 552a(o)). During the period October 18, through October 29, 1976 the Office of Management and Budget received the following reports on new (or revised) systems of records.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

System names:

(1) Medical Records of Vinyl Chlorida and Carcinogen Workers.
(2) Coal Handlers Study.
(3) Litigation Master Record File.

Report date:

October 26, 1976.

Point of contact:

John Ottina (for specific points of contact), Assistant Secretary for Administration and Management, Department of Health, Education and Welfare, Washington, D.C. 20201.

PHILLIP D. LARSEN,
Acting Assistant to the Director for Administration.

[FR Doc.76-32722 Filed 11-5-76;8:45 am]

Office of Federal Procurement Policy

MEMORANDUM FOR THE SECRETARY OF DEFENSE, THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE, THE SECRETARY OF THE INTERIOR, THE SECRETARY OF TRANSPORTATION, THE ADMINISTRATOR OF GENERAL SERVICES, THE ADMINISTRATOR OF VETERANS AFFAIRS

National Supply System

AUGUST 3, 1976.

It is said of institutions that, like clocks, they must occasionally be cleaned, wound up, and set to "true time." In this bicentennial year, it is appropriate that we who are engaged, either as managers or consumers, in the logistics systems of the Federal Government, examine our basic structures and systems, clear away the accumulated inefficiencies, and, where necessary, adjust our logistics institutions to "true time." As befits a period of retrospection and recommitment, such an effort entails not only the review and appraisal of the achievements of the past, but also the identification of those major tasks yet before us and the orientation of ourselves and our resources to their accomplishment. The purpose of this memorandum is to initiate that effort.

Threaded throughout the logistics literature of the last decade, the term "National Supply System" appears with surprising regularity—surprising in that nowhere is the term formally defined and fully described. Despite the lack of conceptual clarity, however, it is apparent that the term's authors and users refer to a single, integrated Government-wide system for the procurement and supply of common items used by agencies of the Federal Government. Those writers recognize that such a system does not now exist. Rather, it is generally agreed that in the absence of a precise and authoritative exposition of the Government's policies and objectives with regard to a National Supply System, a proliferation of nonintegrated logistics procedures among Federal agencies has occurred. Many of these procedures, developed on the basis of limited perspectives and in response to immediate needs, are restricted in application and redundant in terms of Government-wide supply needs. Moreover, while certain mechanisms currently in being, such as the Federal Catalog System, offer the potential for Government-wide use, most observers acknowledge that this potential has not been exploited fully. In some instances, it may have been hampered by the lack of a structural framework that takes into account the resources, capabilities and needs of small decentralized agencies as well as those of their large, centralized counterparts. As a result of these and other factors, the present logistics system, in the opinion of many, is marked with an undesirable and unacceptable degree of fragmentation in responsibilities, duplication in functions, and inefficiency in operation.

In spite of these shortcomings, there are many positive and commendable aspects of current logistics operations. During the last decade, significant advances have been made in identifying root causes and likely solutions to present inefficiencies. Efforts by the Department of Defense and the General Services Administration have been especially constructive. Through their joint endeavors, particularly undesirable examples of duplication and overlap have been, and are continuing to be, eliminated. Moreover, ongoing developments in communications and information management technology now offer a more effective and affordable means for binding together all the participants of a Federal supply system in a more fully integrated and responsive relationship. These activities and developments comprise the foundation upon which we, in a new, coordinated, and comprehensive effort, can build a truly integrated National Supply System.

We fully appreciate the scope and complexity of the task we are proposing to undertake. To be truly effective we must deal with policies and procedures affecting all aspects of the procurement and supply process from item entry to item disposal, from procurement assignment to depot utilization, and from cataloging to requisitioning. To assure that such a far-reaching and multifaceted endeavor reflects the cumulative best judgment of the Federal logistics community, I have decided to establish a broad-based, high level forum to advise and assist my Office in meeting its responsibilities under Pub. L. 93-400.

A formal charter has been prepared which establishes such an instrumen-

tality. The charter, copies of which are attached, details the purposes, composition, and responsibilities of a National Supply System Advisory Board. It also details the responsibilities and relationships of the primary agent of the Advisory Board, namely, a National Supply Sytem Steering Committee.

By institutionalizing this effort, which is the effect of the charter, we are creating a comprehensive framework which will permit the coordinated oversight and direction of those many areas that must be examined and for which policies must be developed. Some examinations are already underway such as those relating to the Federal Government's procurement and supply of medical items and nonperishable subsistence. Others, such as that dealing with the increased use of commercial products and commercial distribution systems by the Federal Government, are in their initial stages. The need for still others will become apparent as the definition of the system, a specific and initial responsibility of the Advisory Board, takes on substance.

The attached charter will become effective as of the date of the last signature thereto. Following signature by an appropriate official of your organization, please return a signed copy to this office.

HUGH E. WITT,
Administrator, Office of Federal Procurement Policy.

NATIONAL SUPPLY SYSTEM ADVISORY BOARD

CHARTER

I. *Reference.*

Pub. L. 93-400, Office of Federal Procurement Policy Act of 1974.

II. *Purpose.*

The purpose of this Charter is to establish a high level, interagency forum, to be known as the "National Supply System Advisory Board," and to delineate its responsibilities and relationships.

III. *Objective.*

Despite substantial progress during the last decade, unnecessary overlap and duplication continue to burden the procurement and supply functions of the Federal Government. The presence of these factors has resulted in the ineffective use and consequent waste of Federal resources, and has prevented the establishment of a single integrated system for the supply of common items.

To eliminate waste and promote economy in Federal procurement and supply activities, a new, coordinated, and comprehensive effort is necessary. The National Supply System Advisory Board will serve as the principal interagency mechanism in this effort. The Advisory Board will advise and assist the Administrator for Federal Procurement Policy with the objective of developing and implementing a single, integrated Government-wide system for the procurement and supply of common items used by agencies of the Federal Government (i.e., a National Supply System). Areas for consideration in the establishment of a National Supply System include, but are not restricted to, the following: cataloging and logistics data, standardization, requisition and order processing, storage and distribution, item management and procurement assignments, and disposal and reutilization.

IV. *General Provisions.*

A. *Composition.* 1. The National Supply System Advisory Board will be chaired by the Administrator for Federal Procurement Policy and will comprise the following officials:

Assistant Secretary for Installations and Logistics, Department of Defense;

Assistant Secretary for Administration and Management, Department of Health, Education, and Welfare;

Assistant Secretary for Management, Department of the Interior;

Assistant Secretary for Administration, Department of Transportation;

Deputy Administrator, General Services Administration;

Deputy Administrator, Veterans Administration.

2. The Assistant Administrator for Logistics, Office of Federal Procurement Policy (OFPP), will serve as the Executive Secretary of the Advisory Board.

3. Each member may designate an alternate who will participate fully in the deliberations of the Advisory Board in the absence of the principal member.

4. Executive departments and agencies will be called on to assist the Advisory Board in its fact-finding, concept development and testing, and program evaluation efforts. Unless otherwise directed, suggestions or comments for consideration by the Advisory Board should be submitted to the Chairman, National Supply System Advisory Board, Office of Federal Procurement Policy, Office of Management and Budget, 726 Jackson Place, N.W., Washington, D.C. 20503.

B. *Responsibilities.* 1. *General.* The Advisory Board will provide advice and assistance to the Administrator for Federal Procurement Policy on all matters associated with the development, implementation and maintenance of a National Supply System.

2. *Specific.* In the development and implementation of a National Supply System, the Advisory Board will:

a. Define and describe an optimum National Supply System, taking into account present and anticipated customer needs, supply manager capabilities, and the logistics environment.

b. Analyze current systems of supply within the Federal Government and identify areas of variance, conflict, duplication and inefficiency. In addition, analyze Government and non-Government systems of supply and identify procedures, processes and methods with potential application to the National Supply System.

c. Develop and recommend to the Administrator for Federal Procurement Policy programs, procedures and policies for a National Supply System; and a comprehensive, timephased plan for its establishment and implementation.

C. *Instrumentalitis.* Coincident with the establishment of the Advisory Board, there is also established a subordinate group consisting of agencies with Government-wide supply responsibilities to be known as the National Supply System Steering Committee. The Steering Committee will (1) serve at the direction, and as principal agent, of the Advisory Board, (2) develop, test, and implement, or as appropriate, oversee the development, testing and implementation of concepts, programs, and procedures as directed by the Advisory Board, (3) establish ad hoc or permanent task groups to deal with specific aspects or phases of this project, and (4) coordinate the activities of already existing interagency entities (e.g., Commissions, Committees, Task Groups) formed to effect improvements in various aspects of current Federal supply systems.

1. *Composition.* The Assistant Administrator for Logistics, Office of Federal Procurement Policy will serve as Chairman of the Steering Committee. In addition, the Steering Committee will consist of the Deputy Assistant Secretary of Defense (Supply, Maintenance and Services), Office of the Assistant Secretary of Defense (Installations and Logistics), Department of Defense; the Commissioner, Federal Supply Service, General Services Administration; and the Director, Supply Service, Veterans Administration, who will be known as Permanent Members. Each Permanent Member will be supported by an Alternate Member who will serve in the absence of the Permanent Member. The Steering Committee may be expanded by the Chairman, in consultation with the Permanent Members, to include Special Members when the need for a specific expertise arises.

2. *Methodology.* Generally, the Steering Committee will perform its assignments in a corporate fashion. Individual Members or groups of Members, however, may be requested by the Chairman to perform specific tasks, or be designated by the Chairman as leaders of Interagency Task Groups or Task Forces reporting to the Steering Committee.

D. *Meetings.* Deliberations of the Advisory Board and the Steering Committee will be accomplished, insofar as possible, through regularly scheduled meetings. Schedules for such meetings will be developed by the respective Chairmen in consultation with the Advisory Board/Steering Committee members. Irregularly scheduled meetings will be arranged at the discretion of the respective Chairmen.

E. *Administrative Arrangements.* Administrative support for the Advisory Board and for the Steering Committee, including conference rooms, document preparation and records maintenance, will be provided, insofar as possible, by the Office of Federal Procurement Policy. Administrative support for ad hoc and permanent task groups/task forces will be provided by the agency employing the task group/task force leader. Pay and travel expenses for each individual involved in this effort will be provided by the employing agency.

V. *Revisions.* Substantive revisions to this Charter are contingent upon the concurrence of all signatories hereto. Revisions of an editorial or nonsubstantive nature may be effected at the discretion of the Administrator for Federal Procurement Policy.

VI. *Effective Date.* This Charter is effective as of October 12, 1976 and will remain in effect until formally rescinded by the Administrator for Federal Procurement Policy.

[FR Doc.76-32723 Filed 11-5-76;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[Release 34-12935]

PROGRAM FOR ALLOCATION OF REGULATORY RESPONSIBILITIES

Hearings

The Securities and Exchange Commission today announced that it will conduct public hearings with respect to the implementation of Rule 17d-2 (17 CFR 240.17d-2) (hereinafter § 240.17d-2) which adopts a program for allocation of regulatory responsibilities in order to reduce regulatory duplication. See announcement of adoption under Title 17 in the Rules and Regulations section of this issue of the FEDERAL REGISTER.

On October 28, 1976 in Securities Exchange Act Release No. 34-12935, the Commission adopted § 240.17d-2, effective December 15, 1976, which calls upon self-regulatory organizations to propose to the Commission a plan or series of plans for allocating regulatory responsibilities with respect to members or par-

ticipants which they have in common. Initial plans may be filed within ninety (90) days of the effective date of the section, i.e., on or before March 15, 1977, or at such later time as the Commission may determine at the conclusion of the hearings.

In order to propose plans for allocation, self-regulatory organizations should thoroughly analyze the interaction among self-regulators in the operation of the regulatory system, identify specific areas of duplication, evaluate which of these are appropriate for allocation, and formulate plans which will alleviate duplication in those areas. In addition, where allocation may be considered inappropriate, self-regulators should consider other methods of coordinating regulation of members or participants which they have in common.

In order to facilitate the efforts of the self-regulatory community to propose plans that can be integrated into a comprehensive, effective and efficient system of regulation, the Commission has determined to provide a forum for the presentation of factual data which self-regulators will require in order to assess their regulatory capabilities and procedures, including availability of staff, convenience of location, and unnecessary duplication, in relation to those of other self-regulators. This testimony will provide additional bases for Commission consideration of any plans which may be submitted pursuant to § 240.17d–2.

To this end, testimony should focus on identification of specific areas of duplication in regulation and assessment of which of these areas would be appropriate for allocation among self-regulators. Where allocation appears to be inappropriate, testimony should be directed toward procedures which may be applied to coordinate the regulation of members or participants.

In addition, the Commission has determined to solicit testimony with respect to the viability of the concept of designating a single self-regulator for a broker or dealer in light of the analysis of the present system of self-regulation and the potential impact of the allocation program.

PROCEDURES RELATING TO PUBLIC HEARINGS

The public hearings are scheduled to commence at 10:00 a.m. on November 30, 1976 at the Securities and Exchange Commission, 500 North Capitol Street, NW., Washington, D.C. 20549. Any persons who wish to make an oral presentation of their views are requested to write or call Daniel J. Piliero II at 202–755–1390 before November 20, 1976. All witnesses are required to submit twenty-five (25) copies of their prepared statements not later than four (4) business days in advance of the date of their scheduled appearance.

Persons making oral statements should limit their prepared presentations to twenty-five minutes, unless a longer period of time is approved, and should be prepared to respond to specific inquiries from the Commission and its staff. In advance of or during the hearings, any person may submit written questions to be directed to a particular witness or group of witnesses, but the presiding hearing officer will determine in his sole discretion whether and to what extent to direct those questions to any witness.

A list of witnesses, setting forth the time scheduled for their appearances, will be published in the SEC News Digest.

This public fact-finding hearing has been ordered by the Commission pursuant to section 22 of the Securities Exchange Act of 1934 and rule 6(c) of the Commission's Rules of Practice.

The text of § 240.17d–2 adopted by the Commission in Securities Exchange Act Release No. 34–12935 (October 28, 1976) is printed under Title 17 in the Rules and Regulations section of this issue of the FEDERAL REGISTER.

By the Commission.

Dated: October 28, 1976.

GEORGE A. FITZSIMMONS,
Secretary.

[70–5259]

MIDDLE SOUTH UTILITIES, INC. ET AL.

Third Post-Effective Amendment Regarding Line of Credit Between Bank and Nonutility Subsidiary Company To Finance Fuel Procurement for Owner Associate Utility Companies

In the matter of Middle South Utilities, Inc., System Fuels, Inc., 225 Baronne Street, New Orleans, Louisiana 70112; Arkansas Power & Light Company, First National Building, Little Rock, Arkansas 72203; Louisiana Power & Light Company, 142 Delaronde Street, New Orleans, Louisiana 70174; Mississippi Power & Light Company, Electric Building, Jackson, Mississippi 39205; New Orleans Public Service Inc., 317 Baronne Street, New Orleans, Louisiana 70112.

Notice is hereby given that Middle South Utilities, Inc. ("Middle South"), a registered holding company, its public-utility subsidiary companies, Arkansas Power & Light Company ("Arkansas"), Louisiana Power & Light Company ("Louisiana"), Mississippi Power & Light Company ("Mississippi"), and New Orleans Public Service Inc. ("NOPSI") (collectively referred to as "Operating Companies"), and System Fuels, Inc. ("SFI"), a jointly-owned nonutility subsidiary company of Operating Companies, have filed with this Commission a third post-effective amendment to the declaration in this proceeding pursuant to sections 6(a), 7, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder regarding the following proposed transactions. All interested persons are referred to the amended declaration, which is summarized below, for a complete statement of the proposed transactions.

By orders in this proceeding dated December 8, 1972, September 17, 1973, and November 25, 1974 (HCAR Nos. 17797, 18097, and 18679), the Commission authorized SFI to issue and sell its unsecured promissory notes, in an aggregate amount not exceeding $25,090,000 outstanding at any one time, to Hibernia National Bank in New Orleans ("Hibernia") from time to time for a period of four years from the date of a loan agreement (December 8, 1972) among Hibernia, SFI, Operating Companies, and Middle South. Under the loan agreement, nine other banks are participating to the extent of $21,590,000 or 86.1 percent of the borrowings. It is stated that as of October 1, 1976, SFI had issued notes under the line of credit in the aggregate principal amount of $25,090,000, the proceeds of which were applied by SFI toward the purchase of oil for use as fuel by Arkansas, Louisiana, Mississippi, NOPSI, and Arkansas-Missouri Power Company.

It is now proposed that the period of the borrowings be extended for two more years so that notes issued pursuant to the loan agreement will be payable on or before December 8, 1978. Section 4 of the loan agreement will be amended to modify the method for determining the rate of interest from one based on the average rate plus three-fourths of one percent (¾ percent) charged on commercial loans of 90-day maturities by the three banks having the largest participation in the loans to SFI to one based on the rate charged by Citibank, N.A., New York, New York, on commercial loans of 90-day maturities plus three-fourths of one percent (¾ percent). Section 6(b) of the loan agreemnt will also be amended to provide for the maintenance of the present proportions of ownership of the common stock of SFI and to enable SFI to make repayments of any existing or future indebtedness of SFI to Arkansas, Louisiana, Mississippi, or NOPSI or all of them provided it is not in default under the loan agreement or under the terms of any other agreement for borrowed money: *And provided further*, That such repayment cannot be made if after any repayment the total of SFI's capital stock, surplus, and indebtedness to its parent companies would be less than 35 percent of SFI's total capitalization including indebtedness due within one year. All the other terms and conditions related to the borrowings remain the same.

No State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than November 29, 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 post-effective amendment to the 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 per-

sonally or by mail upon the declarants at the above-stated addresses, 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 now amended or as it may be further 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.76-32720 Filed 11-5-76;8:45 am]

DEPARTMENT OF STATE

Agency for International Development

RESEARCH ADVISORY COMMITTEE

Renewal

The RAC performs necessary and important advisory functions in connection with the formulation of A.I.D. research policy, the appraisal of central research projects and in evaluating and providing necessary advice concerning the progress and future potential of all centrally-funded research activities. There continues to be a need for such advisory functions.

Accordingly, I hereby determine, pursuant to the provisions of Section 14(a)(1)(A) of the Federal Advisory Committee Act (Pub. L. 92-463) and paragraph 7 of OMB Circular A-63 (Revised) that renewal of the Research Advisory Committee for a two year period beginning December 24, 1976, is in the public interest.

Dated: August 27, 1976.

DANIEL PARKER,
Administrator.

[FR Doc.76-32711 Filed 11-5-76;8:45 am]

Agency for International Development

BOARD FOR INTERNATIONAL FOOD AND AGRICULTURAL DEVELOPMENT

Meeting

Pursuant to Executive Order 11769 and the provisions of section 10(a), (2), Pub. L. 92-463, Federal Advisory Committee Act, notice is hereby given of the second meeting of the Board for International Food and Agricultural Development on November 22, 1976. The purpose of the meeting is to develop policies, priorities and procedures in dealing with the duties and responsibilities of the Board as set forth in Title XII of the "International Development and Food Assistance Act of 1975" and to discuss substantive approaches relative to that Title. The meeting will begin at 9:00 a.m. and adjourn at 5:30 p.m., and will meet in Room 5951, U.S. Department of State, 21st and Virginia Avenue, N.W. The meeting is open to the public. Dr. Erven J. Long, Associate Assistant Administrator is designated as the Federal Officer at the meeting. It is suggested that those desiring more specific information contact him at 21st and Virginia Avenue, N.W., Washington, D.C. 20523 or call area code 202-632-3800.

Dated: October 29, 1976.

ERVEN J. LONG,
Federal Officer, Board for International Food and Agricultural Development.

[FR Doc.76-32750 Filed 11-5-76;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD76-009]

COMMERCIAL DIVING STANDARDS

Public Hearing

Pursuant to the Memorandum of Understanding between the Occupational Safety and Health Administration (OSHA) and the Coast Guard published in the FEDERAL REGISTER (41 FR 24292) on June 15, 1976, the Coast Guard intends to publish a notice of proposed rulemaking on commercial diving standards that will be substantially similar to the proposed permanent standards for commercial diving operations published by OSHA in the November 5, 1976, issue of the FEDERAL REGISTER (Vol. 41, Part V).

The Coast Guard and OSHA will hold a joint public hearing at 9:30 a.m. on December 16-17, 1976, at Terrace Suites 3, 4, and 5, Braniff Place Hotel, 1500 Canal Street, New Orleans, Louisiana, to receive public comments on the substance of the proposed standards.

Copies of the proposed OSHA standard may be obtained from the Executive Secretary, Marine Safety Council (G-CMC/81), Room 8117, U.S. Coast Guard, Washington, D.C. 20590 (202-426-1477).

The Coast Guard will give the public an opportunity to comment on its proposed regulations and will hold another public hearing if there is a substantive issue raised in the request for a hearing that was not or could not have been raised during the joint Coast Guard-OSHA hearings.

Dated: November 2, 1976.

W. M. BENKERT,
Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

NOTE.—This document is being reprinted without change from the issue of Friday, November 5, 1976.

[FR Doc.76-32615 Filed 11-4-76;8:45 am]

Federal Aviation Administration

TECHNICAL ADVISORY COMMITTEE

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 of the Federal Aviation Administration Technical Advisory Committee to be held Monday, November 29, 1976 (9:30 a.m. to 3:00 p.m.) at Lincoln Laboratory in Lexington, Massachusetts, and Tuesday, November 30, 1976 (8:30 a.m. to 2:30 p.m.) at the Transportation Systems Center (TSC) in Cambridge, Massachusetts. The agenda for this meeting is as follows: Review of Discrete Address Beacon System/Intermittent Positive Control (DABS/IPC) program and hardware; Lincoln Lab activities and capabilities; TSC support to FAA; Report and discussion of projects by Technical Advisory Committee members.

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 the day before the meeting, and information may be obtained from, Mr. Thomas M. Johnston (AEM-200), Executive Director, FAA Technical Advisory Committee, 800 Independence Avenue, S.W., Washington, D.C. 20591 (tel: 202-426-8796). Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C., on October 28, 1976.

THOMAS M. JOHNSTON,
Executive Director, FAA Technical Advisory Committee.

[FR Doc.76-32733 Filed 11-5-76;8:45 am]

Federal Highway Administration

INTERSTATE RESURFACING, RESTORATION AND REHABILITATION STUDY

Request for Comments

Pursuant to section 150(b) of the Federal-Aid Highway Act of 1976 (Pub. L. 94-280) the Federal Highway Administration, in conjunction with the Office of the Secretary of Transportation, is preparing a study and recommendations to Congress on the need to provide Federal financial assistance for resurfacing, restoration, and rehabilitation of routes on the Interstate Highway System. Section 150(b) specifically requires that in arriving at recommendations a full and complete study be conducted to determine alternative means of assuring that the high level of transportation service is maintained. The study shall include an estimate of the cost of implementing any recommended programs as well as an analysis of alternate methods of apportioning any Federal assistance. The recommendations are to be submitted to Congress by May 5, 1977.

To assure that all concerned parties have an opportunity to express their views, the Federal Highway Administration is soliciting comments on the subject of this study. Although any area of the subject may be commented upon, the Federal Highway Administration would be most interested in views concerning the need for financial involvement in maintaining a high level of transportation service on the Interstate System and, if needed, the degree and type of such financial involvement.

Interested persons or organizations should submit their comments, in writing, to the Federal Highway Administration, Office of Engineering, HNC–13, Washington, D.C. 20590, no later than November 30, 1976.

Issued on: November 1, 1976.

J. R. COUPAL, Jr.,
Deputy Administrator.

[FR Doc.76–32712 Filed 11–5–76;8:45 am]

Federal Railroad Administration

MINORITY BUSINESS RESOURCE CENTER ADVISORY COMMITTEE

Meeting; Correction

In FR Doc. 76–32148 appearing on page 48163 of FEDERAL REGISTER dated November 2, 1976, the room number for the above-mentioned meeting will be changed from 2232 to room 5334.

KENNETH E. BOLTON,
Executive Secretary.

[FR Doc.76–32734 Filed 11–5–76;8:45 am]

National Highway Traffic Safety Administration

NATIONAL MOTOR VEHICLE SAFETY ADVISORY COUNCIL

Public 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 of the National Motor Vehicle Safety Advisory Council to be held on November 30, December 1 and 2, 1976 at the DOT Headquarters Building, 400 Seventh Street, S.W., Washington, D.C.

On November 30 there will be a joint meeting of the Accident Avoidance and Operating Systems and Crashworthiness Committees in room 2230 starting at 9 a.m. There will be reports on the safety of recreational vehicles and on the Phase II of the RSV contract. There will also be a discussion of the barrier equivalent velocity usage in restraint system performance assessment.

Also on November 30 the Motorcycle Committee will meet in room 2230 starting at 2 p.m. There will be a review of the program for Head & Neck Injury Seminar, a status report on California demonstration project on motorcycle driver licensing, briefing on MVP rationale for current motorcycle lighting standard and industry reaction to the lighting standard on the proposed moped standard.

On December 1 the Awards Committee will meet in room 6200 at 8:45 a.m. The meeting will consist of a report on the status of Awards Program and discussion of update of EXCALIBUR and SPENO pamphlets.

Also on December 1 the Fifth International Congress Committee will meet in room 6204 starting at 9:15 a.m., to discuss the status report on Congress plans and progress.

The Consumer and Public Information Committee will meet on December 1 in room 2230 starting at 10 a.m. There will be a briefing on NHTSA public information programs, a status report on "Hotline", review of seat belt usage promotion and information publications, briefing on Title II—Cost Savings Act, discussion on clarifying consumer information on passive restraint systems, and old/new business.

On December 2 the full Council will meet in room 2230 starting at 8:45 a.m. There will be the swearing in of new members, approval of the September Council minutes, reports by the following committees: Joint Meeting of Accident Avoidance and Crashworthiness, Motorcycle, Consumer and Public Information, Congress and Awards, and old/new business.

Starting at 12:10 p.m. on December 2 the Executive Committee will meet in room 2230 to discuss future Council activities.

The above meetings are subject to the approval of the National Highway Traffic Safety Administrator.

With the approval of the Chairman, members of the public may present oral statements at the meeting. Any member of the public may present a written statement to the Council at any time.

Additional information may be obtained from the NHTSA Executive Secretary, room 5215, 400 Seventh Street, S.W., Washington, D.C. 20590, telephone 202–426–2872.

Issued in Washington, D.C., on November 4, 1976.

WM. H. MARSH,
Executive Secretary.

[FR Doc.76–32979 Filed 11–5–76;10:10 am]

DEPARTMENT OF THE TREASURY

Customs Service

CHAINS AND PARTS THEREOF, OF CA3T IRON, IRON OR STEEL, FROM ITALY

Receipt of Countervailing Duty Petition and Initiation of Investigation

A petition in satisfactory form was received on October 1, 1976, alleging that payments of bestowals, conferred by the Government of Italy upon the manufacture, production or exportation of chains and parts thereof, of cast iron, iron or steel, including terminal and connecting links, hooks, rollers, pivots and plates, constitute the payment of a bounty or grant within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303).

The chains and parts are provided for in the Tariff Schedules of the United States under item numbers 652.24, 652.27, 652.30, 652.33 and 652.35.

Pursuant to section 303(a)(4) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)(4)), the Department of the Treasury is required to issue a preliminary determination as to whether or not any bounty or grant is being paid or bestowed within the meaning of the Countervailing Duty Law within 6 months of the receipt, in satisfactory form, of a petition alleging the payment or bestowal of a bounty or grant. A final decision must be issued within 12 months of the receipt of such petition.

Therefore, a preliminary determination on this petition will be made no later than April 1, 1977, as to whether the alleged payments or bestowals conferred by the Government of Italy upon the manufacture, production, or exportation of the above described merchandise constitute the payment or bestowal of a bounty or grant within the meaning of section 303, Tariff Act of 1930, as amended. A final determination will be issued no later than October 1, 1977.

This notice is published pursuant to section 303(a)(3) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)(3)), and § 159.47(c) of the Customs Regulations (19 CFR 159.47(c)).

LEONARD LEHMAN,
Acting Commissioner of Customs.
JERRY THOMAS,
Under Secretary of the Treasury.

NOVEMBER 2, 1976.

[FR Doc.76–32753 Filed 11–5–76;8:45 am]

[Order No. 114 (Rev. 1)]

Internal Revenue Service

DELEGATION ORDER

Designation To Act as "Competent or Taxation Authority" Under Tax Treaties

NOVEMBER 3, 1976.

1. Pursuant to the authority delegated to me by the Treasury Department Order No. 150–83, there is hereby delegated to the Assistant Commissioner (Compliance) the authority to act as "competent or taxation authority" under tax treaties of the United States. This authority includes the administration of the operating provisions of tax treaties as well as the interpretation or application of such treaties. With respect to the interpretation or application of tax treaties, the Assistant Commissioner (Compliance) shall act in all such matters only after the concurrence of the Assistant Commissioner (Technical).

2. The authority delegated herein may not be redelegated.

3. Delegation Order No. 114, issued June 26, 1970, is superseded.

Effective date: November 3, 1976.

DONALD C. ALEXANDER,
Commissioner.

[FR Doc.76–32789 Filed 11–5–76;8:45 am]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATION FOR RELIEF

NOVEMBER 3, 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 November 23, 1976.

FSA No. 43262—*Grain and Grain Products from Points in Montana.* Filed by North Pacific Coast Freight Bureau, Agent, (No. 76-2), for interested rail carriers. Rates on grain and grain products, in carloads, as described in the application, from specified points in Montana, to Spokane, Washington, and points taking some rates.

Grounds for relief—Carrier competition.

Tariff—Supplement 10 to North Pacific Coast Freight Bureau, Agent, tariff 13-I, I.C.C. No. 1302. Rates are published to become effective on December 4, 1976.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-32786 Filed 11-5-76;8:45 am]

[Notice No. 147]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

NOVEMBER 3, 1976.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 13900 (Sub-No. 28TA), (Correction), filed October 8, 1976, published in the FR issue of October 26, 1976, and republished as corrected this issue. Applicant: MIDWEST HAULERS, INC., 228 Superior St., Toledo, Ohio 43604. Applicant's representative: Leslie A. Peters, 4027 S. Wells St., Chicago, Ill. 60609. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* which are at the time moving on bills of lading of freight forwarders, between Phoenix and Tucson, Ariz.; Reno and Las Vegas, Nev.; Salt Lake City, Utah; San Diego, Santa Fe Springs, Los Angeles, Fresno, San Jose, Oakland, San Francisco and Sacramento, Calif., and points within their respective commercial zones on the one hand, and, on the other, Chicago, Ill.; Milwaukee, Wis.; St. Louis, Mo., and points within their respective commercial zones; with permission to tack the grant of authority herein to the carrier's existing authority over Chicago, Ill., and St. Louis, Mo., for the purpose of providing through transportation service between the points in the west named above and the following points in the east; Baltimore, Md.; Boston, Mass.; Cincinnati, Ohio; Cleveland, Ohio; Detroit, Mich.; Edison, N.J.; Harrisburg, Pa.; New York, N.Y.; Newark, N.J.; Philadelphia, Pa.; and Pittsburgh, Pa., and points within their respective commercial zones, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately 6 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: Keith D. Warner, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 313 Federal Office Bldg., 234 Summit St., Toledo, Ohio 43604. The purpose of this republication is to correct the territorial description in this proceeding.

No. MC 14479 (Sub-No. 3TA), filed October 21, 1976. Applicant: DELIVERY SERVICE & TRANSFER CO. INC., 962 S. 700 West, Salt Lake City, Utah 84104. Applicant's representative: Keith E. Soh, Suite 81 Trolly Square, Salt Lake City, Utah 84102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Household products* for Jewel Companies, Inc., such as but not limited to dry packaged foods, cleaning aids, household utensils and similar general merchandise, from Salt Lake City, Utah, on the one hand, to Ogden, on the other, going north including intermediate points along Interstate 15 and U.S. Highways 89 and 91 and off-route points within 10 miles thereof; and from Salt Lake City, Utah, on the one hand, to Provo, Utah, on the other, going south including intermediate points along Interstate 15 and U.S. Highways 89 and 91 and off-route points within 10 miles thereof, and return with rejected merchandise, under a continuing contract with Jewel Companies, Inc., and Park Corporation (Subsidiary), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Jewel Companies, Inc., and Park Corporation (Subsidiary), 511 Lake Zurich Road, Barrington, Ill. 60610. Send protests to: Lyle D. Helfer, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Bldg., 125 South State St., Salt Lake City, Utah. 84138.

No. MC 107839 (Sub-No. 170TA), filed October 21, 1976. Applicant: DENVER-ALBUQUERQUE MOTOR TRANSPORT, INC., 2121 E. 67th Ave., P.O. Box 16106, Denver, Colo. 80216. Applicant's representative: David E. Driggers, 1660 Lincoln St., Suite 1600, Denver, Colo. 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bakery goods* (except frozen), from the facilities of Keebler Company, at or near Atlanta and Macon, Ga., to Denver, Colo., for 180 days. Supporting shipper: Keebler Company, One Hollow-Tree Lane, Elmhurst, Ill. 60126. Send protests to: Herbert C. Ruoff, District Supervisor, Interstate Commerce Commission, 721 19th St., 492 U.S. Customs House, Denver, Colo. 80202.

No. MC 113651 (Sub-No. 202TA), filed October 26, 1976. Applicant: INDIANA REFRIGERATOR LINES, INC., 2404 N. Broadway, Muncie, Ind. 47303. Applicant's representative: Daniel D. Sullivan, 327 S. LaSalle St., Chicago, Ill. 60604. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products and articles dinstributed by meat packinghouses*, as described in Sections A and C of the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766, from the plantsite and storage facilities of American Beef Packers, Inc., located at or near Omaha, Nebr., to points in Georgia and Florida, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: American Beef Packers, Inc., 7000 W. Center Road, Omaha, Nebr. 68106. Send protests to: J. H. Gray, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 345 W. Wayne St., Room 204, Fort Wayne, Ind. 46802.

No. MC 113843 (Sub-No. 235TA), filed October 26, 1976. Applicant: REFRIGERATED FOOD EXPRESS, INC., 316 Summer St., Boston, Mass. 02210. Appli-

cant's representative: Lawrence T. Sheils (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pickles, pickled tomatoes and sauerkraut*, in vehicles equipped with mechanical refrigeration (except commodities in bulk, in tank vehicles), from the plantsite of Claussen Pickle Co. (a wholly-owned subsidiary of Oscar Mayer & Co., Inc.), at or near Woodstock, Ill., to points in Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia, restricted to traffic originating at the above-named origin and destined to the above-named destinations, for 180 days. Supporting shipper: Oscar Mayer & Co., Inc., 910 Mayer Ave., Madison, Wis. 53704. Send protests to: Darrell W. Hammons, District Supervisor, Interstate Commerce Commission, 150 Causeway St., Room 501, Boston, Mass. 02114.

No. MC 118846 (Sub-No. 16TA), filed October 18, 1976. Applicant: DALE JESSUP, R.R. 1, Box 252, Camby, Ind. 46113. Applicant's representative: Walter F. Jones, Jr., 601 Chamber of Commerce Bldg., Indianapolis, Ind. 46204. Authority sought to operate as a *contract carrier* by motor vehicle, over irregular routes, transporting: *Paper board*, from Indianapolis, Ind., to points in Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington and Wyoming, under a continuing contract with The Beveridge Paper Company, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: The Beveridge Paper Company, 717 W. Washington St., Indianapolis, Ind. Send protests to: Fran Sterling, Interstate Commerce Commission, Federal Bldg., & U.S. Courthouse, 46 E. Ohio St., Room 429, Indianapolis, Ind. 46204.

No. MC–121775 (Sub-No. 3 TA), filed October 8, 1976. Applicant: MILTON B. ANDERSON AND MELVIN K. ANDERSON, doing business as, OVERLAND EXPRESS, 798 E. Glendale Road, Sparks, Nev. 89431. Applicant's representative: Melvin K. Anderson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except household goods as defined by the Commission; commodities in bulk, those requiring special equipment; Classes A and B explosives; and articles injurious to other lading), restricted against the transportation of shipments in excess of 200 pounds from any one shipper to any one consignee on any one day; and further restricted against the transportation of any single package weighing in excess of 100 pounds, between points in Lassen, Sierra, Plumas, Nevada, El Dorado, Mono, Inyo, Sacramento, Yolo, Placer, Solano, Contra Costa, Alameda, Santa Clara, San Mateo and San Francisco Counties, Calif., on the one hand, and Reno and Sparks, Nev., on the other, for 180 days. Supporting shippers: There are approximately 46 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: Kenneth D. Lester, Transportation Specialist, Interstate Commerce Commission, 203 Federal Bldg., 705 North Plaza St., Carson City, Nev. 89701.

No. MC 126904 (Sub-No. 19TA), filed October 26, 1976. Applicant: H. C. PARRISH TRUCK SERVICE, INC., RFD #2, Bos 264, Freeburg, Ill. 62243. Applicant's representative: B. W. La Tourette, Jr., 11 S. Meramec, Suite 1400, Clayton, Mo. 63105. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Concrete filter blocks, concrete lawn crypts, and mausoleum crypts*, from St. Louis, Mo., to Houston, Tex., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: James E. Hereford, President, Hereford Concrete Products, Inc. 6655 Rockbrook, St. Louis, Mo. 63133. Send protests to: Harold C. Jolliff, District Supervisor, Interstate Commerce Commission, P.O. Box 2418, Springfield, Ill. 62705.

No. MC 128075 (Sub-No. 36TA), filed October 21, 1976. Applicant: JOHNSRUD TRANSPORT, INC., Highway 9 West, Cresco, Iowa 52136. Applicant's representative: James E. Ballenthin, 630 Osborn Bldg., St. Paul, Minn. 55102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Butter*, from the plantsite of Associated Milk Producers, Inc., located at or near New Ulm, Minn., to points in Pennsylvania, New York, New Jersey, Connecticut, Rhode Island and Massachuetts, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Associated Milk Producers, Inc., New Ulm, Minn. 56073. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Bldg., Des Moines, Iowa 50309.

No. MC 133566 (Sub-No. 63TA), filed October 20, 1976. Applicant: GANGLOFF & DOWNHAM TRUCKING CO., INC., P.O. Box 479, Logansport, Ind. 46947. Applicant's representative: Charles W. Beinhauer, 1224 Seventeenth St., N.W., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Shortening, lard, tallow, cooking oil and margarine* (except in bulk), in vehicles equipped with mechanical refrigeration, from the plantsite and storage facilities of Swift Edible Oil Co., at or near Bradley, Ill., to points in New Jersey, New York, Maryland, Pennsylvania, Massachusetts and the District of Columbia, and the specified points of Manassas, Williamsburg, Richmond and Newport News, Va.; Dover, Rehoboth Beach and Wilmington, Del.; Levitt City, New Haven, New London, Hartford, Meriden, Colchester and Stamford, Conn.; Burlington, Brattleboro, Rutland and White River Junction, Vt.; Dover Concord and Manchester, N.H.; Fairfield, Lewiston, Portland and Augusta, Maine; and Providence and Cranston, R.I., and the commercial zones of the respectively named cities, for 180 days. Supporting shipper: Swift Edible Oil Company, a Division of Swift & Co., 115 W. Jackson Blvd., Chicago, Ill. 60604. Send protests to: J. H. Gray, District Supervisor, Interstate Commerce Commission, 345 W. Wayne St., Room 204, Fort Wayne Ind. 46802.

No. MC 134387 (Sub-No. 38TA), filed October 22, 1976. Applicant: BLACKBURN TRUCK LINES, INC., 4998 Brayon Ave., South Gate, Calif. 90280. Applicant's representative: Lucy Kennard Bell, 606 S. Olive St., Suite 825, Los Angeles, Calif. 90014. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Empty glass containers*, from Los Angels County, Calif., to points in Coconino County, Ariz., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Nackard Pepsi Cola Bottling Co., 4980 Railhead Ave., Flagstaff, Ariz. 86001. Send protests to: Mary A. Francy, Interstate Commerce Commission, Bureau of Operations, Room 1321 Federal Bldg., 300 N. Los Angeles St., Los Angeles, Calif. 90012.

No. MC 135326 (Sub-No. 6 TA), filed October 22, 1976. Applicant: BILLY R. ALMAND, doing business as ALMAND TRUCKING CO., Rt. 2, Box 50, Keithville, La. 71047. Applicant's representative: Louis Tarlowski, 914 Pyrmid Life Bldg., Little Rock, Ark. 72201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing and roofing materials*, from Pulaski County, Ark., plantsite of Masonite Corporation, to points in Kansas, Louisiana, Oklahoma and Texas, for 180 days. Supporting shipper: Masonite Corporation, 2500 E. Roosevelt Road, Little Rock, Ark. 72203. Send protests to: Ray C. Armstrong, Jr., District Supervisor, 701 Loyola Ave., 9038 Federal Bldg., New Orleans, La. 70113.

No. MC 139269 (Sub-No. 9 TA), filed October 26, 1976. Applicant: C. P. CRASKA, INC., 10422 Cosby Manor Road, Utica, N.Y. 13501. Applicant's representative: Murray J. S. Kirshtein, 118 Bleecker St., Utica, N.Y. 13501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, in mechanically temperature controlled vehicles, from points in New Jersey to points in New York, 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: Morris H. Gross, District Supervisor, Interstate Commerce Commission, U.S. Courthouse & Federal Bldg., 100 S. Clinton St., Room 831, Syracuse, N.Y. 13202.

No. MC 139495 (Sub-No. 175 TA), filed October 26, 1976. Applicant: NATIONAL CARRIERS, INC., P.O. Box 1358, 1501 E. 8th St., Liberal, Kans. 67901. Applicant's representative: Herbert Alan Dubin, 1819 H St., N.W., Suite 1030, Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods* (fruits, vegetables, potato products, juice concentrates, and bakery products), from the facilities of North Pacific Canners & Packers, Inc., located at or near Salem, Gresham, Dayton, Stayton and Brooks, Oreg., and Prosser, Kennewick, Burlington, Chehalis, Stanwood, Arlington and Ellensburg, Wash., to points in Texas, Oklahoma and Louisiana, for 180 days. Supporting shipper: North Pacific Canners & Packers, Inc., (NORPAC), 5200 S.E. McCloughlin Blvd., Portland, Oreg. 97202. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, Suite 101 Litwin Bldg., 110 N. Market, Wichita, Kans. 67202.

No. MC 142500 (Sub-No. 1 TA), filed September 28, 1976. Applicant: HERBERT ROARK, doing business as KID'S EXPRESS CO., 8081 Forest Road, Cincinnati, Ohio 45230. Applicant's representative: Boyd B. Ferris, 50 W. Broad St., Columbus, Ohio 43215. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles;* (1) from the plantsite and warehouse facilities of E. K. Morris, in Cincinnati, Ohio, to Allen, Ashland, Corbin, Hazard, Lexington, Louisville, London, Martin, Middlesboro and Pikeville, Ky.; Abingdon, Christiansburg, Damascus, Glen Lyn, Marion, Pulaski, Richland, Roanoke, Saltville and Tembroke, Va.; Beckley, Bluefield, Charleston, Huntington, Logan, Oakhill, Pineville and Princeton, W Va.; and (2) from Chicago, Ill.; Burns Harbor, Ind.; Detroit, Mich.; Pittsburgh, Pa.; Jellico, Tenn.; and Roanoke, Va.; to the plantsite and warehouse facilities of E. K. Morris, in Cincinnati, Ohio, restricted to the transportation of shipments transported on shipper-owned trailers, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Richard C. Morris, Jr., President, E. K. Morris & Co., Inc., 10270 Wayne Ave., Cincinnati, Ohio 45215. 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 142548 (Sub-No. 1TA), filed October 26, 1976. Applicant: STALEY EXPRESS, INC., 2501 N. Brush College Road, Decatur, Ill. 62521. Applicant's representative: Fritz R. Kahn, Suite 110, 1660 L St. NW., Washington, D.C. 20036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Tires, tire parts, inner tubes, inner tube parts, and equipment, materials and supplies* used and useful in the manufacture, distribution or repair thereof, between Decatur, Ill., on the one hand, and on the other, points in Illinois, Indiana, Kentucky and Missouri, restricted to the transportation of shipments originating at or destined to the plantsites or storage facilities of the Firestone Tire & Rubber Company, at Decatur, Ill., under a continuing contract with The Firestone Tire & Rubber Company, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: C. W. Baker, Jr., Manager, Transportation Operations, The Firestone Tire & Rubber Company, 1200 Firestone Parkway, Akron, Ohio 44317. Send protests to: Harold C. Jolliff, District Supervisor, Interstate Commerce Commission, P.O. Box 2418, Springfield, Ill. 62705.

No. MC 142557 (Sub-No. 1TA), filed October 18, 1976. Applicant: TRI-VALLEY EXPRESS, INC., Bradley Star Route, Liberty, N.Y. 12754. Applicant's representative: Bruce J. Robbins, 1 Lefrak City Plaza, Flushing, N.Y. 11368. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Juice* (except in bulk), in mechanically-refrigerated vehicles, from Tonawanda, N.Y., to points in New Jersey; points in Pennsylvania on and east of U.S. Highway 15, and points in Westchester, Nassau and Suffolk Counties, and New York, N.Y.; and (2) *Materials*, equipment and supplies used in the manufacture, packaging, sale and distributing of the commodities described in (1) above, including, but not limited to, juice concentrate, from Baltimore, Md.; points in Florida on and south of Interstate Highway 4, and points in the destination areas named in (1) above, to the point of origin named in (1) above, under a continuing contract with Great Northern Juice, Inc., for 180 days. Supporting shippers: Great Northern Juice, Inc., 333 Delaware Ave., Tonawanda, N.Y. 14150. Send protests to: Robert A. Radler, District Supervisor, P.O. Box 1167, Albany, N.Y. 12201.

No. MC 142567TA, filed October 19, 1976. Applicant: GREENVILLE TRANSIT, INC., Route 1, Box 452 Suffletown Road, Simpsonville, S.C. 29681. Applicant's representative: Mitchell King, Jr., P.O. Box 1628, Greenville, S.C. 29602. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, between the facilities of South Carolina Steel Corporation, in Greenville County, S.C., on the one hand, and, on the other, points east of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma and Texas, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: South Carolina Corporation, P.O. Box 71, Greenville, S.C. 29602. Send protests to: E. E. Strotheid, District Supervisor, Interstate Commerce Commission, Room 302, 1400 Pickens St., Columbia, S.C. 29201.

No. MC 142570TA, filed October 18, 1976. Applicant: ADVANCE MOVING & STORAGE CO., 120 East "D", Altus, Okla. 73521. Applicant's representative: Weldon G. Wilson (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Pickup and delivery service, in connection with packing, crating and containerization or unpacking, uncrating and decontainerization* of household goods and military baggage, between Beckham, Greer, Harmon, Jackson, Custer, Dewey, Ellis, Roger Mills, Washita and Beaver Counties, Okla.; Childress, Collingsworth, Donley, Hall, Gray, Wheeler, Roberts, Hemphill, Ochiltree and Lipscomb Counties, Tex., under a continuing contract with Chief, Contract Administration, for 180 days. Supporting shipper: Chief, Contract Administration, 443 MAW, Altus AFB, 443 MAW/LGP, Altus AFB, Okla. 73521. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box H–4395 Herring Plaza, Amarillo, Tex. 79101.

No. MC 142571TA, filed October 21, 1976. Applicant: METROPOLITAN ARMORED CAR, INC., 1410 E. 17th Ave., Columbus, Ohio 43211. Applicant's representative: Edwin H. van Deusen, 220 W. Bridge St., Box 97, Dublin, Ohio 43017. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Industrial abrasives*, in armored car service, from the facilities of General Electric Company, Special Materials Division, Worthington, Ohio, to Romulus, Mich., for 180 days. Applicant hsa also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: General Electric Company, Specialty Materials Department, 6325 Huntley Road, Worthington, Ohio 43085. Send protests to: Frank L. Calvary, District Supervisor, Interstate Commerce Commission, 220 Federal Bldg. and U.S. Courthouse, 85 Marconi Blvd., Columbus, Ohio 43215.

No. MC 142572TA, filed October 21, 1976. Applicant: MARK RENNER TRANSPORTATION, 6639 Green Mt. Road., Woodland, Wash. 98674. Applicant's representative: Russell M. Allen, 1200 Jackson Tower, Portland, Oreg. 97205. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, between the mills of R.S.G. Forest Products and Gram Lumber Co., at or near Kalama, Wash., on the one hand, and, on the other, points in Multnomah, Wash., and Clackamas Counties, Oreg., under a continuing contract with R.S.G. Forest Products; and Gram Lumber Co., for 180

days. Supporting shipper: R.S.G. Forest Products, and Gram Lumber Co., Kalama, Wash. 98625. Send protests to: W. J. Huetig, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, Portland, Oreg. 97204.

No. MC 142573TA, filed October 19, 1976. Applicant: GRAIG JONES, doing business as GILLETTE CREW TRANSPORTERS, Garner Lake Route No. 94, Gillette, Wyo. 82716. Applicant's representative: Graig Jones (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Railroad crews and their baggage*, in same vehicle with passengers, between Gillette, Wyo., and points within 300 miles of Gillette, Wyo., and return to Gillette, Wyo. (Restricted to a transportation service to be performed under a continuing contract with Burlington Northern, Inc., for 180 days.) Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Burlington Northern, Inc., P.O. Box 597, Alliance, Nebr. 69301. Send protests to: Paul A. Naughton, District Supervisor, Interstate Commerce Commission, Room 1006 Federal Bldg., and Post Office, 100 E. "B" St., Casper, Wyo. 82601.

No. MC 142574TA, filed October 18, 1976. Applicant: CIRCLE C TRANSPORTATION COMPANY, 5800 York St., Denver, Colo. 80217. Applicant's representative: William J. Lippman, Suite 140 Cherry Creek Center, 360 S. Monroe, Denver, Colo. 80209. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Meats, meat products, and meat by-products and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from Denver, Colo., to points in the United States east of the Mississippi River; and (2) *Materials, equipment and supplies, and such other commodities* as are used, or dealt in by persons engaged in the production and distribution of the commodities named in (1) above, from points in the United States east of the Mississippi River, to Denver, Colo., restricted to the transportation of traffic destined to the facilities of Circle C Beef Company, of Denver, Colo., under a continuing contract with Circle C Beef Company, for 180 days. Supporting shipper: Circle C Beef Company, 5800 York St., Denver, Colo. 80217. Send protests to: Herbert C. Ruoff, District Supervisor, Interstate Commerce Commission, 721 19th St., 492 U.S. Customs House, Denver, Colo. 80202.

No. MC 142575TA, filed October 21, 1976. Applicant: UNDERWOOD TRUCK LINES, INC., 21 S. Depot St., Brazil, Ind. 47831. Applicant's representative: Walter F. Jones, Jr., 601 Chamber of Commerce Bldg., Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers, semi-trailers, trailer chassis* (other than designed to be drawn by passenger automobiles), and parts and accessories therefor, in initial movements, from the plantsite and storage facilities of Great Dane Trailers, of Ind., to points in Indiana, Kentucky, Illinois, Ohio, Michigan and Missouri, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Great Dane Trailers Indiana, Inc., Highway 40 East, P.O. Box 350, Brazil, Ind. 47834. Send protests to: Fran Sterling, Interstate Commerce Commission, Federal Bldg., and U.S. Courthouse, 46 E. Ohio St., Room 429, Indianapolis, Ind. 46204.

No. MC 142580TA, filed October 22, 1976. Applicant: DONALD P. BYERS, 105 Wabash St., Carthage, Ill. 62321. Applicant's representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, Ill. 62701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural limestone*, in bulk, in dump vehicles, from points in Des Moines and Lee Counties, Iowa, to points in Adams, Hancock, Henderson and McDonough Counties, Ill., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: William Gable, dba Gable Elevator, Box 6, Elvaston, Ill. 62334. Housewright Soil Service, Millard Housewright, Owner, Burnside, Ill. Chem Grow Fertilizer Company, Allan Berry, Mgr., Adrian, Ill. 62310. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Room 1386, Chicago, Ill. 60604.

No. MC 142581TA, filed October 26, 1976. Applicant: LEO BRICKMAN, doing business as LEOS, 5502 47th Ave., East, Tacoma, Wash. 98443. Applicant's representative: Anniliese G. Brickman (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Food products*, processed, fresh and frozen, between King, Pierce, and Snohomish Counties, and points in Oregon, California, Nevada and Idaho, under a continuing contract with Oberto Sausage Company, Inc.; and Donald E. Engle Distributing Co. Inc., for 180 days. Supporting shippers: Oberto Sausage Company Inc., 2005 Airport Way S., Seattle, Wash. 98134. Donald E. Engle Distributing Co. Inc., 2601 East F. St., Tacoma, Wash. 98421. Send protests to: L. D. Boone, Transportation Specialist, Bureau of Operations, 858 Federal Bldg., 915 Second Ave., Seattle, Wash. 98174.

PASSENGER APPLICATIONS

No. MC 45626 (Sub-No. 68TA) filed October 22, 1976. Applicant: VERMONT TRANSIT CO., INC., 135 St. Paul St., Burlington, Vt. 05401. Applicant's representative: John J. Dwyer (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular and irregular routes, transporting: *Passengers and their baggage, and express and newspapers*, in the same vehicle with passengers in regular route and round-trip special operations, (1) Regular Route: between junction of New Hampshire Highway 103 and New Hampshire Highway 114 east of Bradford, N.H., over New Hampshire Highway 114 to its junction with U.S. Highway 202 at Henniker, N.H., thence over U.S. Highway 202 to its junction with New Hampshire Highway 103 at Hopkinton, N.H.; (2) Irregular Routes: *Passengers and their baggage*, in round-trip special operations, beginning and ending at points in Vermont, points in Cheshire and Sullivan Counties, N.H., and points in that part of Grafton County, N.Y., west of U.S. Highway 3 and extending to Saratoga Race Track in Saratoga Springs, N.Y., and the United States–Canada International Boundary (destination Blue Bonnets Race Track, at Montreal, Quebec, Canada), and return. Applicant intends to tack its existing authority with MC 45626, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately 12 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: David A. Demers, District Supervisor, Interstate Commerce Commission, P.O. Box 548, Montpelier, Vt. 05602.

No. MC 142582TA filed October 26, 1976. Applicant: JAMES M. SMITH, INC., 1227 Norris Lake Road, Lithonia, Ga. 30058. Applicant's representative: Kem G. Meyer, 40 Marietta St., Atlanta, Ga. 30303. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and oil samples*, in containers, weighing less than 100 lbs., between Lambert International Airport, in St. Louis, Mo., and Scott Air Force Base, Ill., under a continuing contract with Scott Air Force Base, 375th Aeromedical Airlift Wing (MAC), Scott Air Force Base, Ill. 62225. Send protests to: William L. Scroggs, District Supervisor, Interstate Commerce Commission, 1252 W. Peachtree St., NW., Room 546, Atlanta, Ga. 30309.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-32787 Filed 11-5-76;8:45 am]

federal register

MONDAY, NOVEMBER 8, 1976



PART II:

FEDERAL COMMUNICATIONS COMMISSION

■

CUSTOMER INTERCONNECTION, JURISDICTIONAL SEPARATIONS AND RATE STRUCTURES

Economic Implications and Interrelationships Arising From Policies and Practices

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20003; FCC 76-879]

CUSTOMER INTERCONNECTION, JURISDICTIONAL SEPARATIONS AND RATE STRUCTURES

Economic Implications and Interelationships Arising From Policies and Practices

Adopted: September 23, 1976.

Released: September 27, 1976.

First report re Inquiry. In the matter of economic implications and interrelationships arising from policies and practices relating to customer interconnection, jurisdictional separations and rate structures, Docket No. 20003; 39 FR 42025.

PART A—EXECUTIVE SUMMARY

PART B—FIRST REPORT TEXT

I. INTRODUCTION

A. *Nature and Scope of Inquiry*

B. *Historical Background*

1. Pre-1970s competition.
2. Competition by private microwave.
3. Interconnection of customer equipment.
4. Competition from other common carriers.
5. Other cases pertaining to competition.
6. AT&T's responses to competition.

C. *The Record—Positions of the Parties*

D. *Manner of Presentation of This Report*

II. STRUCTURE OF THE DOMESTIC TELECOMMUNICATIONS INDUSTRY

A. *General*

B. *Telephone Companies*

1. AT&T.
2. The Independent telephone companies.
3. Separations, division of revenues and settlements.

C. *The Interconnect Industry*

D. *The Other Common Carriers*

1. Specialized Common Carriers (SCCs).
2. Value added networks or carriers (VANs).
3. Domestic satellite carriers (DSCs).

E. *Other Sectors of the Domestic Telecommunications Industry*

F. *Summary*

III. OVERALL ECONOMIC EFFECTS OF COMPETITION

A. *Historical Results*

B. *AT&T's Contribution Concept*

C. *USITA Study*

IV. INTERCONNECT COMPETITION

A. *Introduction*

B. *Contributions*

1. Contribution Studies.
   a. AT&T.
   b. United States Independent Telephone Association (USITA).
   c. Continental Telephone Company (CTC).
   d. General Telephone and Electronics (GTE).
   e. United Telephone System (UTS).
   f. New York Public Service Commission (NYPSC).
   g. National Association of Regulatory Utility Commissioners (NARUC).
   h. Office of Telecommunications Policy (OTP).
2. Contribution Studies—Summary of Findings.
3. Separations and usage sensitive pricing.

C. *Market and Market Share Forecasts of Interconnect Competition*

D. *Innovation and Interconnect Competition*

E. *Telephone Company Pricing Responses to Interconnect Competition*

F. *Small Independent Telephone Companies*

G. *Summary*

V. IMPACT OF COMPETITION FROM OTHER COMMON CARRIERS

A. *Introduction*

B. *Issues*

1. Direct losses of interstate private line services to the OCCs.
2. Decline in MTS and WATS volume and revenue; decrease in interstate revenue pool.
3. Adjustments in MTS/WATS rates.
4. Economies of scale.
5. Innovation.
6. Docket No. 18128 findings and conclusions.

C. *Summary*

APPENDIX A

PARTIES

APPENDIX B

T&E REPORT (THIS REPORT WILL BE MADE AVAILABLE ON OR ABOUT NOVEMBER 5, 1976 IN FEDERAL COMMUNICATIONS COMMISSION OFFICES)

APPENDIX C

MARKET AND MARKET SHARE FORECASTS OF INTERCONNECT COMPETITION

PART A—EXECUTIVE SUMMARY

1. The role of competition in the supply of telecommunications services to the American public is a subject of current national debate. Competition has long existed in varying degrees and in various sections of the U.S. telecommunications industry. For example, Western Union and AT&T have long competed in supplying domestic private line services for government and industry; the international record carriers (RCA, WUI, ITT, TRT, and several smaller firms) compete in the provision of international record (Telegram and telex) and private line services; some 500 radio common carriers compete with the telephone industry in providing mobile telephone and paging services; and many independent manufacturers compete in the supply of equipment to the telephone industry as well as to individual consumers. However, the current controversy centers on recent actions by the FCC and courts which have expanded the opportunities for private line competition and for customer-ownership and use of terminal devices.

2. In opposing these FCC and court actions, the established telephone industry argues that there are "economies of scale" and other factors in the supply of U.S. telecommunications services which cause this entire market sector to be a "natural monopoly"; that in this situation competition will only result in wasteful duplication of facilities, impairment of the technical and operational integrity of the domestic communications network, and other inefficiencies. The telephone industry further contends that so-called "specialized" services such as private line service and terminal equipment leasing presently generate revenues substantially in excess of their direct costs, which help to defray overall system costs and thus to maintain low rates for basic telephone services; and that any loss of this business to competitive suppliers will inevitably result in higher rates for basic telephone services.

3. This proceeding, Docket 20003, was instituted as a broad fact-finding investigation into the economic effects and interactions of several telecommunications industry and regulatory policies and practices. In particular, we are examining the economic effects of competition in the private line and terminal equipment markets, of present procedures for segmenting intrastate and interstate costs and revenues, and of present rate structures for local telephone services. In this, the initial phase of our investigation, two fundamental questions of immediate concern have been addressed: (1) Whether the existence of competition in the market for private line services and terminal equipment either has caused or is likely to cause a significant loss of revenues by the telephone industry, or an increase in basic telephone rates; and (2) Whether the beneficial cross-subsidies claimed by the telephone industry do in fact exist, and if so whether they will be adversely affected by the presence of competition in the private line and terminal equipment markets.

4. In this proceeding, interested parties have been afforded ample opportunity to submit their views, comments, studies, or other information concerning these major issues as well as numerous subsidiary topics. The Commission's staff, aided by an independent economics consulting firm, has examined these filings in great detail, as well as other relevant data in the public record. The following observations represent a distillation of our findings. For a more comprehensive analysis of each item, reference is made to the main text and/or the report of the consulting firm.

5. First, we are compelled to express our disappointment with the overall depth and quality of the comments and studies submitted. Considering the importance of these issues to the American public, the strong views expressed by some of the parties, and the length of time allowed for preparation, we expected comprehensive economic analyses complete with substantial documentation. Instead, as is elaborated more fully in the main text, we received primarily a reiteration of previous views together with various reports of fragmentary studies, and very little supporting documentation. Accordingly, we find that these comments raise a far greater number of questions than they resolve. Nevertheless, we believe that sufficient evidence exists to enable us to arrive at some initial conclusions which will be valid for the foreseeable future, while we and

others pursue these issues with greater rigor and more factual information.

6. The first question we address is whether competition has had any adverse impact, to date, on telephone industry revenues or basic telephone rates. To answer this question, we have reviewed very carefully the revenue and earnings reports of the telephone industry and its competitors for the past several years—up to and including the most recent quarterly stockholders reports—as well as the supporting arguments presented in recent rate increases proposals for both intrastate and interstate services. We find that the telephone industry—including both Bell and the independent telephone companies—have been experiencing a period of record growth in revenues and earnings, even despite the recent inflationary and recessionary trends in the economy. During the second quarter of 1976, operating revenues for those companies representing more than 95 percent of the industry were up 11–18 percent over the same quarter in 1975—an amount typical of the past several years. For the same period, net income was up 12–22 percent over the corresponding 1975 results while earnings per share were up 15–20 percent. Furthermore, the telephone companies dominate the industry by a wide margin—receiving $35.1 billion, or about 97 percent of total industry revenues, in 1975. Even in the private line and terminal equipment markets—the only areas open to competition—the telephone industry received $4.1 billion, or 95.5 percent as compared with $194 million, or 4.5 percent for the competitive industry. Based on these absolute differences, as well as recent comparative growth trends, we are confident that the telephone industry will continue to dominate its competitors—even in the competitive markets—by increasing margins. Furthermore, there is general agreement among all the comments and studies we have received that competition has had little, if any, adverse impact on telephone industry revenues or local telephone rates to date. Of some 14 intrastate and interstate rate increase requests studied, either granted during 1975 or currently pending, not one cites the existence of competition as a significant factor.

7. Despite the absence of evidence that competition has resulted in any adverse economic impact thus far, the telephone industry claims that there will be a substantial impact in the future. This impact will occur, it is alleged, through a combination of two basic processes: contribution losses and jurisdictional separations effects. We address each of these issues separately.

CONTRIBUTION LOSS

8. According to the "contribution loss" argument, certain telecommunications services have historically been priced so as to yield revenues which substantially exceed their costs, in order that other services could be priced at levels lower than would otherwise be possible. It is argued that if the overpriced services are lost to competition, or even if their price is lowered in response to competition, the price for historically underpriced services will have to be raised. A somewhat different variation of this same argument is that all services must contribute a certain amount of revenues in excess of their directly attributable costs, in order to cover unattributed joint common costs of operation; thus any reduction in revenues from one service (e.g. due to competitive losses or pricing responses to competition) must be made up through increased revenues (and thus rates) from other services.

9. There is little doubt that certain services and/or customers of a large multi-service operation such as the telephone industry may contribute somewhat more than enough to pay for their service, while others may contribute somewhat less. Such a result is perhaps inevitable. The matter to be resolved in the present instance, however, is which services or customers are the beneficiaries of such pricing practices, and which are the "donors"?; and what specific effect could competition in the private line and terminal equipment markets have on these relationships? Specifically, we should like to determine whether those particular services now subject to competition are currently providing any real contribution—i.e. revenues in excess of the total cost of providing such services—and whether and to what extent that is likely to be affected in the future by the existence of competition.

10. In its Embedded Direct Cost (EDC) studies, AT&T attempts to demonstrate that local rates could be increased as much at 70% or more if the presence of competition were to cause the elimination of all revenue "contribution" above directly assigned costs for its interstate and intrastate (other than basic exchange) services. If there were even a remote possibility that presently authorized competition could have an impact of this magnitude, this would of course be a matter for serious concern. However, as we discuss fully in paras. 126–138 of the main report. Bell's analysis is so flawed as to its underlying assumptions, data, and computational methods that it is incapable of demonstrating that the revenues from competitive services even cover their costs—much less that they are making any real contribution toward covering the cost of basic telephone services, or that their loss to competitors is either likely or that this would result in any increase in basic telephone rates if it occured. Indeed, an analysis of Bell's data by T+E shows that basic telephone services are themselves contributing more than their proportionate share of revenues toward covering joint and common costs of operation, and may thus be helping to support (i.e. subsidizing) competitive services—a conclusion not unlike study results before several State regulatory commissions (e.g. New York, Massachusetts, and Vermont) in recent rate proceedings. If this were indeed to prove true, the rates for basic telephone service could be lowered if the telephone industry were to lose business in the competitive markets.

11. In its EDC analysis, Bell simply attempts to show the amount by which the revenues for each of three broad categories of service—Local Telephone, Intrastate, and Interstate—exceed what Bell terms their embedded direct costs. These costs are the historical expenses which Bell considers to be readily assignable to these service categories—and represent some 57 percent of Bell's total costs of operation. The remaining 43 percent of total costs are considered by Bell to be joint and common costs, not allocable to particular service categories. Each service is considered to make a contribution toward covering these joint and common costs which is equal to the excess of revenues over embedded direct costs; and any reduction in revenues for a particular service category is said to represent a loss in contribution. We note, however, that this concept of "contribution" is quite different from the normal interpretation of that term. Bell's contribution does not signify an excess of revenues over total costs (e.g. profit), but merely an excess of total revenues over some costs, i.e. those which Bell considers readily assignable to specific service categories. Since this includes only 57 percent of total costs, each service category is bound to make a "contribution", irrespective of whether its total revenues exceed its total costs (including that portion of the 43 percent in joint and common costs which may be properly allowable to the service category in question). Indeed, each service category defined by Bell does make a substantial "contribution" in this sense, with local telephone service incidentally making the largest proportionate "contribution." But whether one or another of these categories makes a real contribution—i.e., an excess of its total revenues over its total costs—and thus helps subsidize other services is indeterminant from this analysis.

12. In addition to this basic deficiency, we note also that Bell has not separated monopoly from competitive services in structuring its service categories—although this is clearly required if one wishes to develop any analysis concerning the effects of competition. For example, the "interstate" category includes the two long distance monopoly services (MTS and WATS) which together provided some $9.2 billion in annual revenues in 1975, plus the competitive interstate private line service which accounted for only $1.0 billion in revenue. Similarly, the "intrastate" category includes statewide long distance monopoly telephone services (MTS and WATS), intrastate private line services (also a monopoly in most states), Yellow Pages, and a variety of miscellaneous monopoly services in addition to the competitive terminal equipment market. In 1975, the intrastate monopoly services provided $6.9 billion in revenues while the competitive terminal equipment market produced $3.1 billion. Thus the effect of competition on "contributions", even as defined by Bell, simply could not be ascertained using Bell's aggregated cost and revenue data. For a more complete review and analysis of the many flaws in Bell's EDC

Study, see paras. 126–138 of the main report and pp. 3–44 of Deliverable G of the T&E report.

13. The United States Independent Telephone Association (USITA) has submitted the results of a study prepared for it by Systems Applications, Inc. (SAI), a consulting firm. This study concludes that terminal equipment competition has had no significant effect on telephone industry revenues or basic telephone rates to date, but that terminal equipment provides a significant "contribution" within the independent telephone industry, much of which will be lost by 1985 due to competition. Specifically, SAI forecasts that this annual "contribution loss" will increase from $7.7 million in 1975 to $295.6 million in 1985 for the independent telephone industry.

14. Both we and our contractors have discovered major flaws in the SAI study which invalidate its conclusions. First, we note that in calculating "contribution", SAI has throughout included amounts received through the toll settlement process as well as direct lease revenues. As the New York PSC has correctly observed in conducting its analysis of contribution, the existence and amount of such toll settlements are a function of the regulatory policy to subsidize basic and intrastate services and do not derive from the alleged pricing of terminal equipment in excess of terminal equipment costs (direct contribution). Since SAI has not disaggregated its "contribution" results into direct and indirect (i.e., toll separations) contributions we have no means for determining how large an effect this correction would have.

15. Other major deficiencies in the SAI study are the failure either to identify or justify the cost allocation method used; use of questionable and unnecessary present value and annuity computational methods; and the use of informal survey techniques, whose reliability was not determined, in establishing very high growth rates for interconnect market penetration. Because of these deficiencies, we conclude that SAI's final results are invalid both as to the existence and level of present contributions and the potential for future contribution losses. Moreover, our own analysis of SAI's historical data—though necessarily limited due to deficiencies in the data base—indicates that direct revenues for terminal equipment may not be covering the full cost thereof, and that any finding of contribution may result solely from the improper attribution of toll settlement revenues to terminal equipment previously referred to.

16. Other studies purporting to demonstrate that terminal equipment now provides a significant contribution and that significant contribution losses will result from competition have been filed by the Continental Telephone Company (CTC), General Telephone and Electronics (GTE), United Telephone Systems (UTS), the National Association of Regulatory Utility Commissioners (NARUC), and others. These filings, which are analyzed in detail in the main report, were found to contain the same or similar flaws in data, assumptions, and methodology as noted with respect to the AT&T and USITA studies.

17. The New York Public Service Commission, in connection with a recent rate proceeding in that state, has conducted a study explicitly designed to determine whether the revenues received by the New York Telephone Company for terminal equipment leasing exceed the costs incurred for this service, i.e. whether this service provides a real "contribution" toward the support of other services such as basic telephone service. Based on an exhaustive and detailed analysis of actual operating cost and revenue data for NYTelco, the NYPSC concluded "—even on a 1975 embedded cost basis, the revenues from terminal equipment offerings are deficient by more than $225 million." Thus, the NYPSC ordered NYTelco to increase its rates for terminal equipment leasing, across the board, by 25 percent in order to remove the burden which the present earnings deficiencies for terminal equipment was imposing on basic telephone service rates. The NYPSC further noted that under the present situation, the general rate-payer actually benefits when the telephone company loses terminal equipment business to its competitors. Similar findings to those of New York—i.e., that terminal equipment revenues in general are not covering the full costs of providing this service, are found in studies before state regulatory agencies in Massachusetts and Vermont.

18. The NYPSC decisions also dealt with intrastate private line services, finding that rates for this category of services should be increased by some 35 percent in order that revenues would cover costs and thus eliminate the burden these services were imposing on basic telephone services. These results of course, are not directly applicable to interstate private line service. However, in its decision in Docket 18128 just released, the FCC has found that interstate private line services have historically been priced at levels which do not cover their full costs—and thus do not make any real contribution to support other services.

19. Based on the extensive evaluation by our contractor of the comments and studies filed in this proceeding, plus our own staff analysis, we find no convincing evidence that telephone industry revenues from terminal equipment and private line services are presently covering their full costs, much less that they are making a "contribution" toward covering the cost of basic telephone services. To the contrary, we find much merit in the decisions of the New York Public Service Commission, and tentative results in Massachusetts and Vermont proceedings, that the rates for such services should be increased substantially in order to cover their full costs and thus remove the burden they now place on basic telephone service.

SEPARATIONS EFFECTS

20. Since the telephone network is used jointly and in common for both interstate and intrastate services, which fall under different operating organizations and regulatory jurisdictions, some means of allocating costs and revenues between these services is required. These processes are termed "jurisdictional separations" and "settlements" procedures. Under these procedures, a portion of the cost of all intrastate operations (including the leasing of terminals, furnishing of subscriber loops, switching equipment, etc.) is assigned to interstate cost allocations. These costs are subsequently reimbursed to the local company from the interstate revenue pool, i.e., the totality of revenues collected for interstate toll services.

21. Under present separations and settlement procedures, a major portion (e.g., up to 60 percent) of the revenues received by local telephone companies come from the toll revenue poll. Thus any reductions in the level of this pool, or changes in the formulas under which it is divided, could have a significant effect on local company revenues. This is of particular importance to the independent telephone companies, who do not themselves generally provide to all services or collect toll revenues, since what might be simply a transfer from one account to another for the Bell System could be an absolute increase or reduction in revenues for the independent company.

22. Two of the principal claims regarding potential adverse impacts of competition is that it will either reduce the level of the interstate revenue pool or shift the burden of certain costs to basic telephone services through either the present operation or modification of the allocation process. Since neither terminal equipment revenues nor interstate private line revenues are significant parts of the interstate revenue pool for divisions of tolls and settlements purposes under separations formulas—the former being held primarily by the local telephone company while the latter are for the most part excluded from the jurisdictional separations procedures under the formula—the principal mechanisms through which competition could affect the interstate revenue pool would be through diversion of message toll (i.e., basic long distance telephone and WATS) traffic to private line services, or a downward repricing of MTS, WATS or private line services offered by the telephone industry.

23. Seveval parties have submitted comments or studies which predict that one or another or both of these results will occur. AT&T asserts that revenue shortfalls resulting from private line competition will necessitate increases in MTS and WATS rates, while USITA takes the opposite position that AT&T will be forced to reduce MTS and WATS rates in order to prevent diversion of MTS and WATS traffic to private line services. We and our contractor have examined each of these contentions, and the various studies relied upon as their support, and conclude that under present regulatory policies governing the scope of private line competition and anticipated competitive responses by the telephone industry to private line competition, there will be little, if any, diversion or repricing of future MTS and WATS due to this competition, and certainly no net

reduction in interstate revenues from these very large and growing services.

24. Our reasoning behind this conclusion may best be illustrated by reviewing our evaluation of the SAI study results on this subject, filed by USITA. SAI forecasts, in its so-called "base case" scenario, that the specialized common carriers will capture 10 percent of the total long distance market (including MTS and WATS traffic) by 1985. The sole basis for this prediction is SAI's "expert opinion", according to the report. However, it is clear from SAI's discussion that a major underlying assumption is that the sepcialized carriers will be authorized by this Commission to offer services which are essentially duplicative of MTS and WATS. Yet as early as July, 1975 and as recently as July 1976, this Commission has emphatically reaffirmed, in rejecting proposed SCC tariffs, its decision in 1971 authorizing the establishment of specialized carriers that such carriers will not be authorized to provide services which are essentially duplicative of MTS or WATS. Thus SAI's basic premise is unfounded, and its forecasts are accordingly invalid.

25. Beyond this fundamental flaw, however, there are additional factors which mitigate against any substantial penetration of the overall long distance market by specialized carriers. The financial resources required to serve any significant portion of this market—now served by telephone company facilities whose value is in excess of $25 billion—is well beyond the collective financial capabilities or borrowing potential of the specialized carrier industry; which has yet to turn the corner toward basic profitability. Furthermore, any diversion of MTS and WATS traffic is equally likely under monopolistic and competitive environments, so long as the telephone industry itself offers private line services. This point is particularly relevant when it is noted that the private line service offerings of the telephone industry have historically been priced below cost, making them particularly attractive to MTS and WATS users desiring to shift. A final flaw in SAI's analysis is in its failure to consider the market stimulation created by the presence of competition and the development of new services meeting otherwise unmet needs.

26. For the reasons cited here, and others more fully documented in our report, we have concluded that private line competition is not likely to have any significant effect on the overall level of the interstate revenue pool available for separations and settlements. There remains, then, the question of potential impact on basic telephone rates through either the present operation or possible modification of the jurisdictional separations process.

27. Under current procedures, all the revenues for terminal equipment leasing are generally retained by the local telephone operating company, while some 20 percent of the costs of such equipment are allocated to interstate services. Additional revenues to cover these costs are subsequently allocated to the local company from the interstate revenue pool. Thus in theory, the local company receives total revenues from terminal equipment leasing which amount to 120 percent of its costs (100 percent in direct revenues, 20 percent in separations revenues). In practice, as the New York PSC has correctly pointed out, this provides an opportunity for the local company simply to set its lease charges at 80 percent of costs, and make up the remaining costs from the interstate revenue pool via the separations/settlement process. The latter course of action, if true, would seem to constitute predatory pricing and an improper use of the separations/settlement process—which is intended to help support basic telephone service, not subsidize terminal equipment including PBX, KTS, business extensions and other business services. Nevertheless, it is correct to conclude that under present separations/settlement procedures, any loss of terminal equipment business results in a reduction of local company costs which can be allocated to interstate service, and a corresponding reduction in revenues received from interstate toll to cover these costs. Since there is also a direct revenue loss at least theoretically equal to the total cost of the terminal equipment, a net reduction in local operating company revenues can occur. The potential magnitude of this net reduction, however, is very unclear inasmuch as the local company receives from the interstate pool, in addition to those revenues needed to cover costs, a share of any remaining revenues after all costs are covered, which should increase as a result of any lost terminal equipment business.

28. SAI and others have attempted to determine the net effect of these several interrelated factors, in conjunction with their forecasts of future market penetration and overall impact. While we and our contractor have found numerous flaws in the data, assumptions, and methodology employed in each of these studies, such that none of the specific impact forecasts due to this particular factor can be accepted as valid, we do accept the basic conclusion that some such impact could occur, and the further conclusion that this would probably be felt most severely by small independent telephone companies. We note, however, that this does not appear to represent a net loss to the telephone industry, but rather a reallocation of revenues within the industry as compared with present procedures. Thus it appears that the first step to be taken to avoid such consequences, and one clearly within the prerogative and capability of the regulatory community, would be to modify the separations/settlement procedures. While any final conclusion in this regard should probably await the results of a definitive analysis of the causes, effects, and magnitude of this factor as related to various types of telephone companies, as well as an evaluation of alternative remedial procedures, one possible correction might be to remove terminal equipment from the separations/settlement procedures entirely, as suggested by AT&T, and allow it to stand on its own as to cost and price. This might also be accompanied, as suggested by AT&T, by modification of certain factors in the separations formula which would return a comparable amount of revenues from the interstate pool to the local companies, without the inclusion of terminal equipment costs. With either or both these approaches, it might also be appropriate to unbundle local service rates and provide for a "network access charge" for all subscribers, irrespective of terminal equipment ownership, again as recently adopted by the New York PSC. In any event, it seems clear that this is primarily a problem of allocation rather than net loss in revenues, that no identifiable impact has occurred to date from this situation, and that corrective action both can and should be taken by the regulatory community. One modification in separations procedures which the regulatory community should not, and in our view probably cannot, take is that assumed by SAI in its analysis, i.e., a return to "board-to-board" separations in which all subscriber plant is simply ignored. We believe the courts have decreed, and that it is sound public policy, that interstate revenues should cover a portion of all telephone company costs incurred in the rendering of interstate services including appropriate local exchange costs.

Conclusions and Recommendations

29. For all the reasons cited above and developed more fully in the attached report, we find that there is no apparent basis for the telephone industry's claims that private line and terminal equipment competition either have had or are soon likely to have any significant adverse impact on telephone company revenues or on the rates for basic telephone services. Specifically, we find no evidence to support the industry's claims that these services currently provide any contribution or excess of revenues over costs, which helps maintain low rates for basic telephone service. Indeed, we find much merit in the study findings before the New York, Massachusetts, and Vermont public service commissions that precisely the opposite may be true, i.e., that terminal equipment and private line services may be earning less than their full costs, and thereby imposing a burden on basic telephone rates.

30. The telephone industry is currently experiencing very high growth in both revenues and earnings. We find nothing in the current financial state of its competitors nor in the various studies submitted herein which would lead us to expect a significant change in this growth or a significant penetration of the private line and terminal equipment markets—much less the total telephone industry markets—by these competitors.

31. Accordingly, we do not believe there is any economic need or justification for any reexamination or revision of our existing policies allowing competition in these two market sectors. We do, however, recognize that present ratemaking practice and separations procedures might possibly lead to some undesirable shifts in revenue requirements

from interstate to intrastate services, with the further possibility that small independent telephone companies might be most seriously affected by any such shifts. Accordingly, we propose to review with state regulatory agencies the various possible cause/effect relationships which could lead to such results and alternative rate-making and separations procedures through which appropriate corrections can be made. We note, in fact, that some of these measures appear worthy of serious consideration irrespective of any issues concerning competition, as is clearly demonstrated by the recent study findings before the New York, Massachusetts, and Vermont commissions. Specifically, we propose that immediate consideration be given to the possibility and probable effects of (a) Removing terminal equipment from the separations process, (b) Establishing a "network access charge" for all subscribers irrespective of terminal equipment ownership, and (c) Conducting an engineering cost analysis of local exchange operations to determine what, if any, changes in the separations procedures should be made to better reflect initial causational effects of any special requirements imposed on the local exchange plant by interstate service requirements, and (d) Substantial revision to the Uniform System of Accounts, in order that cost and revenue data can be readily segregated by service category.

PART B—FIRST REPORT TEXT

I. INTRODUCTION

A. *Nature and scope of inquiry.*—32. By Notice of Inquiry issued on April 10, 1974 (46 FCC 2d 214) and supplemented on December 17, 1974 (50 FCC 2d 574), we began a broad fact-finding inquiry into the economic implications and interrelationships which arise from regulatory policies and current pricing practices for telecommunications services and facilities, particularly those subject to competition. We specified as key issues the economic effect on telephone costs and charges of: (a) The interconnection of customer-provided terminals and other facilities to the switched telephone network, (b) the competitive supply of private line common carrier services, (c) the use of flat-rate and other cost-insensitive pricing practices for local exchange services, and (d) jurisdictional separation of revenues and expenses for plant and facilities commonly used for both intrastate and interstate (or foreign) services. The Supplemental Notice set forth for the guidance of the parties a detailed itemization of subissues and specific matters on which we desired to gather information (50 FCC 2d 574, 576–588).

33. This proceeding was intended primarily as a fact-finding inquiry to obtain information that would be useful not only to this Commission in the discharge of our statutory obligations but also to other agencies, including the State utility commissions, in carrying out their responsibilities. We did not propose in this particular proceeding to adopt any rules or policies. However, we expect that the record developed in this inquiry may be used in part to facilitate the resolution of questions in pending or future rulemaking proceedings. Moreover, this record may form the basis for separate regulatory actions by us or by other regulatory bodies. (Notice, 46 FCC 2d at 214–15; Supp. Notice, 50 FCC 2d at 574).

34. We contracted with "T+E, Inc. (T+E)" of Cambridge, Massachusetts to summarize the record and analyze the filings of the parties. The T+E report to us, comprising seven volumes denominated "Deliverables," is appended hereto. For the most part we believe that the T+E report contains a useful summary and analysis of the record and to this extent we rely on it extensively. However, we have found it necessary to analyze portions of the filings of some parties in greater depth, as reflected below. Moreover, in some instances the record appears deficient, particularly in the case of OCC competition, although our Further Notice of Inquiry sought comprehensive and detailed data on the listed matters (50 FCC 2d 544). Accordingly, we have turned to other appropriate sources of relevant information such as our own common carrier statistics compiled from reports by the carriers, and a report by Frost and Sullivan, Inc. entitled The Telephone Interconnect Market (Report No. 396, January 1976). AT&T has filed numerous exhibits on the desirability of vertical integration of the telephone company. We do not address that question here since it is at issue in Docket No. 19129 which is pending before us for decision.

35. Before turning to the material filed by parties in response to the notices, we believe that it may be helpful to briefly set forth the historical background and principal decisions which give rise to the questions we are exploring here.

B. *Historical Background*—(1) *Pre-1970s Competition.* 36. In the latter part of the 19th century, The Western Union Telegraph Company (Western Union) was the dominant communications carrier. After Western Union declined an opportunity to purchase the Bell Telephone patents, Western Union and American Telephone and Telegraph Company (AT&T) eventually settled their differences by dividing the communications market into telegraph and telephone services and agreeing generally not to compete in their respective service offerings.[1] Apart from AT&T, Western Union faced competition principally from Postal Telegraph Cable Company (Postal) until the economic difficulties of the latter led Congress to amend the Communications Act of 1943 to permit the merger of Western Union and Postal.

37. There has long been competition to the telephone companies in the provision of mobile telephone service. In the 1940s the Commission established the land mobile radio service, authorizing both telephone companies and independent radio common carriers (RCCs) on different blocks of frequencies (1 Pike & Fischer, RR 91:143, 165).[2] There are now about 500 RCCs in all areas of the country, providing two-way mobile service and one-way paging service, in competition to the telephone companies.

(2) *Competition from private microwave.* 38. In the early 1940's the Army Signal Corps found that it needed additional telephone transmission capacity in North Africa. Using the then new principle of radio transmission by means of wave lengths a few centimeters long (microwaves), they designed a system of radio relays which could not be monitored except by locating the monitor between the two stations. Construction of this type of network was more economic and easier than laying cables in the Sahara Desert, since the antenna towers could be as much as 35 miles apart. After the war, there were two new technologies of transmission—coaxial cable, and microwave. The Bell System made a policy decision to stress the use of coaxial cable, until the advent of television. A television signal utilizes the same capacity as 300 two-way telephone calls (600 voice grade circuits). This large quantity could not feasibly be transmitted down a wire, or even (at that time) a coaxial cable. In response to the need for this new service requirement AT&T used microwave to provide network television and miscellaneous common carriers came into existence to carry television programs to more remote parts of the country.[3] These carriers used microwave systems.

39. While the FCC licensed microwave transmitters and systems, and assigned frequencies, these assignments were temporary pending the accumulation of sufficient information on common carrier microwave needs so that permanent allocations could be made. In 1956 the FCC launched Docket 11886—"In the Matter of Allocation of Frequencies in the Bands Above 890 Mc" (known as the "Above 890" proceeding).

40. In 1957, 22 percent of Bell telephone traffic was on microwave (0.5 million circuit miles) as was 78 percent of Bell intercity television mileage (60,000 miles). It was estimated that by 1967, 55

[1] AT&T achieved its dominance in the telephone sector by enforcing its patents, acquiring its competitors and refusing to sell equipment to or interconnect with the independent telephone companies. These latter practices ceased when AT&T and the Justice Department signed the "Kingsbury Commitment" in 1913.

[2] The purpose of the separate frequency allocations was to assure that the telephone companies did not preempt most or all of the available frequencies. Over the years the frequencies used by the RCCs have become heavily congested in some areas of the country, whereas the telephone companies have not used all of their frequencies in such areas.

[3] Additionally, railroads, pipelines, lumber camps and others in remote locations installed microwave facilities. For example, the first long over-water hop was accomplished by the Southern Pacific Railroad, which was a microwave pioneer, along with Motorola as a manufacturer.

percent of Bell telephone circuits would be on microwave (70 million circuit miles). Congestion was noted in some cities, but improvements in technology seemed able to prevent saturation of frequencies. The Western Union Telegraph Company and the independent telephone companies also made extensive use of point-to-point microwave. According to the Operational Fixed Microwave Council in 1957 there were approximately 253 private users and proposed users, with an aggregate of 3,012 transmitter/beams of about 35 miles each. The utilities (gas, electric, water and steam) had 513 stations and 14,000 system route miles, or 69,000 channel miles. Their estimate was that by 1970 there would be about 1,160 stations and 26,000 system miles. There were special industrial services, the oil industry, airlines, railroads, truckers all using or proposing to use point-to-point microwave. The common carrier systems claimed to serve the general public and that their use of microwave would lower cost, allocate frequencies more efficiently and benefit the national defense. The private users claimed that they would gain increased efficiency resulting in lower cost, that there would be more flexibility in priorities and that they would benefit the national defense.

41. One of the major issues was whether there were enough frequencies available to meet all needs. The Commission after carefully reviewing the record concluded there would be. In 1959 the Commission decided to make available frequencies for private microwave systems for business use, upon finding that there was no showing in the record before it of a reasonable likelihood that adverse economic effects would result from the licensing of private systems. *Allocation of Frequencies in the Bands Above 890 Mc.*, 27 FCC 359, 411–412 (1959), 29 FCC 825, 849–852 (1960). The Commission noted that the AT&T tariffs did not permit interconnection of private microwave facilities to the telephone network, but deferred consideration of that question for tariff review procedures (29 FCC at 841). In response to the possibility of competition by private microwave systems, AT&T filed a tariff for Telpak, a bulk discount offering of private line service. After hearing, the Commission found that the Telpak A and B classifications were not justified by competitive necessity and the rates were unlawfully discriminatory as compared to other private line services. AT&T (Telpak), 37 FCC 1111, 1118 (1964) aff'd sub nom *American Trucking Associations, Inc.* v. *F.C.C.*, 37 F. 2d 121 (1966). The Commission concluded that there was apparent justification for the Telpak C and D classifications in terms of meeting competition from private microwave systems, but was unable to determine on that record whether those rates were compensatory so that users of AT&T's other services would not be burdened (ibid.). Subsequently, the Commission undertook in Docket No. 18128 to determine whether the Telpak and other private line tariffs were compensatory or burdensome to telephone and other services (AT&T, 13 FCC 2d 853 1968)). The Commission also found in another proceeding that the Telpak sharing provisions were unreasonably discriminatory and unlawful. Telpak Sharing, 23 FCC 2d 606 (1970), aff'd in part sub nom *AT&T* v. *FCC*, 449 F 2d 439 (C.A. 2, 1971); see also 31 FCC 2d 674 (1971), 32 FCC 2d 619 (1971).

(3) *Interconnection of customer equipment.*—42. The prohibition in the AT&T tariffs against interconnection of customer-supplied terminal equipment[4] generally remained absolute until 1956 when the United States Court of Appeals for the District of Columbia Circuit ruled that the tariff restriction, as applied to the Hush-a-Phone device, was an "unwarranted interference with the telephone subscriber's right reasonably to use his telephone in ways which are privately beneficial without being publicly detrimental" (*Hush-a-Phone* v. *U.S.*, 238 F. 2d 266, 269).[5] The Commission on remand then ordered AT&T to cancel the tariff prohibition against the Hush-a-Phone device "or any other device which does not injure defendants' employees, facilities, the public in its use of defendants' services or impair the operation of the telephone system." Hush-a-Phone, Decision and Order on Remand, 22 FCC 112 (1957).[6] Subsequently, in reliance on the Hush-a-Phone principle, the Commission held that the AT&T broad tariff prohibition was unlawful as applied to Carterfone[7] and other interconnecting devices. Carterfone 13 FCC 2d 420 (1968), reconsideration denied 14 FCC 2d 571 (1969). We found that "the tariff was unlawful, and had been in the past, because it prohibited the use of Carterfone and other interconnecting devices without regard to actual harm caused to the system" (14 FCC 2d at 572). In addition to considering the question of technical harm, we recognized that the economic effects were a pertinent public interest consideration but found no showing in the Carterfone record to demonstrate economic harm (14 FCC 2d at 572–573).

43. Following "Carterfone" AT&T filed tariff revisions permitting interconnection of customer-provided terminal equipment subject to requirements for telephone company-provided connecting arrangements (CAs) and network control signalling units (NCSUs). "AT&T Foreign Attachment Tariff Revisions," 15 FCC 2d 605 (1968), reconsideration 18 FCC 2d 871 (1969). The Commission allowed the tariff revisions to go into effect but commenced a Federal-State Joint Board proceeding (Docket No. 19528) to determine whether the CA and NCSU restrictions could be liberalized without technical harm to the telephone network "Interstate and Foreign MTs and WATS," 35 FCC 2d 533 (1972). The question of potential economic harm was deferred pending consideration of our findings in this docket. The "First Report and Order in Docket No. 19528" (56 FCC 2d 593 (1975), reconsideration 58 FCC 2d 716) established a registration program to allow users to connect certain terminal equipment to the telephone network without the need for carrier-supplied CAs, provided that the equipment or the connecting protective circuitry has been certified by the Commission pursuant to Part 68 of the rules which is designed to protect the telephone network from technical harm. The Commission's "Second Report and Order in Docket No. 19528 "further amended Part 68 of the rules to include private branch exchanges PBX's), key telephone systems, and main station telephones in the registration program (58 FCC 2d 736 (1976)). The United States Court of Appeals for the Fourth Circuit stayed the effectiveness of the Commission's orders in Docket No. 19528, but on June 16, 1976, after oral argument, ended the stay with respect to customer provided data, and ancillary devices ("North Carolina Utilities Commission v. FCC and USA," Case No. 76–1002, C. A. 4). The court appeal on the merits is still pending. The Commission recently revised its rules to specify standard plugs and jacks for the connection of telephone equipment to the telephone network. "Report and Order in Docket No. 20774," FCC 76–617, 41 FR 28694 (1976).

(4) *Competition from other common carriers.* 44. One important element of the Computer Inquiry, which was begun in 1966 and will be discussed infra, was the revelation of an unmet need that was actually one of the implications of the "Above 890" decision and the growth of computer and private line services: there was need for a company or companies capable of providing flexible private line services which could be tailored to the special needs of the users. Such a company could provide new and more flexible services with a plant designed for private line use rather than exchange telephone use. In 1970 as a result of a large number of applications for microwave stations on the part of MCI (Microwave Communications, Inc.), Datron (Data Transmission Co., a subsidiary of University Computing) and others, the FCC launched "In the Matter of Establishment of Policies and Procedures for Consideration of Application to Provide Specialized Common Carrier Services in the Domestic Point-to-Point Microwave Radio Service and Proposed Amendments to Parts 21, 43 and 61 of the Com-

[4] Such forbidden attachments included plastic covers on phone books (as recently as 1975 such a case was taken by the telephone companies to the Supreme Court of North Carolina which overturned the prior State P.U.C. ruling that such a tariff restriction was valid), shoulder rests attached to the receiver, and dial locks to prevent people from calling out from a telephone.

[5] The Court reversed the Commission's prior ruling upholding the validity of the tariff against the Hush-a-Phone (20 FCC 391, 425–427 (1955)).

[6] The Hush-a-Phone was a plastic cup clipped to the mouthpiece of the telephone to assure privacy and also to promote intelligibility in noisy environments.

[7] The Carterfone was an inductive-accoustically coupled device which allowed a mobile telephone user to access the public telephone network through the mobile system's base station, where the Carterfone was installed.

mission's Rules," Docket 18920,[8] "Specialized Common Carriers" for short.

45. The FCC had already granted MCI its Chicago-St. Louis system in deciding "Microwave Communications, Inc.,"[9] but the issue here was whether to embody such grants in a new general policy. These carriers proposed to provide their own networks. Datran was to provide highly reliable low cost data services, using digital transmission, a variety of speeds and other benefits on a switched network. MCI offered customized communications services at low cost, low error rate, and a number of other flexible tariff provisions. Both companies intended originally to provide their own local distribution links using microwave, but eventually were forced by cost considerations to go to telephone companies for local circuits (MCI had originally intended to use both microwave and telephone company facilities).

46. In the "Specialized Common Carrier" Decision (29 FCC 2d 870, 920 (1971)), the Commission treated at some length the question of the potential economic effect of new entry, finding no reason in the record before it to anticipate any adverse impact on service to the public by existing carriers[10] such as to outweight the considerations supporting new entry (29 FCC 2d at 910–920). We further found that there is a public need and demand for the proposed services and for new and diverse sources of supply of communications, that competition in the private line field is reasonably feasible, and that new entry can reasonably be expected to have some beneficial effects for the public (29 FCC 2d at 920, 904–910). Among the anticipated beneficial effects were: broadened consumer choices, dispersed responsibility for the supply of communications, economies of specialization, and provision of a regulatory yardstick and an incentive for technical and service innovation by AT&T (29 FCC 2d at 909–910). We also decided that AT&T could compete fully and fairly in private line services and could, where appropriate, depart from nationwide average pricing for private line services (29 FCC at 915). On reconsideration the Commission further found no reasonable likelihood of economic harm to independent telephone companies (31 FCC 2d 1106 (1971)). The Commission's Specialized Carrier decisions were affirmed by the United States Court of Appeals for the Ninth Circuit "sub nom Washington Utilities & Transportation Commission v. F.C.C.," 514 F. 2d 1142 (1975), cert. den. 423 U.S. 836.

47. In the proceeding in Docket No. 16495 promulgating policies for the authorization of domestic satellite facilities, the Commission decided upon a policy of multiple entry by telephone and specialized carriers.[11] "Domestic Communication-Satellite Facilities," 35 FCC 2d 844 (1972); on reconsideration 38 FCC 2d 665 (1972). The Commission also decided for the first time to consider the authorization of an independent telephone company (GTE Service Corporation) to provide some of the interstate transmission facilities for telephone service, previously supplied only by AT&T, provided that GTE demonstrated the absence of operational or economic prejudice to the telephone network (35 FCC 2d at 853–854). Although the Commission granted GTE authorization for a separate domestic satellite system upon a finding that GTE had made the requisite showing, GTE later chose not to pursue that grant but rather to own earth stations in AT&T's domestic satellite system. The latter authority was granted after a hearing ("GTE Satellite Corporation," 57 FCC 2d 147 (1975)).

48. Recently the Commission has reiterated that its specialized carrier policy decision and authorizations permit competition only in the provision of private line services and do not authorize carriers other than telephone companies to provide message telephone service (MTS). See "MCI Telecommunications Corporation" (Docket No. 20640, FCC 76–622, released July 13, 1976), where the Commission ordered MCI to cease offering Execunet service because that service has the essential characteristics of MTS and is beyond the scope of MCI's specialized carrier authorizations.

(5) *Other cases pertaining to competition.* 49. In addition to authorizing facilities to OCCs, the Commission has authorized "value added carriers" which lease channels from AT&T or other carriers under voluntarily filed tariff provisions and provide additional equipment and services of value to their customers. "Packet Communications, Inc.", 43 FCC 2d 922 (1973); Graphnet Systems, Inc., 44 FCC 2d 800 (1974); "Telenet Communications Corp.", 46 FCC 2d 680 (1974). For example, a value added carrier may combine the leased circuits with computerized switching facilities which enable data communications between otherwise incompatible terminals. On July 16, 1976 we determined in Docket No. 20097 that tariff provisions preventing or restricting unlimited resale and sharing of private line services are unlawful "(Resale and Shared Use of Common Carrier Services," FCC 76–641, 41 FR 30657). We found that the resale of communications is a common carrier activity fully subject to our Title II jurisdiction, and that sharing must be on a non-profit basis (FCC 76–641 at paras. 129, 130). This decision is presently before the Commission on petitions for reconsideration.

50. On August 9, 1976 we began an inquiry and proposed rule making in Docket No. 20828 (FCC 76–745) to revise the rules adopted in our "Computer Inquiry" ("Tentative Decision", 28 FCC 2d 291 (1970), "Final Decision," 28 FCC 2d 267 (1971), aff'd in part "sub nom GTE Service Corp. v. FCC," 474 F. 2d 724 (C. A. 2, 1973)). In the "Computer Inquiry" we decided that common carriers may not offer data processing services except through a separate subsidiary organized in accordance with § 64.702(c) of our rules,[12] and declined to exercise jurisdiction over data processing services. We gave consideration to hybrid services combining data processing and message switching, exercising jurisdiction over hybrid communications services wherein the data processing capability is incidental to the message switching function but not over hybrid data processing service wherein the reverse is true. Our current Inquiry recognizes that technological advances in computer hardware and software are blurring the distinctions between data processing and communications, and make new definitions appropriate. We are proposing to delete the "hybrid service" concept and to arrive at a definition of data processing which will provide a demarcation between data processing and communications service.

(6) *AT&T's responses to competition.* 51. In response to competition by independent equipment suppliers, AT&T has introduced new and modified equipment offerings and, in some instances, has lowered its equipment charges (see Parts IV(D) and (E) below). AT&T's response to other common carrier (OCC) competition has been three-fold. First, it has filed tariff revisions for voice grade private line services which generally reduced charges on high density routes served by OCCs and set higher charges on low density routes.

52. Second, in response particularly to a digital data offering by Data Transmission Company (Datran), AT&T sought and was granted authority to provide a new dataphone service utilizing the digital data under voice (DUV) technique on its existing microwave and T1 carrier facilities—a technical innovation which it maintained would make more efficient and economic use of the spectrum. We set AT&T's tariff for the new dataphone digital service (DDS) for investigation and hearing in Docket No. 20288 to determine whether the rates, which are below those of Datran, are just and reasonable (50 FCC 2d 501 (1974)). This matter is pending before the Commission for decision upon exceptions to the Initial Decision of the Administrative Law Judges (FCC 76 D–34). There is also pending an application by AT&T for authority under Section 214 of the Act to provide dataphone switched digital service (No. at–P–C–778).

53. And, third, AT&T initially refused to interconnect with the OCCs for some private line services (foreign exchange

[8] 29 FCC 2d 870.

[9] 18 FCC 2d 953, 21 FCC 2d 190.

[10] The Commission reasoned that even if all of AT&T's private line revenues were lost, something not very likely, amounting to less than 4 percent of AT&T's total revenues, the public would not be harmed (29 FCC 2d at 885, 891–892).

[11] The policies adopted in Docket No. 16495 also permit the authorization of domestic satellite facilities to private entities.

[12] This was done so as to prevent cross-subsidization of the data processing activities of a carrier (competitive) by its communications activities (regulated). The Commission saw no public interest benefit to be gained by not allowing carriers to enter the data processing arena as long as the communications user did not pay more for his services than absolutely necessary.

(FX) and common control switching arrangements (CCSA)). After a show cause proceeding in Docket No. 19896 the Commisison found that AT&T was under an obligation to furnish to the OCCs interconnection facilities for all of their authorized services. "Bell System Tariff Offerings," 46 FCC 2d 413 (1974), aff'd "sub nom Bell Telephone Company of Pennsylvania v. FCC," 503 F. 2d 1250 (C.A. 3, 1974), cert. den. 423 U.S. 886 (1975). In Docket No. 20099 the Commission accepted a settlement agreement between AT&T and other carriers which set forth the rates, terms and conditions for AT&T's OCC facilities offering (AT&T, 52 FCC 2d 727 (1975)). See also, the Commission's Report and Order on multiple satellite hops (FCC 76-766, adopted August 5, 1976) which accepts a negotiated agreement on interconnection between AT&T and domestic satellite carriers.

54. The history cited above demonstrates this Commission's great concern with the needs and desires of the regulated companies' customers, which is the traditional concern of any governmental body directly involved in the regulation of a public utility service. The Commission recognizes that these needs and desires are continually evolving, and it has therefore provided for a certain amount of flexibility in many of its decisions.

C. THE RECORD—POSITIONS OF THE PARTIES

55. The current inquiry (Docket No. 20003) was undertaken to analyze the economic implications and interrelationships arising from regulatory policies and current pricing practices for telecommunications services and facilities. This inquiry is broadly concerned with the economic effect on telephone costs and charges of: (a) The interconnection of customer-provided equipment to the telephone network, (b) the competitive supply of private line services, (c) local exchange rate structures, and (d) jurisdictional separations for allocating commonly used plant and revenue requirements between intrastate and interstate services. This Report is primarily directed toward the first two issues: the effects of interconnection and private line competition. As the Inquiry continues, we will address the other issues.

56. In response to our Notices of Inquiry a large number of interested parties filed voluminous material and studies. While we specified a cut-off date of July 12, 1976 in order to permit preparation of a report on the record to date, it is our intent that this Inquiry shall continue. The parties are listed in Appendix A below. They include AT&T, various independent telephone companies, the United States Independent Telephone Association (USITA), Western Union, various OCCs and terminal equipment suppliers, NARUC and two State Public Service Commissions, the Office of Telecommunications Policy (OTP), and various communications users.

57. We have one further comment before summarizing very briefly the major positions of the parties. This record is voluminous and useful studies have been filed. However, it appears from the record, as well as from the T+E report, that to a significant extent some parties are renewing contentions which were made and considered in prior proceedings (e.g., "Specialized Common Carrier," 29 FCC 2d 870 (1971); Orders in Docket No. 19528, 56 FCC 2d 593 (1975), 58 FCC 2d 716, 58 FCC 2d 736 (1976)). We note that apart from updated estimates this record does not contain much new support for such allegations. Despite our desire for a full record which would enable factual findings, the documentation for some contentions is either nonexistent or no better than what we have previously considered. We cannot accept unsubstantiated or inadequately supported contentions as a basis for findings of fact.

58. Since the key arguments and studies of the parties are addressed below in Parts III–V of this Report, we shall here indicate only the general tenor of representative positions so as to introduce our discussion of the issues.

(a) *AT&T.* 59. AT&T maintains that:

(1) The telecommunications industry is historically and naturally a regulated monopoly due to economies of scale (Bell Ex. 9 and 14) and because duplication of communications facilities is wasteful.

(2) The public interest has been served by traditional ratemaking practices—value of service pricing, rate and cost averaging, and the pricing of certain services above costs so that the costs of basic services may be kept low.

(3) Intercity services and terminal equipment make contributions to unallocated common costs that keep exchange rates low.

(4) Jurisdictional separations methods have also promoted universal telephone service by keeping basic local exchange rates low.

(5) As a regulated monopoly the telephone company has made high quality communications services widely available at low cost.

(6) AT&T has been innovative (Bell Exs. 35 and 37).

(7) Vertical integration of AT&T is imperative in order to maintain the integrity of the telephone system.

(8) Competition from the OCCs will have adverse economic effects on telephone users.

(9) The principal intercity services—MTS, private line and Wide Area Telephone Service (WATS)—are cross-elastic (Bell Ex. 34), and the intercity network is designed to take advantage of economies of scale.

(10) The OCCs are offering few, if any, new services, but rather are exploiting opportunities opened by traditional pricing policies.

(11) Competitive responses of AT&T can mitigate the loss (Bell Ex. 10); if competition is allowed, it should be full and fair.

(12) Loss of intercity revenues to OCCs will reduce the benefits of economies of scale by increasing AT&T's circuit costs and delay the introduction of new large scale technology.

(13) Such competitive loss of revenues will reduce the contributions that these intercity services make, thereby adversely affecting local exchange rates.

(14) Private line revenue losses will require increases in MTS rates as well, with resultant decline in MTS demand.

(15) Savings from usage sensitive pricing of local exchange service do not provide a satisfactory answer, since the pricing efficiencies would be offset by the associated measurement costs.

(16) Competition from the interconnect industry will adversely affect the local exchange rates because these equipment offerings by the telephone company make a contribution to basic exchange service and the separations procedures are based on having the telephone company provide the terminal equipment.

(17) Traditional pricing policies encompass end-to-end service.

(18) Interconnect competition may undermine the integrity of the entire telephone network.

(19) The certification programs adopted by the Commission will entail considerable supervision and enforcement costs.

(20) The multiple suppliers of terminal equipment, facing a fragmented market, will delay the introduction of innovations.

(b) *Independent telephone companies.* 60. The independent telephone companies and United States Independent Telephone Association (USITA) respond generally along the lines of AT&T. In addition, it is asserted:

(1) The adverse impact of competition, particularly from the interconnect industry, on independents will be greater than on AT&T and will increase their capital costs.

(2) Independents do not have the same ability as AT&T to make competitive responses.

(3) The provision of terminal equipment should not be on different bases—regulated for telephone companies and non-regulated for independent suppliers. Both should be non-regulated, or, in any event, subject to uniform accounting requirements.

(4) Competition from the interconnect industry will adversely affect the depreciation schedules of the telephone companies.

(5) If the telephone companies no longer provide station equipment, new separations procedures will be required.

(6) USITA attaches (USITA Attachment B) preliminary results of a continuing study by Systems Applications, Inc. (SAI) on the impact of OCCs on independents, concluding that the OCCs presently have a competitive advantage because AT&T interstate rates subsidize low exchange rates, but the OCCs could not survive in direct cost/price competition because they are high cost suppliers. Competition from OCCs and the interconnect industry will not benefit the public, but rather will lead to higher exchange rates, retard innovation and increase the regulatory burden.

(7) The final report of SAI on OCCs projects that the OCCs will have a significant share of the total composite toll market by 1985 and that MTS rates will be reduced in order to compete with highly cross-elastic OCC services.

(c) *Other common carriers.* 61. Western Union did not submit a lengthy response in this Inquiry but relied instead on its filings in other proceedings. MCI and other OCCs claim that:

(1) OCCs are providing new services previously neglected by the telephone company.

(2) In offering some services which are highly cross-elastic with those of AT&T, the OCCs give customers a choice between various qualities of service and sometimes lower prices (than telcos) or telephone company services which may not always suit the needs of individual users.

(3) AT&T's private line services are not competitive with the OCC services, given the current market size.

(4) AT&T's tariff responses to private line competition reflect cross-subsidization from MTS and WATS and need regulatory scrutiny.

(5) AT&T is not a low-cost carrier in private line markets, since it must cross-subsidize to remain competitive.

(6) The OCCs, by creating additional sources of supply, bring lower prices and more innovational activity.

(7) The OCCs will be viable in the long-run on a cost effective basis.

(8) The impact of OCC competition on residential exchange rates will not be significant, particularly since competitive responses by AT&T should prevent a serious erosion of its market shares.

(9) AT&T's market projections of revenue loss are highly exaggerated when compared to actual OCC revenues.

(10) It is unclear that exchange service is now subsidized; it may be that exchange service is subsidizing intrastate toll.

(11) Any revenue impact of OCC competition can be neutralized by employing some form of usage sensitive pricing for exchange service.

(12) Competition should lessen. AT&T's capital requirements for interstate facilities insofar as those used for private line are essentially fungible with those required to furnish MTS.

(13) Since AT&T's private line service is non-compensatory, the loss to competition reduces the required subsidy from MTS users.

(14) Competition has not caused any delay in the introduction of new service by AT&T, quite the contrary.

(15) AT&T's Long Lines Department should be a separate entity in order to simplify regulation and eliminate anti-competitive cross-subsidies.

(d) *Interconnect companies.* 62. The Computer and Business Equipment Manufacturers Association (CBEMA) and other interconnect companies or associations claim that:

(1) The interconnect companies have introduced significant innovations in terminal equipment and provided customers with a wider variety of equipment that more closely fits their individual needs.

(2) Competitive pressures have forced AT&T to respond, usually with imitative offerings.

(3) The manufacture of terminal equipment is not characterized by economies of scale and high capital costs for entry; it is not a natural monopoly.

(4) This competitive area should not be blocked simply to permit telephone companies to raise revenue to support other services.

(5) Competition to date has not caused any serious disruption.

(6) Rate increases due to inflation are outstripping any competitive effects.

(7) Interconnect competition will not significantly impact on local exchange rates, since the telephone companies imitative responses will prevent a serious erosion of their markets and they have never offered complex data equipment.

(8) While noting that NARUC projects that telephone companies would retain very substantial shares of the key telephone system and PBX market, CBEMA claims that the telephone companies will enjoy a net revenue increase due to expansion of the markets in large part because of interconnect competition.

(e) *Users.* 63. Those users who filed in this proceeding generally assert that:

(1) Quality and service improvements have resulted from OCC and interconnect competition, both from the competition and subsequently from AT&T.

(2) Communications costs to businesses have decreased.

(3) Changes in rate structures that tend to reflect relative costs should be allowed.

Specific examples of user comments are as follows:

Telecommunications Management Inc., a consultant to private industry for telecommunications services: The specialized carriers have brought to the market place a refreshing sense of concern for the customer and his needs. The American public, as a whole, must surely benefit : s reduced telecommunications costs and increased flexibility allow businesses to operate more efficiently and keep their prices down.

Krigger and Company, Inc.: I had contacted the Bell System quite a number of times to price a direct line to our Cleveland office, but the price of the service was prohibitive and I would not stand the expense. When MCI contacted me, their service was a full 35% cheaper than Bell's and at this price, it was a service I could afford.

Bunker Ramo Corporation: [S]pecialized common carriers have produced a new competition into long lines pricing of all classes of service offered currently under FCC Tariff 263 and 266. We also have seen an improvement of service as it would pertain to matters of trouble nature or installation as a result of the entry of new carriers.

MCI questionnaire to its users, as tabulated by Thomas H. Farrell Associates: 79 percent said competition stimulated new service offerings; 65 percent said OCC offerings meet requirements not previously met by established carriers; 76 percent believed that improvements in their telecommunications services created economies which ultimately lower their prices to consumers and increased the variety and improved the quality of their goods and services; 55 percent said OCCs offer new services that met a special requirement of theirs, unfulfilled by the established carriers.

(f) *Regulatory Agencies.* 64. NARUC's position is as follows:

(1) NARUC estimates from its study that OCC competition and PBX and key system interconnection will cost basic exchange subscribers a substantial amount by 1984.

(2) PBX and key system interconnection would strike hard at independent telephone companies.

(3) Interconnect competition could retard some innovations, such as electronic central switching offices, because of the non-compatibility of interconnect subscribers' equipment and may impair the availability of services at reasonable prices in rural areas.

(4) While competitive manufacturing of data communications terminal equipment and ancillary devices will enhance innovation and PBX and key system interconnection may facilitate the distribution of innovation, innovation will not be speeded up where independent manufacturers already serve independent telephone companies.

(5) There has been no reduction in regulatory load as a result of OCC and interconnect competition.

(6) The history of separations shows that residential subscribers are slow to benefit from increased telephone revenues.

(7) To the extent that competition increases the cost of exchange service, regulatory action should be taken to change separations principles.

(8) Usage sensitive pricing is being investigated by the NARUC staff, but a final report is not yet ready.

65. The New York Public Service Commission (NYPSC) submitted two studies. The first, a staff study by James Augstell on the "Revenues and Cost of Interconnection within the Service Area of New York Telephone Company," completed in January, 1975 concluded that:

(1) Interconnect penetration in the NYTelco area as of the end of 1973 was relatively small for PBX-Centrex and key telephone systems (KTS) where the greatest impact on NYTelco revenues is expected.

(2) If the initial rate of growth for interconnect equipment were to continue through the 1975–1984 period, NYTelco revenues and contributions to local exchange service in these markets would be substantially reduced as compared to their potential levels absent competition.

The second NYPSC study, a more comprehensive analysis of interconnection competition and alleged contribution of vertical services to exchange services, by Yog Varma of the NYPSC staff, has been adopted by the NYPSC (NYPSC Case No. 26775, Opinion No. 75-28, October 22, 1975). The Varma study concluded that:

NYTelco business vertical services (PBX, Centrex and KTS) are underpriced, and do not provide any contribution to residential exchange service but rather are subsidized by other services.

As a result of the Varma study the NYPSC has ordered the NYTelco to make substantial increases in its charges for business vertical services.

66. The Nebraska Public Service Commission believes that the maximum availability of basic exchange service outweighs any considerations arising from a cost of service approach and should take precedence over competition by the interconnect industry and OCCs.

67. The Office of Telecommunications Policy (OTP) has appended several studies to its comments, including a critique of the NARUC and NYPSC studies. Very briefly, OTP maintains that:

(1) Any increase in local exchange rates due to interconnect and OCC competition would be relatively small—using NARUC/NYPSC projections for 1980—and this increase could be eliminated through changes in separations principles and usage sensitive pricing of exchange rates.

(2) The OCCs probably are not viable in the long run on a cost-effective basis except in the provision of services which are not highly cross-elastic with services currently offered by AT&T, unless they can utilize technology not available to AT&T.

(3) The OCCs can and do provide new services, especially in the area of data transmission, which will benefit users—particularly businesses.

(4) There are economies of scale in long haul transmission, toll switching and local distribution; but not in the manufacture of terminal equipment.

(5) Competitive pressures from interconnect companies would probably quicken the pace of innovation, both by interconnect companies and telephone companies, as indicated by recent experience.

D. MANNER OF PRESENTATION OF THIS REPORT

68. We shall proceed in Part II below to describe the structure of the Telecommunications industry in greater detail. In Part III we consider the historical and over-all impact of interconnect and OCC competition. Part IV addresses the interconnect question more extensively and Part V treats OCC competition.

II. Structure of the Domestic Telecommunications Industry

A. General

69. The United States telecommunications industry, as shown in Table II–1, consists of several sectors, each of which provides a variety of telecommunications services to the public. As can be seen from an examination of the data in the table, the industry has grown significantly over the past fifteen years—operating revenues and gross plant have nearly quadrupled since 1960—with the telephone sector leading the way. In 1975, the telephone sector accounted for almost 97 percent of the operating revenue and slightly over 97 percent of the gross plant of the entire U.S. telecommunications industry. The other sectors, which account for the remaining 3 percent of the industry, have also grown since 1960. The telegraph sector more than doubled operating revenues, while nearly quadrupling gross plant. The operating revenues of the public land mobile radio service increased more than five times during the period 1960–1974.[12] Of the remaining sectors, all have grown, but all or parts of some sectors, i.e., private branch exchange (PBX) and key telephone system (KTS) equipment and specialized, value added, and domestic satellite carriers, are too new to the industry to show increases in the table. These will be examined in more detail below.

70. The discussion that follows will be concerned essentially with these sectors of the industry: (1) The telephone sector (1. in Table II–1); (2) The interconnect industry, represented by the non-telephone company PBX and KTS equipment sector (6. in Table II–1); and (3) The other common carriers (OCCs), made up of specialized and value added terrestrial carriers (3. b and c in Table II–1) and the domestic satellite carriers (5.a in Table II–1). The other sectors, comprising telegraph carriers, international carriers, mobile radio carriers, and miscellaneous domestic carriers relaying television signals, are not the prime concern of this report; however, each will be discussed briefly at the end of this section.

[12] Data on operating revenues for the public land mobile radio service are not available for 1975; also, data are not available to determine the increase in gross plant for this sector.

TABLE II–1.—*The Telecommunications Industry of the United States*

	Number of companies				Operating revenues (thousands)				Total communications plant (gross in thousands)			
	1960	1965	1970	1975	1960	1965	1970	1975	1960	1965	1970	1975
1. Telephone:												
(a) Bell System [1]	25	25	25	25	$8,108,806	$11,317,928	$17,364,639	$29,581,647	$24,721,830	$36,228,981	$56,171,376	$89,194,378
(b) Independents [2]	3,299	2,421	1,841	1,618	1,008,451	1,618,264	2,891,814	5,500,000	3,970,578	6,825,867	12,390,327	21,000,000
2. Telegraph:												
(a) Domestic [1]	1	1	1	1	262,365	305,615	402,456	504,760	398,023	688,757	1,029,149	1,581,052
(b) International [1]	8	6	6	6	80,976	106,607	193,808	316,070	163,798	189,242	351,674	645,881
3. Private line microwave: [3]												
(a) MCC			59	45			7,347	[4] [5] 14,248			[6] 23,280	[4] [5] 56,191
(b) SCC				9				[7] 34,944				[7] [8] 166,611
(c) Value added				[9] 2				[9] 20				[8] [9] 3,030
4. Public land mobile radio service: [10]												
(a) Telephone companies	111	281	396	351	11,100	20,900	22,200	[5] 61,305				[5] [8] 60,090
(b) Other firms	409	423	489	434								
5. Satellite communications:												
(a) Domestic				3				[5] 16,300				[6] 205,000
(b) International [1]		1	1	1		2,139	69,598	[11] 140,681		10,063	188,782	[11] 322,679
6. Non-Telephone Co. PBX and KTS equipment				(12)				[13] 143,000				(12)
7. Total	3,853	3,158	2,818	2,495	9,477,698	13,391,543	20,951,862	36,312,975	29,254,229	43,942,910	70,154,588	113,235,300

[1] "Statistics of Communications Common Carriers," 1960, 1965, 1970, and 1975.
[2] Independent Phone Facts 1976 (USITA).
[3] Other than telephone companies, which is included in 1.
[4] The figures are for December 1974 from "Statistical Summary of the Results of Operations During 1972, 1973, and 1974 of Miscellaneous Microwave Common Carriers," FCC, Common Carrier Bureau, Economics Division.
[5] December 1974. Figure for 1975 not available.
[6] Figure is net plant.
[7] FCC form P's for 1975.
[8] MCI Telecommunications Corp. shows zero communications plant in their FCC form P for 1975. They lease all plant for MCI Leasing Corp., a subsidiary of MCI Communications Corp.
[9] Communications with company officials.
[10] Number of stations.
[11] FCC form M for 1975 before consolidation with Comsat General.
[12] No data available on the total number of companies producing PBX and KTS equipment or the amount of plant investment devoted to PBX or FTS production. There are roughly 30 main manufacturers of PBX equipment.
[13] This is a rough estimate using some actual data for the Bell System (exhibits) and some projected figures for the IC in independent territory.

B. Telephone Companies

1. *AT&T.*—71. The telecommunications industry in the United States, as mentioned above, is dominated by the telephone sector. The telephone sector, in turn, is dominated by AT&T or the Bell System—the collective term for the twenty-five Bell System operating companies.[14] In terms of assets, the Bell System is the largest non-financial corporation in the world. In 1975 its net assets were over $80 billion,[15] making it $47 billion, or nearly two-and-one-half times, larger than Exxon Corp., the largest industrial corporation in the U.S., as ranked by Fortune magazine.[16] As shown in Table II–1, the Bell System's operating revenues in 1975 were $29.6 billion and its gross plant was $89.2 billion. Additionally, Bell had nearly 1 million employees in 1975.[17] As Table II–1 shows, the Bell System has grown significantly since 1960. Its operating revenues have increased almost four times, and its gross plant has more than tripled.

72. The Bell System provides about 82 percent of the domestic telephone service in the U.S., as measured by the number of telephones, and accounts for about 84 percent of domestic telephone operating revenues.[18] It provides 85 percent of basic exchange (local) service and 84 percent of the toll (long distance) service, in terms of operating revenues.[19] In addition to providing the basic monopoly local

[14] The Bell System is sometimes defined as the American Telephone and Telegraph Co. (AT&T), its principal domestic telephone operating subsidiaries, the Western Electric Company (the manufacturing arm of the System) and Bell Telephone Laboratories (the research and development arm of the System). AT&T is both a holding and an operating company. It owns 100 percent of the stock of Western Electric and 50 percent of the stock of Bell Labs (Western Electric owns the other 50 percent). Additionally, AT&T owns controlling interest in twenty-three of the twenty-five operating telephone companies (including Long Lines) and minority interest in the two others (Southern New England Telephone Co. and Cincinnati Bell). AT&T itself is divided into two departments. The General Department provides services to the operating companies such as basic R&D (through Bell Labs) and advice on accounting, commercial, engineering, financial, legal, plant and traffic matters. The Long Lines Department provides land line facilities connecting the country into a nationwide long distance system. For the purposes of this report, the term Bell System is used to mean the twenty-five operating telephone companies, including AT&T Long Lines, but not including AT&T General Department, Western Electric or Bell Labs.

[15] Fortune, July 1976, p. 215.

[16] Fortune, May 1976, p. 318.

[17] Fortune, July 1976, p. 215.

[18] Statistics of Communications Common Carriers, 1975.

[19] *Id.*

and toll telephone services, which account for over 85 percent of its operating revenues, the Bell System is also engaged in virtually all other aspects of the telecommunications industry. It is the major supplier of private line voice and data services, it provides the bulk of the facilities used in the transmission of radio and television programs and a large part of the facilities used for press and telephotograph services. The Bell System is also extensively engaged in the provision of public land mobile radio service. Revenues from these other services (except public land mobile radio which are shown in 4. in Table II–1) are included in total Bell System revenues is Table II–1. As will be shown below under the discussion of the interconnect industry and other common carriers, however, the Bell System accounts for the vast majority of total revenue generated from the private line and terminal equipment markets.

73. Geographically, the Bell System operates in most metropolitan areas of the country and in all states but Alaska and Hawaii. Although independent telephone companies are predominantly located in rural areas and suburbs, Bell does serve a substantial number of rural customers particularly in sparsely populated areas.

74. The Bell System has devoted considerable resources to telecommunications technology, e.g., in 1974 it spent $758 million for basic research and development in electronics and communications.[20] This amount is included as part of the prices of the equipment purchased by Bell System operating telephone companies, and thus is capitalized when the equipment is placed in the rate base by those companies.

2. *The Independent Telephone Companies.*—75. The independent telephone industry is made up of about 1600 telephone companies, most of which are small, non-affiliated telephone companies, including many cooperative and municipal systems. The exception to this is the handful of "medium-sized" systems composed of the subsidiaries of the independent holding companies—General Telephone and Electronics Corporation, United Telecommunications, Inc., Continental Telephone Corporation, Central Telephone and Utilities Corporation, and Mid-Continent Telephone Corporation. Although generally small, the independent telephone companies provide vital service to millions of Americans. They serve about one-half the land area of the United States,[21] predominantly in rural areas or suburbs which were rural before 1920 when the telephone industry was acquiring its present form.[22] As shown in Table II–1, in 1975 independent telephone company operating revenues were $5.5 billion and gross plant was $21 billion. Total employment in the independent telephone industry in 1975 was 158,000.[23] The independent telephone companies provide about 18 percent of the domestic telephone service in the U.S., as measured by the number of telephones, and account for about 16 percent of domestic operating revenues. They provide about 15 percent of basic exchange service and 16 percent of long distance intrastate service in terms of operating revenues.[24]

76. As with the Bell System, the bulk of independent telephone company revenues is derived from the basic monopoly telephone services, but also as with the Bell System, the independent telephone companies, to a greater or lesser extent, are engaged in virtually all other aspects of telecommunications industry. They provide private line voice and data service, television and radio transmission, teletypewriter service, and public land mobile radio service. Revenues from these services (except public land mobile radio which are shown in 4. in Table II–1) are included under total revenues of the independent telephone companies in Table II–1. While the Bell System accounts for the majority of revenues generated from the private line and terminal equipment market, the independents account for much of the remainder of those revenues, as will be seen under the discussion of the interconnect industry and other common carriers.

77. The structure of the independent industry is changing, however. Each year fewer independents are listed among concurring and connecting carriers and each year more of the independents are absorbed into one or another of the non-Bell holding companies. In many cases mergers are the result of the passing of the telephone pioneers whose family-operated telephone companies were the mainstays of the independent telephone industry. In other cases neighboring telephone companies have found it expedient to merge as their service areas develop a community of interest. In still other cases, undercapitalized small independents have merged with larger ones in order to acquire the financial resources to improve service. Finally, many independents have rendered themselves prime merger prospects by their high profitability.

78. Although individual independent telephone companies are sometimes considered weak financially, just the opposite is often true. Many small independents have unusually high rates of return on equity.[25] This circumstance may be due partially to policies of state commissions which set rates or rates of return on capital for the larger telephone companies and then allow smaller telephone companies to charge the same rates, or earn the same overall rate of return. Indeed, this Commission follows such a policy when it regulates toll rates on a nationwide basis. Many independents earn very high returns on their interstate operations because of this adherence to a uniform rate schedule.

3. *Separations, Division of Revenues and Settlements.*—79. The telephone operating companies, both Bell and independent, and AT&T Long Lines are interconnected into a single nationwide telephone network for the provision of interstate services. Since multiple carriers participate in the interstate services, procedures have been established for dividing the interstate revenues between AT&T Long Lines and the Bell operating companies and for settlements between the Bell System and the independent companies. Such divisions of revenue and settlements in turn are based on separations procedures, made necessary by the circumstance that much of the property of the telephone operating companies is used in common for both interstate and intrastate services.[26] Modifications in separations procedures over the years have had the effect of transferring increasing amounts on revenue requirements from intrastate to interstate services, thereby lowering intrastate revenue requirements.[27]

80. Under the separations procedures plant and expenses are apportioned among the intrastate and interstate operations on various bases. In the case of MTS and WATS under the separations procedures including the Ozark plan (26 FCC 2d 247, 248), subscriber plant costs (station equipment and subscriber lines) and the non-traffic sensitive portion of local dial switching equipment are assigned to interstate operations by the application to the cost of such plant of a "subscriber plant factor". However, where this subscriber plant factor enters into the apportionment of costs, the allocation is not strictly on the basis of relative use but rather is weighted so as to increase the interstate revenue requirements and lower the local exchange requirements. Although the nationwide average interstate use of the subscriber plant is significantly less than 10 percent, approximately 19.9 percent of the Bell costs (16.7 percent in the case of the independ-

[20] Bell Exhibit No. 31, Att. A, p. 4.

[21] Department of Commerce Office of Telecommunications, "Geographical Areas Serviced by Bell and the Independent Telephone Companies in the United States," February 1973.

[22] For details of the early history of telephony in the U.S., see FCC Staff Report, "Telephone Investigation" (Pursuant to Public Resolution No. 8, 74th Congress) (known as the "Walker Report").

[23] Independent Telephone Statistics, 1976 Edition, USITA, July 1976.

[24] *Id.*

[25] Among the first 12 independents listed in the Missouri PSC's survey, "1969–73 Inclusive Directory of Independent Operating Telephones," eight had returns on equity in excess of 20 percent during the period; 1 in every year, 1 in 4 years, 4 in 3 years, 1 in 2 years, and 1 in 1 year. In contrast, the Bell System's prescribed rate of return on its interstate services is presently 9.5 percent to 10.0 percent (57 FCC 2d 960 (1976)).

[26] The current Separations Procedures are incorporated into Part 67 of the Commission's Rules and the 1971 NARUC–FCC Separations Manual, entitled "Standard Procedures for Separating Telephone Property, Costs, Revenues, Expenses, Taxes and Reserves".

[27] See Separations Procedures, 26 FCC 2d 247, 248 (1970); Report and Order in Docket No. 17975, 16 FCC 2d 317 (1969); Interim Report and Order in Docket No. 16258, 9 FCC 2d 30, 88–111 (1967), reaffirmed and made final, 11 FCC 2d 493 (1968). See also Richard Gabel, "Development of Separations Principles in the Telephone Industry," East Lansing, Michigan State University Press (1967).

ents overall) has been made a part of the interstate revenue requirement. The annual costs of local exchange plant assigned to interstate constittue about 29 percent of total interstate MTS and WATS revenues.

81. In order to arrive at a division of revenues,[28] all the interstate revenues are placed into an interstate settlements pool.[29] The respective operating expenses (pursuant to separations procedures) that are allocated or assigned to the interstate operations are paid over to each operating company and AT&T Long Lines. The balance left in the pool is divided on the basis of investment (net plant), ascertained via the separations procedures, that each operating company and AT&T Long Lines have assigned to the interstate enterprise. This remainder constitutes the return on investment in plant as related to the interstate services.

82. There are two different settlement procedures available to the independent telephone companies by which such a company may determine its share of the aggregate interstate pool. A company may elect to perform its own cost studies and receive settlements from the pool based on those studies. On the other hand, a company may elect to receive its share of the interstate revenues based on so-called average schedules. These average schedules, in turn, are derived from cost studies developed jointly by AT&T and USITA on the basis of groups of selected exchanges.

83. Most terminals supplied by telephone companies are connected to the local exchange plant with access to the switched telephone network. Thus, the terminal can access local exchange service, intrastate MTS and WATS, and interstate MTS and WATS. Terminals such as telephone instruments, key telephone systems and PBXs are offered under state tariffs. A few terminals are offered under interstate private line tariffs when these are used in conjunction with interstate private line service. Except for the relatively small proportion of revenues associated with interstate private line service, the revenues derived from terminals are directly attributable to the state jurisdiction and are carried in the Local Service Revenues accounts of the telephone companies. Terminals are treated as communications plant and costs are allocated between state and interstate on the same basis as all other plant. Since terminals connected to a local exchange subscriber loop can be used for state and interstate telephone service, the costs associated with these are subject to separations procedures and the subscriber plant factor is applicable. Thus, although the interstate usage of telephone instruments is less than 10 percent, approximately 19.9 percent of the Bell station equipment costs (16.7 percent of the costs of the independents) has been made a part of the interstate revenue requirement.[30]

84. Under the separations procedures, the weighted subscriber plant factor does not apply to the apportionment of costs for private line services. To the extent that private line is provided on dedicated facilities, costs are apportioned by direct assignment. Common plant and expenses in the provision of private line services are apportioned between interstate and intrastate on various other bases. Thus, the separations procedures for private line services do not operate so as to shift revenue requirements from intrastate to interstate in the same manner as for MTS and WATS.

85. The telephone carriers' method of dividing interstate revenues is relevant to the question of whether OCC or interconnect competition will affect local exchange rates because of the operation of the separations procedures, particularly the weighted subscriber plant factor. We discuss this question in Part III below on OCC competition and in Part IV on interconnect.

C. THE INTERCONNECT INDUSTRY

86. The interconnect industry[31] is made up of many firms which provide a variety of terminal equipment (the various types of equipment are described below) to the telecommunications market. The firms comprising the interconnect industry are not regulated by the FCC, and therefore are not required to file reports with the Commission concerning operating revenues, gross plant, etc., as are common carriers. Moreover, no industry-wide trade association or similar type organization provides data on the composition of the interconnect industry. Lacking such official or trade association data, the best estimates that can be made on the size of the industry are those contained in the following tabulation, which come from submissions to this Docket.[32]

[28] The term "division of revenues" is sometimes used to mean allocations only between AT&T and the Bell operating companies; whereas the term "settlements" refers to allocations between AT&T/Bell and the independent telephone companies.

[29] The Commission receives monthly reports from AT&T Long Lines on the division of revenues and settlements.

[30] Long Lines Statistics, 1930–1963, 1950–1974.

[31] For the purpose of this report, the interconnect industry refers to those non-telephone company firms that provide terminal equipment to the telecommunications industry. As is shown in this section, however, the telephone industry is the principal supplier of interconnect devices, and data relating to telephone industry revenues in this area are shown for comparative purposes.

[32] Estimated revenues from private branch exchanges (PBXs) and key telephone systems (KTSs), the two major products of the interconnect industry, are shown because revenue data for other products are not available for the total industry. These other products, however, such as modems, repertory dialers, and answering machines, are estimated to account for a relatively small part of the industry in terms of revenues. Additionally, historical revenue data for terminal equipment is available only for the Bell System. Since Bell accounts for the bulk of the revenues, however, it is significant to show this data. In 1960 Bell revenues from terminal equipment were $869 million; in 1965, $1.3 billion; and in 1970, $2.1 billion (Data from Bell submission in this Docket). It should be noted that in 1960 and 1965 no revenues were generated by the interconnect industry, since this was the pre-Carterphone period; in 1970, revenues from the interconnect industry were probably less than $10 million. The record in this Inquiry and this Report do not treat telephone main stations and extensions since our Second Report and Order in Docket No. 19528, now partially stayed by judicial order, is too recent to have been the subject of comment here.

ESTIMATED PBX AND KTS REVENUES, 1975
[Millions of $] [33]

Telephone Industry	3,060
Interconnect Industry	143
Total	3,203

86(a). As shown in the tabulation, an estimated $143 million in revenues were generated by the interconect industry in 1975, compared with over $3 billion generated by the telephone companies. These $143 million in revenues accounted for 4.5% of total revenues from PBX and KTS, and less than ½ of 1% of the total revenues of the telecommunications industry in 1975.

86(b). The two principal types of terminal equipment used in the telecommunications industry are private branch exchanges (PBX), and key telephone systems (KTS). Other important types are data terminals, answering machines and repertory dialers. Each of these is described briefly below.

87. Private branch exchanges are facilities that allow for communications within a particular location, such as a building. A typical PBX would be a switchboard used by a business or apartment building for handling communications on the premises. PBX systems are classified as small (up to 40 phones); medium (between 41 and 100 phones); and large (over 100 phones). An estimated 50 percent of PBX installations are small, 32 percent medium, and 18 percent large.[34] Also, it is estimated that business accounts for about 86 percent of the PBX installations, state and local governments account for about 6 percent, nonprofit organizations (such as universities) account for 4 percent, and other uses account for 4 percent.[35]

88. Key telephone systems are systems which provide for the direct selection of an outside line from a multiple telephone set. Functions such as line holding and intercommunication are selected at the instrument. Visual indications are given as to the status of each line associated with the instrument. The Stanford Research Institute estimates that the average interconnect key system uses 12–15 phones and is therefore competitive with the small PBX market.[36] About 95 percent of all key systems are estimated to be used by business, about 2 percent by state and local governments, and the remaining 3 percent in other applications.[37]

[33] Source: Based on data from Bell Exhibit No. 20A, Docket No. 20003, and Table I, above.

[34] Bell Exhibit No. 19.

[35] Id.

[36] Id.

[37] Id.

89. A data terminal or modem is a device required for transmitting and receiving data signals over an analog circuit. It consists of a modulator for transmission and a demodulator for receiving. An estimated 82 percent of all installed modems are found in business; 6 percent in state and local government; 9 percent in the Federal government, and 3 percent in private non-profit organizations such as universities.[38]

90. Answering machines, as the name suggests, are devices that automatically answer the phone and send and/or receive a message. Repertory dialers are small devices that store telephone numbers and permit the user to automatically dial a particular number. No estimates are available on the distribution of these devices among various groups.

91. As mentioned above, many firms make up the interconnect industry. The following is a list of some of the major suppliers and examples of the types of equipment each produces.[39]

Chestel, Inc.—Small electronic PBXs.
Collins Radio Company—Automatic call distributors.
Danray, Inc.—Computerized PBXs.
Digital Telephone Systems, Inc.—Large PBXs.
Executone, Inc.—Digital telephone PBXs and key systems.
International Telephone and Telegraph Company—Several types of electronic PBXs.
Milgo Electronic Corporation—Crossbar PBXs and key systems.
Nippon Electric Co.—PBXs and key systems.
Northern Telecom, Inc.—Complete array of interconnect equipment.
RCA Service Company—Variety of terminal equipment.
Rolm Corporation—Electronic PBXs.
Siemens Corporation—Complete array of interconnect equipment.
TIE/Communications, Inc.—Key telephone systems.

D. OTHER COMMON CARRIERS (OCCS)

92. The other common carriers (OCCs) comprise, for the purpose of this report, the following groups of carriers: The Specialized Carriers, consisting of terrestrial private line carriers and switched data carriers; the Value Added Networks or Carriers; and Domestic Satellite Carriers. The customers for these carriers are almost entirely in the commercial and government sector of the economy and the market for their services is divided among voice, data, facsimile, and special purpose applications in private and public networks.

93. The first OCC authorization was granted August 13, 1969, when Microwave Communications, Inc. (MCI), was given permission to offer point-to-point analog channel service between St. Louis, Missouri and Chicago, Illinois. By May 1, 1976, a total of 14 OCCs were either operational or had filed 214 applications with the FCC; of this number ten were in operation by the end of 1975. The following tabulation shows the number of OCC firms, their operating revenues, and their amount of gross plant at the end of 1975.

The other common carriers (OCC's),[1] number of firms, operating revenues and gross plant, 1975

[Operating revenues and gross plant in thousands of dollars]

	Number of firms	Operating revenues	Gross plant
Specialized common carriers	9	34,944	166,611
Value added carriers	2	20	[2] 3,020
Domestic satellite carriers	[3] 3	16,300	[2] 205,000
Total	14	51,264	374,631

[1] Source: Table II-1, above.
[2] Net plant.
[3] For purposes of this report we do not include the domestic satellite facilities of A.T. & T./GSAT.

94. The OCCs accounted for about one-tenth of 1 percent of the total operating revenues and about three-tenths of 1 percent of total gross plant of the telecommunications industry in 1975.

95. Inasmuch as all the activities of the OCCs are still essentially in the start-up phase, it is difficult, if not impossible, to predict the extent to which the relative distributions depicted in the above tabulation will continue as the industry evolves. In the case of the domestic satellite sector, which represents about 45 percent of total OCC investment, investments tend to come in large, discrete quantities as each new entity begins operations. Thus, under current technology the number of additional entries must necessarily be limited to the relatively few firms which can accumulate the minimal start-up investment of about $150 million. Terrestrial microwave carriers, however, can commence operations with investments which are a relatively small fraction of the mature system investment, and add to their plant at relatively slow and continuous rates of capital flow. A more detialed examination of each group of OCCs is contained in the remainder of this section.

1. *The Specialized Common Carriers (SCCs).* 96. At the end of 1975, as shown in Table II-2, nine Specialized Common Carriers were operational, with operating revenues of nearly $35 million and gross plant of almost $167 million. All but one of these firms, Data Transmission Co., are terrestrial point-to-point microwave carriers. The latter carriers at present are concentrating almost exclusively upon the market for point-to-point analog transmission channels. With terminal and modem equipment currently available from interconnect suppliers these analog channels are easily configuured into private line telephone, data, or facsimile networks. Indeed, the same network is capable of carrying all of these transmissions—either alternately or simultaneously. The physical plant of these carriers consists predominantly of microwave radio equipment which is readily available from several suppliers. To get into business, a terrestrial microwave carrier must acquire the radio equipment itself, and additionally, the towers, land, and support facilities necessary to set up a route. The owned physical plant of the terrestrial microwave carriers is concentrated almost entirely in long haul intercity facilities. Local loops (the final connection to a user's premises) are in almost all instances leased from local telephone companies. In some instances telephone company facilities are also used to supplement or extend intercity facilities. In competing with the established common carriers, the channel facilities of the terrestrial microwave carriers are offered with a wide variety of bandwidths and channel conditioning options. Additionally, the terrestrial microwave carriers offer alternatives to the rate level, rate structures, and other terms and conditions as they are tendered in the established common carrier tariffs.

TABLE II-2.—*Specialized common carriers,[1] Dec. 31, 1975*

[In thousands of dollars]

	Gross communications plant	Operating revenues	Net income from microwave services
CPI Microwave, Inc.	10,910	1,876	[2] 768
Data Transmission Co.	48,733	117	[2] 15,374
MCI Telecommunications Corp.[3]	(4)	21,319	[2] 24,405
Microwave Communications, Inc.[3]	4,727	1,643	[2] 1,468
Midwestern Relay Co.[5]	10,307	2,377	129
N-Triple-C, Inc.[3]	11,871	548	[2] 2,401
Southern Pacific Communications Co.	71,781	5,088	[2] 14,796
West Texas Microwave Co.[5]	2,587	871	202
Western Telecommunications, Inc.[5]	5,695	1,105	265
Total	166,611	34,944	[2] 58,506

[1] FCC form P, 1975.
[2] Loss.
[3] Parent company is MCI Communications Corp.
[4] Leases all communications plant from MCI Leasing Corp.
[5] Operates as both a specialized common carrier and a miscellaneous microwave common carrier.

[38] Id.

[39] Frost and Sullivan, "The Telephone Interconnection Market," No. 396, 1976.

TABLE II–3.—*Operating revenues: Telephone company—Private line[1] and specialized common carriers*

[In thousands of dollars]

	1960	1965	1970	1975
Bell System [2]	403,862	543,766	1,030,857	1,479,473
Independent telephone companies [3]	14,872	36,782	80,439	133,103
Total telephone company	418,734	580,548	1,111,296	1,612,576
Specialized common carriers [4]				34,944
Total	418,734	580,548	1,111,296	1,647,520

[1] Including intrastate private line.
[2] "Statistics of Communications Common Carriers," 1960, 1965, 1970, 1975.
[3] "Independent Telephone Company Statistics," 1960, 1965, 1970, 1975.
[4] FCC form P, 1975.

97. As mentioned above, at the end of 1975 only one switched data carrier—Data Transmission Co. (DATRAN)—was operational; however, DATRAN recently filed a petition in bankruptcy.[39] DATRAN began operations in April 1974 as an offeror of private line data channels and began the offering of switched data service in January of 1975. Unlike other terrestrial microwave carriers, DATRAN offered channels suitable for data transmission only. Approximately 30 percent of the DATRAN interstate transmission capacity was composed of company-constructed digital facilities, extending from Houston to Chicago, the remainder were high speed digital data system (DDS) channels leased from AT&T and SPCC. Local loops were obtained from local telephone operating companies and were on either analog or digital plant. As shown in Table II–2 above, DATRAN's revenues in 1975 were $117,000. The market served by DATRAN included those applications where: (a) Economics or convenience did not justify private leased facilities, (b) the connect times of the switched data carrier's data switch offered an improvement over those achievable by the DDD telephone network, and/or (c) full duplex service was required. In concentrating upon the switched data market, DATRAN also configured its service about a digital transmission plant and time division switching. The DATRAN transmission plant consisted of a mix of owned plant and DDS channels leased from AT&T.

98. Table II–3 shows the operating revenues of the Specialized Common Carriers compared with the private line operating revenues generated by the Bell System and the independent telephone companies. As is shown in the table, total telephone company private line revenues have almost quadrupled since 1960, reaching over $1.6 billion in 1975. The Specialized Common Carriers only began generating revenues in recent years, and by 1975 their revenues amounted to $34.9 million, or about 2.12% of the total private line revenues in that year.

2. *Value Added Networks or Carriers (VANs)*. 99. Currently only two VANs, Telenet and Graphnet, are operational. Income for 1975 has not been formally reported to the FCC by either of these entities, both of which began operations in that year. For 1975, Telenet officials informally reported losses of $2.7 million and a net plant investment of $3 million.[41] Graphnet has reported no financial data.

100. The VANs are attempting to serve a market where the user is seeking an additional service—the added value—to be superimposed by the carrier upon the basic transmission service. The nature of the value added by the two carriers operational at this time is generically the same. Both use data processing capabilities which is resident in their networks, to permit disparate terminals[42] to communicate with each other. The Telenet service is oriented toward computer-to-computer and terminal-to-computer communications. The Graphnet service is oriented toward teleprinter-to-graphic and graphic-to-graphic communications applications. In addition to adding value in the sense cited previously, the value added carriers also seek to offer: (a) Competitive rate levels, (b) switched service, and (c) other features which enhance customer operations and convenience. It is worthwhile to note two other features which the early entrants have in common: (a) Packet switching and (b) entirely leased transmission plant.

101. Packet switching is a variant of the message switching technique which, like message switching, is implemented most easily by stored-programmed computers. The packet technique ostensibly permits the VAN to maximize the occupancy of the channels in his network, which results in: (a) Lower investment in communications channels, (b) a lower cost to to the user, and (c) a negligible penalty in connect time.[43]

102. The other VAN feature—a network in which the preponderance channels is leased from other carriers—is of particular significance. A new entity in this field may use the lease alternative in configuring a transmission plant. Under these conditions start up capital requirements are minimized and this capital can be concentrated into marketing and promotion rather than upon the construction of new plant. A further bonus is the avoidance of long construction times during the critical start up mode. As in the case of packet switching, although the lease option is attractive, it is again not a necessary component of a value added network.

3. *Domestic Satellite Carriers (DSCs)*. 103. In 1975 three DSCs were operational in providing service to the contiguous 48 states: Western Union Telegraph Co. (WESTAR System), RCA American Communications, Inc. (SAT COM System), and American Satellite Corporation (ASC). Other existing or scheduled entries include: (a) the AT&T/GSAT system which commenced operations in July 1976, and (b) Satellite Business Systems (SBS)—a consortium of the Information Satellite Corp. (a wholly owned subsidiary of IBM), COMSAT General Business Communications, Inc. (a wholly owned subsidiary of COMSAT General Corp.) and Aetna Satellite Communications, Inc. (a wholly owned subsidiary of The Aetna Casualty and Surety Co.). SBS filed applications with the FCC in January 1976; the applications are currently under review.

104. The first three DSCs are still very much in the startup phase. RCA began operations in late 1973 and WU and ASC in late 1974. Their operating results are summarized below:

Operating Results—Domestic satellite carriers

[In thousands of dollars]

	Operating revenues	Net income	Net plant
Western Union	11,000	(1)	102,000
RCA	2,240	(1)	75,700
ASC	3,010	(8,330)	27,600
Total	16,300	(8,330)	205,000

[1] Not available.

SOURCE.—Communications with company officials.

105. The DSCs, at present, are offering the same "product" as the terrestrial microwave carriers—point-to-point analog channels at voice grade and higher bandwidths. Because the rate levels and rate structures of satellite and terrestrial microwave carriers are quite different, these entities are focussing upon two different market sectors—long haul and medium to short haul—with some degree of overlap.

106. The basic communications plant of a DSC consists of one or more communications satellites and associated earth stations. A typical satellite has 12–24 transponders [44] each of which can

[39] DATRAN filed a petition, in bankruptcy on August 27, 1976 and ceased all commercial operations on September 15, 1976.

[41] Since Telenet leases all of its transmission plant from common carriers, net plant investments may be deceptively low. The preponderance of its plant investment is in switching computers and software.

[42] The disparities which can be treated include inter alia: Transmission speeds, codes, line disciplines, and display formats.

[43] Although all of the entrants in this field to date have proposed packet techniques, these are not a necessary component of a value added service.

[44] A transponder is essentially a microwave radio relay which is located at an apparently stationary point in space. An earth station is essentially a microwave radio transmitter/receiver.

carry either from 1000 to 2000 voice channels or one television channel or 50 megabits of data. The terrestrial terminations of these channels can only occur at the points where the earth stations happen to be located.

107. This unique method of setting up a communications path leads to two basic differences between satellite and terrestrial transmission. The cost of a satellite channel is not sensitive to the geographical separation between earth stations but is sensitive to channel density. The costs of terrestrial microwave channels are not only sensitive to the channel density along a given route but are also sensitive to distance and, indeed, the rate levels and rate structures of the terrestrial microwave carriers and the DSCs reflect these cost relationships.[45] This circumstance has resulted in a situation, given the tariffs currently filed by these entities, where the charges for a transcontinental circuit favor the DSC carriers, whereas the charges for distances up to 750 miles favor the terrestrial microwave carrier.

108. The fact that satellite circuits can only be terminated in earth station cities and the current costs of earth stations limit the extent to which the long haul economies of satellite circuits can be realized. When a subscriber is located at some distance from an earth station site the satellite circuit must be extended with terrestrial circuits. At the intermediate distance range these extensions can change the cost equation in favor of the terrestrial microwave carrier.

109. In the market for two-way voice and data circuits, the satellite and terrestrial carrier vendors offer services which are largely complementary. In the television distribution market, the DSC offers a unique capability which cannot be approximated by the terrestrial microwave carrier. Since TV broadcasting is a one-way distribution process, a TV network requires comparatively few transmitting earth stations and other earth stations can be used only for receiving. Moreover, a single transmission can be received by all the receive earth stations within the United States. The number of TV circuit terminations achievable with a satellite system is therefore theoretically limitless and is only a function of the number of installed earth stations.

E. OTHER SECTORS OF THE DOMESTIC TELECOMMUNICATIONS INDUSTRY

110. Western Union is the sole purveyor of message telegraph service in the U.S. In addition to its monopoly telegraph services (telegram message service, telegraphic money order service, Mailgram, and Telex/TWX), Western Union also provides some private line and other services that are in competition with similar services of the rest of the telecommunications industry. As shown in Table II–I, in 1975 Western Union's operating revenues were over $500 million and its gross plant was $1.58 billion. Although Western Union's operating revenues have grown in recent years, the increases have been mainly the result of contributions from Mailgram, and even more recently, from satellite services (a discussion of Western Union's domestic satellite service is included under the OCC section). Revenues from the traditional Western Union service—telegram message—have continued to decline as they have for many years. Revenues from telegraphic money orders and Telex/TWX service have grown modestly over the past several years.

111. International telephone service is provided principally by AT&T. The international class of the telegraph sector is made up of six carriers—commonly known as the international record carriers, or IRCs. As shown in Table II–1, both operating revenues and gross plant of the IRCs have almost quadrupled since 1960. The four major international record carriers are ITT World Communications, Inc., RCA Global Communications, Inc., TRT Telecommunications Corp., and Western Union International, Inc. All of these carriers provide message, Telex, and private line record services, with the Teyex being the most important in terms of revenues, followed by the private line and message services.

112. The only carriers of the private line microwave sector not included among the OCC category are the miscellaneous common carriers (MCCs). As seen from the data in Table II–1, the actual number of these carriers has declined slightly in recent years, but operating revenues have almost doubled and gross plant has more than doubled. The miscellaneous common carriers are engaged primarily in providing, through the utilization of microwave facilities, television signals to cable television firms and certain broadcast stations.

113. Public land mobile radio service, as shown in Table II–1 is provided by telephone companies and other firms (commonly known as radio common carriers or RCCs), which are in competition with the telephone companies. As mentioned earlier, operating revenues of this sector have increased more than five times since 1960. Plant figures for this sector are not available on a historical basis, but as is shown, the net plant amounted to slightly more than $60 million in 1974 (the latest year available). The companies engaged in public land mobile radio service provide mobile radio/telephone service, paging services, rural radio services, and air/ground service.

114. The international communications satellite carrier shown in Table II–1, is the Communications Satellite Corporation (COMSAT). As seen in the table, COMSAT's operating revenues and gross plant have grown significantly since 1965. The bulk of COMSAT's revenues are derived from services it provides to U.S. communications common carriers. These carriers, in turn, provide communications services to the public between the U.S. and foreign points and between the forty-eight contiguous U.S. states and certain offshore points.

F. SUMMARY

115. We have here set forth a basic overview and description of the structure of the United States telecommunications industry, with particular emphasis on those sectors of the industry that are the principal concern of this report—the telephone companies, the interconnect companies, and the other common carriers. As shown in Table I, and previously discussed, the telephone sector, and particularly the Bell System, dominate the telecommunications industry in the United States. Not only does the telephone sector provide all of the monopoly local and toll telephone service in the United States, it also provides the bulk of all other telecommunications services to the nation. In 1975, almost 97 percent of the operating revenues of the telecommunications industry was generated by the telephone sector (81.5 percent by Bell), which also accounted for 97 percent of the gross plant (78.8 percent by Bell). In contrast, the combined operating revenues of the interconect companies and the other common carriers were about 0.5 percent of the total telecommunications industry's revenues in 1975.[46]

III. OVERALL ECONOMIC EFFECTS OF COMPETITION

116. In evaluating the economic effects of compeition in the telecommunications industry, we first look at historical developments since the introduction of competitive private line and terminal equipment suppliers in 1968–69. We shall also, in this section, examine those comments and studies which deal with alleged overall effects of competition in the future. Comments dealing in more detail with the individual effect of private line or terminal equipment competition are treated separately in subsequent parts of our report.

A. HISTORICAL RESULTS

117. The telephone company revenues lost to private line and interconnect competition to date have been clearly minimal or nonexistent. Table III–1 and Figures 1 and 2 below, a consolidation of data previously discussed, in part, in connection with the present industry structure, illustrate telecommunications market developments in the competitive era since 1968–69. In a telecommunications market which produced $36.3 billion in annual revenues during 1975, the telephone industry received $35.1 billion, or about 97.0 percent of the total, while the competitive industry received $194 mil-

[45] At the present time DSC tariffs offer voice grade circuits only in the mileage band from approximately 750 to 2,500 miles. The single voice grade channel rates charged by the three DSCs are essentially identical and coincide at the low end of the mileage band ($500/mo.) and at the high end ($1,000/mo.). See RCA Globcom Tariff FCC No. 93, W. U. Telegraph Co. Tariff FCC No. 261, and American Satellite Corp. Tariff FCC No. 1.

[46] Data on gross plant of the interconnect companies and other common carriers as a percent of total gross plant of the telecommunications industry are not available.

lion, or 0.5 percent of the total. Considering only the private line and terminal equipment submarkets—the principal areas open to competition—the telephone industry received $4.1 billion or 95.5 percent, as compared with the $194 million or 4.5 percent received by the competitive industry. Furthermore, telephone industry revenues from the competitive market area are and have been increasing each year—by $373 million, or almost twice the total annual revenues of the competitive industry, in 1975 alone. During the 1969–74 period since "Carterfone," the Bell System's annual revenues for terminal equipment alone have increased by $1.046 billion. Even the annual growth rate of telephone industry revenues for terminal equipment has been higher in the post-"Carterfone" era—14.2 percent vs. 13.4 percent.

118. The telephone industry contends that any revenues received by its competitors constitute a revenue loss to the industry, and uses this as a measure of economic impact. Such a concept of revenue loss and economic impact requires careful review. In any stationary competitive market, one or more entities must "lose" revenues to the successful competitor for a particular customer in this sense. Indeed, were this not so the market would not be "competitive." However, all competitors can gain revenues in a growing market, and if the presence of competition increases total demand, all competitors may profit by the presence of competition. The issues of concern in this proceeding are whether any so-called "losses" are of sufficient magnitude to threaten the telephone industry's ability to cover its embedded costs of providing these services, or otherwise impact on the rates for other services such as local exchange.

119. As indicated, telephone industry revenues for competitive services are increasing by substantial increments each year, despite the growing revenues of its competitors. Clearly, the overall market is expanding at a substantially faster pace than are the competitive revenues, and the telephone industry is suffering no net loss in revenues to its competitors.[47] Presumably, these increased revenues are covering both the embedded costs and any additional costs required to serve the expanding market; otherwise, the telephone industry would be unwise to expand its capacity to satisfy this demand, rather than leaving it to the competition.

120. Looking to the immediate future, it is readily apparent that the telephone industry can suffer no net revenue loss due to competition. In order to satisfy all the growth in demand for competitive services—and thus arrest the telephone industry's own growth in this area—the competitive industry would have needed to increase its 1974 revenues from $114 million to $567 million—the sum of its actual revenues of $194 million and the telephone industry's increase in competitive revenues of $373 million. (See Table III–1, Col. 3, below.) This it did not do, by a wide margin, and there is clearly little prospect that it can do so within the foreseeable future—and each year the differential increases.[48] Accordingly, one cannot foresee a time when telephone industry revenues for competitive services will cease to increase—much less either decline or disappear—due to competition.

121. Revenue effects alone do not provide the sole measure of economic impact—even if one could accept the validity of the "revenue loss" concept. Any business allegedly lost by the telephone industry also involves costs which must be deducted from any revenue loss figure to arrive at a meaningful measure of the net loss.[49] As we find in our detailed analysis of the telephone industry studies filed for the proceeding, the carriers have not provided, in connection with their revenue loss claims, the cost data required to determine the net economic effect of any business lost to its competitors. Indeed, we find substantial evidence that in some cases revenues for some competitive services such as PBX and KTS terminal equipment are not covering their full costs. Further, as found in Docket No. 18128, Bell's interstate private line services are underpriced and recipients of subsidy from basic telephone users.[50] Under such circumstances, any loss of such non-compensatory business to competitors would obviously benefit, rather than harm, the users of other services.

122. However, even if the carriers were realizing a significant "profit" on these services, the net economic effect of any business diversion would be substantially less than the $194 million gross revenue figure. Typically, about 64 percent of the revenues collected for a common carrier service are required to cover operating expenses, about 17 percent for taxes, while the remaining 19 percent covers the return on investment or "profit".[51] All these cost categories would normally be eliminated in the case of any business lost to competition. But the telephone industry contends, in effect, that the return on investment for competitive services is in fact greater than normal—by some unspecified amount—resulting in an additional profit in excess of the cost of capital. To evaluate the significance of this claim, one might postulate that, as an upper bound, as much as one-half the 19 percent return share from competitive services—i.e., about 10 percent of gross revenues from such services—represents such an "excess profit" beyond the normal return on investment. Even in this hypothetical situation, the net effect of any loss of private line or terminal equipment business would be at most about $20 million (10 percent of $194 million) or less than 0.06 percent of the telephone industry's total annual revenues. Clearly, such a small increment—assuming it exists at all—could have had no discernible impact on basic telephone rates.

123. Moreover, as we have noted, revenues alone are not the complete measure of the historical impact from competition or the sole measure of an industry's long-term potential. One can also look to overall profitability. Here too, telephone industry results in recent years far overshadow those of its competitors. During 1975, according to AT&T's annual report to shareholders, Bell System net income was $3.15 billion, providing a return on equity ("profit" to stockholders) of 9.83 percent. For the independent (i.e., non-Bell) telephone industry, the corresponding results were $747 million and 9.0 percent resepctively. While composite data on the terminal equipment industry are not readily obtainable, comparable data for the private line competitors (including domestic satellites) were as follows: $51.3 million in annual revenues, $120.8 million in annual expenses, for a net loss of $69.5 million, or approximately 15 percent loss on net investment of some $400 million.[52]

---

[47] In Part III of our report we find it likely that terminal equipment competition has stimulated demand to such an extent that both the telephone industry and its competitors have realized net revenue increases which would not otherwise have occurred. Indeed, annual industry revenues are some $150 million higher than they would have been had they continued at the pre-Carterfone growth rate. Nor would it be unreasonable to assume that the additional usage of the network resulting from the larger volume of terminal equipment connected thereto has indirectly produced additional increases in telephone industry revenues.

[48] One could argue, of course, that the telephone industry experienced a lower percentage growth rate than did its competitors in 1975, as a basic telephone industry concern. It is indeed true that the $28 million revenue increase (from $7.0 million to $35.0 million) for the specialized carrier industry represents a very large percentage growth rate. It is a well-known principle of mathematics that even moderate increases on a small initial base appear as large percentage increases. It is also customary for start-up operations to exhibit high initial percentage growth rates. The firm with $1 million in revenues the first year, which receives $2 million the following year, can be said to have growth by 100 percent (using revenues as a measure of size); but one certainly cannot expect the same firm to continue this 100 percent growth rate, doubling its annual revenues in succeeding years to $4, 8, 16, 32, 64 millions, etc. Likewise, one cannot expect the specialized carrier or terminal equipment industries to maintain their initial growth rates. We consider this point further in our sections dealing with interconnect and private line competition individually.

[49] One might argue, on an abstract basis, that such business losses could result in idle plant and capacity whose basic costs would remain. However, since the telephone industry is experiencing annual increases in all market areas which substantially exceed the annual growth of their competitors, such arguments are invalid in this factual situation. These are "avoidable costs" to the telephone industry; it need only refrain from making the additional investments and incurring the additional expenses which would be required to satisfy this increment of growth, rather than absorb the costs of any idle capacity or equipment. Also, most intercity telephone plant can be used interchangeably for most telephone company services.

[50] See Final Decision, Docket No. 18128, FCC 76–886, the findings and conclusions of which are incorporated herein by reference.

[51] Public utility rates are generally designed to produce revenues sufficient to recover the expenses of providing service, including a return on capital investment ("profit") sufficient to attract necessary capital. The particular levels cited here are typical of telephone industry operations as reported to the FCC.

[52] Sources: FCC Form P and special carrier reports.

124. Financial reports of the telephone industry universally belie any competitive impact to date. The Bell System, GTE, CTC, and UTS, which comprise 95 percent of the industry are financially sound and enjoying improved earnings. The common stock of these companies has for a considerable period been selling above book value. Earnings per share of AT&T common stock during the first six months of 1976 were at an annualized level of $5.89 as compared with $5.04 for the comparable period of one year earlier. Operating income in the first six months of 1976 showed an 18.1 percent increase over the first six months of 1975.[53] The GTE companies are doing well also. Net income from telephone operations in the second quarter of 1976 was $100.2 million and in the corresponding 1975 period $89.7 million. Furthermore, the annual growth rate in GTE net income (telephone) from 1971 to 1975 was 14.5 percent. Earnings per share rose 16.6 percent from the second quarter of 1975 to the corresponding quarter of 1976.[54] Net income of the Continental Telephone Company (CTC) was $13.6 million in the second quarter of 1975 and $16.3 million in the second quarter of 1976, a rise of 19.55 percent. Over the same periods, earnings per share of common stock rose 17.65 percent.[55] In the case of the United Telecommunications System (UTS) earnings in the second quarter of 1975 were $21.8 million and in the second quarter of 1976 $26.5 million. Between these two periods earnings per share of common stock rose 20 percent.[56] Since Bell and the other systems cited together account for more than 95 percent of the revenues in the telephone industry, we find it reasonable to conclude that the industry is in a healthy condition and we foresee no significant obstacles arising from competition to the continuance of this growth and prosperity. It follows that the telephone industry claims of dire financial consequences due to competition cannot be accepted as valid.

125. Thus, the historical revenue, earnings and rate effect data set forth above, and the further data set forth in those sections of our report which deal individually with interconnect and private line competition, indicate no discernible adverse impact on telephone industry revenues and basic local telephone rates to date, and very little likelihood of any adverse impact in the foreseeable future.

TABLE III–1.—*Telecommunications industry statistics*

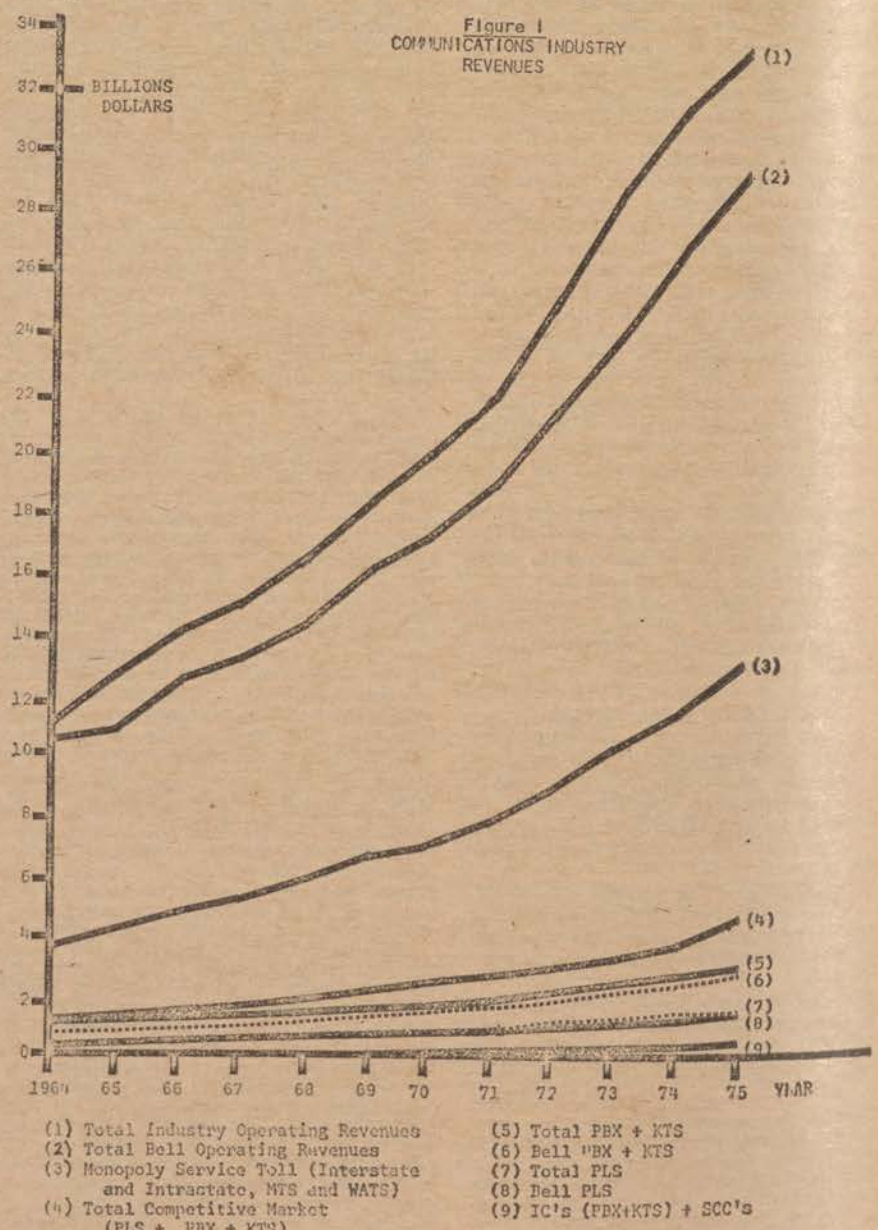
[Dollar amounts in millions]

	1975 revenues	Percent of total industry	Increase over 1974
1. Total industry	$36,313	100.0	$3,836
Bell System	29,581	81.5	2,839
Independent telcos	5,500	15.1	786
Competitive industries	194	.5	80
Other (telegraph, public land mobile)	1,038	2.9	[1] 150
2. Telephone industry	35,081	96.6	3,60
(a) Monopoly services	31,004	85.4	3,233
Local exchange	13,822	38.1	1,213
Interstate toll (MTS, WATS)	9,176	25.3	1,074
Intrastate toll (MTS, WATS, private line)	6,868	18.8	854
Miscellaneous revenues	1,138	3.2	92
(b) Competitive services	4,077	11.2	373
PBX and KTS	3,060	8.4	296
Interstate private line	1,017	2.8	77
3. Competitive industry	194	.5	80
Interconnect (PBX and KTS) [2]	143	.4	36
Specialized carrier	35	.1	28
Satellite carrier	16	([3])	16

[1] Estimate.

[2] Due to the diverse structure and marketing arrangements (e.g., sale versus lease) of the independent terminal equipment industry, revenue data directly comparable to that of the telephone industry is not readily available. The figures presented here consist of $130,200,000 in revenues which A.T. & T. contends it would have received in 1975, had it provided all the terminal equipment actually provided by nontelco suppliers; plus our pro rata estimate of a comparable figure for the independent telephone industry ($12,700,000).

[3] Negligent.

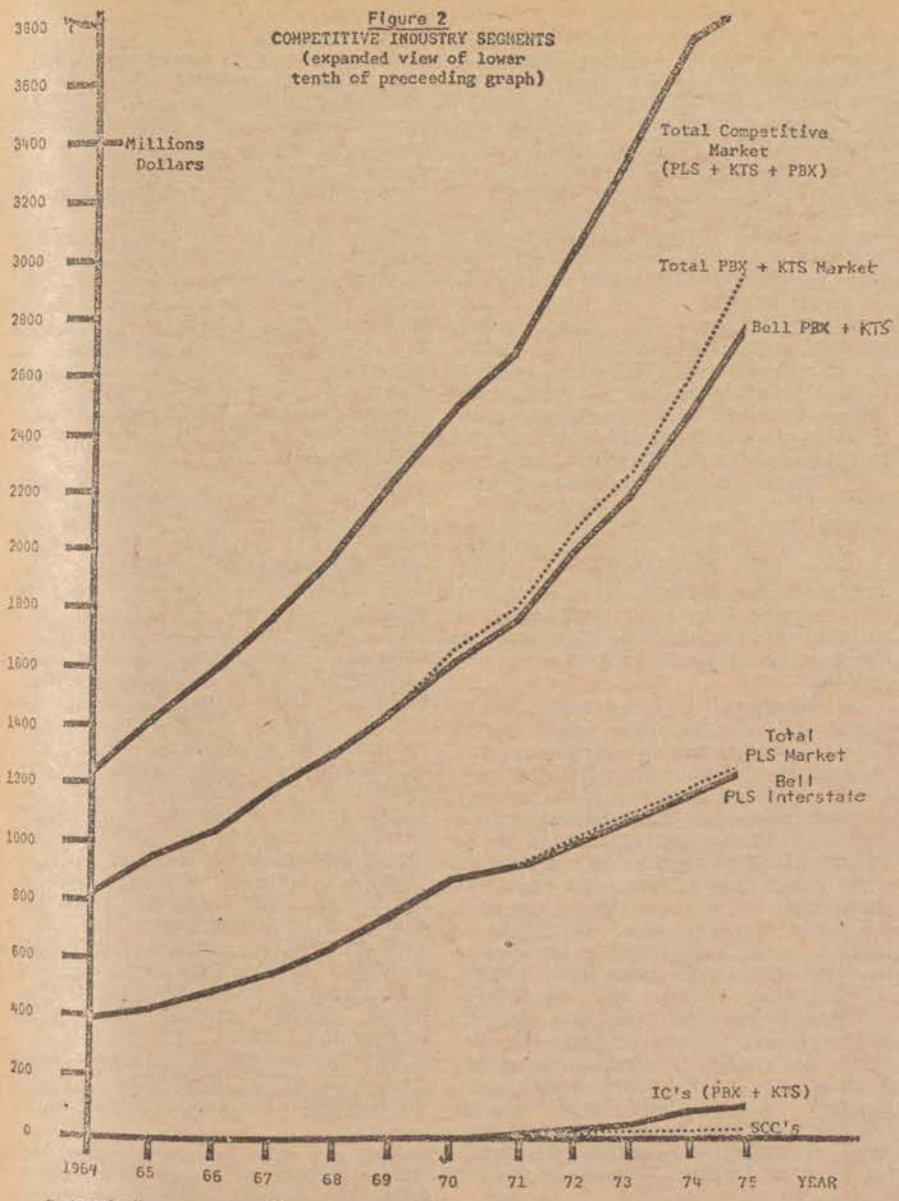


[53] Bell System, C.R. 51—No. 1, June 1976, as filed with the FCC. For the 3-month period ending August 31, 1976, AT&T earnings increased by 25 percent to $1.01 billion from the $810.2 million reported at the same time a year ago. For the 12-month period ended August 31, earnings rose 16 percent to $3.59 million, or $5.74 per share, from $3.10 billion or $5.10 a share, the year before. Wall Street analysts expect full-year results to exceed the latest 12-month figure and forecast per share earnings of $5.88 to $6 for 1976. Wall Street Journal, September 16, 1976, p. 3.

[54] Moody's Public Utilities, Vol. 48, and General Telephone & Electronics, Annual Report, 1975, p. 24.

[55] Moody's Public Utilities, Vol. 48.

[56] Ibid.



B. AT&T'S "CONTRIBUTION" CONCEPT

126. The telephone industry contends, however, that any revenues received by its competitors—whether in satisfaction of existing or new demand—will have an adverse impact on the rates charged by the telephone industry for other services (e.g., local exchange service). This will result, according to industry claims, because the revenues they receive from competitive services make a "contribution" above and beyond the direct costs of providing such services, which helps to support basic telephone services. We shall examine the general claims and principles concerning the "contribution" concept in this section, although examples of this concept related separately and specifically to specialized carrier and interconnect competition will be treated in those sections of the report.

127. The principal study relied upon by the telephone industry in support of its contention that basic telephone services are recipients of "contribution" from competitive services, is AT&T's "Embedded Direct Cost Study", (EDC). AT&T's EDC study is the source of industry claims that competition could cause as much as a 72 percent increase in residential telephone rates. Before we set forth our analysis of this study we note the quoted impact figure represents neither an actual nor a forecast result—it is entirely hypothetical. That is, the study merely postulates that if the Bell System were to lose all revenue contributions from certain service categories—without assessing either the likelihood or even the mechanism through which such an event could occur—then the residential rates would have to be increased by the stated amount in order to cover total costs (which the study further assumes would not be reduced concurrently with any loss of revenues).

128. AT&T attempts in Bell Ex. No. 1, its EDC study, to demonstrate that basic telephone services benefit from the revenues derived from private line services and terminal equipment leases such that basic telephone service rates are kept lower.[57] We will briefly review general accounting and economics approaches that are used to evaluate the revenue/cost relationship in a multiproduct firm, as a basis for evaluating Bell's EDC study which is an attempt to show current contributions. In order to determine whether the revenues received from each of several products or services provided by a single firm equal or exceed the cost of providing each service, one customarily identifies (to the maximum feasible extent) all the direct costs associated with each service, plus an appropriate share of any remaining costs. What constitutes an "appropriate share" of such costs for each service is a subject of considerable debate. Such costs may be assigned on the basis of comparative volumes of service provided; initial causation; relative usage of common facilities and production factors; various marginal or incremental cost effects; comparative demand elasticities; etc. Some costs may not be explicitly assigned to individual service or product lines, but may remain as common or joint costs. Whatever the particular method of allocation and assignment, however, certain basic facts must be considered. First, in the long run, all such costs must ultimately be covered by revenues from some source if the firm is to remain solvent. Second, each service normally contributes in some manner and to some degree to such costs, which would be lowered by the reduction or elimination of that service. And third, the proper identification, classification, and assignment of both direct and "overhead" costs is essential to any determination as to whether a service's revenues are covering its properly attributable costs—and correspondingly, whether users of other services provided by the firm would either benefit or be harmed if it were to lose business in that service to competitors.

129. In its 1974 EDC study,[58] AT&T has assigned slightly more than half of

[57] AT&T has submitted two updates of its original Ex. No. 1 which was for the year 1973: Ex. No. 1-A is a 1974 EDC study and Ex. 1-B is a 1975 EDC study. Bell claims the 1974 and 1975 EDC studies corroborate its original 1973 study. T+E prepared a detailed analysis of Bell's EDC studies which will be made available at a later date. Basically, T+E finds that the general methodology and assumptions relied upon by Bell in its EDC analysis, as identified in our discussion, are invalid. See T+E Deliverable G, pp. 10-33. In addition, T+E finds numerous deficiencies in the manner in which Bell develops joint (access) costs, joint (access) expenses, common costs and capacity costs, and identifies further problems with respect to Bell's assignment of costs to the common category.

[58] Bell's 1975 EDC study is based upon the same methodology employed by Bell in its 1973 and 1974 EDC studies. Our conclusions herein are therefore applicable to all three studies. The revenue and cost figures utilized by Bell, and the claimed results, in the respective studies vary insignificantly and thus 1974 figures provide an accurate picture of Bell's claims.

its total operating costs among three broad categories of service, as indicated in the following table. The remaining costs, which Bell characterizes as either "joint" or "common" costs of production, have not been allocated or assigned to particular services or categories of service, according to any of the criteria previously mentioned:

[In millions of $]

Service Category:	Cost
Local Telephone Service	$3,620
Intrastate Service	7,610
Interstate Service	2,930
Total (57 pct.)	14,160
Unassigned Costs:	
Joint Costs	6,400
Common Costs	4,270
Total Unassigned Costs (43 pct.)	10,670
Total costs (100 pct.)	24,830

Having thus assigned only 57 percent of its total costs of operation to three major service categories, AT&T then proceeds to identify the total revenues for each of these categories, as follows:

[In millions of $]

Service Category:	Revenues
Local Telephone Service	$8,290
Intrastate Service	10,440
Interstate Service	6,100
Total Revenues	24,830

Next AT&T subtracts the assigned costs for each service category from the total revenues from that category, producing a result which it terms a "contribution" toward the coverage of unassigned costs:

Service category	Assigned		
	Revenue	Cost	Contribution
Local telephone service	8,290	3,620	4,670
Intrastate service	10,440	7,610	2,830
Interstate service	6,100	2,930	3,170

Finally, AT&T postulates that if it were to lose all contributions from all services other than local telephone services, the rates for local telephone service would have to be increased by an average of 72 percent to cover all unassigned costs.[59] This number is obtained by combining the figures identified as "contributions" from Interstate and Intrastate services ($2,830 million+$3,170 million) and dividing the result ($6,000 million) by the 1974 revenues from Local Telephone Service ($8,290 million).

130. In the following analysis, we will examine the elementary logic of AT&T's "contribution" concept, as well as the various assumptions, data, and interpretations of the study. In particular, we will attempt to determine whether Bell's "contribution" concept provides any meaningful information concerning the existence or extent of any cross-subsidies among Bell's monopoly and competitive service offerings, or the potential effects of any competitive business losses on the rates for monopoly services. We will also examine the relevance of Bell's selection of service categories and the assignment of costs thereto to the issue of competitive impact. AT&T's definition, identification, and assignment of various cost elements will be reviewed for consistency and relevance. Finally, we will assess the logical foundations for and validity of AT&T's final postulate regarding the potential loss of all contributions from other than Local Telephone Services, and the potential effects thereof on local telephone rates.

131. *Contribution.* As noted, AT&T uses the term "contribution" to signify the amount by which the revenues for a particular service category exceed its assigned costs. At the outset, one must question the fundamental logic and assumptions of the "contribution" concept. As we have noted, while certain expenses of operation in a multi-product or multi-service firm are frequently incurred as "joint" or "common" costs attributable to more than one service (e.g., land, buildings, management, sales, etc.), the fact remains that the overall level of such expenses is generally dependent on the quantity of each product or service supplied.

132. According to some public utility ratemaking theories, such costs should be apportioned among all services on the basis of relative usage or business volume. Other theories hold that only the amount by which such costs would be reduced if a particular service were eliminated can be assigned to that service. At a minimum each service has a cause and effect responsibility for some portion of any such joint and common costs.[60] In failing to make any such assignment of these costs to particular service categories, AT&T's "contribution" concept fails to provide any meaningful assessment as to whether the revenues from each category are covering its properly attributable costs: Each service could, in fact, show a substantial "contribution" even though none was covering its own costs and they were not collectively covering the firm's total costs.[61] In fact, if the revenues for each of the service categories in the EDC study covered just its assigned costs plus a small contribution, the total enterprise would operate at a 43 percent deficit. A "contribution" concept which permits such an unrealistic analytical result provides no meaningful information concerning the effect which any loss of business in one service category would have on total costs, net income, or the rate and revenue requirements for other services. In short, one simply cannot determine through AT&T's "contribution" analysis whether loss of business in one service category would result in higher rates for other services (because the revenues for the former service had been exceeding its properly attributable costs); or lower rates for other services (because revenues from the lost business were failing to cover its properly attributable costs).[62]

133. *Service categories.* In its study, AT&T has divided its total range of communications services into 3 broad categories: Local Telephone Service, Interstate Services, and Intrastate Services (other than basic exchange). Since the apparent objective of the study is to demonstrate that any loss of business or revenues in competitive markets could adversely impact local telephone service rates, one would expect that competitive service offerings would be clearly segmented from monopoly offerings for the purpose of such analysis. This AT&T has failed to do. The "Interstate" and "Intrastate" service categories used in this study each incorporate relatively small competitive markets together with vast monopoly markets, without separately identifying their respective costs, revenues, or "contributions." The Interstate market, as defined in this study, consists of the two long distance monopoly telephone services (MTS and WATS), which together provided $9.176 billion in revenues in 1975; plus the interstate private line services, which accounted for only $1.017 billion in revenues. Similarly, the Intrastate market, as defined herein,

[59] In its 1975 FDC study Bell postulates the percentage increase to be 78 percent, Bell Ex. No. 1-B, p. 5.

[60] T+E finds that basic service, under the Bell methodology and on a proportionate basis, made a greater "contribution" towards covering joint and common costs than other services. One would suppose that just the opposite conclusion would pertain if Bell's "contribution" concept had any validity, supra, n. 57.

[61] The U.S. Supreme Court recognized a solution to allocating common costs in the Minnesota Rate Cases, 30 U.S. 352 (1913), wherein it adopted the principle of allocation on the basis of relative use. The principle was extended to telephony in *Smith v. Illinois Bell*, 282 U.S. 133, 154 (1930). Accordingly, the NARUC-FCC Separations Manual, Part 67 of the Commission Rules, 47 CFR Part 67, allocates revenue requirements between interstate and intrastate on the basis of direct assignment where possible, and on the basis of relative use otherwise. While there is dispute over some of the relatively minor details of the formula, we are aware of no claims that the Separations Manual, and relative use methodology basic thereto, should be wholly abandoned or drastically changed. Further, modern accounting also allocates common costs by relative use. When a modern management is concerned as to whether a product or product line is "paying its way", it establishes a "profit center" for that product line which involves allocation of costs. Thus, Bell's failure to allocate joint and common costs in the studies it provided for this inquiry, thereby understating costs associated with particular services, is contrary to long-established principles and methodologies.

[62] Another important flaw in Bell's allocation scheme is that the subsidy flowing to intrastate services from interstate toll via separations, i.e., the indirect contribution, is neglected. The costs thus shown for station equipment appear to be those for the intrastate portion only. Thus, total intrastate revenue is compared to only 80 percent (on average) of the cost. Clearly this comparison is misleading. Total revenue, interstate and intrastate, should be compared with total costs, interstate and intrastate. If total costs are not considered the result is invariably an overstatement of contribution, if any.

includes statewide long distance monopoly telephone services (MTS and WATS), intrastate private line services (also a monopoly in most states), Yellow Pages, and a variety of miscellaneous monopoly services—in addition to the competitive terminal equipment market.[63] In 1975, the intrastate monopoly services provided $6.868 billion in revenues, while the competitive terminal equipment market produced $3.060 billion. Thus, of the $20.121 billion now in the combined Interstate and Intrastate markets, at most only $4.077 billion or 20 percent is potentially subject to competition[64]—and even this overstates the competitive market in terms of real entry opportunities. Since 80 percent of these two markets is therefore protected from even the threat of competitive entry, it follows that no evaluation of either the real or potential economic effect of competition can be made on the basis of this highly aggregated cost and revenue data.

134. *Cost definition and assignment.* We have previously commented on AT&T's failure to allocate and assign portions of general overhead costs to each service, based on the general increase in such costs occasioned by the offering of the service. There are, in addition, several specific cost assignments which appear questionable. While the study lacks sufficient delineation of all cost items to permit any in-depth critique, among those mentioned one must question whether the cost of the basic telephone instrument and customer line, traffic-insensitive local central office equipment, and spare switching capacity, properly fall within the unassigned cost category. Similarly, one must question whether all the unstated costs associated with the competitive markets (e.g., special sales and marketing efforts, special installation and maintenance teams, special research and development expenses, litigation and lobbying expenses, etc.) have been properly attributed to these services. Since the AT&T study is largely silent as to the delineation or justification of specific cost assignments, these must remain as unanswered—though significant—questions of fact.[65]

135. *Hypothetical arguments.* The preceding observations challenge the validity of the "contribution" concept, the delineation of service categories, and the identification and assignment of specific cost elements. But even if one firmly believed in the methodology and data employed in deriving the basic "contribution" results, AT&T's final hypothetical argument regarding the potential loss of all contributions from services other than local exchange appears to violate certain logical rules. As previously noted, one of these rules is that the relevant market (i.e., the market actually subject to competition) should be properly identified and distinguished from monopoly markets as to both costs and revenues, before attmpting to postulate the effects of competition within that market. This AT&T has failed to do, leaving these small markets instead aggregated with the monopoly Interstate and Intrastate telephone markets which are not subject to competition. One cannot, therefore, responsibly postulate that competition could in any way result in the loss of all "contribution" from the Interstate and Intrastate service categories.

136. Suppose, however, that AT&T had accurately identified the relevant market for a competitive impact analysis (i.e., the interstate private line and terminal equipment markets), as well as the relevant revenues and costs associated with these markets. The question would then be, through what mechanism could the event postulated—i.e., the loss of all "contributions" from this market—actually occur, and what would be the likelihood of such an event?

137. There are two basic means by which the loss of all "contributions" from a competitive market area could occur. First, AT&T could lose all the business to its competitiors. Given the history of competition to date, this outcome would seem highly unlikely. But even if one merely wishes to speculate about such an occurrence, it would have to be recognized that this would be accompanied by substantial reductions in both assigned and unassigned costs, which would largely offset any "contribution loss" as defined in this study. Alternatively, one could postulate that AT&T would be forced, in response to competition, to lower its rates to the point that revenues just covered assigned costs, as the means through which a total loss of "contribution" could occur. Indeed, this appears to be the approach AT&T has taken in the study. But since a substantial portion of the costs of providing each service are in the unassigned category, this is to say that AT&T, in order to respond to its competitors, would have to price substantially below the total costs of providing the service—by as much as 43 percent, on the average! While competitiors frequently claim they can provide certain equipment or services more efficiently than can AT&T, a 43 percent differential is hardly believable, even in a hypothetical study—particularly since AT&T in arguing against competition steadfastly contends that, because of economies of scale, it is the low cost supplier.

138. In light of the significant flaws in the fundamental logic, hypotheses, assumptions, data, and interpretations contained in Bell's EDC study, Bell Ex. No. 1, we cannot accept as valid any of the conclusions or inferences Bell attempts to draw from its study regarding the economic effects of interconnect and private line competition. Thus, it provides no valid basis for determining whether competition in interconnect and private line could—even on a hypothetical basis—affect basic telephone service rates. It follows without further comment that it provides no insight to actual effects.

C. USITA STUDY

139. In support of its views concerning the potential economic impact of competition on the independent telephone industry, USITA has submitted a lengthy report prepared for it by a consulting firm, Systems Applications, Inc. (SAI). Using a data base consisting of current operating statistics from 29 selected independent telephone companies, in connection with a variety of computer models developed for this study, SAI has attempted to project the possible impact of specialized carrier and interconnect operation on the future revenues and earnings of the independent telephone industry, as well as on local telephone rates, according to various assumed "scenarios" regarding future competitive developments and telephone industry responses. Based on its analysis of current operating data from the 29 selected companies, SAI concludes that competition to date has had a minimal—if any—impact on either independent telephone industry revenues or on telephone rates. SAI also forecasts little impact within the near future. However, under what it terms its "base case" scenario, SAI projects that competition will result in substantial revenue losses to the independent telephone industry beginning in 1979 and increasing through 1985, the end of its forecast period. Specifically, SAI projects[66] that the combined effect of competition from both the interconnect companies and other common carriers on the independent telephone industry will be a revenue diversion of $230.2 million in 1979, $410.6 million in 1980, and $2,387 million in 1985. These figures are in constant 1974 dollars. The loss as a percent of the independents' projected revenue, under 1973 market conditions, is 6.09, 10.08, and 41.33 in 1979, 1980 and 1985, respectively, according to SAI's analysis.

---

[63] Thus, we are unable to focus our analysis in this section with specificity on alleged direct contributions to basic exchange services from vertical services such as PBX, KTS, etc.

[64] Excluding any cross-elasticity effects.

[65] Still another serious problem with the Bell study is that it was done using claimed rate of return rather than an actual one. Since the claimed rate was in excess of the actual rate of return (in the study at hand), revenues were less than total costs. We discuss this type of problem to some extent below in the context of CTS's study done by Baer and Mitchell, but it was not significant in that study, wherein it was overwhelmed by the even more serious problem of the irreconcilability of the accounts.

[66] In a letter to the Chief, Common Carrier Bureau, dated July 1, 1976 and submitted in the record, SAI asserts that it does not predict results but contends that it only "projects" economic effects of competition "through scenario analysis." By this we understand SAI to be saying that while its conclusions are "projected" on certain assumptions, it cannot "predict" that these assumptions of the future will, in fact, occur. Such a posture is both understandable and proper since SAI's expertise is in general economic studies and it is, obviously, not privy to all of the decision making processes of the entire telephone industry and regulatory bodies. In evaluating the study it is crucial to understand this point made by SAI.

140. While SAI has made a determined effort to quantify some of the more complex economic factors involved in telephone industry operations (e.g., interaction of separations and competition), we find that its ultimate conclusions regarding the long-term impact of competition rest upon faulty assumptions and analytic procedures. Accordingly, we cannot accept these results as any valid indication of such effects.

141. Many of the key assumptions upon which SAI's forecasts of future competitive impact rest are embodied in the internal design of the computer program which SAI developed for this study, and would require detailed interrogation of the original computer program analyst to unearth. There are, however, several major assumptions stated in the SAI report which can be examined. In some instances, these stand alone as representing only the "best judgment" of the SAI staff, with no further supporting rationale. In other cases, supporting arguments are presented which represent secondary assumptions requiring evaluation.

142. Among the more critical assumptions employed by SAI in its "base case" scenario are the following:

That the specialized carrier industry will by 1985 capture 10% of the total long distance communications (including the MTS and WATS markets as well as the private line markets to which SCC competition is presently limited);

That OCC services will be so cross-elastic with MTS and WATS that MTS rates will be substantially reduced in order to retain its present market;

That the present usage-dependent arrangements for allocating and assigning costs between interstate and intrastate services (i.e., jurisdictional separations procedures)—which derive from a 1930 Supreme Court decision in "Smith v. Illinois Bell Telephone Company, supra,"—will be abandoned;[67]

That the selected sample of 29 independent telephone companies accurately represents the independent telephone industry for purposes of long-range forecasts of economic impact;

That the elasticity of demand for toll service is −.8, based on short run price elasticities, despite the fact that SAI's study projects 10 years into the future.

143. We have reviewed these and other SAI assumptions in detail, as has our contractor (T+E), both independently and in consultation with the SAI study team. Concerning the assumption of 10 percent penetration of the total long distance communications market and MTS rate reductions, SAI offers this only as its "expert opinion". In a preliminary report in this proceeding,[68] we pointed out that this would require not merely one but a combination of several developments, each of which seems virtually impossible of achievement, namely:

Reversal of the Commission's firm policy determination that specialized carriers will not be authorized to offer services which are directly competitive with MTS and WATS;[69]

A compound growth rate for the specialized carrier industry of over 60 percent per year for the next 10 years, whereas the industry is presently experiencing great difficulty in obtaining short-term financial resources so that it can reach a break-even posture.[70]

144. While we do not rule out the need for changes in some jurisdictional separations procedures, we find no justification for SAI's expectation that we would agree to a complete abandonment of the allocation procedures which were first developed in 1947 and revised several times thereafter. Changes of this type would violate "Smith v. Illinois Bell, supra." In addition we would expect that any separations changes would increase rather than decrease as SAI anticipates, our recognition of the role of local facilities in the provision of interstate services.

145. In regard to its sample of independent telephone companies, SAI states that it is based upon an informal survey technique. The methodology for the survey is neither explained nor justified, nor is any support given for the assertion that the 29 companies surveyed are representative of the independent industry. We have no way of determining whether the sample is representative or whether the results are statistically valid. Since SAI's projections of competitive effects to 1985 are based in large part upon this survey, we have no way of determining the validity of the study results.

146. Finally, SAI's elasticity figures are clearly too low. The use of short run elasticities for a ten year study is unjustified. We agree with our contractor, T+E, that use of a more realistic long run elasticity figure, even without adjustments to other unreasonable assumptions, would reduce the projected OCC competitive impact by 50 percent.

147. While any such elasticity studies are speculative in nature, they do serve to illustrate the critical nature of the demand elasticity assumptions.[71] Demand or impact studies, and market penetration estimates, which do not consider the effect of demand elasticity (or which, like the SAI study, use arbitrary or unjustified numbers) are of limited value to our analysis of competitive impact.

148. We shall examine these and other assumptions made in SAI's report in greater detail in sections IV and V of this Report. As with our analysis of the assumptions discussed above, our examination of SAI's other assumptions leads us to conclude that this report is of little value in our determination of the impact of competition on the telecommunications industry.

IV. Interconnect Competition

A. Introduction

149. In this section of our report, we consider the basic question of whether, and if so, to what extent interconnect competition has had, or will have, an adverse economic impact on the rates and availability of basic local telephone service. In particular, we are concerned with ascertaining the adverse economic impact of interconnect competition, if any, on the rates and availability of basic exchange telephone service. We do not address issues raised herein which concern alleged technical harm to the public switched network from interconnect competition since such issues have been thoroughly covered in Docket No. 19528. Allegations of economic harm were also made in Docket No. 19528. Such allegations have been considered herein.

150. Our findings and conclusions on the above question will be discussed in six basic sections. The bulk of our discussion will be in Section B wherein we

---

[67] "Jurisdictional separations" refers to the process through which the property, revenues, and expenses of telephone industry operations are allocated between interstate and intrastate services. The Supreme Court established the principle in "Smith v. Illinois Bell Telephone Company" that such allocations should be based on "actual" or "relative" use. As a result, part of the cost of local exchange telephone facilities are allocated to interstate services, and part of the interstate revenues are returned to the local operating telephone company to cover such costs. SAI assumes, without justification, that competition in the interstate private line market will cause this separations process to be abandoned, leaving the responsibility for covering all costs of local exchange telephone facilities to the local exchange telephone service revenues. Supra, n. 60.

[68] Letter to Chairman, House Communications Subcommittee, May 25, 1976 (Mimeo No. 65570).

[69] MCI Telecommunications Corporation (Execunet), FCC 75-799 (released July 2, 1975); FCC 76-622 (released July 13, 1976).

[70] In order to satisfy 10 percent of the projected total toll market for 1985, e.g., 10 percent of $42 billion, the specialized carrier sector would have to reach a level of total investment in plant of approximately $13.4 billion—based on general industry experience that $3.2 in investment is required to produce $1 in annual revenues. The present net plant in service for the entire specialized common carrier sector (including satellite carriers) is at a level of about $400 million. To reach $13.4 billion by 1985 the specialized carriers would be required to invest capital, primarily from the debt market, at an average rate of about $1.3 billion per year—a feat approaching the $2.5 billion debt financing of the entire Bell System in 1975. The prospective entry of new firms such as IBM and ITT into this market may bring additional resources; but there is nothing to indicate that the collective investments of this industry either could or would be likely to approach the $1.3 billion annual level.

The recent bankruptcy of Data Transmission Company (Datran), a specialized common carrier, points out the financial difficulties certain carriers have experienced. Other carriers in the field are just reaching or have not yet reached the break-even point and many are continuing to suffer cash flow deficiencies.

While we do not anticipate further failures of these carriers, there is no question that the specialized carrier industry remains in the developmental stage.

[71] Among those variables, SAI found difficult to estimate with confidence were: growth rates of demand for various vertical services, price elasticities of demand for "basic exchange" services and for each type of terminal equipment, cross-elasticities among "basic exchange", KTS and PBX services, increases in the use of Centrex and consequent reductions in PBX installations, and technical change in the central office, subscriber loop and terminals.

address the various "contribution loss" claims of the telephone industry and other respondents' views. In particular, we describe and evaluate the individual "contribution loss" studies which were filed in this proceeding and discuss the importance of separations and usage sensitive pricing insofar as such measures could neutralize undesirable effects of interconnect competition, if any. In Section C, and Appendix C, we set forth and evaluate the estimates of historical and projected terminal equipment market penetration given for interconnect companies. In Section D, we consider the subjects of innovation by interconnect and telephone companies and the extent to which public benefits have resulted therefrom. In Section E, we consider telephone company pricing responses to interconnect competition. In Section F, we consider the issue of competitive impact on small independent telephone companies. Finally, in Section G we briefly summarize our findings with respect to the overall economic impact of interconnect competition. We have relied extensively upon the T+E analysis in arriving at our findings and therefore cite to T+E findings where appropriate. Throughout this part of our report, we attempt to identify particular subjects which should be addressed by the parties in the further stages of this inquiry.

B. CONTRIBUTIONS AND INTERCONNECT COMPETITION

151. As noted above, the telephone industry respondents argue basically that business customers subsidize residential customers thereby keeping basic exchange rates lower. For example, they claim that business vertical services (such as PBX, KTS, Centrex, etc.)[72] provide substantial revenue contributions or subsidies to basic local exchange service. Claims are also made by the telephone industry that other kinds of terminal equipment such as business or residential extensions provide such contributions. The industry alleges that interconnect competition has resulted, and will continue to result in lost revenues and contributions thereby necessitating increased rates for basic local exchange subscribers. API, CBEMA, MCI, NATA, OTP, Phone-tele, SPCC and others challenge the telephone industry claims. They argue generally that the revenue and contribution losses claimed by the telephone industry due to interconnect competition are either non-existent or exaggerated. Some of the non-telephone industry parties, especially MCI, while questioning the existence of the claimed contributions, argue that residential customers may actually be subsidizing business customers. Finally, OTP and SPCC contend that separations changes or usage sensitive pricing of exchange services could neutralize carrier revenue and contribution losses, if any, caused by interconnect competition. In this section of our report, we describe and evaluate the specific studies filed which purport to show current contributions from carrier-provided terminal equipment, or which attempt to show contribution losses to date or projected contribution losses due to interconnect competition in the future. We also provide an overview and summary of the effect of interconnect competition on contributions, attempting to compare the various submissions and their import for basic local exchange ratepayers. Finally, we discuss the importance of separations and usage sensitive pricing and the extent to which they could have neutralizing effects on revenue and contribution losses, if any, due to interconnect competition.

152. We note that most of the studies filed with us or examined by us were based on the following cost concepts: Embedded direct historical cost; direct current cost; or long run incremental cost. These costs are then generally compared with associated revenues to determine contributions, if any, to basic local exchange service. We found in examining the studies submitted it was not practical for us to change the basis of cost allocation in any study (we generally lacked the workpapers to do so)[73] so we generally treat each on its own terms below, although we will point out internal inconsistencies where such exist. Further, many of the studies are not comparable and cannot be fully reconciled. However, to the extent possible, we have drawn relevant comparisons and conclusions.

153. Finally, as stressed by T+E, it should be kept in mind there are two kinds of contribution which we discuss below. The so-called "direct contribution" is that contribution which the telephone industry claims terminal equipment makes to basic local exchange services because such terminal equipment is allegedly priced above its associated costs. The other form of contribution is the "indirect contribution" or "interstate toll contribution," which flows from the interstate jurisdiction to the intrastate jurisdiction and exists because of the manner in which terminal equipment costs are allocated between interstate and intrastate jurisdictions under separations procedures. All terminal equipment revenues generally go to intrastate under existing separations procedures, but some 20 percent of the terminal equipment costs are allocated to interstate.[74] This "indirect contribution," generally flows to basic local exchange or intrastate toll services. It exists, however, independently of the terminal equipment services, i.e., the indirect contribution's existence and amount are functions of the regulatory policy to subsidize basic and intrastate toll service. However, as we find below, it may in fact subsidize the terminal equipment services themselves. We shall distinguish the two types of contributions where possible in our consideration of the individual studies.

1. *Contribution Studies*—a. *American Telephone and Telegraph Company (AT&T or Bell)*. 154. Having previously found the principal contribution study relied upon by Bell, Bell's EDC study, Bell Ex. No. 1 (1–A, 1–B) invalid, we shall consider more limited studies submitted by Bell for the purpose of showing current contributions. AT&T presents three other embedded direct cost-type studies which purport to show current contributions by certain classes of terminal equipment or services. Bell's "Embedded Direct Cost Study-Extensions", Bell Ex. Nos. 18 and 18–A, are systemwide studies involving 70 percent of all extensions. Trimline, Princess, Business 500, and Residence 500 telephones are studied using an embedded cost methodology. Embedded investment includes the phone itself and the costs of installation. Capital costs, both return on investment and taxes, as well as operating expenses, are included. Data are collected for calendar years 1973 and 1974. Total claimed contributions from this study are approximately $100 million for each year. Bell claims the high percentages of contribution are consistent with the Bell policy of having vertical services make contributions above their directly attributable costs so as to help cover the common and joint costs of the business. A detailed breakdown of unit and gross contributions is given in Table IV–1 below.

155. One problem we and T+E had in scrutinizing the study, is that we were not provided with any underlying documentation.[75] For example, in calculating test

[72] Some studies treat Centrex CO as a basic exchange service. Despite the presence of the common equipment in a central office, Centrex CO is as much a vertical service as Centrex CU, PBX and KTS services.

[73] A fundamental difficulty we had in fully evaluating most of the studies submitted (especially the Bell, SAI, GTE, UTS and NARUC studies) was a lack of underlying documentation. Since the issues involved are of critical importance to the telecommunications industry we expected that respondents would document their positions and studies to the greatest extent possible. This was not done in most cases. In the further stages of this inquiry we expect full documentation of all assumptions, conclusions, inferences, studies, etc. that are provided.

[74] With the removal of telephone company-provided terminal equipment from service the portion of the associated costs which was assigned to the interstate jurisdiction by the separations formula can no longer be assigned there. Subsequently, when the division of revenues procedures are applied to the interstate revenue pool, the "pay back" to the local operating company, i.e., interstate toll contribution or indirect contributions, will be reduced to the extent that separated expense and investment disappear. This "lost" indirect contribution would thus manifest itself in a higher intrastate revenue requirement. This revenue requirement shift occurs in the independent telephone industry through toll settlements procedures. See our discussion of interconnection and separations below.

[75] We note, moreover, that the study did not include an allocation of common overhead costs to extensions, Bell Ex. No. 18, p. 3. As was the case with Bell's Ex. No. 1, this could mean extension telephone costs are understated, overstating current contributions, if any.

period revenues local company tariffs for each item were weighted by the number of each tariff item (recurring and nonrecurring) as determined by local studies.[76] Without documentation as to the representativeness and statistical validity of the local studies we do not know if the resulting weighted tariff rates provide an accurate picture of realized revenues. We also do not know if the costs considered were total costs or merely intrastate costs. Further it is not clear whether the claimed contributions include the interstate toll or indirect contribution. As noted previously, the consideration of only intrastate terminal equipment costs, or the inclusion of the indirect contribution with claimed direct contributions, results invariably in an overstatement of contribution, if any. Moreover, there may be substantial differences in tariffs from state to state such that the systemwide revenues and contribution figures for extensions do not provide an accurate picture of current contributions, if any, in all cases. Accordingly, we cannot properly analyze and verify any conclusions or inferences from Bell's extension study regarding the extent of any contributions made by extensions.

TABLE IV–1.—*Contributions from extension phones* [1]

[Dollar amounts in millions]

Item	Extension type			
	Residence trimline		Residence princess	
	1973	1974	1973	1974
Unit revenues	$28.50	$29.00	$23.25	$24.75
Direct unit costs	$17.75	$18.25	$13.75	$14.25
Unit contribution	$10.75	$10.75	$9.50	$10.50
Contribution as a percent of direct costs	61	59	69	74
Total system contribution	$23.00	$26.50	$15.50	$16.20
	Extension type 500			
	Business		Residence	
	1973	1974	1973	1974
Unit revenues	$24.00	$25.50	$14.25	$15.00
Direct unit costs	$15.00	$15.50	$11.25	$11.75
Unit contribution	$9.00	$10.00	$3.00	$3.25
Contribution as a percent of direct costs	60	65	27	28
Total system contribution	$22.10	$25.60	$52.70	$58.40

[1] The 1973 figures above are adjusted in Bell Ex. No. 18–A from what appeared originally in Ex. No. 18 due to admitted errors, resulting in an overstatement of weighted revenues and costs in the original study.

SOURCE.—Bell Ex. Nos. 18, p. 2, and 18–A, p. 2.

156. In Bell Ex. No. 53, Bell provides a Business Exchange Cost Study (BCS). Acccording to Bell the purpose of its BCS study is to demonstrate the relationship between revenue and cost associated with provision of business exchange service as of December 1974. This study also uses an embedded direct cost type analysis and approximately 13 million main and "equivalent" main telephones are claimed to be represented in the study. Among other things, a random sample of 6,300 exchange lines was selected for measurement to determine the casual responsibility for traffic sensitive investments and expenses of business.[77] The claimed results are given in Table IV–2 below:

TABLE IV–2.—*Contributions from business exchange services month of December 1974 dislayed on an annualized basis*

[Millions of dollars]

	All business Millions of dollars
Revenues	$3,035
Direct costs of local calling	−1,415
Contribution toward covering joint and common overhead costs	1,620
Joint (access) costs	1,515
Contribution toward covering common overhead costs [1]	105

[1] Does not reflect additional funds that flow (via separations) from the assignment of a portion of the Joint Costs to long distance services.

SOURCE: Bell Ex. No. 53, p. 3.

157. No underlying documentation is provided to facilitate a comprehensive analysis of the claimed results. As was the case with other Bell studies provided herein, however, joint and common overhead costs were not allocated specifically to business exchange service, resulting necessarily in an understatement of business exchange associated costs and overstatement of contribution, if any. Further, we also cannot determine the extent to which claimed contributions are based upon an analysis of intrastate costs only. As noted earlier, this could result in an overstatement of contribution, if any. Moreover, we find that even if none of the common overhead costs were properly allocated to business (i.e., no advertising expense for business, no supervisory expense, no legal expense, no regulatory expense, etc.), the benefit or contribution to Bell's 83,097,678 residential customers would be non-existent according to other figures Bell has reported to the Commission.[78] Marketing Department expenses are 82.0¢ per month per telephone (or $9.84 per year per telephone). Since there were 31,373,453 business telephones, marketing expenses attributable to business for such things as advertising, sales, etc., were $308,714,778, or about three times the amount claimed as the total contribution in Bell's BCS study. Actually, other expenses such as accounting and law, should also be clearly attributable to business exchange service, and business telephones are greater than average beneficiaries of commercial and marketing services. Thus, it appears that business telephones may actually fall short of paying for themselves by at least $200 million.[79] If business exchange rates were raised to cover this deficit, residential exchange rates could possibly be lowered by $2.45 per year or $0.21 per month. Further, as was the case with other Bell studies, systemwide results may not provide an accurate picture of business exchange contributions, if any, in all states. Accordingly, we cannot draw any inferences or conclusions from Bell's BCS study regarding the extent to which contributions are made by business exchange service to residential exchange service.

158. Bell also provides, utilizing an embedded direct cost type analysis, a 1975 Residential Cost Study (RCS) in its Ex.

[76] Bell Ex. No. 18, p. 4.

[77] Absent underlying documentation, we have no way of verifying the representativeness of the sample relied upon by Bell. In this connection, in 1975 there were 9,618,917 business main telephones in service indicting that Bell's sample size is only 0.666 percent of the total number. Since investments were allocated by exchange line usage, verification of the reliability and representativeness of the sample is critical.

[78] Figures used in this aspect of our discussion are taken from Bell Monthly Report No. 5, Consolidated Report 63, December 1974, which is on file with the Commission.

[79] Approximately $308 million in advertising and sales expenses attributable to business telephones, minus the $105 million claimed contribution from business exchange service, equals approximately $200 million. We note that the $105 million in claimed contributions toward covering common overhead costs is only 3.5 percent of total operating revenues for business exchange service. Assuming arguendo the $105 million figure is valid, such contribution figure is miniscule in the total contribution picture and hardly supports industry claims that business services provide substantial contributions to basic local telephone service including residential exchange.

No. 54.[80] According to Bell, the purpose of this study is to determine and illustrate the relationship between revenue and cost associated with the provision of residential exchange telephone service. Bell claims that the study shows that residential exchange telephone service revenues exceed all of their directly attributable local calling costs and are making a contribution, $2.75 billion, that is available to help cover joint (access) costs,[81] but that the remaining $4.62 billion required to cover joint (access) costs are covered by contributions from other Bell services such as interstate and intrastate MTS, WATS, terminal equipment, extensions, etc. Additionally, it is claimed those other Mell services are priced to help cover all common corporate overhead costs as well. The claimed results are given in Table IV–3 below:

TABLE IV–3.—*1975 residential cost study Results, month of December 1975 Displayed on annualized basis, including 10.5% cost of capital*

[In millions of dollars]

Revenues	$5,820
Direct costs of local calling	—3,070
Contribution toward covering joint (access) costs	2,750
Joint (access) costs	—7,370
Total	(4,620)
Contribution required from other services	[1] 4,620

( ) Denotes negative amount.

[1] At 9½% rate of return this figure would be $4.14 billion.

SOURCE.—Bell Ex. No. 54, p. 4.

Bell claims that if other sevrice categories were restructured and repriced so as to cover all their directly attributable costs and, in addition, cover all common corporate overhead costs, but none of the joint costs, average monthly residential exchange service rates would have to be increased from $9.00 to $16.15 per main telephone or an average of about 79 percent, to meet the business' overall revenue requirements.[82]

159. A thorough analysis of Bell's 1975 RCS study, filed July 12, 1976, has been completed by T+E and will be made available at a later date. Despite the absence of underlying documentation, we are able to make some important observations about Bell's 1975 RCS study. As with its other studies, especially its 1974 EDC study discussed above, Bell fails to allocate any joint and common overhead costs to business services including vertical services, thereby stating incorrectly the costs and contributions, if any, for such services. We find several problems also arise in regard to Bell's isolation of residential exchange costs from the total exchange costs category. For example, T+E finds there is an obvious deficiency in Bell's determination of embeddel investment for subscriber loops (assigned to the access line costs category). Subscriber loop investment is an average of all loops, Bell Ex. No. 54, p. 9, which will include business loops as well (e.g., house cable found in countless large commercial and industrial structures), thereby overstating the portion of loop investment attributable to residential subscribers. Bell's assignment of traffic sensitive investment to residential exchange is also questionable because the special traffic study upon which allocation was based was restricted to Electronic and No. 5 Crossbar offices. Thus Bell derived no data from Bell central offices which were Step-by-Step, Panel, Manual and No. 1 Crossbar which account for 56 percent of all Bell central offices.[83] T+E also finds, as do we, problems in isolating residential exchange costs from total exchange costs in revenue accounting expense, traffic operating expense, directory expense and service order and line test work expense. Finally, we have difficulty reconciling the 1975 RCS Study with the comparable category in Bell Ex. No. 1–B. While the direct cost of local calling in the 1975 RCS Study is 78 percent of the comparable category in Bell Ex. No. 1–B, we find that joint (access) costs are higher, i.e., joint access costs in the 1975 RCS Study are 105 percent of joint access costs shown in Bell Ex. No. 1–B.[84] We find that discrepancy unexplainable even when we take into account the higher cost of capital utilized by Bell in its 1975 RCS study.[85] Accordingly, again we cannot draw any conclusions of inferences from Bell's 1975 RCS study. As we noted above, we expect to have a more detailed analysis of Bell's 1975 RCS Study available in the near future.

[In millions of dollars]

	1975 RCS study	1975 EDC study
(1) Revenues	$5,820	$8,050
(2) Direct cost of local calling	3,070	3,920
(3) Contribution toward joint (access) costs (line 1 minus line 2)	2,750	5,030
(4) Joint (access) costs	(7,370)	(6,990)
(5) Total (line 4 minus line 3)	(4,620)	(1,960)

160. A final Bell study we consider is Bell Ex. No. 45, "The Impact of Competition for Intercity Services and Terminal Equipment on Separations Assignments and Procedures." Although this exhibit relates to separations, and is treated in detail elsewhere,[86] we discuss it briefly at this time because it is related to Bell's position on interconnect competition and contributions. The basic claim made by Bell in this exhibit is that "a significant factor in keeping basic local exchange rates low has been modifications in the jurisdictional separations procedures."[87] We find there is no evidence in the exhibit which shows that it is "only" or "primarily" basic exchange, and not non-basic exchange intrastate services such as message toll, PBX, KTS, etc. that are relieved of cost burdens by transfers of costs of local exchange plant to interstate services via separations. Moreover, we find that the exhibits does not show the actual contributions above interstate costs made by interstate services. Further, we have difficulty reconciling Bell Ex. No. 1–B to Bell Ex. No. 45. In Bell Ex. No. 1–B (1974 EDC Study), revenues for Bell system interstate services, omitting Long Lines, are given as $6,100 million, while in Bell Ex. No. 45 we are given $8,850 million in revenues for interstate MTS and WATS for Bell and the independents. It is possible that the difference represents funds transferred to the independents as toll settlements, but exactly how the discrepancy is in fact allocated to the independents and/or Long Lines and to any other services is not clear.

161. Bell also presents in Bell Ex. No. 45 a set of appendices purporting to show contribution losses due solely to separations effects (i.e., indirect contribution losses) and terminal equipment competition under arbitrary percentage assumptions relating to interconnect market penetration (examined at 20, 40, 60, 80 and 100 percent penetration) and percentage contribution (rates are fixed to yield, alternatively, zero, 10 and 20 percent contributions).[88] For example, assuming a total-competitive interconnect market penetration of 20 percent by 1984 the contribution loss (in terms of an increase in annual intrastate revenue requirements) would be $1,100 million (rates set at 0 contribution), $1,250 million (rates set at 10 percent contribution) and $1,350 million (rates set at 20 percent contribution), respectively.[89] T+E finds, and we agree that, the projections are of no value in assessing the competitive impact of interconnect competition via separations effects because the Bell assumptions underlying the projections are not supported. For example, Bell assumes, without support, that (1) The observed historical interconnect, and alleged toll separations losses, will continue during

[80] This exhibit is an update of the 1973 Residential Cost Study attached to Bell Ex. No. 2, although there are differences. For example, the 1973 study covered only single party residential exchange service while the 1975 study purports to include all residential exchange services as of November 1975.

[81] Bell classifies costs into three major categories for its study: Station, access line and usage. The station and access line categories are combined to show joint (access) costs and the usage category is shown as direct (local calling) costs. Bell Ex. No. 54, p. 7.

[82] Bell Ex. No. 54, Table 1, p. 5.

[83] FCC Statistics of Communications Common Carriers, 1973, Table 15, p. 31, items 178–1–3. We also have no way of verifying the representativeness and thus validity of Bell's limited sample of 73,000 residence lines for only a two-week period, utilized by Bell in measuring traffic.

[84] We compare in pertinent respects Bell Ex. No. 54 (RCS Study), p. 4, with Bell Ex. No. 1–B (1975 EDC Study), p. 6, as follows:

[85] Bell Ex. No. 54 includes a 10.5 percent cost of capital whereas Bell Ex. No. 1–B uses the realized rate of return.

[86] Bell Ex. No. 45 is considered in some detail in the separations discussion in T+E Deliverable F, pp. 45–118.

[87] Bell Ex. No. 45, p. 6.

[88] Bell Ex. No. 45, Appendices D, E and F.

[89] Bell Ex. No. 45, Appendix F.

the 1974–1984 period at the same pace; (2) The percentage of exchange costs allocated to the interstate market is fixed, in particular, independent of interconnect market penetration; and (3) The substitution of customer for telephone company-provided equipment means complete loss of interstate revenues associated with such equipment; equivalently, that interstate usage of customer-provided equipment remains unallocated to the interstate market. These Bell assumptions ignore, among other things, the market stimulative effects of interconnect competition and competitive responses by carriers which are likely to offset any revenue or contribution diversion due to interconnect competition. As noted above, Bell Ex. No. 45 is considered in detail in the Appendix, T+E Deliverable F.

b. *United States Independent Telephone Association (USITA).* 162. The interconnection impact study done by SAI on behalf of USITA provides estimates of current contributions from specified vertical services and forecasts of future contribution losses for the same services.[90] The impact study encompasses PBX (instruments and common equipment), KTS (instruments and common equipment), and business and residential extensions. Two types of losses are purportedly shown: (1) "Local contribution" (direct contribution) loss due to the fact that the current excess of revenues over costs of these vertical services ("contribution" to basic exchange services)[91] will decline as telephone company shares in the terminal equipment market fall and as prices decline in response to interconnect competition, (2) "toll contribution" (indirect contribution) loss due to the treatment of terminal equipment as a cost under current separations procedures.[92] The SAI Study is based on a sample of twenty-nine telephone companies.[93] SAI presented its study results in terms of a specific "cost study" company, and in terms of an "averaged schedule company," purporting to show its study results for the total independent company sample.

163. SAI forecasts the economic impact of interconnect competition, expressed as annual revenue losses in toll and local contribution to independent telephone company basic exchange services, as follows (in millions of constant 1974 dollars):

Year	Best estimate	Faster interconnect penetration	Slower interconnect penetration
1975	$7.7	$7.7	$7.7
1980	120.1	179.8	64.8
1985	295.6	341.2	164.6

SOURCE.—SAI study, 1-30.

According to SAI's best-estimate forecasts, as early as 1980 the total interconnect company induced annual contribution loss to exchange services will be 18 percent of the revenues that would be denied the independent telephone companies from their four main vertical services (PBX, KTS, and business and residence extensions) under 1973 market conditions. By 1985 SAI projects this figure to about 31 percent. Cumulatively, SAI forecasts the exchange service contribution loss for the independents during the next decade in excess of $1.4 billion. SAI claims this is a more than significant amount in the context of total independent revenues from all telephone operations, i.e., $4.6 billion in 1973.

164. SAI's best estimate forecasts of annual independent telephone company revenue losses in toll and local contributions due to competition in four specific vertical market segments in which interconnect companies have been and will continue to be especially active, according to SAI, are as follows (in millions of constant 1974 dollars):

Year	PBX	KTS	Business extension	Residence extension
1975	$4.1	$2.2	$4.5	$1.0
1980	47.6	34.4	12.3	25.8
1985	98.4	78.7	34.3	84.2

SOURCE.—SAI study, 1-30.

165. SAI forecasts the total independent annual contribution loss per residence main and business main due to projected interconnect competition as follows (loss in constant 1974 dollars):

Year	Business main	Residence main
1975	$0.68	$0.31
1980	8.44	3.71
1985	16.61	7.21

SOURCE.—SAI study, 11-33.

166. If the base case forecasts of SAI were accurate, they would indicate a substantial increase in per main station rates over the next decade as a result of interconnect competition.[94] However, we cannot accept SAI forecasts of contribution losses as valid for a variety of reasons. Critical to the validity of the SAI decadal forecasts of contributions losses were SAI's assumptions regarding interconnect company market penetration and average annual growth rates for such penetration. For the reasons given by T+E, as set forth in Appendix C below, where we consider SAI's base case forecasts of interconnect company market penetration for 1975, 1980, and 1984, we cannot accept SAI's market penetration forecasts and annual growth rates. Basically, SAI's forecasted growth rates and market penetration shares for interconnect companies were developed by using an informal survey technique, the reliability and validity of which SAI did not document. SAI also failed to take fully into account the market growth stimulation caused by interconnect competition.

167. There are other serious deficiencies in the SAI study. The SAI appears to have been done on a cash flow basis with allocation of common costs.[95] However, the report does not indicate the methods used for the allocation of cost, nor the degree of conformity to the basic industry standard methodology. Although it appears in the text that contribution was defined as the difference between revenue and cost,[96] we are uncertain, absent underlying documentation showing all the underlying costs actually used, that such is the case. We also find that equipment costs and revenues are presented in a questionable manner with discounted present values of revenues and costs being converted

[90] USITA Comments, "Regulatory Policy Changes and the Future of the Independent Telephone Industry," SAI Study. See T+E Reviews of Additional Submissions, May 25, 1976, pp. 3–21, for a thorough appraisal of the deficiencies in the SAI Study of SCC and interconnect competition.

[91] For purposes of its analysis, SAI uses the classification of services as "basic exchange" or "vertical service." Recalling that primary regulatory concern is with the ultimate impact of selective competition on "basic exchange" rates, as an income distributional matter and as a question of "universality" of service, T+E finds the classification of some of these services might be arguable. Among these are mobile telephones, and KTS and PBX trunks. In other words, unbundling of KTS and PBX instruments from KTS and PBX trunks could significantly affect the SAI analysis and results. See our discussion of unbundling in connection with the NYPSC Varma study, infra.

[92] Of importance here is the likelihood that even very modest market growth stimulation by interconnection will neutralize fully the indirect contribution loss (toll contribution in SAI's terminology), if any, attributable to interconnect competition. We note for every vertical service category for which SAI supplies contribution loss estimates the indirect contribution loss is much smaller than (on the order of 20 percent of) the alleged local (direct) contribution loss. Thus, if complete neutralization materializes the estimated losses would fall by about 20 percent. See T+E Deliverable F, pp. 95–118.

[93] We were unable to find an explanation or documentation of the procedures for projecting losses for the independent telephone industry as a whole from the projections based on the sample. The sample is admitted to be nonrandom, though claims for its representativeness are made. Nonetheless, it is worthwhile to bear in mind that no statisical technique was used to generalize to the industry level. We note that an analysis of the companies in the study indicates that although 24 percent of the total telephones in the independent industry are represented in the study, 59 percent of the total business telephones are represented. These relative proportions could cause an over estimate of the contribution loss (a large percentage of business customers indicates greater loss to residents at the assumed penetration levels if we also assume that business service subsidizes residential).

[94] We note that the SAI study results shown for 1975 indicate that terminal equipment and private line competition have had no significant effect on telephone industry revenues or basic telephone rates to date. SAI Study, 1–25 to 1–27.

[95] SAI Study, Appendix, pp. A37, A40.

[96] SAI Study, Appendix, pp. A38, A56–58.

into an annuity.[97] We do not believe there is a need to use such a procedure in order to calculate the contribution in a test year. To the extent that the purpose of the present worth calculation is to achieve a life cycle measure of contribution, the results differ with different discount rates. If the income stream is uneven, use of a low discount rate will overemphasize the larger of costs or revenues in distant years; if a high discount rate is chosen, it will overemphasize the larger of costs or revenues in the nearer future. If costs are greater than revenues at first, and revenues greater than costs later in the life of the item of plant, a low rate of discount will show the investment to be profitable in a present value calculation, while a high rate will show it to be unprofitable.[98] The SAI methodology therefore appears to be subject to considerable uncertainty and possible manipulation.

168. The SAI cash flow basis for analysis is subject to question on other grounds as well. Under regulation, revenue requirements are generally determined by analysis of historic embedded costs. Although, as SAI indicates, structure of the Uniform System of Accounts for telephone companies (Part 31 of the FCC Rules) does not generally permit the analysis of the costs and investment in a particular service,[99] this is not really an insurmountable obstacle. The required cost breakdowns are readily prepared from the parallel set of allocations which are used for toll settelements and are based on the jurisdictional separations analysis. The accounting for jurisdictional separations rests on the same foundation as the Uniform System of Accounts—the continuing property record. However, the allocations are by function, location and use rather than by type of expenditure, so analysis of the separations worksheets permits costs to be distributed by service.

169. SAI defines local contribution (direct contribution) as "that portion of the contribution that's independent of the settlements mechanism."[100] However, none of the tables submitted by SAI, in fact, show local contribution separately from the interstate toll contribution (indirect contribution). Utilizing sample data reported by SAI we have calculated local contribution separately for business extensions.[101] Lacking detailed data we could not calculate local contribution separately for other business services such as PBX and KTS. SAI Exhibit A–4 shows for a "cost study" company, a business extension to have annual local revenues of $22.94. Cash expenses are shown to be $13.80,[102] return is shown at $2.55,[103] and depreciation is shown as $8.75,[104] giving a revenue requirement of $25.10, for business extensions. Therefore the local contribution for business extensions is negative to the amount of $2.16. For an "average schedule" company, the annual local revenues are also given as $22.94.[105] Cash expenses for the "average schedule" company are given as $14.64,[106] return is $2.55 [107] and depreciation is shown as $8.75.[108] Revenue requirements are thus $25.94 for the "average schedule" company, so local contribution from business extensions for the average schedule company is negative by $3.00. However, in SAI Table A–7, SAI shows positive contribution for business extensions of $9.33 and $10.14 in "cost study" and "average schedule" companies, respectively.[109] We conclude from this analysis that SAI either found negative local contributions for business extensions, or that its methodology forced local contributions to zero artificially. If our finding of negative local contributions is typical of other business services, such as PBX, KTS and Centrex, the SAI contribution estimates which we reproduce as Table IV–4 below appear to be either incorrect or due entirely to interstate toll contribution. It is not appropriate to include such toll contribution as a subsidy from vertical services to basic local exchange service, because this toll contribution may also subsidize vertical services and its existence is independent of such vertical services. Further, in light of findings below indicating negative direct contributions by vertical services (i.e., vertical services are recipients of subsidy rather than donors) in New York, Vermont and Massachusetts it is reasonable to conclude that the business and vertical services studied by SAI might also be recipients of subsidy.

TABLE IV–4.—*Estimated annualized contribution at achieved rate of return for selected vertical service equipment categories*

[Pretax dollars per annum per unit of equipment]

Equipment category	Local contribution[1]		Total of local and toll contribution[2]	
	Cost study company	Average schedule company	Cost study company	Average schedule company
Business extension:				
Installed simultaneously with main station	[3] $2.16	[3] $3.00	$9.33	$10.14
Installed subsequently	[4]	[4]	8.74	9.63
Residence extension:				
Installed simultaneously with main station	[4]	[4]	5.18	5.69
Installed subsequently	[4]	[4]	5.18	5.78
KTS:				
Instrument	[4]	[4]	33.03	35.45
Common equipment	[4]	[4]	5.86	11.14
PBX:				
Instrument	[4]	[4]	9.34	10.18
Common equipment:				
1 to 40 lines	[4]	[4]	656.76	688.93
41 to 80 lines	[4]	[4]	895.94	939.04
81 to 99 lines	[4]	[4]	1,265.33	1,368.25
100 to 499 lines	[4]	[4]	2,380.55	2,552.85
500 or more lines	[4]	[4]	1,595.12	1,846.49

[1] SAI study, appendix, exhibit A4, p. A72.
[2] SAI study, appendix, table A7, p. A71.
[3] Negative amount.
[4] Not reported.

[97] SAI Study, Appendix, p. A55.
[98] SAI Study, Appendix, p. A48.
[99] SAI Study, Appendix, p. A40.
[100] SAI Study, Appendix, A59. It also appears that SAI may have used only the vertical equipment costs allocated to the intrastate market in its analysis. As noted in our analysis of Bell's EDC Study, such procedure cannot be accepted as valid.
[101] We question the validity of the investment figures utilized by SAI. The investment figures are mere projections by sample companies, rather than book figures, and are based, in part, upon the consideration of what the company would do under a competitive atmosphere as opposed to what they do now. In other words, are we to suppose costs suddenly change and become lower because of competition? In particular, based upon our experience, the $14.22 figure given for installation of a business extension at the same time as a main station seems inordinately low. For example, the NYPSC informs us that Mid-States Telephone Company of New York, which was a sample SAI company, reports a capitalized figure of $58–$67 for such installation and Rochester Telephone Company of New York, which was not sampled, reports a capitalized figure of $134. Absent documentation regarding SAI's sampling process and how it translated sampled data into specific investment figures we cannot accept as valid any of SAI's investment figures.
[102] Neglecting interest expense ($1.32) which is included in the return component as well.
[103] It is reported as $7.10, but just as only 81.2 percent of the return component is used, it appears only 81.2 percent of the depreciation component is used.
[104] It is reported as $7.10, but just as only 81.2 percent of the return component is used, it appears only 81.2 percent of the depreciation component is used.
[105] The use of SAI of the same revenue figure for local revenues in both cases, "cost study" and "average schedule" companies, coupled with their use of some similar and some different cost figures, means that SAI conclusions are unreliable and cannot be accepted as valid. It is possible that local contribution may be positive for one group of companies, although for other companies it could be negative. Absent underlying documentation we are unable to make this determination.
[106] Reported as $15.96, less $1.32 in interest.
[107] Reported as $2.07, but corrected to show full 7.69 percent return on $33.18 investment.
[108] Shown as $7.10, but adjusted upward to reflect omission of 28.8 percent.
[109] SAI Study, Appendix, p. A71.

It appears that SAI may be aware that local (direct) contribution is negative from vertical services, since SAI shows that the effect of interconnect competition will be to initially reduce revenue requirements somewhat for basic services, and even more so for vertical business services.[110] If indeed basic services were recipients of substantial subsidies from business vertical services (which SAI has not shown), the effect of competition would be to increase basic service revenue requirements vis-a-vis vertical services rather than decrease. If interconnect companies capture the subsidized vertical service business, thereby removing the subsidization burden from basic service subscribers, the result could be basic local exchange rate decreases, rather than exchange rate increases, as result of interconnect competition.

170. Also, for some unexplained reason, SAI considered Centrex–CO to be basic business service rather than vertical service.[111] Since other studies by Bell, NYPSC (Augstell Study), NYPSC (Varma Study), and CTC (Baer and Mitchell) all find Centrex (which they show to be a vertical service) to be underpriced, any subsidy or contribution SAI shows flowing to basic business service must be influenced by the subsidy or contribution probably flowing to Centrex.

171. From data in the SAI Study, it is not possible to determine the amount of subsidy that users of basic local telephone services, including basic residential exchange service, may be giving to business and vertical services, since as noted above, most of the detail is not reported. However, looking only at business extensions, SAI's report involves some 1,777,000 business extensions in a sample of 16 telephone companies.[112] If, on the average, each extension was the recipient of $2.58 in subsidy,[113] total subsidy to business extensions is $4,584,660. If rates were raised for business extensions to eliminate this subsidy, it appears rates could be lowered for the 13,667,000 residential main telephones in the 16 sample companies by $.34 per year or $.03 per month. The potential for basic residential service rate reductions when such subsidization of any other business services, such as vertical services, is eliminated, is, of course, far greater.

c. *Continental Telephone Company (CTC).* 172. CTC submitted a study by Walter S. Baer and Bridger M. Mitchell on the aggregate effects of competition upon CTC. The study purports to show the current contributions that various classes of business services, including vertical services, are making to residential customers. The study also attempts to forecast future contribution losses due to interconnect competition.[114]

173. The methodology used is based on fully-distributed costs, i.e., directly attributable costs plus allocations of non-traffic sensitive plant equally to each main station and for traffic sensitive plant by relative usage for each class. Reported costs include operating, overhead, taxes, and return on investment (8.5 percent). Revenues are specified for individual services, including toll settlements allocated by the same factors as for costs. Contributions are calculated per main station and per customer as well as by gross amount in the case of vertical services. We note that the meaning of contribution here is quite different from Bell's, since joint and common costs have been allocated to particular services. Accounting data is system wide for the Summer and Fall of 1974. Services include local exchange and toll (considered jointly) and vertical services, (considered individually and in the aggregate) for both residential and business customers.[115] The traffic study utilized for the fully distributed cost method was done on a statistical sample of 35 CTC exchanges.

174. Table IV–5 below summarizes the annual contribution per main station for residential users and business users, and for basic service (local exchange and toll) and for vertical services claimed by CTC:

TABLE IV–5.—*Contributions per main station in the CTC system, 1974*

	Basic service (local exchange plus toll)	Vertical services	All services
Residential users...	−$59	+$3	−$56
Business users.....	+132	+44	+176

SOURCE.—CTC Comments, table 1, p. 13.

CTC also presents the costs, revenues and contributions for local exchange and toll service collectively and vertical services, respectively, covering the following classes of customers: (a) Residential; (b) business other than KTS and PBX; (c) KTS; (d) small PBX; and (e) large PBX.[116] According to CTC all classes of customers, except residential, local exchange and toll service make contributions. According to CTC residence extensions also make contributions. As a percent of revenue earned, the claimed contribution appear to be quite high, 54 percent. Residence and business extensions and vertical services are all associated with large percentage contributions, approximately 50 percent, under the CTC results. Large PBX vertical services, however, are quite low in comparison, 12 percent, and are even lower in comparison to local exchange and toll contributions, 40 percent.

175. CTC also provides forecasts of future contribution losses from interconnection. Using the baseline case year of 1980, CTC projects annual local exchange rate increases of $5.16—$5.52 and $32.31—$34.58 for residential and business customers, respectively, due to interconnect competition.[117] CTC assumes that the historically observed growth rates shown by its own services over the 1971–1974 period will continue to 1980 and that there will be no increase in competition. This includes projecting continued growth in the percentage of total revenue produced via toll settlements. We note that there are no associated costs for toll settlements, so that revenue losses and contribution losses are the same in this case. For the baseline case, vertical service investment is projected to grow at 12 percent for PBX and KTS and for between 15 to 18 percent for business and residential extensions. Changes in costs for the various scenarios associated with interconnection competition[118] enter through the change in investment. For example, in Scenario II, the growth in vertical service investment is reduced from the 12 percent in the baseline case to only 6 percent. This change in investment between the baseline case and Scenario II will be reflected in a cost difference between them, thus affecting the contribution losses.[119] CTC defines losses with respect to the baseline case and not with respect to CTC's current business, nor

[110] SAI Study, Figure I–4, p. I–26. After 1980 SAI shows increases in revenue requirements because they assume that in 1979 the separations formula will be changed in a way that will have an especially harmful effect on smaller independents, and will especially benefit AT&T. As explained elsewhere and by T+E, this assumption is remote and leads to unrealistic and exaggerated results.

[111] SAI Study, p. I–6. We also note that SAI considered Centrex–CU as vertical service although Centrex–CU and Centrex–CO services are identical except for the location of equipment, and are functionaly related to large PBXs. This inconsistency adds further uncertainty to the SAI Study results.

[112] All figures cited in this para. are taken from SAI Study, Appendix, p. A65.

[113] This figure is the average of $2.16 and $3.00 (see Table IV–4 above), the contributions for business extension telephones installed at the same time as main telephones.

[114] We have considered CTC's study as it relates to SCC competition in Part V herein.

[115] Since the principal concern of this inquiry is ascertaining the economic impact, if any, of interconnect competition on the rates and availability of basic local telephone service including basic residential exchange service, CTC's aggregation of intrastate toll revenues and costs with basic exchange revenues and costs in its study makes it difficult to isolate the precise impact that interconnect competition had had, or will have, on local exchange service.

[116] See our Table IV–7 and discussion below where we set forth in detail and evaluate CTC's contribution estimates.

[117] CTC Comments, Tables 3 and 4.

[118] CTC considers 4 scenarios: Scenario I—Tariffs reduced to yield zero contribution for business extensions, KTS and PBX by 1980; Scenario II—business extension, KTS and PBX projected annual growth rate reduced by 50 percent; Scenario III—loss of 10 percent of business extensions, KTS and PBX by 1980; and Scenario IV—loss of 25 percent by business extensions, KTS and PBX by 1980. CTC considers Scenario II most likely. See CTC Comments, Baer and Mitchell Study, Table IV–5, p. 43. We note that the likelihood of any of these scenarios actually resulting is not fully documented. For example, it does not appear that market stimulation by interconnect competition or technological innovation by telephone companies were taken into account in any of the scenarios.

[119] CTC Comments, Table IV–5.

with respect to any loss in its current customer base. CTC's projections are all based on growth added to CTC's current customer base. The contribution losses are due to the difference in growth with no increase in competition and growth with intensified competition. For example, in 1980 annual contributions from vertical services under the baseline case are $34,612,000, compared to 1974 claimed contributions of $12,168,000. Under Scenario II there is a loss of local contribution of $8,401,000 from the baseline contribution of $34 million in 1980. Therefore, under Scenario I, contributions are listed as $26,211,000 in 1980.

176. We find significant deficiencies in Baer and Mitchell's reported results on behalf of CTC. Among other things, the reported results are internally inconsistent, and their statistical results lead to self contradictory conclusions. We were unable to resolve many of the contradictions we found, despite direct consultations between our staff and the authors. For example, while attempting to test the validity of CTC's current contribution estimate, we could not reconcile CTC's plant as shown by Baer and Mitchell with the corresponding amount shown in CTC's Balance Sheet. Multiplying the investment per station or system by the number of stations or systems does not equal the plant investment shown in the company's annual report as indicated in Table IV–6 below:

TABLE IV–6.—*CTC investment, 1974*

Class of customer	Number of customers	Average (gross) investment per customer (lines, extensions and common equipment)	Total investment (col. (a) times col. (b))
	(a)	(b)	(c)
Residence	1,215,000	$945	$1,148,175,000
Business	152,200	1,145	174,269,000
Key system	13,500	5,429	73,291,500
Small PBX	1,620	28,116	45,547,920
Large PBX	136	171,493	23,323,048
Total			1,464,606,468

SOURCE.—CTC Comments, Baer & Mitchell study, table III–6.

In its 1974 Annual Report to Shareholders, CTC reports $1,997,249,000 in gross telephone plant, or $1,651,319,000 in net plant.[120] This differs greatly from the total investment figure given by CTC in Table IV–6 above. The difference is too great to be rounding error, but yet appears too small to be jointly used central office plant. In any event, Baer specifically states that costs are fully distributed.[121] The difference also appears too large to be due to separations. If it is the result of CTC's comparing total revenues with intrastate plant and expense, a fundamental problem arises: Any analysis considering the subsidy from interstate toll to other services should first deduct interstate toll expenses and return. We are unable to verify that this has been done. There is also a conceptual problem, discussed below, in attributing to terminal equipment such as PBX and KTS a subsidy that actually comes from interstate toll service.

177. Baer and Mitchell allocate expenses to various service classifications in proportion to the allocated plant. They use the overall ratio of expense to gross plant of 27.9 percent. It is unlikely that such a ratio applies equally to business and residential services (much less KTS and PBX services). According to CTC's annual report to shareholders, telephone operating expenses in 1974 were $327,722,000 and gross plant was $1,997,249,000,[122] which implies that the average should be 16.4 percent of gross plant rather than 27.9 percent. Using the gross plant statistic quoted in Table IV–6 above, the ratio of operating expenses (327,722,000) to gross plant ($1,464,606,468) should be 22.4 percent. We are unable to explain the difference and therefore verify the accuracy of the reported contribution estimates.

178. There are other judgments, basic to the contribution loss estimates presented, which render CTC's reported results questionable. According to Baer, plant is allocated to the various customer classes as follows:

> * * * [I]nvestment and overhead expenses [were] allocated among services according to relative use. This methodology was selected because it is consistent with the separations principles presently used to divide toll revenues among independent telephone companies and the Bell System. Investment was then separated into traffic sensitive and nontraffic sensitive components; the traffic sensitive was allocated among customer classes according to relative usage measured in the Continental system, while nontraffic sensitive plant was allocated equally among subscribers (main stations).[123]

The foregoing represents a questionable methodology. The official formula for making jurisdictional separations allocates nontraffic sensitive plant according to relative use, as indicated in the first two sentences. While alternative allocations have been proposed, the proposals are usually to allocate on the basis of some notion of causation or in proportion to allocated investment. In any event, the result appears to be a gross over-allocation to residence service of nontraffic sensitive plant and expense (which are generally a very large proportion of the total in smaller telephone companies, such as those in the CTC system). Accordingly, we believe it likely that CTC has overestimated the residential investment and expense and underestimated business revenue and expense with a resultant overestimate of contribution flowing to residence.[124]

179. Another significant defect we find in the Baer and Mitchell analysis involved their traffic study, which was the basis for determining usage. We believe they properly used relative busy-hour usage per main station or trunk for local service. However, the toll service usage is determined for a 24-hour period. Obviously, relative busy-hour usage is appropriate for toll as well as local service. The idea behind allocating plant on the basis of busy-hour usage for local service is the fact that the plant is designed to handle traffic at the busy-hour and one would like to charge the costs of the peak hour traffic to the customers that cause it. The same is true of toll service and therefore a 24-hour period masks the true usage and the costs of providing service. Thus, contribution loss estimates may be overstated due to an understatement of costs.

180. In its Table III–6,[125] Baer and Mitchell present the combined costs, revenues, and contributions by class of customers. This CTC table shows that every class except residence provides contribution, with these amounts ranging from $101 annually (from business basic service) to $12,243 (from a large PBX). The combined contribution analysis presents serious difficulties. For one thing, the amount of contribution allegedly needed to "support" residential subscribers is equal to approximately $68 million (calculated by multiplying 1,215,000 residence customers by an alleged $56 contribution loss per customer). However, the amount of alleged contribution furnished under CTC's baseline case to residence from business, KTS and PBX customers equals only $34 million.[126] In other words, under an 8.5 percent rate of return residents still need $34 million in contribution. The authors state that this can be reconciled because CTC earned less than an 8.5 percent rate of return and that directory advertising also provides support to residents. In 1974 CTC had a net operating income of $119 million (including directory advertising revenues) and telephone property of $1,561 million, so the rate of return would equal approximately 7.2 percent. If, as the authors state, the $34 million required is due to not making a 8.5 percent rate of return, then adding $34 million to net operating income should equal about 8.5 percent. However, it does not: increasing net operating income by $34 million would give a rate of return of 9.3 percent. This circumstance may be related to the other unreconcilable discrepancies between Baer and Mitchell's results and those reported in CTC's annual report.

181. According to CTC, the annual contribution levels in millions of 1974 dollars are shown in Table IV–7 below column I:

[120] CTC's Annual Report to Shareholders, 1974, p. 12.

[121] Letter to Allen Buckalew of the FCC Common Carrier Bureau staff, December 12, 1975, p. 1.

[122] CTC's Annual Report to Shareholders, 1974, pp. 11–12.

[123] Letter to Allen Buckalew of FCC Common Carrier Bureau Staff, December 12, 1975, p. 1.

[124] Note that none of this argument depends on improved allocation of costs between residence and business. Our argument above is based solely on Baer and Mitchell's apparent departure from accepted allocation methods as used in or advocated by the telephone industry.

[125] CTC Comments, Baer and Mitchell Study, p. 33.

[126] See our Tables IV–6 and IV–7 for figures.

TABLE IV–7.—*CTC contribution levels (1974)*

[Dollars per customer, main station line or trunk]

	Main station line or trunk [1]	Extensions and common equipment and extensions		
		With settlements [2]	Without settlements [3]	Contribution from equipment after unbundling [4]
	(1)	(2)	(3)	(4)
Residential	($59)	$9.77	$5.55	
Business	91	16.07	11.55	
Key system	208	271.00	128.00	($11)
Small PBX	551	1,606.00	(365.00)	(578)
Large PBX	609	5,302.00	(13,908.00)	(14,179)

[1] CTC Comments, Baer & Mitchell, table 1–1, p. 4.
[2] CTC Comments, Baer & Mitchell, table 1–1, p. 31.
[3] CTC Comments, Baer & Mitchell, pp. 31, 33, modified on our worksheets.

Assuming the validity of the figures reported, it is clear from Table IV–7 above that business main stations are providing insignificant amounts of contribution. The picture with respect to vertical services is not so clear. According to the authors, "total toll settlements" (indirect contributions) were distributed among customer classes in the main station analysis. However, in the station equipment and vertical service analysis, CTC again included a toll settlements component. We report CTC's results both ways: In Table IV–7, column 2 includes toll settlements, and column 3 excludes them. It is clear from Table IV–7 that non-PBX–KTS business vertical services provide little contribution, even by the carriers' estimates. The result in column 3, however, shows that the alleged contribution from PBXs may not exist. Indeed, if CTC did double count the toll settlements component of contribution, i.e., indirect contribution, as Baer and Mitchell appear to state in their text, when this possible double counting is removed, PBXs appear to be the recipient of subsidy (col. 3 of Table IV–7).

182. As noted above, there is no way we can verify any interpretations of this study since the revenue, expense and investment data in CTC's submission in this docket all disagree with those given by CTC in its other published reports. We cannot even be certain of the amount of the interstate toll subsidy, since it does not appear that Baer and Mitchell deducted toll expenses from toll revenues.

183. However, even if Baer and Mitchell did manage to avoid double counting toll settlements, there is a serious question of how to interpret their results. The most that Baer and Mitchell have shown is that in CTC there is a large overall subsidy from interstate toll service i.e., indirect contribution. The mechanism for this subsidy is of course, the revenue transfers effected by the separations formula. It appears from Baer and Mitchell's results, as we analyze them in column 3 of Table IV–7 above, that the principal beneficiaries of this subsidy, on a per line basis, may be PBX customers.

184. In view of the purpose of this inquiry, it is important to examine the effects of "unbundling" on the results. One effect of widespread interconnection of customer equipment could be the restatement of tariffs for access lines and equipment, so that the charge for the access line remains fully compensatory even if the customer provides his own equipment. Table IV–7 above, Column 4, restates the contribution from ITS and PBX common control equipment and extensions by deducting both the PBX trunk charge and the toll settlement amount.[127] Note that the trunk charge deducted was not a compensatory, unbundled trunk charge, but the present charge which was established under the assumption that station equipment would be provided as well. We conclude from this analysis that terminal equipment for business services other than the basic service may have been underpriced substantially. Moreover, residential service does not appear to be the recipient of any substantial amount of subsidy from business station equipment in the CTC System.

185. If PBXs paid their full costs from local revenue, leaving the full toll contribution to be allocated to CTC's residential subscribers, it appears that residential rates could be lowered significantly. If the 1,620 small PBXs paid their full way instead of receiving $365.00 back in annual toll contribution, and if the 136 large PBXs paid their full way instead of receiving $13,908.00 each in annual toll contribution, there would be $2,482,788 in additional toll contribution for residential exchange customers.[128] Thus, residential bills for basic service could possibly be lowered by $2.04 each year for every one of the CTC's 1,215,000 residential customers or $0.17 per month.[129]

186. With unbundling, so that the contribution from toll service to the line charges would not be required, residential rates could be lowered even more. The 13,500 KTSs, 1,620 small PBXs, and 136 large PBXs would no longer absorb $11,578 or $14,179 each in toll contribution annually, releasing $3,013,204 in toll contribution that they are not absorbing.[130] Thus basic residential rates could be lowered by $2.48 per customer annually, or $0.21 per customer every month.[131] This result is consistent with our other findings herein that vertical services in New York, Vermont, Massachusetts and probably California are likely to be recipients of subsidy from basic telephone service including basic residential exchange service.

d. *General Telephone and Electronics (GTE).* 187. GTE presents its estimates of current contributions from vertical services to local exchange service which are reported in Table IV–8 below:

[127] We noted a similar deficiency in the SAI study, supra, n. 90.

[128] See CTC Comments, Baer & Mitchell, p. 31, and our Table IV–7 above for the cited figures.

[129] See CTC Comments, Baer & Mitchell, p. 33.

[130] See CTC Comments, Baer & Mitchell, p. 31, and our Table IV–7 above for the cited figures.

[131] We note that "basic residential service" in CTC's terminology includes both intrastate exchange and toll service.

TABLE IV-8.—*Vertical service contributions, 1974*

	Population	Trunk/station average size	Unit contribution	Total (millions)
Residence extension	2,844,000	1/1	$8.52	$24.2
Business extension	813,000	1/1	17.65	14.3
Small PBX (40 lines or less)	8,857	3.5/25	1,555.04	13.8
Medium PBX (41 to 80 lines)	4,219	5.5/55	2,730.43	11.5
Large PBX (80 lines or more)	3,644	8.5/125	7,898.74	25.1
KTS	52,250	3/6	439.94	23.0

SOURCE.—GTE Comments, attachment 1, p. 3 and app. 1-A, p. 6.

For the same services GTE presents a series of contribution loss projections to 1984. Costs are proportionately based on direct costs and both costs and tariff rates are held constant in 1974 dollars, except when an inflation rate of 7 percent is applied.[132] The impact of interconnect competition in the period 1975–1984 is studied under five scenarios (PBX penetration is assumed to be 10 percent higher than the figures listed below): (1) no change in telephone company rates, low market penetration (15 percent); (2) no change in telephone company rates, medium market penetration (25 percent); (3) no change in telephone company rates, high market penetration (50 percent); (4) price at cost and 90 percent market retention by telephone company; and (5) price at cost plus connecting arrangements and 90 percent retention by telephone company. The GTE estimates are presented in Table IV-9 below:

TABLE IV-9.—*Annual contribution loss*

[In millions of dollars]

	1975	1984	Cumulative
Scenario 1	1.9	31.3	172.7
Scenario 2	3.0	43.8	239.6
Scenario 3	5.6	73.7	397.1
Scenario 4	72.2	85.8	786.6
Scenario 5	56.4	69.1	624.8

SOURCE.—GTE comments, app. 1-A, p. 10.

188. No underlying documentation is provided by GTE. Although a directly attributable cost methodology is used, the included costs and revenues separately stated are not provided. Toll settlements appear to be included in revenues but the precise method is left unspecified. Therefore, we cannot determine how much of the total alleged contribution from vertical services is attributable to the separations mechanism. The importance of making this determination was pointed out earlier in our discussions of the SAI and CTC studies. Moreover, in discussing the incidence of vertical service contributions GTE states that, "*We believe* local exchange service is the primary beneficiary." (Emphasis added)[133] This GTE statement, for which no evidentiary support is offered, appears to contradict the reported results of its contribution analysis and seems to indicate that other intrastate ratepayers, such as toll users, might be receiving contributions rather than local exchange users.

189. GTE also indicates that the cost and revenue data used in its analysis is based on information collected from a sample of GTE telephone companies. Without documentation regarding this sample of telephone companies, we cannot determine if the sample is representative of the GTE system or whether the sample was statistically valid. Thus, we cannot determine the validity of the cost and revenue data used by GTE. In regard to the estimates of future contribution losses under various scenarios no documentation is provided demonstrating the likelihood of any of the scenarios actually resulting. For example, it does not appear the scenarios take into account the effect of PBX and KTS market growth stimulation on telephone company revenues which we have found is a likely result of interconnect competition. Nor does it appear the effect of telephone company innovation or pricing responses are considered to any great extent by GTE in its scenarios. Further, GTE assumes without justification that interconnect company market penetration will continue into the future at present rates and levels. For reasons stated below this assumption is unrealistic.

190. The major problem we have with the GTE estimates of contribution loss, however, is that although the results are shown in terms of lost contribution, due to the lack of underlying documentation, we are unable to determine the initial amounts from which the lost portions are derived. Thus, we have no way of determining what directly assignable costs GTE allocated to the vertical services or what methodolgy GTE utilized to allocate general and overhead costs among services (or whether it even did so). Without this data, we cannot determine what current contributions, if any, exist. Accordingly, we cannot accept the GTE contribution loss estimates.

e. *United Telephone System (UTS).*

191. UTS's contribution study of its KTS and small and large PBX users is based on a directly attributable cost methodology which includes: (a) Cost of capital; (b) direct maintenance expense; (c) other direct departmental expense; (d) depreciation expense; (e) income taxes; and (f) other direct taxes. Revenues are provided by specific services and company wide data from 1973 is used. Estimates of current contributions appear to be obtained by taking the difference between revenues and costs. The results provided for current contributions are given in Table IV-10 below:

[132] However, we are not told when the inflation rate is applied.

[133] *GTE Comments*, 1-A, p. 3.

TABLE IV–10.—*KTS and PBX contributions*

[In thousands of dollars]

	Plant maintenance expense	Common and market expenses	Cost of cap	Depreciation	Other taxes	Income taxes	Total expense	Total revenue	Contribution to ovhr. and common
1973:									
KTS	2,817	290	2,076	2,055	919	923	9,080	17,980	8,900
Small PBX	1,888	436	2,252	2,183	534	1,137	8,430	14,497	6,067
Large PBX	1,449	443	3,544	3,135	967	1,921	11,459	15,394	3,935
Total, market									18,902

SOURCE.—UTS comments, exhibit 1.

Expressed as a fraction of revenues, the contributions for KTS', small PBXs and large PBXs are 49 percent, 42 percent, and 25 percent, respectively. Contributions annually per unit for KTS, large PBX and small PBX are claimed as $350, $6,367 and $2,231, respectively.[124]

[124] UTS Comments, Tables 14 and 15.

192. UTS also presents its contribution loss estimates for KTS, small and large, PBX systems for 1978, 1983, and 1988. Contribution losses with assumed 10 percent and 30 percent interconnect company market penetrations are also given. UTS's method assumes that the growth rate for the total terminal equipment market is exogenous, with the total market, determined by a secular trend, divided by the telephone companies and interconnect companies (a loss to the telephone company is a gain to the interconnect company under such an assumption). Using the number of main telephones from UTS Exhibit 6, the claimed contribution loss per main telephone is calculated in Table IV–11 below:

TABLE IV–11.—*Contribution losses for KTS and PBX systems ($1,000, unless specified otherwise)*

[Estimated economic impact]

	Total expenditure	Total expenditure	Contribution [1] to ovhr. and common	Contribution [1] at 10 pct penetration	Net impact	Contribution [1] at 30 pct penetration	Net impact	Of main telephones	Contribution losses per main telephone	
									At 10 pct penetration	At 30 pct penetration
1978										
Key system	$14,613	$29,651	$15,038	$13,534	($1,504)	$10,527	($4,511)	2,500,837	$1.19	$3.57
Small PBX	11,290	20,708	9,418	8,476	(942)	6,593	(2,825)			
Large PBX	16,733	21,960	5,227	4,704	(523)	3,659	(1,568)			
Total market			29,683		(2,969)		(8,904)			
1983										
Key system	20,698	40,201	19,503	17,553	(1,950)	13,652	(5,851)	3,091,894	1.13	3.39
Small PBX	15,857	26,078	10,221	9,199	(1,022)	7,155	(3,066)			
Large PBX	24,253	29,560	5,307	4,776	(531)	3,715	(1,592)			
Total market			35,031		(3,503)		(10,509)			
1988										
Key system	29,149	55,582	26,433	23,790	(2,643)	18,503	(7,930)			
Small PBX	21,480	33,395	11,915	10,724	(1,191)	8,341	(3,574)			
Large PBX	33,497	39,085	5,588	5,029	(559)	3,912	(1,675)			
Total market			43,936		(4,393)		(13,180)			

[1] Revenue contribution by terminal equipment market to cover other costs.

Source: UTS Comments, exhibits 1 and 6.

193. As was the case with the GTE and Bell Studies, no underlying documentation was supplied by UTS. UTS' results are shown in terms of lost contribution but absent knowledge of the specific costs and revenues included in the study, we are unable to determine the initial amounts from which the lost portions are derived. Further, it is not clear that UTS has excluded the interstate toll subsidy, i.e., indirect contribution, from its contribution figures. In our discussing of the SAI and CTC studies we showed the potential for overstating vertical service direct contributions, if any, if indirect contributions are inappropriately attributed to vertical services. An even more basic deficiency in the study is the manner in which UTS defines contribution. UTS defines contribution in the same manner as did bell in its studies, i.e., in terms of contribution to cover overhead and common costs.[125] In this regard, see our discussion of the Bell contribution studies and the difficulties we encountered with Bell's non-allocation of joint and common costs among all services, including vertical services, thereby understating vertical service costs and overstating contribution, if any. Moreover, T+E finds that there are serious inconsistencies in the 1973 revenue figures provided in UTS's Table 15 and UTS's Exhibit 6 (not reproduced here).[126] The revenues associated with the KTS, large PBX and small PBX categories in UTS Exhibit 6 are approximately 30 percent smaller than the correspondence values in Table 15. (In making this comparison, PBX and PABX revenues in Exhibit 6 were added; if not, the discrepancy is much larger). Overstatement of revenues, of course, will overstate claimed contributions unless costs are similarly reduced. The projected contribution losses for 1978, 1983 and 1988 are also highly questionable because UTS does not document the likelihood of any of its penetration scenarios actually occurring. In this regard, UTS, like SAI and others, assumes that the growth in market demand for vertical services is independent of interconnect competition and its market stimulative effects. Nor does UTS consider to any great extent the effect that telephone company innovation and pricing responses to interconnect competition have had, or will have, on its contribution loss estimates. Accordingly, we cannot attribute any validity to UTS's study results.

[125] See our Tables IV–10 and IV–11 above.

[126] UTS Comments, Exhibit 6 and Table 15.

f. New York Public Service Commission (NYPSC). 194. The NYPSC submitted two studies with its comments in this proceeding. The first, a staff study by James Augstell completed in January, 1975 and entitled "The Revenue and Cost Impact of Interconnection", represents NYPSC's initial effort toward determining the potential effect of interconnect competition in New York State. The study was designed around a worst possible case (i.e., highest impact) scenario, intended to establish the outer bounds of the impact issue. Thus, the study assumed that interconnect sales would grow during the 1974–84 period at observed historical growth rates and thus at an ever increasing rate; that there would be no stimulation of the overall market and no competitive response by the telephone industry; and most importantly, that the methods employed by the New York Telephone Company (NYTelco) to determine and allocate terminal equipment revenues and costs were essentially correct. Based on these assumptions, the study estimated that NYTelco had suffered contribution losses to interconnect competition by December, 1973,

and that these losses might increase substantially in the period 1974–1984.

195. In its second study, completed by Yog Varma and adopted by the NYPSC as the basis for its decisions in recent rate proceedings, the NYPSC adopted an approach designed to identify according to the Commission's costing methodology the current embedded costs and revenues for all NYTelco terminal equipment offerings, as a basis for determining whether any or all these services were in fact earning enough to cover their costs. The Varma study and subsequently the NYPSC itself concluded that NYTelco terminal equipment rates have not been high enough to cover the company's costs of providing them—much less make a contribution to cover the company's costs services such as basic telephone service.[137]

196. While the results of these two studies may appear to be in conflict, they are in fact relatively easy to distinguish, as the NYPSC has noted.[138] The Augstell study represents a hypothetical case or scenario dealing with possible future events and the assumed existence of contributions from terminal equipment, similar to those employed by other parties to this proceeding (e.g., AT&T, USITA(SAI), CTC, GTE, NARUC, etc.). The Varma study deals with the actual operating costs and revenues of a specific operating telephone company (NYTelco) to determine whether such contributions actually exist, independent of any question of competition. As indicated, the NYPSC quite correctly employed the Varma study in its recent decisions regarding NYTelco rates and revenues for terminal equipment and other services, and the potential effect of competition in an actual as opposed to a conjectured situation.

197. In the Augstell study, the voice services of the business interconnect market were divided into the following large PBX, Centrex CO, KTS, and Individual Line (non-key). Revenue and cost impacts, which are used to estimate alleged contribution losses, are estimated from 1973 data relating to NYTelco's service area. Revenue losses include the business lost from interconnected voice customers who were not subscribers to NYTelco service prior to opting for interconnection. Thus, the Augstell study looks solely at the revenue/cost relationships for lost customers (as do most of the telephone industry studies before us) and does not purport to examine the revenue/cost relationships for customers who were not lost (as does the Varma study), i.e., the terminal equipment category as a whole. Although Augstell does not specifically define his cost methodology, it appears that Augstell performed basically an incremental cost study. Augstell's estimate of total contribution losses from interconnection at December 31, 1973, was $5,332,000.[139] Assuming a total of 5.2 million residential main stations, the contribution loss per resident main station in 1973 was estimated as approximately $1.00.

198. With respect to projected contribution losses, 1974–1984, Augstell made projections of lost customers to interconnection from 1974 through 1984 by fitting quadratic equations to the five (historical) data points (1970–1973 and four months of 1974) for both the PBX-Centrex and KTS service classifications. As noted above, these projections are worst case analyses. The calculations reflect compound average annual growth rates of 28 percent and 34.5 percent for interconnect PBX-Centrex and KTS customers, respectively, during the projection period. Based on projections of the number of interconnect customers and NYTelco's historical revenue data (both market growth and revenue increases per customer), Augstell projected revenue losses through 1984 from interconnection and the size of the total developed market (NYTelco and interconnect) consistent with the lost revenue projections. In making these projections, Augstell assumed, based on historical data, that PBX-Centrex revenues per customer and KTS revenues per customer would grow at compound annual rates of 6.36 percent and 7.37 percent, respectively, and that total market revenues for the PBX-Centrex and KTS service classification would increase at compound annual rates of 9.59 percent and 10.45 percent, respectively. According to the assumptions adopted by Augstell, by 1984 the revenue loss due to interconnect could have grown to $229 million and 31.5 percent of the developed market for PBX-Centrex, and $156 million and 49.54 percent of the developed market for KTS. Also, cumulative loss from 1974 through 1984 could range from $464 million to $588 million, or from $237 million to $301 million in 1974 dollars.

199. As found by T+E, and in our own analysis, Augstell's projections are based on highly unrealistic and/or unsubstantiated assumptions. Indeed, it is admitted the study is essentially a worst case analysis and thus intended to establish the outer bounds of the impact issue. One of the major deficiencies is Augstell's attempt to fit a quadratic equation to the five available data points and to use it to estimate the number of lost customers from 1974–1984. No justification for a quadratic form is offered, even though the approach leads to very high market penetration figures and non-constant growth rates. In addition; the five data points (representing annual customers lost to interconnection) used to fit the quadratic equation are themselves of doubtful statistical value. One point represents only the first four months of 1974. Of the remaining four, two have values of 59 and 212, which are infinitestimal in comparison to the final extrapolation to a 1984 market penetration of 62,911 interconnect customers, which results from the use of this quadratic formula. Insofar as Augstell's estimate of lost customers is central to all his projections of revenue contribution losses to interconnection, we find these projections are themselves statistically invalid.

200. Another serious deficiency in the Augstell projections, as found both by T+E and our analysis, is the assumption of a secular rate of growth of the terminal market based on historical NYtelco data and independent of any market growth stimulus from interconnection. The implication of this assumption is that any customers gained by interconnect companies are lost to the telephone companies, customers who (on the stated assumption) would have purchased from those carriers if there were no interconnect competition. We agree with T+E that this approach is a particularly restrictive and unrealistic assumption and that it allows for no innovative behavior from interconnection and no innovative or competitive pricing response from the telephone carriers, both of which are occurring. Further, it ignores the effect of stimulated market demand which we have found is the likely result of interconnect competition. Since the market is constrained to grow at historical (exogenous) rates, according to Augstell's assumption, interconnection's more rapid projected rate of growth must eventually subsume the entire rate of PBX and KTS revenue growth. In Augstell's projections, by 1984 interconnect companies would be taking customers away from Bell (the percentage of growth to interconnect is over 100 percent). NYTelco would no longer be capable, according to Augstell's projections, of attracting new customers and its established market would be deteriorating. In the light of the evidence showing Bell responding significantly to competition, this result is clearly unrealistic.

[137] NYPSC Case No. 26775, Opinion No. 75–28, October 22, 1975 (Varma Study). See also NYPSC Case No. 26426, Opinion No. 76–13, July 2, 1976. For a summary of the action in Case No. 26775 and its ramifications, see A. E. Kahn and C. A. Zielinski, "Proper Objectives in Telephone Rate Structuring," Public Utilities Fortnightly (April 8, 1976), p. 22.

[138] See NYPSC Motion for Acceptance of Supplemental Material in Docket No. 2003 filed April 8, 1976, p. 4. Further, see testimony of James Augstell and Yog Varma before the NYPSC in Case No. 26755 wherein the nonconflicting relationship of the studies was explained by the two authors. See also Neil A. Swift, Director of NYPSC Communications Division, "Address Before the Interface '76 Symposium in Florida", reported in Telecommunications Reports, April 12, 1976, p. 4.

[139] Augstell Study, p. 69. The Augstell Study combines direct and indirect contributions, thereby confusing the effect of the interstate toll or indirect subsidy with any subsidy or direct contribution from vertical services. This procedure overstates the contribution, if any, which derives from the alleged value of service pricing of terminal equipment and thus is subject to question for the reasons stated in our analysis of SAI and Baer and Mitchell studies.

201. The Varma study reflects the view of the NYPSC concerning the actual donors and beneficiaries of contributions (subsidies) within the NYTelco service offerings, and the potential effect of interconnect competition on these subsidies.[140] The Varma and NYPSC study methodology is based on several levels of analysis which have been accepted and used by the Commission and telephone companies involved. The investment is based on the companies' terminal equipment accounts for the appropriate year in question. From these accounts various items were then excluded (e.g., coin, etc.). The embedded investment in the aforementioned accounts was then multiplied by a current cost-to-book factor. An annual carrying charge factor (which includes maintenance, taxes, return etc.) was then calculated and multiplied by the current cost of investment. The result is a revenue requirement which can be compared to actual revenues to determine whether revenues are adequate to cover total costs.

202. Varma's results, which according to the NYPSC were not disproved, showed that on a historic, embedded cost basis, using total costs, and looking at the terminal equipment category as a whole, there was a revenue deficiency in excess of $225,000,000 for NYTelco terminal equipment in 1975, compared to a $157,500,000 deficiency in 1972.[141] Thus, having found no subsidy of basic services by terminal equipment revenues, the NYPSC ordered an immediate 25 percent rate increase across the board on terminal equipment (including Centrex, where the Commission found a 29 percent revenue deficiency), noting that even this increase would probably not make them fully compensatory. This increase was designed to generate $144,000,000 leaving $81,000,000 of the revenue deficiency to be made up by a rate increase in August 1976.[142]

203. It is significant to compare this revenue deficiency for terminal equipment services provided by a telephone carrier in a single state, with the claimed losses of $142 million to competition in the 48 contiguous states. The NYPSC findings are particularly significant in that the New York market represents some 10–12 percent of total telephone industry operations and revenues, according to FCC statistics. Should the same situation as that in New York exist in other states (and we find evidence herein that such result is likely), one could infer that other services such as basic local telephone services may be contributing as much as $2.25 billion annually to cover revenue deficiencies resulting from telephone industry underpricing of certain terminal equipment.

204. In Case No. 26775, the NYPSC also highlighted one of the ways in which traditional telephone company rate structures could be revised to insure both fair terminal equipment competition and to accomplish the goal of keeping basic local telephone service obtainable at a reasonable charges to residents.[143] The NYPSC ordered NYTelco to "unbundle" its rate for Bell terminal equipment for basic monthly local telephone service. Previously, the rates for basic local telephone service in New York were all inclusive, i.e., they included the telephone instrument, station wiring and the access facilities to the exchange network. As a result of the NYPSC decision the charge is now divided into two parts—a terminal equipment charge (which covers the telephone instrument and station wiring), and exchange "access" charge.[144] If one decides to supply his own terminal equipment or inside wiring, his bill will be reduced by an appropriate amount reflecting the cost of the telephone instrument and inside wiring to the telephone company.[145] The NYPSC found that the advantages of unbundling far outweigh any of the disadvantages. According to the NYPSC, unbundling would (1) ensure that customers did not pay for what they did not receive, (2) permit identification of retirements, (3) prevent the company from double charging for station wiring and, most importantly, (4) allow for determination of the rate of return on terminal equipment offerings.[146] The NYPSC also stated:

> By providing a means of analyzing and controlling the cost and profitability of terminal equipment offerings on the one hand, and exchange service on the other, with their very different cost functions and market situations, it (unbundling) will make it easier to price each more rationally, to achieve whatever goals—economic efficiency, subsidization of the basic service, the competitive development of alternative equipment offering—society wishes to achieve. In this last connection, not the least of the benefits of unbundling, is that it will eliminate the present inequity in the competition between NYT and other suppliers of terminal equipment.[147]

In the further stages of this inquiry, we expect the parties to address in detail the concept of "unbundling" and its economic and other ramifications, if any, on the availability and rates for basic local telephone service.

205. We note that on July 12, 1976, AT&T filed Bell Ex. No. 55, which is a copy of a NYTelco Memorandum (dated May 28, 1976) filed with the NYPSC challenging the findings of the NYPSC in Case No. 26775 and the Varma study.[148] NYTelco claims that there are errors in the Varma study and that terminal equipment revenues do cover embedded costs and also challenges the NYPSC's "unbundling" determination in certain respects. On August 30, 1976, the NYPSC staff responded to the NYTelco Memorandum. The NYPSC staff addressed all the contentions of NYTelco and stated at p. 67 of its response that "New York Telephone Company's Memorandum dated May 28, 1976, is a meaningless document which repeats absurd arguments already rejected by the Commission on the basis of testimony and evidence in Cases No. 26426 and 26775." It also concluded at p. 67 that the updated 1975 revenue shortfall because of NYTelco's underpricing of terminal equipment before rate increases in Case No. 26775 was $291.8 million, rather than $225 million as originally determined. Further, it concluded there is still a revenue deficiency of $103.6 million, exclusive of 1976 wage increases already recognized by the NYPSC in determining NYTelco overall revenue requirements. Finally, it concluded at p. 69 that NYTelco's revenues from terminal equipment "have not only held their own after the 25 percent increase in November, 1975, but these revenues have demonstrated a healthier growth after the rate increases than before. The terminal equipment market is now in a position to absorb further cost-based rate increases * * * New York telephone consumers are currently being misguided into oversubscribing to terminal equipment services due largely to below-cost rate levels while the company is being made whole through higher rates for other services, e.g., toll services."

206. We find the NYPSC studies and decisions very persuasive, as does T+E. Until the 1975–1976 rate increases in New York State, it appears that terminal equipment services (e.g., PBX, KTS and

---

[140] Supra, ns. 136 and 137.

[141] NYPSC Case No. 26775, pp. 58–67. This deficiency was even larger on a current cost basis the NYPSC has noted.

[142] The NYPSC has also found, NYPSC Case No. 26732, Opinion No. 75–17, August 11, 1975, p. 31 et seq., that intrastate private line revenues are not covering revenue requirements (i.e., costs) and ordered that a 25 percent increase be implemented for most private line rates. Significantly, the FCC recently concluded in Docket No. 18128 that most Bell interstate private line services are underpriced and have been (and still are) recipients of subsidy from basic interstate telephone users.

[143] *Supra*, n. 136. See also the August 20, 1976 NYPSC order in Case No. 26775 authorizing revisions to unbundling of telephone rates.

[144] This exchange or network access charge could be the focal point for any direct or indirect contribution or subsidy of basic local telephone service that society may decide is warranted. This assumes, however, that the terminal equipment charge is compensatory.

[145] Where NYTelco customers do not have telephone-company provided telephones and/or inside wiring (beyond the CA), the NYPSC has recently directed NYTelco to provide monthly credits to such customers as a means of implementing its "unbundling" decision. Telecommunications Reports, September 7, 1976, p. 170.

[146] NYPSC Case No. 26775, p. 82.

[147] NYPSC Case No. 26775, pp. 83–84.

[148] USITA filed a SAI review of the Augstell and Varma studies on September 20, 1976, too late to permit our full analysis of the review herein. The SAI review and other material which has been filed since July 12, 1976 will be considered in the continuation of this proceeding. However, our preliminary analysis of the SAI review indicates that it is essentially a rehash of the NYTelco May 28, 1976 memorandum and is a further attempt by SAI to buttress its own study. Significantly, at p. V–1 of its review, SAI states that "[f]rom what SAI has determined from the public record, and from informal exchanges with a number of parties, the (NYPSC) Staff's studies were performed in a competent and, in general, methodologically consistent manner." (emphasis added) Thus, even SAI finds consistency between the Augstell and Varma Studies, supra, n. 137.

Centrex) were not covering their full costs (and still are not covering their full costs according to the NYPSC staff). NYTelco's residential exchange customers would be better off if the unprofitable terminal equipment services had been lost to interconnect competition or withdrawn. If all this $225,000,000 deficiency as found by the NYPSC (which does not include Centrex) were made up, the approximately 5.5 million residential main stations in the NYTelco area could possibly have had their 1975 bills for basic service reduced by approximately $41.32 per year, or $3.44 per month.

207. We find substantial evidence from proceedings in states other than New York, namely, Vermont and Massachusetts, that terminal equipment such as PBXs and KTSs may also be underpriced and recipients of subsidy from basic local telephone services including residential exchange. With respect to Vermont and Massachusetts, we find it useful to compare Bell's EDC study results to studies submitted by a Bell operating company, New England Telephone Company, in Vermont and Massachusetts to the respective public utility commissions in those states. While a study of a single state cannot, without qualifications, be taken as representing the universe, the studies concerning New England Telephone are significant since they indicate some of the differences hidden in broad compilations and nationwide averages as supplied by Bell in its EDC study.

208. Table IV–12 below compares the three Bell studies, i.e., Bell Ex. No. 1 filed herein and studies of New England Telephone in Vermont and Massachusetts.[149] Table IV–13 below shows more detail from the Vermont study. It is clear from these studies that, contrary to industry assertions, basic local telephone service is not necessarily the only recipient of contribution, even as that term is defined by the industry itself. In Vermont, for example, it appears that as shown in Table IV–13, large PBX-Centrex service was half as great a recipient of contribution as was basic exchange service ($0.7 million compared to $1.4 million). In both Vermont and Massachusetts, private line service was a large recipient of contribution, as shown in Table IV–12. In fact, as shown in Table IV–13, in Vermont private line and large PBX-Centrex services combined were greater recipients of contributions than was basic residential service ($1.5 million compared to $1.4 million). One could conclude from Bell's own study that in Vermont, New England Telephone pursued a policy of subsidizing its largest business customers to a far greater extent than its residential customers.

209. It seems that if competition caused Bell to lose the entire PBX-Centrex, private line, and mobile services markets in Vermont, the residential users would be better off; residential and small business users could then share a rate reduction of over $1.5 million. The extent of the reduction would, of course, depend on how New England Telephone would unbundle its line charges. If $1.5 million were allocated to Vermont's 126,363 residential main telephones (1973), residential basic service would be reduced by $11.87 per year (99c per month).

210. As indicated by T+E, similar results could be expected in Massachusetts. In this connection, the Massachusetts Department of Public Utilities (PUC) staff recently completed a category cost of service study (not shown here but similar to the Varma study which considered total terminal equipment costs) of New Engand Telephone's Massachusetts operations in 1974. While we do not report all the specific figures here (T+E has prepared a summary of the study which will be made available at a later date), we note that the staff found that the basic exchange ratepayer is subsidizing all other intrastate service categories including message toll, private line and vertical services. In particular, T+E reports that the Massachusetts PUC staff found in Docket 18210 before the Massachusetts PUC that local exchange service attained a 26 precent return on investment; terminal services 0.9 percent; and all other services operated at a loss. See T+E Deliverable G, pp. 46–51.

211. Accordingly, both T+E and we find substantial evidence that in several states, telephone company-provided terminal equipment, particularly PBXs and KTS', is underpriced and is likely to be a recipient of subsidy from basic local telephone services including residential exchange. We believe this situation could exist nationwide. If substantial contributions were being made by terminal equipment, such as PBXs and KTS', and if such contributions have been a long-standing practice of the industry as claimed, it would seem to be relatively easy for the telephone industry to establish both the existence and amount of such subsidies. They have been given an ample opportunity to do so in this proceeding.

212. However, as we have found above, none of the telephone industry contributions studies submitted herein and evaluated above (all the Bell studies, the SAI study for USITA, the Baer and Mitchell study for CTC, and the GTE and UTS studies) establish either the existence or amount of contributions flowing from terminal equipment to basic local telephone service. Indeed, these telephone industry studies establish in many cases the opposite conclusion, namely, that terminal equipment services are likely recipients of substantial subsidy from basic local telephone services including residential exchange. Under such circumstances, basic local telephone users would actually benefit if the telephone companies lost the unprofitable and subsidized terminal equipment business to competition because they would no longer be required to cover telephone company losses on such business. This could possibly lead to reductions in rates for basic local telephone service.

TABLE IV–12.—*Bell estimates of contributions by service, 1973*[1]

[In millions of dollars]

	Bell system[2]			Massachusetts[3]			Vermont[4]		
	Revenue	Cost	Revenues in excess of cost	Revenue	Cost	Revenues in excess of cost	Revenue	Cost	Revenues in excess of cost
Interstate intercity	5,560	2,760	2,800						
Toll				140.063	114.596	25.467	9.2	8.5	0.7
Interstate other than basic exchange	9,230	6,760	2,470						
Private line				18.036	31.335	[5] 13.299	0.5	1.3	[5] .8
Exchange				278.847	340.112	[5] 61.265	13.5	15.8	[5] 2.3
Basic exchange	7,460	3,240	4,220						
Vertical				136.174	120.738	15.436	5.8	4.2	.8
Other				39.372	14.433	24.939	1.4	1.0	.4
"Joint" (access) costs[6]	0	5,790	[5] 5,790	0	0	0	0	0	0
Common costs	0	3,700	[5] 3,700	0	109.005	[5] 109.005	0	6.6	[5] 6.6
Total	22,250	22,250	0	612.493	730.219	[5] 117.726	30.4	37.4	[5] 7.4

[1] We use Bell Ex. No. 1, 1973 EDC study, rather than Bell Ex. No. 1–A, 1974 EDC study, to facilitate comparison with the 1973 studies in Vermont and Massachusetts.
[2] Source: Bell Ex. No. 1, p. 1.
[3] Source: New England telephone embedded direct cost study for 1973, attachment B, docket 18210 before Massachusetts Department of Public Utilities.
[4] Source: State of Vermont, Public Service Board, docket 3806, testimony of Thomas D. Flaherty, Jr., attachment A.
[5] Negative.
[6] All these are properly allowable by class of customer and even by service.

[149] It is not clear, particularly in the case of Vermont, that the interstate toll subsidy (indirect contribution) has been properly excluded from the study results as shown in our Tables. Nor is it clear whether the New England Telephone studies improperly compare only 80 percent of terminal equipment costs to total revenues. Inclusion of the interstate toll subsidy or consideration of less than total costs, of course, means the study results purporting to show contributions could overstate contributions, if any. In this regard, see our discussion of these problems in connection with the SAI and Baer and Mitchell Studies. Our comments with respect to Bell's EDC study are applicable here as well. In any event, on their face, the New England Telephone studies belie Bell claims of significant contribution from terminal equipment.

TABLE IV–13.—*New England Telephone and Telegraph Co., State of Vermont; class of service allocation—1973 intrastate results (Revised Jan. 9, 1975)*

[In millions of dollars]

Study category	Cost	Revenue	Revenues in excess of costs
Local Service:			
Residence service:			
Basic service	10.0	8.6	(1) 1.4
Vertical service	.4	1.2	.8
Nonrecurring service	1.8	.4	(1) 1.4
Total residence service	12.2	10.2	(1) 2.0
Business service:			
Basic service	3.7	3.6	(1) .1
Vertical service	2.5	4.4	1.9
PBX-Centrex (total)	2.4	1.7	(1) .7
Large PBX revenue		1.3	
Centrex revenue		.4	
Nonrecurring service	1.1	.5	(1) .6
Total business service	7.3	8.5	1.2
Coin service	.5	.6	.1
Total local service	20.0	19.3	(1) .7
Toll service:			
Wide area telephone service	.7	.7	
Message service:			
Operator-assisted service	2.6	2.0	(1) .6
Other service	5.2	6.5	1.3
Total message service	7.8	8.5	.7
Total toll service	8.5	9.2	.7
Other	2.3	1.9	(1) .4
Mobile service (total)	.0405	.0170	(1) .023
Basic service		.0161	
Message charge		.0009	
Common	6.6		(1) 6.6
Study total	37.4	30.4	(1) 7.0

(1) Negative.

Source: State of Vermont, Public Service Board, Docket 3806, testimony of Thomas D. Flaherty, Jr.

g. National Association of Regulatory Utility Commissioners (NARUC). 213. In its submission, NARUC presents its findings from "NARUC Interconnection and Specialized Common Carrier Report". According to the report, the SCC's and PBX and KTS interconnection would cost basic exchange subscribers a minimum of approximately $1.5 billion to $1.7 billion annually by 1984 in terms of higher local service rates, and on a cumulative basis, a minimum of approximately $6.7 billion to $9.6 billion. Of this total, the Report, estimated that approximately $620 million annually would be due to SCC's ($2.7 billion on a cumulative basis) and approximately $930 million to $1.0 billion annually would be due to PBX and KTS interconnection competition ($4.0 billion to $6.9 billion on a cumulative basis).

214. Detailed analysis of the NARUC report is difficult because the underlying documentation upon which NARUC's findings are based was not submitted. For example, NARUC presents its results in terms of lost contributions but, absent work papers showing the specific costs and revenues included in the study, we are unable to determine the initial amounts from which the lost portions are derived. Thus, we do not know what specific costs were considered by NARUC in its analysis and how such costs were allocated to vertical services and basic services such as residential exchange service. As noted in our consideration of the UTS and GTE studies, and Bell studies, knowledge of the specific costs utilized and the allocation methodology is essential before a determination regarding the existence of contributions can be made. In this regard, the NARUC estimates adopt, in part, the definition of contribution utilized by Bell and UTS, i.e., contribution or subsidy is expressed in terms of contribution towards covering joint or common and overhead costs. As noted above, this procedure invariably results in an understatement of costs associated with vertical services and thus overstates contribution, if any, to basic local exchange service. Indeed, NARUC uses the UTS estimates, and UTS's definition of contribution, as the base line case for the effect of interconnect competition on independents, "NARUC Comments," p. C–12. In this regard, it is not clear that UTS is representative of the independents. We must also challenge the projected future contribution losses of NARUC. As explained fully below, the NARUC interconnect company market penetration figures, upon which its projected contribution loss estimates are based, are clearly unrealistic. We do, however, attempt to compare the NARUC estimates to those submitted by other parties attempting to draw relevant conclusions where possible.

h. Office of Telecommunications Policy (OTP). 215. OTP did not provide estimates of current contributions, but did evaluate those of NARUC and Augstell in an attempt to make a judgment regarding contribution losses to date and for the future. Assuming that the portion of the market captured to interconnect suppliers in 1974 was about $92 million as estimated by NARUC, and adding another $20 million from OTP estimates of SCC total revenue, the total loss from competition, according to OTP, is approximately $112 million. OTP places this figure into perspective by noting that the telephone carriers had total revenues in excess of $30 billion in 1974. OTP indicates that this $112 million figure, according to NARUC, translates into an annual cost of interconnect and SCC competition of $1.50 annually per residential subscribed, assuming competitive PBX and KTS price reductions, or $.90 annually, assuming no price reductions. Based on an average Bell System residential exchange rate of $7.85 per month, the increases are about two percent and one percent, respectively. Using Augstell findings that loss of contribution due to PBX and KTS interconnection totalled $1.30 per residence main station annually (or approximately 11¢ per month), OTP indicated that interconnection presently requires a cost increase in basic exchange rates of only 1.4 percent. OTP concludes that the impact of interconnect and SCC competition has to date been negligible.

216. OTP also examines the Augstell and NARUC future projections of the impact of competition on residential exchange rates. OTP, correctly in our view, questions the Augstell and NARUC techniques of using data from the four-year period 1970–1973 (in fact, also the first four months of 1974) to extrapolate 11 years into the future. OTP notes that the 1980 annual "cost" per main station (from interconnection only) of between $9.32 and $11.67, excluding revenues from CA's, and between $7.15 and $9.08 including them, should be 43 percent lower if deflated to 1974 dollars by the deflation factors provided by Augstell, Ex. No. 23, p. 76. The final comment by OTP in regard to Augstell's projections is that they completely ignore the technological and marketing innovations that are taking place in the industry. OTP's point concerning the effects of technological innovation, namely, as a stimulus to the market in addition to secular growth—is an important one as we discuss below. OTP also considers methods of neutralizing contributions losses, particularly by changes in separations procedures and by employing usage sensitive pricing. These issues are examined below.

217. Finally, OTP indicates two important qualifications to any estimation of subsidy and contributions loss. First, the issue of subsidy OTP points out, is ultimately one of user-subsidy, not service subsidy. According to OTP, a blanket endorsement of a basic exchange subsidy may lead to "a random pattern of discrimination." Second, OTP cites evidence both from Illinois and California that suggests that some local exchange rates are subsidizing both intrastate toll and private line services. To the extent that basic exchange service is not subsidized, of course, contributions losses do not exist. As previously indicated, we have found that in several states substantial

evidence exists that vertical services such as PBX and KTS are likely recipients of subsidy.

2. *Contribution Studies—Summary of Findings.* 218. Based upon our analysis and the T+E analysis, we find the studies of contribution loss submitted by the telephone industry without merit. Among other things, the studies submitted generally utilize inappropriate cost and allocation methodologies, thereby failing to show whether there is, in fact, any direct contribution to basic local telephone service including residential exchange to be lost due to interconnect competition. Bell's failure to allocate common and joint costs among its various services including business vertical services such as PBX and KTS (thereby understating vertical service costs and overstating contribution, if any), and its assumption that all such costs are to be borne by the basic local telephone service ratepayer, is perhaps the best example of an inappropriate cost and allocation methodology. Further, most of the telephone industry respondents to this proceeding, particularly the Baer and Mitchell study for CTC and SAI Study for USITA, have not attempted to isolate the indirect contribution which flows from interstate toll to basic local exchange service due to settlements and division of revenues. That is, they use only intrastate terminal equipment costs or include interstate toll contribution with other claimed direct contributions. Comparing intrastate terminal equipment costs (or 80% of total costs) with 100 percent of the revenues in a contribution analysis means that in the case of vertical services, vertical services costs are understated and contribution, if any, is overstated. With respect to interstate toll contribution, we show herein that such indirect contribution is determined by the separations mechanism which is merely the vehicle for effecting the transfer. As noted above, it is note appropriate to include this indirect contribution as a subsidy to exchange services deriving from terminal equipment such as PBXs or KTS's, since it exists independently of such terminal equipment. As the NYPSC states, and as we agree: [150]

> If terminal equipment rates are set to cover only their allocated intrastate costs, then the rates charged for each new installation would fall short of bringing to NYT revenues sufficient to cover the additional costs of providing that service. To be sure, NYT will receive an enhanced return flow of revenues from interstate toll settlements directly attributable to the provision of additional services of this kind. But, in such a case, subscribers to terminal equipment would not be paying the full additional costs of these services—they would be receiving a subsidy from users of interstate toll, whose charges are forced to cover part of the costs of the terminal equipment investment. Clearly, such prices below the total cost of terminal equipment are economically inefficient.
>
> The next question, then, is whether this subsidization might not be the conscious purpose of the interstate-intrastate cost allocation procedure. The staff, arguing in favor of the use of total costs, asserts that it is not: the intention of the interstate separations process is to help hold down the rates of basic services, not of terminal equipment; and we believe that characterization to be correct.
>
> Therefore, both economic efficiency and a consideration of the purpose of interstate separations argue in support of staff's contention: The proper intrastate rates for terminal equipment ought to be high enough to cover their total costs, since only if they do so will that service not be inefficiently subsidized, and the flow of revenues from interstate separations be properly applied to subsidize rates for basic service.
>
> We note that this conclusion is also supported by other persuasive arguments raised by staff, notably, that fair competition on the basis of efficiency between NYT and independent suppliers of terminal equipment requires such a pricing method. The independent suppliers, of course, receive no return flow of revenues from interstate tolls. Their customers pay the same interstate toll rates, inflated by the allocation to interstate revenue requirements of a portion of NYT's investment in terminal equipment, as do NYT's own terminal equipment customers. For this reason as well, therefore, it would be incorrect to price terminal equipment below company costs.

219. Another fundamental deficiency identified by T+E in many of the studies submitted, particularly the Bell and SAI Studies, was in expense allocation. Since the principal expense categories other than depreciation are not in the Uniform System of Accounts and are not allocated to classes of plant, to services, or to classes of customer, any proper allocation must be based on a special study. It appears that in most cases such studies were not undertaken, or if they were, not provided. Generally maintenance expense for terminal equipment was assigned on the basis of dollars of gross plant, or per subscriber line, or per telephone. Our information indicates that on any of these bases, maintenance costs for business terminal equipment are actually higher than for residential terminal equipment. Similarly, business office expense is so allocated as to result in an underassignment to business customers. This leads invariably to an underassignment of expense to business customers and overstatement of contributions, if any, to basic local exchange service.

220. Thus, the telephone industry studies submitted claimed in varying degrees that a great deal of direct contribution to basic local exchange service was being provided by terminal equipment, particularly PBXs and KTS'. However, our analysis and T+E's analysis of these studies has shown that such conclusion is without merit. We find that if a study purported to show terminal equipment such as PBXs and KTS' subsidizing or providing direct contribution to basic local telephone service including residential exchange, the study was incorrect (overstated) in amount and even more likely it was incorrect in direction (i.e., the terminal equipment was a recipient of subsidy, presumably from local telephone service). Indeed, we find substantial evidence that in several states, and it could be inferred nationwide, terminal equipment, particularly PBXs and KTS', were recipients of subsidy from basic local telephone services rather than donors as claimed by the telephone industry. We also find examples whereby basic local telephone service rates, including residential exchange rates, could actually be lowered if this subsidy was eliminated. We recognize that the nationwide results may not always be applicable to any single state—and vice-versa—because of variations in business and residential tariffs. However, we believe that full category cost of service studies for terminal equipment and basic local telephone services, conducted under appropriate cost and allocation methodologies, are essential to reach a determination that basic local exchange service is not being burdened by non-compensatory rates for terminal equipment and intrastate private line services.

221. Accordingly, we conclude that neither the amount nor existence of claimed terminal equipment contribution has been shown by the telephone industry. Indeed, it is likely that terminal equipment is a recipient of subsidy from basic local telephone service rather than a donor. Under such circumstances, loss of terminal equipment business to interconnect competition could possibly result in rate reductions for local telephone service users rather than rate increases.

3. *Separations and Usage Sensitive Pricing* [151]—222. *Separations and Interconnection.* As noted earlier, one of the most important factors influencing the amount of subsidy or contribution flowing to basic local exchange service from other services is the formula used for separating interstate plant for jurisdictional purposes. The separations formula is of particular significance because it provides the mechanism whereby large amounts of revenue requirements (costs) are treated as part of the costs of doing interstate business. Since some of these costs (revenue requirements) are for plant and other expenses which are shared by several services, including basic exchange service, there is a large flow of funds through the settlements (for non-Bell carriers) and the division of revenues (for the Bell carriers) procedures. This flow of funds is such that a great deal of the revenue from every toll call is channeled to the carrier that originated the call.[152] This Commission and NARUC have repeatedly revised the separations procedures so that progressively

[150] NYPSC Case No. 26775, pp. 60–62 (footnote omitted). *Supra*, n. 136.

[151] In T+E Deliverable F, pp. 45–118, there is a thorough discussion of the matters we cover in this Section. We have attempted to highlight some of the items we feel are most important.

[152] A well-known difficulty of the settlements—division of revenues—procedure involves carriers that predominantly originate or terminate toll calls. Since the formula measures only originations, and assumes equal amounts of terminations, carriers with asymmetric loads have complained. There also appears to be a need to analyze the initial causational effects of any special requirements imposed on the local exchange plant by interstate service requirements.

more of the toll revenue has gone to the company providing the originating exchange service. Since the total costs of the systems are assumed to be unaffected by this transfer, as are the total of interstate and intrastate costs of each carrier, and since intrastate revenues are assumed to be unaffected, the result of the transfer of revenue requirements is generally considered to be a subsidy, or contribution from interstate to intrastate. In the case of terminal equipment all revenues from the provision of such equipment generally flow to intrastate but approximately 20 percent of the total costs or revenue requirements are allocated to interstate. This absorption of 20 percent of the total costs by interstate constitutes a subsidy. As previously indicated we call this subsidy the indirect contribution.[153] The estimates of the effects of interconnect competition given herein frequently include an estimate of the loss of this indirect contribution due to separations effects. We have noted above that it is inappropriate to include the interstate toll contribution, or indirect contribution, as a contribution deriving from vertical services since its existence and amount are functions of the regulatory policy to subsidize basic and intrastate toll services. Further, as found above, it may also subsidize those vertical services.

223. We will highlight the separations effect with a specific example. Before doing so, however, we note we have found no evidence herein of adverse economic impact on telephone industry revenues and alleged contributions (direct or indirect) to basic local telephone services which would require separations changes.[154] Therefore, in our discussion that follows we are operating under two assumptions. One, we assume arguendo, the possibility of an adverse economic impact. Secondly, we assume that this adverse economic impact is of such a magnitude that it requires changes in separations procedures to neutralize the impact on rates for basic local telephone service including residential exchange.

224. According to Bell, some 19.9 percent of Bell station equipment cost is assigned interstate, and some 16.7 percent of independent station equipment is so assigned. Thus, Bell claims if all station equipment were "lost," some 14.6 percent of MHS and WATS revenues would be "lost" to the local operating companies (and retained by Long Lines). If interstate revenue requirements were reduced by some amount (we show 14.6 percent above), the interstate rate of return actually received would rise. Until this Commission could lower interstate rates through a rate case, or increase the assignment to intrastate by revision of the separations formula (perhaps the SLU or CSR factors), the telephone industry would retain those revenues in the form of a higher rate of return (net revenues) on the interstate investment, and these revenues would be allocated to the operating companies on the basis of their share in the total interstate enterprise.

225. We lack the data to calculate the precise effect this allocation would have on the independents, but we can approximate the effect on the Bell operating companies. Some 12.4 percent of the total interstate revenue requirements are related to Bell's station equipment (2.3 percent is related to independent station equipment). Since interstate revenue requirements would be reduced by the dollar amount derived from this percentage ($1,090,000,000 since we neglect the independents), this amount would be allocated to the various Bell companies on the basis of relative investment. In other words, the "balance for division" would increase from $1,487,557,000 to $2,577,557,000. While, at present the Bell operating companies receive 42.6 percent of this sum, their share would decrease, due to their decreased share of the interstate investment. The operating companies now have 73.8 percent of the Bell System interstate investment. A reduction of $1,090,000,000 in operating company revenue requirements amounts to a reduction of some 21.6 percent of the operating companies' expenses and taxes which are now $5,050,495,000. Plant investment does not, of course, exactly parallel expenses and taxes, but if we assume that operating company interstate investment also would decline by about 21.6 percent, the Bell operating companies would receive 33.4 percent ((100 percent—21.6 percent) × 42.6 percent) of the increased interstate revenues or $860,904,000.[155] Thus, the decrease in interstate toll contributions can be calculated. The operating companies would receive $1,090,000,000 less due to decreased revenue requirements as shown above. This amount would appear in the reports as an increase in interstate net return and a decrease in intrastate net return, since the revenue requirements would simply be reallocated from interstate to intrastate. The operating companies' share of the interstate net return would decline from 42.6 percent to 33.4 percent, or a decrease of $237,081,000. Thus, the operating companies' revenues would decline by a total of $1,327,031,000[156] and Long Lines' revenues would increase by a like amount.[157] Naturally, any loss in revenues could be reallocated back to the operating companies according to the way it was originally allocated to them—adjustments in measurements and allocations procedures.

226. It is clear then, that in theory, interconnection could have an impact on the interstate toll contribution resulting from separations and that the effect of the interconnection of terminal equipment on such indirect contribution depends on the amount of interconnection that occurs. As noted above, we have found no record evidence of adverse economic impact requiring separations changes. Further, the effect of interconnection on jurisdictional separations is simply to transfer revenues within the industry, as we show above. There is no net loss of revenue due to separations. The principal beneficiary of the separations effect due to interconnection would be the Long Lines division of AT&T. There would be a net effect benefitting the Bell System at the expense of the independents, but within the Bell System the effect would be to transfer revenues among the companies.

227. We had expected that the parties to this proceeding would provide us with some information regarding the precise kinds and amounts of separation changes that would be advisable in the event it were determined that interconnect competition has, or will, adversely impact indirect contributions from carrier-provided terminal equipment to basic local telephone service.[158] We received few responses. NARUC merely points out that it sees a need for modification of separations without making a specific proposal. As noted above, SAI assumed in its study that we would adopt "board-to-board" separations after 1979. Indeed, it seems that this assumption is the principal basis for those effects of competition which SAI was able to find. "Board-to-board" separations would mean the elimination of all exchange plant and expense from the separations formula, a procedure contrary to the decision in "Smith v. Illinois Bell, supra." The effect of such a radical separations change would be to transfer large amounts of money from the independents to Bell. It is the effect of this transfer that SAI shows as a contribution loss for independents in the years after 1979. In Bell Ex. No. 45, Bell also presents its sug-

[153] As previously indicated, the direct contribution is that contribution allegedly provided by vertical services to basic local telephone services because of the alleged pricing of vertical services above costs. As we found above in our analysis of the individual contribution studies, there is substantial evidence that direct contributions from vertical services do not exist. Our discussion herein of separations and usage sensitive pricing is intended to address primarily the indirect contribution loss, if any, that may result due to interconnect competition.

[154] See our discussion of the smaller independent telephone companies in Section F herein where we recognize the possibility of future impact on smaller independents and the necessity to guard against any such impact.

[155] Taxes can be neglected because of the pooled tax returns.

[156] This example assumes a constant rate of return for operating companies' interstate operations. If we divided the new balance-for-division revenues by investment ratios the operating companies' revenue decline would increase for both the operating companies and Long Lines. We have interpreted Bell Ex. No. 45 appendix C, p. 29 to show annual charges, rather than embedded book cost.

[157] All figures used in this discussion are obtained from Long Lines Statistics, 1930–1963, March 18, 1974, p. 102, and 1950–1974, April 1975, p. 103.

gestions on how to deal with the separations effect of interconnect competition. Bell suggests the elimination of terminal equipment from the separations process (from the interstate jurisdiction) along with a compensatory increase in the allocation of other costs to interstate, involving the remainder of local exchange plant (subscriber lines and non-traffic sensitive Central Office Plant).[159] Bell admits that increase allocation of subscriber lines to interstate could not exactly offset the effects of terminal equipment allocation to intrastate for every company in every state.[160] However, we expect that if such allocations were made on an industry-wide basis, most independents (which have relatively less investment in station equipment than Bell) would benefit through increased settlements revenues. This point and others are worthy of exploration.[161]

228. As noted above, we find no evidence of economic harm in this record which would require separations changes.[162] However, even if changes were required, we believe a serious problem would have to be solved before any separations changes were implemented. A mechanism to ameliorate the impact of direct or indirect contribution losses, if any, due to interconnect competition must be determined to insure that the benefits from any separations changes actually flow to basic local telephone service subscribers. In the past, rarely does it appear that a clear connection has been established between separations changes, interstate and intrastate rate reductions or increases, and the existence of subsidies, if any, to basic local telephone service subscribers. Steps would also be necessary to insure that business vertical services, rather than basic local telephone services, are not among the beneficiaries of separations effects as we find they have been in the past. Further, as noted below, usage sensitive pricing should be considered in conjunction with any proposed separations changes.

229. *Usage Sensitive Pricing and Interconnection.* As found by T+E, another available alternative which could operate to neutralize indirect contribution losses, if any, due to interconnect competition is the initiation of usage sensitive pricing structures for intrastate exchange services.[163] We set forth below examples of usage sensitive pricing measures which we believe merit study and briefly elaborate on some of our other findings with respect to usage sensitive pricing.

230. Most of the telephone companies currently utilize flat monthly rates rather than usage sensitive pricing for local exchange service. While there are many reasons for these circumstances, and they should be analyzed on a case-by-case basis, we note generally that flat rate pricing appears to provide little incentive for customers to make efficient use of service. Essentially, the cost to the customer of making a local telephone call, after he has subscribed to the service, is zero. Yet increased traffic causes increased cost to the utility and requires more investment in traffic sensitive plant. Traffic sensitive plant may be as much as half of all exchange plant in the largest cities, and may be at least 20 percent of exchange plant in the smallest.[164] Usage insensitive pricing also appears to increase the allocation of exchange plant to intrastate, thereby raising intrastate revenue requirements and rates. On the other hand, usage sensitive charges for exchange service (which could vary by time of day, distance, and duration) appear to provide an incentive for customers to conserve their use of the telephone system (and also to make such calls at off-peak hours when they do not add to the need for plant). Since there is no such suppressive incentive in the case of current flat rate local calls, the percentage of the time that exchange plant is in use that is being used for intrastate purposes is raised. Since exchange plant and expenses are allocated to interstate on the basis of relative minutes of use, the effect of usage insensitive pricing then is generally to raise intrastate revenue requirements and rates. Conversely, the effect of usage sensitive pricing would generally be to lower intrastate revenue requirements and rates. A lower intrastate revenue requirement would make intrastate services, such as basic local exchange services, less dependent on any subsidy obtained from interstate via the separations mechanism. Thus, to the extent there may be an adverse effect from interconnect competition which results in a reduced interstate subsidy (*i.e.*, reduced indirect contribution) to intrastate services including local basic exchange services, usage sensitive pricing could operate to neutralize this subsidy loss.

231. We cannot go further and conclude that basic local exchange rates are, in fact, higher today because of usage insensitive pricing since most states (California is the main exception) do not allocate the intrastate toll and local exchange revenue requirements on the basis of the jurisdictional separations formula. However, if the intrastate revenue requirement were allocated between toll and exchange services in a manner parallel to that provided for in the jurisdictional separations manual, the effect of usage insensitive pricing would be to raise local exchange rates, if a state allocated the intrastate revenue requirement on the basis of the proportion of costs directly attributable to local exchange and toll.

232. At the outset, we note that the potential cost savings due to more economically rational tariffs has not been widely explored in telephony. We received little information in this inquiry, but we have attempted to explore the matter through other sources. We find that there are potential cost savings through efficiency gains in the use of existing plant and potentially reduced investment for new plant. We recognize that the cost of metering equipment is an important factor and that the potential for cost savings may be limited in some exchanges or that some telephone companies may find it more advantageous than others. In any event, as noted above, usage sensitive pricing certainly merits thorough exploration by the telephone industry irrespective of its use as an ameliorating response to interconnect competition.

233. In designing an economically rational tariff structure, costs must be examined to determine their variability with usage. Some costs are not traffic sensitive and might be reflected in a customer charge or a "network access" charge.[165] Some costs derive from the use of common equipment and vary with the number of calls. Other costs vary with the duration of calls. Some costs vary with distance and duration. A properly designed usage sensitive tariff should reflect these cost differences to the greatest extent possible. We have carefully evaluated testimony from the NYPSC[166] and as a result we suggest that it would be useful to consider tariffs having some of the following elements:

---

[158] We note that separations changes could also be utilized to neutralize the loss, if any, of direct contributions allegedly made by vertical services. Also, as stressed throughout T+E Deliverable F, pp. 45–118, the need for any separations changes at all is highly dependent on the overall market growth stimulus caused by interconnect competition. We find below that such market stimulation is occurring, and thus it is likely that there has been, or will be, no net revenue or contribution diversion.

[159] Bell states that there are problems of legality in doing this which might require legislation, Bell Ex. No. 45, pp. 22.

[160] Bell Ex. No. 45, p. 23.

[161] We discuss the Bell proposal in connection with smaller independents later herein. See also T+E Deliverable F, pp. 95–118, for a thorough discussion of proposals regarding the need for separations changes and, if so, what kind of changes would be appropriate.

[162] Similarly, usage sensitive pricing changes are not required solely because of the existence of interconnect competition.

[163] T+E finds that several reasons exist for initiating usage sensitive pricing irrespective of the existence of interconnect competition and its alleged adverse economic impact, e.g., usage sensitive pricing encourages more efficient use of existing plant investment and a reduction in new plant investment. However, if it is viewed only as a response to interconnect competition such factors as market growth stimulation caused by interconnect competition also become important. As noted previously, T+E finds it is likely that very modest market growth stimulation caused by interconnect competition, coupled with usage sensitive pricing, could operate fully to neutralize a revenue requirements shift, i.e., indirect contribution loss, resulting from interconnection. We agree with T+E. OTP claims usage sensitive pricing in conjunction with separations changes could fully neutralize the jurisdictional impact of interconnection.

[164] GTE lecture on usage sensitive pricing given to the Commission's Common Carrier Bureau staff February 27, 1976.

[165] As noted previously, the "network access" charge could be the focal point for any direct or indirect subsidy to basic local telephone service that society finds is warranted. This assumes, of course, that terminal equipment services, such as PBX and KTS, are priced to cover their total costs.

[166] NYPSC Case No. 26775. Supra, n. 136.

1. A station equipment charge for all items of station equipment provided by the telephone company, i.e., "unbundled" terminal equipment charges.

2. A "network access" or "customer" charge to cover local loops, station wiring up to the connecting block, and dedicated central office plant (such as the main frame and the appearance of the line finder). Business office expenses could also be recovered herein.

3. A charge per call. On exchanges with little common equipment this could be waived. This charge could vary by time of day.

4. A charge per minute. This charge could also vary by time of day.

5. Charges for special services, such as local directory assistance.

6. On calls beyond the customer's local central office, the charges per call and per minute could vary with distance.

7. Non-recurring charges could be based on local practices, but we believe the following should be considered:

a. a charge for the paperwork involved in a service order which could vary with what is ordered;

b. a charge for the central office work involved in a service order which could vary with what must be done;

c. a charge for connecting the customer's premises to the network, including a charge for basic inside wiring (up to the first connection on the premises) which could vary with the type of customer;

d. a charge for additional inside wiring on a per foot or per jack (connecting block) basis. This amount could vary with the type of customer equipment to be connected;

e. a charge for installing station apparatus, which could vary with the type of equipment to be connected.

We also believe that moves and rearrangements could be fully charged for at the time performed, and that nonrecurring costs could be segmented from recurring charges. There is some evidence that business customers in many areas are being undercharged for moves and rearrangements because of averaging with residential customers.[167] We also recommend a thorough examination of extended area service rates, particularly the relationship of such rates to associated costs.[168]

234. When it is realized that even during the business day there may be slack usage periods, e.g., before 10 am, between 12 pm and 2 pm, and so forth, it appears that some cost savings could be affected by transferring calls to those periods. We have seen the results of a toll tariff in South Dakota that transferred a large amount of traffic by giving 20 percent discounts at 12 noon and after 4 pm.[169] There may also be seasonal peaks in certain areas, and not just where tourism and recreation are important industries. Seasonal tariffs are well established and accepted in the electric utility industry, and we believe they should be explored in the field of telephony as well.

235. Our experience with respect to time of day charges has been successful. We have found demand, particularly residential demand, to be quite sensitive to price differences. We have not attempted to measure the cost savings accrued when we ordered the initial "after nine" rates in April 1963, but we do note that there was a substantial interstate net revenue increase of 10 percent, despite the transfer of $46 million in revenue requirements from intrastate to interstate in 1962.[170]

236. If usage sensitive pricing is initiated for basic local exchange service, it is likely that some subscribers, depending on the extent of their usage, could pay more for basic service while others could pay less. It has also been argued that usage sensitive pricing would raise the cost of service to the poor who are allegedly heavy telephone users. No evidence on this matter was submitted in the present inquiry. What evidence we have seen is for three exchanges in Illinois. While we are reluctant to generalize from so limited a sample, this evidence indicates that telephone usage generally increases with income, and that the poor and elderly are relatively light users.[171]

237. The foregoing discussion is not intended to be exhaustive of all the ramifications relating to the initiation of usage sensitive pricing and possible separations changes. Usage sensitive pricing certainly deserves active study by the telephone industry, and any further consideration of competitive effects from interconnect competition must include also a look at usage sensitive pricing and separations as possible neutralizing mechanisms of any adverse economic impact that might arise. Therefore, we expect that the parties will address this subject comprehensively in the further stages of this inquiry.

C. MARKET AND MARKET SHARE FORECASTS OF INTERCONNECT COMPETITION

238. One measure of the competitive effect of interconnect competition is the market penetration vis-a-vis the telephone companies achieved by interconnect companies to date and forecasted market penetration in the future. Indeed, we find that estimates of historical market penetration and forecasts of interconnect company market penetration in the future were basic to the validity of all the contribution loss claims we considered above. Thus, we have already stated some of our findings with respect to market penetration estimates. We address the subject in more detail herein to clarify the nature and the extent of interconnect competition.

239. Thus, in Appendix C below, we present forecasts of the PBX and KTS markets in 1975, 1980, and 1984. Basically, both T+E and we find that studies presenting the forecast are without merit. Assuming arguendo the validity of the forecasts presented, they point to insignificant market penetration to date, perhaps 5 percent as a maximum, and to a potential interconnect company market share of well under 20 percent by 1984. In the Appendix, however, we find indications that much of the interconnect market may be an addition to the telephone carriers' markets, so that even if the telephone carriers have 80 percent of the total market by 1984 (which we believe is a conservative estimate), they will have a much higher dollar share of the market than they would have had absent interconnect competition. In the further stages of this inquiry, we expect parties to provide realistic estimates of markets and market share penetrations which take into account likely innovative, technological and pricing responses by telephone carriers and market stimulation caused by interconnect competition. We expect such filings to examine in greater detail the main station and

[167] Dittberner Associates, "Interconnection, An Economic Impact Analysis", Appendix D, OTP-Contract OTP-SE-72-113. Detailed analysis of this report by OTP indicates that the results are dependent on several assumptions and OTP found that most these assumptions were unsupported. We cite this report because it is the only study of the problem of differential cost of moves and rearrangements that has come to our attention. The issue of cross-subsidization in moves and changes is hard to study, since the cost that is not recaptured immediately must be recovered in the undifferentiated pool of recurring charges. Thus due to the capitalization of station equipment and connections into an undifferentiated account, it is not possible to determine whether the allocations presently made are justified on any of the bases we consider—direct cost, incremental cost, fully distributed cost, etc.

[168] Extended area service is basically telephone service which includes service beyond a subscriber's exchange or zone at exchange rates rather than toll rates.

[169] South Dakota Study, "Interstate Long Distance Telecommunication Service, AT&T", 1969.

[170] Richard Gabel, "Development of Separations Principles in the Telephone Industry," East Lansing, Michigan State University, Institute of Public Utilities, 1967, p. 103.

[171] Illinois Commerce Commission, Docket No. 76-0069, Ex. No. 3, in Bell Ex. No. 21 there is presented an analysis of demand for basic residential exchange service and a associated demographic analysis undertaken for Bell by National Economic Research Associates, Inc. The purpose of the study was to investigate quantitatively the economic and demographic determinants of telephone availability including age, urbanism, education, race, region of residence and family type and especially income level. The study was based on reported availability, not use, of the telephone. Chief findings include: (a) availability tends to vary directly with income, age and urbanism, is higher among whites and lower in the South; and (b) availability does seem to be price sensitive, but the degree of sensitivity varies inversely with the income level; estimates of (arc) price elasticities vary from virtually zero (for households with annual income greater than $12,000) to .29 (for households with annual incomes less than $3,000); also varies with age and family type. T+E finds the study to be of questionable value for this inquiry. T+E indicates that at best, one can say price sensitivity seems to vary somewhat with income level, but the estimated variations at all income levels are very low. T+E notes that not only is teelphone availbility inelastic but almost completely so and that this would suggest (income effects aside) that modest changes in the charge for exchange service would have very little effect on the universality of service. T+E also identifies several technical problems with the study. For example, it finds there is an obvious deficiency in using reported telephone availability as a proxy for telephones in use. See T+E Deliverable A, p. 41.

residential and business extension markets.

D. INNOVATION AND INTERCONNECT COMPETITION

240. We consider in this section the subjects of innovation by interconnect and telephone companies and public benefit in the post-Carterfone competitive marketplace.

241. The telephone industry, especially Bell, argues that research and development and innovation has been helped by vertical integration and that interconnect competition could hinder innovation as well as research and development.[172] Some of the telephone company respondents, such as Bell an GTE, also identify particular innovations provided by the telephone industry. It appears that the telephone industry also claims that the terminal equipment market may be a natural monopoly. CBEMA, IBM, ITT, MCI, NATA, Phonetele, ABC, CBS, NBC, API, Bunker Ramo, Commercial Metals, Krigger, Utilities Telecommunications Council (UTC), and OTP generally provide comments or evidence challenging the telephone industry claims. For example, CBEMA, MCI and OTP, among others, argue that the provision of terminal equipment is not a natural monopoly. Several of these parties (such as API, CBEMA, IBM, ITT, UTC and the commercial television networks) cite public benefits from interconnect competition such as innovation by interconnect companies and broadened customer choices in the purchase or leasing of terminal equipment. Finally, several parties (such as OTP, MCI, IBM, ITT, API and UTC) argue that interconnect competition has actually stimulated telephone companies to be more innovative in their terminal equipment product lines than they would have been in the absence of competition.

242. Innovations may materialize in many forms: In equipment performsince "Carterfone", both by interconnect manufacturing processes which lead to cost reductions; in design changes which lead to optimal use of material sources and energy; in improved reliability and maintainability; and in an array of pricing and payment options which take into consideration the time value of money, equipment features packages, and unbundling of other packages into discrete offerings for maintenance, installation, instruction, etc. As set forth below, we find substantial evidence of innovation since "Carterfone", both by interconnect companies and telephone carriers, in a wide variety of terminal devices and private communications systems such as data modems KTS and PBXs.

243. In the early 1960's, users of computers were in general limited to carrier modem (data set) equipment because of telephone company tariffs which prohibited connection of other than carrier owned equipment to the public-switched network. In the mid-1960's, as computers became more important in telecommunications and faster, a demand arose for more sophisticated and higher speed modem equipment. The telephone companies at first responded slowly to these new demands, but interconnect companies responded dramatically. For example, as early as 1965 a non-carrier modem which allowed a data transmission speed of 4800 bps was marketed, but Bell did not market a 4800 bps data set until mid-1972.[173] Also, in the 1968–1969 time period interconnect companies introduced 7200 and 9600 bps modems, but the Bell System first marketed a 9600 bps modem in 1974.[174] Nevertheless, we find that Bell has reacted to the competition from independent modem suppliers. For example, in January, 1972, Bell's Customer Products Council (CPC) approved a competitive response which involved among other things: (a) proposed new data set development; (b) improved tariff provisions such as optional payment plans; (c) streamlined product lines by removing the "low mover modems;" and (d) an improvement in service quality in such areas as installation, maintenance, repair, etc.[175] The post-Carterfone modem market today consists of at least 50 different manufacturers making more than 280 models of modems.[176]

244. We find, as is the case with modems, the KTS and PBX markets have also been characterized by substantial innovation in the years since Carterfone. As of year-end 1973 there were 39 various KTS systems, 3 of which are made by Western Electric, accounting for 115 individual features and/or configurations, from 17 suppliers and 15 manufacturers.[177] In regard to PBX equipment, as of November 1972 there were 163 different PBXs available on the market (of which 13 were Western Electric products), manufactured by 28 companies, and having 180 standard and optional features.[178] An example of a significant response by Bell to PBX interconnect competition was Bell's establishment of a Joint AT&T/Western Electric/Bell Lab project team in Denver to develop competitive PBXs.[179] The first product developed at the Western Electric Denver plant was the 812–A PBX which advanced from design to production in only 13 months, well below previous product development time intervals.[180] CBEMA also details other terminal equipment innovations by both interconnect companies and telephone carriers in the post-"Carterfone" years in teleprinter equipment, CRT display terminals, remote batch terminals, point of sale terminals, banking terminals, credit card authorization systems, telephone and recording systems, facsimile equipment, and call dispatchers and toll restrictors.[181] Thus, both we and T+E find substantial evidence of innovation by both interconnect and telephone companies in the post-"Carterfone" years.

245. Further, we find no evidence in this docket of natural limitations in supply such as economies of scale, substantial economic barriers to entry or conditions of service which would support a finding that there is a natural monopoly in the provision of terminal equipment or private communications systems. Moreover, electric and gas utilities are in some ways similar to telephone companies. In each case, the service provided travels the lines of the electric or gas company, and telephone company, to a terminal piece of equipment. Electric and gas companies do not normally supply the terminal piece of equipment.

246. Accordingly, based upon our experience, the T+E analysis, and this record, we find the interconnect competitive marketplace has been characterized by innovation on the part of both interconnect and telephone companies, thereby affording the public a wide range of choices regarding the terminal device or private communications system which

[172] Our findings herein that both interconnect suppliers and telephone carriers have been innovative in the post-Carterfone competitive marketplace is not to be construed as a judgment on the many complex issues relating to a vertically integrated Bell System now before the Commission in Docket No. 19129, Phase II.

[173] CBEMA Comments, p. 24. IBM Comments, p. 7.

[174] CBEMA Comments, p. 24.

[175] Minutes of Bell's CPC meeting, January 1, 1972, pp. 2–3. Trial Staff Ex. No. 1973, Docket No. 19129, Phase II. See also minutes of Bell's CPC meeting, July 29, 1971, concerning analysis of 100 series data equipment, data set competition study, dataspeed KSR and data sets 202. Trial Staff Ex. No. 172, Docket No. 19129, Phase II.

[176] CBEMA Comments, Appendix A (Datapro Research Corp. Report).

[177] CBEMA Comments, p. 38. CBEMA further stated that a recent survey showed at year end 1973 a total of 1.04 million KTS supplied by interconnect companies out of a total of approximately 11 million sets. See also Frost and Sullivan, pp. 147–159.

[178] CBEMA Comments, pp. 36–37 and IBM Comments, p. 5. See also Frost and Sullivan, pp. 30–146 for a very thorough discussion of the variety of interconnect company and carrier PBX offerings.

[179] The "Denver Story", Western Electric's PBX plant, as presented to the AT&T cabinet, October 3, 1969 and the Denver Concept and PBX Development, as presented at Sky Top Conference, September 27, 1973, by J. W. Schaefer (Bell Labs). See Trial Staff Ex. Nos. 153 and 154, respectively, Docket No. 19129, Phase 11.

[180] See MCI Comments, pp. 34–39, for this and other examples of Bell's innovative responses to interconnect competition. Examples of innovative responses by Bell are found in several other filings herein also. See, e.g., API Comments and Phonetele Comments.

[181] CBEMA Comments, pp. 22–40, Appendices A–D. See also Frost and Sullivan, pp. 160–177, for a description of interconnect company and telephone company terminal equipment offerings other than KTS and PBXs. API also presents a listing of innovations by both telephone companies and interconnect companies in the post-Carterfone years, API Comments, pp. 16–19. BII Ex. No. 30 contains an extensive list of innovations, product improvements and style changes by the Bell System in KTS, PBX, Centrex and automatic call distributors. Significantly, the number of post-Carterfone innovations (23) claimed by the Bell System is larger than the number of pre-Carterfone innovations (16).

best serves their needs.[182] Benefits include availability of new equipment features, improved maintenance and reliability, improved installation features including ease of making changes, competitive sources of supply, option of leasing or owning,[183] and competitive pricing and payment options.[184] Although it is difficult to predict future innovative developments, because so much is dependent on new product lines and new marketing strategies adopted by the telephone carriers in response to competition, it appears likely that the public will continue to benefit from the competitive interconnect marketplace in terms of innovation in the immediate future.

E. TELEPHONE COMPANY PRICING RESPONSES TO INTERCONNECT COMPETITION

247. While innovation and new product development has been and we believe will continue to be a sigificant form of response by telephone companies to interconnect competition, we find another significant response has been and will continue to the telephone company pricing responses. The major area opened to the threat of terminal equipment competition (PBX, KTS, modems, etc.) makes up perhaps 10 percent of Bell System revenues. In these areas (and others) the Bell System carriers have emphasized before various state regulatory commissions their need to move away from a "value of service" pricing approach to a "cost" approach apparently to meet interconnect competition.[185] While it is appropriate for the telephone companies to competitively price their terminal equipment and other services, of course, regulatory scrutiny should be given to these pricing responses in order to insure that the specific rate reductions requested are not so extensive as to cause certain customer classes who are not subject to competition to pay more than their fair share of the costs.[186] This scrutiny should also include a thorough examination of the costing methodologies utilized by the telephone companies.

248. A fairly common practice by the new vendors of terminal equipment was to enter into three, five or seven year periods of payment for the capital costs of a PBX (or shorter period for key systems) with the customer obligation thereafter limited to periodic maintenance charges. The practice contrasted with prevailing common carrier pricing arrangements. Under Bell System pricing practice, a uniform monthly charge was applied indefinitely for the entire duration of service. As part of its revised marketing program "to meet the competition" AT&T introduced a new pricing concept applicable to the competitive terminal equipment field. This new concept was termed the "Two-Tier Contract Plan". Implementation of this plan has been nearly universal by the Bell System operating companies. Under the two-tier plan, the company establishes two tiers of rates: Tier A is intended to recover the capital costs of the equipment—depreciation, returns and income taxes. These charges are recovered in 3, 5, 7 or 10 year periods, at customer option, through uniform monthly charges. When the capital recovery period has been completed, no further charges are levied under the Tier A rates. Tier B is intended for recovery of operating expenses, including maintenance and administration. While Tier A rates do not vary through the life of the contract, Tier B rates are subject to variations with general cost changes experienced by the telephone company. In addition to the Two-Tier Contract made available to PBX customers, the telephone company has continued to offer standard monthly tariff prices under conventional monthly charges. See T+E Deliverable F, pp. 3–44, for a thorough evaluation of two-tier pricing and other pricing methodologies employed by Bell System operating companies and their import for interconnect competition.[187]

249. While telephone company pricing responses, such as two-tier pricing of PBXs, have been effective according to T+E, in combatting interconnect competition in several states, there are other telephone company rate practices which deserve close scrutiny in the competitive climate. The NYPSC, as noted above, has highlighted one of the ways in which tradtional telephone company rate structures could be revised to insure both fair terminal equipment competition and to accomplish the goal of keeping basic telephone service obtainable at reasonable charges to residents. In this regard, see our previous discussion of unbundling.

F. SMALL INDEPENDENT TELEPHONE COMPANIES

250. In the public press there have been many statements of concern that the Commission's competitive policies may have an adverse economic impact on some small independent telephone companies. The argument is that a small independent that loses a PBX or KTS to a competitor may lose a large amount of revenue, both the direct revenue from the PBX or KTS leasing and the indirect revenue from jurisdictional toll settlements. It is claimed that the loss in revenues is greater than the reduction in annual operating expense, and that furthermore the telephone company may have difficulty in recovering its undepreciated investment through reuse or resale of the PBX or KTS. Such circumstances, it is claimed, would necessitate increased charges for basic telephone service within the area served by such a company.

251. Despite our specific request for information on such occurrences, we have reecived only theoretical discussions of the possibility. Our analysis indicates that there is little liklihood of widespread PBX and KTS loss by independent telephone companies, and we have not heard of examples of such loss causing rate increases. It appears that small independents have not been experiencing PBX and KTS losses, or have not been sufficiently affected by such losses to state their cases before us or in any other public forum. Certainly, the submissions from GTE, UTS, CTC, and the NTCA have not made any claims or established that such losses have occurred.

252. Our analysis indicates that PBX-KTS interconnection is still largely an urban phenomenon, and is likely to remain so in the forseeable future. To begin with, small telephone companies have few PBX's or KTS' to lose, so there is little risk from competition. In rural areas it is hard for interconnect com-

[182] See also, Docket No. 19528, supra, 35 FCC 2d at 542. We note that in some cases Bell operating companies purchase modems, KTS, PBX, etc. from interconnect suppliers to use in their own service offerings rather than relying solely on Western Electric for such equipment. It has been alleged that independent telephone companies rely on independent interconnect suppliers to an even greater extent.

[183] Some telephone companies are considering departing from the traditional leasing arrangement for terminal equipment. E.g., Central Telephone and Utilities Corp., the fourth largest independent, has announced a trial plan to allow business customers to purchase PBX and KTS systems as part of its "response to competition within the telecommunications industry." See Telecommunications Reports, August 23, 1976, p. 12. Similar views regarding the sale of PBXs to customers were given by a United Telephone System executive representative. See "Interconnection, Today's Solution," Teleprinter Engineer and Management, June 15, 1971.

[184] It is also likely that interconnect equipment has stimulated network traffic and improved network efficiency. See comments of Robert E. Bennis, Director-Corporate Telecommunications of the Westinghouse Electric Corporation of 87th Annual NARUC Convention in Boston on November 6, 1975. Telecommunications Reports, November 10, 1975, pp. 36–37.

[185] Significantly, a FCC staff study of 14 interstate and intrastate rate increase requests in 1975 granted or still pending revealed that none were requested on the grounds of competitive impact. Information was obtained from PUR Reports.

[186] The Iowa Commerce Commission in Docket No. U–366, had before it Northwestern Bell's proposal for rate reductions in KTS but substantial rate increases for monopoly services of the company. In a subsequent investigation decided December 23, 1971, the Iowa Commerce Commission reinstated the earlier, higher KTS charges concluding that "the evidence shows a distinct anti-competitive effect stemming from the subject rate change and respondent's failure to sustain its burden through the production of necessary cost data * * *." Show Cause Investigation, Docket No. U–366, para. 2.

[187] We note that Bell System operating companies' two-tier pricing of PBXs is being contested by NATA in some 20 states. E.g., the Massachusetts Department of Public Utilities has rejected New England Telephone's two-tier pricing of Dimension PBXs on the basis "it is unjustly discriminatory against other classes of ratepayers." Telecommunications Reports, April 26, 1976, pp. 1–2. New England Telephone has appealed to the Massachusetts Supreme Judicial Court. The Nebraska Public Utilities Commission approved a two-tier pricing plan for Dimension PBXs but disallowed Tier A rates because such rates were fixed and not subject to change. Telecommunications Reports, July 6, 1976, p. 21. The Georgia Public Service Commission recently dismissed complaints challenging the lawfulness of Southern Bell Teelphone Company's two-tier pricing of Dimension PBXs in Georgia. Telecommunications Reports, August 30, 1976, p. 30.

panies to locate potential PBX–KTS customers and to make creditable promises of service. In urban areas the interconnect companies are more successful, but small independents that do serve a few urban areas have the resources to enable them to compete successfully and are able to reuse or resell displaced PBX's and KTS's when necessary. They would, of course, be less affected than small rural companies by the loss of one or two PBX's or KTS'. Bell and the large independents (GTE, CTC and UTS) represent approximately 95 percent of the telephone industry and the remaining 5 percent are the small independents. Thus, the potential problem is minimal and is a special situation.

253. Still, we have investigated what could be done if the problem should materialize. We have isolated two elements of the problem—the direct loss of PBX or KTS revenue, and the indirect loss of settlements revenue. The loss of PBX and KTS direct revenue could clearly be compensated for by "unbundling"—by ensuring that line charges and network access charges are compensatory and profitable. The indirect loss of settlements revenue was addressed by only one respondent in this inquiry, AT&T, which suggested in Bell Ex. No. 45 that station equipment be removed from the settlements procedure, with a concurrent adjustment in the subscriber plant factor on customer access lines to keep total settlements unchanged.

254. T+E has analyzed the Bell proposal in some detail and we have commented on it elsewhere. We find that it appears to have sufficient merit to warrant further investigation as a possibility for consideration whether or not PBX or KTS loss by small independent telephone companies begins to affect rates for basic service. The Bell proposal has several advantages. By removal of station equipment from the settlements procedures (which Bell claims will require legislation), Bell's proposal facilitates our competitive policy by removing the potential adverse impact on settlements. Also, by removing the interstate absorption of twenty percent of PBX and KTS costs, the Bell proposal will make competition fairer by making it harder for telephone companies to set rates too low because they or regulatory bodies may mistakenly compare all of the revenue with only the eighty percent of the cost that is allocated to intrastate service. The elimination of the risk of such an incorrect comparison may also benefit consumers of basic telephone service since it will facilitate the setting of station equipment rates high enough so that station equipment does not absorb the subsidy that interstate revenue supplies through the settlements process. Preliminary analysis also suggests that removal of station equipment from the separations-settlements procedure may cause a greater proportion of interstate revenue to go to the very independents that have the smallest relative amount of station equipment, and which are therefore at greatest theoretical risk from competition. Finally, we note that the Commission may always entertain specific requests for waivers of its interconnection policies. See "Mebane Home Telephone Company, supra and Puerto Rico Telephone Company", 57 FCC 2d 1202 (1976), appeal pending, Case No. 76–1134 (1st Cir.) Thus, we will explore, in conjunction with State regulatory authorities, Bell's proposal and any alternative proposals that we receive.

G. SUMMARY

255. Based on detailed evaluations by T+E and our staff of the comments and studies submitted in this proceeding, and other record evidence, we conclude that interconnect competition has had no discernible adverse impact to date on telephone industry revenues or on basic local telephone service rates and availability, and that there is very little liklihood of any adverse impact in the near future. We note that claims of economic harm, as well as technical harm, were made in "Carterfone" and Docket No. 19528 by the telephone industry. Our findings and conclusions herein are dispositive of such economic claims. In view of this determination we find no need at the present to alter either the "Carterfone" policy or our registration program in Docket No. 19528. We intend, however, to keep this proceeding open and to continue our own surveillance of economic developments in this field. Should a need arise to reevaluate these policies, we shall thus be fully prepared to do so.

256. The telephone industry contribution studies claimed that significant revenue contribution was being provided by terminal equipment, particular PBXs and KTS', and that this served to maintain lower local telephone service rates. Our examination reveals that in fact, the terminal equipment, such as PBXs or KTS' are probably recipients of subsidy or contribution from either interstate telephone service or basic local telephone services. Claimed terminal equipment contributions were found to be nonexistent by the NYPSC in New York and basic local telephone users were found to be subsidizing terminal equipment services such as PBX and KTS services. Under such circumstances, basic local telephone service may actually benefit when underpriced and subsidized terminal equipment business is lost to interconnect competition. Findings from Massachusetts and Vermont studies support the NYPSC results.

257. We also find that market penetration by interconnect companies is insignificant to date (as admitted by SAI and the SRI studies), perhaps 5 percent in the PBX and KTS markets which are the primary competitive markets. Even by 1984, the maximum penetration is likely to be well under 20 percent. However, even these penetration figures are misleading. The studies supplying such figures generally ignore the overall market stimulation caused by interconnect competition (which results in net revenue benefits to both telephone and interconnect companies thereby neutralizing telephone industry revenue diversions, if any), and also ignore the effect of competitive responses by telephone carriers.

258. We also find that careful scrutiny should be given to telephone company competitive pricing responses such as two-tier pricing of PBXs, and that the unbundling of terminal equipment from service offerings should be given serious consideration.

259. Finally, we find that interconnect and telephone companies have been innovative in the post-"Carterfone" marketplace, resulting in numerous public benefits.

260. While we found on this record on evidence that competition has caused adverse economic impact to date and little liklihood of any in the forseeable future, we nonetheless recognize the possibility that smaller independent telephone companies could in the future suffer a reduction in their share of the interstate revenue pool due to distortions in the jurisdictional separations and settlement procedures under competitive conditions. Thus, we indicated in Section F above our intention to develop, in conjunction with State regulatory authorities, separations changes which will avoid the possibility of any such adverse effects.

V. IMPACT OF COMPETITION FROM OTHER COMMON CARRIERS

A. INTRODUCTION

261. As discussed above, the FCC opened intercity private line services to "full and fair competition" in our Specialized Common Carrier decision, 29 FCC 2d 870 (1971), and has authorized a number of carriers to offer specialized private line services. In the rulemaking proceeding, Docket No. 18920, which led to the Specialized Common Carrier decision, we sought evidence as to the potential impact of competition on the established telephone and telegraph carriers. At that time we concluded that "there is no reason to anticipate that new entry will have any adverse impact on service to the public by existing carriers such as to outweigh the considerations supporting new entry." 29 FCC 2d at 920.

262. The present proceeding was instituted, inter alia, to determine if the experience of the past five years of OCC operation has borne out our 1971 conclusion, and what further conclusions can be reached regarding the possible near future economic impact of OCC competition on the established carriers. In that regard, we asked respondents to present us with any studies, documentation or other information which would allow us to determine the extent to which OCC competition has resulted or will result in higher rates for residential and business customers of all telecommunications services. We also sought information regarding the impact of OCC competition on the introduction of new services and technology into the industry, the industry structure, the size of the communications market, approaches to be taken to ratemaking, cross-subsidies, and other areas specified in the appendices to our First Supplemental Notice, supra. While not all issues were commented upon by the respondents, we have received a number of filings regarding the

general issue of impact of OCC competition on the rates for local exchange service and XXTS and on the issue of innovation.

B. ISSUES

263. In general the Bell System, individual independent telephone companies, and USITA contend that competition from OCCs[188] will, within 8–10 years, cause significant increases in communications costs for users of both interstate and intrastate communications services. While AT&T asserts that revenue requirement shortfalls resulting from private line competition will necessitate increases in MTS and WATS rates, USITA takes the opposite position, contending that OCC services will directly impact upon MTS traffic such that Bell will find it necessary to reduce MTS rates substantially in order to compete. The effect of this, USITA claims, will be a substantial decrease in interstate toll contributions to intrastate services. The telephone company respondents, in particular Bell, further asserts that OCC competition will not increase the level of innovation within the telecommunications industry. The OCC respondents generally disagree with these claims, asserting that the economic impact on the established carriers will be insubstantial and that OCC competition has caused significant innovations and will continue to do so.

264. Rate increases for telecommunications services will occur, according to the telephone company respondents, as a result of several factors: (1) Direct losses of interstate private line services to the OCCs; (2) increases in the unit cost of providing intercity communications services as a result of economies of scale that will not be realized due to private lines services being diverted from AT&T to the OCCs (3) decline in MTS and WATS traffic as a result of cross-elastic effects of private line services offered by the OCCs; (4) decrease in the size of the interstate revenue pool available for divisions of revenues with Bell System Operating Companies and settlements with independent telephone companies; (5) adjustments in MTS/WATS rates to meet otherwise unmet interstate revenue requirements; (6) changes which will probably be made to the separations formula. The respondents' positions regarding these points are amplified below.[189]

I. DIRECT LOSSES OF INTERSTATE PRIVATE LINE SERVICES TO THE OCC'S

265. The issue here concerns direct revenue losses which may occur as a result of private line customers replacing private line services provided by established carriers with those secured from OCCs. AT&T contends that its losses to the Specialized Common Carriers (SCCs), through 1974, amount to $16,584,000, while the total revenue gained by the SCCs in that period is about $17 million (AT&T Ex. 8, p. 66). It further claims to have lost $7,642,000 to miscellaneous common carriers during the period June, 1970–January, 1975 (Id., p. 67).

266. Bell has also submitted an estimate of SCC and domestic satellite carrier capacity by year-end 1977 (Id. pp. 71–76). These estimates are based upon OCC applications for construction and operating authority at the time Bell filed its exhibits (April, 1975), as well as its own market estimates of the total private line market. AT&T concludes that, if all proposed OCC construction is completed by year-end 1977, the OCCs will have the physical plant capacity of 70–105 percent of the estimated total Bell private line market and 105–165 percent of the estimated Bell private line market between the cities expected to be served by the OCCs. Bell estimates the revenue effect of this OCC competition, by year-end 1976, to be $159,811,000 in private line revenues Bell would otherwise have received but for OCC impact.

267. SPCC disagrees with AT&T's direct impact figures. It contends that AT&T's projections of losses of revenue to the SCCs greatly exceed actual SCC revenue for 1974 and 1975. SPCC predicts SCC revenues at substantially below AT&T's loss projections. SPCC points to Bell's projections submitted in the Hi-Lo proceeding and notes that the Commission held these projections to be considerable overestimates of SCC impact.[190] For example, SPCC asserts that Bell had projected in its Hi-Lo filing SCC revenue of $148 million by year-end 1976, while a later tariff filing contains forecasts of only $119 million in revenue for both the SCCs and the domsat carriers in 1977.

268. While the revenue losses projected by Bell are close to the total revenues of the SCCs, SPCC claims that 22 percent of its and MCI's revenues are paid to the Bell Operating Companies for local distribution facilities, and that much of the OCC revenue represents new demand. SPCC also disagrees that Bell has shown any actual losses in private line services since 1971. Rather, it contends that Bell has increased its private line toll revenues at an annual rate of 8.2 percent since 1971, but that the increase in 1975, the year in which the largest growth to date in SCC revenues has occurred, was 8.7 percent over 1974. The amount of increase, SPCC asserts, was more than three times the total SCC revenues for the year. SCC revenues for Calendar Year 1975 were $34,944,000. See para. 93 supra.

269. Our contractor, T+E, notes difficulties in analyzing these filings, based on (1) different definitions of the time periods used in the studies, e.g., Bell and SPCC annualize year-end December figures while other respondents cite annual revenues, and (2) ambiguities regarding precisely what carriers each respondent includes in determining total SCC revenues. The contractor concludes, however, that SCC 1974 revenues, either annual or annualized, were clearly far less than the projected loss of $75–80 million given in Bell's Hi-Lo filing (Docket No. 19919), being instead closer to $10 million.

270. Another difficulty T+E suggests is the failure of the parties to present impact figures by category of service. For example, it is difficult to analyze AT&T's 1977 projected impact figures, which aggregate projected losses in MTS, WATS and private line service. If certain cross-elasticity assumptions in Bell's filing are found unjustified, it is impossible to determine the extent to which its projections are affected without disaggregation of the figures.

271. We cannot accept AT&T's assertion that almost 100 percent of OCC revenue represents a loss to the established carriers. Bell's submissions in this regard are internally contradictory. First, it asserts (in Ex. 8, p. 66) that it can trace most of the OCC's revenue to direct Bell losses of private line circuits. No support is given for that assertion, and the OCC revenue figures cited are not found in any reports filed with us nor are they justified in any way. Bell's OCC revenue figures are apparently annualized December results in the years cited, and this fact biases them upward. We also agree with T+E that analysis is difficult

[188] For purposes of this part, OCCs include the specialized terrestrial carriers, value-added or resale carriers, and the domestic satellite non-telephone company carriers.

[189] A recent development which may affect the economics of the telecommunications industry is our Report and Order in Docket No. 20097, Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, FCC 76–641, released July 16, 1976. The respondents in Docket No. 20097 were given an opportunity to address the potential economic impact of resale and shared use on the industry, and our findings in that regard appear at paras. 56–62, 65 and 87 of that Order. Obviously, there was no opportunity for comments on resale and shared use to be incorporated into this proceeding, but we shall treat any comments submitted in a separate report.

[190] See AT&T (Hi-Lo) Interim Decision, 55 FCC 2d 224 (1975); Decision, 58 FCC 2d 382 (1976).

with Bell using annualized figures and other carriers citing calendar 1974 revenues. Since OCC revenue for 1974 was less than $6 million, based on Form P reports filed with us, the procedure AT&T used in annualizing its estimate of OCC revenue, $17 million, is misleading.

272. More important, however Bell in no way supports the assertion that the OCCs' gains were direct circuit losses to Bell. Ex. 8 enumerates the claimed direct circuit losses to the OCCs, again without support. In fact, in two cases, the number of losses which Bell claims exceeds the number of circuits gained by the competing carriers.

273. For year-end 1977, Bell predicts a net revenue loss of $247 million to the OCCs from all interstate services without the Hi-Lo rates. With the Hi-Lo rates in effect, the loss will be reduced by $29 million (AT&T Ex. 10, p. 6). Bell cites in support of these estimates its own filings in Docket No. 19919, the Hi-Lo cases. In deriving the figures, AT&T assumed it would file no rate response in order to compete with the OCCs. However, the competitive Hi-Lo rates were in effect from June 13, 1974 until August 20, 1976, when they were replaced by a further competitive response, the Multi-Schedule Private Line (MPL) rates.[191] Bell further anticipates that the MPL tariff will produce increased revenues over the Hi-Lo rates during each of the years 1977–79 (cost support data filed with MPL tariff schedules, April 1976, Vol. IV, pp. 2–1, 3–1, 4–1).

274. Bell's projections of substantial losses to the OCCs during the period 1974–77 in the absence of any competitive rates response are clearly unrealistic, since Bell in fact filed two successive competitive responses, Hi-Lo and MPL. Bell asserts that MPL is both a reasonable response to competition by de-averaging private line rates, and is closer to the actual costs of providing service than either Hi-Lo or its predecessor tariff schedule.[192] While we take no position regarding the validity of these contentions, our staff analysis indicates that the rate levels within the MPL schedules are largely competitive with those of the OCCs.[193] Accordingly, we cannot accept as valid any estimates of losses to Bell from OCC competition that do not take Bell's rate responses, either Hi-Lo or MPL, into account.

275. A further Bell assertion is that the OCCs will by the end of 1977, have substantial excess capacity and thus will be able to absorb all of Bell's private line traffic. This excess capacity, Bell contends, will cause the OCCs to divert traffic from MTS and WATS in order to fill their systems. While we believe that AT&T has overestimated the potential capacity of the OCCs (and would like to see the analysis of microwave and satellite applications which were pending in 1974 to which Bell refers), we disagree with the unjustified assumption that any excess capacity will be used to divert business from MTS and WATS. Discussion of diversion from MTS and WATS appears below (paras. 280–302). Further, whether or not excess capacity exists on the OCCs' systems, we believe that Bell will retain the bulk of its private line business through the use of competitive price and service responses. We have encouraged such responses both in our "Specialized Common Carrier" decision, 29 FCC 2d 870, 915 (1971) and in the final decision in Hi-Lo, 58 FCC 2d 262, 366 (1976).

276. Bell Ex. 10, which contains Bell's impact estimates for 1977, apparently attempts to take competitive responses into account. However, this exhibit appears to employ study methodology similar to that used in Docket No. 19919 to estimate both Bell and OCC revenues for 1977. These methods, as used in the Hi-Lo proceeding, were found to have produced results which greatly underestimated Bell revenues and overestimated OCC revenues and were thus rejected by the Commission (55 FCC 2d at 232–3). For example, the basis of the computer analysis in Ex. 10 of this proceeding is the PLIAC computer model, which was found in Hi-Lo to have serious deficiencies. In addition, the estimates of 1977 Bell private line revenues are considerably below those revenues actually attained in 1975. While it is not inconceivable that substantial declines could occur, it appears improbable, especially since Bell interstate private line revenues for each month in 1976 for which we have reports have continued to increase over the comparable 1975 period.[194] Further, Bell's forecast of losses of revenues to the OCCs in 1977 far exceed the OCCs' own predictions of the total revenues they anticipate by that time. Finally, given the present revenue levels and the chronic difficulties that the OCCs have had in obtaining even short term financing, it is inconceivable that they would achieve revenues approaching $.5 billion, which would be the minimum necessary to divert from Bell the amounts of revenue that AT&T predicts. This assumes no new demand, an assumption which, as discussed in the section on innovation below, we cannot accept.

277. We note the recent bankruptcy of Data Transmission Company (Datran) and cessation of all communications operations on September 15, 1976.[195] Datran's failure, we believe, provides further evidence that the OCC industry remains in the developmental stage, with little direct impact on the services of the established carriers. While we do not anticipate additional failure of OCCs, we are cognizant of the financial difficulties other carriers have anticipated. This is further evidence that the OCCs will be unable, in the near future, to divert substantial private line revenues from the established carriers.

278. Finally, we found in our recent Decision in Docket No. 18128 that the return levels for most of Bell's private line services, e.g., private line telephone, telegraph, audio/radio, and television service classifications, indicate that full costs are not being covered and that these services are being subsidized by users of other services. Accordingly, return levels for these services are to be increased. Therefore, as with terminal equipment that is priced below costs, the loss of private line service to competitors will mitigate this cross-subsidization and will lower the revenue requirements of other services. Figure 3 illustrates the rates of return earned by various Bell services during several recent years. Note that most private line services are earning considerably lower returns than MTS or WATS.

279. From this analysis, we find that the direct impact of the OCCs on the private line services of established carriers has been insubstantial. We further find that analysis of the historical growth of the OCCs, the financial difficulties being experienced within the industry, and the competitive rate responses of the established carriers result in the conclusion that the OCCs' impact on private line revenues will be far less than AT&T has estimated and insufficient to have a substantial impact on the revenues of the established carriers.

[191] The MPL filing is presently under investigation in our Docket No. 20814.

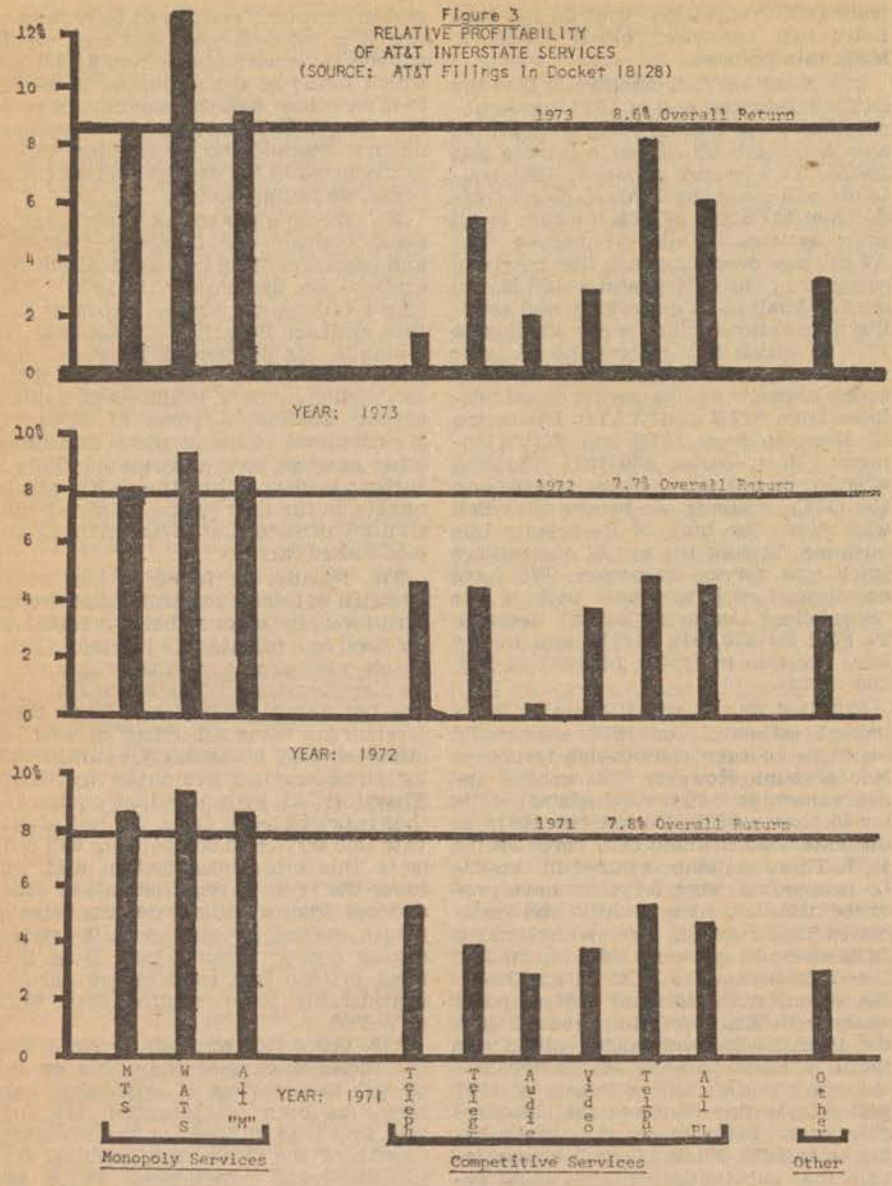
[192] Material accompanying and associated with AT&T Transmittal No. 12546, filed April 19, 1976.

[193] The MPL rates have been set for investigation in our Docket No. 20814, Memorandum Opinion and Order, 59 FCC 2d 428 (1976).

[194] Reports filed monthly by the Bell System, January–June 1976.

[195] *See* Order and Certificate, FCC 76–809, released August 27, 1976, in which we granted Datran's applications to discontinue service, conditioned upon giving customers a reasonable period of time, until September 15, to find alternative services to meet their communications needs.

Figure 3
RELATIVE PROFITABILITY
OF AT&T INTERSTATE SERVICES
(SOURCE: AT&T Filings In Docket 18128)



2. *Decline in MTS and WATS Volume and Revenue Decrease in Interstate Revenue Pool.* 280. These issues concern the potential indirect loss of MTS and WATS traffic and revenues as a result of OCCs' offering of services which are alternatives to MTS and WATS. Pursuant to separations procedures,[196] toll interstate MTS and WATS are placed into the interstate revenue pool which is then allocated, by a formula, to interstate and intrastate plant categories.[197] Under this formula, a portion of local telephone facilities is designated as interstate plant and the costs are allocated to interstate services. Part of the interstate revenues are returned to local operating telephone companies (both Bell System and Independent) to cover such costs. Accordingly, if MTS and WATS interstate revenues decline, the revenues in the pool available for settlements and divisions of revenues with local telephone companies will also decline. Unless there were a countervailing decrease in revenue requirements or offsetting revenues derived from the leasing of facilities to the OCCs, the operating companies would suffer a shortfall which would have to be made up through increases in rates for intrastate services. There are considerable differences among the respondents as to what effect, if any, OCC competition will have on separations and intrastate revenue requirements.

281. Continental Telephone Company (CTC), for example, which has few large business customers and therefore anticipates little direct private line losses to the OCCs, projects settlements losses totalling $7.8 million in 1980. CTC also predicts its own total revenues in 1980 as being $861 million of which $567 million are toll settlements.

282. Bell alleges it will lose substantial MTS and WATS revenues as a result of cross-elastic effects with OCC services. By year-end 1976, such losses, AT&T projects, will be $50,092,000. Bell also expects some MTS/WATS revenue decreases as a result of its own competitive private line response, MPL, by 1979. In support of its allegations of cross-elastic losses, Bell submits a study of MTS revenue from customers in the St. Louis-Chicago corridor, an area with a high penetration of SCC private line services. The results of this study show an immediate reduction in MTS revenues of about 25 percent following a subscriber's shift to SCC services. MTS revenue losses gradually decrease until the rate of growth of such revenue becomes positive after 27 months. The base used is the average MTS billing prior to subscription to the SCC services. Bell does not support its allegations with any work papers or other documentation of the figures presented. Further, Bell did not submit similar data concerning the impact on MTS billing when an MTS customer switches to a Bell private line service—data which are essential to a determination of any net or comparative effect of SCC competition.

283. In its filing, NARUC contends that there will be considerable diversion of MTS and WATS traffic to private line services offered by both the OCCs and AT&T as a result of Bell pricing responses to competition (e.g., Hi-Lo and MPL). It asserts that the most significant diversion, in terms of loss of revenues under separations procedures, will be that gained by Bell, and NARUC calls for changes to be made to the separations procedures in order to mitigate some of the impact on the intrastate services. NARUC cites AT&T's study of Chicago-St. Louis MTS losses as the only support of its diversion estimates. As a result, it contends, the subscriber line usage factor in the separations formula will stop its historic growth by 1978, and potential revenues accruing to the States under the formula will decline by $390 million annually by 1980 and $890 million annually by 1984.

284. We cannot accept the conclusions reached in the Bell Chicago-St. Louis MTS loss study. Besides the fact that no work papers were submitted to justify the study it appears that the conclusions are inconsistent with Bell's other claims that most OCC circuit gains represent direct private line circuit losses to Bell. If a Bell private line customer replaced his existing private lines with comparable services secured from another carrier, it is inconceivable that the claimed MTS losses would have occurred. Even Bell's filing itself is unclear, as it cannot be ascertained whether the claimed MTS losses among customers in the St. Louis-Chicago corridor refer only to calls made to other points in this corridor or

[196] Separations procedures are detailed at paras. 79–85 above.

[197] Under separations procedures, private line revenues enter the revenue pool but, for the most part, are specifically allocated according to the facilities used and are not separated under the formula.

whether they refer to all MTS interstate calls which would have been placed by the SCC customers.

285. NARUC asserts, however, that the effect on the local exchange ratepayer will be equal whether losses of MTS or WATS traffic are at the expense of Bell of the OCCs. It asserts that the competitive responses of AT&T, such as Hi-Lo and MPL, will be major factors promoting diversion of MTS traffic to private line. However, when NARUC supplies figures as to the amount of the projected impact, it provides no documentation. Without any justification NARUC assumes that the interstate MTS/WATS usage factor, which has risen each year for some time, will cease increasing. Projecting historical increases to 1984, it derives substantial impact figures on intrastate services. However, it is not made clear what studies NARUC used to project the substantial increase in private line services, at the expense of MTS, which are necessary to accomplish the expected result. Further, even Bell's projections filed with the Hi-Lo[198] and MPL[199] tariffs do not project that the responsive rate filings will have substantial impact upon MTS and WATS during the three-year projection period contained in the support data.

286. While we cannot accept NARUC's figures on losses of MTS and WATS traffic, we agree that any loss of MTS or WATS traffic to private line services will impact local service ratepayers in much the same way if the losses are to Bell as if they are to the OCCs. We cannot foresee this occurring, but we shall continue to scrutinize private line service filings of all carriers to make certain that the offerings are not in fact MTS or WATS.

287. One of the principal filings on this subject is a study conducted by Systems Applications, Inc. (SAI) for USITA. While predicting a negligible direct impact on the independents as a result of losses of services to the OCCs, SAI anticipates a highly significant negative impact from settlement losses, beginning in 1979 and continuing to rise through the study period (ending in 1985). It expects OCC shares of the total interstate telecommunications market to rise from 0.1 percent in 1976 to 1.12 percent in 1979, 4.80 percent in 1982 and 10 percent by 1985, under SAI's "base case" scenario, which constitutes the bulk of the filing. SAT projects that the total effect of private line competition by 1985 will be a $1.758 billion reduction in independent telephone company revenues, as compared with SAI's forecast of such revenues absent competition.

288. SAI's study is criticized in a filing by SPCC, which attacks many of its basic assumptions as allegedly unsupported or impossible of fulfillment. For example, SAI's projection that the OCCs will attain a 10 percent market share by 1985, SPCC claims, its entirely unsupported. It asserts that achievement of this market share would require a compound growth rate of 25–32 percent for the SCCs and domestic satellite carriers for a period of 10 years. It argues that even a tripling of plant by 1985 is unlikely, especially in terms of announced satellite capacity plans of the domsat carriers. Taking into account the announced capacities of Western Union, RCA American Communications, Inc. and Satellite Business Systems, the three nontelephone carriers who have launched or applied to launch domestic communications satellites,[200] SPCC asserts that the terrestrial OCCs must grow at a compound rate of 48 percent in order to achieve the predicted market share by 1985.

289. In its review of the SAI study, the firm we have retained to analyze the Docket 20003 filings (T+E) criticized several of SAI's assumptions underlying the study (See paras. 139 to 148 above, and Review of Additional Submissions in Appendix B hereto). First, T+E examined at length the elasticity of demand for composite toll services that is used in the study. From its analysis, T+E concludes that the figure SAI used, −0.8, as the elasticity estimate represents the short run price elasticity. Because of the time frame (10 years) of SAI's study, T+E concludes that the use of short run price elasticity is improper and the proper figure is the long run price elasticity, which it calculates to be −1.022, or 25 percent higher than the short run figure. The impact of this error alone, T+E calculates, reduces the contribution loss projections of SAI from OCC competition by 50 percent in 1985.

290. T+E also disputes SAI's use of "board-to-board" cost, the procedure in effect prior to the advent of jurisdictional separations procedures, as the floor to which toll rates will decline. SAI argues that MTS rates will drop if SCCs are not required to bear any of the joint and common costs that MTS and WATS bear (these are the procedures followed prior to the 1947 Separations Manual). We agree with T+E that this is extremely unlikely, both from a policy standpoint and from the point of view of legal precedent. We agree with T+E criticisms of the underlying assumptions and resultant conclusions contained in the SAI study. In addition, we note several more discrepancies concerning which we, the responsible regulatory agency, have information not readily available to T+E in its review. First, we find that SAI's basis for projecting that the OCCs' share of the total long distance communications market (including MTS and WATS) could reach 10 percent by 1985 is totally devoid of logical or factual grounds. SAI cites its "expert opinion" as the primary source of this assumption, however it apparently relies on underlying assumptions that this Commission will allow OCC's to offer services which are either direct alternatives to, or highly cross-elastic with, MTS and WATS (see Final Report, pp. III–19, 23, 28–34).

291. The policy of this Commission on this subject has been clearly stated and adhered to, both in the "Specialized Common Carrier" decision, *supra*, and in recent decisions regarding specific tariffed services (see Decision in "MCI Telecommunications Corporation (Execunet)", released July 13, 1976, FCC 76–622, paras. 33–51, ____ FCC 2d ____;[201] see also the Commission's prior decision in this matter, FCC 75–799, released July 2, 1975, taken more than 6 months prior to the date of the SAI report). OCCs are and will continue to be limited to the provision of private line services, and will not be permitted to offer services which are essentially MTS or WATS substitutes.

292. Accordingly, we must reject SAI's assumption that the OCCs' services will compete directly with MTS and WATS. We therefore can see no justification for SAI's projection that the rates for these services will be substantially reduced in the period 1979–1985 in order to retain customers. Thus, the impact of OCC competition will have little impact on the market for MTS and WATS, which together accounts for about 90 percent of Bell's interstate revenues. For similar reasons, we find that SAI's assumptions regarding a return to "board to board" separations (see Final Report, pp. III–26–28) are also without foundation. This Commission is in complete agreement with the principle set forth in "Smith v. Illinois Bell Telephone Company," 282 U.S. 133 (1930), and embodied in present jurisdictional separation procedures jointly adopted by ourselves, NARUC, and the telephone industry that a portion of local facility costs should be covered by interstate revenues, based on relative use or cost causation.

293. USITA projects that changes to these jurisdictional separations procedures will be made in the next few years, the effect of which will be to reduce substantially—or eliminate entirely—the portion of local plant costs which must be covered by interstate revenues. We can find no foundation for USITA's assumption. We agree that there may well be future changes in separations procedures, as there have been in the past. Indeed, we believe that some changes may be appropriate in the present competitive environment, and are prepared to address this question forthwith. However, any such changes are likely to give more—not less—recognition to the role of local facilities in the provision of interstate services.

294. Finally, we disagree with SAI's "base case" projection of an OCC 10 percent total market share by 1985 on the additional ground that it is inconceivable that the OCCs would be able to raise the funds necessary to reach the level of plant investment to enable them to attain a 10 percent share. SPCC, in its

[198] Transmittal No. 11891, filed November 15, 1973.

[199] Transmittal No. 12546, filed April 19, 1976.

[200] Although Comsat General Corporation has two satellites in service and has applied for authorization to launch a third, the entire capacity of these satellites is leased to AT&T and GTE Service Corporation.

[201] Our Decision is presently under stay and appeal before the United States Court of Appeals for the District of Columbia "sub nom MCI Telecommunications Corporation v. FCC," Case No. 75–1635.

First Supplemental Response herein, asserts that the OCCs would have to achieve a 25–46 percent compound annual rate of growth. We agree that this rate is beyond the capabilities of the industry.

295. In an analysis made by the Common Carrier Bureau attached to a letter dated May 25, 1976, to the Chairman, House Communications Subcommittee (Mimeo No. 65570), the Bureau, inter alia, concluded that general communications industry experience was that $3.20 in investment is required to produce $1 in annual revenues. If this is projected to the OCC industry, the Bureau concluded that the compound growth rate to 1985 must be 60 percent in order to achieve a 10 percent market share.

296. SAI commented on this analysis in a letter dated July 1, 1976 to the Chief, Common Carrier Bureau. At the request of USITA, this letter has been made part of the record of this proceeding. SAI contends that the amount of investment necessary to produce $1.00 of revenue is not the $3.20 used by the Bureau but rather $1.00. Further, SAI asserts that the growth rates necessary to achieve a 10 percent share are realistic and have been achieved by other companies and industries, such as Xerox, international satellite communications, Polaroid, and the Japanese automobile industry sales to the U.S.

297. We are not persuaded that SAI's contention regarding the ratio of revenues to investment is a more likely figure for the OCCs than that which currently prevails in the telephone industry. Certainly the present financial reports of the OCC's would not support the SAI view (see, e.g., para. 93, supra). Moreover, we find little similarity between the industries cited by SAI as capable of high growth rates and the OCC industry.

298. Most of the industries SAI mentions are not involved in highly capital intensive businesses and have not experienced the financing difficulties faced by many of the OCCs. Some, such as Xerox, Polaroid, and international satellite communications, were the sole and immediate beneficiaries of major technological breakthroughs unlike any available to the OCC industry. In the case of international satellite communications, this was further enhanced by governmental actions which established a protected monopoly and provided considerable assistance in extending this into the international arena and guaranteeing customers for the resulting enterprise. And the sale of Japanese automobiles in the U.S. is hardly a relevant comparison, due not only to the different type of commercial activities involved but also to the totally different policy and regulatory environment encountered.

299. Accordingly, whether the needed investment is closer to the Bureau's figures or to those supplied by SAI, we find it unrealistic, based upon the present financial condition of the OCCs and their projected investment, to expect them to be capable of achieving the investment levels necessary to attain a 10 percent share by 1985. The conclusion developed below of significantly less than a 2 percent share appears far more appropriate. Much of this share, we find, will be made up of new demand rather than diversion from the telephone carriers, and much of it will be returned to the telephone companies in payment for facilities.

300. While the diversion of 10 percent of the total toll market is SAI's "base case" scenario of the OCC's impact by 1985, its study does include a "sharper boundaries" scenario which assumes that we will enforce a clear distinction between private line and MTS services, an assumption which we believe is quite realistic. Under this scenario, SAI projects a total OCC impact of 2 percent of the composite toll market by 1985. However, even this assumes that the OCCs will achieve a 50 percent share of the private line market *and* 50 percent of the WATS market, and the authors of the study admit that such deep penetration is "considered by SAI as most unlikely." (Final Report, p. V–9). We concur with the belief that such penetrations are exceedingly unlikely. Thus, if the assumptions underlying SAI's "base case" scenario are found unjustified, and SAI itself agrees that the projected penetration levels under its "sharper boundaries" scenario are unlikely, one is left with the conclusion that the potential OCC impact by 1985 is substantially less than 2 percent of the composite toll market.

301. Finally, all the impact studies appear to ignore the fact that most local facilities used to extend services from OCC offices to the customers' premises will be secured from local Bell or independent operating companies. The cost of these facilities will be direct payments to these companies. Furthermore, an increasing number of OCCs will secure all or part of their intercity facilities from the telephone companies. If, as we anticipate, the OCC's diversion from existing telephone company services is insignificant and the bulk of their services constitute new demand, Bell and the independents will be better off financially as a result of OCC entry.

302. In summary, the diversion of revenues from MTS and WATS has been insignificant to date and we anticipate no substantial traffic and revenue loss from these services to the OCCs in the future. As a result, we find that the revenue losses to Bell and the independent telephone companies from separations effects will be only minor and will not require any significant adjustments in the rates charged for local telephone services. Since our policies are that OCCs are permitted to offer only prviate line services, we expect the OCCs to develop such new private line services as will meet otherwise unmet needs, thus stimulating new demand to the advantage of both the established carriers and the OCCs.

3. *Adjustments in MTS/WATS Rates.* 303. AT&T, Continental and others assert that losses to the OCCs will cause a decrease in overall revenue, with revenue requirements declining far less than the decrease in associated costs. In order for AT&T to earn its prescribed rate of return, they claim, MTS rates must increase, and thus usage will decline. This situation will raise the cost of service and cause a reduction in revenues for the local Bell and independent operating companies, based on separations procedures, they contend. On the other hand, USITA asserts that MTS rates will be *reduced* in order to compete with OCC services that are highly cross-elastic with MTS. The SAI study contemplates that OCC services will directly replace MTS for many customers, and that Bell can retain a share of the MTS traffic only by reducing its rates.

304. We disagree that either alleged major effect will occur. First, in regard to MTS rate increases, private line revenues represent only about 10 percent of Bell's overall revenue. Thus the loss of even a large portion of private line traffic would cause only minor overall shortfalls in revenues and thus necessitate only minor MTS rate adjustments. Second, most of the inter-exchange plant used for private line services can be put into use for other Bell services, such as MTS and WATS. Thus, even if plant should become idle, it will be only a short time until it would be utilized for other services. Third, although we anticipate no significant increases in MTS rates as a result of competition, we have no information which would indicate that small increases would have any effect on MTS usage. Bell's contention that usage would decrease is not justified by elasticity of demand studies or any other material. If usage remains constant, small changes in MTS rates would not significantly affect the revenue requirements for other services. Without appropriate, documented studies, we cannot make any firm findings.

305. In contrast to these allegations, USITA's submission assumes that OCC services will be so cross-elastic with MTS that Bell will be forced to lower MTS rates substantially in order to compete. As discussed above, this premise ignores both the "Specialized Common Carrier" decision and our initial rejection of Execunet, which preceded submission of the study.

306. Accordingly, we find that there is no justification for the assertion that MTS rates will be increased substantially to make up for an interstate revenue requirement shortfall caused by OCC competition. We further find that any small increases which might be required will not cause any more than a minor decline in usage. Finally, since the OCCs' services are not and will not be highly cross-elastic with MTS, we find no justification for substantial competitive reductions in MTS rates.

4. *Economies of Scale.* 306. The question of economies of scale determines, in part, whether the loss of private line traffic has any direct effect on the unit cost of the MTS and WATS interexchange facilities. If economies of scale exist, the loss of any traffic will increase the long run cost of facilities still in use. AT&T has submitted econometric studies which purport to demonstrate that econ-

omies of scale exist in long-haul distribution facilities to the extent that the loss of any appreciable volume of interstate traffic will raise the unit cost of services carried on these facilities, and ultimately the rates to the users of all Bell services. An SAI study submitted by OTP concludes that some economies of scale exist, based upon a complex econometric analysis. In the OTP Study, facilities are compared for unit service cost at capacity, rather than at actual experienced fills. MCI and SPCC disagree with these analyses of scale economies, claiming that the small losses of private line and MTS/WATS traffic from Bell to the OCCs will have an insignificant effect on unit costs and will be offset by overall demand increases. They further allege that the rates for such services will continue to be lower on their facilities than on Bell's.

307. AT&T's contentions regarding economies of scale underlie, in part, Bell's Fourth Supplemental Response in this proceeding, in which Bell asserts that the cost per unit of multiple intercity networks exceeds that of a single intercity facility supplier. The study concludes that, if Bell provided all private line services during the study period, 1971–1991, it could supply an estimated 14 percent increase in total circuit miles of demand with only an 8 percent increase in costs. If all private line services were operated by other suppliers, however, Bell claims that the total cost of the facilities would increase by 16 percent. The dollar amount of this 16 percent increase, discounted to 1971 value, is $1 billion. We are unable to determine the source of these assertions, as Bell submitted no work papers or other documentation.

308. Basically, economies of scale exist when long-run increases in volume produce declining unit costs. The term does not refer to short-run efficiencies which may be realized when the fill on existing plant in place is increased. Thus, if Bell's premises concerning economies of scale are accepted, the loss of significant private line or MTS traffic as a result of competition will cause long-run increases in unit costs to remaining subscribers. As a result of the alleged economies of scale, Bell asserts that all its intercity services are collectively a natural monopoly.

309. First, it should be pointed out that if Bell's assumptions were correct, it would be the lowest cost carrier for all its intercity services. Thus, if Bell priced its services on the basis of cost, the competitors will either be forced to price at a higher rate or would take losses on operations. While a new carrier might operate at a loss during the first few years of operation, it must ultimately earn a reasonable rate of return on all services provided in order to remain in business. Rates will then be set at levels designed to yield such returns. If Bell is the lowest-priced carrier, it will be able to undercut the competition and will secure virtually all of the private line market. This reasoning also applies to the "cream-skimming" argument advanced by the telephone industry. According to this argument, the competitors are seeking only to serve the high volume intercity routes, leaving the telephone industry to serve the remaining, less profitable routes. But if economies of scale exist, they will be most significant on these same high volume routes. Thus, the telephone industry—with its large base of MTS traffic over such routes—will easily be able to underprice its competitors (legitimately) on such routes. We have made it abundantly clear that such route-by-route pricing of competitive services is acceptable, provided it is cost-justified.

310. On the other hand, if such economies of scale as alleged by Bell do not exist, and Bell is not the lowest-cost carrier for private line services, it is in the public interest for users of private line services to reap the benefits of whatever cost savings the emerging carriers can realize, since the competition will then not, by definition, cause Bell to incur an increase in unit cost to its remaining subscribers.

311. Having said that, we turn to the studies. The filings in this area are lengthy, largely consisting of technical, econometric and engineering models, often, without the needed material to determine their validity. Our contractor, T+E, has, we believed, accurately analyzed these submissions on economies of scale (see Appendix B, Deliverable B, pp. 103–121) and in general, we adopt their conclusions. T+E correctly observed that the short run reductions in cost which accompany increased utilization ("returns-to-fill") are unrelated to long run returns to scale. Economies of scale exist only if the life cycle cost of a unit of output of larger systems is less than that of smaller systems and if the demand is too small to sustain multiple systems of most efficient scale. The studies failed to address fully the scale issue, separating it from technical improvements and relating it to market size. Accordingly, we conclude that no showing of the existence of economies of scale due to interexchange transmission facilities has been made in the record of this inquiry.[202] We concur with T+E that (Appendix B, Deliverable B, p. 120):

> In conclusion, we believe (1) that the engineering and econometric exhibits must be signficantly improved in order to yield policy relevant results, and, (2) that the complex relationship between economies of scale and competition including market size, fill, and cost allocation, has been inadequately developed by the respondents.

312. In regard to AT&T's Fourth Supplemental response, it appears illogical to us that the cost of constructing new facilities would double if accomplished by the OCCs rather than by Bell. Even assuming arguendo that economies of scale exist in the Bell System, it is highly unrealistic that the OCCs would experience double the costs experienced by Bell in constructing facilities to meet the same volume of projected additional traffic. Accordingly, it appears to us that Bell's figures can be valid only if the study is comparing two unlike occurrences, i.e., Bell increasing the fill of its existing facilities while the OCCs construct their own new plant. Clearly, the costs of these would be quite different, but comparison of the two is highly misleading. Since the continuing growth in Bell's MTS services will be able to fill existing Bell intercity plant, even without new private line demand, we cannot accept Bell's assertions regarding the relative costs of obtaining private line capacity. Further, we are unclear as to why multiplexing and switching equipment, which may constitute a considerable part of Bell's investment and expense when converting existing plant to private line uses, are not included in the costs used in the study (AT&T Ex. 57, p. 2 n.).

313. The study is, in part, internally inconsistent. The narrative discussion contained therein (at p. 5) states that Bell assumed that the OCCs would secure Bell facilities until it was more economic to construct their own. However, if Bell can construct the required new facilities at half the cost of the OCCs, one must assume that it would always be in the OCCs' interest to secure the facilities from Bell. Thus, the study appears to assume that the OCCs will make illogical investment decisions.[203] The only possible explanation is that other cost factors mitigate Bell's alleged scale economies and thus make it more advantageous for the OCCs to construct their own facilities. Bell also makes an assumption that either all of the private line business would be supplied by Bell or it would all go to the OCCs. Since neither case is likely to occur, it would appear appropriate to include a sensitivity study under various assumptions as to relative market shares. For all the reasons cited, we believe that the figures supplied in this filing are misleading and do not constitute justification for the assertion that AT&T is the lowest-cost supplier of private line services.

314. From our experience in dealing with AT&T construction requests over a number of years, we have concluded that the facilities types to be installed between two points are primarily dictated by the projected requirements of MTS and WATS traffic, with the private line projections considered only minimally. This is logical, as interstate MTS and WATS represent close to 90 percent of Bell System interstate revenues. Since economies of scale refer to the unit service cost deriving from facilities installed between any two points, and since pri-

---

[202] Since none of the Bell economies of scale studies report the basic data on labor and capital underlying such studies, it is impossible to analyze the studies fully, much less replicate them. A basic problem with many economies of scale studies is the appropriateness (or inappropriateness) of the data used, and thus failure of AT&T to report the data is a particularly serious deficiency.

[203] Since the study was submitted subsequent to issuance of our Resale and Share Use decision, we must assume that the study took into account the removal of all resale restrictions.

vate line services play a minor role in plant construction decisions, it follows that the loss of private line traffic will have little effect on the unit service cost arising from facilities used for other services.

315. Thus, we can find no documented evidence that economies of scale exist such that losses of private line traffic will increase the costs of intercity channels used for non-competitive services. However, if such economies exist, Bell would be the lowest-cost carrier of all services and in the absence of other overriding cost savings, no OCC building its own facilities will be able to complete successfully.

5. *Innovation.* 316. The other issue raised in regard to the OCCs' impact upon the telecommunications industry is the effect of private line competition on the rate of innovation within the industry, both innovation by AT&T and by the competitors. The comments of respondents can be divided into past innovations and probable future innovation. Bell compares its services to those of the specialized common carriers and concludes that the SCCs offer no innovative services. Rather, Bell contends, their services are virtually identical to those already offered by the Bell System, with some pricing variations. In its Exhibit 8, for example, Bell lists specific tariffed services of the OCCs and concludes that all can be secured under Bell tariffs.

317. In regard to future innovation, AT&T has submitted a study by Arthur D. Little, Inc. (ADL) which concludes that Bell has been a highly innovative company in the past, that its level of innovation has not increased significantly since the advent of competition, and there is no indication that the level of innovation will change to any major degree in the future. The ADL study surveys the current literature on innovation in a competitive industry, develops a taxonomy of innovations, then reviews three case histories of development where AT&T Innovation has taken place. The conclusion reached from this analysis is:

> No consensus beyond general uncertainty can be inferred from the theoretical and empirical studies reviewed * * *. In empirical studies of non-regulated industries, the basic statistical result is that some market power seems to be necessary, but not sufficient, to induce innovation, but the empirical relationships found were all very weak or not statistically significant.[204]

318. Other telephone companies and associations, specifically GTE, Continental, United and USITA (for the independents generally support Bell's view that the OCCs have offered no new innovative services. Continental accuses the OCCs rather of "cream-skimming" profitable markets. The OCCs that have filed, including MCI, Datran and SPCC, disagree. They list a number of specific services which they assert are new and innovative and which are allegedly not available from the telephone companies. Of the user respondents, Commercial Metals asserts that digital data transmission services and packet switching are examples of services not offered by Bell which are available through OCC. TMI contends that metered tie-lines and half-time circuits available through the OCCs are innovative new services.

319. Finally, OTP speaks to the future innovation question through a lengthy list of potential innovations that the OCCs could offer which do not directly compete with telephone company offerings. None of these are pricing innovations, but rather all are technological developments for which OTP asserts that a market will be found to exist.

320. In discussing whether or not the OCCs have introduced only innovative services into telecommunications, it is first necessary to define what is meant by an innovative service for this purpose. For example, while a competitive pricing change, such as a bulk rate discount, may be viewed by the consumer as innovative since it allows him to secure more services at a lower cost, for the purposes of this inquiry we do not consider such a discount truly innovative. Rather, for this analysis, an innovation is a change which will allow the user to accomplish something using his communications equipment which he was unable to accomplish previously, or which will make better and more efficient use of the radio spectrum or of a given amount of communications plant. Bulk rate pricing services, such as TELPAK (AT&T), network pricing (SPCC and MCI) and usage-sensitive pricing of private line services (Western Union, MCI and others) do not fit within our definition of innovation.

321. Clearly, a service is not innovative if it is identical to one already offered by another carrier. For example, when Datran constructed and operated its all-digital network,[205] it became the first carrier to offer an all-digital private line service and the first to offer a switched digital data service. AT&T presently offers a digital private line service and has applied to offer switched digital services, but the fact remains that it was Datran, not Bell, which was the first to offer or to apply to offer an all-digital service, and thus it should get the credit for offering the innovative service.[206]

322. SPCC has offered such innovative services as simultaneous voice and 300 baud data transmission on a single channel and high resolution facsimile service, capable of duplicating magazine pages with no loss in quality. Telenet Corporation is offering a packet switching service, which permits customers with the need for only medium speed data channels to utilize the savings and quality inherent in high speed digital data channels. Packet switching also permits more efficient use of the radio spectrum by permitting many customers to share a single high speed data channel, thus reducing the time when the channel is vacant.

323. American Satellite Corporation (ASC) offers such services as high speed facsimile for remote newspaper printing and high speed data services at unique bit rates as ordered by the customer. MCI and Western Union have offered various metered use point-to-point private line services which permit the customer instant access to a distant point at usage sensitive rates. The inter-exchange channels are shared, thus making more efficient use of the facilities, with the carrier providing switching or concentration equipment at the two ends. The customer for such metered use services must maintain a full time local channel at one or both ends, dedicated to the service, and may reach only designated points, including appropriate distant central offices. The inter-exchange facilities, however, are shared by a number of customers.

324. The carriers offering data transmission services also have added such optional services as code and speed conversion, which allow communications between terminals operating at different bit rates or different character codes. MCI has recently begun to offer a shared Common Control Switching Arrangement (CCSA) service, which brings the benefits of common control switching within a closed network to small businesses that cannot afford or utilize a full-time CCSA service. ITT Corporate Communications Services, Inc. has filed an application to offer specialized private line services which include a similar shared CCSA offering.

325. This enumeration is not intended to be exhaustive, and other developments that will lead to technological innovation are presently under development or in the process of being implemented. It is only designed to illustrate our finding that the OCCs are offering some innovatives services. We note in addition that AT&T has, in recent months, increased its sales force and has offered more thorough and frequent analyses of customer's specific communications needs. This, we find, is a response made by Bell to competition which benefits the public interest.

326. In discussing future innovations, including services presently proposed only in facility applications, we are not in a position to determine the precise scope of future tariff offerings nor do we wish to appear to be prejudging the lawfulness of any future services. However, it appears to us that certain new carriers, such as Satellite Business Systems, may be contemplating rather unique services, such as direct satellite private line transmission, utilizing rooftop earth stations.

327. The only study submitted regarding future innovation, filed by AT&T and

---

[204] A. D. Little, The Relationship between Market Structure and the Innovation Process, (AT&T Ex. 52), p. 17.

[205] AT&T contends in the A. D. Little study submitted herein that the technology utilized by Datran had been developed and published by Bell some years before. This may be the case, and, if so, Bell is a significant partner in the innovative development. However, this does not eliminate the significance of Datran's actually planning and constructing a system using this technology.

[206] Datran filed a bankruptcy petition on August 27, 1976, and ceased all operations on September 15, 1976.

prepared by Arthur D. Little, essentially finds that it can come to no positive conclusion regarding future innovation by the OCCs.

While ADL is quite correct in concluding that theory and empirical evidence do not support the notion that more firms in a market will increase the rate of innovation;[207] neither do they support the notion that having a single supplier in a market will increase the rate of innovation. Indeed, many of the studies cited by ADL show that having a single supplier may reduce the rate of innovation. Little says the evidence indicates that medium size firms have some incentives to innovation whereas small firms may not be able to suport R&D, and that large firms that dominate their industries exhibit diseconomies of scale in R&D which may lead to decreased R&D efforts.

328. There are numerous other studies which demonstrate that R&D does not increase proportionally with an increase in firm size. Worley and Hamberg found that for the majority of firms the number of personnel devoted to R&D did not increase with increased size.[208] Morton Kamien and Nancy Schwartz also noted that size was important up to a point, but that "beyond some magnitude, size does not appear especially conducive to either innovational effort or output in either this country or in European countries for which studies have been made." [209]

329. There is also some indication that the larger dominant firm is frequently a follower in the innovation process rather than a leader. As pointed out by ADL, in stainless steel razor blades, computers and remote terminals, microwave, and liquid detergent, the dominant firms were the followers rather than the leaders, a situation which one would not expect if large firms were particularly innovative. The example used by ADL to show Bell's innovation pattern demonstrates that Bell was a follower rather than a leader in the major developments in time-division switching technology. In 1956 the British Post Office first began experiments with time-division switching and Automatic Electric (a GT&E subsidiary) at the 1956 USITA convention displayed a time-division PBX. In 1959 Automatic Electric was using an experimental system with time-division switching. In 1961 the first time-division PBX was placed in active service by Stromberg-Carlson. Not until 1963 did Bell install the first time-division electronic switch system. Although Bell may have had many minor technological advances, the major ones were produced by firms much smaller than Bell.

330. Most studies on innovation relate to the unregulated sectors of our economy. Kahn observes that experience "demonstrates the virtue of freedom of entry and competition for innovation for encouraging the development of new and different services and for assuring the optional development and exploitation of new technology." [210]

331. An increased rate of innovation due to competition is possible and probable based on theory and empirical evidence, including our experience to date, but no clear answer exists as to its effect in the future on innovation in telecommunications. However, as Waverman has stated, "It is clear that existing carriers are trying to have it both ways: Either there are substantial incentives to innovation in regulated monopolies, in which case new, specialized carriers are committing technological suicide in the long run by entering; or there are no advantages from the existing monopoly structure, so that competition would stimulate innovative activity in all market participants." [211]

332. As the above discussion indicates, the OCCs offer services aimed only at the business customer. Thus, unlike competition in the terminal market, the residential telephone customer is not directly benefited by competition for private line services. However, we continue to believe that the residential customer is best served by retaining the present monopoly over MTS. We have seen nothing which would change our belief that the retention of the present industry structure in this area will permit the local exchange subscriber using interstate MTS to obtain the most efficient service at the lowest cost.

333. Before permitting private line service competition, we solicited and analyzed numerous studies of potential economic impact and concluded that we could find no showing that the competitors would impact to the detriment of the local exchange or MTS subscriber. The present proceeding was initiated in part to test our 1971 predictions following the experience of several years of competition. Clearly, the OCC industry remains in the developmental stage, and the possible opening of unlimited resale and shared use of private line services will cause further changes in the industry structure. However, we had hoped in this inquiry to ascertain the actual revenue losses that have occurred because of OCC competition, including full justification for figures supplied; payments to telephone companies for facilities; actual revenue impact on MTS and WATS and the extent to which these losses, if any, were reflected in separations; potential and actual OCC markets, by service and geographical area; actual comparative transmission costs; and the numerous other issues listed in our First Supplemental Notice in this Proceeding.

334. While a few of these issues have been addressed, many others were not, and, as discussed, most of the responses were either unsupported, internally contradictory, or were based on unjustified assumptions. Some of the filings made were almost unchanged from those submitted in Docket No. 18920, the Specialized Common Carrier inquiry, and in other proceedings, except for minor updating of figures. We invite the respondents to conduct and submit new studies in the present proceeding, accompanied by work papers, sensitivity studies, justifications for assumptions made, and other support which will enable us to reach more concrete conclusions.

6. *Docket No. 18128 Findings and Conclusions.* 335. We have recently rendered our Decision in Docket No. 18128, the Private Line Services proceeding. We are incorporating the record findings and conclusions in that Decision, FCC 76–886, by reference herein. Based on a full evidentiary hearing in that proceeding, we have found that the revenues from certain interstate private line services offered by the Bell System do not cover their relevant costs and that, therefore, the level of return earned on such services are unjust, unreasonable and in violation of section 201(b) of the Communications Act, 47 U.S.C. 201(b). Bell is directed to file revised tariffs within 8 months.

336. We have also directed Bell to revise costing methodologies and forecasting techniques in conjunction with the staff of the Common Carrier Bureau, to cure the present infirmities. Further, we found AT&T's TELPAK service offering not an appropriate response to the level of competition existing in the market and ordered that the service be refiled.

337. Finally, we concluded that there is no economic justification for a change in our policies regarding private line competition. Accordingly, we declined to revisit the Specialized Common Carrier decision or to institute any new proceedings regarding private line competition in the domestic telecommunications industry.

---

[207] AT&T Ex. 52, p. 9: Theoretical statements about the innovation market-structure relationship have not been well developed for the regulated industries. Most workers commenting on this subject borrow from the theory developed for the non-regulated industries without being able to make very comprehensive adjustments for the complications enusing from this regulatory environment. Empirical studies of regulated industries show mixed results. Some cases suggest that more competition will bring about more innovation; other cases suggest just the reverse; and still other cases suggest that to induce more innvoation the form of competition should be completely changed. As with the non-regulated industries, no universally applicable statements can be made.

[208] James S. Worley, "Industrial Research and the New Competition," Journal of Political Economy, 64 (April 1961) 183–186. Daniel Hamberg, "Size of the Firm, Oligopoly, and Research: The Evidence," The Canadian Journal of Economics and Political Science, 30 (Feb. 1964), 62–75.

[209] Morton L. Kamien and Nancy L. Schwartz, "Market Structure and Innovation: A Survey," Managerial Economics and Decision Sciences, Graduate School of Management, Northwestern University, Evanston, Illinois, 1974, p. 42.

[210] A. E. Kahn, The Economics of Regulation: Principles and Institutions, Vol. II, Institutional Issues, New York, Wiley, 1970, p. 149.

[211] Almarin Phillips, editor, Promoting Competition in Regulated Markets, Washington, D.C., The Brookings Institution, 1975, Chapter 7 by Leonard Waverman, "The Regulation of Intercity Telecommunications," p. 225.

C. SUMMARY

338. Having examined the filings of all respondents to this proceeding, as well as other material as indicated herein, we conclude that the impact of the OCCs on the revenues and markets of both the Bell System and the independent telephone companies has been negligible to date. The gross revenues of the specialized carriers during 1975, $35 million, represent under four percent of the Bell System's revenues from interstate private line services, or 0.4 percent of Bell's 1975 interstate revenues. Of the $35 million, well over 20 percent is returned to the telephone companies in the form of payment for local distribution or other facilities. Thus, even if there were no stimulation of new demand for private line services, and all OCC gains are direct telephone company revenue losses, these losses to date have been insignificant. There is further no justified showing that MTS/WATS business has declined as a result of cross-elastic effects from private line services. Rather, MTS and WATS traffic has continued to rise substantially, despite rate increases which have allegedly been justified on grounds totally unrelated to competition.[212]

339. In short, the record is devoid of justification for the claims made of dire consequences to the established carriers from OCC competition. The lack of supporting material, especially workpapers or references to back up assertions, limits our ability to analyze fully many of the filings. There are also areas where studies or filings are internally contradictory or clearly unsupported by other undisputed facts.

340. In regard to innovation, while it is not possible to predict what innovative services will be devised by existing or new specialized carriers, we find that existing OCCs are offering some innovative services today, and we find nothing in the record which indicates that new services will not continue to be developed to meet otherwise unmet communications needs.

341. We have also found in Docket No. 18128 that most private line services of AT&T do not cover their costs and ordered rate increases. Thus even the small impact to date from competing carriers has been minimized as a result of these non-compensatory rates.

342. As to the future, we conclude that it is unrealistic to assume that the OCCs will be able to attain sufficient traffic and revenue levels to achieve the market penetration projected by USITA and others. High overall communications penetrations assume that OCC services will compete directly with MTS, an assumption which a study of the history of our regulatory posture toward competition demonstrates is unfounded. Further, the established carriers' competitive price responses have caused them to retain the bulk of the private line market. Much of the OCCs' market is therefore comprised of new demand or specialized services meeting otherwise unmet communications needs. Additionally, the OCCs have entered the market at a time of tight money and high interest rates, and as a result have experienced continuing cash flow difficulties, as the recent bankruptcy of Datran demonstrates. While we believe that the OCC industry will remain viable, we cannot envision the raising of the capital necessary to obtain the overall telecommunications market shares anticipated by USITA and others.

343. In order that the OCCs will achieve and maintain a significant share of the total telecommunications market, they must develop and offer services which are not otherwise available and for which a market will develop. They cannot long survive by attempting to undercut established carriers in the provision of existing services, unless they can devise methods of greatly cutting their costs. While the established carriers serve primarily the mass markets, the OCCs tailor their services to meet the needs of a comparatively small number of users. We foresee that such carriers have a role to play in the telecommunications industry, but that they will not adversely impact the established carriers.

FEDERAL COMMUNICATIONS COMMISSION,[213]
VINCENT J. MULLINS,
Secretary.

APPENDIX A

[Docket 20003]

LIST OF PARTIES

Established Common Carriers
- American Telephone and Telegraph (AT&T)
- Continental Telephone Corporation
- GTE Service Corporation (GTE)
- National Telephone Cooperative Association (NTCA)
- United States Independent Telephone Association (USITA)
- United Telephone Systems (UTS)
- Western Union Telegraph Company

Specialized Common Carriers and Interconnect Companies
- American Satellite Corporation (ASC)
- Computer and Business Equipment Manufacturer Association (CBEMA)
- Computer Industries Association
- Data Transmission Company (Datran)
- International Business Machines Corporation (IBM)
- International Telephone and Telegraph Company (ITT)
- MCI Telecommunications Corporation and Microwave Communications, Inc. (MCI)
- North American Telephone Association (NATA)
- Phonetele Corporation
- Southern Pacific Communications Company (SPCC)

Regulatory Agencies
- National Association of Regulatory Utility Commissioners (NARUC)
- Nebraska Public Service Commission (NPSC)
- New York Public Service Commission (NYPSC)
- Office of Telecommunications Policy (OTP)

Users
- ABC, CBS, and NBC
- American Petroleum Institute, Central Committee on Telecommunications (API)
- Bunker-Ramo Corporation
- Commercial Metals Company
- Indiana University Law School
- Krigger, Inc.
- South Bend Freight Lines
- Telecommunication's Management, Inc. (TMI)
- United Telecommunications Council (UTC)

APPENDIX C

MARKET AND MARKET SHARE FORECASTS OF INTERCONNECT COMPETITION

1. One measure of the competitive effect of interconect competition is the market penetration vis-a-vis the telephone companies achieved by interconnect companies to date and forecasted market penetration in the future. Indeed, we find that estimates of historical market penertation and forecasts of interconect company market penetration in the future were basic to the validity of all the contribution loss claims we considered above. Thus, we have already stated some of our findings with respect to market penetration estimates. We address the subject in more detail herein to clairify the nature and the extent of interconnect competition. Data and forecasts of the terminal equipment market are found primarily in the filings of AT&T, NARUC, CBEMA, NYPSC, OTP and USITA. We report and evaluate some of these forecasts in Table IV–14 below. We also utilize the Frost and Sullivan report as an additional source of data. We note that we have considered all filing herein containing market penetration estimates for interconnect companies and that our findings are applicable to all estimates provided. Our discussion will be divided into three sections: Our general findings; our finding that interconect competition appears to cause expansion in certain terminal equipment markets to the benefit of both telephone and interconnect companies; and our discussion and comparison of some of the specific penetration estimates porvided.

2. *General Findings.* For the most part, we find the data and forecasts provided purporting to show historical or projected interconnect industry market penetration deficient. Generally, the studies and forecasts provided failed to take into account the business risks faced by the interconect industry. Some interconect suppliers have suffered large business losses (e.g., Arcata lost $2.1 million on sales of $18 million in 1971) because of some deficiencies in marketing and management and the scarcity of managerial talent.[214]

[212] For example, AT&T filed increased rates in January, 1975 and March, 1975 which were purportedly required by increased cost of capital. Following hearing, we prescribed an increase in Bell's overall rate of return, 57 FCC 2d 690 (1976), and AT&T filed across-the-board rate increase in January, 1976.

[213] Concurring and dissenting statements of Commissioner Hooks and separate statement of Commissioner Fogarty filed as part of the original document.

[214] USITA Comments, p. 7, quoting an industry source "The Protection of a Contract", Communicators Management and Engineering, November 1974, p. 19.

TABLE IV–14.—*Projected telephone company (TELCO) and interconnect industry (IC) market share for PBX and KTS—1975–84*

[In percent]

	1975				1980				1984			
	PBX		KTS		PBX		KTS		PBX		KTS	
	Telco	IC	Telco	IC	Telco	IC	Telco	IC	Telco	IC	Telco	IC
Bell (SRI)	94.6	5.4	97.3	2.7	89.5	10.5	93.4	6.6	84.4	15.6	88.9	11.1
NARUC	92	8	93	2	79	21	92	8	61	39	85	15
NYPSC (Augstell)	94.34	5.66	93.48	6.52	81.52	18.48	73.14	26.88	68.43	31.57	50.46	49.54
USITA (SAI)	96	4	97	3	83	17	89	11	75	25	85	15

SOURCES: Bell Ex. No. 19, tables 1 and 2. NARUC Committee on Communications Report, May 15, 1974, tables C3, C4. NARUC comments. James Augstell, "The Revenue and Cost Impact of Interconnection", January 1975, p. 76. USITA comments, SAI study, p. II–25, table II–4.

The Frost and Sullivan report indicates that by the 1980's it is likely that the PBX control equipment market will be totally regained by the telephone companies, but that there will be many independent vendors of software for stored program devices.[215] The uncertainties of the regulatory climate[216] and telephone company competitive responses[217] would appear to add to the business risks for interconnect companies at this stage of the industry. Thus, it must be recognized that some interconnect companies may find it difficult to obtain essential capital for rapid market expansion and penetration.[218]

3. Most market "studies" were simply projections of interconnect company growth patterns of the past 4 or 6 years. Such methods lead to rather unrealistic estimates of interconnect market penetration. As noted above, essential capital for rapid market expansion and thus extensive market penetration may not be readily available in light of the business risks faced by the interconnect industry. Further, a crude projection of present trend must necessarily have a great range of attendant uncertainty. For example, no respondent gave us any reliable data on the sort of variation that might be associated with his projections. We believe various modeling techniques could have been used to develop the 1985 market and market share independently. Such models would have considered the stimulative market effects of the increased innovation which we have found is occurring. Further, no respondent used any estimate of the price elasticity of demand for particular vertical services. This omission is important, since Bell has presented evidence that the elasticity of demand for certain tele-communications services may be quite high.[219] If Bell is correct in this respect, any price reductions attendant upon interconnect competition will not reduce industry revenues, but could increase them. Since we are dealing with long-term changes in price structure, we would conclude from the Bell study that rate reductions could cause temporary dips in gross revenues followed by long term increases as customers adjusted their calling habits. It is unfortunate that vertical services (PBX, KTS and ancillary equipment) were not separately studied in this respect.

A. Rodney Dobell and four associates.

4. *Market Expansion.* All the studies submitted assumed that the market growth of the interconnect companies is entirely at the expense of the telephone companies. We find indications that to a great extent the revenues generated by interconnect equipment suppliers are not diverted from telephone companies' markets. Thus, interconnect companies have developed new markets, in addition to existing telephone company markets, in several areas. One of the most notable areas is terminal equipment used for information exchange.[220] As information became more voluminous and complex, users required more efficient means for transferring information between geographically separated points. Interconnect companies have responded faster to this need than Bell.

The interconnect industry had a modem that allowed information transfer at 4800 bits per second in 1965, whereas Bell did not begin marketing at 4800 bps modem until mid-1972. Also, the interconnect industry marketed 7200 and 9600 bps modems by 1969, whereas Bell first marketed a 9600 bps modem in 1974. Before "Carterfone", there were few independent interconnect vendors, supplying primarily accoustically-coupled modems. There are now at least 50 manufacturers with at least 80 models. The sale of telephone answering devices is another example where terminal equipment suppliers have enlarged the total terminal equipment market rather than penetrating the telephone company's market share. The telephone companies began marketing some answering devices during the late 1950's, although the devices were available earlier. However, sales of answering devices have increased substantially since "Caterfone." For example, Phone Mate, Inc. has sold 300,000 devices since 1969, an amount five times larger than the number of answering devices provided since 1958 by the Bell System although we believe telephone company sales of such devices may be increasing.[221]

5. Interconnect suppliers have also expanded the PBX market under several alternative definitions of the market.[222] As we note below, there are 163 different PBX's available of which only 13 are Western Electric products. An examination of Table IV–15 below indicates that the Bell System small PBXs (1–40 lines) have decreased from 127,000 units in 1958 to 73,000 units in 1974, a decline of 43%. It is not clear that competition has been the cause of the declining trend in small PBXs; nor does it seem it has hastened the decline; since the rate of decline has not been constant but varies. We believe this makes it difficult to attribute the decline to competition. The 1970's economic recession may be a cause of some of the loss; however, the ratio of decline in the recession is only slightly greater than the rate of decline in earlier years. The most important factor in the decline of small PBXs has probably been their displacement by new kinds of KTS' which offer comparable features.[223] Thus, we shall not include small PBX's in our analysis of market expansion due to competition.

6. As shown below, we find the interconnect companies have expanded the total market for medium (40–100 lines) and large PBXs (over 100 lines). The Bell System has added units of medium or large PBXs to the system in a fairly constant manner since 1958. The increase in medium or large PBXs has ranged between 0–200 units per year. The market for large PBXs has been relatively more stable than that for medium PBXs (although both are stable compared to small PBXs) even during the competitive years since 1968. Thus, the telephone industry claims that the large PBXs are the most vulnerable to competition are not supported by the data in Table IV–15 below. However, there may have been some initial market penetration, since Bell did not add many units from 1970 to 1971, but, again, the recession probably caused many large companies to cut back expenditures at the time.

---

[215] Frost and Sullivan, p. 57: NARUC appears to agree, stating that once telephone companies "shape up" due to the pressure of competition, then there will be no business left for the interconnect suppliers. NARUC Comments, p. 12.

[216] For example, we note the virtual absence of PBX and KTS interconnect competition in North Carolina due to policies adopted by the North Carolina Commission.

[217] We find indications that the telephone companies have responded significantly to interconnect competition through innovation and by adopting new pricing responses, *e.g.*, two-tier pricing of PBXs.

[218] We do not consider herein the economic and other ramifications of IBM's full entry into the competitive terminal equipment markets. Therefore, we expect this possibility to be addressed by the parties in the further stages of this inquiry.

[219] Bell Ex. No. 44. The study was done by

[220] We find there is little disagreement or confusion in the analysis of the interconnect market for data and ancillary devices and such devices as answering machines. It is generally agreed in the industry that the carrier offerings are somewhat limited, and that the interconnect sales have little potential for economic harm to the carriers, since the carriers' market for these devices was very small. In this area then, it appears that the interconnect suppliers may be competing for the most part among themselves, rather than competing only against the telephone carriers. Accordingly, we concentrate our analysis primarily on competition in the KTS and PBX markets as do the respondents.

[221] CBEMA Comments, p. 35, footnote.

[222] The finding that the total PBX market has expanded due to competition has serious implications for the validity of the estimates of contribution loss provided herein. The total PBX market, carrier and interconnect companies is now growing faster than the carrier PBX market has grown at any time in the past 20 years. The PBXs sold by the interconnect companies which do not displace carrier PBXs, and this appears to include a substantial portion of the PBXs sold by the interconnect companies, do not cause any contribution or separations loss to the carriers. Losses can only occur when carrier provided equipment is displaced. For the most part, the contribution studies provided ignore the effect of an expanded interconnect market and therefore cannot be accepted as valid. The contribution loss estimates pertaining to KTS competition cannot be accepted as valid for the same reason.

[223] In Bell Ex. No. 19, p. 16, Bell attributes the decline in the number of small PBXs solely to the interconnect companies displacing Bell-provided small PBXs. It is reasonable to find, however, that Bell-provided KTS' may also be displacing Bell-provided small PBXs. See also Frost and Sullivan, pp. 147–150, wherein the interchangeability of small PBXs and KTS' is discussed.

TABLE IV–15.—*PBX market*

[1 unit equals 1,000 PBXs]

	Bell small PBX's (1–40 lines)			Bell medium PBX's (41–100 lines)			Bell large PBX's (100 lines)			IC IC PBX's [2]		
	Units [1]	Units added	Percent	Units [1]	Units added	Percent	Units [1]	Units added	Percent	Units [1]	Units added	Percent
1958	127	[3] 2	[3] 1.57	27	2	7.41	14	1	7.14			
1959	125	1	0.80	29	2	6.90	15	0	0.00			
1960	126	[3] 6	[3] 4.76	31	1	3.23	15	1	6.67			
1961	120	[3] 4	[3] 3.33	32	2	6.25	16	1	6.25			
1962	116	[3] 5	[3] 4.31	34	1	2.94	17	1	5.88			
1963	111	[3] 5	[3] 4.50	35	1	2.86	18	1	5.66			
1964	106	[3] 4	[3] 3.77	36	2	5.56	19	1	5.26			
1965	102	[3] 2	[3] 1.96	38	1	2.63	20	1	5.00			
1966	100	[3] 3	[3] 3.00	39	2	5.13	21	0	0.00			
1967	97	[3] 2	[3] 2.06	41	2	4.88	21	2	9.52			
1968	95	[3] 4	[3] 4.21	43	2	4.65	23	1	4.35			
1969	91	[3] 2	[3] 2.20	45	2	4.44	24	2	8.33	0.05	0.55	1,100.00
1970	89	[3] 4	[3] 4.49	47	0	0.00	26	0	0.00	0.6	1.4	233.33
1971	85	[3] 5	[3] 5.88	47	1	2.13	26	1	3.83	2.0	2.1	105.00
1972	80	[3] 4	[3] 5.00	48	1	2.03	27	1	3.70	4.1	3.2	78.05
1973	76	[3] 3	[3] 3.95	49	1	2.04	28	1	3.57	7.3	2.5	34.25
1974	73	[3] 6	[3] 8.22	50	0	0.00	29	0	0.00	9.8	1.9	19.39
1975	76			50			29			11.7		

[1] End of year.
[2] No breakdown of size (number of lines) available.
[3] Negative.
Source: Bell Ex. No. 20.

7. More particularly, to examine the PBX market expansion using Table IV–15 above, we will consider the relevant competitive PBX market as being only in medium and large PBXs. If we assume that Bell would have expanded the number of medium and large PBXs at a rate equal to its best year, *i.e.*, added 4,000 units three years in a row, (something that it has never achieved since 1958), the figures would appear as follows:

	(1) What Bell could have added	(2) What Bell actually added	(3) What interconnect companies actually added	(2+3) Total actually added	(2+3−1) Competition induced market expansion (worst case)
1972	4,000	2,000	2,100	4,100	100
1973	4,000	2,000	3,200	5,200	1,200
1974	4,000	2,000	2,500	4,500	500

One can readily see from the figures above that even if Bell would have had three of their best years in a row, the total PBX market would still have expanded by some 1800 units for the period. Once again this is a worst case analysis. If Bell would have had "average" years compounded growth, the analysis would show that the interconnect supplier expanded the market much more than just 1800 units. We believe some credit must be given to interconnect competition for expanding the total PBX market by offering special alternatives in equipment features, price, supply, service, etc.

8. Similarly, the total KTS market appears to have undergone some expansion since the advent of interconnect competition.

An examination of Table IV–16 below indicates that Bell achieved some outstanding KTS growth rates after 1968. While for the years 1958 to 1967, Bell's growth rate averaged only about 3.3 percent, the post-1968 growth rate has been about 3.8 percent, a 15 percent increase. Significantly, this KTS market growth was achieved during a recession. In other words, the KTS market growth seems to run counter to the normal business cycle since it expanded during a period in which business growth in general declined. We believe this indicates that competition must have had some positive effect in the expansion of the total KTS market, for Bell as well as for the total KTS market.

TABLE IV–16.—*Contribution Losses for KTS and PBX Systems* ($1000, unless specified otherwise)

[Estimated economic impact]

	Total expenses	Total expenses	Contribution [1] to ovhr. and common	Contribution [1] at 10 pct penetration	Net impact	Contribution [1] at 30 pct penetration	Net impact	Of main telephones	Contribution losses per main telephone: At 10 pct penetration	Contribution losses per main telephone: At 30 pct penetration
1978										
Key system	$14,613	$29,651	$15,038	$13,534	($1,504)	$10,527	($4,511)	2,500,837	$1.19	$3.57
Small PBX	11,290	20,708	9,418	8,476	(942)	6,593	(2,825)			
Large PBX	16,733	21,960	5,227	4,704	(523)	3,659	(1,568)			
Total market			29,683		(2,969)		(8,904)			
1983										
Key system	20,698	40,201	19,503	17,553	(1,950)	13,652	(5,851)	3,091,894	$1.13	$3.39
Small PBX	15,857	26,078	10,221	9,199	(1,022)	7,155	(3,066)			
Large PBX	24,253	29,560	5,307	4,776	(531)	3,715	(1,592)			
Total market			35,031		(3,503)		(10,509)			
1988										
Key system	29,149	55,582	26,433	24,790	(2,643)	18,503	(7,930)			
Small PBX	21,480	33,395	11,915	10,724	(1,191	8,341	(3,574)			
Large PBX	33,497	39,085	5,588	5,029	(559)	3,912	(1,675)			
Total market			43,936		(4,393)		(13,180)			

[1] Revenue contribution by terminal equipment market to cover other costs.
Source: UTS comments, exhibits 1 and 6.

9. On the basis of the previous analyses, we find indications that the effect of interconnect competition has been to expand the overall interconnect terminal equipment, to the benefit of both telephone and interconnect companies, and not simply to penetrate the existing telephone company markets as alleged by the telephone carriers.[224] Our findings concern primarily the KTS and PBX markets. In the further stages of this inquiry, we expect the parties to address with appropriate studies the prospects for market stimulation by interconnect competition in the main station, business and residential extension markets.

10. *Specific Study Estimates.* While the studies submitted contain estimates of market and market shares for various future years, and while the estimates cannot be accepted as valid, as explained generally above, we nevertheless report and comment more particularly upon some of the studies, arriving at relevant comparisons and conclusions where possible (see Table IV–18 above). As noted above, we concentrate our analysis primarily in the medium and large PBX market and KTS market.[225]

11. Augstell forecasts that as of the end of 1973 the interconnect industry penetration in the NYTelco area was 4 percent for PBX-Centrex, 1 percent for KTS and 27.7 percent for Data Set.[226] He claimed the greatest quantitative impact on revenues was and could continue to be PBX-Centrex and KTS markets. He estimated an average annual interconnect company growth rate of 28 percent for PBX and 34.5 percent for KTS for the 1975–1984 period. It forecast the interconnect company share of the market in 1984 as 31.6 percent for PBX and 49.5 percent for KTS. Augstell estimates an annual gross revenue loss in 1973 due to interconnect competition of $12,939,510 for NYTelco. Approximately, $7,967,700 (61 percent of the loss) is said to be from PBX-Centrex customers switching to interconnect suppliers $2,939,181 (22.93 of the loss) from NYTelco KTS customers switching to interconnect suppliers, $1,947,522 (15.2 percent of the loss) from NYTelco data set customers switching to interconnect suppliers, and only $22,107 (0.17 percent of the loss) from individual line (non-KTS) changes by NYTelco customers.

12. The Augstell study is a projection based on four years of data. Total markets for the years 1973–85 were estimated by means of a simple extrapolation of NYTelco's recent growth. Then the interconnect market share was projected by fitting a parabola to four years of data. As noted previously, it is inappropriate to extrapolate growth rates of the interconnect companies market share, which is similar to what Augstell did. The reason is that, since the initial market percentage is near zero, any absolute growth in sales will imply astronomical growth rates. In light of innovation and pricing responses to competition by telephone carriers and other business risks faced by interconnect companies it is unrealistic to expect interconnect companies to achieve such market penetration. Indeed after six years of aggressive marketing, including the introduction of improved operating features and more favorable price terms than normally furnished by the common carrier industry, NARUC estimates the interconnect firms had obtained by 1974 less than 1 percent of Bell's KTS market and less than 6 percent of Bell's PBX revenue.[227] Augstell's results are also questionable with respect to KTS. Augstell's projection of a 50 percent KTS market share for the interconnect companies by 1984 (preceded by a 27 percent KTS share forecasted by Augstell in 1980) is unrealistic, and also appears to be due to the extrapolation of a very high initial growth rate for interconnected KTS', a rate due to a low number of interconnected KTS' in the early years. As noted above, this high rate of growth cannot reasonably be expected to continue. Accordingly, the Augstell forecasts are without merit.

13. Historical data supplied by AT&T regarding Bell System and interconnect company provided terminal equipment is found in Bell Ex. Nos. 20 and 20–A. Some of this data has been set forth in Tables IV–15 and IV–16 above. The equipment considered is PBX (small, medium, and large, separately), KTS, modems, dialers, answering sets, and extensions. For Bell System-provided equipment data is given for 1958 through 1975; for non-Bell PBX and KTS for the years 1969–1975. Bell claims that in 1975 it lost $97.3 million in PBX revenue and $32.9 million in KTS revenue due to interconnect competition and that the 1975 revenue loss as a percent of total 1975 Bell System PBX and KTS revenue was 4.64 percent. Annual revenue lost by Bell as a percent of average annual Bell System revenue increase (1969–1975) was claimed to be 13.7 percent for PBX, 5.4 percent for KTS and 9.9 percent combined. Bell also provided an extensive series of forecasts for 7 categories of terminal equipment in Bell Ex. No. 19 prepared by Stanford Research Institute (SRI). Forecasts from 1975–1984 are given for customer-provided PBX (including Centrex), KTS, data terminals, modems, automatic answering devices, dialing devices, and mobile telephone equipment. The SRI study forecasted 1975–1984 Average Annual Growth Rates (AAGR) of 10 percent for PBX and 15 percent for KTS. For example, SRI predicts interconnect company PBX industry sales will be $475 million in 1984 and that its present levels of sales is about $120 million. It forecasted that by 1980 the interconnect industry would have 10.5 percent of the PBX market and 6.6 percent of the KTS market in terms of telephones installed and that by 1984 the PBX penetration would rise to 15.6 percent and KTS penetration to 11.1 percent.

14. Underlying the figures presented in Bell Ex. No. 20, is the unsubstantiated claim that the growth in non-Bell provided terminal equipment is necessarily a revenue loss to the Bell System. However, Bell revenues have been increasing in every equipment category throughout the periods considered, e.g., between 1974 and 1975 Bell's PBX annual revenues increased by approximately $200 million, while interconnect company PBX revenues increased by approximately $20 million.[228] Arguments can be given for increased or decreased Bell revenues if competition is eliminated, depending on whether competition served to stimulate demand or not. Above, however, we find indications that competition has stimulated overall terminal equipment market demand to the benefit of both telephone and interconnect companies.

15. With respect to Bell's Ex. No. 19 and the SRI study, we find no detail is provided as to SRI's methodology or assumptions. Thus, we do not know whether the SRI intended its study at its best estimate, its minimum estimate, or its maximum estimate. It is also impossible to determine from SRI's results whether and to what degree competition is assumed to stimulate the market; that is, whether or not growth occurs at the expense of the carriers. As noted above, in some areas, such as the market for dialing and answering devices, the telephone company sales appear to be growing slowly. While SRI projects growth tends and market shares we find indications that the expansion of those markets have not been at the expense of the established carriers. The market for modems is also, to a great extent, an expansion of the existing market. As far as data terminals are concerned, SRI indicates a mixed picture, with printer types (teletypes, etc.) being replaced by cathode ray and specialized units. Here again, SRI confirms our own findings in this docket and in the Computer Inquiry, supra, that the carriers appear to be lagging to some extent in the provision of specialized devices to meet the needs of their customers, until stimulated by competition. It also appears that the new devices may be creating a new market in such applications as point of sale terminals, etc.

16. NARUC provided some forecasts of market shares which show extremely high levels of interconnect company penetration.[229] At the outset, we note that we were not furnished with the underlying documentation which makes a comprehensive analysis of the findings difficult.

However, to the extent possible, we report and analyze the NARUC forecasts. The NARUC report does agree with certain of our other findings, e.g., that the interconnect company penetration into the PBX market will be greater than into the KTS market. However, as we have shown above, PBXs, particularly large PBXs, are likely recipients of subsidy from basic local telephone service. Therefore, a higher interconnect company penetration into the PBX market could serve to minimize any adverse effects from interconnect competition on local exchange subscribers. NARUC estimates what it terms minimum levels of penetration, which are much higher than those reported by the Bell System and certain others. Using the 1974 FCC Statistics of Communications Common Carriers, we find that, in general, for a common carrier to earn $1 in revenues it must invest $3 in plant. We will utilize this 1 to 3 ratio to analyze, in part, the NARUC response. NARUC forecasts indicate that PBX interconnect revenues are around $115 million for 1975. However, it forecasts that the interconnect industry will have sold enough PBX equipment by 1984 to cause the Bell System to lose $1.265 billion. NARUC estimates $545 million in KTS revenues will be lost to the Bell System companies in 1984. NARUC bases its figures on a 20 percent minimum average compound annual growth rate for PBX units in service (35 percent for KTS). We find the growth rates and projected market shares provided by NARUC are unrealistic. Applying the 1–3 revenue-investment ratio to PBXs, the interconnect companies must sell $3.8 billion in PBXs by 1984 to generate the $1.265 billion in revenues which could allegedly be lost to Bell. In the case of KTS', the interconnect companies would have to sell approximately $1.6 billion in KTS' by 1984 to generate the $545

[224] Indeed, between 1969–1975 the Bell System gained over $1.3 billion in additional revenue from PBX and KTS services. However, interconnect company revenues at the end of the period were less than 10 percent of merely the growth portion of Bell System revenue from these services. Bell Ex. No. 20–A, p. 5.

[225] *Supra*, n. 7.

[226] Augstell Study, supra.

[227] NARUC Comments, p. C–11, Table C–3. See also Table IV–14 above and the 1975 market penetration figures which indicate insignificant market penetration by interconnect firms to date.

[228] Bell Ex. No. 20–A, pp. 3–4. Supra, n. 11.

[229] NARUC Comments, NARUC Report After Investigation, May 15, 1974.

million in revenues which could allegedly be lost to Bell. In contrast, SRI's more reasonable estimates indicate that interconnect industry PBX sales will be only $475 million by 1984, and that present interconnect company PBX sales levels are only about $120 million.[230] As noted above, the interconnect industry could have some difficulty in obtaining essential capital for such rapid market expansion. Moreover, it appears that the NARUC figures do not take into account fully the market stimulation caused by interconnect competition and the effect of telephone company innovation and pricing responses to competition. Indeed, NARUC indicates elsewhere that once telephone companies "shape up" due to the pressure of competition there will be no business left for interconnect suppliers.[231] Accordingly, the NARUC forecasts are without merit.

17. USITA submitted an impact study of interconnect competition for PBX, KTS, and business and residential extensions with respect to independent telephone companies as part of its contribution analysis, which has been considered in detail elsewhere herein. SAI furnished that interconnect market penetration would focus on user organizations such as hospitals, hotels, motels and educational institutions, which rarely change location and have relatively stable arrangements of terminal installations within their facilities. SAI estimates typical interconnect market penetration as 2 percent but in hotels, motels, and educational institutions as over 15 percent. SAI estimates the interconnect average annual growth rate as 11 percent for residence extension, 7 percent for business extension, 5 percent for PBX and 5 percent for KTS during the 1975–1984 period. SAI forecasts the 1985 interconnect company market share (its base case estimate) as 25 percent for PBX, 15 percent for KTS, 35 percent for business extension and 25 percent for residence extension.

18. SAI's projected terminal equipment market shares are purportedly based on "expert opinion obtained through an informal SAI survey". T+E finds, and we agree, that an "informal survey" is less than a fully adequate basis upon which to base decadal forecasts of market penetration and revenue and contribution losses, particularly since SAI provides no details of the distribution of terminal share estimates it gathered in the survey. T+E notes that we do not know if the values used in the study represent the mean estimates nor do we know how large the variance was around the mean. Also, T+E finds that there is another critical assumption implicitly made, though not stated, in the SAI analysis, i.e., that the rate of growth of the total terminal equipment market facing the independent telephone industry is unaffected by rate of market growth and/or the extent of interconnection.[232] This reflects the assertion made by SAI that the independents rely primarily on the same terminal equipment suppliers as the interconnect company distributors themselves. Then, once terminal equipment manufacturers introduce innovations, their diffusion within the interconnect company does not depend on the extent of interconnection. No evidence is presented to support the SAI assertion. Equally important is the fact that if interconnection is forbidden or severly limited outside the independents (i.e., for Bell affiliated companies), there may be a decline in the rate of innovation in terminal equipment by independent manufacturers. Finally, SAI points out that vertically intergrated (distributors/manufacturers) interconnect companies, such as RCA, are becoming more important. In this case, contrary to the SAI assertion, the rate of innovation, and hence the market growth rate, may again depend on the extent of interconnection within the independent telephone industry. In any event, T+E finds that much more substantiation of the assertion that the independents purchase terminal equipment from the same suppliers as the interconnect distributors is needed.

19. Although some of SAI's growth rates appear plausible at first glance, it is not possible, absent underlying documentation, to determine the reasonableness of SAI's assumptions regarding competitive pricing responses by telephone carriers which utilized, in part, in arriving at such growth rates. Finally, by assuming that terminal equipment market growth is exogenous, SAI as did Augstell, makes interconnect competition a "zero-sum game," i.e., absolute revenue gains of interconnect companies imply an absolute revenue decline of independent telephone company vertical service net revenues.[233] Accordingly, we cannot accept the SAI market penetration forecasts.

20. CBEMA on page 63 of its Comments refers to the NARUC Report for its predictions on the future of the PBX and KTS markets. Quoting NARUC, CBEMA predicts that the common carriers would obtain up to 61 percent of the $2 billion increase in PBX equipment, and up to 85 percent of the $2.3 billion increase in KTS. Mention of the time period to which these numbers refer and how they were obtained is omitted. CBEMA claims that the telephone common carrier will enjoy a net revenue increase due to the expansion of the market. A large part of that expansion is alleged to come from interconnect competition. We note that the NARUC projections of common carrier market shares relied upon by CBEMA are maxima ("up to" 85 percent) not conservative estimates and that these projections are unsubstantiated by NARU. OTP did not provide any data or forecasts itself, but did criticize those of NARUC and Augstell. It stated that while both reports make projections to 1984, they use data from the four-year period 1970–1973 to extrapolate 11 years into the future. OTP notes, correctly in our view, that to assume that previously observed interconnect growth rates will continue beyond or even up to 1980 is highly questionable. OTP also states currently in our view, that the forecasts to 1984 also seem to ignore the technological and marketing innovations that are taking place in the industry.

21. In summary, in Table IV–14 above, we present forecasts of the PBX and KTS markets in 1975, 1980, and 1984. Assuming arguendo the validity of the forecasts presented, they point to insignificant market penetration to date, perhaps 5 percent as a maximum, and to a potential interconnect company market share of well under 20 percent by 1984.[234]

As noted above, however, we find that indications are that much of the interconnect market may be an addition to the telephone carriers' markets, so that even if the telephone carriers may have 80 percent of the total market by 1984, which we believe is a conservative estimate, they will have a much higher dollar share of the market than they would have had absent interconnect competition. We note again, however, that the market penetration forecasts shown for the interconnect companies are without merit. In the further stages of this inquiry, we expect parties to provide realistic estimates of markets and market share penetrations which take into account likely innovative, technological and pricing responses by telephone carriers and market stimulation caused by interconnect competition. As noted above, we expect such filings to examine in greater detail the main station and residential and business extension markets. We also solicit the views, studies, etc. of interconnect firms (both independent manufacturers of interconnect equipment and interconnect distributors) since their participation in this inquiry has been minimal to date.

[FR Doc.76–32223 Filed 11–5–76;8:45 am]

---

[230] Bell Ex. No. 19, SRI Study, p. 7, Table 1. Based on the limited number of data points used to project the revenues and sales, we believe both SRI and NARUC estimates are of questionable validity.

[231] *Supra*, n. 2.

[232] In particular, SAI's view is that the only vertical service category open to growth-stimulating innovation is residential extensions and that PBX, KTS and business extensions are not open to growth stimulation. This view is contrary to our market stimulation findings above. See T+E Reviews to Additional Submissions, May 25, 1976, pp. 3–21, which will be made available at a later date, for a thorough discussion of this and other difficulties with the SAI Study.

[233] Assuming, of course, that vertical service rates are compensatory.

[234] As noted above, Frost and Sullivan indicated that by the 1980's it is likely the PBX market will be totally reacquired by the telephone companies and NARUC appears to agree. *Supra*, n. 2.

federal register

MONDAY, NOVEMBER 8, 1976



PART III:

INTERSTATE COMMERCE COMMISSION

■

REVISED RULES OF PRACTICE

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1100]

[Ex Parte No. 55 (Sub-No. 24)]

REVISED RULES OF PRACTICE

Proposed Rulemaking

● *Purpose:* The Commission herein proposes to revise its Rules of Practice in order to facilitate and expedite proceedings before it. ●

The Commission, pursuant to a recommendation by its Blue Ribbon Staff Panel in 1975, began an evaluation of its Rules of Practice with the aim of updating, clarifying, and improving them. Subsequently, the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94–210, 90 Stat. 31, charged the Commission with a duty to review and revise its Rules of Practice in the rail area within one year of the date of enactment.

Pursuant to its commitment resulting from the Blue Ribbon Panel's recommendation and its statutory duty, certain proposed revised Rules of Practice have been compiled which are designed to clarify and simplify our existing rules and make more efficient the procedures employed in proceedings before the Commission arising under the Interstate Commerce Act and related acts. Some of the significant modifications proposed in this rulemaking include the limiting of the use of interrogatories and requests for admissions to those circumstances in which depositions and production of documents are currently permitted, revision of the procedure regarding administrative appeals, and provisions for the substitution of oral argument in lieu of written briefs at the conclusion of hearings. These proposals, which upon approval by the entire Commission will require a renumbering of the Rules of Practice, are being proposed by the Commission's Committee on Rules.

The proposed action is not expected to affect significantly the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. No oral hearing is contemplated at this time, but anyone wishing to make representations in favor, or against the proposals may do so by the submission of written data, views, or arguments. An original and 15 copies (wherever possible) of such data, views or arguments shall be filed with this Commission on or before January 7, 1977. Such time should be sufficient for interested persons to obtain copies of the proposed rules and analyze the issues. No extensions of time are contemplated in light of the Commission's statutory deadline to complete this task.

Copies of the proposed rules are appended to this notice and will be available in the docket and upon written request to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423. All written submissions will be available for public inspection during regular business hours at the offices of the Interstate Commerce Commission, 12th and Constitution Avenue, Washington, D.C.

Notice to the general public of the matter herein under consideration will be given by depositing a copy of this notice in the Office of the Secretary of the Commission for public inspection and by filing a copy thereof with the Director, Office of the Federal Register.

By the Commission's Committee on Rules, Chairman Stafford, Vice Chairman Clapp, and Commissioners Murphy and Corber.

ROBERT L. OSWALD,
Secretary.

PRESENT RULE	PROPOSED RULE	COMMENT
	PART 1100--~~GENERAL~~ RULES OF PRACTICE	The proposed change in the title of Part 1100 from "GENERAL RULES OF PRACTICE" to "RULES OF PRACTICE" is warranted by the fact that Part 1100 is no longer limited to general rules, but embraces numerous and important special rules.
GENERAL INFORMATION		
§1100.1 Scope of rules. (Rule 1)	§1100.1 General information.	
The rules in this part govern procedure before the Interstate Commerce Commission in proceedings under the Interstate Commerce Act and related acts, unless otherwise directed by the Commission in any proceeding.	(a) Scope of rules. The rules in this part govern procedure before the Interstate Commerce Commission in proceedings under the Interstate Commerce Act, as amended, and related acts, except insofar as they may be inconsistent with and superseded by requirements governing the practice and procedure in specified categories of proceedings as set out in Parts 1101-1159,1/ or unless otherwise directed by the Commission in any proceeding.	The principal change proposed here consists of the insertion of a reference to the procedural requirements in 49 CFR 1101-1159. This change accomplishes a worthwhile objective by calling the public's attention to the existence of the special requirements in Parts 1101-1159, and by further advising that those special requirements will prevail in any instance where they conflict with the Rules of Practice in Part 1100. As a further service to the public, it is provided that an index to Parts 1101-1159 be set forth in Appendix E to the Rules of Practice.
	(b) Applicability. Subpart A of this part sets forth general rules applicable to all types of proceedings, except to the extent otherwise provided in subpart B hereof which sets forth special rules applicable to particular types of proceedings. Wherever there is any conflict between one of the rules of general applicability in subpart A and a special rule in subpart B, the special rule will govern.	This new rule sets up the Committee's proposed format for Part 1100, with the rules of general applicability being embraced in subpart A and the special rules in subpart B. Most important, this rule provides that whenever there is any conflict between the rules of general applicability in subpart A and a special rule in subpart B, the special rule will govern. It is the Committee's view that this provision will eliminate most, if not all, inconsistencies or conflicts in the present Rules of Practice.
	(c) Reference to and citation of rules. This part shall be referred to as the "Rules	This proposed new addition to the Commission's rules meets a long-standing need by clearly advising the public as to the proper method of citing particular rules.

1/ An index to parts 1101-1159 is set forth in Appendix E hereto.

PRESENT RULE	PROPOSED RULE	COMMENT
	of Practice." Each section, and any paragraph or subparagraph thereof, shall be referred to as a "Rule." The number of each rule shall include only the numbers and letters at the right of the decimal point. For example, "§1100.63 Request for admission" shall be referred to as "Rule 63." Paragraph (b) of that rule, relating to "Effect of admission," shall be referred to as "Rule 63 (b)."	
§1100.2 Liberal construction. (Rule 2) The rules in this part shall be liberally construed to secure just, speedy, and inexpensive determination of the issues presented.	§1100.2 Liberal construction. ~~(Rule 2)~~ The rules in this part shall be liberally construed to secure just, speedy, and inexpensive determination of the issues presented.	No change is proposed in the actual content of this rule. It is set forth here in the "Proposed Rule" column solely for the purpose of calling attention to the fact that, by reason of Rule 1(c), it is no longer necessary to include the parenthetical citation in the title of the rule. Hereinafter, such parenthetical citations in the titles will be omitted in both columns.
	§1100.3 Information; special instructions. Information as to procedure under the rules in this part, and instructions supplementing these rules in special instances, will be furnished upon application to the Secretary of the Commission, Washington, D.C. 20423.	The only change proposed in the present rule consists in the addition of the zip code to facilitate mailings to the Secretary.
	SUBPART A - RULES OF GENERAL APPLICABILITY	In line with the provisions of proposed Rule 1(b), this new title is necessitated to set off the rules of general applicability. At a later point, another new title, "SUBPART B - SPECIAL RULES," will be included to set off the special rules.

PRESENT RULE	PROPOSED RULE	COMMENT
§1100.4 Communications and pleadings generally.		
(a) How addressed. All communications, including correspondence concerning matters referred to boards, should be addressed to the Commission unless otherwise specifically directed. All communications should clearly designate the docket number, if any, and short title. The person communicating shall state his address, the party he represents, and how response should be sent to him if not by first class mail.	No change.	
(b) Timely filing required. Pleadings, requests, or other papers or documents required or permitted to be filed under this part must be received for filing at the Commission's offices at Washington, D.C., within the time limits, if any, for such filing. The date of receipt at the Commission and not the date of deposit in the mails is determinative.	No change.	It should be noted that consideration has been accorded to the views submitted by several parties requesting amendment of Rule 4(b) so as to provide that pleadings be considered timely filed (a) if certified as having been deposited in the mail as late as the due date and actually received at the Commission no later than 5 days after the due date, or (b) if filed by the due date at a field office of the Commission. Although sympathetic to the proposal in (a) above, the Committee determined that no amendment be made for the reasons (1) that the Commission just recently denied such relief, and (2) that such action undoubtedly would serve to add to so-called "administrative lag."
(c) Disposition of; when defective. In any proceeding when upon inspection the Commission is of the opinion that a pleading, document, or paper tendered for filing does not comply with this part or, if it be an application, does not sufficiently set forth required material or is otherwise insufficient, the Commission may decline to accept the pleading, document, or paper for filing and may return it unfiled, or the Commission may accept it for filing and advise the person tendering it of the deficiency and require that the deficiency be corrected.	No change.	
(d) Objectionable matter. The Commission may order any redundant, immaterial, impertinent, or scandalous matter stricken from any pleading, document, or paper filed with it.	No change.	
(e) Ex parte communications prohibited; penalties provided. Ex parte communications as defined in Appendix C to this part are prohibited and any person violating the prohibitions set out in such Appendix is subject to the penalties as therein provided.	No change.	

PRESENT	PROPOSED RULE	COMMENT
§1100.5 Definitions. ~~(Rule 5)~~ As used in this part: (a) The terms "act" and "part" mean the Interstate Commerce Act and the several parts thereof, respectively. The term "act" also means, unless the context otherwise indicates, any other statute which the Commission administers in whole or in part. NOTE: References to parts designated by Roman numerals refer to the Interstate Commerce Act. References to "this part," the rules in this part or to parts designated by Arabic numerals, refer to this Code.	No change.	
	(b) The term "proceeding" shall include: (1) an "informal ~~or formal~~ complaint" filed under Rule 24 or 25 or a "formal complaint" alleging violation of any provision of the act or of any regulation or requirement made pursuant to a power granted by such act, including petitions on the special docket; (2) an "application" for (i) the granting of any right, privilege, authority, or relief under or from any provision of the act or of any regulation or requirement made pursuant to a power granted by such act, or (ii) the consideration of any submission required by law to be made to the Commission; ~~and~~ (3) an "investigation" instituted by the Commission; ~~including, among other, matters on the valuation and investigation and suspension dockets;~~ and (4) a "rulemaking" proposal instituted by the Commission.	The proposed amendment deletes from the definition of "investigation" the language "including, among other, matters on the valuation and investigation and suspension dockets" as unnecessarily redundant, adds, at (4), "a 'rulemaking' proposal instituted by the Commission."
	(c) The term "complainant" means a person filing a complaint; "defendant" means a ~~carrier or other~~ person against whom complaint is filed; "applicant" means a person filing an application; "respondent" means a person designated in an investigation; "protestant" means a person opposed to the granting of an application, to any tariff or schedule becoming effective, or to a tentative valuation; "intervener" means a person permitted to intervene as provided in Rule 72 or 73, and "petitioner" means any other person seeking relief otherwise than by complaint, protest or application.	The proposed amendment makes only minor editorial changes, including adding to the definition of "intervener" those persons permitted to participate in a proceeding pursuant to Rule 73.
	(d) The term "party" shall include all named in paragraph (c) above, or others, permitted or directed by the Commission to participate in a proceeding. It shall not include persons signing certificates of support or witnesses appearing at an oral hearing or submitting verified statements under modified procedure unless such persons are included in the preceding provisions of this Rule, and shall not include persons named in the docket service list merely for the purpose of receiving copies of Commission releases.	The proposed new Rule 5(d) defining the term "party" fills a long-standing void in the Commission's rules. The need for this definition has become more critical since the fairly recent promulgation of the discovery rules wherein the definition of the term "party" has particular relevance. Former subsection (d) becomes new proposed subsection (e).

PRESENT	PROPOSED RULE	COMMENT
	~~(d)~~ (e) The term "pleading" means a complaint, answer, reply, application, protest, motion (other than motion orally made at hearing or argument), brief, exceptions, petition, document supplementing oral hearing as described in Rule 86 and all documents filed under modified procedure.	Proposed Rule 5(e) expands the definition of "pleading" as it appears at present Rule 5(d) to include briefs and exceptions.
	~~(e)~~ (f) The term "practitioner" means a person authorized by the Commission to appear before it in a representative capacity.	Proposed Rule 5(f) embodies present Rule 5(e) without change.
	~~(f)~~ (g) The term "officer," except as a different meaning is indicated in Rules 17(b), 57 to 66, inclusive, 71(a) and 78 (civil and corporate functionaries), includes ~~(1)~~ a Division, Commissioner, administrative law judge, board of employees (called an "employee board" in this part), an examiner or special board composed of State representatives (called a "joint board" in this part), to which a proceeding (called "referred matter" in this part) is ~~by order~~ assigned or referred for hearing, consideration, or recommendation of an appropriate order thereon pursuant to provision of law, ~~and (2) a Commissioner, an examiner; or other Commission employee before whom without entry of an order of reference, a proceeding is assigned for hearing.~~ The term "board" means either an employee board or a joint board as the context requires. ~~1 Such as sections 17 and 205 of the Interstate Commerce Act.~~	Proposed Rule 5(g) expands the definition of "officer" to include Division and administrative law judge.
(g) The term "proposed report" means an officer's written statement of the issues, the facts, and the findings the officer proposes that the Commission should make, with the reasons therefor, but with no recommended order. Such term also means, and shall include, a "recommended decision" and a "tentative decision" as these last two terms are used in the Administrative Procedure Act.	Deleted.	Present Rule 5(g) is to be replaced by Rule 5(i).
(h) The term "report and recommended order" means an officer's written statement in a referred matter of the issues, the facts, the findings, reasons for such findings, and a recommended order. Such term also means, and shall include, an "initial decision" as the latter term is used in the Administrative Procedure Act.	(h) The term "initial decision" means an officer's statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record, and an appropriate order. An initial decision made by a Commissioner, an administrative law judge or a joint board will become effective as the order of the Commission in the circumstances described in Rule 95(b).	Proposed Rule 5(h) would replace present Rule 5(h) by modifying and updating the contents of the latter in line with present official terminology and Commission practice.

PRESENT	PROPOSED RULE	COMMENT
(i) The term "officer's report" or "board's report" means a proposed report or report and recommended order.	Deleted.	Rule 5(i) is outdated and serves no useful purpose.
	(i) The term "tentative decision" means a decision proposed by the Commission, which shall embrace the same elements specified for inclusion in initial decisions. A tentative decision will not become the decision of the Commission through failure to file objections, but in the absence of exceptions or of ascertainable error the statement therein of the issues and facts ordinarily will be taken by the Commission as the basis of its subsequent decision.	Proposed Rule 5(i) replaces present Rule 5(g).
(j) The term "modified procedure" means the procedure specified in Rules 45 to 54, inclusive, which rules provide for the filing and serving of pleadings in proceedings with a view to limiting the matters upon which subsequent oral evidence, if any, will be introduced.	No change.	
	(k) The term "transcript" ~~shall include~~ means a written or electronically recorded statement of all proceedings at an oral hearing.	Proposed Rule 5(k) is essentially the same as the present Rule 5(k) with a minor editorial change.
	§1100.6 Use of gender and number. ~~(Rule 6)~~ Words importing the singular number may extend and be applied to several persons or things; words importing the plural number may include the singular; and words importing the masculine gender include the feminine. ~~may be applied to females~~.	**The revision to proposed Rule 6 is editorial in nature.**
PRACTITIONERS		
§1100.7 Register of practitioners. ~~(Rule 7)~~ A register is maintained by the Commission in which are entered the names of all persons entitled to practice before the Commission. Corporations and firms will not be admitted or recognized.	No change.	

PRESENT	PROPOSED RULE	COMMENT
	§1100.8 Attorneys at Law - Qualifications and requirements for practice before the Commission. Any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth or the District of Columbia may represent others before the Commission upon filing with the Commission a written declaration so stating that he is currently qualified. The written declaration shall contain the declarant's full name, address, and telephone number. A declaration may be filed with the Secretary of the Commission in the form as shown in Appendix D to this part, in which event the attorney's name will be entered in the Register of Attorneys at Law. Attorneys may also file declarations with the Secretary or a Hearing Officer when making an initial appearance in any proceeding and the Attorney's name will be entered in the Register of Attorneys at Law. Once an attorney's name is entered in the Register of Attorneys at Law no further declaration of qualification will be required except in those instances where an attorney's right to practice has been suspended, in which event a written declaration will be required that he is now properly qualified in accordance with this paragraph.	Changes title of Rule and deletes preamble.
(b) Persons not attorneys. Any person not an attorney at law who is a citizen or resident of the United States and who shall satisfy the Commission that he is possessed of the necessary legal and technical qualifications to enable him to render valuable service before the Commission, and that he is otherwise competent to advise and assist in the presentation of matters before the Commission.	Deletion proposed from Rule 8.	Rule 8(b) now appears as Rule 9, with changes.
(c) Appearances. Practitioners who meet the requirements set forth in paragraphs (a) and (b) of this section shall also file a declaration that they are authorized to represent the particular party in whose behalf they propose to act at the time of making an initial appearance in any proceeding. This requirement will be met by the practitioner entering his name as the representative of an applicant in the appropriate space on an application form; by signing any complaint, petition, protest, reply, or other pleading with a designation following the practitioner's signature that	Deletion proposed from Rule 8.	Rule 8(c) now appears as proposed Rule 10.

PRESENT	PROPOSED RULE	COMMENT
he is the attorney or other representative of a party therein named; by entering an appearance on the form provided at any hearing; or by filing a letter with the Secretary of the Commission stating that he is authorized to represent a party, whose name and address is given in a particular proceeding which shall be identified.		
§1100.9 Nonattorneys' applications for admission to practice. ~~(Rule 9)~~ An application under oath for admission to practice shall be addressed to the Commission, Washington, D. C. 20423, and must state the name, residence address, and business address of the applicant, and the nature of his qualifications. Such application shall also state whether the applicant has ever been suspended or disbarred as an attorney, or whether his right to practice has ever been revoked by any court, commission, or administrative agency, in any jurisdiction. Such application shall be accompanied by a certificate signed by three or more practitioners as sponsors for the applicant, which certificate shall recite that applicant possesses all the requisite qualifications under this section and under Rule 8(b), and the sponsors shall incorporate in their certificate a recommendation and motion that applicant be admitted to practice under this section. [32 F.R. 20778, Dec. 23, 1967]	§1100.9 Persons not attorneys at law - qualifications and requirements for practice before the Commission. (a) In general. Any citizen or resident of the United States, not an attorney at law, who shall file an application for admission to practice, accompanied by payment of the fee prescribed by rule or order of the Commission, successfully complete the practitioners' examination, and shows that he possesses the necessary legal and technical qualifications to enable him to render valuable service before the Commission and that he is competent to advise and assist in the presentation of matters before the Commission, may be permitted to practice before the Commission.	This section of proposed new Rule 9(a) incorporates present Rule 8(b). Note changes such as "resident."
	(b) ~~Application for admission~~. An application filed pursuant to this rule under oath for admission to practice shall be completed in full on the form provided by the Commission, and shall be addressed to the Secretary of the Commission, Washington, D.C. 20423.	This section of proposed new Rule 9(b) incorporates present Rule 9, with unnecessary provisions being deleted.
	(c) Additional certificates by applicant's sponsors; hearing on application; abandonment of application. The Commission may require an applicant's sponsors to provide a detailed statement of the nature and extent of their knowledge of his qualifications. Upon consideration thereof, if the Commission is not satisfied as to the adequacy of applicant's qualifications, he will be notified thereof by registered mail, whereupon he may request a hearing to prove his qualifications. If he presents such a request, the Commission will accord him a hearing. In the absence of a request for hearing within 20 days from receipt of said notice, his application shall be considered as withdrawn.	Proposed new Rule 9(c) incorporates present Rule 10. (Note changes).
	(d) Application fee. Each application filed pursuant to this rule must be accompanied by a non-refundable fee of $50. Payment must be made either in cash, or by check or money order payable to the Interstate Commerce Commission.	This section of proposed new Rule 9(d) incorporates present Rule 11. The filing fee has been increased to $50, consistent with the lowest bar application (District of Columbia). (Note the "nonrefundable" provision which also is a substantial change from present Rule 11).

PRESENT	PROPOSED RULE	COMMENT
	(e) Failure to appear for examination. Except for good cause shown, if an applicant fails to appear at the time and place indicated by the Commission to take the practitioners' examination, the application shall be considered withdrawn.	
	(f) Applicant's oath. No applicant shall be admitted to practice before the Commission until he shall have subscribed to an oath or affirmation that he will demean himself, as a practitioner before the Commission, uprightly, and according to law; and that he will support the Constitution of the United States and laws of the United States andwill conform to the rules and regulations of the Commission.	This section of proposed new Rule 9(f) incorporates present Rule 12.
§1100.10 Additional certificates by applicant's sponsors; hearing; abandonment of application. ~~(Rule 10)~~ The Commission in its discretion may call upon the practitioners making such certificate for a full statement of the nature and extent of their knowledge of the qualifications of the applicant. If upon consideration of the papers filed by the applicant and the statements submitted by his sponsors, or otherwise, the Commission is not satisfied as to the sufficiency of the applicant's qualifications under these rules, it will so notify him by registered mail, whereupon he may request a hearing for the purpose of showing his qualifications. If he presents such requests, the Commission will accord him a hearing. If he presents to the Commission no request for such hearing within 20 days after receiving the notification above referred to, his application shall be deemed to be withdrawn. [32 FR 20066, Dec. 20, 1967, as amended at 32 FR 20778, Dec. 23, 1967]		This section now appears as proposed Rule 9(c).
§1100.11 Application fee. ~~(Rule 11)~~ An application filed under Rule 9 must be accompanied by a fee of $25. Payment must be made either in cash, or by check, or money order payable to the Interstate Commerce Commission. The fee will be returned if applicant is not admitted to practice. [33 FR 7821, May 29, 1968]		This section now appears as proposed Rule 9(d).

PRESENT	PROPOSED RULE	COMMENT
§1100.12 Applicant's oath ~~(Rule 12)~~ No applicant under Rule 9 shall be admitted to practice before the Commission until he shall have subscribed to an oath or affirmation that he will demean himself, as a practitioner before the Commission, uprightly, and according to law; and that he will support the Constitution of the United States and laws of the United States and will conform to the rules and regulations of the Commission. [32 F.R. 20778, Dec. 23, 1967]		This section now appears as proposed Rule 9(f).
	§1100.10 Initial appearances. Practitioners shall file a declaration that they are authorized to represent the particular party in whose behalf they propose to act at the time of making an initial appearance in any proceeding. This requirement will be met by the practitioner entering his name as the representative of an applicant in the appropriate space on an application form; by signing any complaint, petition, protest, reply, or other pleading with a designation following the practitioner's signature that he is the attorney for or other representative of a party therein named; by entering an appearance on the form provided at any hearing; or by filing a letter with the Secretary of the Commission stating that he is authorized to represent a party, whose name and address is given in a particular proceeding which shall be identified. For additional information on appearances, see Rule 71.	This proposed section incorporates present section 8(c) with minor editorial changes.
§1100.13 Denial of admission, censure, suspension, or disbarment of practitioners. ~~(Rule 13)~~ The Commission may, in its discretion, deny admission, censure, suspend, or disbar any person not an attorney who, it finds, does not possess the requisite qualifications to represent others, or is lacking in character, integrity, or proper professional conduct. All persons whether or not admitted to practice under Rule 8 or 9, must, in their representations before the Commission conform to the code of ethics for Practitioners, which code is set forth as	§1100.11 Suspension, disbarment, or other disciplinary action. When it is shown to the Commission that any member of its bar has been suspended or disbarred from practice in any court of record, or has violated any of the Commission's rules, including the code of ethics as set out in Appendix A, or has engaged in other conduct unbecoming a member of the bar of the Commission, he will be subject to suspension, disbarment, or other disciplinary action by the Commission. The member shall be afforded an	This proposed section makes only editorial changes in present Rule 13.

PRESENT	PROPOSED RULE	COMMENT
Appendix A to this part. If for good cause shown, the Commission shall be of the opinion that any attorney is not conforming to such standards, or that he has been otherwise guilty of conduct warranting disciplinary action the Commission may issue an order requiring such attorney to show cause why he should not be suspended or denied the right to practice before the Commission. If such attorney shall fail to show good cause why he should not be suspended or denied the right to practice, he may be censured, suspended, or disbarred. Any person who has been admitted to practice may be suspended or disbarred only after he is afforded an opportunity to be heard. [32 FR 20778, Dec. 23, 1967]	opportunity to show good cause, within such time as the Commission shall prescribe, why he should not be suspended, disbarred or otherwise disciplined. Upon his response to the order to show cause, and after hearing, if requested, or upon failure to respond within the time prescribed for a response, the Commission shall issue an appropriate order.	
	§1100.12	Omitted.
	§1100.13	Omitted.
SPECIAL RULES RESPECTING BOARDS	JOINT BOARDS	
§1100.14 Special rules respecting boards. ~~(Rule 14)~~	1100.14 Joint board organization and procedures.	Change in title only.
(a) Organization. After a joint board has been created it shall select one of its members to act as chairman for all purposes concerning matters which may be referred to it. In the event the member so selected is absent from any meeting of the joint board the members attending shall select one of such members, except as provided in paragraph (b) of this section, temporarily to act as chairman.	(a) No change.	
(b) Waiver by absence of a joint board member. The failure of a duly appointed member of a joint board to participate in any hearing after notice thereof on a matter referred to such joint board shall be considered to constitute, as to the matter referred, a waiver of action on the part of the State from which such member was appointed.	(b) No change.	

PRESENT	PROPOSED RULE	COMMENT
(c) Procedural rulings in case of disagreement. If the members of a board or a majority thereof in actual attendance at a hearing shall be unable to agree upon the disposition of a procedural question arising therein, the chairman (or acting chairman) of the board shall decide the question and rule or order accordingly.	(c) No change.	
(d) Form of board's report; service. For the sake of uniformity the board's report shall conform as nearly as may be practicable to the form of report issued by the Commission in similar cases. The board's report will be served by the Commission.	(d) Form of joint board's initial decision; service. In the interest of uniformity the board's initial decision shall conform as nearly as may be practicable to the form of decision issued by the Commission in similar cases. The board's initial decision will be served by the Commission.	Proposed rule involves only editorial changes. Substitutes "initial decision" for "report."
(e) Termination of joint board jurisdiction; subsequent procedure. The jurisdiction of a joint board over a referred matter shall be terminated in the event of: (1) service of a report as provided in paragraph (d) of this section; (2) submission of the board's conclusions without written report; (3) waiver of action in writing by appropriate authority of each State from which a member is entitled to be appointed; (4) failure of all members of the board to appear at the hearing; (5) failure of a majority of the board to agree; or (6) entry of order vacating the order of reference to the joint board. Except where a report is served as provided in paragraph (d) of this section, in which event the subsequent procedure will be as provided in Rule 96 and subsequent sections, a referred matter, after termination of joint-board jurisdiction, will be decided by the Commission or be made the subject of another officer's report on the record theretofore made or after such hearing or further hearing as may be required.	(e) Termination of joint board jurisdiction; subsequent procedure. The jurisdiction of a joint board over a referred matter shall be terminated in the event of: (1) service of an initial decision as provided in paragraph (d) of this section; (2) submission of the board's conclusions without a written initial decision; (3) waiver of action in writing by appropriate authority of each State from which a member is entitled to be appointed; (4) failure of all members of the board to appear at the hearing; (5) failure of a majority of the board to agree on substantive matters; or (6) entry of order vacating the order of reference to the joint board. Except where an initial decision is served as provided in paragraph (d) of this section, in which event the subsequent procedure will be as provided in Rules 101, 102, 103 and 104, a referred matter, after termination of joint board jurisdiction, will be decided by the Commission or be made the subject of another officer's initial decision on the record theretofore made or after such hearing or further hearing as may be required.	Proposed rule involves only editorial changes. Substitutes "initial decision" for "report." Additional language has been added to Subsection (e)(5) to clarify the fact that the joint board's jurisdiction shall terminate if it disagrees only on substantive matters.

PRESENT	PROPOSED RULE	COMMENT
PLEADING SPECIFICATIONS GENERALLY		
§1100.15 Typographical specifications generally. ~~(Rule 15)~~ Except as otherwise provided respecting applications (Rule 38(a)), exhibits (Rule 84(a)), and informal complaints (Rule 24(a)), all pleadings, documents, and papers to be filed under these rules shall be on opaque, unglazed, durable paper not exceeding 8½ by 11 inches. To permit binding in covers of uniform size, margins of at least 1½ and 1 inch, respectively, shall be allowed on the left and right margins. Binding shall be on the left margin. Reproduction may be by printing, printing by offset press, multigraphing, or mimeographing, or by any other process, provided the copies are clear and permanently legible. Whiteline blueprints which cannot be reproduced by photography are not acceptable. If directly typewritten, or if in facsimile reproduction of typewriting, the impression may be on both sides of the paper and must be double-spaced, except that long quotations shall be single-spaced and indented. Nothing less in size than Elite type shall be used. If printed, adequate leading and nothing less than 10-point type shall be used, except that 8-point type may be employed in footnotes and in tabular matter where printing limitations so require. A pleading or brief in excess of 50 pages (except a pleading under modified or shortened procedure), including cover pages, indexes, and appendixes, must be printed. Printing by offset press will be accepted: Provided, That the type used is not reduced in size smaller than that required for typewritten documents and that where the pleading or brief exceeds 50 pages, the impression is on both sides of the paper. Failure to observe these specifications will result in rejection.	No change.	

PRESENT	PROPOSED RULE	COMMENT
§1100.16 Copies. ~~(Rule 16)~~ (a) Generally. The original and 8 copies of every pleading, document, or paper permitted or required to be filed under this part shall be furnished for the use of the Commission except as a different number is required under paragraph (b) of this section, or as otherwise provided respecting: answers (Rule 35(c)), applications (Rule 38(b) and Rule 40(c)); complaints, formal (Rules 26 and 37) and informal (Rule 24(a) and Rule 25(d)); depositions (Rule 64); exhibits (Rules 84(c) and 86); modified procedure (Rule 52); petitions in intervention (Rule 72(d)); prepared statements (Rule 77); protests in investigation-and-suspension proceedings (Rule 42(c)); replies (Rule 23(b)); and matters respecting oral argument (Rule 98); subpenas (Rule 56(a)); time modification (Rule 21(b)); transcript correction (Rule 90(b)), and petitions for rehearing, reargument, or reconsideration (Rule 101(a)).	§1100.16 Copies. The original and 6 copies of every pleading, document, or paper permitted or required to be filed under this part shall be furnished for use of the Commission except as a different number is otherwise specified in Appendix F hereto which lists the various pleadings, documents, or papers normally filed with the Commission.	Reduces required copies from "original and 8" to original and 6" except as appears otherwise in the Appendix. This is an important change which should give economic benefit to the public and reduce Commission files. Also note that provision for a new Appendix F will be of great help to the public by enabling discernment at a glance of the number of copies required for any pleading filed with the Commission.
(b) In bankruptcy proceedings. Except as otherwise provided in an application form or instruction (Rule 38) and respecting exhibits (Rule 84(c)), the original and 19 copies of every pleading, document, or paper filed in a proceeding arising under the Uniform Bankruptcy Act shall be furnished for the use of the Commission. [FR Doc. 75-2261 Filed 1-23-75; 8:45 am]	Deletion of Rule 16(b) is proposed.	Note that this Rule with its outlandishly high number of copies required is no longer needed and that only 6 (instead of 19) copies will be needed purusant to new Rule 16.

---

§1100.17 Attestation and verification. ~~(Rule 17)~~ (a) Practitioner's signature. If a party is represented by a practitioner each pleading, document, or paper of such party shall be signed in ink by one such practitioner whose address shall be stated. The signature of a practitioner constitutes a certificate by him that he has read the pleading, document, or paper; that he is authorized to file it; that to the best of his knowledge, information, and belief there is good ground for it; that it is not interposed for delay; and that with respect to a complaint he files it with the distinct knowledge and specific consent of complainant. A pleading document, or paper thus signed need not be verified or accompanied by affidavit except as otherwise provided respecting applications (Rule 38), modified procedure (Rule 50), and statements of claimed damages (Rule 100).	No change.	

PRESENT	PROPOSED RULE	COMMENT
(b) When no practitioner's signature. A pleading, document, or paper not signed by a practitioner must be signed in ink, the address of the signer shall be stated, and the facts alleged in a pleading must be verified under oath by the person in whose behalf it is filed. Signature and verification in such manner must be by at least one complainant if the pleading is a complaint. A pleading document, or paper filed on behalf of a corporation or other organization authorized to make complaint under the act, which is not signed by a practitioner must be signed in ink, and the facts alleged in a pleading must be verified by an executive officer of such corporation or organization.	No change.	
§1100.18 Affirmation in lieu of oath. ~~(Rule 18)~~ Whenever under this part an oath is required, an affirmation in judicial form will be accepted in lieu thereof.	No change.	
	§1100.19 Pleadings part of record. Recitals of material and relevant facts in a pleading filed prior to oral hearing in any proceeding, unless specifically denied in a counterpleading filed under these rules, shall constitute evidence and be a part of the record without special admission or incorporation therein, but if request is seasonably made, a competent witness must be made available for cross-examination on the evidence so included in the record. Pleadings may contain specific references to or quotation from the tariffs or schedules containing the several rates, fares, charges, schedules, classifications, regulations or practices alleged to be material. A filing under Rule 42, ~~Petition for suspension of tariffs or schedules~~ Protests against tariffs or schedules, shall not be considered a pleading for the purposes of this rule.	Changes last line to substitute "Protests against tariffs or schedules" for "Petitions for suspension of tariffs or schedules."

PRESENT	PROPOSED RULE	COMMENT
§1100.20 Amendments. ~~(Rule 20)~~ Leave to file amendments to any pleading will be allowed or denied as a matter of discretion.	No change.	
§1100.21 Time. ~~(Rule 21)~~ (a) Computation. In computing any period of time prescribed or allowed by this part, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is Saturday, Sunday or a legal holiday in the District of Columbia, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. A half holiday shall not be considered as a holiday.	No change.	The Committee considered allowing an additional three-day period when service is made by mail, in conformity with Rule 26(c) of the Federal Rules of Appellate Procedure. The majority felt, however, that the existing rule should be retained.
	(b) Modification. Except as to the maximum time periods provided by law or specified in this part respecting informal complaints seeking damages (Rule 25), any time period prescribed or permitted in this part may, upon request and for good and sufficient cause, be modified by the Commission in its discretion. Requests for extension or modifications of time must be served upon all parties of record at the same time and by the same method of communication as service is made on the Commission. A request for postponement of date for filing briefs or other documents must be filed not less than 10 days before the due date. ~~in question, except in extraordinary circumstances, and where such requests are filed less than 10 days before the due date the petitioning party shall state the reasons for his failure to make such request within the prescribed time~~. Only the ~~The~~ original ~~only~~ of the request and certificate of service need be filed with the Commission. If granted, the party making the request shall promptly so notify all parties to the proceeding and so certify to the Commission.	Changes are largely editorial, with one being designed to eliminate an apparent invitation for the late filing of requests for postponement.

PRESENT	PROPOSED RULE	COMMENT
§1100.22 Service; Pleadings and Papers to Show	§1100.22 Service of pleadings and papers. ~~to show.~~	Proposed new rule essentially recognizes upgrading of first-class mail service to airmail service.
	(a) Generally. Except as otherwise provided in paragraph (b) of this section, or as otherwise provided respecting applications (Rule 38(b)), formal complaints (Rule 34), and informal complaints (Rule 24(b)), every pleading, document, or paper must, when filed, or tendered to the Commission for filing, include a certificate showing simultaneous service thereof upon all parties to the proceeding. Such service shall be made by delivery in person, or by first-class ~~or air~~ mail, or by express or equivalent parcel delivery service, properly addressed with charges prepaid, one copy to each party. Service ~~shall be effected~~ upon the parties ~~to the proceeding~~ shall be by the same means of communication and class of service ~~that is~~ employed in making delivery to the Commission: Provided, however, That when delivery is made to the Commission in person, and it is not feasible to serve the other parties in person, service shall be made ~~upon parties 1000 or more miles from the party effecting service by air mail and upon parties less than 1000 miles distant~~ by first-class or ~~air~~ express mail. When any party is represented by a practitioner, service upon such practitioner will be deemed service upon the party.	
(b) Exceptions as to letter. Copies of letters to the Commission relating to oral argument (Rule 98) and subpenas (Rule 56(a)) need not be served upon other parties to the proceeding.	No change.	

PRESENT	PROPOSED RULE	COMMENT
§1100.23 Replies	§1100.23 Replies. (a) Time for filing. Except that a reply to a reply is not permitted, and except as otherwise provided in paragraph (b) of this section and respecting answers (Rule 35(c)) and modified procedure (Rule 51), ~~and briefs (Rules 92 and 93)~~, an adverse party may file and serve a reply to any pleading permitted under the rules in this part within 20 days after filing at the Commission. (b) Replies to ~~petitions under Rule 101 and exceptions~~ administrative appeals. A reply to ~~a petition~~ an administrative appeal filed under Rule 101 seeking a change in a decision, order, or requirement may be filed and served within 20 days after the final date for filing such ~~petitions~~ administrative appeals. ~~, and a reply to exceptions filed under Rule 96 may be filed and served within 20 days after the final date for filing such exceptions~~. (c) Copies. The original of the reply should be accompanied by the same number of copies as required respecting the pleading to which the reply is responsive.	Proposed new Rule 23 reflects editorial changes only.

PRESENT RULE	PROPOSED RULE	COMMENT
COMMENCEMENT OF PROCEEDINGS		
§ 1100.24 Informal complaints not seeking damages. (Rule 24)		
(a) Form and content. Informal complaint may be by letter or other writing, and will be serially numbered and filed as of the date of its receipt. No form of informal complaint is suggested, but in substance the letter or other writing (original and one copy shall be filed) must contain the essential elements of a formal complaint as specified in Rules 28 and 30. It may embrace supporting papers.	No change.	
(b) Correspondence handling. If the informal complaint appears to be susceptible of informal adjustment, a copy or a statement of the substance thereof will be transmitted by the Commission to each person complained of in an endeavor to have it satisfied by correspondence and thus obviate the filing of a formal complaint.		
(c) Discontinuance without prejudice. A proceeding thus instituted on the informal docket is without prejudice to complainant's right to file and prosecute a formal complaint, in which event the proceeding on the informal docket will be discontinued.		
§ 1100.25 Informal complaints seeking damages. (Rule 25)		
(a) Actual filing required. Notification to the Commission that an informal complaint may or will be filed later seeking damages is not a filing within the meaning of the statute except as provided in paragraph (e) of this section.	No change.	
(b) Content. An informal complaint seeking damages, when permitted under the act, must be filed within the statutory period, and should contain such data as will serve to identify with reasonable definiteness the shipments or transportation services in respect of which damages are sought. Such complaint should state: (1) that complainant makes claim for damages, (2) the name of each individual seeking damages, (3) the names of defendants against which claim is made, (4) the commodities, the rate applied, the		

date when the charges were paid, by whom paid, and by whom borne, (5) the period of time within which or the specific dates upon which the shipments were made, and the dates when they were delivered or tendered for delivery, (6) the points of origin and destination, either specifically or, where they are numerous, by definite indication of a defined territorial or rate group of the points of origin and destination and, if known, the routes of movement, and (7) the nature and amount of the injury sustained by each claimant.

(c) Statement of prior claim. If a complaint filed under paragraph (b) or (e) of this section contains a claim on any shipment which has been the subject of a previous informal or formal complaint to the Commission, reference to such complaint must be given.

(d) Copies. The original of an informal complaint seeking damages must be accompanied by copies in sufficient number to enable the Commission to transmit one to each defendant named.

(e) Special-docket proceedings. Where the act provides for an award of damages for violation thereof and a carrier is willing to pay them, or to waive collection of undercharges, petition for appropriate authority should be filed by the carrier on the special docket in the form prescribed by the Commission. If the petition is granted an appropriate order will be entered. Such petition, when not filed in connection with an informal complaint pending before the Commission, must be filed within the statutory period and will be deemed the equivalent of an informal complaint and an answer thereto admitting the matters stated in the petition. If a carrier is unable to file such petition within the statutory period and the claim is not already protected from the operation of the statute by informal complaint, a statement setting forth the facts may be filed by the carrier within the statutory period. Such statement will be deemed the equivalent of an informal complaint filed on behalf of the shipper or consignee and sufficient to stay the operation of the statute.

(f) Six months' rule. If an informal complaint seeking damages cannot be disposed of informally, or is denied, or is withdrawn by complainant from further consideration, the parties affected will be so notified in writing by the Commission. The matter in such complaint will not be reconsidered unless, within six months after

PRESENT RULE	PROPOSED RULE	COMMENT
the date such notice is mailed, either a formal complaint as to such matter is filed, or it is informally resubmitted on an additional fact basis. Such filing or resubmission will be deemed to relate back to the date of the original filing, but reference to that date and the Commission's file number must be made in such resubmission or in the formal complaint filed. If the matter is not so resubmitted, or included in a formal complaint, as provided in this section, complainant will be deemed to have abandoned the complaint and no complaint seeking damages based on the same cause of action will thereafter be placed on file or considered unless itself filed within the statutory period.		

PRESENT RULE	PROPOSED RULE	COMMENT
§1100.26 Formal complaints; copies (a) Generally. The original of each formal complaint, amended or supplemental formal complaint, or cross complaint, must be accompanied by copies in sufficient number to enable the Commission to serve one upon each defendant, including each receiver or trustee, and retain six copies in addition to the original.	No change. (b) Provision for State authorities. If complaint is made under Part II of the act, or respecting State-made rates (Rule 30(b)), sufficient copies in addition to those required under paragrpah (a) of this section shall be furnished to permit the Commission to supply one to the appropriate authority in each of the States included in the scope of the complaint.	For clarity, since several rules contain the words "of the Act" which are added here.
§ 1100.27 Formal complaints; joinder. (a) Causes of action. Two or more grounds of complaint concerning the same principle, subject, or state of facts may be included in one complaint, but should separately be stated and numbered. (b) Complainants. Two or more complainants may join in one complaint if their respective causes of action are against the same defendant or defendants and concern substantially the same alleged violation of the act and a like state of facts. (c) Defendants. If complaint is made with respect to through transportation by continuous carriage or shipment, all persons subject to the act participating therein, and against which an order is sought, should be made defendants. If complaint is made of a classification or any provision thereof, ordinarily it will suffice to make defendants the persons operating one or more through routes between representative points of origin and destination. (d) Correct designation of parties. The unabbreviated names of all parties complainant and defendant must be stated correctly.	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
§ 1100.28 Formal complaints; allegations generally. A formal complaint should be so drawn as fully and completely to advise the parties defendant and the Commission in what respects the provisions of the act have been or are violated or will be violated, and should set forth briefly and in plain language the facts claimed to constitute such violation. If two or more sections or subsections of the act or requirements established pursuant thereto are alleged to be violated, the facts claimed to constitute violation of one section, subsection, or requirement should be stated separately from those claimed to constitute a violation of another section, subsection, or requirement whenever that can be done by reference or otherwise without undue repetition.	No change.	
§ 1100.29 Formal complaints; when damages sought. A formal complaint that includes a request for an award of damages should contain the information specified for an informal complaint seeking damages (Rule 25, paragraphs (b) and (c)).	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
	§ 1100.30 Formal complaints; discrimination, preference, and prejudice.	
	(a) Generally. A complaint that alleges the act is violated because of an undue or unreasonable preference or advantage, undue or unreasonable prejudice or disadvantage, or unjust discrimination should specify clearly the particular elements stated in the act as constituting such violation, and the facts which complainant relies upon to establish it. Such elements may include a special rate, rebate, drawback, or other device; and a particular person, company, firm, association, port, port district, gateway, transit point, locality, region, district, territory, or description of traffic.	The footnote that is in the present rule is eliminated and incorporated as the second sentence.
(b) State-made rates. A complaint that brings in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, upon the ground that it violates provisions of the act which prohibit undue or unreasonable advantage preference, or prejudice as between persons or localities in intrastate commerce and persons or localities in interstate or foreign commerce, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce, should bring in issue the justness and reasonableness of the rate, fare, charge, classification, regulation, or practice applicable to the interstate or foreign commerce involved in such complaint. Such complaint should also bring in issue the question as to what should be the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice that should be established so as to remove any such advantage, preference, prejudice, or such unjust discrimination.	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
§1100.31 Formal complaints; other specifications.	No change.	
(a) Tariff or schedule references. The several rates, fares, charges, schedules, classifications, regulations, or practices on which complaint is made should be set out by specific reference to the tariffs or schedules in which they appear, whenever that is practicable.		
	(b) States in which transportation occurs. A formal complaint under Part II of the act should specifically name the States in and through which the transportation which gives rise to the complaint is performed.	See comment for Rule 26(b)
(c) Hearing place. A formal complaint should be accompanied by a statement of the place at which hearing is desired.	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
§ 1100.32 Formal complaints; prayers for relief. (a) Generally. A formal complaint in which relief for the future is sought should contain a detailed statement of the relief desired. Relief in the alternative or of several different types may be demanded, but the issues raised in the formal complaint should not be broader than those to which complainant's evidence is to be directed at the hearing. (b) Specific prayer for damages. Except under unusual circumstances, and for good cause shown, damages will not be awarded upon a complaint unless specifically prayed for, or upon a new complaint by or for the same complainant which is based upon any finding in the original proceeding.	No change.	
§ 1100.33 Amended and supplemental formal complaints. An amended or supplemental complaint may be tendered for filing by a complainant against a defendant or defendants named in the original complaint, stating a cause of action alleged to have accrued within the statutory period immediately preceding the date of such tender, in favor of complainant and against the defendant or defendants.	No change	
	§ 1100.34 Service of formal and cross complaints. The Commission will serve formal complaints. It will also serve supplemental, amended, and cross complaints and specific amendments to all complaints when it has granted leave to file such pleadings. Such service will be made personally upon a carrier or freight forwarder or upon an agent thereof designated for purposes of service, or by mail addressed to the carrier or freight forwarder or to the agent thereof at the address filed. If no agent has been designated, service may be made by posting	Editorial changes only.

PRESENT RULE	PROPOSED RULE	COMMENT
	in the office of the Secretary of the Commission, and if the defendant be a carrier subject to Part II of the act, by also posting in the office of the secretary or clerk of the motor carrier regulatory board of the State wherein the motor carrier maintains headquarters. If the complaint involves only the lawfulness of rates, fares, charges, classifications, or practices, service in the manner indicated in the third sentence of this section may be made upon an attorney in fact of a carrier or freight forwarder who has filed a tariff or schedule on behalf of such carrier or freight forwarder, but such service will not be made upon a carrier subject to Part I of the act unless such carrier has failed to designate an agent for service in the city of Washington.	
§ 1100.35 Answers and cross complaints to formal complaints. (a) Generally. An answer may simultaneously be responsive to a formal complaint and to any amendment or supplement thereof. It must be drawn so as fully and completely to advise the parties and the Commission of the nature of the defense, including, if a departure from the requirements of section 4(1) of the act is involved, the number of the particular application or order, if any, which protects such departure; and must admit or deny specifically and in detail each material allegation of the pleading answered. An answer may embrace a detailed statement of any counter-proposal which a defendant may desire to submit. Unless the issue is such that separate answers are required, answer for all defendants may be filed on their behalf by one defendant in one document, in which event the answer must show clearly the names of all defendants joining therein, and their concurrence. (b) Cross complaints. A cross complaint, alleging that other persons, parties to the proceeding, have violated the act or requirements established pursuant thereto, or seeking relief against them under the act, may be tendered for filing by a defendant with its answer.	No change	

PRESENT RULE	PROPOSED RULE	COMMENT
(c) Time for filing; copies. Unless otherwise directed by the Commission, an answer to a complaint should be filed within 20 days after the day on which the complaint to which answer is filed was served. The original and six copies of an answer shall be filed with the Commission. (d) When issue joined. If any defendant answers or fails to file and serve answer within the period specified in paragraph (c), issue thereby is joined as to such defendant.		
§ 1100.36 Motions to dismiss or to make more definite and certain. (a) As to complaint. Defendant may file with his answer, or with his statement under modified procedure, a motion that the allegations in the complaint be made more definite and certain, such motion to point out the defects complained of and details desired. Defendant may also file with his answer a motion to dismiss a complaint because of lack of legal sufficiency appearing on face of such complaint. (b) As to answer. No replication to the answer shall be filed, but any party may file, within 10 days after the filing of an answer, or, in the case of modified procedure, complainant may file with his statement in reply, a motion that the answer, or defendant's statement, as the case may be, be made more definite and certain, such motion to point out the defects complained of and the details desired.	No change	
§ 1100.37 Satisfaction of complaint. If a defendant satisfies a formal complaint, either before or after answering, a statement to that effect signed by the opposing parties must be filed (original only need be filed), setting forth when and how the complaint has been satisfied. This action should be taken as expeditiously as possible.	No change	

PRESENT RULE	PROPOSED RULE	COMMENT
	§ 1100.38 Applications ~~(a)~~-Forms and instructions. An application filed with the Commission shall be prepared in accord with and contain the information called for in the form of application, if any, prescribed by the Commission, or any instructions which may have been issued by the Commission with respect to the filing and service of an application.	The changes in this section are editorial in nature. Subsection(b) is deleted as unnecessary because all instructions are included in the first part of the rule.
(b) Copies; service. Copies of an application shall be furnished in such number, and be filed and served in the manner and upon the persons specified in the form or instruction.	Deletion of Rule 38(b) is proposed.	
§ 1100.39 Applications; notice Appropriate notice of the filing of an application will be given by the applicant or by the Commission to the States, to State authorities, or to other persons as may be required by the form or instruction or by the act.	No change	
§ 1100.40 Protests against applications (a) Content. A protest against the granting of any application shall set forth specifically the grounds upon which it is made and contain a concise statement of the interest of protestant in the proceeding.		
	(b) When filed. Any protest shall be filed with the Commission promptly after the application is filed. If the proceeding be one respecting which the Commission has issued a notice advising the public of the filing of the application, the protest shall be filed within the time specified in such notice. ~~Failure to file a protest shall not prejudice subsequent participation in the proceeding~~.	The last sentence of Rule 40(b) is deleted, in order to encourage prospective parties to make their interest known at an early date. If the protest time is missed an appropriately supported petition for leave to intervene may be filed.
(c) Copies; service. A protest filed under this section shall be served upon applicant and, unless otherwise specified		

PRESENT RULE	PROPOSED RULE	COMMENT
in the public notice, the original and six copies of the protest shall be filed with the Commission. (d) When rule disregarded. An application may be set for hearing without awaiting the filing of a protest or of a reply thereto, and also may be disposed of without regard to the prior paragraphs of this section unless the act provides that the particular application may be granted only upon hearing.		
§1100.41 Valuation proceedings; protests. A protest of a tentative valuation shall contain a concise statement of the essential elements of protest with particular reference to the matters in the tentative valuation concerning which protest is made and shall include a statement of the changes therein desired by protestant. When practicable, each object of protest should be set up as a separate item in a separately numbered paragraph. Each item of protest against land values or areas must state the valuation section and zone on the Commission's maps in which the land is located. When protestant claims that property owned or used has been omitted, a full description of such property and its location must be included in the protest.	Change in title only: Protests in valuation proceedings.	For clarity, since the rule falls in context with rules on various pleadings, e.g. following rule 40 on protests in general.

PRESENT RULE	PROPOSED RULE	COMMENT
§ Petitions for suspension of tariffs or schedules. (Rule 42)	§ 1100.42 ~~Petitions~~ Protests against ~~for suspension of~~ tariffs or schedules.	Title change to be consistent with Rules 40 and 41 which deal with protests.
	(a) Content. The protested tariff or schedule sought to be suspended should be identified by making reference to the name of the publishing carrier, freight forwarder, or agent, to the Interstate Commerce Commission number, and to the specific items or particular provisions protested. Reference should also be made to the tariff or schedule, and the specific provisions thereof, proposed to be superseded. The protest should state the grounds in support thereof, indicate in what respect the protested tariff or schedule is considered to be unlawful, and state what protestant offers by way of substitution. Such protests will be considered as addressed to the discretion of the Commission ~~and no protest shall include a prayer that it also be considered a formal complaint~~. Should a protestant desire to proceed further against a tariff or schedule which is not suspended, or which has been suspended and the suspension vacated, a separate later formal complaint or petition should be filed.	Subsection 42(a) is modified to conform to section 202(e) of the Railroad Revitalization and Regulatory Reform Act of 1976, which requires that protests to rail rate changes include a complaint.
(b) When filed. Protests against, and requests for suspension of, tariffs or schedules filed under the act will not be considered unless made in writing and filed with the Commission at Washington, D.C. Such protests and requests for suspension shall reach the Commission at least 12 days (except as provided in paragraph (c) of this section) before the effective dates of the tariffs, schedules, or parts thereof to which they refer, unless the protested publications were filed on less than 30-days notice under the authority of this Commission, in which event the protests should be filed not less than 5 days before such effective dates. In an emergency, telegraphic protests will be acceptable if received within the time limits herein specified, provided they also fully comply with paragraph (a) of this section and copies thereof are immediately telegraphed by protestants to the respondent carriers or their publishing agents. Six copies of such telegrams should immediately be mailed by the protestants to the Commission at Washington.	No change.	
	(c) Motor carrier tariff bureau filings.	To add a caption for the matter covered by paragraph (c).
(c) When motor common carrier tariff bureaus file schedules of proposed general increases in rates and charges, or of a proposed rate restructuring, which	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
proposals are subject to the special procedures prescribed in Ex Parte No. MC-82, "New Procedures in Motor Carrier Rev. Proc.," 339 I.C.C. 324, and set forth in Part 1104 of this subchapter, protests thereto shall reach the Commission at least 20 days before the published effective dates of those schedules. To assure consideration, replies to protests should reach the Commission not later than the seventh workday prior to the effective date of the protested schedules.		
	(d) Copies; service. The original and ~~seven~~ six copies of each protest, except as provided in paragraph (e), or of each reply filed under this section, must be filed with the Commission, and one copy of the protest simultaneously must be served upon the publishing carrier, freight forwarder, or agent, and upon other persons known by protestants to be interested.	Change in first line of 42(d) to clarify that an original and six copies are required, not seven copies.
	(e) Passenger fare increases. The original only of each protest or request for investigation and suspension of increased passenger fares need be filed with the Commission.	New paragraph to reflect the Commission's order in Ex Parte No. 286 (349 I.C.C. 741, 794).
	~~(e)~~ (f) Reply to protest. A reply to a protest filed under this section ~~should be filed and served promptly.~~ must reach the Commission not later than the fourth working day prior to the scheduled effective date of the protested schedules unless otherwise provided.	Provisions revised to align the rule with our actual requirements.
(g) Special requirements for protests against revisions to rail rates and charges. Protests against, and requests for suspension of, tariffs or schedules filed by rail carriers or their publishing agents that result in revisions of rates or charges shall also include a verified complaint containing specific facts showing: (1) that without suspension the protested tariffs or schedules will cause substantial injury to the complainant or the party represented by the complainant, and (2) that it is likely that complainant or the party represented by the complainant will prevail on the merits pursuant to any applicable provisions of the act.	Change only in number, from present Rule 42(f) to Rule 42(g).	To implement provisions of Public Law 94-210 regarding verified complaints.

PRESENT RULE	PROPOSED RULE	COMMENT
§1100.43 Service of investigation order; default where failure to comply.		
An order instituting an investigation will be served by the Commission upon respondents. If within the time period stated in that order a respondent fails to comply with any requirement specified therein, respondent shall be deemed in default and to have waived any further hearing. Thereafter the investigation may be decided without further proceedings.	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
PETITIONS SEEKING INSTITUTION OF RULEMAKING PROCEEDINGS § 1100.44 Petitions seeking institutions of rulemaking proceedings. Any person may file a petition requesting the Commission to institute a proceeding for the purpose of issuing statements, rules, or regulations of general applicability and significance designed to implement or interpret law, or to formulate general policy for future effect. No reply to such a petition may be filed. Whether a proceeding shall be instituted as requested is within the discretion of the Commission and the ruling on the petition will be final.	Add at end of present rule: In the event a rulemaking proceeding is instituted by the Commission, the procedure to be employed for the taking of evidence or the receipt of views and comments will be designated by Commission order.	Rulemaking proceedings are instituted either (a) upon the Commission's own motion or (b) at the request of a member of the public pursuant to Rule 44. Rule 44 generally provides that any person may file a petition requesting the Commission to institute a proceeding for the purpose of issuing statements, rules or regulations of general applicability and significance designed to implement or interpret law or to formulate policy for future effect. No reply is permitted to this type of pleading and the Commission's decision thereon is final, and is not subject to review. There are no special rules of Commission practice concerning rulemaking, and procedures may vary from case to case; but the Commission fully satisfies the procedural requirements of the Administrative Procedure Act. Generally, a rulemaking proceeding is instituted by formal order of the entire Commission (formulating, amending, or repealing a rule), together with an accompanying notice of the proposal. Such notice contains a specific description of the proposed rule or the issues involved, sets forth the reasons therefor, makes reference to the legal authority under which the rule is proposed, and makes provision for interested persons to make representations, views and comments, for or against the action proposed or in respect to the involved issues, within a prescribed period. Notice of the institution of the rulemaking is given to the public by publication of the order and accompanying notice in the Federal Register. The Commission's procedures do not normally contemplate oral hearings at the initial stage. Provision for the taking of evidence and the presentation of views may be made by subsequent order authorizing or directing, among others, replies to representations, oral hearing, or oral argument. Rulemaking may also be accompanied by investigation proceedings, and the Bureau of Enforcement and all or specified regulated carriers may be made parties. The procedures now used appear adequate, and afford the Commission a flexibility in dealing with various problems and issues

PRESENT RULE	PROPOSED RULE	COMMENT
		according to their importance. We believe this flexibility should be preserved. Accordingly, it is recommended that no code be formulated at this time.
§ 1100.45 Modified procedure, how initiated. (a) Commission's initiative or by request. Modified procedure (see Rule 5 (j)) will be ordered in a proceeding upon the Commission's initiative or upon its approval of a request filed by any party that the modified procedure shall be observed.	(b) Order directing modified procedure. An order directing modified procedure will list the names and addresses of the persons who at that time are parties to the proceeding, and direct that they comply with the modified procedure rules. As used in Rules 49, 51, and 53 the term "complainant" shall comprehend ~~the term "respondent" or "applicant", and the term "defendant" shall include the term "protestant," according as procedure under Rules 45 to 54, inclusive, may be ordered in a particular proceeding,~~ the party having the initial duty to establish the truth of the claim or to justify the relief or authorization sought, and the term "defendant" shall comprehend the party controverting the truth of the claim or opposing the relief or authorization sought.	(b) There appears to be some problem in the use of the term "complainant" to comprehend "respondent" or "applicant", and the term "defendant" to include "protestant". This is of special concern, in rate cases, particularly in the application of Rules 49(a) and 51. Those rules, in effect, reflect the burden of going forward in a case. A carrier proposing a changed rate is the "proponent" or "respondent" and has the burden of proof. However, where a carrier proposes an initial rate, the "protestant" has the burden of proof. (Rule 74 properly reflects these burdens). Rule 45(b) is changed accordingly.
§ 1100.46 Modified procedure; effect of order. (a) Relief from answer rule. Issuance of an order directing modified procedure shall relieve defendant from the obligation of answering as provided in Rule 35. (b) Default where failure to comply. If within any time period provided in the modified procedure rules a party fails to file a pleading required by those rules, or otherwise fails to comply therewith, such party shall be deemed to be in default and to have waived any further hearing. Thereafter the proceeding may be disposed of without further notice to the defaulting party, and without other formal proceedings as to such party.	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
§ 1100.47 Modified procedure; intervention. Persons permitted to intervene under modified procedure shall file and serve pleadings in conformity with the provisions relating to the parties in whose behalf they intervene.	No Change	
§ 1100.48 Modified procedure; joint pleadings. Parties having common interests shall arrange for joint preparation of pleadings filed under modified procedure.	No change	
§ 1100.49	Modified procedure; content of pleadings. (a) Generally. A statement filed under the modified procedure after that procedure has been directed shall state separately the facts and arguments and include the exhibits upon which the party relies. If, pursuant to Rule 46(a), no answer has been filed, defendant's statement must admit or deny specifically and in detail each material allegation of the complaint. In addition defendant's statement in reply shall: specify those statements of fact and arguments of the opposite party to which exception is taken, and include a statement of the facts and arguments in support of such exception. Complainant's statement of reply shall be confined to rebuttal of the defendant's statement.	For clarity. Rule 46 has two paragraphs, each of which involves a type of "waiver". The provision is to make it clear that Rule 49(a) is directed to paragraph (a) of Rule 46 only.
	(b) Exhibit identification. ~~In addition to being in compliance with Rule 8 (a) and (b),~~ An exhibit which is part of any pleading filed under modified procedure shall serially be numbered and bear the notation, properly filled out, in the upper right-hand corner: "Complainant (Defendant)----------, Exhibit No.----------Witness----------."	The first part of paragraph (b) is deleted as unnecessary and redundant. The requirements of present Rules 8(a) and (b), and proposed Rules 8 and 9, apply to all submissions.
(c) Damages. If an award of damages is sought the paid freight bills or properly certified copies thereof should accompany the original of complainant's statement when there are not more than 10 shipments, but otherwise the documents should be retained.	(c) No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
§ 1100.50 Modified procedure; verification. The facts asserted in any pleading filed under modified procedure must be sworn to by persons having knowledge thereof, which latter fact must affirmatively appear in the affidavit. Except under unusual circumstances, such persons should be those who would appear as witnesses orally to substantiate the facts asserted should hearing become necessary. The original of any pleading filed under modified procedure must show the signature, capacity, and impression seal, if any, of the person administering the oath, and the date thereof.	No change.	
	§ 1100.51 Modified procedure; when pleadings filed and served. Within 20 days from the date of service of an order requiring modified procedure, complainant shall serve upon the other parties a statement of all the evidence upon which it relies. Within 30 days thereafter defendant shall serve its statement. Within 20 days thereafter complainant shall serve its statement in reply. No further reply may be made by any party except by permission of the Commission. ~~[38 FR 31008, Nov. 9, 1973]~~	Rule 51 is clarified to reflect current procedure in which the time begins to run from the service date of an order, rather than from the date of the order. The Federal Register citation is unnecessary and is therefore deleted.
§ 1100.52	Modified procedure; copies of pleadings. Except as otherwise provided in Rule 247, the original and six copies of any statement made pursuant to Rule 51 shall be filed with the Commission. Subsequent pleadings are subject to Rule 54.	Certain provisions of Rule 247, e.g. Rules 247(d)(3) and (e)(3) require only one copy of certain documents involved.

PRESENT RULE	PROPOSED RULE	COMMENT
§ 1100.53 Modified procedure; hearings. (a) Request for cross examination or other hearing. If cross examination of any witness is desired the name of the witness and the subject matter of the desired cross examination shall, together with any other request for oral hearing, including the basis therefor, be stated at the end of defendant's statement or complainant's statement in reply as the case may be. Unless material facts are in dispute, oral hearing will not be held for the sole purpose of cross examination. (b) Hearing issues limited. The order setting the proceeding for oral hearing, if hearing is deemed necessary, will specify the matters upon which the parties are not in agreement and respecting which oral evidence is to be introduced.	No change.	
§ 1100.54 Modified procedure; subsequent procedure. Procedure subsequent to that provided in the modified procedure rules shall be the same as that in proceedings not handled under modified procedure.	No change	

PRESENT RULE	PROPOSED RULE	COMMENT
Notice of Hearing; Subpenas; Discovery; Depositions	§1100.55 Notice of hearing.	
	(a) Assignment; service and posting of notice; electronically recorded transcript. In those proceedings in which a an oral hearing is to be held, the Commission will, by order or otherwise, assign a time and place for hearing. Such action will include notice when the transcript is to be made by electronic recording. Notice of such hearing will be posted in the Office of the Secretary of the Commission and will be served upon the parties and such other persons as may be entitled to receive notice under the act.	It is noted that consideration has been accorded to the matter of striking from Rules 55(a) and (b) all references to the electronic recording of hearings because of unsatisfactory experience in the one or two instances where it has been used heretofore. However, the Committee decided that this material should be left as is on the basis that, at some future time, an improved and workable method of electronically recording hearings may become available. Paragraph (a) has been clarified to show that it applies only to oral hearing.
(b) Requests for changes in assignment. Requests for postponements of date of hearing will be granted only for good and sufficient cause. After notice of the use of electronic recording, any request for stenographic transcript by the Commission's official reporter in lieu thereof must be made in writing to the Secretary of the Commission not less than 20 days prior to the date of the hearing. Such request will contain a statement that the requestor will provide the Commission with the original and one copy of such stenographic transcript at his own expense in accordance with the schedule of charges in the official reporting contract. In the event a request is made for a written transcript of an electronic recorded proceeding at a later date, the requestor will furnish at no expense to the Commission, an original and one copy of such written transcript for the Commission's use, in accordance with the schedule of charges in the official reporting contract.	No change.	
(c) Service of notice of assignment change. The Commission may confine the service of notice of a change of time or place assigned for hearing (other than by publication or posting), or of any adjourned, further, or supplemental hearing to those only who have indicated to the Commission a desire to be notified, at their own expense if telegraphic advice becomes necessary, of any such change.	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
§1100.56 Subpenas.		
(a) Requests; particularity. Unless directed by the Commission upon its own motion, a subpena to compel a witness to produce documentary evidence will be issued only upon petition showing general relevance and reasonable scope of the evidence sought, which petition must also specify with particularity the books, papers, or documents desired, and the facts expected to be proved thereby; Provided, however, That for good cause shown, in lieu of a petition, the request for such a subpena may be made orally upon the record to the officer presiding at the hearing. A request for issuance of a subpena other than to compel the production of documentary evidence may be made either by letter (original only need be filed with the Commission) or orally upon the record to the officer presiding at the hearing. A showing of general relevance and reasonable scope of the evidence sought may be required and the subpena will be issued or denied accordingly.	No change.	
(b) Issuance. A subpena may be issued by the Commission or by the officer presiding at the hearing, but only under the signature of the Secretary or of a member of the Commission.	No change.	
(c) Service. The original subpena shall be exhibited to the person served, shall be read to him if he is unable to read, and a copy thereof shall be delivered to him by the officer or person making service.	No change.	
(d) Return. If service of subpena is made by a United States marshal or his deputy, such service shall be evidenced by his return thereon. If made by any other person, such person shall make affidavit thereof, stating the date, time, and manner of service; and return such affidavit on, or with, the original subpena in accordance with the form thereon. In case of failure to make service the reasons for the failure shall be stated on the original subpena. The written acceptance of service of a subpena by the person	No change.	

named therein shall be sufficient without other evidence of return. The original subpena, bearing or accompanied by the required return, affidavit, statement, or acceptance of service, shall be returned forthwith to the Secretary of the Commission, or, if so directed on the subpena, to the officer presiding at the hearing at which the person subpenaed is required to appear.

(e) Witness fees. A witness who is summoned and responds thereto is entitled to the same fee as is paid for like service in the courts of the United States. Such fee is to be paid by the party at whose instance the testimony is taken at the time the subpena is served, except that when the subpena is issued on behalf of the United States or an officer or agency thereof, fees and mileage need not be tendered at the time of service.

No change.

---

§1100.57 Discovery.

(a) In general. Unless otherwise ordered in accordance with these rules, or as required by the Interstate Commerce Act or other applicable statutes, parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending proceeding (other than those informal proceedings specified in rules 200 and 225), including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

§1100.57 Discovery.

(a) In general. Unless otherwise available under the Interstate Commerce Act or other applicable statutes, parties may obtain discovery pursuant to these rules (Rules 57-67, inclusive) regarding any matter, not privileged, which is relevant to the subject matter involved in the pending proceeding (other than those informal proceedings specified in Rules 24, 25, 200 and 225, and proceedings that need not be determined on a record after hearing); provided that, discovery procedures may be used only when the Commission, upon its own motion, or upon a verified petition filed by a party, and upon good cause shown, shall have entered an order approving such use. Such petitions must be filed in sufficient time to allow for the filing of replies thereto and for consideration by the Commission without requiring the postponement of any established date for hearing or for submission of initial statements under the modified procedure. It is not ground for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Although the Commission's discovery rules have been in existence in their present form for a relatively short period of time, experience thereunder clearly demonstrates a need for a "tightening up" of these rules. Of the four principal methods of discovery encompassed by the present Rules of Practice, only two (viz, interrogatories and requests for admissions) may be used without first having obtained approval by the Commission pursuant to the filing of an appropriate petition and a showing of good cause therefor. It is now quite clear that the unfettered right to serve interrogatories has been abused, with the result that parties have been harassed and unduly burdened thereby. Further, it is most questionable whether any real benefit has stemmed from the free use of interrogatories, particularly in those application proceedings covered by Rules 240 and 247. Although the unrestricted right to file requests for admissions does not appear to have been abused as yet, it would seem to be only a matter of time before this right is used in the same manner as that respecting interrogatories. Thus, to terminate such abuse of the discovery rules, as well as to prevent their use solely for purposes of delay, the Committee proposes that

PRESENT RULE	PROPOSED RULE	COMMENT
		all discovery procedures be available only upon the filing of a petition and a showing of good cause therefor. The proposed rule also includes a provision respecting the timely filing of petitions for discovery in order to preclude any disruption of hearing or modified procedure schedules.
	(b) Definition. The term "Commission," as used in these discovery rules (Rules 57-67, inclusive), means the Interstate Commerce Commission, division, Commissioner or presiding officer.	Proposed Rule 57(b) is a new rule designed to (1) clarify the fact that discovery matters may be disposed of by a division, individual Commissioner or presiding officer, as well as by the Commission itself, and (2) eliminate a seeming inconsistency between the discovery rules and Rule 70 (which specifically provides that hearing officers may dispose of discovery requests). Additionally, the new Rule 57(b) will operate to assure that the Commission is not overburdened by numerous procedural matters.
	~~(b)~~ (c) Protective conditions. Upon motion by any party, by the person from whom discovery is sought, or by any person with a reasonable interest in the data, information, or material sought to be discovered, and for good cause shown, any order which justice requires may be entered to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, or to prevent the raising of issues untimely or inappropriate to the proceeding. Relief through a protective order may include one or more of the following: (1) That the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time and place; (3) that the discovery may be had only upon such terms and conditions as the Commission may impose to insure financial responsibility in indemnifying the party or person against whom discovery is sought to cover the reasonable expenses incurred; (4) that the discovery may be had only by a method other than that selected by the party seeking discovery; (5) that certain matters not be inquired into, or that the scope of discovery be limited to certain matters; (6) that discovery be conducted with no one present except persons designated in the protective order; (7) that a deposition after being sealed be opened only by order of the Commission; (8) that a trade secret or other confidential research	Proposed Rule 57(c) consists in the present Rule 57(b) with the addition of a needed provision at the end designed to preclude premature requests for protective orders.

PRESENT RULE	PROPOSED RULE	COMMENT
	development, or commercial information not be disclosed or be disclosed only in a designated way; and (9) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened only upon direction or order of the Commission. If the motion for a protective order is denied in whole or in part, the Commission may, on such terms and conditions as it deems just, enter an order requiring any party or person to provide or permit discovery. A protective order under this paragraph may only be sought after, or in conjunction with, an effort by any party to obtain relief under Rules 60(d), 62(a) or 67.	
	~~(c)~~ (d) Sequence and timing of discovery. Unless the Commission upon motion, for the convenience of parties and witnesses and in the interest of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.	Proposed Rule 57(d) is exactly the same as the present Rule 57(c). The only change consists in the renumbering.
	~~(d)~~ (e) Stipulations regarding discovery. Unless otherwise ordered, ~~the parties may by~~ a written stipulation entered into by all the parties and filed with the Commission may (1) provide that depositions be taken before any person, at any time or place, upon sufficient notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery.	Proposed Rule 57(e), although substantially the same as the present Rule 57(d), reflects language changes designed to assure that the stipulations are entered into by all the parties.
§1100.58 Deposition.	§1100.58 Deposition	
(a) Purpose. The Commission will either upon its own initiative, or upon receipt of a verified petition filed by a party or one who reasonably expects to be a party to a proceeding, and upon good cause shown, issue an order to take the testimony of any person, including a party, by deposition upon oral examination (1) for use as evidence, (2) for discovery, or (3) for any person who desires to perpetuate his testimony or that of another person regarding any matter that may be cognizable in any proceeding before the Commission.	(a) Purpose. Subject to the proviso in Rule 57(a), the testimony of any person, including a party, may be taken by deposition upon oral examination.	It is proposed that Rule 58(a) be greatly simplified and shortened for the reasons (1) that the first several lines of the present Rule are no longer needed in light of the proposed new proviso in Rule 57(a), and (2) that the last several lines of the present Rule constitute surplusage.

PRESENT RULE	PROPOSED RULE	COMMENT
	(b) Petitions. ~~-A-~~The petition filed under Rule 57(a) requesting an order to take a deposition and perpetuate testimony or to produce documents and materials (1) shall be filed with due regard to the time periods specified in ~~§1100.59(c)~~ Rule 59(c); (2) shall set forth the facts it desires to establish and the substance it expects to elicit; (3) shall be served upon all parties to the proceeding and upon the person sought to be deposed and/or the custodian of the documents or materials sought to be produced; (4) shall set forth the name and address of the witness, the place where, the time when, the name and office of the officer before whom, and the cause or reason why such deposition should be taken; and (5) shall specify with particularity the documents and materials which the deponent is requested to produce.	The change in the beginning of this Rule is designed to direct attention to the fact that a petition seeking a deposition is subject to the overriding requirements set forth in proposed Rule 57(a). The second change corrects the form of rule-citation used in the present Rule 58(b). It should be noted here that the form of rule-citation employed throughout the present discovery rules is completely out of line with that used in the remainder of the Rules of Practice. This proposed change is intended to achieve conformity with proposed Rule 1(c), as well as uniformity in citations appearing throughout the Rules of Practice.
	(c) Order. If the Commission is convinced on its own initiative or by the petition requesting an order to take a deposition that the deposition will prevent a failure or delay of justice, it ~~shall issue an order, which action may be taken without awaiting the filing of a reply, and~~ will serve ~~such~~ an order upon the parties and the witness, naming the witness whose deposition is to be taken, specifying the time when, the place where, and the officer before whom the deposition is to be taken, and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The provisions for the taking of the deposition specified in the Commission's order may or may not be the same as requested in the petition. The deposition may then be taken in accordance with these rules, and the Commission ~~or presiding officer~~ may make orders of the character provided by ~~§1100.67~~ Rule 67.	The change proposed in the first sentence of Rule 58(c) will not operate to preclude the Commission from disposing of petitions for depositions without awaiting replies thereto in the circumstances described in the Rule. However, the Committee is of the view (1) that the disposition of such petitions, without awaiting the filing of replies thereto, is a type of action which should be avoided wherever possible, and (2) that the language proposed to be stricken constitutes an invitation to parties to seek such action. Accordingly, it is recommended that such language be deleted. The editorial change at the end of the Rule merely sets forth the citation in proper form. Also, the term hearing or presiding officer is embraced in the word "Commission", see Rule 57 (b), and the unnecessary wording is eliminated.

---

§1100.59 Depositions, location, officer, time, fees, absence, disqualification.		
(a) Where deposition shall be taken. Unless otherwise ordered or agreed to by stipulation, depositions shall be taken in the city or municipality where the deponent is located.	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
(b) Officer before whom taken. Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held. Within a foreign country, depositions may be taken before an officer or person designated by the Commission or agreed upon by the parties by stipulation in writing to be filed with the Commission.	No change.	
(c) When taken. Unless under special circumstances and for good cause shown, no deposition shall be taken within 10 days prior to the date assigned for commencement of hearing or the filing of opening statements of fact and argument under the modified procedure, and when the deposition is taken in a foreign country it shall not be taken within 30 days prior to such date.	Deletion of Rule 59(c) in its entirety.	If, pursuant to the proposed new proviso in Rule 57(a), an order is issued authorizing the taking of depositions, it is contemplated that such order will specify the time within which the deposition will be taken. Thus, there will no longer be any need for current Rule 59(c).
(d) Fees. A witness whose deposition is taken pursuant to these rules and the officer taking same, unless he be employed by the Commission, shall be entitled to the same fee paid for like service in the courts of the United States, which fee shall be paid by the party at whose instance the deposition is taken.	(c) Fees.	Change in the number of the paragraph.
	(d) Failure to attend or to serve subpena; expenses. (1) If the party who filed a petition pursuant to ~~§1100.58(b)~~ Rule 58(b) fails to attend and proceed with the taking of the deposition and another party attends in person or by representative pursuant to an order entered under ~~§1100.58(c)~~ Rule 58(c), the Commission may order the party who filed the petition to pay to such other party the reasonable expenses incurred by him and his representative in so attending, including reasonable attorney's fees. (2) If the party who filed a petition pursuant to ~~§1100.58(b)~~ Rule 58(b) fails to serve a subpena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by representative because he expects the deposition of the witness to be taken, the Commission may order the party who filed the petition to pay to such other party the reasonable	The changes proposed in Rules 59 (d)(1) and (2) merely convert the citations to the proper form and assign the proper number to the paragraph.

PRESENT RULE	PROPOSED RULE	COMMENT
	expenses incurred by him and his representative in so attending, including reasonable attorney's fees.	
(f) Disqualification for interest. No deposition shall be taken before a person who is a relative or employee or representative or counsel of any of the parties, or is a relative or employee of such representative or counsel or is financially interested in the proceeding.	(e) Disqualification for Interest	Renumbering of the paragraph.

---

§1100.60 Depositions. Procedures

(a) Examination. Examination and cross-examination of witnesses shall proceed as permitted at a hearing. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition, and he shall transmit them to the officer, who shall open the sealed envelope, propound the questions to the witness, and record the answers verbatim.	No change.	
(b) Use of depositions. At the hearing, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:	No change.	
(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.	No change.	
(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated to testify on behalf of a public or private corporation, partnership, association or governmental agency (other	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
than this Commission, except in those instances where the Commission itself is a party to the proceeding) which is a party, may be used by an adverse party for any purpose.		
(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the presiding officer or Commission finds: (i) That the witness is dead; or (ii) that the witness is at a greater distance than 100 miles from the place of hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or (iii) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (iv) that the party offering the deposition has been unable to procure the attendance of the witness by subpena; or (v) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally at public hearing, to allow the deposition to be used.	No change.	
(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts. Substitution of parties does not affect the right to use depositions previously taken.	No change.	
	(c) Effect of taking or using depositions. A party shall not be deemed to make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition under paragraph (b)(2) of this rule ~~section~~. At the hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.	The proposed change in Rule 60(c) is necessary to correct an inadvertent or typographical error in the present Rule. Absent this change, Rule 60(c) is inconsistent with the corresponding rule in the Federal Code and does not make sense. At the end of the second sentence, the word "rule" replaces the incorrectly used word "section".
	(d) Motions to protect. At any time during the taking of the deposition, on motion of any party or of the deponent and upon a	This change converts the citation to the proper form. It also reflects the fact that present Rule 57(b) is proposed herein to be

PRESENT RULE	PROPOSED RULE	COMMENT
	showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the Commission may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in ~~§ 1100.57 (b)~~ Rule 57(c). If the order made terminates the examination, it shall be resumed thereafter only if so ordered. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.	renumbered as Rule 57(c).
	(e) Recordation. The officer before whom the deposition is to be taken shall observe the provisions of ~~§§ 1100.15~~ Rules 15 and ~~1100.71~~ 71 respecting appearances and typographical specifications, shall put the witness on oath, and shall personally, or by someone acting under his direction and in his presence, record and transcribe the testimony of the witness as required by these rules.	The editorial changes in Rule 60(e) are intended solely to correct the form of the citations.
(f) Signing. When the testimony is fully transcribed or otherwise recorded, the deposition shall be submitted to the witness for examination and shall be read to or by him unless such examination and reading are waived by the witness and the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 15 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used fully as though signed, unless, on a motion to suppress, it is found that the reasons given for refusal to sign require rejection of the deposition in whole or in part.	No change.	
(g) Attestation. The officer shall certify on the deposition that the witness was duly	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
sworn by him and that the deposition is a true record of the testimony given by the witness, and that the officer is not a relative or employee or representative or counsel of any of the parties, or is a relative or employee of such representative or counsel, or is financially interested in the proceeding.		
(h) Return. The officer shall securely seal the deposition in an envelope indorsed with sufficient information to identify the proceeding and marked "Deposition of (here insert name of witness)" and shall promptly send the original and one copy of all exhibits, by registered mail to the Secretary of the Commission. A deposition to be offered in evidence must reach the Commission not later than 5 days before the date it is to be so offered.	No change.	
(i) Notice. The party taking the deposition shall give prompt notice of its filing to all other parties.	No change.	
(j) Copies. Upon payment of reasonable charges therefor, the officer before whom the deposition is taken shall furnish a copy of it to any interested party or to the deponent.	No change.	
§1100.61 Effect of errors and irregularities in depositions.		
(a) As to disqualification of officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.	No change.	
(b) As to taking of deposition. (1) Objection to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.	No change.	
	(c) As to completion and return of deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under ~~§§1100.59~~ Rules 59 and ~~1100.60~~ 60 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.	Editorial changes proposed solely to reflect proper method of citing other rules in conformity with proposed Rule 1(c).

---

§1100.62 Written interrogatories to parties.

(a) Availability; procedures for use. Subject to the proviso in Rule 57(a), ~~Any~~ any party may serve upon any other party written interrogatories to be answered by the party served, or if the party served is a public or private corporation, partnership, association, or governmental agency (other than this Commission, except in those instances where the Commission itself is a party to the proceeding), by any officer or agent, who shall furnish such information as is available to the party. Copies of any interrogatories served shall also be filed with the Commission. Each interrogatory shall be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them and subscribed by an appropriate verification generally in the form prescribed in No. 6 of appendix B to these rules. Objections are to be signed by the representative or counsel making them. The person upon whom the interrogatories have been served shall serve a copy of the answers and objections within the time period designated by

The proposed change in Rule 62(a), i.e., the insertion at the beginning of the Rule of the words "Subject to the proviso in Rule 57(a)," calls attention to the applicability of that proviso in any instance where a party desires to serve interrogatories. Upon reference to that proviso the party is advised that he may not serve interrogatories unless he shall have first filed a verified petition showing good cause therefor and the Commission shall have issued an order approving service of the interrogatories. This procedure further contemplates that the order issued will routinely fix the time period within which the interrogatories must be served, thereby enabling the later deletion herein of present Rule 62(c).

PRESENT RULE	PROPOSED RULE	COMMENT
	the party submitting the interrogatories, but not less than 15 days after the service thereof.	
	(b) Option to produce business records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such business records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies thereof, or compilations, abstracts, or summaries therefrom. If information sought is contained in computer runs, punchcards, or tapes which also contain privileged or proprietary information or information the disclosure of which is proscribed by the ~~Interstate Commerce~~ act, it shall be sufficient response under these rules that the person upon whom the interrogatory has been served is willing to make available to and permit an independent professional organization not interested in the proceeding and paid by the party serving the interrogatory to extract from such runs, punchcards, or tapes the information sought in the interrogatory that is not privileged or proprietary information or information the disclosure of which is proscribed by the ~~Interstate Commerce~~ act.	Editorial change.
(c) When written interrogatories must be served. Unless under special circumstances and for good cause shown, no written interrogatories shall be served within 10 days prior to the date assigned for commencement of hearing or the filing of opening statements of fact and argument under the modified procedure, and when the written interrogatories are to be served in a foreign country, they shall not be served within 30 days prior to such date.	Deletion of Rule 62(c) in its entirety.	If, pursuant to the proposed new proviso in Rule 57(a), an order is issued authorizing the service of interrogatories, it is contemplated that such order must specify the time by which the interrogatories are to be served. Thus, there will no longer be any need for the present Rule 62(c). It should also be noted that this present Rule has been a constant source of trouble. As written, it allows service of interrogatories up to within 10 days prior to the date of hearing, whereas those answering the interrogatories have an additional 15 days from that service date to serve their answers.

PRESENT RULE	PROPOSED RULE	COMMENT
		Thus, under the present rules, a hearing could be well underway before the final date for the serving of answers to interrogatories is reached. This situation has been begging for correction, and it is the view of the Committee that the changes proposed will effect such correction.
	§1100.63 Request for admission.	
	(a) Availability; procedures for use. Subject to the proviso in Rule 57(a), ~~A~~ a party may serve upon any other party a written request for the admission, for purposes of the pending proceeding only, of the truth of any matters within the scope of ~~§1100.57(a)~~ Rule 57(a) set forth in the request, including the genuineness of any documents described in the request for admission. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Copies of any requests for admission served shall also be filed with the Commission. Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within a period designated in the request, not less than 15 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or his representative or counsel. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or	The principal proposed change in Rule 63(a), i.e., the insertion of the words "Subject to the proviso in Rule 57(a)," is intended to call attention to the applicability of that proviso in any instance where a party desires to serve requests for admissions. By reference to that proviso the party is advised that he may not serve such requests unless he shall have first filed a verified petition showing good cause therefor and the Commission shall have issued an order approving service of the requests. This procedure further contemplates that the order issued will routinely fix the time period within which the requests for admissions must be served, thereby permitting the later deletion herein of the present Rule 63(c). The other two proposed changes in Rule 63(a) merely reflect the proper method of citing other Rules in conformity with proposed Rule 1(c).

PRESENT RULE	PROPOSED RULE	COMMENT
	deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for hearing may not on that ground alone, object to the request; he may, subject to the provisions of ~~§1100.67 (e)~~ Rule 67(c), deny the matter or set forth reasons why he cannot admit or deny it. Copies of any answers or objections shall be filed with the Commission.	
(b) Effect of admission. Any matter admitted under this rule is conclusively established unless upon petition and a showing of good cause the Commission enters an order permitting withdrawal or amendment of the admission. Any admission made by a party under this rule is for the purpose of the pending proceeding only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.	No change.	
(c) When written requests for admission must be served. Unless under special circumstances and for good cause shown, no requests for admission shall be served within 10 days prior to the date assigned for commencement of hearing or the filing of opening statements of fact and argument under the modified procedure, and when requests for admission are to be served in a foreign country, they shall not be served within 30 days prior to such date.	Deletion of Rule 63(c) in its entirety.	If, pursuant to the proposed new proviso in Rule 57(a), an order is issued authorizing the service of a request for admissions, it is contemplated that such order will, as a matter of routine, specify the time by which such request is to be served. Thus, there will no longer be any need for the present Rule 63(c). Otherwise, the rationale for the deletion of Rule 63(c) is the same as that advanced for the deletion of Rules 59(c) and 62(c), the corresponding rules for depositions and interrogatories.

---

§1100.64 Depositions, requests for admission, ~~and~~ written interrogatories, and responses thereto: inclusion in record.

At the oral hearing, or upon the submission of statements under the modified procedure, depositions, requests for admission and written interrogatories, and respective responses, may be offered in evidence by the party at whose instance they were taken. If not offered by such party, they may be offered in whole or in part by any other party. If only part of a deposition, request for admission or written interrogatory, or response thereto is offered in evidence by a party, any other party (where the matter is being heard orally) may require him to introduce all of it which is relevant to the part

The proposed changes in the title and body of Rule 64 are intended to make clear that this Rule provides for inclusion in the record of the responses to the discovery vehicles.

PRESENT RULE	PROPOSED RULE	COMMENT
	introduced, and any party may introduce any other parts. Such depositions, requests for admission and written interrogatories, and responses thereto shall be admissible in evidence subject to such objections as to competency of the witness, or competency, relevancy, or materiality of the testimony as were noted at the time of their taking or are made at the time they are offered in evidence.	
§1100.65 Supplementation of responses.		
A party who has responded to a request for discovery with a response that was complete when made is under a duty to supplement his response to include information thereafter acquired in the following instances:	No change.	
(a) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (1) the identity and location of persons having knowledge of discoverable matters, and (2) the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he is expected to testify, and the substance of his testimony.	No change.	
(b) A party who knows or later learns that his response is incorrect is under a duty seasonably to correct his response.	No change.	
(c) A duty to supplement responses may be imposed by order, agreement of the parties, or at any time prior to the hearing or the submission of verified statements under the modified procedure through new requests for supplementation of prior responses.	No change.	
	§1100.66 Production of documents and things and entry upon land for inspection and other purposes.	
	(a) Scope. ~~Upon petition by any party and upon good cause shown, the Commission may issue an order and direct~~ Subject to the proviso in Rule 57(a), any party may be ordered and directed (1) to produce and permit the petitioning party to inspect any designated documents (including writings, drawings, graphs, charts, photographs, phonograph	The change proposed at the start of Rule 66 (a) calls attention to the applicability of the proposed new proviso in Rule 57(a) and deletes language rendered unnecessary thereby. The remaining changes proposed in this Rule are editorial in nature, merely correcting the form of citing other Rules in order to achieve compliance with proposed Rule 1(c).

records, tapes, and other data compilations from which information can be obtained, translated, if necessary, with or without the use of detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of ~~§1100.57(a)~~ Rule 57(a) and which are in the possession, custody, or control of the party upon whom the order is served, but if the writings or data compilations (including computer runs, punchcards, and tapes) include privileged or proprietary information or information the disclosure of which is proscribed by the act, such writings or data compilations need not be produced under this rule but may be provided pursuant to ~~§1100.62(b)~~ Rule 62(b); or (2) to permit, subject to appropriate liability releases and safety and operating considerations, entry upon designated land or other property in the possession or control of the party upon whom the order is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of ~~§1100.57(a)~~ Rule 57(a).

(b) Procedure. Any petition filed pursuant to this rule shall set forth the items to be inspected either by individual item or by category and describe each item and category with reasonable particularity. The petition shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

Editorial change to reflect deletion of certain language at the beginning of Rule 66(a).

---

§1100.67 Failure to respond to discovery.

(a) Failure to answer. If a deponent fails to answer or gives an evasive answer or incomplete answer to a question propounded under ~~§1100.60(a)~~ Rule 60(a), or a party fails to answer or gives evasive or incomplete answers to written interrogatories served pursuant to ~~§1100.62(a)~~ Rule 62(a), the party seeking discovery may apply for an order compelling an answer, by motion filed with the Commission and served on all parties and ~~persons affected thereby~~ deponents. Such motion to

The first three proposed changes in Rule 67(a) are editorial in nature.

The principal change proposed in this Rule consists in the new sentence setting time limits within which motions to compel answers must be filed with the Commission. As matters presently stand, there is no time limitation within which motions to compel answers must be filed, and the Committee is advised that parties have been dilatory in filing such motions, even waiting up until the time that

compel an answer must be filed with the Commission within 10 days after the failure to obtain a responsive answer upon deposition, or within 10 days after expiration of the period allowed for submission of answers to interrogatories. On matters relating to a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

(b) Failure to comply with order. (1) If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the Commission, such refusal may subject the refusing party or person to action by the Commission under sections 12(3) and 12(4) of the ~~Interstate Commerce~~ act to compel appearance and compliance with the Commission's order.

(2) If any party or an officer, director, managing agent, or employee of a party or person refuses to obey an order made under paragraph (a) of this section requiring him to answer designated questions, or an order made under ~~§1100.66~~ Rule 66 requiring him to produce any document or other thing for inspection, copying, testing, sampling, or photographing or to permit it to be done, or to permit entry upon land or other property, the Commission may make such orders in regard to the refusal as are just, and among others the following:

(i) An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or any other designated facts shall be taken to be established for the purposes of the proceeding in accordance with the claim of the party obtaining the order;

(ii) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing in evidence designated documents or things or items of testimony;

(iii) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the proceeding or any part thereof.

(c) Expenses on refusal to admit. If a party, after being served with a request under ~~§1100.63~~ Rule 63 to admit the genuineness

the hearing is scheduled to begin. The proposed change would remedy this situation.

The only change proposed in this Rule is to correct the form of a citation made in subparagraph (2).

Editorial change only is proposed in Rule 67(c) to correct the form of rule citation utilized.

PRESENT RULE	PROPOSED RULE	COMMENT
	of any document or the truth of any matter of fact, serves a sworn denial thereof, and if the party requesting the admission thereafter proves the genuineness of any such document or the truth of any such matter of fact, the Commission may order the party making such denial to pay to such other party the reasonable expenses incurred in making that proof, including reasonable attorney's fees.	
	(d) Failure of party to attend or serve answers. If a party or a person or an officer, director, managing agent, or employee of a party or person willfully fails to appear before the officer who is to take his deposition, after being served with a proper notice, or fails to serve answers to interrogatories submitted under ~~§1100.62~~ Rule 62, after proper service of such interrogatories, the Commission on motion and notice may strike out all or any part of any pleading of that party or person, or dismiss the proceeding or any part thereof.	Editorial change only is proposed in Rule 67(d) to correct the form of rule citation utilized.
(e) Expenses against United States. Expenses and attorney's fees are not to be imposed upon the United States under this rule.	No change.	
It is ordered, That notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of this Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.	Deletion of this paragraph in its entirety.	It is apparent that this paragraph was included in the present Rule through inadvertence. It properly should be deleted.

Hearings

§1100.68 Prehearing conferences.

(a) Purposes. Upon written notice by the Commission in any proceeding, or upon written or oral instruction of an officer, parties or their attorneys may be directed to appear before an officer at a specified time and place for a conference, prior to or during the course of a hearing, or in lieu of personally appearing, to submit suggestions in writing, for the purpose of formulating issues and considering: (1) The simplification of issues; (2) The necessity or desirability of	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
amending the pleadings either for the purpose of clarification, amplification, or limitation; (3) The possibility of making admissions of certain averments of fact or stipulations concerning the use by either or both parties of matters of public record, such as annual reports and the like, to the end of avoiding the unnecessary introduction of proof; (4) The procedure at the hearing; (5) The limitation of the number of witnesses; (6) The propriety of prior mutual exchange between or among the parties of prepared testimony and exhibits; and (7) Such other matters, including disposition of requests for discovery, as may aid in the simplification of the evidence and disposition of the proceeding.		
(b) Facts disclosed privileged. Facts disclosed in the course of the prehearing conference are privileged and, except by agreement, shall not be used against participating parties either before the Commission or elsewhere unless fully substantiated by other evidence.	No change.	
(c) Recordation and order. Action taken at the conference, including a recitation of the amendments allowed to the pleadings, the agreements made by the parties as to any of the matters considered and defining the issues, shall be recorded in an appropriate order, unless the parties enter upon a written stipulation as to such matters, or agree to a statement thereof made on the record by the officer.	No change.	
(d) Objection to the order; subsequent proceedings. If an order is entered a reasonable time shall be allowed to the parties to present objections on the ground that it does not fully or correctly embody the agreements reached at such conference. Thereafter the terms of the said order or modification thereof, the written stipulation, or statement of the officer, as the case may be, shall determine the subsequent course of the proceedings, unless modified to prevent manifest injustice.	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
§1100.69 Stipulations. Apart from the procedure contemplated by the prehearing provisions (Rule 68), and upon permission granted, the parties may in the discretion of the officer, by stipulation in writing filed with the Commission at any stage of the proceeding, or orally made at the hearing, agree upon any pertinent facts in the proceeding. It is desired that the facts be thus agreed upon so far as and whenever practicable.	No change.	
	§1100.70 Authority of officers. (a) An officer may grant leave to amend or to file any pleadings, or to intervene, upon request tendered at the hearing, but in no event shall an officer grant ~~such~~ leave to amend if thereby the issues would be so ~~narrowed~~ changed as to make a referred matter one which should properly be referred to a different officer. An officer shall have no power to decide any motion to dismiss the proceeding or other motion which involves final determination of the merits of the proceeding. The officer shall regulate the procedure in the hearing before him, and shall have authority to take all measures necessary or proper for the efficient performance of the duties assigned him, including the ~~disposition of requests for discovery~~ authority to hold hearings, to administer oaths and affirmations, to examine witnesses, to issue subpenas at the hearing and (subject to the proviso of Rule 57(a)) dispose of requests for discovery, to hold conferences for the settlement and simplification of issues, to rule on motions and dispose of procedural requests, to make initial decisions, and to take any other action authorized by this part, by the Administrative Procedure Act, or by the Interstate Commerce Act and related acts. Any proceeding in which an oral hearing is held and in which the officer can announce his decision either (1) on the record after the close of the taking of testimony or (2) by appropriate notification to the parties after the filing of briefs, may be made the subject of an initial decision prepared.	The change in the first sentence (viz, substitution of the word "changed" in lieu of "narrowed") is intended to broaden the admonition regarding amendments, thereby advising joint boards to guard against any amendment which would so broaden the issues as to affect their jurisdiction.

by a party or parties in whose favor the officer decides, within a period specified by the officer, and subject to such changes as the officer considers appropriate in the draft prepared for him. The hearing officer's authority in each proceeding will terminate upon the service of the initial decision, or upon the certification of the record in the proceeding to the Commission, or when he shall have withdrawn from the proceeding upon considering himself disqualified.

The third sentence of Rule 70(a) has been amplified to spell out more completely the presiding officers' authority.

The fourth sentence in the proposed Rule 70(a) provides for bench decisions, comparable to those permitted by Special Rule 247(i), in any and all categories of Commission proceedings. This procedure is permissive, not mandatory. It affords a vehicle for speedy decisions in the more routine type of cases in which no unique or momentous issues are present. There appears to be no valid reason for limiting this practice to operating rights application cases as at present. It is not contemplated that the provision for bench decisions would be used in proceedings involving complex issues of fact or law, or in unopposed proceedings. It is recognized that implementation of this bench decision provision in Rule 70(a) will necessitate deletion of the present Special Rule 247(i).

The fifth sentence in proposed Rule 70(a) meets a long-standing need by specifying when the jurisdiction of a hearing officer terminates.

(b) At any oral hearing conducted before the Commission, ~~or before~~ an Administrative Law Judge ~~of the Commission~~ or joint board, at which an official record of the proceeding is made, the recording of the hearing by means of live or delayed television, radio, or the use of a tape recorder or other electronic or photographic equipment by any person other than the official reporter will not be permitted without special permission of the Chairman of the Commission.

~~[32 FR 20066, Dec. 2, 1967, as amended at 38 FR 7563, Mar. 23, 1973.]~~

The proposed change in Rule 70(b) is aimed essentially at curing an omission in the present Rule by giving recognition to the fact that oral hearings also are conducted by joint boards.

PRESENT RULE	PROPOSED RULE	COMMENT
§1100.71 Appearances; standard of conduct; absence from hearing.	No change.	
(a) Who may appear. Any individual may appear for himself and any member of a partnership which is a party to any proceeding may appear for such partnership upon adequate identification. A bona fide officer or a full-time employee of a corporation, association, or of an individual may appear for such corporation, association, or individual by permission of the officer presiding at the hearing. A party also may be represented by a practitioner.		
(b) Appearances. An appearance may be either general, that is, without reservation, or it may be special, that is, confined to a particular issue or question. When a practitioner enters an appearance at a hearing he will be expected to represent his client faithfully until the completion of the proceeding in which he has been retained, or until the completion of the part of the proceeding for which he has specially appeared. A practitioner who has entered his appearance at the hearing shall not be permitted to withdraw from the hearing, or wilfully to absent himself therefrom, except for good cause and, wherever practicable, only with the permission of the presiding officer. If a person desires to appear specially, he must expressly so state when he enters his appearance and at that time he shall also state the questions or issues to which he is confining his appearance; otherwise, his appearance will be considered as general.	No change.	
(c) Standard of conduct. Contemptuous conduct by any person appearing at a hearing shall be ground for his exclusion by the presiding officer from the hearing.	No change.	
	(d) Absence from hearing. If a party or the person representing him ~~his representative~~ shall, after entering an appearance, attempt to withdraw from the hearing in a manner other than that specified in paragraph (b) of this section, the Commission on its own motion, or on motion of any party to the proceeding, may take such action as, in the interest of justice and the protection of the lawful rights of all parties to the proceeding, the circumstances of the	Editorial change.

PRESENT RULE	PROPOSED RULE	COMMENT
	case may warrant, including the striking out of all or any part of any pleading of the offending party, and including the possible dismissal of the action or proceeding, or any part thereof, the entry of an order of default against that party, or the disciplining of the practitioner concerned.	
§1100.72 Intervention; petitions.		
(a) Content generally. A petition for leave to intervene must set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, and whether petitioner's position is in support of or opposition to the relief sought. If the proceeding be by formal complaint and affirmative relief is sought by petitioner, the petition should conform to the requirements for a formal complaint.	No change.	
(b) When filed. A petition for leave to intervene in any proceeding should be filed prior to or at the time the proceeding is called for hearing, but not after except for good cause shown.	No change.	
(c) Broadening issues; filing. If the petitioner seeks a broadening of the issues and shows that they would not thereby be unduly broadened, and in respect thereof seeks affirmative relief, the petition should be filed in season to permit service upon and answer by the parties in advance of the hearing.	No change.	
(d) Copies; service; replies. When tendered at the hearing, sufficient copies of a petition for leave to intervene must be provided for distribution as motion papers to the parties represented at the hearing. If leave be granted at the hearing, one additional copy must be furnished for the use of the Commission. When a petition for leave to intervene is not tendered at the hearing, the original and three copies of the petition shall be submitted to the Commission together with a certificate that service in accordance with Rule 22 has been made by petitioner. Any reply in opposition to a petition for leave to intervene not tendered at the hearing	No change.	

must be filed within 20 days after service. In the discretion of the Commission leave to intervene may be granted or denied before the expiration of the time allowed for replies.

(e) Disposition. Leave will not be granted except on averments reasonably pertinent to the issues already presented and which do not unduly broaden them. If leave is granted the petitioner thereby becomes an intervener and a party to the proceeding.

No change.

---

§1100.73 Participation without intervention.

In an investigation proceeding, in a proceeding under paragraphs (18) ~~to (20) inclusive~~ of section 1, or sections ~~5 and~~ 13a of Part I of the act, ~~in application proceedings under parts II, III, and IV,~~ and in a proceeding of any one of the characters herein enumerated when heard on a consolidated record with a complaint proceeding, but in no other proceeding, an appearance may be entered at the oral hearing without filing a petition in intervention or other pleading, if no affirmative relief is sought, if there is full disclosure of the identity of the person or persons in whose behalf the appearance is to be entered, if the interest of such person in the proceeding and the position intended to be taken are stated fairly, and if the contentions will be reasonably pertinent to the issues already presented and any right to broaden them unduly is disclaimed. A person in whose behalf an appearance is entered in this manner becomes a party to the proceeding.

The present Rule 73 has been the root cause of much confusion on the part of the public. Only too frequently, persons rely upon this Rule as the basis for their participation in section 5 proceedings and in application proceedings under sections II, III and IV of the Act. Later, to their consternation, they learn that those proceedings (which constitute the bulk of the Commission's hearing docket) are covered by Special Rules 240 and 247 which exempt such proceedings from the application of Rule 73 (except as concerns persons seeking to intervene in support). Even with respect to the last-mentioned exception, there exists a possibility that this provision [in Special Rule 247(h)] could be relied upon in an attempt to thwart the application of the so-called "Schaeffer Rule" which is contained in Rule 247(b). In light of the foregoing, the Committee believes that Rule 73 must be changed in the manner noted. Although the Committee considered deleting this Rule in its entirety, it concluded that this Rule does serve a valuable purpose in investigation, abandonment, and discontinuance cases. However, in line with the original intent of this Rule, the Committee proposes that its application be limited solely to orally heard proceedings.

It is recognized that the proposed change in Rule 73 will necessitate modification of Special Rules 240(g) and 247(h).

Editorial changes were made to conform to the 4 R Act.

PRESENT RULE	PROPOSED RULE	COMMENT
	§1100.74 Witness examination; order of procedure. Witnesses will be orally examined under oath before the officer unless their testimony is taken by deposition or the facts are presented to the Commission in the manner provided under modified ~~or shortened~~ procedure. In formal-complaint, application, and investigation proceedings complainant, applicant, and respondent, respectively, shall open and close at the hearing, except at further hearings granted on petition the petitioner requesting further hearing shall open and close; and except, further, that parties other than the respondent shall open and close in investigations in which the burden of proof is not upon the respondent. Interveners shall follow the party in whose behalf the intervention is made. The foregoing order of presentation may be varied by the officer, who also shall designate the order of presentation in any other type of proceeding, of any other party to any proceeding, or of parties to several proceedings being heard upon a consolidated record.	The only change proposed in Rule 74 consists in the striking of the words "or shortened" as they appear in the first sentence of the Rule. The wording proposed to be stricken refers to an archaic type of procedure which has long been discontinued. Thus, it serves no useful purpose and amounts to nothing more than surplusage.

PRESENT RULE	PROPOSED RULE	COMMENT
§1100.75 Evidence; admissibility generally. Any evidence which would be admissible under the general statutes of the United States, or under the rules of evidence governing proceedings in matters not involving trial by jury in the courts of the United States, shall be admissible in hearings before the Commission. The rules of evidence shall be applied in any proceeding to the end that needful and proper evidence shall be conveniently, inexpensively, and speedily produced, while preserving the substantial rights of the parties.	No Change.	
§1100.76 Evidence; cumulative restriction. It shall be the duty of the officer before whom any proceeding is being heard to limit the number of witnesses whose testimony may be merely cumulative. And in order to enforce this section, the officer may require a clear statement on the record of the nature of the testimony to be given by any witness proffered.	No Change.	
§1100.77 Evidence; prepared statements. With the approval of the officer, a witness may read into the record, as his testimony, statements of fact or expressions of his opinion prepared by him, or written answers to interrogatories of counsel, or a prepared statement of a witness who is present at the hearing may be received as an exhibit, provided that the statement shall not include argument that before any such statement is read, or admitted in evidence the witness shall deliver to the officer, the reporter, and to opposing counsel as may be directed by the officer, a copy of such statement or of such interrogatories and his written answers thereto; and that the admissibility of the evidence contained in such statement shall be subject to the same rules as if such testimony were produced in the usual manner, including the right of cross-examination of the witness. Such approval ordinarily will be denied when in the opinion of the officer the memory or demeanor of the witness may be of importance.	No Change	

PRESENT RULE	PROPOSED RULE	COMMENT
§1100.78 Evidence; official records. An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied with a certificate that such officer has the custody. If the office in which the record is kept is within the United States or within a territory or insular possession subject to the dominion of the United States, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the United States stationed in the foreign state or country in which the record is kept, and authenticated by the seal of his office. A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of his office contain no such record or entry. This section does not prevent the proof of official records or of entry or lack of entry therein or official notice thereof by a method authorized by any applicable statute or by the rules of evidence.	No Change.	
§1100.79 Evidence; entries in regular course of business. Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, will be admissible as evidence thereof if it shall appear that it was made in the regular course of business, and that it was the regular course of business to make such memorandum or record at the time such record was made, or within a reasonable time thereafter.	No Change.	

PRESENT RULE	PROPOSED RULE	COMMENT
§1100.80 Evidence; documents containing matter not material. When material and relevant matter offered in evidence is in a document containing other matter not material or relevant, the offering party shall produce the document at the hearing, shall plainly designate the matter so offered, and shall accord to the officer and to participating counsel an opportunity to inspect it. Unless it is desired to read such matter into the record, and the officer so directs, true copies in proper form of the material and relevant matter taken from the document may be received as an exhibit, but other parties shall be afforded an opportunity to introduce in evidence, in like manner, other portions of such document if found to be material and relevant. The document itself will not be received.	No Change.	
§1100.81 Evidence; documents in Commission's files. (a) In general. If any matter contained in a report or other document, not a tariff or schedule, open to public inspection in the files of the Commission is offered in evidence such report or other document need not be produced but in other respects the provisions of Rule 80 will apply. (b) Tariffs and schedules; official notice in investigation proceedings. If any matter contained in a tariff or schedule on file with the Commission is offered in evidence, such tariff or schedule need not be produced or marked for identification, but the matter so offered shall be specified with particularity in such manner as to be readily identified and may be received in evidence subject to check by reference to the original tariff or schedule. Official notice will be taken without offer or production of that portion of any tariff or schedule which is the subject matter of an order of investigation and suspension.	No Change.	
§1100.82 Evidence; records in other Commission proceedings. If any portion of the record before the Commission in any proceeding other than the one on hearing is offered in evidence a true copy of such portion shall be presented for the record in the form of an exhibit unless:	No Change.	

PRESENT RULE	PROPOSED RULE	COMMENT
§1100.82 Evidence; records in other Commission proceedings. (Continued) (a) The party offering the same agrees to supply such copy later at his own expense, if and when required by the Commission; and (b) The portion is specified with particularity in such manner as to be readily identified; and (c) The parties represented at the hearing stipulate upon the record that such portion may be incorporated by reference, and that any other portion offered by any other party may be incorporated by like reference subject to paragraphs (a) and (b) of this section; and (d) The officer directs such incorporation. Any such portion so offered, whether in the form of an exhibit or by reference, shall be subject to objection.		
§1100.83 Evidence; abstracts of documents. When documents, such as freight bills or bills of lading, are numerous, the officer may refuse to receive in evidence other than a limited number of such documents said to be typical. Instead he may instruct, if the proffer be for the purpose of proving damage, that introduction be deferred until there is opportunity to comply with Rule 100. If the proffer be for other purpose the officer may require the party in orderly fashion to abstract the relevant data from the documents, affording other parties reasonable opportunity to examine both the documents and the abstract, and thereupon offer such abstract in evidence in exhibit form.	No Change.	
§1100.84 Evidence; exhibits. (a) Generally. Exhibits of a documentary character may have a maximum width of 22 inches by 12½ inches in height. Whenever practicable the sheets of each exhibit and the lines of each sheet should be numbered. If the exhibit consists of five or more sheets the first sheet or title-page should be confined to a brief statement of what the exhibit purports to show, with reference by sheet and line to illustrative or typical examples contained therein. The exhibit should bear an identifying number, letter, or short title which will readily distinguish it from other exhibits offered by the same party. It is desirable that, whenever	No Change.	

§1100.84 Evidence; exhibits. (Continued)

practicable, rate comparisons and other evidence should be condensed into tables. Whenever practicable, especially in proceedings in which it is likely that many documents will be offered, all the documents produced by a single witness should be assembled and bound together, suitably arranged and indexed, so that they may be identified and offered as one exhibit. Exhibits should not be argumentative and should be limited to statements of fact, and be relevant and material to the issue, which can better be shown in that form than by oral testimony.

(b) Reference to tariff authority, routes, and distances. All exhibits showing rates, fares, charges, or other tariff or schedule provisions must, by appropriate Interstate Commerce Commission number reference, indicate the tariff or schedule authority therefor, and if distances are shown must also show the authority therefor and, by lines, highways, or waterways, and junction points, the routes over which the distances are computed; except that the routes over which the distances are computed need not be shown when such distances are specifically published in a tariff or schedule lawfully on file with the Commission, or definitely ascertainable from a tariff or schedule on file with the Commission showing rates prescribed by the Commission and based on short-line distances, or short-highway distances, provided the exhibit makes specific reference to such tariff or schedules as provided by this section.

(c) Copies. Unless the officer shall otherwise direct, the original and one copy of each exhibit of a documentary character shall be furnished for the use of the Commission - original to be delivered to the reporter, and the copy to the officer. If the hearing be before a board, a copy of the exhibit shall be furnished to each member of the board, unless the board otherwise directs. Unless the officer for cause directs otherwise, a reasonable number of copies shall be furnished to counsel in attendance at the hearing. Unless the officer shall otherwise direct, in proceedings under the Uniform Bankruptcy Act, the original and three copies of every exhibit of a documentary character shall be furnished for use of the Commission - original to be delivered to the reporter, and the three copies to the officer.

(d) Interchange prior to hearing. Whenever practicable, the parties should interchange copies of exhibits or other pertinent material or matter before or at the commencement of the hearing; and the Commission or presiding officer may so direct.

PRESENT RULE	PROPOSED RULE	COMMENTS
§1100.84 Evidence; exhibits. (Continued) (e) When excluded how treated. In case an exhibit has been identified, objected to, and excluded, the officer will develop whether the party offering the exhibit withdraws the offer, and if so, permit the return of the exhibit to him. If the excluded exhibit is not withdrawn it should be given an exhibit number for identification and be incorporated in the record. Exhibit numbers once used for identification will not be duplicated thereafter.		
§1100.85 Record in referred matter unaffected by a second reference. If for any reason an order referring a matter to a particular officer is vacated and the matter referred to a different officer, any testimony already taken in such proceeding shall be part of the record along with any testimony which thereafter may be taken.	No Change.	
	§1100.86 Evidence; filing of subsequent to hearing; copies. Except as provided below or as expressly may be permitted in a particular instance, the Commission will not receive in evidence or consider as part of the record any documents, letters, or other writings submitted for consideration in connection with any proceeding after close of the hearing, and may return any such documents to the sender. Before the close of a hearing the officer may, at the request of a party or upon his own motion, or upon agreement of the parties, require that a party furnish additional documentary evidence supplementary to the existing record, within a stated period of time. Documentary evidence thus to be furnished ~~will not be assigned an exhibit number at the hearing, but the document~~ will be given an exhibit number at the time of filing and the parties accordingly advised. Unless otherwise directed by the officer, the original and one copy of such submission shall be filed with the Commission.	Editorial change only.

PRESENT RULE	PROPOSED RULE	COMMENT
	§1100.87 Evidence; objections to. Formal exception to a ruling of an officer at a hearing is unnecessary. It is sufficient that a party, at the time the ruling is made or sought, make known to the officer on the record the action which he desires the officer to take or his objection to the action of the officer and his grounds therefor. An objection not pressed in brief will be considered as waived. Where no brief is filed an objection will be considered as waived if not pressed in exceptions or reply to exceptions, if filed, or in a separate petition dealing only with that objection. Rulings of the presiding officer at the hearing may not be appealed ~~during the hearing~~ prior to service of the initial decision except where such ruling (a) may result in substantial detriment to the public interest or undue prejudice to any party, and the presiding officer so finds, (b) denies or terminates any person's participation, (c) grants a request for the inspection of documents not ordinarily available for public inspection, (d) overrules an objection based on privilege, the result of which ruling is to require the presentation of testimony or documents, or (e) for some other reason might, in the opinion of the presiding officer, result in substantial irreparable harm. ~~[32 FR 20064, Dec. 20, 1974, as amended at 39 FR 22426, June 24, 1974]~~	It is the view of the Committee that sound operating practice requires that Rule 87 be modified to provide that rulings made by the presiding officer may not be appealed prior to service of the initial decision except in the circumstances set forth in (a) through (e) of the present Rule.
§1100.88 Oral argument before officer. If oral argument before the officer is desired, he should be so notified at or before the hearing and may arrange to hear the argument at the close of the testimony within such limits of times as he may determine, having regard to other assignments for hearing before him. Such argument will be recorded and made a part of the transcript of testimony, and will be available to the Commission for consideration in deciding the case. The making of such argument shall not preclude oral argument before the Commission and request therefor may be made as provided in Rule 98.	§1100.88 Oral argument before the hearing officer. At the discretion of the hearing officer and upon reasonable notice to the parties oral argument may be made at the close of testimony before him as an alternative to the filing of written briefs. Such argument, which should include requested findings and conclusions, will be recorded and made a part of the transcript of testimony, and will be available to the Commission for consideration in deciding the case. The making of such argument shall not operate to preclude oral argument before the Commission pursuant to Rule 98.	It is the view of the Committee that the proposed substantial revision of Rule 88 is needed, and that it should be beneficial to both the Commission and the public. The main thrust of the revision is to afford a viable alternative to the filing of written briefs, thereby enabling the saving of the considerable period of time generally required for the filing of briefs. Under the present system whereby transcripts of testimony ordinarily are not available until 15 days after the close of the hearing, the filing of written briefs usually entails a minimum period of

PRESENT RULE	PROPOSED RULE	COMMENT
		about 45 days from the end of the hearing. This time period for briefs necessarily contributes to the so-called "regulatory lag." Clearly, a real savings in time could be effected by encouraging oral argument at the hearing (wherever possible) as an alternative to the filing of written briefs. The Committee also is of the view that the utilization of oral argument at the hearing, as an alternative to written briefs, constitutes effective compliance with section 557(c)(1) of the Administrative Procedure Act.
§1100.89 Continuance for further hearing.		
A continuance may be granted by the presiding officer if it is impossible to conclude a hearing within the time available, or for any reason a continuance is necessary or advisable, but a joint board shall not set a date and place for a continued hearing without first consulting the Commission. If consultation with the Commission is impracticable, the hearing shall be adjourned by the joint board to such time and place as the Commission subsequently shall determine.	No change.	

PRESENT	PROPOSED RULE	COMMENT
§1100.90 Transcript of Record. (a) Filing. After the close of the hearing the complete transcript of testimony taken and the exhibits shall be filed with the Commission. (b) Corrections. A suggested correction in a transcript ordinarily will be considered only if offered not later than 20 days after the date each transcript is filed with the Commission. A copy of the letter (original only need be filed with the Commission) requesting the suggested corrections shall be served upon all parties of record and with 2 copies to the official reporter. (c) No free copies. No free copies of transcript will be furnished to any party to any proceeding.	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
Briefs; Reports; Oral Argument		
§1100.91 Briefs; content and arrangement.		
(a) Due date. The due date of each brief must appear on its front cover or title page.	No change.	
	(b) Table of contents; citations. A brief of more than 20 pages shall contain on its front flyleaves a table of contents and points made with page references, the table of contents to be supplemented by a list of citations, alphabetically arranged, with references to the pages ~~where~~ in which they appear.	Editorial change.
(c) Sketch or chart. In proceedings wherein misrouting or undue prejudice or preference are alleged, the complainant should include as part of the brief a small sketch or chart adequately reflecting the situation.	No change.	
	(d) Evidence abstract. A brief filed after a hearing ~~should~~ may contain an abstract of the evidence relied upon by the party filing it, preferably assembled by subjects, with reference to the pages of the record, if written, or exhibit where the evidence appears. ~~The abstract should follow the statement of the case and preeede the argument.~~ In the event the party elects not to include a separate abstract in his brief, he should give specific reference to the portions of the record, whether transcript or otherwise relied upon in support of the respective statements of fact made throughout the brief.	These changes are intended to discourage to some extent the filing of briefs which routinely contain or are accompanied by abstracts of evidence, by making it clear that while abstracts of evidence may be filed, they are optional and not required by the rules. The Commission or a hearing officer could still require the filing of an abstract where circumstances warranted.
(e) Requested findings. Each brief should include such requests for specific findings, separately stated and numbered, as the party desires the Commission to make.	No change.	
	(f) Exhibit reproduction. Exhibits should not be reproduced in the brief, but may, if desired, be shown, within reasonable limits, in an appendix to the brief. Analyses of such exhibits should be included in the brief ~~abstract of evidence under the subjects to which they pertain~~ where pertinent.	This change is to make subparagraph (b) consistent with the changes in subparagraph (d), so that any analyses of exhibits will appear in the brief rather than in an abstract of evidence.

PRESENT RULE	PROPOSED RULE	COMMENT
	§1100.92 Briefs; when ~~officer's report is served~~ filed. In a proceeding which has been the subject of oral hearing, and in which ~~an officer's report is to be prepared and served~~, briefs are to be filed, which fact will be stated by the officer on the record, only one brief shall be filed by each party. The officer shall fix for all parties the same time within which to file briefs, which time shall not exceed 45 days from the close of the hearing unless otherwise ordered by the Commission. Reply briefs are not permitted unless ordered by the Commission.	Rules 92 is the same as Rule 93 except that Rule 92 refers to "Briefs; when officer's report is served", while Rule 93 refers to "Briefs; when officer's report is not served." Inasmuch as both refer to briefs in a proceeding which has been the subject of an oral hearing, and are otherwise the same except for an officer's report, there is no need for two separate rules. Therefore, the two rules, in effect, have been combined.
§1100.93 Briefs; when officer's report is not served. In a proceeding which has been the subject of oral hearing, and in which no officer's report is to be prepared and served, which fact will be stated by the officer on the record, only one brief shall be filed by each party. The officer shall fix for all parties the same time within which to file briefs, which time shall not exceed 45 days from the close of the hearing unless otherwise ordered by the Commission. Reply briefs are not permitted unless ordered by the Commission.	Deletion of Rule 93 in its entirety	As indicated above, Rule 93 has, in effect, been combined with Rule 92 and is no longer necessary as a seperate rule.

PRESENT RULE	PROPOSED RULE	COMMENT
§1100.94 Briefs of interveners. Briefs of interveners shall be filed and served within the time fixed for the briefs or the party in whose behalf the intervention is made.	Deletion of Rule 94 in its entirety	Rule 94 is superflous. Interveners are parties once intervention is permitted, and there is no need for this particular rule.

PRESENT RULE	PROPOSED RULE	COMMENT
§1100.95 Officer's report; when and how served. After expiration of the time set for filing briefs, if the proceeding be one in which a hearing has been held, the officer's report will be prepared and served by mailing a copy to each party. An officer's report prepared in a proceeding in which a hearing has not been held will be served by mailing a copy to each party of record and to any other persons not parties to the proceeding who are believed to have an interest in the proceeding.	§1100.95 Officer's initial decision. (a) How served. An officer's initial decision will be served by mailing a copy to each party of record and to other persons who are believed to have an interest in the proceeding. (b) When and how effective as the order of the Commission. If no exception is filed to the initial decision made by a Commissioner, an administrative law judge, or a joint board and the Commission does not stay it, the initial decision becomes the order of the Commission upon expiration of the period for filing exceptions, or of any postponement of such period, or postponement of the effective date of such initial decision, and a notice stating that the initial decision has, giving the date, become the order of the Commission will be mailed to the parties by the Commission. The initial decision of officers other than individual commissioners, administrative law judges, and joint boards are final decisions, although exceptions as defined in Rules 101, 102, and 103 may be filed.	The proposed major modification of Rule 95 has a threefold purpose. First, the revised Rule reflects the official change in Commission terminology by referring to the officer's decision as an "initial decision" rather than a "report." Secondly, it greatly simplifies the somewhat cumbersome language in the present Rule 95. Lastly, in view of the proposed deletion of Rule 97 as part and parcel of a rather substantial revision of the Rules concerning administrative appeals, it is believed necessary to add paragraph (b) to Rule 95 in order that the public may continue to be apprised as to the matter of when and how an initial decision becomes effective as the order of the Commission. The distinction in the last sentence is necessary because section 17 of the act 49 U.S.C. 17, establishes different procedures for initial decisions made by an individual commissioner, administrative law judge, or joint board, on the one hand, and, on the other, the entire Commission, divisions thereof, and review boards.

PRESENT RULE	PROPOSED RULE	COMMENT
§ 1100.96 Exceptions to officer's report. (a) Generally. Exceptions to the officer's report with respect to statements of fact or matters of law must be specific and must be stated and numbered separately. If exception is taken to conclusions in the report, the points relied upon to support the exception must be stated and numbered separately. When exception is taken to a statement of fact contained in the report, reference also must be made to the page or part of the record relied upon to support the exception and a corrected statement must be incorporated. (b) When filed. Within 30 days after service of the officer's report, any party may file and serve exceptions thereto and reasons in support thereof. Replies may be served and filed as provided in Rule 23. In any case the Commission may, in its discretion, upon notice to the parties reduce or extend the time for filing exceptions or replies. (c) Exceptions and request for hearing by person not party. If the proceeding is one in which no oral hearing has been held, any person not a party to the proceeding, but having an interest therein, may file and serve upon applicant, or complainant, as the case may be, exceptions to the officer's report and reasons in support thereof. A request for hearing may be included therein but the exceptions need not include a request for hearing if none is deemed necessary.	Delete in its entirety.	(a) Rule 96 would be covered by proposed Rules 101-103. See comment on Rules 101-103.

PRESENT RULE	PROPOSED RULE	COMMENT
§ 1100.97 Effect of exceptions or absence thereof. (a) Upon report and recommended order. The filing of exceptions to a recommended order operates to stay the effectiveness of the order and thereafter decision by the Commission will be made in due course. If no exception is filed to the recommended order and the Commission does not stay it, the recommended order becomes the order of the Commission upon expiration of the period for filing exceptions provided in Rule 96(b), or of any postponement of such period, or postponement of the effective date of such order, and a notice stating that the recommended order has, giving the date, become the order of the Commission will be mailed to the parties by the Commission. (b) Upon proposed report. A proposed report will not become the decision of the Commission through failure to file objections, but in the absence of exceptions or of ascertained error the officer's statement of the issues and of the facts ordinarily will be taken by the Commission as the basis of its decision.	Delete in its entirety.	Regarding the effect of the failure to file exceptions will be covered by proposed Rule 95(b) Rule 97(b) is rendered unnecessary by the proposed Rules 95(b) and 5(h) and (i).

PRESENT RULE	PROPOSED RULE	COMMENT
§1100.98 Oral argument before Commission. (a) Request; how made. If no officer's report is to be served, request for oral argument before the Commission must be made at hearing or by letter (original only need be filed with the Commission) within 10 days after the hearing. If an officer's report is to be served, the request for oral argument must be included as part of the exceptions brief or reply thereto. (b) Request for time allotment. If the petition is granted a notice will be served by the Commission upon the parties setting the date for the oral argument. At least 10 days before that date any party desiring to participate in the oral argument must make request by letter (original only need be filed with the Commission) for an allotment of time. Only those making request in this manner will be permitted to participate.	§1100.98 Oral argument before Commission. (a) Request, to whom addressed. Request for oral argument should be addressed to the Secretary, Interstate Commerce Commission. Oral argument shall be at the discretion of the Commission or its divisions. (b) Request, by whom made. Any party may submit a written request for oral argument, stating reasons therefor. No replies shall be entertained. (c) Request, when filed. Requests for oral argument shall be filed within 30 days after the date of service of the decision, order or requirement being appealed, unless a different time period is fixed by the Commission or division, which shall rule upon such requests by order. (d) Time allotment. Unless otherwise directed, the proponents of a rule or order will be allowed one half hour for oral argument and shall be heard first. Opponents, in the aggregate, will also be allowed one half hour. One counsel only will be heard for each side, unless additional presentations are specifically authorized and additional time is allocated for them.	Section (a) changes the present rule to make it clear that the Commission itself, which arranges its own hearing schedules, will determine if and when oral argument will be allowed. Section (b) bars the filing of replies to requests for oral argument. The committee felt that replies were not only unnecessary, but that they could be interposed for purposes of delay if permitted. Section (c) of the proposed revision requires that all parties, applicants and protestants alike, must request oral argument before the Commission within 30 days from the date of service of the prior decision. This period is consonant with the time for filing exceptions or petitions for administrative review and can be included therein. The most important change in this rule is embodied in section (d) of the revision which imposes a one half hour limitation per side on oral argument before the Commission. Additionally, that section requires each side to select one representative for the presentation of the argument. The purpose of this proposal is to require counsel for the parties to focus on the critical issues raised on reconsideration and to reduce lengthy arguments which merely review the evidence. Thus, oral argument can be effectively utilized to highlight those aspects of a case which have been fully discussed in the written petitions for review and exceptions. Correspondingly, the limitation on the number of counsel is an effort to eliminate repetitious arguments of parties which have substantially similar interests in the outcome of the proceeding. This rule will benefit both the Commission and the public since it will permit the agency to schedule a number of arguments for a single session as well as afford the public greater personal access to the Commission in its proceedings. These limitations are widely utilized in the United States Courts of Appeals. Moreover, where a particular case involves a multitude of competing interests the Commission will have the discretion to allot additional time and opportunity for argument.

PRESENT RULE	PROPOSED RULE	COMMENT
	Order Compliance; Damage Statements	
	§1100.99 Compliance with Commission's orders.	
	When in consequence of proceedings under the act, the Commission has by its order directed a defendant or a respondent to do or desist from doing a particular thing, such defendant or respondent must notify the Commission on or before the date upon which such order becomes effective, ~~whether or not compliance has been made therewith.~~ of the manner and details of compliance with the order. Such notification shall be in the form of an affidavit subscribed by an appropriate verification generally in the form prescribed in No. 6 of appendix B to these rules and must, when filed or tendered to the Commission for filing, show simultaneous service thereof upon all parties to the proceeding in accordance with Rule 22(a). If a change in rates or schedules is required the notification must be given in addition to the filing of proper tariffs or schedules, and must specify the Interstate Commerce Commission numbers of the tariffs or schedules so filed.	This rule, in its present form, does not require compliance with a Commission order, but only notification whether or not compliance has been made. The proposed change requires a defendant or respondent to notify the Commission, by a subscribed affidavit, of the manner and details of actual compliance. Since there are often other parties to a Commission proceeding who have an interest in the compliance of a respondent or defendant, the proposed rule requires simultaneous service on all parties. There is no change in the last sentence of the current rule.
§1100.100 Statements of claimed damages based on Commission findings.		
When the Commission finds that damages are due, but that the amount cannot be ascertained upon the record before it, the complainant should immediately prepare a statement showing details of the shipments on which damages are claimed, in accordance with the form No. 5. (See Appendix B.) The statement should not include any shipment not covered by the Commission's findings, or any shipment on which complaint was not filed with the Commission within the statutory period. The filing of a statement will not stop the running of the statute of limitations as to shipments not covered by complaint or supplemental complaint. If the shipments moved over more than one route a separate statement should be	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
prepared for each route, and separately numbered, except that shipments as to which the collecting carrier is in each instance the same may be listed in a single statement if grouped according to routes. The statement, together with the paid freight bills on the shipments, or true copies thereof, should then be forwarded to the carrier which collected the charges for verification and certification as to its accuracy. If the statement is not forwarded immediately to the collecting carrier for certification, a letter request from defendants that forwarding be expedited will be considered to the end that steps be taken to have the statement forwarded immediately. All discrepancies, duplications, or other errors in the statements should be adjusted by the parties and correct agreed statements submitted to the Commission. The certificate must be signed in ink by a general accounting officer of the carrier and should cover all of the information shown in the statement. If the carrier which collected the charges is not a defendant in the case its certificate must be concurred in by like signature on behalf of a carrier defendant. Statements so prepared and certified shall be filed with the Commission whereupon it will consider entry of an order awarding damages.		

PRESENT RULE

§1100.101 Petitions for rehearing, reargument, or reconsideration.

(a) In general. (1) A petition seeking any change in a decision, order, or requirement of the Commission should specify whether the prayer is for reconsideration, reargument, rehearing, further hearing, modification of effective date, vacation, suspension, or otherwise.

(8) Administrative finality of division and employee board decisions. All decisions, orders, or requirements of a division of the Commission in any proceeding shall be considered administratively final, except those involving issues of general transportation importance, those wherein the division reverses, changes, or modifies a prior decision by a hearing officer, and those wherein the initial decision is made by a division: Provided, however, That this subparagraph shall not preclude the seasonable filing of a petition for relief under paragraphs (b) and (c) of this section, to be considered and disposed of by the division or appellate division which made the decision, order, or requirement as to which relief is sought. Decisions of an employee board, whether original or on review, are not administratively final. Such employee board decisions shall be subject to review by an appropriate appellate division of the Commission upon the filing of a timely petition in accordance with these rules of practice.

(3) Limitations on petitions for review of division decisions. Pursuant to authority granted in section 17(6) of the Interstate Commerce Act, the right to apply to the entire Commission for rehearing, reargument, or reconsideration of a decision, order, or requirement of a division of the Commission in any proceeding shall be limited and restricted to those proceedings in which the entire Commission, on its own motion, determines and announces that an issue of general transportation importance is involved. In proceedings in which no such announcement has been made, but in which a division reverses, changes, or modifies a prior decision by a hearing officer or where the initial decision is made by a division, a petition to the same division for rehearing, reargument, or reconsideration of its decision will be permitted and will be considered and disposed of by such division in an appellate capacity and with administrative finality.

(4) Petitions seeking a finding that an issue of general transportation importance is involved; 3-page limitation; time for filing; no reply permitted. In any proceeding which has involved the taking of evidence at oral hearing or by modified procedure in which the Commission has not noted the presence of an issue of general transportation importance, any party may, within 15 days after the service of a final decision, order, or requirement of a division or appellate division, as to which the filing of a petition for rehearing, reargument, or reconsideration is not

PROPOSED RULE

§1100.101 Administrative appeals - All Types

The rules in this section apply to all Commission proceedings:

(a) General. The term "administrative appeals" means exceptions and petitions for administrative review.

(b) Exceptions. (1) Exceptions may be filed to an initial decision, or to a tentative decision, and shall detail the assailed findings, with supporting citations to the record and authorities.

(2) Exceptions shall be confined to factual and legal issues which are essential to the ultimate and just determination of the proceeding and shall be based on the following grounds:

(i) That a necessary finding of fact is erroneous or unsupported by substantial evidence of record;

(ii) That a necessary legal conclusion or finding is contrary to law, Commission precedent or policy;

(iii) That an important question of law, policy or discretion, is involved which is without governing precedent; or

(iv) That prejudicial procedural error has occurred.

(3) Exceptions shall not exceed 30 pages in length, including the index of subject matter, argument, and appendices or other attachments, and replies shall be subject to the same limitation.

(4) Exceptions which are not timely filed or do not comply with the requirements in (1) through (3) above will be subject to rejection.

COMMENT

The proposed revision of Rules 101, 102, and 103 is one of the most significant changes in the present rules.

In recognition of the separate procedural requirements for rail and nonrail cases, created by the Railroad Revitalization and Regulatory Reform Act of 1976, the committee felt it would be simplest to treat these matters in 3 separate rules.

Section 101 is applicable to all administrative appeals, both exceptions and petitions for administrative review alike, and to rail and non-rail proceedings, and is an effort to simplify the cumbersome and complicated appeal procedures now described in Rule 101. It also permits the deletion of rules 96 and 97 governing the filing of exceptions.

A definitive section has been added to dispell possible uncertainty as to the all-inclusive nature of the new term "administrative appeal" which is not used in the current rules.

Section (b) of the proposal reflects the committee perception that exceptions should be written to identify the specific findings below which are alleged to be in error, the factual and legal basis of the allegation, and the portions of the record relied upon to support the claim. The revision does not substantively alter the present rules and is derived from Rule 96(a).

Other provisions of Rules 96 and 97 regarding the time for filing exceptions (96(b)), requests for oral hearing (96(c)), and the effect of filing or failure to file exceptions (97(a) and (b)), are included in the proposed revision with all other administrative appeals.

PRESENT RULE	PROPOSED RULE	COMMENT
§1100.101 Petitions for rehearing, reargument, or reconsideration. (Continued) permitted, file a petition requesting the Commission to find on its own motion that the proceeding is one involving an issue of general transportation importance. Any petition seeking such a finding shall not be considered an application for rehearing, reargument, or reconsideration within the meaning of section 17 of the act and shall not exceed 3 pages. No reply thereto may be filed and the ruling thereon will be final. Petitions seeking the relief specifically covered herein will not be entertained at any other stage of the proceeding. (5) Copies of petitions and replies. In cases in which it has been determined and announced that an issue of general transportation importance is involved, there shall be furnished for the use of the Commission the original and 14 copies of each petition filed under this section and of replies to such petitions. A like number of copies shall be furnished of petitions seeking a finding that the proceeding involves an issue of general transportation importance. In all other cases, the original and 7 copies of such petitions and replies shall be furnished for the use of the Commission. (b) Rehearing or further hearing. When in a petition filed under this section opportunity is sought to introduce evidence, the evidence to be adduced must be stated briefly, such evidence must not appear to be cumulative, and explanation must be given why such evidence was not previously adduced. (c) Modification of effective date. A petition under this section seeking only modification of the effective date of a decision, order, or requirement, or in the period of notice, or other period or date prescribed therein, must be filed seasonably, except that, in case of unforeseen emergency satisfactorily shown by petitioner, such relief may be sought informally by telegram or otherwise, provided like notice is simultaneously communicated to all parties of record. (d) Reconsideration. If relief under this section other than under paragraphs (b) and (c) is sought, the matters claimed to have been erroneously decided and the alleged errors or relief sought must be specified with the particularity respecting exceptions as outlined in Rule 96(a), as should also any substitute finding or other substitute requirement by petitioner. (e) Time for filing. Except for good cause shown, and upon leave granted, petitions under this section must be filed within 30 days after the date of service of a decision or order, except as otherwise provided in the special rules of practice.		The definition of the term "exceptions" has been expanded to include all appeals from the initial decisions of hearing officers (Administrative law judges, joint boards and individual Commissioners) as well as appeals from employee board decisions (review boards) on modified procedure. The committee believes that the function of these pleadings is conceptually identical and that a clear distinction should be drawn between exceptions from an initial decision without regard to the issuing forum and petitions for administrative review which encompass only appeals from division orders or entire Commission orders. The committee recommends that all initial decisions be labeled as such to avoid any possible confusion at the bar as to the appropriateness of filing exceptions to review board decisions. The limitations imposed upon the scope of the exceptions arise out of the language in Section 303(c) of the 4R Act which expressly refers to the provision of the Administrative Procedure Act, 5 U.S.C. 557(b), authorizing the limiting and defining of issues upon review. The Committee understands that this language in the 4R Act was enacted as a direct result of the Commission's legislative proposal of October 17, 1975, suggesting adoption of this standard. The revised proposal here is designed to narrow the issues on review to the alleged critical substantive and procedures errors while avoiding de novo review of the entire record. The enumerated grounds for exceptions are in keeping with the practice at other agencies and provide adequate opportunity for the parties to challenge the essential basis of the initial decision.

§1100.101 Petitions for rehearing, reargument, or reconsideration. (Continued)

(f) Successive petitions on same grounds, not entertained. A successive petition under this section submitted by the same party or parties, and upon substantially the same grounds as a former petition, which has considered and denied by the entire Commission will not be entertained.

(g) Petitions for reconsideration of appellate division decisions on review of barod decisions. When an appellate division has denied a petition seeking a reversal, change or modification of a determination whether original er on review by a board of employees, any further petition for reconsideration by the same party or parties upon substantially the same grounds will not be entertained. If in the consideration of such a petition, however, by the appellate division, the previous determination of the board of employees has been reversed, changed, or modified, a further petition may be filed by any party to the proceeding adversely affected by the decision of the appellate division, within the time specified in paragraph (e) of this section, and the petition will be considered and disposed of by the same appellate division which passed upon the initial petition.

PRESENT RULE	PROPOSED RULE	COMMENT
	§1100.102 Administrative Appeals - Non Rail Proceedings The rules in this section apply to nonrail proceedings: (a) Conclusiveness. Unless the division or Commission, as the case may be, reverses, changes or modifies the prior decision, order, or requirement or unless the decision, order, or requirement is issued by the division or Commission in the first instance, no further administrative appeal shall lie. (b) Petitions for administrative review. (1) Except when no further administrative appeal shall lie, any party may file a petition for administrative review, which shall detail in what respects further hearing, rehearing, reargument or reconsideration is sought and the reasons therefor. (2) Such specifications of alleged error, relief sought, and argument in support thereof must be summarized, in a preface to the petition, suitably paragraphed, which shall be a succinct, but accurate and clear, condensation of the matters raised on petition. Except in extraordinary circumstances, and upon leave granted, the preface shall not exceed 3 pages. Replies to petitions shall also contain a preface of no more pages than permitted in the petition's preface, and shall address, point by point, the specifications of alleged error, relief sought, and argument in the preface to the petition. In proceedings in which a division reverses, changes, or modifies a prior decision by a hearing officer or an employee board, petitions for reconsideration addressed to the division in an appellate capacity, and replies thereto, shall not exceed 10 pages, in addition to the preface required by this paragraph. (3) When in a petition filed under this section opportunity is sought to introduce evidence, the evidence to be adduced must be stated briefly, such evidence must not appear to be cumulative, and explanation must be given why such evidence was not previously adduced. (c) Time for filing. Exceptions and petitions for administrative review shall be filed within thirty days after the date of service of the decision, order or requirement. For replies, see Rule 23.	Section (a) (of Rule 102) does not reflect a substantive change but emphasizes that the decision of the division or the Commission is administratively final in all proceedings except those specifically exempted. Where a change or initial decision by the division or Commission is involved, an appeal, as now, remains available. Section (b)(1) introduces the term "petitions for administrative review" and includes all available relief sought under the present Rule 101. This section states unequivocally that any party to a Commission proceeding has the right of appellate review except where specifically barred by other provisions of the rules. The proposal is drafted to encourage the petitioner to select the specific type of relief sought on appeal and to discourage the filing of petitions seeking for every conceivable remedy. This is not a substantive change in current Rule 101. Subsections (b)(2) implements the proposal in Ex Parte No. 55 (Sub-No. 19). Section (c) is derived from Rules 96(b) and 101(e) and applies to both exceptions and petitions for administrative review. The purpose of the revision is to emphasize the importance of the 30 day filing period (the same period in the existing rules) and to discourage unsupported requests for extensions. This proposal reflects the current practice of the Office of Proceedings in granting extensions for exceptions and petitions for reconsideration only in cases where the most worthy reasons for failure to comply are advanced. Since it is well established that the Commission always retains the authority to waive or modify its rules of practice where necessary (American Farm Lines v. Black Ball Freight, 397 U.S. 532 (1970)), the committee felt it was unnecessary to include the words "Except for good cause shown" now appearing in Rule 101(e). Such language merely invites requests for extensions. The administrative paperwork and the time needed to process a case could be reduced by severely limiting extensions in the area.

(d) Successive petitions. A party shall not be permitted to file a second administrative appeal unless the division or Commission, as the case may be, shall have reversed, changed or modified the prior decision, order or requirement, or where the decision, order, or requirement is issued by the division or Commission in the first instance, in which event the petition shall be limited to the reversal, change or modification, and successive administrative appeals upon substantially the same grounds shall not be entertained.

(e) Administrative finality. The timely filing of exceptions and petitions for administrative review shall, and the Commission on its own motion may, stay the effect of the decision, order or requirement until thirty days after the date of service of the order of the Commission, division or review board acting thereon, unless otherwise provided. Decisions of an employee board whether original or on review, are not administratively final. Such employee board decisions shall be subject to review by an appropriate appellate division of the Commission upon the filing of a timely petition in accordance with these rules of practice.

(f) Matters of General Transportation Importance. (1) Limitations on petitions for review of division decisions. Pursuant to authority granted in section 17(6) of the Interstate Commerce Act, the right to apply to the entire Commission for rehearing, reargument, or reconsideration of a decision, order, or requirement of a division of the Commission in any proceeding shall be limited and restricted to those proceedings in which the entire Commission, on its own motion, determines and announces that an issue of general transportation importance is involved. In proceedings in which no such announcement has been made, but in which a division reverses, changes, or modifies a prior decision by a hearing officer or where the initial decision is made by a division, a petition to the same division for rehearing, reargument, or reconsideration of its decision will be permitted and will be considered and disposed of by such division in an appellate capacity and with administrative finality.

Section (d) of the proposed revision bars the filing of all successive administrative appeals (exceptions and petitions for further hearing, rehearing, reargument or reconsideration alike) and uniformly governs the appellate review process before the Commission whether from the recommended decision and order of an administrative law judge or the order of a review board under modified procedure. As with Section (c) above, this proposal makes it clear that an appeal can be filed where the decision sought to be reviewed is rendered by the division or the Commission in the first instance. A change included in the proposal however involves the limitation of successive petitions, where permitted, to those aspects of the prior decision which were reversed or changed by the division or Commission. Thus, a complete review of the prior appellate decision which is now available will not be entertained. This proposal will have the effect of narrowing the issues presented for review as the proceeding advances through the Commission's appellate process and will help define and identify the precise matters which are the gravamen of the dispute. Accordingly, a saving in administrative energy should be achieved.

Section (e) of the proposed revision regarding the effect on the prior decision of filing exceptions or petitions for administrative review is derived from Section 17(8) of the Act, and is not now included in any form under current Rule 101. The committee felt that a clear expression of the staying effect of administrative appeals is sorely lacking in the present rules and is needed to alleviate confusion in this regard. The proposal does not, however, constitute a substantive change in Commission practice since exceptions and petitions for reconsideration now operate to stay the prior decision (except, of course, where a petition for GTI or a successive petition is involved).

Section (f) retains the existing procedures regarding matters of general transportation importance. That procedure has generally worked effectively and promptly and should not be disturbed.

PRESENT RULE	PROPOSED RULE	COMMENT
	(2) Petitions seeking a finding that an issue of general transportation importance is involved; 3-page limitation; time for filing; no reply permitted. In any proceeding which has involved the taking of evidence at oral hearing or by modified procedure in which the Commission has not noted the presence of an issue of general transportation importance, any party may, within 15 days after the service of a final decision, order, or requirement of a division or appellate division, as to which the filing of a petition for rehearing, reargument, or reconsideration is not permitted, file a petition requesting the Commission to find on its own motion that the proceeding is one involving an issue of general transportation importance. Any petition seeking such a finding shall not be considered an application for rehearing, reargument, or reconsideration within the meaning of section 17 of the Act and shall not exceed 3 pages. No reply thereto may be filed and the ruling thereon will be final. Petitions seeking the relief specifically covered herein will not be entertained at any other stage of the proceeding.	
	(3) Copies of petitions and replies. In cases in which it has been determined and announced that an issue of general transportation importance is involved, there shall be furnished for the use of the Commission the original and 14 copies of each petition filed under this section and of replies to such petitions. A like number of copies shall be furnished of petitions seeking a finding that the proceeding involves an issue of general transportation importance.	
	(g) Petitions for stay. A party may petition for stay of a decision, order or requirement pending a request for judicial review, for extension of the compliance date, for modification of the effective date or for similar procedural relief, stating reasons therefor. Such a petition shall be filed no less than five (5) working days in advance of the effective date, and no replies shall be entertained.	Section (g) is applicable to petition for stay pending judicial review and does not now appear in the General Rules of Practice. It is derived from Rule 18 of the Federal Rules of Appellate procedure which provide that an application to the United States Courts of Appeals for the stay of a decision or order of an administrative agency pending judicial review, "shall ordinarily be made in the first instance to the agency". Prior to March 1, 1975, judicial review of the Commission's orders was appropriately sought before three-judge United States District Courts pursuant to the Urgent Deficiencies Act, 49 U.S.C. 2325 and there was no requirement that a stay of the Commission's decision be sought at the agency in the first instance. Now, however, judicial review of Commission orders has been elevated to the United States Courts of Appeals, and the rules of that court require that such a petition first be filed with the agency. Accordingly, the committee felt that the Section (g) is necessary to advise the bar of the procedure applicable to seeking this form of temporary relief. Section (g) governing petitions for procedural relief, including requests for extensions and modifications, is derived from present Rule 101(c) which provides that such relief can be sought "seasonably" and "informally by telegram". The imposition of the 5 day requirement in the proposal reflects an attempt by the committee to discourage such requests in order to reduce, whenever possible, the time required for processing a case. Additionally, the elimination of replies to such requests is recommended to achieve similar results particularly where the relief sought is procedural only, and does not involve a substantive agency determination.

PRESENT RULE	PROPOSED RULE	COMMENT
	§1100.103 Administrative Appeal - Rail Proceedings The rules in this section apply only to proceedings involving rail matters: (a) Conclusiveness. The decision, order or requirement of the division or Commission will not be the subject of reconsideration or further proceedings except when the Commission, on its own motion or upon petition, determines that the proceeding involves a matter of general transportation importance, or that new evidence or changed circumstances exist which would materially affect the prior decision, order or requirement. (b) Successive administrative appeals. A party shall not be permitted to file a second administrative appeal, except that (1) petitions for administrative review pursuant to paragraph (c) below, and (2) petitions for stay pursuant to paragraph (f) below shall be permitted. (c) Petitions for administrative review. (1) Any party may file a petiton for administrative review of the decision, order, or requirement of the division or Commission, subject to the following requirements: (i) That the petition shall detail in what respects the proceeding involves a matter of general transportation importance or new evidence or changed circumstances exist which would materially affect the prior decision, order or requirement, and include a request that the Commission make such determination. (ii) That, to the extent further hearing, rehearing, reargument or reconsideration is sought, the petition shall detail in what respects such relief is requested and the reasons therefor. When in a petition filed under this section opportunity is sought to introduce evidence, the	Significantly, section (a) of Rule 103 eliminates additional review by the division in those instances where review is sought for the reason that an initial decision has been modified or revised. In the spirit of the RRRR Act of 1976, the committee believes that this second appeal to the same division is unnecessary and creates administrative delay. In all rail cases, administrative review of division or Commission decisions is discretionary with the agency and limited to instances where the Commission determines that issues of general transportation importance, or new evidence or changed circumstances exist materially affecting the prior decision. Section (b) reflects the discussion above and enumerates the only circumstances under which a second administrative appeal will be permitted. Section (c) governs the filing of "petitions for administrative" review as distinguished from "exceptions" and establishes the requirements as to content and form. In accord with current practice in administratively final matters and with the 4R Act, practitioners are clearly notified that a petition does not automatically stay the effect of the prior decision. The imposition of a page limitation for this second appeal parallels the practice in the Federal courts of encouraging brevity in appellate pleadings, and conforms to the proposal in Ex Parte No. 55 (Sub-No. 19). Section (d) is in harmony with section 303(a) of the 4R Act. For general comments on this section, see the comment regarding proposed Rule 102(c), supra.

PRESENT RULE	PROPOSED RULE	COMMENT
	evidence to be adduced must be stated briefly, such evidence must not appear to be cumulative, and explanation must be given why such evidence was not previously adduced. (iii) That the petition shall not exceed 10 pages in length, although a separate preface and summary of arguments not exceeding 3 pages may also accompany the petition. Replies shall be subject to the same requirements. (2) The filing of the petition itself shall not stay the effect of the prior decision, order or requirement. (d) Time for filing. Exceptions and petitions for administrative review with respect to any matter involving a common carrier by railroad shall be filed within 20 days after the date of service of the decision, order, or requirement to which it is directed, and within 30 days thereof for any other matter. For replies, see Rule 23. (e) Administrative finality. (1) The timely filing of exceptions shall stay the effect of an initial or tentative decision. (2) Unless otherwise provided, the Commission, on its own motion or upon petition, may stay the effect of a decision, order or requirement of the division or Commission. (f) Petitions for stay. A party may petition for stay of a decision, order or requirement pending a request for judicial review, for extension of the compliance date, for modification of the effective date or for similar procedural relief, stating the reasons therefor. Such a petition shall be filed no less than five working days in advance of the effective or compliance date, and no replies shall be entertained.	Section (e) of the proposed revision regarding the effect on the prior decision of filing exceptions or petitions for administrative review is derived from section 17(9) of the Act as revised by the 4R Act, and is not now included in any form under current Rule 101. The Committee felt that a clear expression of the staying effect of administrative appeals is sorely lacking in the present rules and is needed to alleviate confusion in this regard. Section (e) reflects the distinction between the effect on the prior decision of filing exceptions (now including appeals from employee boards in Rule 101(b), supra) and petitions. For comment on section (f) see comment regarding Rule 102(g)

PRESENT RULE	PROPOSED RULE	COMMENT
§1100.102 Petitions not otherwise covered. When the subject matter of any desired relief is not specifically covered by the rules in this part, a petition seeking such relief, and stating the reasons therefor may be served and filed.	§1100.104 Petitions not otherwise covered. A party seeking relief not otherwise provided for by these rules may file a petition for such relief, stating reasons therefor. Petitions barred by any other rule of practice shall not be entertained.	The existing rule has been revised to reflect an editorial change to render it more readable. Additionally, the revised version includes an additional sentence to make it clear that the purpose of the rule is to provide a procedural remedy which, due to the particular circumstances involved, may not be available under any other rule. It is not to be invoked in order to circumvent the requirements of those rules. Thus, successive administrative appeals barred by Rules 101-103 would not be entertained under this provision.
	§1100.105 Application of the rules: Time limits - Proceedings involving common carriers by by railroad. In applying these rules to proceedings involving common carriers by railroad subject to Part I of the Interstate Commerce Act, the Commission will be governed by the time limits specified in section 17(9) of said Act, as set forth in Appendix G.	Rule 105 is a new provision that has been added to reflect the procedural limitations imposed upon the Commission in the Railroad Revitialization and Regulatory Reform Act of 1976 which was signed into law on February 5, 1976. The new rule limits application of the strict time limitations set out in Section 303 of that Act to proceedings involving railroads alone, as required by the bill, and does not extend those provisions across-the-board to motor or water carrier proceedings. The Committee believes that the Commission should allow itself an opportunity to study and experience the effect of the new requirements on a portion of the caseload (rail) before applying those procedures to all proceedings. A significant factor in limiting application of these procedures was the concern expressed regarding the number of staff available to implement the required procedures. If experience revealed that the entire caseload could be processed within the time limits set Rule can be easily amended.

PRESENT RULE	PROPOSED RULE	COMMENT
	SUB-PART B SPECIAL RULES OF PRACTICE	
	§ 1100.200 ~~Special~~ Rules of practice governing procedure in certain suspension and fourth-section matters.	
	(a) The proceedings of the ~~Board of Suspension and the Fourth Section Board~~ Suspension and Fourth Section Board shall be informal. No transcription of such proceedings will be made. Subpoenas will not be issued and, except when applications or petitions are required to be attested, oaths will not be administered.	Revisions to Rule 200 to reflect the correct title of the Board, to delete outdated material, to reflect that Division 2 will not consider any new matter in an appeal made under Rule 200(c), and to conform to the more limited appellate review created by the 4-R Act.
	(b) Petitions for reconsideration of orders of the following may be filed by any interested person within 20 days after the date of the service of the orders:	
	(1) ~~Board of~~ Suspension and Fourth Section Board, ~~(2) Fourth Section Board,~~	
	~~(3)~~ (2) of Appellate Division 2 reversing, changing, or modifying a previous determination of an employee board in a non-rail matter, and	
	~~(4)~~ (3) of Division 2 suspending schedules or granting or denying fourth-section relief prior to hearing in proceedings not subject to a prior determination by an employee board, but only in non-rail matters.	
	~~Except as to said subparagraph (4) of this paragraph, respecting which an original and 14 copies are required,~~ The original and six copies of every pleading, document or paper filed under this section shall be furnished for the use of the Commission. Any interested person may file and serve a reply to any petition for reconsideration permitted under this paragraph within 20 days after the filing of such petition with the Commission but if the facts stated in any such petition disclose a need for accelerated action, such action may be taken before expiration of the time allowed for reply. In all other respects, such petitions and replies thereto will be governed by the Commission's ~~general~~ rules of practice.	
	(c) When the ~~Board of~~ Suspension and Fourth Section Board has declined to suspend a proposed tariff or schedule, or any part thereof, a petition in writing by	

any protestant or protestants may be filed with the Commission for reconsideration by the designated appellate division provided it reaches the Commission at least two work-days prior to the effective date of the tariff or schedule in question. For the purposes of this section, a work-day shall be considered any day except Saturday, Sunday or a legal holiday in the District of Columbia. (A legal holiday of less than one day shall be considered a work-day within the meaning of this section.) Petitions submitted under this section shall be filed with the Secretary of the Commission by 4:00 p.m., United States Standard Time (or by 4:00 p.m., Local Daylight Saving Time if that time is observed in the District of Columbia). Telegraphic notice or the equivalent thereof must be given by the petitioners to the respondent or respondents. As no replies to the petitions for reconsideration are contemplated under this rule, petitioners will be expected~~, except in unusual circumstances,~~ to rely wholly on the information previously filed with the ~~Board of~~ Suspension and Fourth Section Board. Written or telegraphic communication in intelligible form requesting reconsideration will be sufficient. Such request shall contain the following prefatory statement: "This matter requires expedited handling under Rule 200 of the Commission's ~~Special~~ Rules of Practice." A petition not timely filed shall be rejected by the Secretary.

PRESENT RULE	PROPOSED RULE	COMMENT
	§ 1100.225 ~~Special~~ Rules of practice governing the procedure of the Motor Carrier Board, the Finance Board,[1] the Operations Boards, the Special Permission Board, the Released Rates Board, ~~the Operating Rights Board,~~ and the Tariff Rules Board.	Revised to reflect the abolition of the Operating Rights Board and to delete the words special and general from the Rules of Practice.
	(a) The proceedings of the Motor Carrier Board, the Finance Board, the Operations Boards, the Special Permission Board, the Released Rates Board, ~~the Operating Rights Board,~~ and the Tariff Rules Board shall be informal. No transcript of such proceedings will be made. Subpoenas will not be issued and, except when applications, petitions, or statements are required to be attested, oaths will not be administered.	
	(b) A petition for reconsideration of an order of ~~one of the following boards may be filed by any interested person:~~ ~~(1) The Motor Carrier Board, an Operations Board, the Special Permission Board, the Released Rates Board, or the Tariff Rules Board; or~~ ~~(2) The Operating Rights Board only with respect to matters arising pursuant to the Commission's deviation rules as set out in Part 1042 of this chapter.~~ the Motor Carrier Board, the Operations Boards, the Special Permission Board, the Released Rates Board, or the Tariff Rules Board may be filed by any interested person.	The footnote currently part of Rule 225 is deleted as unnecessary.
	(c) A petition for reconsideration of ~~the~~ a ~~Operating Rights Board, except as provided in paragraph (b) of this section, and the~~ Finance Board decision may be filed only by a party to the proceeding.	
	(d) A petition for reconsideration pursuant to paragraphs (b) and (c) of this section and reply thereto will be governed by the Commission's ~~general~~ rules of practice, except as provided in paragraph (e), (f), and (g) of this section.	

[1] ~~The general rules of practice apply to the procedure of all employee boards except to the extent specifically provided for in Rules 200 and 225.~~

PRESENT RULE	PROPOSED RULE	COMMENT
(e) The original and six copies of every pleading, document, or paper permitted or required to be filed under this section, shall be furnished for the use of the Commission.	No change.	
	(f) A petition seeking reconsideration of an order of the Motor Carrier Board entered under section 210a(a) or 311(b) of the ~~Interstate Commerce~~ act must be filed within 20 days after the date of service of the order. Within 20 days after the filing of such petition with the Commission any interested person may file and serve a reply thereto.	Editorial change.
(g) A petition seeking reconsideration of an affirmative order of the Motor Carrier Board entered pursuant to the rules and regulations governing transfers of property brokers' licenses, Part 1045 of this chapter, passenger brokers' licenses, Part 1133 of this chapter, motor carrier operating rights, Part 1132 of this chapter, water carrier operating rights, Part 1141 of this chapter, and freight forwarder permits, Part 1151 of this chapter, must be filed within 20 days following publication of a synopsis of such order in the FEDERAL REGISTER. In such a petition the matters claimed to have been erroneously decided and the alleged errors must be specified with particularity. If the petition contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted in affidavit form. Within 20 days after the final date for filing of such petitions with the Commission, any interested person may file and serve a reply thereto.	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
	§ 1100.240 Rules governing ~~notice of filing of~~ applications by motor carriers of property or passengers under sections 5(2) and 210a(b) of the Interstate Commerce Act. ~~and certain other procedural matters with respect thereto.~~	To eliminate surplus language.
	(a) Scope of rules. These rules govern the filing and handling of (1) applications under section 5(2) of the act respecting control, lease, and unification of operating rights and properties of motor carriers of property or passengers, and (2) applications for approval under section 210a(b) of the act of the temporary operation of motor carrier properties sought to be acquired in an application under section 5(2) of the act. Except as otherwise herein provided, the ~~general~~ rules of ~~Practice shall apply.~~ general applicability shall govern.	To conform with the terminology proposed in Rule 1(b) and the title of SUBPART A", RULES OF GENERAL APPLICABILITY
(2) If applicants propose that any portion of the operating rights involved in the transaction be canceled or restricted, such proposal will be included in the summary. (3) The summary will state whether an application has or has not been filed for temporary authority under section 210a(b) of the act. (4) No notice by applicants to interested persons is required, except that applicants are not relieved from the obligation to file copies of applications with Governors, State Boards, and Regional Directors of the Commission's Bureau of Operations as may be required by the prescribed form of application, and except as hereinafter provided in paragraph (d)(3) of this section. (5) Except for good cause shown, amendments to applications which broaden	(b) Notice ~~to interested persons.~~ (1) Notice of the filing of applications under section 5(2) will be given by the publication of a summary of the authority sought in the FEDERAL REGISTER. ~~Such~~ The ~~summaries~~ summary will be prepared by the Commission, ~~and it~~ but applicants shall be ~~the responsibility~~ responsible ~~of applicants~~ promptly to advise the Commission if the summary does not properly describe the authority sought.	For clarity.

PRESENT RULE	PROPOSED RULE	COMMENT
the scope of the proposed transaction will not be allowed if tendered after notice of the filing of an application has been published in the Federal Register. Restrictive amendments may be submitted at any time, but if tendered after such publication, they may be allowed only in the discretion of the Commission, or by the hearing officer if the matter is assigned for hearing or prehearing conference. (c) Protests and requests for hearing under section 5(2). (1) Protests to the granting of an application under section 5(2) of the act shall be filed with the Commission within 30 days after the date notice of the filing of the application is published in the FEDERAL REGISTER. A protest filed under these rules shall be served upon applicants' representatives named in the notice of filing published in the FEDERAL REGISTER. Unless otherwise specified in the notice, the original and one copy of the protest shall be filed with the Commission. Protests not in reasonable compliance with the requirements of this section may be rejected in the discretion of the Commission. (2) Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. (3) A protest against an application shall set forth specifically the grounds upon which it is made and the protestant's interest in the proceeding, shall request an oral hearing if one is desired, and shall specify with particularity the facts, matters and things relied upon, but shall not include issues or allegations phrased generally, (4) Any request for an oral hearing shall be supported by a specific explanation as to why the evidence to be presented cannot reasonably be submitted in the form of affidavits, and shall set forth the approximate number of witnesses who would be presented by the protestant, an estimate of the hearing time required for such presentation, and whether a hearing at Washington, D. C., would be objectionable, and, if so, what place would be more suitable; and protestant shall certify in its protest that, if an oral hearing is held, it will appear and present evidence.	No change.	
	(5) Where a person has a limited interest in an application, which possibly could be eliminated by a restrictive amendment of the proposed transaction, such person may also include in a protest filed in conformity with this paragraph an offer to withdraw the protest	Subsection (c)(5) is modified to reflect that acceptance of an amendment by applicant is not and can not be binding on the Commission.

PRESENT RULE	PROPOSED RULE	COMMENT
	in the event of acceptance of such amendment by applicants, and the Commission.	
(6) Except as provided in subparagraph (5) of this paragraph, or for good cause shown, the failure of any person filing a protest to an application to appear at a hearing scheduled thereon shall be construed as a waiver of his right to participate further in the proceeding; such person shall no longer be considered as a party to the proceeding, and such person and any representative responsible for his participation in the proceeding may be subject to censure for failure to appear.	No change.	
(7) Any interested person, not a protestant, desiring to receive notice of the time and place of any hearing, conference, or other proceedings shall notify the Commission by telegram or letter within 30 days from the date of the publication of the notice of the filing of the application in the FEDERAL REGISTER.		
(d) Procedure to be followed under section 210a(b). (1) Subject to subparagraph (4) of this paragraph, protests to the granting of an application for temporary authority under section 210a(b) may be filed by persons who oppose, or intend seasonably to oppose, the application under section 5(2).		
(2) The protest to temporary approval may be by telegram, letter, or other writing, of which only an original need be filed, or may be included in a protest filed under paragraph (c) of this section. It should state the interest of the protestant and the grounds for the position taken in opposition to temporary approval, and should show service upon applicants' representatives.		
(3) If an application for temporary authority is filed in a contested proceeding after the period for filing protests under paragraph (c) of this section has expired, applicants are required to furnish copies of such application to protestants. Notice will not thereafter be given by publication in the FEDERAL REGISTER.		
(4) Applications for temporary authority under section 210a(b) will be disposed of without hearings or other proceedings, and without necessarily awaiting expiration of the period allowed for protests.		
(5) Unless circumstances requiring immediate action are shown, applications for temporary authority under		

PRESENT RULE	PROPOSED RULE	COMMENT
section 210a(b) will not be disposed of before 10 days after the date the notice of filing of the application under section 5(2) is published in the FEDERAL REGISTER, or 10 days after the date an amended notice is published, if the application for temporary authority is filed within 30 days after the date of initial publication; or, if the application for temporary authority is filed after expiration of the 30 days from the date of initial publication of notice of the section 5 application, and protests have been filed, copies of the temporary authority application shall be served on protestants, and action will not be taken in less than 20 days from the date of such service, unless circumstances require immediate action. (e) Hearing or other procedures under section 5(2). (1) The Commission will determine whether an assignment for oral hearing should be made, after notice to interested persons of the filing of the application has been published in the FEDERAL REGISTER and the period for filing protests has expired. At or prior to such time, applicants who do not intend to prosecute their application should promptly request dismissal thereof. (2) Applicants who believe their application is not susceptible of handling without oral hearing may request oral hearing when the application is filed, or later, if additional evidence which cannot reasonably be submitted in the form of affidavits is required. (3) If applicants request an oral hearing and show that such hearing is necessary, or if the proceeding is contested, applicants shall advise the approximate number of witnesses who will be presented, furnish an estimate of the hearing time required for such presentation, and state whether a hearing at Washington, D.C., would be objectionable, and, if so, what place would be more suitable. (f) Notice of hearing, conference or other proceedings. (1) Notice of the time and place of any hearing, conference, or other proceedings will be given to applicants' representatives, applicants, protestants, and other interested parties by mailing to them the order or notice assigning the application for hearing, conference, or other procedure.	No change	

PRESENT RULE	PROPOSED RULE	COMMENT
(2) A request by any party for a change in the time or place of an assigned hearing must set forth good and sufficient cause for the action requested, must be in writing and filed with the Commission not less than 10 days before the assigned hearing date, except in emergency circumstances, and must be served on all known parties of record at the same time and by the same method of communication as service is made on the Commission. Where such requests are filed less than 10 days before the date of hearing, the petitioning party shall state the reasons for his failure to make such request within the prescribed time. (3) The applicants' representatives, protestants, and those who request notice of changes in time or place of hearing, conference, or other proceedings will be informed of such changes if notice is given by mail. If telegraphic notice becomes necessary, notice of such changes will be given by telegram only to those who request telegraphic notice at their expense. (4) Upon receipt of an order or notice of a hearing assignment, applicants who no longer intend to proceed to hearing shall immediately and jointly request dismissal of their application, with appropriate notification to all protestants, failing which applicants or their representatives, or both, may be subject to censure.		
	(g) Intervention. Rule 73 relating to participation without intervention is inapplicable to applications subject to this section. ~~except with respect to persons seeking to intervene in support.~~ No person who fails to file a protest as provided in these rules will be permitted to intervene in opposition except upon a showing of substantial reasons in a petition submitted in accordance with Rule 72.	Rule 73, as proposed, would not permit participation without intervention under any circumstances in cases under §5(2) or §210a(b). See proposed rules 72 and 73

PRESENT RULE	PROPOSED RULE	COMMENT
	§ 1100.245 ~~Special~~ Rules governing procedures for the issuance ~~to single State common carriers, by motor vehicle~~ of Certificates of Registration under section 206(a)(6) of the ~~Interstate Commerce~~ act, ~~as amended October 15, 1962, authorizing motor common carrier operations in interstate and foreign commerce, and certain other procedural matters with respect thereto.~~	To eliminate unnecessary words.
	(a) Scope of ~~special~~ rules. These ~~special~~ rules govern (1) the matter of giving notice to interested persons, by publication in the FEDERAL REGISTER, of the filing of applications for State certificates of public convenience and necessity authorizing motor common carrier operations in the transportation of property or passengers in intrastate commerce, in connection with which the applicant, also desires to engage in transportation in interstate and foreign commerce under the provisions of section 206(a)(6) of the ~~Interstate Commerce~~ act, ~~as amended October 15, 1962~~, and certain related matters.	
	(2) The filing with the Interstate Commerce Commission of applications for Certificates of Registration based upon intrastate certificates of public convenience and necessity issued by a State Commission which contain a concurrent finding that the public convenience and necessity require operations in interstate and foreign commerce in accordance with the provisions of section 206(a)(6) of the ~~Interstate Commerce~~ act, ~~as amended October 15, 1962~~.	
	(3) The filing with, and the handling by, the Interstate Commerce Commission of petitions for reconsideration of the decisions of State Commissions, made pursuant to the provisions of section 206(a)(6) of the ~~Interstate Commerce~~ act, ~~as amended October 15, 1962~~, finding that	

the public convenience and necessity require motor common carrier operations in the transportation of property or passengers, in interstate and foreign commerce, which do not exceed the scope of the concurrently authorized motor common carrier operations in intrastate commerce contained in certificates of public convenience and necessity issued by such State Commissions. Except as otherwise herein provided, the ~~general rules of practice shall apply.~~ rules of general applicability shall govern.

(b) Notice to interested persons of the filing of State Applications. In accordance with such rules and regulations as may be prescribed by the State Commissions, any person seeking an intrastate certificate of public convenience and necessity, who or which also desires to engage in transportation in interstate and foreign commerce pursuant to section 206(a)(6) of the ~~Interstate Commerce~~ act, ~~amended October 15, 1962~~, shall so notify the State Commission with which the intrastate application is filed at the time of filing the intrastate application. Notice to interested persons of the filing of such an application, and of the applicant's desire also to engage in transportation in interstate and foreign commerce, shall be given by the publication in the FEDERAL REGISTER of a summary of the authority sought as prepared by the State Commission and transmitted to the Interstate Commerce Commission at Washington, D.C. (See approved Form No. 7 in Appendix B). In order to afford interested persons a reasonable opportunity to be heard, such summaries must be forwarded to the Interstate Commerce Commission sufficiently in advance of any hearings that

may be scheduled on the application so noticed. Except as otherwise may be required by the State Commission, no other notice by applicant to interested persons is necessary.

(c) Conduct of, and participation in, State Commission application proceedings. Subject to the requirement of section 206(a)(6) of the ~~Interstate Commerce~~ act, ~~as amended October 15, 1962~~, that interested persons be afforded a reasonable opportunity to be heard, the rules and regulations of the State Commission with which the intrastate application is filed shall govern the conduct of, and participation in, any State hearings or other State Commission proceedings that may be held with respect to such application, notice of the filing of which has been published in the FEDERAL REGISTER pursuant to paragraph (b) of this section. Protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, and any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission. The record made in the State Commission proceeding shall be made available to the parties to such proceeding upon payment of such costs as may be fixed or prescribed by the State Commission.

(d) Applications to the Interstate Commerce Commission for Certificates of Registration. (1) Within 30 days after service by the State Commission of a certificate of public convenience and necessity authorizing motor common carrier operations in intrastate commerce and containing the recitations required by section 206(a)(6) of the ~~Interstate Commerce~~ act, ~~as amended October 15, 1962~~, the holder of such State certificate shall file with the Interstate

Commerce Commission at Washington, D. C., an Application for Motor Carrier Certificate of Registration, Form BOR-100, §1003.1 of this chapter. Such application shall be prepared in accordance with and contain all information called for in the form of application and the instructions thereto. Copies of such application shall be furnished in such number, and be filed and served in the manner and upon the persons specified in the form of application.

PRESENT RULE	PROPOSED RULE	COMMENT
(2) Upon receipt, an application for a Certificate of Registration will be assigned a docket number; and thereafter notice of the date of filing of the application and the docket number assigned thereto will be transmitted by the Interstate Commerce Commission to the applicant and those persons upon whom copies of the application were served by the applicant as specified in the form of application; and thenceforth all further proceedings therein before the Interstate Commerce Commission will be under such docket designation.	No Change.	
	(3) Any party in interest, who or which opposed in the State Commission proceeding the authorization of operations in interstate or foreign commerce, shall be deemed to be a party in the corresponding application proceeding instituted in accordance with subparagraph (1) of this paragraph. No other person will be permitted to participate in such proceeding except upon a showing of substantial reasons in a petition submitted in accordance with Rule 72 of the Commission's ~~general~~ rules of practice.	Changed for consistency.
(4) Except for good cause shown, and upon leave granted, failure to file an application for a Certificate of Registration within the 30-day time period specified in subparagraph (1) of this paragraph shall be construed as a waiver of any right thereafter to file for and obtain such a certificate.	No Change	
(e) Petitions for reconsideration of State Commission decisions made the subject of applications for Certificates of Registration-(1) Parties. Any party in interest, who or which opposed in the State Commission proceeding the authorization of operations in interstate or foreign commerce, may file with the Interstate Commerce Commission at Washington, D.C., a petition seeking reconsideration of the State Commission decision which is the basis for an application for a Certificate of Registration.		

PRESENT RULE	PROPOSED RULE	COMMENT
	(2) Filing requirements. Except for good cause shown, and upon leave granted, petitions under this rule shall be filed within 30 days after the date of the filing of an application with the Interstate Commerce Commission pursuant to paragraph (d) (1) of this section for a Certificate of Registration authorizing motor common carrier operations in interstate and foreign commerce under the provisions of section 206(a)(6) of the ~~Interstate Commerce~~ act, ~~as amended October 15, 1962~~, and such petition shall be filed under the docket number assigned to the related application proceeding.	To conform with the terminology in proposed rule 1(c).
	(3) Contents. Any such petition shall specify with particularity the facts, matters, and arguments relied upon; and unless a copy of such record already has been submitted by another petitioner, such petition shall be accompanied by a certified copy of the complete record made before the State Commission, including a transcript of any testimony taken and any exhibits filed before such State Commission, such copy to be provided by, and at the expense of, the petitioner. The petition shall conform in all respects to requirement of Rules 15 and 17 of this Commission's ~~general~~ rules of practice. The original and 6 copies of the petition, and one certified copy of the record made before the State Commission, shall be furnished for the use of the Interstate Commerce Commission.	
(4) Replies to petitions. A reply to a petition filed under these rules may be filed and served within 20 days after the final date for filing such petitions. The original and 6 copies of the reply shall be furnished for the use of the Interstate Commerce Commission.		
	(5) Service of petitions and replies. Copies of each petition and reply filed under these rules shall be served on the State Commission involved and on all other parties to the State Commission proceeding in accordance with the requirements of Rule 22 of the Commission's ~~general~~ rules of practice.	To conform with the terminology in proposed rule 1(c)

PRESENT RULES	PROPOSED RULES	COMMENT
(6) Effect of petitions. The filing under these rules of a petition for reconsideration shall not preclude or affect the institution of the motor carrier operations in intrastate commerce authorized by the State certificate; and failure seasonably to file a petition for reconsideration under these rules will be construed as a waiver of opposition and further participation in the related application proceeding for a Certificate of Registration.		
(f) Disposition of Applications for Certificates of Registration and related petitions for reconsideration. Applications for Certificates of Registration and related petitions for reconsideration filed under these rules will be handled together and processed in a single proceeding and will be disposed of by the division of the Interstate Commerce Commission to which these matters may be assigned, acting as an Appellate Division. Except as the Interstate Commerce Commission may, in its descretion, otherwise direct, a decision and order issued by the Appellate Division disposing of such an application and petition will be administratively final and petitions by any of the parties for reconsideration of such Division's actions will not be entertained.	No change	
(g) Disposition of Unopposed Applications for Certificates of Registration. Where the State Commission proceeding which resulted in the issuance of the State Certificate sought to be made the basis of a Certificate of Registration was unopposed, or where petitions for reconsideration of the finding of the State Commission that the public convenience and necessity require operations in interstate and foreign commerce are not seasonably filed, the application for a Certificate of Registration will be disposed of in the most expeditious manner and, so far as practicable and legally permissible, without formal hearings or other proceedings.		

PRESENT RULE	PROPOSED RULE	COMMENT
	§ 1100.246 ~~Special~~ Rules pertaining to proceedings for the discontinuance or change of train or ferry service.	Change in title for the purpose of conformity.
(a) Scope of special rules. These special rules govern procedure before the Commission in proceedings commenced by carriers subject to part I of the Interstate Commerce Act, under and pursuant to the provisions of section 13a of said Act, upon a notice under paragraph (1) of said section or by a petition under paragraph (2) thereof, with respect to a proposed discontinuance or change, in whole or in part, of the operation or service of any train or ferry.	No change.	
	(b) General rules otherwise applicable. Except as ~~provided otherwise in these~~ special rules, proceedings upon notices and petitions filed under section 13a shall be governed by the ~~Commission's general rules of practice~~ rules of general applicability.	For Conformity with the term proposed with rule 1(b) and the title of SUBPART A, RULES OF GENERAL APPLICABILITY
(c) Notices and petitions by carriers. A notice filed under paragraph (1), and a petition under paragraph (2), of said section 13a shall be prepared in accordance with and contain the information called for by rules and regulations then in force with respect to such a notice or petition. See Part 1122 of this chapter.		
(d) Notice to interested parties. Notice of the institution of any investigation or of the time and place of any hearing, conference, or other proceeding will be given by the Commission to the carrier or carriers involved, the Governor and appropriate regulatory agency of each State in which the train or ferry affected is operated, protestants, and other interested parties of record, by mailing to them the order or notice instituting the investigation or assigning the hearing, conference, or other proceeding. Similar notice will be given to the same parties of changes in the time or place of hearing, conference, or other proceeding when time permits notice by mail; but, if telegraphic notice becomes necessary, notice of such changes will be given by telegram only to those who have requested telegraphic notice at their expense.		
(e) Participation at hearings without intervention. In an investigation proceeding under section 13a(1), or in pro-		

PRESENT RULE	PROPOSED RULE	COMMENT
ceedings upon a petition filed under section 13a(2), an appearance may be entered at the hearing without filing a petition in intervention or other pleading, if there is full disclosure of the identity of the person or persons in whose behalf the appearance is to be entered, if the interest of such person in the proceeding and the position intended to be taken are stated fairly, and if the contentions will be reasonably pertinent to the issues already presented. A person in whose behalf an appearance is entered in this manner becomes a party to the proceeding.		
	(f) Complaints and protests. When a notice is filed with the Commission pursuant to ~~the provisions of~~ section 13a(1), proposing to discontinue or change, in whole or in part, the operation or service of any train or ferry ~~from~~ between a point in one State ~~to~~ and a point in any other State or in the District of Columbia, ~~or from a point in the District of Columbia to a point in any State,~~ any interested person opposed to such proposal may ~~make his opposition known by filing~~ file with the Commission a complaint or protest. ~~The complaint or protest may be~~ by telegram, letter, or other writing, of which only an original need be filed. Service ~~of copies~~ thereof upon the carrier proposing the discontinuance or change is not required. A complaint or protest should identify ~~the proceeding by reference to the name of~~ the carrier and ~~to~~ the particular train or ferry involved, and should state the interest of the complainant or protestant and the grounds for the ~~position taken in~~ opposition. ~~to the proposal, in order to be considered by the Commission,~~ The complaint or protest must be filed with the Commission in Washington, D. C., not later than 15 days before the date when the carrier proposes to make effective the ~~subject~~ discontinuance or change. ~~Replies to a protest or complaint are not contemplated, and~~ The failure to reply will not be construed as an admission of any allegations contained ~~therein~~ the protest or complaint.	To eliminate unnecessary words.

PRESENT RULE	PROPOSED RULE	COMMENT
(g) Petitions for reconsideration of orders instituting an investigation. Petitions for reconsideration of an order instituting an investigation in relation to a proposed change or discontinuance may be filed by the carrier or carriers affected within 15 days after the date of service of the order. An original and 6 copies shall be furnished for the use of the Commission, and copies thereof shall be served upon the persons to whom copies of the notice of the carrier were required to be mailed by the rules and regulations prescribed by the Commission. See §1122.5 of this chapter. Any interested person may file and serve a reply to any petition for reconsideration permitted under this paragraph within 15 days after the filing of such petition with the Commission.	(h) Reconsideration of decision not to institute an investigation. A decision not to institute an investigation concerning a proposed discontinuance or change of service may be made the subject of a petition for reconsideration by any interested person, provided the petition reaches the Commission at least two workdays prior to the effective date of the proposed discontinuance or change of service. If an order is desired requiring continuance of the service pending hearing and decision upon investigation, the petition should reach the Commission at least 12 days before the discontinuance or change is scheduled to become effective. ~~two-workdays before the Commission's authority to enter such an order will expire.~~[1] (Under ~~the provisions of~~ section 13a(1) of the act, an order of the Commission requiring continuance of the operation or service, pending hearing and decision in an investigation, must be served upon the carrier or carriers affected thereby at least 10 days before a discontinuance or change would otherwise become effective.) For the purposes of this section, a workday shall be considered any day except Saturday, Sunday, or a legal holiday in the District of Columbia. (A legal holiday of less than one day shall be considered a workday within the meaning of this section.)	A change in the interest of clarity and elimination of the footnote.

Petitions submitted under this paragraph shall be filed with the Secretary of the Commission by 4:00 p.m., United States Standard Time (or by 4:00 p.m. Local Daylight Saving Time if that time is observed in the District of Columbia.) Written or telegraphic communication in intelligible form requesting reconsideration will be sufficient. The request for reconsideration shall contain the following prefatory statement: "This matter requires expedited handling under Rule 246 of the Commission's ~~special~~ rules of practice." If in writing, an original and six copies of the petition shall be furnished for the use of the Commission. Telegraphic notice or its equivalent must be given by the petitioner to the carrier or carriers affected, and certification that such notice has been given must accompany the request for reconsideration. Action may be taken upon the petition without awaiting a reply, but if a reply is received prior to a decision upon the petition it will be given consideration. A petition not timely filed will be rejected by the Secretary.

For clarification.

(i) Protests. ~~As the applicable statute requires~~ Section 13a(2) requires this Commission to conduct a full hearing in the State involved, before ~~the Commission~~ it may grant a petition filed thereunder for authority to discontinue or change the operation or service of any train or ferry operated wholly within the boundaries of ~~a single~~ that State. It is not necessary, therefore, that persons opposed to such a petition file a protest in order to obtain a hearing; ~~on the proposal;~~ but interested persons may file protests by complying with Rule 40 or they may register their opposition by letter addressed to the Secretary, Interstate Commerce Commission, Washington, D. C. 20423, for the purpose of receiving notice of the time and place of the hearing. ~~when assigned.~~ See paragraph (e) of this section in regard to participation at hearing.

PRESENT RULE	PROPOSED RULE	COMMENT
	§ 1100.247 ~~Special~~ Rules governing ~~notice of filing of~~ applications by motor carriers of property or passengers and brokers under sections 206 (except section 206(a)(6) relating to Certificates of Registration), 209 and 211, by water carriers under sections 302(e), 303, and 309, and by freight forwarders under section 419 of the ~~Interstate Commerce~~ act. ~~and certain other procedural matters with respect thereto.~~	Surplusage deleted from title
	(a) Scope and applicability of special rules--(1) Scope. These special rules govern the filing and handling pursuant to the provisions of the ~~Interstate Commerce~~ act of (i) applications for certificates, permits, and licenses respecting the transportation of property or passengers under sections 206 (except section 206(a)(6) relating to Certificates of Registration), 209, and 211, (ii) applications for certificates, permits, and exemptions respecting the water transportation of property or passengers under sections 302(e), 303, and 309, and (iii) applications for permits to operate as freight forwarders and for certificates of abandonment under section 410. Except as otherwise herein provided, the ~~general~~ rules of general applicability shall apply.	To conform with the terminology of proposed rule 1(b) in the title of SUBPART A, RULES OF GENERAL APPLICABILITY
	(2) Applicability. Except as otherwise provided herein these special rules shall apply to all applications enumerated in subparagraph (1) of this paragraph and filed with the Commission on and after May 20, 1966, and to such of those applications filed prior to that time as the Commission may designate by appropriate publication in the Federal Register.	
	(b) Applications.--(1) Form and content. An application filed with the Commission under these special rules shall be prepared in accord with and contain the information called for in the form of application prescribed by the Commission or in instructions which may have been issued by the Commission with respect to the filing of such an application. An application for a certificate, permit, or license as defined in subparagraph (a)(1) must be accompanied by certifications of support on the prescribed form for each individual, corporation or partnership known to the applicant upon whose support	

PRESENT RULE	PROPOSED RULE	COMMENT
applicant intends to rely. Except for good cause shown, no application will be accepted for filing unless it is accompanied by certifications as herein required. Upon request by any party, the applicant shall furnish such party with copies of all certifications filed with the application. If, subsequent to the filing of an application, additional witnesses become known to the applicant, applicant shall file a certification for each such witness with the Commission and shall concurrently serve copies thereof upon all parties of record. The total number of witnesses subject to this rule whose testimony is offered in support of the application may not exceed twice the number for whom certifications were filed with the application, whether the case is designated for oral hearing or for modified procedure. In cases designated for oral hearing, certifications of additional witnesses as provided above must be filed and served not later than 30 days prior to the date assigned for commencement of hearing: Provided, That, the presiding officer may authorize additional certifications for witnesses to be presented at a continued hearing to be filed and served not later than 30 days prior to the date of the continued hearing. No testimony will be received from witnesses for whom such certifications have not been timely received. Provided, however, that the provisions of this paragraph limiting the total number of witnesses and requiring certifications for subsequently discovered witnesses shall not be applicable to applications to transport passengers, and that certifications for subsequently discovered witnesses shall not be required in cases handled under modified procedure except when reassigned for oral hearing. (2) Copies and service. Copies of an application filed under these special rules shall be furnished in such number and shall be filed and served in the manner and upon the persons specified in the form or instructions.	No Change.	

PRESENT RULE	PROPOSED RULE	COMMENT
(3) Requests for handling applications without oral hearing. An applicant who believes its application is susceptible of handling without oral hearing may request such handling when the application is filed. If such a request is made at that time, the applicant shall submit with its application original verified statements of the facts to which its witnesses would testify at an oral hearing if one were held, together with one copy thereof which need not be verified. Applicant shall furnish copies of its verified statements to interested persons upon request from such interested persons.		
(c) Notice to interested persons. (1) Notice of the filing of applications to competitors and other interested persons will be given by the publication of a summary of the authority sought in the FEDERAL REGISTER. Such summary will be prepared by the Commission, and it shall be the responsibility of applicant promptly to advise the Commission		

107(a)

if the summary does not properly describe the authority sought. No other notice by applicants to interested persons is required, except that applicants are not relieved from the obligation to file copies of applications with Governors, State Boards, and Regional Directors of the Commission's Bureau of Operations as may be required by the prescribed form of the application.

(2) Amendments. Except for good cause shown, amendments to applications which broaden the scope of the proposed operations will not be allowed if tendered after notice of the filing of an application has been published in the FEDERAL REGISTER.

Restrictive amendments acceptable to the Commission may be submitted at any time: Provided, That, except as hereinafter provided, in cases assigned for oral hearing amendments must be received by the Commission not later than (1) 30 days after the service date of a notice that the case has been assigned for oral hearing, or (2) the date of prehearing conference assigned to consider such amendments. Restrictive amendments submitted after such date may be considered by the Commission or presiding officer only if exceptional reason is shown why the amendment could not have been timely filed. Prehearing conferences assigned for the consideration of amendments shall be subject to the provisions of subparagraph (d)(6) of this rule respecting appearance at hearings.

(d) Protests and request for hearing. (1) Protests to the granting of an application shall be filed with the Commission within 30 days after the date notice of the filing of the application is published in the FEDERAL REGISTER. A protest filed under these rules shall certify that it has been served upon applicant's representative (or applicant, if no practitioner representing him is named in the notice of filing published in the FEDERAL REGISTER). Unless otherwise specified in the published notice, the original and one copy of the protest shall be filed with the Commission. Protests

No Change.

PRESENT RULE	PROPOSED RULE	COMMENT
not in reasonable compliance with the requirements of these rules may be rejected in the discretion of the Commission. (2) Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. (3) A protest against any application shall set forth specifically the grounds upon which it is made and contain a detailed statement of the protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method (whether by joinder, interline, or other means) by which protestant would use such authority to provide all or part of the service proposed), shall request an oral hearing if one is desired, and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests phrased in general terms and not complying with these specifications may be rejected. (4) Any request for an oral hearing shall be supported by a specific explanation as to why the evidence to be presented cannot reasonably be submitted in the form of affidavits, and shall set forth the number of witnesses which would be presented by the protestant and an estimate of the hearing time required for such presentation. Protests embracing a request for oral hearing shall contain the following certification without further qualification: The undersigned hereby certifies that, if an oral hearing is held, protestant(s) will appear and present evidence of protestant(s) own operations and particular interests(s) in the outcome of this application unless this application is amended so as to eliminate the interest(s) of protestant(s) as set forth in this protest. (5) Where a person has a limited interest in an application, which possibly could be eliminated by a restrictive amendment to the application, which amendment must be acceptable to the Commission, it may also include in a protest	No Change.	

PRESENT RULE	PROPOSED RULE	COMMENT
filed in conformity with this paragraph an offer to withdraw the protest in the event of acceptance by applicant and the Commission of such amendment. (6) Except where a restrictive amendment has been made as provided in subparagraph (5) of this paragraph, or for good cause shown, the failure of any person filing a protest to an application to appear at a hearing scheduled thereon shall be construed as a waiver of its right to participate further in the proceeding; such person shall no longer be considered as a party to the proceeding, and it and any representative responsible for its participation in the proceeding may be subject to censure for failure to appear. In addition, the mere appearance of protestant without the presentation of evidence of protestant's own operations and particular interest in the application may, in the absence of good cause shown, subject protestant and its representative to similar censure. (7) An interested person, not a protestant, desiring to receive notice of the time and place of any hearing, conference, or other proceedings shall notify the Commission by telegram or letter (original and one copy) within 30 days from the date of the publication of the notice of the filing of the application in the FEDERAL REGISTER. (8) A person (carrier) who does not file a protest as required by the regulations in this part, or who otherwise fails to remain a proper party to an application proceeding filed under the regulations in this part (by withdrawal of a previously filed protest, by failure to file verified statements in opposition as required by an appropriate order, by failure to appear at a scheduled oral hearing, or by other means), and who is not granted leave to intervene pursuant to the provisions of paragraph (h) of this section, except for good cause shown, may not personally, or through a representative, appear as a witness for a party protestant, except as provided hereafter. This provision shall not preclude the filing of a proper joint protest on behalf of several opposing carriers, or the presentation of evidence of service by bona fide connecting carriers through a duly qualified protestant, as to the nature and	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
extent of their joint services, or other probative evidence, provided the party protestant's original protest contains a clear statement that its opposition is based, in part at least, upon a transportation service performed by it jointly with connecting carriers.	No change.	
(e) Hearing or other procedure to be followed--(1) Determination. The Commission will determine whether an assignment for oral hearing should be made, after notice to interested persons of the filing of the application has been published in the FEDERAL REGISTER and the period for filing protests has expired. At or prior to such time, any applicant who does not intend to prosecute its application should promptly request dismissal thereof.		
(2) Uncontested proceedings. Proceedings in which no protests are filed within 30 days after publication of notice in the FEDERAL REGISTER, and which are not assigned for oral hearing, will be determined on the basis of verified statements submitted by applicant. Where not submitted previously along with the application as provided in paragraph (b)(3) of this section, such statements, by order, will be required to be filed by the applicant with the Commission within the time prescribed in said order, failing which the application may be summarily dismissed for want of prosecution.		
	(3) Contested proceedings. In those contested proceedings which the Commission determines that assignment of an application for oral hearing is unnecessary, thereafter the procedure shall be in accordance with Rules 45(b), 46(b), and 47-54, inclusive, of the general rules of practice, except that only the original and one copy of any statement made pursuant to Rule 51 need be filed with the Commission. All other contested proceedings which are subject to these rules will be assigned for oral hearing, unless other procedures are ordered.	Modified for conformity.
(f) Failure to prosecute applications. An applicant who does not intend timely to prosecute its application shall promptly request dismissal thereof. Failure to prosecute an application under procedures ordered by the Commission will result in dismissal	No Change.	

PRESENT RULE	PROPOSED RULE	COMMENT
thereof. Submission of a request for dismissal of an application later than 15 calendar days after the service date of a notice setting it for oral hearing, or failure by applicant to appear and prosecute the application at such hearing will result in dismissal thereof and will bar the filing of any application for the same or any part of the same authority by the same applicant for a period of 1 year after the date of the dismissal order except upon a petition showing good cause why this rule should be waived. Such petition shall be served upon all protestants to the prior application. (g) Notice of hearing, conference or other proceedings--(1) Initial assignment. Notice of the time and place of any hearing, conference, or other proceedings will be given to applicant's representative, applicant, protestants, and other interested parties by mailing to them the order or notice assigning the application for hearing, conference, or other procedure. (2) Assignment of an application for hearing concurrently with notice of its filing. For the convenience of the Commission in handling applications related to one or more applications which already have been noticed in the FEDERAL REGISTER, when, in the Commission's discretion, the public interest would be served, an application may be concurrently noticed and assigned for hearing provided appropriate publication in the FEDERAL REGISTER can be made at least 1 week prior to the assigned date of hearing. Where such action is taken, and regardless of any prior publication of the application, any interested person may, without filing a protest prior to the assigned hearing, appear at the hearing in opposition to the application so assigned and become a party and be entitled to participate in that proceeding. (3) Requests for change. A request by any party for a change in the time or place of an assigned hearing must set forth good and sufficient cause for the action requested, must be in writing and filed with the Commission not less than 10 days before the assigned hearing date, except in emergency circumstances, and must be served on all known parties of record at the same time and by the same method of communication as service is made on the Commission. Where	No change.	

PRESENT RULE	PROPOSED RULE	COMMENT
such requests are filed less than 10 days before the date of hearing, the petitioning party shall state the reasons for his failure to make such request within the prescribed 10 days.		
(4) Notice of changes. The applicant's representative (or applicant if it has no representative), protestants, and those who request notice of changes in time or place of hearing, conference, or other proceeding will be informed of such changes if notice is given by mail. If telegraphic notice becomes necessary, notice of such changes will be given by telegram only to those who request telegraphic notice at their expense.	No change	
	(h) Intervention. Rule 73 relating to participation without intervention is inapplicable to applications subject to this section. ~~except with respect to these persons seeking to intervene in support.~~ No person who fails to file a protest as provided in these rules will be permitted to intervene in opposition in a proceeding except upon a showing of substantial reasons in a petition submitted in accordance with Rule 72.	Proposed changes to Rule 73 prohibit participation without intervention. See also Rule 72.
	(i) ~~Drafting of recommended order and report by prevailing party.--Applications in which the hearing officer can announce his decision, either (1) on the record after the close of the taking of testimony or (2) by appropriate notification to the parties after the filing of briefs, may be made the subject of a report and recommended order, prepared by the party or parties in whose favor the hearing officer decides, within a period specified by the hearing officer. The hearing office will make such changes as he considers appropriate in the draft prepared for him.~~	The provisions are covered entirely by the proposed Rule 70.

Policy statement begins on page 40.5 of the April 1, 1975 addition of the General Rules of Practice.

~~[32 F.R. 20066, Dec. 20, 1967, as amended at 33 F.R. 9259, June 22, 1968]~~

To eliminate unnecessary words.

Note: A General Policy Statement concerning Motor Carrier Licensing Procedures (Ex Parte No. 55)(was published May 3, 1966 at 31 FR 6600, Since the policy remains pertinent, the substance of that statement is repeated here, with modifications to update the factual information.

The number of applications filed for authority to conduct operations, in interstate or foreign commerce, as common or contract carriers by motor vehicle, contines to rise; and the upward trend shows no signs of abating. Motor carrier applications, comprising 70 percent of the Commission's formal case docket, rose from 5,655 filings in 1964 to 5,899 in 1975. At year's end, 5,805 such applications were still pending, even though 6,424 had been disposed of during the calendar year 1975.

Motor carrier application proceedings involve issues of substantial interest not only to the regulated transportation industry, but to every shipper and receiver of goods, regardless of the size of his operation; to manufacturers, wholesalers, distributors, and retailers; and to all members of the general public, both as buyers and consumers, and as travelers over the lines of the Nation's common carriers of passengers. To delay a determination that a newly proposed motor transportation is required by the public convenience and necessity or would be consistent with the public interest and the national transportation policy can result in an irretrievable loss of sales and can unjustifiably deprive the public of needed products and transportation services. For the regulated surface transportation industry to continue to thrive, to grow, and to keep pace with the expanding national economy, the mechanics of regulation must be such that administrative decisions are not only fair and impartial but are rendered with reasonable dispatch and efficiency. The regulatory process in which competing claims are considered and adjudicated must be geared to the type of proceeding involved, and must not entail an expenditure of time and money, either for the parties or the Government, which is disproportionate to the scope, importance, and economic significance of the particular proceeding.

This sets out the basis for and procedures under modified procedure. It is needed as much now as in 1966, when modified procedure was first being emphasized. This statement is substantially the same as the one published in 1966, but it has been updated to show our current statistics and refer to the pending rulemakings which may result in further procedural changes in the near future.

Under past procedures which provided for oral hearing in virtually all application cases, the Commission found that it was infeasible to deal with motor carrier application proceedings with the promptness and efficiency to which the parties are entitled, and which the nature of the proceedings themselves and the public interest require. Due and timely execution of the Commission's functions, imperatively and unavoidably, required that the procedures be modified to eliminate such requirements as were causing undue delay and unjustified expense.

To achieve timely decisions and insure adjudication with the maximum possible speed and efficiency consistent with the requirements of due process of law, this Commission adopted, among other things, a number of general policies and internal procedures governing motor carrier operating authority applications. A new application form was approved and revised special rules of practice were issued.

The policy stated May 3, 1966, and its implementing rules and regulations are reaffirmed herein, though with slight modification. Additional modifications are under consideration in Ex Parte No. MC-55 (Sub-No. 14) Revision of Application Forms for Operating Authority and Amendment to Rules 22, 49, 51, 57, 74, and 247 of the General Rules of Practice, and Ex Parte No. MC-55 (Sub-No. 19), Revised Content Requirements and Page Limitations on Petitions for Reconsideration.

In processing the motor carrier caseload, the scheduling of unnecessary oral hearings will be avoided to the extent possible. Where the issues presented are well defined or where the matters involved are not of sufficient moment to justify the expense of an oral hearing, parties will be required to submit their evidence in the form of verified statements under the modified procedure, and the issuance of an initial decision by a hearing officer will be dispensed with. Oral hearings for the sole purpose of cross-examination will be scheduled only where material facts in dispute cannot be ascertained under the modified procedure.

All applications for motor carrier operating rights will be noticed in the FEDERAL REGISTER as at present. After the 30-day period for filing protests has expired the applications will be designated either for oral hearing or modified procedure. To the oral hearing docket will be assigned the more complex cases, and those which for one reason or another, might be handled more expeditiously and effectively with an oral hearing. Normally such cases will be the subject of an initial ~~report~~ decision by the hearing officer.

To the modified procedure docket will be assigned those applications (whether or not opposed) in which an oral hearing is not deemed necessary. Assignment for modified procedure will be followed by an order requiring the submission of the supporting and opposing evidence under the present rules of practice. Such order will provide that "except for good cause shown" all preliminary motions or other requests for relief filed prior to a decision will not be handled separately but will be acted upon by those making the decision in the case.

Under modified procedure, once all verified statements are filed (whether or not the application is opposed) the case will be submitted to one of the five Review Boards, in rotation, to the extent practicable, for the issuance of final report. The Board's decision will be subject to petition to Appellate Division 1.

A request for cross-examination by any party will be disposed of by the Review Board. If the Board concludes that the request has merit, it will have the authority to refer the case for oral hearing ~~for the purpose of cross-examination~~. Requests which are found to be without merit will be denied in the Board's report, with the reasons for the action taken. The Review Board also will have authority to refer for ~~full~~ oral hearing any case in which it believes such treatment is warranted.

PRESENT RULE	PROPOSED RULE	COMMENT
§1100.248 Implementation of Public Law 91-375, Postal Reorganization Act (Motor Carrier Licensing Provisions).		
	(a) Scope of ~~special~~ rules. These special rules govern the filing and handling of applications seeking the right to operate pursuant to either a Postal Certificate of Public Convenience and Necessity or a General Postal Certificate of Exemption authorizing operation, in interstate or foreign commerce, by motor vehicle in the transportation of mail.	Changed for conformity.
(b) Applications for postal certificates of public convenience and necessity. (1) The application form (Op-Or-10) shall be available from the Secretary, Interstate Commerce Commission, and shall be completed in duplicate, and transmitted to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, and a copy thereof shall be sent to the transportation regulatory commission (or, if none, the Governer) of each State within which operations are sought to be performed.	No Change.	
(2) Attached to the applications shall be a true copy of applicant's contract with the Postal Service (or its predecessor Post Office Department), which contract must have been in force on the effective date of section 5215 of the Postal Act.		
(3) If applicant is a successor in interest to a qualifying star route carrier, evidence of continuity of star route service and carrier identity must be furnished (this may be done in letter form duly sworn and notarized).		
(4) The application form provides space for a description of the territory served by the applicant on or before the effective date of section 5215. Here applicant should describe the territorial extent of operations performed pursuant to its contract in force on the effective date, such description being in terms of the appropriate political division or subdivision (i.e., State, county, city, village, et cetera) within which service was authorized by contract. Authority may be granted only commensurate with the service covered by applicant's contract; therefore, applicants are cautioned to be specific in delineating the territory sought in order to avoid delays in processing their applications.		
(5) Notice to the public of any such application will be made by publication in the FEDERAL REGISTER. Provision will be made for the filing of protests within 30 days from the date of publication, although it is not contemplated that protests will, in fact, be filed.		
(6) Upon determination that an applicant is qualified to receive "grandfather" authority, and upon compliance by applicant with sections 215 and 221(c) of the Interstate Commerce Act, and with the rate-filing procedures established by this Commission, a Postal Certificate of Public Convenience and Necessity will be issued, authorizing the transportation of mail from, to, or between points in the involved territory.		

PRESENT RULE	PROPOSED RULE	COMMENT
§1100.248 Implementation of Public Law 91-375, Postal Reorganization Act (Motor Carrier Licensing Provisions). (Continued)		
(c) Applications for inclusion within general postal certificate of exemption. The class of carriers to which such certificate of exemption is applicable is defined as all star route, mail messenger and contract motor vehicle operators, whose for-hire motor carrier operations are confined to a single State, and who, on the effective date of section 5215 of the above-entitled Postal Act, hold a contract for the transportation of mail wholly within a single State. Upon submission to this Commission of a copy of such contract, the name of the carrier's representative to whom inquiries may be made, and the carrier's written request therefor, such carrier shall be included within the terms of the general postal certificate of exemption which reads as follows: General Postal Certificate of Exemption, Designated Single-State Motor Carriers Affected By The Postal Reorganization Act (Public Law 91-375) At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 3d day of March 1971. After due investigation, it appearing that any motor carrier having complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and having complied with all the requirements established by this Commission in its report in Ex Parte No. MC-86, and lawfully engaging in operations solely within a single State in the transportation of mail; that the transportation of mail in interstate or foreign commerce performed by him is in fact of such nature, character, or quantity as not substantially to affect or impair uniform regulation by this Commission of transportation by motor carriers engaged in interstate or foreign commerce in effectuating the national transportation policy declared in the Interstate Commerce Act; that he, therefore, is entitled to inclusion within a general postal certificate of exemption in accordance with the provisions of section 204(a)(4a) of part II of said act; and this Commission so finding: It is ordered, That the said motor carrier be, and it is hereby, granted this general postal certificate of exemption, which during the period it shall remain effective and unrevoked, shall exempt the said motor carrier from compliance with the provisions of part II of said act in respect of transportation of mail in interstate or foreign commerce, and it is hereby issued to said motor carrier.		
	(7) All further proceedings, including petitions for reconsideration, shall be handled in the manner specified in this Commission's ~~general~~ rules of practice.	Changed for conformity.

PRESENT RULE

§1100.248 Implementation of Public Law 91-375, Postal Reorganization Act (Motor Carrier Licensing Provisions). (Continued)

It is further ordered, That this general postal certificate of exemption shall be effective from the date hereof and shall remain in effect until revoked in accordance with the provisions of said act.

By the Commission.

(SEAL) ROBERT L. OSWALD, Secretary.

PROPOSED RULE

§1100.249 Special rules governing the filing of motor carrier mail transportation service orders or determinations under subsection (f) of section 5203 of title 39, United States Code 84 Stat. 768, 39 U.S.C. 5208

(a) Definitions. For the purposes of this section the following words and terms, except as otherwise indicated in the context of this section, are to be construed as follows:

(1) "Postal Service" means the U.S. Postal Service, 39 U.S.C. 201.

(2) Whenever a "section" is cited, it refers to a provision of title 39, United States Code, as revised and reenacted.

(3) "Commission" means the Interstate Commerce Commission.

(4) "Motor carrier" or "carrier" means a common carrier by motor vehicle as defined in subsection (5) of section 5201 of title 39, United States Code, 39 U.S.C. 5201.

(b) Applicability. The provisions of this section shall apply to all orders or determinations of the Postal Service under section 5203 (39 U.S.C. 5203) directing a motor carrier to transport mail.

(c) Filing and content of orders or determinations - (1) General. All orders or determinations shall be filed by the Postal Service with the Com-

COMMENT

The only change is in the number of copies in Sections (c)(3), (d)(5), and (e).

§1100.249 Special rules governing the filing or motor carrier mail transportation service orders or determinations under subsection (f) of section 5203 of title 39, United States Code 84 Stat. 768, 39 U.S.C. 5208 (Continued)

mission at its office in Washington, D.C., and shall conform to the provisions of subparagraphs (2) and (3) of this paragraph.

(2) Content. Each order or determination of the Postal Service shall include: (i) The full and correct name and business address of the motor carrier, (ii) a description of the mail transportation service required, (iii) a specification of the operating authority held by the carrier which corresponds to the mail transportation required, and (iv) a showing that the order or determination is consistent with orders of the Commission under sections 5207 and 5208 (39 U.S.C. 5207 and 5208), if any, or that the Postal Service and the carrier have agreed that the compensation for the transportation and service connected therewith is fair and reasonable. Further, each order or determination issued shall set forth in a conspicuous place on the face thereof, in bold face type, a clear statement that the order or determination is concurrently filed with the Interstate Commerce Commission at Washington, D.C., that it is being simultaneously deposited with the Director, Office of the Federal Register, and that any protest seeking termination thereof under subsection (f) of section 5203 (39 U.S.C. 5203) must be filed in 15 days of the date of publication in the FEDERAL REGISTER. This statement may also include reference to the penalty provisions of section 5206 (39 U.S.C. 5206), and such other information as the Postal Service deems appropriate.

(3) Copies; service. The original and six copies of each order or determination issued under this section shall be filed with the Commission, and one copy of the order or determination simultaneously shall be served upon the motor carrier specified therein and upon any other person known to be interested, in such a manner so as to be received on the date the original is filed with the Commission, and a copy also should be simultaneously deposited with the Director, Office of the Federal Register, for publication therein as notice to all other interested persons. A certificate shall be executed by an authorized official of the Postal Service, showing upon whom simultaneous service has been made. The order or determination filed with the Commission and the envelope of transmittal to the Commission should be clearly marked: "Mail Transportation Service Order (or Determination)."

PRESENT RULE	PROPOSED RULE	COMMENT
	§1100.249 Special Rules governing the filing of motor carrier mail transportation service orders or determinations under subsection (f) of section 5203 of title 39, United States Code 84 Stat. 768, 39 U.S.C. 5208 (Continued)	Changes for conformity.

(d) Protests seeking termination of Postal Service orders or determinations, and replies thereto - (1) General. A motor carrier subject to an order or determination of the Postal Service, or any of the carrier's other customers, may protest to the Commission and request termination of the order or determination. Such protests shall be restricted to the matter of showing that performance by the carrier of the required mail transportation service would be detrimental to the carrier or to its other customers, or that the carrier does not operate equipment suitable for the transportation of mail, and shall conform to the provisions of subparagraphs (2), (3), and (4) of this paragraph.

(2) Content. The protest for termination of an order or determination filed under this section must identify the issued order or determination (i) by reference to the name and address of the motor carrier shown in the order or determination, (ii) the order number or other identification assigned thereto by the Postal Service, and (iii) specific citation to the volume, page, and date of publication in the FEDERAL REGISTER, i.e., "_____ F.R. _____, _____ 197_ _." Facts relied upon in support of the protest must be verified as provided in Rule 50 of the Commission's ~~general~~ rules of practice. ~~(§1100.50).~~

(3) When filed. Protests requesting termination of an order or determination filed under this section will not be considered unless made in writing and filed with the Commission at Washington, D.C., within 15 days of the date of publication of the order or determination in the FEDERAL REGISTER.

(4) Replies. Replies confined to rebuttal of such protests may be filed within 10 days of the date on which the protest was filed with the Commission.

(5) Copies; service. The original and six copies of each protest or reply shall be filed with the Commission, and one copy simultaneously shall be served on the opposing party (ies). A certificate shall be executed stating that simultaneous service has been made. The protest or reply and the envelope of transmittal to the Commission should be clearly marked: "Protest (Reply) - Mail Transportation Service Order (or Determination)," and be delivered free of all charges. (Copies for service on the Postal Service shall be addressed to the Assistant General Counsel

§1100.249 ~~Special~~ Rules governing the filing of motor carrier mail transportation service orders or determinations under subsection (f) of section 5203 of title 39, United States Code 84 Stat. 768, 39 U.S.C. 5208 (Continued)

Transportation, U.S. Postal Service, Washington, D.C. 20260, as agent for the Postmaster General.)

(e) Petitions for reconsideration. Petitions for reconsideration (1) of an order terminating an order or determination of the Postal Service, or (2) of a notice declining to order termination of such an order or determination, may be filed by any interested person within 20 days after service of the order or notice of the Commission. As no replies to the petitions for reconsideration under this rule are contemplated in view of the statutory time limitation, petitioners will be expected, except in unusual circumstances, to rely wholly on the information previously filed with the Commission. Such petitions for reconsideration must be clearly marked: "Petition for Reconsideration - Mail Transportation Service Order (or Determination)." Petitioners shall file an original and ~~seven~~ six (6) copies of the petition with the Commission and one copy thereof shall be served simultaneously on the opposing party (ies), and a certificate of service shall be executed to that effect.

(f) Withdrawal of Postal Service orders or determinations. If, within 90 days after the filing of an order or determination by the Postal Service, the motor carrier cited in the order or determination voluntarily agrees and undertakes to perform the required mail transportation service, the Postal Service shall promptly notify the Commission of such action and shall withdraw the Postal Service order forthwith.

§1100.251 Special rules for proceedings in which the elimination of discrimination against the shipment of recyclable materials is sought.

(a) Filing of complaint. A person seeking elimination of discrimination against shipments of recyclable materials shall file a formal complaint. Such complaint should be so drawn as to fully advise the parties defendant and the Commission of the discrimination against recyclables complained of; make specific referenct to the tariffs or schedules containing the rates, fares, or charges occasioning the discrimination against the shipment of recyclable materials, if the claimed discrimination is said to be occasioned by the rate structure; and in all other respects comport with the requirements for the commencement of proceedings as set forth in the General Rules of Practice.

(b) Discrimination defined. For the purpose of these rules, "discrimination" is understood to encompass, but not be limited to, situations in which carriers charge different rates and/or charges for substantially similar transportation servicesen recyclable materials which are competitive, in whole or in part, with virgin natural resource materials. Any complainant of the view that the "discrimination" referred to in section 603 of the Regional Rail Reorganization Act of 1973, 45 U.S.C. 793 (1974), is other than "unjust discrimination" prescribed by section 2 of the Interstate Commerce Act shall set forth the reasons therefor in said complaint.

The only change is in Section (g) to reflect change in title of rules.

§1100.251 Special rules for proceedings in which the elimination of discrimination against the shipment of recyclable materials is sought.

(c) Recyclable materials defined. For the purpose of these rules, the term "recyclable materials" includes, but is not limited to, commodities shown in Standard Transportation Commodity Code Tariff No. 1-B, Traffic Executive Association - Eastern Railroads, Agent, I.C.C. No. C-998, issued jointly with other agents, effective April 1, 1974, including the following:

Commodity	STCC No.:
22	Textile waste garneted or processed.
22 973 15	Noils, ramie.
22 973 25	Nolis (combings or comb-
22 973 68	Rovings, jute and istle (ixtle).
32 299 24	Cullet (broken glass).
33 119	Blast furnace or coke oven products, nec.
32 312	Copper matte, speiss or flue dust.
33 322	Lead matte, speiss or flue dust.
33 332	Zinc dross, residues, ashes.
33 342	Aluminum residues.
33 398	Miscellaneous nonferrous metal residue.
40 1	Ashes.
40 2	Waste or scrap.

(d) Filing of answer. Answers to claims of discrimination shall be so drawn as to fully advise the complainant, any other parties, and the Commission of the defense to the charge of discrimination against the shipment of recyclable materials that the respondent proposes to assert in its defense and otherwise conform to the requirements of the ~~General~~ Rules of Practice.

(e) Procedural handling. The proceeding following the commencement of the action as set forth in the foregoing rules shall be handled under modified procedure and will be accorded expeditious handling.

(f) Intervention. (1) A summary of any complaint filed with the Commission under these rules will be published in the FEDERAL REGISTER as notice to interested parties, (2) Government agencies, environmental and other public interest groups, and trade associations having an interest in the proceeding may intervene as of right by filing a statement of their intention to participate within 20 days from the date that notice of the

PRESENT RULE | PROPOSED RULE | COMMENT

§1100.251 Special rules for proceedings in which the elimination of discrimination against the shipment of recyclable materials is sought. (Continued)

filing of a complaint is published in the FEDERAL REGISTER. After the expiration of that 20-day period, petitions for leave to intervene must be filed under rule 72 of the ~~General~~ rules of practice, 49 CFR §1100.72.

(g) Other procedures. In all other particulars the proceeding shall be governed by the Commission's ~~General~~ Rules of Practice.

APPENDIX A—CODE OF ETHICS FOR PRACTITIONERS BEFORE THE INTERSTATE COMMERCE COMMISSION

TABLE OF CONTENTS

Preamble.
Canons of Ethics.
1. Standards of ethical conduct in courts of United States to be observed.
2. The duty of the practitioner to and his attitude towards the Commission.
3. Punctuality and expedition.
4. Attempts to exert political influence on the Commission.
5. Attempts to exert personal influence on the Commission.
6. The selection of Commissioners.
7. The practitioner's duty in its last analysis.
8. Private communications with the Commission.
9. Adverse influences and conflicting interests.
10. Joint association of practitioners and conflicts of opinion.
11. Withdrawal from employment.
12. Advising upon the merits of a client's cause.
13. Negotiations with opposing party.
14. Fixing the amount of the fee.
15. Compensation, commission and rebates.
16. Contingent fees.
17. Division of fees.
18. Suing clients for fees.
19. Acquiring interest in litigation.
20. Expenses.
21. Witnesses.
22. Dealing with trust property.
23. How far a practitioner may go in supporting a client's cause.
24. Restraining clients from improprieties.
25. Ill-feeling and personalities between advocates.
26. Treatment of witnesses and litigants.
27. (None.)
28. Discussion of pending litigation in public press.
29. Candor and fairness.
30. Right of practitioner to control the incidents of the trial.
31. Taking technical advantage of opposing practitioner; agreements with him.
32. Advertising, direct or indirect.
33. Professional card.
34. Stirring up litigation, directly or through agents.
35. Justifiable and unjustifiable litigation.
36. Responsibility for litigation.
37. Discovery of imposition and deception.
38. Upholding the honor of the calling.
39. Intermediaries.
40. Retirement from public employment.
41. Confidences of a client.
42. Partnerships-names.
43. Titles.

PREAMBLE

No rules of conduct can be framed which will particularize all the duties of the practitioner in the varying phases of litigation or in his relations to clients, adversaries, other practitioners, the Commission and the public. The following canons of ethics are adopted as a general guide for those admitted to practice before the Interstate Commerce Commission.

It will be remembered that the practitioners before the Commission include (a) lawyers, who have been regularly admitted to practice law, and (b) others having traffic or other technical experience qualifying them to aid the Commission in administration of the Interstate Commerce Act and related acts of Congress. The former are bound by a broad code of ethics and unwritten rules of professional conduct which apply to every activity of a lawyer; for the latter, no code of ethics has been written heretofore. The following canons do not release the lawyer from any of the duties or principles of professional conduct by which lawyers are bound. They apply alike to all practitioners before the Commission and the setting forth therein of particular duties or principles of conduct should not be construed as a denial of the existence of others equally imperative although not specifically mentioned. The word "Commission" as used herein includes Divisions of the Commission, and the representatives of the Commission, whether members, examiners, or other employees connected with the matter in hand.

CANONS OF ETHICS

1. *Standards of ethical conduct in courts of United States to be observed.* These canons are in furtherance of the purpose of the Commission's rules of practice which enjoin upon all persons appearing in proceedings before it to conform, as nearly as may be, to the standards of ethical conduct required of practitioners before the courts of the United States; and such standards are taken as the basis for these specifications, modified in so far as the nature of the practice before the Commission requires.

2. *The duty of the practitioner to and his attitude towards the Commission.* It is the duty of the practitioner to maintain towards the Commision a respectful attitude, not for the sake of the temporary incumbent of the office, but for the maintenance of the importance of the functions he administers. In many respects the Commission functions as a Court, and practitioners should regard themselves as officers of that Court and strive to uphold its honor and dignity. The Commission, not being wholly free to defend itself is peculiarly entitled to receive the support of the practitioner against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a member or

No changes are proposed in Appendix A except to change "examiner" to "hearing officer" wherever it appears in Appendix A as indicated.

As used in Appendix A, examiner actually means a hearing officer. While examiners are now known as Administrative Law Judges, the term "hearing officer" is all inclusive.

PRESENT RULE

employee of the Commission it is the right and duty of the practitioner to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.

3. *Punctuality and expedition.* It is the duty of the practitioner not only to his client, but also to the Commission and to the public, to be punctual in attendance, and to be concise and direct in the trial and disposition of causes.

4. *Attempts to exert political influence on the Commission.* It is unethical for a practitioner to attempt to sway the judgment of the Commission by propaganda, or by enlisting the influence or intercession of members of the Congress or other public officers, or by threats of political or personal reprisal.

5. *Attempts to exert personal influence on the Commission.* Marked attention and unusual hospitality on the part of a practitioner to a Commissioner, examiner, or other representative of the Commission, uncalled for and unwarranted by the personal relations of the parties, subject both to misconstruction of motive and should be avoided. A self-respecting independence in the discharge of duty, without denial or diminution of the courtesy and respect due the official station is the only proper foundation for cordial personal and official relations between Commission and practitioners.

6. *The selection of Commissioners.* The nomination of Commissioners is a duty of the President, and confirmation, of the Senate. It is the duty of the practitioners in so far as they attempt to advise the appointing or confirming officers, to endeavor to prevent any consideration from outweighing fitness in the selection.

7. *The practitioner's duty in its last analysis.* No client, corporate or individual, however powerful, no cause, civil or political however important, is entitled to receive, and no practitioner should render, any service or advice involving disloyalty to the law or disrespect of its official ministers, or corruption of any person or persons exercising a public office or employment or private trust, or deception or betrayal of the public. In rendering any such improper service or advice the practitioner invites and merits stern and just condemnation. Correspondingly, he advances the honor of his calling and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advise his client to observe the statute law, although until a statute shall have been construed and interpreted by competent adjudication, he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But above all he will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.

8. *Private communications with the Commission.* In the disposition of contested proceedings brought under the Interstate Commerce Act the Commission exercises quasi-legislative powers, but it is nevertheless acting in a quasi-judicial capacity. It is required to administer the Act and to consider at all times the public interest beyond the mere interest of the particular litigants before it. To the extent that it acts in a quasi-judicial capacity, it is grossly improper for litigants, directly or through any counsel or representative, to communicate privately with a commissioner, examiner or other representative of the Commission about a pending cause, or to argue privately the merits thereof in the absence of their adversaries or without notice to them. Practitioners at all times should scrupulously refrain in their communications to and discussions with the Commission and its staff from going beyond ex parte representations that are clearly proper in view of the administrative work of the Commission.

9. *Adverse influences and conflicting interests.* It is the duty of a practitioner at the time of retainer to disclose to the client all the circumstances of his relations to the parties, and any interest in or connection with the controversy, which might influence the client in the selection of the person to represent or assist him.

It is unethical to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon a practitioner represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.

10. *Joint association of practitioners and conflicts of opinion.* A client's proffer of the assistance of additional practitioner should not be regarded as evidence of want of confidence, but the matter should be left to the determination of the client. A practitioner should decline association as colleague if it is objectionable to the practitioner first retained, but if the client should relieve the practitioner first retained, another may come into the case.

When practitioners jointly associated in a cause cannot agree as to any matter vital to the interest of the client, the conflict of opinion should be frankly stated to him for his final determination. His decision should

PROPOSED RULE

COMMENT

be accepted by them unless the nature of the difference makes it impracticable for the practitioner whose judgment has been overruled to cooperate effectively. In this event it is his duty to ask the client to relieve him.

Efforts, direct or indirect, in any way to encroach upon the business of another practitioner are unworthy of those who should be brethren, but, nevertheless, it is the right of any practitioner, without fear or favor, to give proper advice to those seeking relief against an unfaithful or neglectful practitioner, generally after communication with the practitioner of whom the complaint is made.

11. *Withdrawal from employment.* The right of a practitioner to withdraw from employment, once assumed, arises only from good cause. Even the desire or consent of the client is not always sufficient. The practitioner representing him should not throw up the unfinished task to the detriment of his client except for reasons of honor or self-respect. If the client insists upon an unjust or immoral course in the conduct of his case, or if he persists over the practitioner's remonstrance in presenting frivolous defenses, or if he deliberately disregards an agreement or obligation as to fees or expenses, the practitioner may be warranted in withdrawing on due notice to the client, allowing him time to employ another. So also when a practitioner discovers that his client has no case and the client is determined to continue it; or even if he finds himself incapable of conducting the case effectively. Sundry other instances may arise in which withdrawal is to be justified. Upon withdrawing from a case after a retainer has been paid, he should refund such part of the retainer as has not been clearly earned.

12. *Advising upon the merits of a client's cause.* A practitioner should endeavor to obtain full knowledge of his client's cause before advising thereon, and he is bound to give a candid opinion of the merits and probable result of pending or contemplated litigation. He should beware of bold and confident assurances to clients, especially where employment may depend upon such assurance. Whenever the controversy will admit of fair adjustment, the client should be advised to avoid or to end the litigation.

13. *Negotiations with opposing party.* A practitioner should not in any way communicate upon the subject of controversy with a party represented by another practitioner except upon express agreement with the practitioner representing such party; much less should he undertake to negotiate or compromise the matter with him, but should deal only with the practitioner who represents the other party. It is incumbent upon the practitioner most particularly to avoid everything that may tend to mislead a party not represented by a practitioner, and he should not undertake to advise him as to the law.

14. *Fixing the amount of the fee.* In fixing fees, practitioners should avoid charges which overestimate their advice and services, as well as those which undervalue them. A client's ability to pay cannot justify a charge in excess of the value of the service, although his poverty may require a less charge, or even none at all.

15. *Compensation, commission and rebates.* A practitioner should accept no compensation, commissions, rebates, or other advantages from parties to the proceeding other than his client without the knowledge and consent of his client after full disclosure.

16. *Contingent fees.* Contingent fees should be such only as are sanctioned by law. In no case, except a charity case, should they be entirely contingent upon success.

17. *Division of fees.* No division of fees for services is proper, except with a member of the bar or with another practitioner, based upon a division of service or responsibility. It is unethical for a practitioner to retain laymen to solicit his employment in pending or prospective cases, and reward them by a division of fees, and such a practice cannot be too severely condemned.

18. *Suing clients for fees.* Controversies with clients concerning compensation are to be avoided in so far as compatible with self-respect and with the right to receive reasonable recompense for services; and lawsuits against clients should be resorted to only to prevent injustice, imposition or fraud.

19. *Acquiring interest in litigation.* The practitioner shall not purchase or otherwise acquire any pecuniary interest in the subject matter of the litigation which he is conducting.

20. *Expenses.* A practitioner may not properly agree with a client that the practitioner shall pay or bear the expenses of litigation. He may in good faith advance expenses as a matter of convenience but subject to reimbursement by the client.

21. *Witnesses.* A practitioner shall not undertake that the compensation of a witness shall be contingent upon the success of the cause in which he is called. If the ascertainment of truth requires that a practitioner should seek information from one connected with or reputed to be biased in favor of an adverse party, he is not thereby deterred from seeking to ascertain the truth from such person in the interest of his client.

22. *Dealing with trust property.* Money of the client or other trust property coming into the possession of the practitioner should be reported promptly, and, except with the client's knowledge and consent, should not be commingled with the practitioner's private property or be used by him.

23. *How far a practitioner may go in supporting a client's cause.* Nothing will operate more certainly to create or foster popular prejudice against practitioners as a class, and deprive them of that full measure of public esteem and confidence which belongs to the proper discharge of their duties than does the false claim, often set up by the un-

No changes.

scrupulous in defense of questionable transactions, that it is the duty of the practitioner to do whatever may enable him to succeed in winning his client's cause.

The practitioner owes "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights, and the exertion of his utmost learning and ability," to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of the disfavor of the Commission or public unpopularity should restrain him from full discharge of his duty. The client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his counsel to assert every such remedy or defense. But it is to be steadfastly borne in mind that this great trust is to be performed within and not without the bounds of the law. Admission to the privilege of appearing before the Commission as representing another does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicane. He must obey his own conscience and not that of his client.

24. *Restraining clients from improprieties.* A practitioner should use his best efforts to restrain and to prevent his clients from doing those things which he himself ought not to do, particularly with reference to their conduct towards the Commission, other practitioners, witnesses and suitors. If a client persists in such wrong-doing the practitioner should terminate their relations.

25. *Ill-feeling and personalities between advocates.* Clients, not their representatives, are the litigants. Whatever may be the ill-feeling existing between clients, it should not be allowed to influence practitioners in their conduct and demeanor toward each other or toward suitors in the case. All personalities between practitioners should be scrupulously avoided. In the trial of a cause it is indecent to allude to the personal history or the personal peculiarities and idiosyncrasies of practitioners on the other side. Personal colloquies between practitioners which cause delay and promote unseemly wrangling should also be carefully avoided. Their statements should be addressed to the Commission.

26. *Treatment of witnesses and litigants.* A practitioner should always treat adverse witnesses and suitors with fairness and due consideration, and he should never minister to the malevolence or prejudice of a client in the trial or conduct of a cause. The client cannot be made the keeper of the practitioner's conscience in such matters. He has no right to demand that the practitioner representing him shall abuse the opposing party or indulge in offensive personalities. Improper speech is not excusable on the ground that it is what the client would say if speaking in his own behalf.

27. (None.)

28. *Discussion of pending litigation in public press.* Attempts to influence the action and attitude of the members and examiners of the Commission through propaganda, or through colored or distorted articles, in the public press, are more apt to react against than in favor of the parties resorting to such measures. On the other hand, it is not against the public interest or unfair to the Commission that the facts of pending litigation shall be made known to the public through the press in a fair and unbiased manner and in dispassionate terms. Practitioners should themselves avoid, and should counsel their clients against, giving to the public press any press notices or statements of a nature intended to inflame the public mind, to stir up possible hostility toward the Commission, or to influence the Commission's course and judgment as to pending or anticipated litigation. When the circumstances of a particular case appear to justify a statement to the public through the press, it is unethical to make it anonymously.

29. *Candor and fairness.* The conduct of practitioners before the Commission and with other practitioners should be characterized by candor and fairness. The non-technical character and liberality of the Commission's practice call for scrupulous observance of the principles of fair dealing and just consideration for the rights of others.

It is not candid or fair for a practitioner knowingly to misstate or misquote the contents of a paper, the testimony of a witness, the language or the argument of an opposing practitioner, or the language or effect of a decision or a text book; or, with knowledge of its invalidity to cite as authority a decision which has been overruled or otherwise impaired as a precedent or a statute which has been repealed; or in argument to assert as a fact that which has not been proved, or to mislead his opponent by concealing or withholding positions in his opening argument upon which his side then intends to rely.

It is dishonorable to deal other than candidly with the facts in taking the statements of witnesses, in drawing affidavits and other documents, and in the presentation of causes.

A practitioner should not offer evidence, which he knows the Commission should reject, in order to get the same before the Commission by argument for its admissibility, or arguments upon any point not properly calling for determination. He should not introduce into an argument remarks or statements intended to influence the by-standers.

These and all kindred practices are unethical and unworthy of a practitioner.

30. *Right of practitioner to control the incidents of the trial.* As to incidental matters pending the trial, not affecting the merits of the cause or working substantial prejudice to the rights of the client, such as forcing the opposing practitioner to trial when he is under affliction or bereavement, forcing

the trial on a particular day to the injury of the opposing practitioner when no harm will result from trial at a different time, agreeing to extensions of time and the like, the practitioner and not the client, must be allowed to judge. In such matters no client has a right to demand that his practitioner shall be illiberal or do anything therein repugnant to the practitioner's sense of honor and propriety.

31. *Taking technical advantage of opposing practitioner; agreements with him.* A practitioner should not ignore known customs or practice of the Commission, even when the law permits, without giving timely notice to the opposing practitioner. In so far as possible, important agreements affecting the rights of clients should be reduced to writing; but it is dishonorable to avoid performance of an agreement fairly made because it is not reduced to writing.

32. *Advertising, direct or indirect.* The most worthy and effective advertisement possible is the establishment of a well-merited reputation for capacity and fidelity to trust. This cannot be forced, but must be the outcome of character and conduct. The publication or circulation of ordinary simple business cards, being a matter of personal taste or local custom, and sometimes of convenience, is not improper. But solicitation of employment by circulars or advertisements, or by personal communications or interviews, not warranted by personal relations, is unethical. It is equally unethical to procure business by indirection through touters of any kind. Indirect advertisement for employment by furnishing or inspiring newspaper comments concerning causes in which the practitioner has been or is engaged, or concerning the manner of their conduct, the magnitude of the interests involved, the importance of the practitioner's positions, and all other like self-laudation, lower the tone of the calling and are intolerable.

33. *Professional card.* The simple professional card mentioned in Canon 32 may with propriety contain only a statement of the practitioner's name (and those of his associates), occupation, address, telephone number, and special branch or branches of practice. Such cards may be inserted in reputable lists and may give authorised references, or name clients with their permission.

34. *Stirring up litigation, directly or through agents.* It is unethical for a practitioner to volunteer advice that a proceeding be brought before the Commission, except in rare cases where ties of blood, relationship or trust make it his duty to do so. Stirring up strife and litigation is not only unethical but it is indictable at common law. It is disreputable for a practitioner to hunt up defects or other causes of action and disclose them in order to be employed to bring complaint, or to breed litigation by seeking out those having claims for damages or any other grounds of action in order to secure them as clients, or to employ agents or runners for like purposes, or to pay or reward, directly or indirectly, those who bring or influence the bringing of such cases to his office to seek his services. No complaint should be brought before the Commission by a practitioner except with the distinct knowledge and specific consent of the client in the particular case. A duty to the public and to the Association devolves upon every member having knowledge of such practices upon the part of any practitioner, immediately to inform thereof to the end that the offender may be disciplined or disbarred.

35. *Justifiable and unjustifiable litigation.* The practitioner must decline to conduct a cause or to make a defense when convinced that it is intended merely to harass or to injure the opposing party, or to work oppression or wrong. But otherwise it is his right, and having accepted retainer, it becomes his duty, to insist upon the judgment of the Commission as to the merits of his client's claim. His appearance should be deemed equivalent to an assertion upon his honor that in his opinion his client's case is one proper for determination.

36. *Responsibility for litigation.* No practitioner is obliged to act either as adviser or advocate for every person who may seek to become his client. He has the right to decline employment. Every practitioner upon his own responsibility must decide what employment he will accept, what causes he will bring before the Commission for complainants, or contest for defendants or respondents. The responsibility for advising as to questionable transactions, for bringing questionable proceedings, for urging questionable defenses is his alone. He cannot escape it by urging as excuses that he is only following his client's instructions, or that he is under a stated retainer or in the regular employment of his client.

37. *Discovery of imposition and deception.* When a practitioner discovers that some fraud or deception has been practiced, which has unjustly imposed upon the Commission or a party, he should endeavor to rectify it; first by advising his client to forego any advantage thus unjustly gained and, if his client refuses, by promptly informing the injured person or his counsel (practitioner), so that appropriate steps may be taken.

38. *Upholding the honor of the calling.* Practitioners should expose without fear or favor before the proper tribunals corrupt or dishonest conduct and should accept without hesitation employment against a practitioner who has wronged his client. The practitioner upon the trial of a cause in which perjury has been committed owes it to the Commission and to the public to bring the matter to the knowledge of the prosecuting authorities. The practitioner should aid in guarding the bar of the Commission against admission thereto of candidates unfit or unqualified because deficient in either

No changes.

PRESENT RULE

moral character or education. A practitioner should propose no person for admission to practice before the Commission unless from personal knowledge or upon reasonable inquiry he sincerely believes and is able to vouch that such person possesses the qualifications prescribed in the Commission's rules of practice. He should strive at all times to uphold the honor and maintain the dignity of his calling and to improve not only the law but the administration of justice.

39. *Intermediaries.* The services of a practitioner should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and practitioner. His responsibility and qualifications are individual. He should avoid all relations which direct the performance of his duties in the interest of such intermediaries. His relation to the client should be personal, and the responsibility should be direct to the client.

He may accept employment from any organization such as an association, club or trade organization, authorized by law to be a party to proceedings before the Commission, to render services in such proceedings in any matter in which the organization, as an entity, is interested. This employment should only include the rendering of such services to the members of the organization in respect to their individual affairs as are consistent with the free and untrammeled performance of his duties to the Commission.

Nothing in this canon shall be construed as conflicting with canon 17.

40. *Retirement from public employment.* A practitioner, having once held public office or having been in the public employ, should not after his retirement, accept employment as an advocate or adviser in the same proceeding or as to the same, or substantially the same, facts as were involved in any specific question which he investigated or passed upon in a judicial or quasi-judicial capacity while in such office or employ, whether the same or different parties are concerned.

41. *Confidences of a client.* The duty to preserve his client's confidences in the course of his employment outlasts the practitioner's employment, and extends as well to his employees. None of them should accept employment which involves the disclosure or use of these confidences, either for the private advantage of the practitioner or his employees or to the disadvantage of the client, without knowledge and consent of the client even though there are other available sources of such information. A practitioner should not continue employment when he discovers that this obligation prevents the performance of his full duty to his former or to his new client.

If a practitioner is falsely accused by his client, he is not precluded from disclosing the truth in respect to the false accusation. The announced intention of a client to commit a crime is not included within the confidences which a practitioner is bound to respect. He may properly make such disclosures as to prevent the act or protect those against whom it is threatened.

PROPOSED RULE

42. *Partnerships-names.* Partnerships among practitioners for the practice of their calling are very common and are not to be condemned. ~~The rules of the Commission provide that corporations or firms will not be recognized.~~ Practitioners before the Commission should therefore appear individually and not as members of partnerships. In the formation of partnerships care should be taken not to violate any law locally applicable; care should also be taken to avoid any misleading name or representation which would create a false impression as to the position or privileges of a member not locally admitted, or who is not duly authorized to practice, and as such amenable to discipline. No person should be held out as a practitioner or member who is not so admitted. No practitioner who is not admitted to practice in the courts should be held out in a way which will give the impression that he is so admitted. No false or assumed or trade name should be used to disguise the practitioner or his partnership. The continued use of the name of a deceased or former partner is or may be permissible by local custom, but care should be taken that no imposition or deception is practiced through this use. If a member of the firm becomes a Commissioner, or an Examiner or other employee of the Commission his name should not be retained in the firm name, as such retention may give color to the impression that an improper relation or influence is continued or possessed by the firm.

This canon does not inhibit the association of a practitioner with a mercantile, manufacturing, or other commercial institution, in the capacity of its representative or adviser.

43. Titles. No ~~member of the Association~~ practitioner not admitted to the bar shall use the title "Attorney" or "Counsel" but should use the title "Traffic Manager," "Practitioner before the Interstate Commerce Commission," "Registered Practitioner," or other appropriate title or designation.

COMMENT

The second sentence of present Canon 42 is deleted to recognize the current practice of most law firms to operate as professional corporations.

The language of Canon 43 is changed to eliminate reference to an unidentified association.

APPENDIX B—APPROVED FORMS

TABLE OF CONTENTS

1. Complaint; verification.
2. Answer.
3. Certificate of service.
4. Petition for leave to intervene.
5. Form of reparation statement under Rule 100.
6. Verification for statements of fact filed under modified procedure.
7. Approved Form No. 7 under Rule 245.

[These forms may be used in cases to which they are applicable, with such alterations as the circumstances may render necessary. Before using such forms the pertinent rules, particularly those referred to in the footnotes, should carefully be studied.]

No changes.

No. 1. COMPLAINT [1]

Before the Interstate Commerce Commission

COMPLAINT

V.

[Insert without abbreviation the names of complainant and defendant (including each of the receivers, operating trustees, or other legal representatives of defendant), and whether a corporation, firm, or partnership, specifying the individual name) of the parties composing the partnership; and the postoffice address of any motor carrier defendant.]

The Complaint of the above-named complainant respectfully shows:

I. That [complainant should here state nature and place of business, also whether a corporation, firm, or partnership and if a firm or partnership, the individual names of the parties composing the same.]

II. That the defendant above named is [here state whether: (a) carrier by railroad, express, motor vehicle (common or contract), water (common or contract), a freight forwarder, or otherwise; (b) the transportation is of property or passengers, or both; and (c) the transportation involves a freight forwarder or more than one type of carrier, specifying particulars] between points in the State of_____ and points in the State of_____ [a complaint under part II should specifically name the States in and through which the transportation which gives rise to the complaint is performed] and as such defendant is subject to the provisions of the Interstate Commerce Act.

III. That [state in this and subsequent paragraphs to be numbered IV, V, etc., the matter or matters intended to be complained of, naming every rate, fare, charge, classification, regulation, or practice the lawfulness of which is challenged, and also, if practicable, the points between which the rates, etc., complained of are applied. Where it is impracticable to designate each point, describe clearly the rate territory or rate group involved. Whenever practicable tariff or schedule reference should be given.]

[Where unlawful discrimination, preference, or prejudice is alleged the particular elements specified in the act as constituting such violation (see sections 2, 3, 4, 13, 216, 217, 218, 305, and 406) and the facts upon which complainant relies to establish the violation should be stated clearly. Where any provision of the act other than those just mentioned, or any requirement established pursuant to the act, is alleged to be violated, the pertinent statutory provision, or established requirement, together with the facts which are alleged to constitute the violation, should be stated. If two or more subsections of the act or requirements established pursuant thereto are alleged to be violated, the facts claimed to constitute vio-

[1] See Rules 26 to 33, inclusive.

lation of one subsection, or requirement, should be stated separately from those claimed to constitute a violation of another subsection, or requirement, wherever that can be done by reference or otherwise without undue repetition.]

X. That by reason of the facts stated in the foregoing paragraphs complainant has been subjected to the payment of rates [fares or charges, etc.] for transportation which were when exacted and still are (1) unjust and unreasonable in violation of section ------ of the Interstate Commerce Act, and (2) unjustly discriminatory in violation of section--------, and (3) unduly preferential or prejudicial in violation of section--------, and (4) in violation of the long-and-short haul [or aggregate of intermediate rates] provision of section 4 thereof. [Use one or more of the allegations numbered (1), (2), (3), (4), or other appropriate allegation according to the nature of the complaint.] That [if recovery of damages is sought] complainant has been injured thereby to his damage in the sum of $----------.

Wherefore complainant prays that defendant be required to answer the charges herein; that after due hearing and investigation an order be made commanding said defendant [and each of them] to cease and desist from the aforesaid violations of said act, and establish and put in force and apply in future to the transportation of---------- between the origin and destination points named in paragraph----------hereof, in lieu of the rates [fares, or charges, etc.], named in said paragraph, such other rates [fares, or charges, etc.], as the Commission may deem reasonable and just [and also, if recovery of damages is sought, pay to complainant by way of reparation for the unlawful charges hereinbefore alleged the sum of $ ----------, or such other sum as, in view of the evidence to be adduced herein, the Commission shall determine that complainant is entitled to an award of damages under the provisions of said act for violation thereof], and that such other and further order or orders be made as the Commission may consider proper in the premises.

Dated at----------, 19----.

(Complainant's signature [5])

(Office and post-office address)

(Signature of practitioner)

(Post-office address)

VERIFICATION [6]

STATE OF----------}
County of----------} ss:

----------, being duly sworn, deposes and says: that he is the complainant (or, one of the complainants; or, is the (insert title of the affiant if complainant is a corporation) of the ---------- company, complainant) in the above-entitled proceeding; that he has read the foregoing complaint, and knows the contents thereof; that the same are true as stated, except as to matters and things if any, stated on information and belief, and that as to those matters and things, he believes them to be true.

Subscribed in my presence, and sworn to before me, by the affiant above named, this ------ day of ----------, 19----.

[USE AN L. S. IMPRESSION SEAL]

[Title of Officer]

Commission expires ----------

No. 2. ANSWER [4]

Before the Interstate Commerce Commission

ANSWER

Docket No. ----------

---

v.

The above-named defendant, for answer to the complaint in this proceeding, respectively states:

I. [Here set forth appropriate and responsive admissions, denials, and averments, specifically answering the complaint paragraph by paragraph.]

Wherefore defendant prays that----------

Dated ----------, 19----.

[Name of defendant]

By [5] ----------

[Title of officer]

[Office and post-office address]

[Signature of practitioner]

[Post-office address]

No. 3. CERTIFICATE OF SERVICE [4]

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding, by (here state the precise manner of making service, which must be consistent with the provisions of Rule 22).

Dated at ---------- this ---- day of ----------, 19--.

(Signature) ----------

No. 4. PETITION FOR LEAVE TO INTERVENE [7]

Before the Interstate Commerce Commission

PETITION

----------}
"}Docket No.----------,
----------}
[or state other title]

[1] See footnote to Verification.

[2] Signature and verification by complainant unnecessary if complaint is signed by a practitioner. See Rule 17.

[4] See Rules 35 to 37, inclusive.

[5] See Rule 17

[6] See Rule 22

[7] See Rule 72

No changes.

Comes now your petitioner, ----------, and respectfully represents that he has an interest in the matters in controversy in the above-entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

I. That [petitioner should here state nature and place of business, and whether as corporation, firm, or partnership, etc., as in form No. 1].

II. [Petitioner should here set out specifically his position and interest in the proceeding.]

III. [If affirmative relief is sought see paragraphs III and X and prayer in form No. 1]

Wherefore said ---------- prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted.

[If affirmative relief is sought insert appropriate prayer here.]

Dated at ----------, 19----.

[See forms Nos. 1 and 3 as to subscription, verification, and certificate of service.]

No. 5. Form of Reparation Statement Under Rule 100

Claim of ---------- under decision of the Interstate Commerce Commission in Docket No. ----------

Date of shipment	Date of delivery or tender of delivery	Date charges were paid	Car [1] initials	Car [2] number	Origin	Destination	Route	Commodity	Weight	As charged		Should be		Reparation on basis of the Commission's decision	Charges paid by [3]
										Rate	Amount	Rate	Amount		

Claimant hereby certifies that this statement includes claims only on shipments covered by the findings in the docket above described and contains no claim for reparation previously filed with the Commission by or on behalf of claimant or, so far as claimant knows, by or on behalf of any other person, in any other proceedings, except as follows: (Here indicate any exceptions, and explanation thereof).

---------- Claimant

By ---------- Practitioner

---------- Address

---------- Date

Total amount of reparation $----------

The undersigned hereby certifies that this statement has been checked against the records of this company and found correct.

Date ---------- Concurred [4] in: ---------- Company

---------- Company, Defendant Collecting Carrier, Defendant.[4]

By ----------, Auditor. By ----------, Auditor.

[1] Substitute "Vessel" if water carrier involved. [2] Substitute "Voyage No." if water carrier involved.
[3] Here insert name of person paying charges in the first instance, and state whether as consignor, consignee, or in what other capacity.
[4] If not a defendant, strike out word "defendant."
[5] For concurring certificate in case collecting carrier is not a defendant.

No. 6. Verification for Statements of Fact Filed Under Modified Procedure [6]

State of ------,
County of ------, *ss:*

---------- being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated.

(Signed) ----------

Subscribed and sworn to before me this ------ day of ----------.

Notary Public of ----------.

My Commission expires ----------

[6] See Rule 50.

No changes.

PRESENT RULE

No. 7. NOTICE OF FILING OF APPLICATION FOR PUBLICATION IN FEDERAL REGISTER UNDER SECTION 206(a)(6) OF THE INTERSTATE COMMERCE ACT, AS AMENDED

(See instructions)

PART I

(To be completed by applicant)

Notice is hereby given that the below-named applicant has filed with

---

(Name of State commission)

an application for a certificate to conduct motor common carrier operations in intrastate commerce; that, in connection with such operations, applicant also is seeking authority to engage in transportation in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operations which may be authorized to be conducted; and that the intrastate and interstate operations proposed to be conducted are as set forth below.

1. ---

(Name and business address of applicant)

(Street) (City) (State)

2 ---

(Name and address of applicant's representative, if any)

(Street) (City) (State)

3. Describe below in full the operations proposed to be conducted in intrastate commerce, together with the extent to which applicant is seeking authority in connection with such intrastate operations to engage in transportation in interstate and foreign commerce. (If additional space is necessary, use reverse side.)

(Signature)

(Title)

Date ---------- 19--

PART II

(To be completed by State commission)

Date of filing application ----------

Docket number assigned ----------.

Date and time and place application has been assigned for hearing, if known --------

---

(Signature)

(Title)

(Name of State commission)

Date this notice forwarded to Interstate Commerce Commission, Washington, D.C. 20423, ---------- 19--

INSTRUCTIONS

This form is for use in giving notice to interested persons regarding the filing of intrastate motor carrier applications in connection with which the applicant also desires authority to engage in interstate and foreign commerce pursuant to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962, by Public Law 87-805. It should be filed *in duplicate* (along with the intrastate application) with the State commission, which will forward it to the Interstate Commerce Commission, Washington, D.C. 20423.

The description in Part I, item 3 should include the commodities (or passengers) sought to be transported, the points to be served, and the routes over which, or territories within which, such transportation is to be performed. Care should be taken to insure that the description, which will be published in the FEDERAL REGISTER, fully informs interested persons of the type and scope of the proposed intrastate operations, and the extent to which applicant desires authority to engage in transportation in interstate and foreign commerce in connection with such intrastate operations.

PROPOSED RULE

"No. 7" has been added to heading to indentify form referred to under Rule 245.

There are no other changes in Appendix B.

COMMENT

PRESENT RULE	PROPOSED RULE	COMMENT
	APPENDIX C - EX PARTE COMMUNICATIONS	
APPENDIX C—EX PARTE COMMUNICATIONS 1. *Ex parte communications.* (a) No person who is a party to, or counsel or agent of a party, or who intercedes in, any on-the-record proceeding, shall submit any ex parte communication concerning the merits of the proceeding to any member of the Commission, hearing officer, member of a joint board, or to any employee of the Commission participating in the decision in such proceeding.	1. Ex parte communications. (a) No person who is a party to, or counsel or agent of a party, or who intercedes in, any on-the-record proceeding, shall submit any ex parte communication concerning the merits of the proceeding to any member of the Commission, hearing officer, member of a joint board, or to any employee of the Commission participating or who may reasonably be expected to participate in the decision in such proceeding.	The additional language in sections 1(a) and 1(b) are designed to bring this provision into direct conformity with Section 557(d)(1)(A) of the Administrative Procedure Act, see P.L. 94-409.
(b) No member of the Commission, hearing officer, member of a joint board, or employee of the Commission participating in the decision in such proceeding shall invite or knowingly entertain any prohibited ex parte communication, or make any such communication to any party to, or counsel or agent of a party, or any other person who he has reason to know may transmit such communication to a party or party's agent.	(b) No member of the Commission, hearing officer, member of a joint board, or employee of the Commission participating or who may reasonably be expected to participate in the decision in such proceeding shall invite or knowingly entertain any prohibited ex parte communication, or make any such communication to any party to, or counsel or agent of a party, or any other person who he has reason to know may transmit such communication to a party or party's agent.	
2. The prohibitions of paragraph 1 apply from the time an on-the-record proceeding is noticed for oral hearing or the taking of evidence by modified procedure or from such earlier time as the Commission may fix by rule or order in the particular case.	(2) The prohibitions of paragraph 1 apply from the time an on-the-record proceeding is noticed for oral hearing or the taking of evidence by modified procedure, at such time as the person responsible for the communication has knowledge that the proceeding will be so noticed, or from such earlier time as the Commission may fix by rule or order in the particular case.	This language would bring this provision into conformity with section 557(d)(1)(E) of the A.P.A.
3. For the purposes hereof: (a) "On-the-record proceeding" means a proceeding required by the Constitution, by statute, by Commission rule, or by order in the particular case, to be decided solely upon the record made in a Commission hearing.	3. For the purposes hereof: (a) "On-the-record proceeding" means a proceeding described in Section 553 of the Administrative Procedure Act (5 U.S.C. 553) or a proceeding required by the Constitution, by statute, by Commission rule, or by order in the particular case, to be decided solely upon the record made in a Commission hearing.	As a practical matter most Commission rulemaking proceedings need only fulfill the notice and comment requirements of section 553 of the APA and are not required to "be made on the record after opportunity for an agency hearing." United States v. Florida East Coast R. Co., 410 U.S. 224 (1973) Thus, read literally, the prohibition contained in the present Appendix C would appear not to apply to most rulemaking proceedings since they are not required "to be decided solely upon the record made in a Commission hearing."
	However, Appendix C was promulgated prior to the Florida East Coast decision, and thus it may be unclear whether or not it covers section 553 rulemaking proceedings. Section 553 proceedings are more informal than adjudications in that they can include informal conferences and reliance on existing Commission records. Clearly, however, ex parte communications with the decision makers would seem to violate the spirit of section 553 in that other parties would be deprived of notice of the communications and an opportunity to comment on them even if they formed the basis of a decision. The Commission does not now engage, nor has it engaged, in such communications. Accordingly, the committee recommends that part 3(a) be clarified to	
(b) "Person who intercedes in any proceeding" means any individual outside the Commission (whether in public or private life), partnership, corporation, or association, other than a party or an agent of a party, who volunteers a communication which he may be expected to know may advance or adversely affect the interest of a particular party to the proceeding, whether or not he acts with the knowledge or consent of any party or any party's agent.		
(c) "Ex parte communication concerning the merits" includes both oral and written communications, but the following classes of ex parte communications shall not be prohibited:		
(1) Any oral or written communication which all the parties to the proceeding agree, or which the Commission, the hearing officer, or joint board formally rules, may be made on an ex parte basis.		
(2) Any oral or written communication of facts or contentions which have general significance for an industry subject to regulation if the communicator cannot reasonably be expected to know that the facts or contentions are material to a substantive issue in a pending on-the-record proceeding in which he is interested.		

PRESENT RULE	PROPOSED RULE	COMMENT
(d) "Any employee of the Commission participating in the decision" includes personal assistants to members of the Commission, members of an employee review board appointed pursuant to Public Law 87-247 (1961) to whom the proceeding may be referred for decision, employees of the Commission Bureau (e.g., Operating Rights, Finance, Rates and Practices) whose responsibilities correspond to the nature of the proceeding, and the staff of the General Counsel's Office.	(8) Any communication by means of any news medium which in the ordinary course of business of the publisher is intended to inform the general public, members of the organization involved, or subscribers to such publications with respect to pending on-the-record proceedings.	indicate that section 553 rulemaking proceedings are covered by the prohibition against ex parte communications.
	(d) "Any employee of the Commission participating in the decision" includes personal assistants to members of the Commission, members of an employee review board appointed pursuant to Public Law 87-247 (1961) to whom the proceeding may be referred for decision, employees of the ~~Commission Bureau (e.g., Operating Rights, Finance, Rates and Practices)~~ Commission's Office of Proceedings ~~whose responsibilities correspond to the nature of the proceeding,~~ and the staff of the General Counsel's Office.	3(d): This change, while not required by the new legislation, would serve to bring the present language of this provision up to date.
4. Any member of the Commission, hearing officer, employee of the Commission, or member of a joint board, participating in the decision who personally receives a written or oral communication which he believes is prohibited at the time received, shall transmit the written communication or a written summary of the substance of an oral communication promptly to the Chairman of the Commission together with a written statement of the circumstances under which the communication was made, if not apparent from the communication itself. If the Chairman concludes that the communication is prohibited, or that the dictates of fairness require that it be made public, he shall instruct the Secretary to place the written communication or summary of the oral communication in the correspondence part of the public docket of the proceeding or take such other or further action as may be appropriate under all of the circumstances.	4. Any member of the Commission, hearing officer, member of a joint board, or employee of the Commission, participating or who reasonably may be expected to participate in the decision, who personally receives a written communication which he believes is prohibited at the time received, shall promptly transmit the written communication, or a written summary of the substance of an oral communication, together with a written statement of the circumstances under which the communication was made, if not apparent from the communication itself, to the Secretary of the Commission, who shall place any material so received in the correspondence section of the public docket of the proceeding. Any such person who receives a communication and who is not certain whether such communication is a prohibited ex parte communication may request, and shall be given promptly, a ruling on the question from the Commission's General Counsel. The Chairman of the Commission shall be notified promptly of all reports of ex parte communications, or requests for rulings on possible ex parte communications, transmitted to the Secretary or the General Counsel. He may require that any such communication be placed in the correspondence section of the docket if he concludes that the dictates of fairness require that it be made public, even if it is not a prohibited communication, and he may direct the taking of such other or further action as may be appropriate under all the circumstances.	The principal reason for proposing a change in this section is to eliminate any appearance that the Chairman might have the authority to prevent the inclusion in the public docket of a communication believed by the person receiving it to be prohibited. It is believed that section 557(d)(1)(C) places the responsibility for making that determination upon the person receiving the communication, and leaves no room for any other person, or the agency itself, to overrule his determination. Recognizing that there may be doubts as to the nature of a communication, specific provision would be made for the person receiving a questionable communication to obtain a prompt ruling on its propriety from the General Counsel. Authority would be retained in the Chairman to have any communication placed in the docket where the "dictates of fairness" require it, even if it did not technically fall within the prohibited category. The Chairman would also retain the authority to take whatever further action he might deem appropriate. Presumably, this would include recommending disciplinary proceedings or the denial of the relief sought by the offending party.
5. The Commission may censure, or suspend or revoke the privilege to practice before the agency, of any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication.		
6. To the extent permitted by law, the relief or benefit sought by a party to a proceeding may be denied if the party, or an agent of the party, knowingly and willfully makes or solicits the making of a prohibited communication.		
7. The Commission may censure, suspend, or dismiss, or institute proceedings for the suspension or dismissal of, any Commission employee who knowingly and willfully violates the foregoing prohibitions or requirements.		

PRESENT	PROPOSED RULE	COMMENT
	APPENDIX D - ATTORNEYS-QUALIFICATION	Descriptive title added.

I,----------
(Name)

(Address) (Telephone No.)

hereby declare that I am an attorney at law qualified as a member in good standing of the bar of the highest court of the ----------.

(Signature)

APPENDIX E--INDEX OF THE SPECIAL RULES CONTAINED IN PARTS 1101-1159.

PARTS 1101-1109--RULES OF PRACTICE

Part

1101 Temporary operating authorities and approvals.
1102 Procedures governing rail carrier general increase proceedings.
1104 Procedures to be followed in motor carrier revenue proceedings.
1107 Requirements and procedures relating to Railroad Rate Adjustment Act of 1973.

1108 Revised Guidelines for Implementation of the National Environmental Policy Act of 1969.

PARTS 1110-1119--RAILCARRIERS CONSOLIDATION, FINANCE, AND REORGANIZATION

1110 General requirements.
1111 Railroad and water carrier consolidation procedure.
1112 Interlocking officers.
1113 Guaranty of loans to carriers by railroad.
1114 Alteration or modification of securities and the provisions of instruments, and filing of certificates and reports.
1115 Issuance of securities, assumption of obligations, and filing of certificates and reports.
1116 Recordation of documents.
1117 Reorganization of railroads.
1118 Corporate reorganization of carriers and corporations.

PARTS 1120-1129--SPECIAL PROCEDURES; RAILCARRIERS CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

1120 Construction, extension, acquisition, or operation of railroad lines.
1121 Abandonment of railroad lines.
1122 Discontinuance or change of operation or service.
1123 Determination of avoidable losses.
1124 Regulations governing the adequacy of intercity railroad passenger service.
1125 Standards for determining rail service continuation subsidies.

1126 Submission of Cost Data to Justify Reimbursement for Directed Service

PARTS 1130-1139--SPECIAL PROCEDURES; MOTOR CARRIERS AND BROKERS CERTIFICATES, PERMITS, LICENSES

1130 Applications for motor carrier certificates and permits.
1131 Temporary authority applications under section 210a(a) of the Interstate Commerce Act.

- 139 -

This new Appendix E is provided pursuant to proposed Rule 1(a). It is designed to serve the need and convenience of the public by calling attention to the special procedural requirements in 49 CFR 1101-1159. In fact, Appendix E should be of considerable benefit to the many lawyers and practitioners who rely almost exclusively upon the pamphlet edition of the Rules of Practice and are not fully aware of additional procedural requirements contained in the Code of Federal Regulations.

Part

1131a Temporary authority applications under section 311(a) of the Interstate Commerce Act.
1132 Transfers of operating rights.
1133 Transfers of Passenger Brokers' Licenses.
1134 Control or consolidation of motor carriers or their properties.
1135 Corporate reorganizations of motor carriers.

PARTS 1140-1149--SPECIAL PROCEDURES; WATER CARRIERS

1140 Extensions of operations.
1141 Transfers of certificates and permits to operate.

PARTS 1150-1159--SPECIAL PROCEDURES; FREIGHT FORWARDERS

1150 Applications for permits.
1151 Transfers of operating rights (permits).

APPENDIX F

NUMBER OF COPIES OF DOCUMENTS (IN ADDITION TO ORIGINAL) TO BE FILED WITH THE COMMISSION

TYPE OF DOCUMENT	CITATION	NUMBER OF COPIES Original plus:
Applications - Finance Matters		
Competitive Bidding Requirements - Exemption.	49 CFR 1115.25 (49 CFR 1110.7)	Six (6)
Interlocking Officers - Approval.	49 CFR 1112.7	Six (6)
Rail Line - Abandonment.	49 CFR 1121.4(a)	Six (6)
Rail Line - Construction, Extention, Acquisition or Operation.	49 CFR 1121.2(b)	Nine (9)
Rail or Ferry Line - Discontinuance or Change of Service.	49 CFR 1121.8	Eight (8) of Notice
(If by Notice)		Seven (7) of Statements
(If by Petition)		Seven (7)
Railcarriers - Guaranty Loans.	49 CFR 1113.4(c)	Six (6)
Railroad Consolidation.	49 CFR 1111.4(b)	Five (5)
Railroad Reorganization.	49 CFR 1117.12(b)	Six (6)
Securities Issuance, Assumption of Obligations.	49 CFR 1115.3(e) (49 CFR 1110.7)	Six (6)
Securities or Instruments - Alteration or Modification.	49 CFR 1114.3(b)	Six (6), plus one (1) for governor of each State in which applicant operates

COMMENT

APPENDIX F is added to the Rules to provide a convenient reference so that the public and the Commission's staff might be able to find out, at a glance, the number of copies required for all kinds of documents filed with the Commission.

TYPE OF DOCUMENT	CITATION	NUMBER OF COPIES
Applications - Motor Carrier and Broker		Original plus:
Acquisition of Control. (Form OP-F-45)	49 CFR 1134.50(b) (49 CFR 1003.1)	Five (5)
Brokers of Passengers - License. (Form OP-OR-11)	(49 CFR 1003.1)	None
Brokers of Property - License. (Form OP-OR-11)	(49 CFR 1003.1)	None
Certificate of Exemption. (Form OP-OR-110)	(49 CFR 1003.1)	None
Certificate of Registration. (Form OP-OR-100)	49 CFR 1047.10 (49 CFR 1003.1)	None
Motor Carrier - Certificate or Permit. (Form OP-OR-9)	49 CFR 1130.1(b) (49 CFR 1003.1)	One
Merger, Consolidation, Purchase, or Lease. (Form OP-F-44)	49 CFR 1134.1(b) (49 CFR 1003.1)	Five (5)
Rental Contract Approval - Contract Carrier. (Form BOp79)	(49 CFR 1003.1)	Three (3) plus three (3) of rental contract
Temporary Authority. (Form OP-MCB-95	49 CFR 1131.2(b) (49 CFR 1003.1)	Six (6)
Temporary Operation. (Form OP-F-46)	49 CFR 1134.6(b) (49 CFR 1003.1)	Five (5)
Transfer or Lease of Certificate of Registration. (Form OP-M 110)	49 CFR 1132.12(b) (49 CFR 1003.1)	Four (4)
Transfer or Lease of Operating Rights or Broker Licenses (Form OP-M 100)	49 CFR 1132.2 (49 CFR 1003.1)	Four (4)

TYPE OF DOCUMENT	CITATION	NUMBER OF COPIES
Applications - Water Carrier and Freight Forwarder		Original plus:
Certificate of Exemption - Water Carrier. (Form OP-WC-10)	(49 CFR 1003.2)	One (1)
Exemption by Contract Carriers - by Water. (Form BWC-1)	(49 CFR 1003.2)	One (1)
Extension of Operations. (Form OP-WC-20)	49 CFR 1140.1(b) (49 CFR 1003.3)	One (1)
Freight Forwarder Permit. (Form OP-FF-10)	49 CFR 1150.1 (49 CFR 1003.3)	One (1)
New Certificates and Permits. (Form OP-WC-20)	49 CFR 1140.1(b) (49 CFR 1003.2)	One (1)
Transfer of Water Carrier Certificates and Permits.	49 CFR 1141.6(b)	Four (4)
Transfer of Freight Forwarder Permit	49 CFR 1151.5(b)	Four (4)
Applications - Other		
Fourth Section.	Rule 200	Six (6) Fourteen (14) if Div. 2 matter
Released Rates.	Rule 225(e)	Six (6)
Special Permission.	Rule 225(e)	Six (6)
Section 5a. (Forms OP-F-44 and OP-F-45)	49 CFR 1134.1(b) & 1134.50(b) (49 CFR 1003.1)	Five (5)
Pleadings and other documents.		
Admissions, Requests for.	Rule 63(a)	One (1) (Copy only)
Administrative Appeals, Exemptions, Petitions for Stay.	Rule 101	Six (6)
General Transportation Importance - Petitions	Rules 102 and 103	Fourteen (14)
Employee Board Actions - Petition for Reconsideration.	Rule 225(e)	Six (6)

TYPE OF DOCUMENT	CITATION	NUMBER OF COPIES
Suspension and fourth-section matters - Petition for Reconsideration.	Rule 200(b)	Original plus: Six (6), Fourteen (14) if Div. 2 matter
Investigation into discontinuance - Order instituting or decision not to investigate - Petition for Reconsideration.	Rule 245(g) Rule 245(h)(3)	Six (6)
Bankruptcy proceedings - Various pleadings.	Rule 16	Six (6)
Complaints - Formal.	Rule 26(a)	Six (6) copies plus one for each defendant to be served. If State-made rates involved one additional copy for each State concerned
Complaints - Informal - Not Seeking damages.	Rule 24(a)	One (1)
Complaints - Informal - Seeking Damages.	Rule 25(d)	One (1) for each defendant to be served
Complaints - Answers.	Rule 35(c)	Six (6) copies
Complaints - Satisfaction.	Rule 37	None
Depositions.	Rule 64	One (1) plus One (1) copy of exhibits
Exhibits.	Rule 84(c)	One copy; plus one copy for each counsel and each board member.
Interrogatories - Written.	Rule 62(a)	One (1) (Copy only)
Intervention Petitions.	Rule 72(d)	Three (3)

TYPE OF DOCUMENT	CITATION	NUMBER OF COPIES
Intervention Petitions - At Oral hearing.	Rule 72	Original plus: One (1) plus one (1) for each party represented. If granted, one (1) for Commission.
Modified Procedure - Verified Statements - In general.	Rule 52	Six (6)
Modified Procedure - Verified Statements - Applications.	Rule 247(e)(3)	One (1)
Prepared Statements - Oral hearing.	Rule 77	Copy for reporter, and one (1) for each counsel
Protests - General.	Rule 40(c)	Six (6)
Protests - Motor Carrier Finance.	Rule 240(c)(1)	One (1)
Protests - Investigation and Suspension Proceedings.	Rule 42(d)	Seven (7)
Protests - Motor Carrier, Broker Water Carrier, Freight Forwarder Applications.	Rule 247(d)(1)	One (1)
Oral Argument Matters.	Rule 98	None
Replies to Pleadings.	Rule 23(c)	Same number as pleading replied to
Subpoena Requests.	Rule 56	None
Time Modification - Requests for Extension.	Rule 21(b)	None
Transcript Correction.	Rule 90(b)	Two (2) for reporter

PROPOSED RULE

APPENDIX G

COMMISSION HEARING AND APPELLATE PROCEDURE

SEC. 303. (a) Section 17 of the Interstate Commerce Act (49 U.S.C. 17) is amended by redesignating paragraphs (9) through (12) thereof as paragraphs (10) through (13) thereof, respectively, and by inserting therein the following new paragraph (9):

"(9) (a) Whenever the term 'hearing' is used in this part, such term shall be construed to include an opportunity for the submission of all evidence in written form, followed by an opportunity for briefs, written statements, or conferences of the parties, such conferences to be chaired by a division, an individual Commissioner, an administrative law judge, an employee board, or any other designated employee of the Commission.

"(b) With respect to any matter involving a common carrier by railroad subject to this part, whenever the Commission assigns the initial disposition of any such matter before the Commission to an administrative law judge, individual Commissioner, employee board, or division or panel of the Commission, such judge, Commissioner, board, division, or panel shall—

"(i) complete all evidentiary proceedings with respect to such matter within 180 days after its assignment; and

"(ii) with respect to any matter so assigned which involves written submissions or the taking of testimony at a public hearing, submit in writing to the Commission, within 120 days after the completion of all evidentiary proceedings, an initial decision, report, or order containing—

"(A) specific findings of fact;

"(B) specific and separate conclusions of law;

"(C) a recommended order; and

"(D) any justification in support of such findings of fact, conclusions of law, and order.

The Commission, or a duly designated division thereof, may, in its discretion, void any requirement for an initial decision, report, or order, and, in appropriate cases, may direct that any matter shall be considered forthwith by the Commission or such division, if it concludes that the matter involves a question of agency policy, a new or novel issue of law, or an issue of general transportation importance, or if the due and timely execution of its functions so requires. Whenever an initial decision, report, or order is submitted, copies thereof shall be served upon interested parties. Any such party may file an appeal with the Commission, with respect to such initial decision or report. If no such appeal is filed within 20 days after such service, or within such further period (not to exceed 20 days) as the Commission, or a duly designated division thereof, may authorize, the order set forth in such initial decision or report shall become the order of the Commission and shall become effective unless, within such period, the order shall have been stayed or postponed by the Commission pursuant to subdivision (d) or (e).

"(c) The Commission, or a duly designated division thereof, may, upon its own initiative, and shall, in any case in which an appeal is filed under subdivision (b), review the matter upon the same record or upon the basis of a further hearing. Any such appeal shall be con-

COMMENT

Proposed Appendix G is provided in line with the provision made therefor in Proposed new Rule 103.

PROPOSED RULE

COMMENT

Commission Hearing And Appellate Procedure

sidered and acted upon by the Commission, or a duly designated division thereof, within 180 days after the date on which such appeal is filed. Any such decision, report, or order shall be stayed pending the determination of such appeal. Such a review shall be conducted in accordance with section 557 of title 5, United States Code, and such rules (limiting and defining the issues and pleadings upon review) as the Commission may adopt in conformance with section 557(b) of such title 5. The Commission may, in its discretion and on such terms and conditions as it may prescribe, authorize duly designated employee boards to perform functions under this paragraph of the same character as those which may be performed by a duly designated division of the Commission (other than the decision of any appeal under this paragraph which may be further appealed to the Commission).

"(d) Any decision, order, or requirement of the Commission, or of a duly designated division thereof, shall become effective 30 days after it is served on the parties thereto, unless the Commission provides for such decision, order, or requirement, or any applicable rule, to become effective at an earlier date. Any interested party to a decision, order, or requirement of a duly designated division of the Commission may petition the Commission for rehearing, reargument, or other reconsideration, subject to such rules and limitations as the Commission may establish. If the Commission finds that a decision, order, or requirement presents a matter of general transportation importance, or if it finds that clear and convincing new evidence has been presented or that changed circumstances exist which would materially affect such decision, order, or requirement, the Commission may reconsider such decision, order, or requirement, and it may, in its discretion, stay the effective date of such decision, order, or requirement. If the Commission reconsiders a decision, order, or requirement, it must complete the process and issue its final order not more than 180 days after the date on which it grants the application for reconsideration.

"(e) The Commission may, in its discretion, extend any time period set forth in this section for a period of not more than 90 days, if a majority of the Commissioners, by public vote, agree to such extension. The Commission shall submit an annual report in writing to each House of Congress setting forth each extension granted pursuant to this subdivision (classified by the type of proceeding involved), and stating the reasons for each such extension and the duration thereof.

"(f) In extraordinary situations in which an extension granted pursuant to subdivision (e) is not sufficient to allow for completion of necessary proceedings, the Commission may, in its discretion, grant a further extension if—

"(i) not less than 7 of the Commissioners, by public vote, agree to such further extension; and

"(ii) not less than 15 days prior to expiration of the extension granted pursuant to subdivision (e), the Commission reports in writing to the Congress that such further extension has been granted, together with—

"(A) a full explanation of the reasons for such further extension;

"(B) the anticipated duration of such further extension;

"(C) the issues involved in the matter before the Commission; and

Commission Hearing And Appellate Procedure

"(D) the names of personnel of the Commission working on such matter.

"(g) The Commission may, at any time upon its own initiative, on grounds of material error, new evidence, or substantially changed circumstances—

"(i) reopen any proceeding;

"(ii) grant rehearing, reargument, or reconsideration with respect to any decision, order, or requirement; and

"(iii) reverse, modify, or change any decision, order, or requirement.

The Commission may establish rules allowing interested parties to petition for leave to request reopening and reconsideration based upon material error, new evidence, or substantially changed circumstances.

"(h) Notwithstanding any other provision of this Act, any decision, order, or requirement of the Commission, or of a duly designated division thereof, shall be final on the date on which it is served. A civil action to enforce, enjoin, suspend, or set aside such a decision, order, or requirement, in whole or in part, may be brought after such date in a court of the United States pursuant to the provisions of law which are applicable to suits to enforce, enjoin, suspend, or set aside orders of the Commission.

"(i) Notwithstanding the provisions of paragraphs (5), (6), (7), and (8), the provisions of this paragraph shall govern the disposition of, and shall apply only to, any matter before the Commission which involves a common carrier by railroad subject to this part, except that the provisions of other sections of this part pertaining to deadlines in Commission proceedings shall govern to the extent that they are inconsistent with the provisions pertaining to deadlines contained in this paragraph.

"(j) Reports in writing and other written statements (including, but not limited to, any report, order, decision and order, vote, notice, letter, policy statement, rule, or regulation) of any official action of the Commission (whether such action is taken by the Commission, a division thereof, any other group of Commissioners, a single Commissioner, an employee board, an administrative law judge, or any other individual or group of individuals who are authorized to take any official action on behalf of the Commission) shall indicate (i) the official designation of the individual or group taking such action, (ii) the name of each individual taking, or participating in taking, such action, and (iii) the vote or position of each such participating individual. If any individual who is officially designated as a member of a group which takes any such action does not participate in such action, the written statement of such action shall indicate that such individual did not participate. Each individual who participates in taking any such action shall have the right to express his individual views as part of the written statement of such action. The written statement of any such action shall be made available to the public in accordance with Federal law.".

(b) Section 17 of the Interstate Commerce Act is amended by inserting therein a new paragraph (14) as follows:

"(14)(a) Any formal investigative proceeding with respect to a common carrier by railroad which is instituted by the Commission

Commission Hearing And Appellate Procedure

after the date of enactment of this subdivision shall be concluded by the Commission with administrative finality within 3 years after the date on which such proceeding is instituted. Any such proceeding which is not so concluded by such date shall automatically be dismissed.

"(b) Within 1 year after the date of enactment of this subdivision, the Commission shall conclude or terminate, with administrative finality, any formal investigative proceeding with respect to a common carrier by railroad which was instituted by the Commission on its own initiative and which has been pending before the Commission for a period of 3 or more years following the date of the order which instituted such proceeding.".

[FR Doc.76-32553 Filed 11-5-76;8:45 am]

federal register

MONDAY, NOVEMBER 8, 1976



PART IV:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Low Income Housing

■

FAIR MARKET RENTS

Schedule C Contract Rent Automatic Annual Adjustment Factors

Title 24—Housing and Urban Development

CHAPTER VIII—LOW INCOME HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-76-311]

PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

Publication of Schedule C—Contract Rent Automatic Anuual Adjustment Factors

On March 31, 1975, at 40 FR 14502, the Department of Housing and Urban Development amended Title 24 of the Code of Federal Regulations by adding to Chapter VIII a new Part 888, Section 8 Housing Assistance Payments Program—Fair Market Rents and Contract Rent Automatic Annual Adjustment Factors. Schedule C of Part 888 constitutes the Contract Rent Automatic Annual Adjustment Factors for New Construction and Substantial Rehabilitation (including Housing Finance and Development Agencies Program).

These adjustment factors are being published in the FEDERAL REGISTER in accordance with the Notice given on March 31, 1975, at 40 FR 14502, that Schedule C Adjustment Factors would be published in the FEDERAL REGISTER at least annually. Different adjustment factor schedules are provided for different geographical areas, and on each schedule factors are shown for different rent brackets and different size units. In addition, different factors are shown for cases in which utilities are not included in the Contract Rent. A new § 888.203 is being added to Subpart B concerning the use of the factors which includes a provision as to which factors are to be used where some but not all of the utilities are included in the Contract Rent. Where the Contract Rent does not include all utilities but does include the highest cost energy source of fuel, the applicable factor is that used where all utilities are included in the rent. If the Contract Rent does include some utilities but not the highest cost energy source of fuel, the applicable factor is that used where no utilities are included in the rent. The Department has determined that this approach is necessary in the interests of avoiding costly and complicated procedures which would be required to carry out a system of adjustment factors for every possible combination of utility payments by Owners and Families.

These factors were calculated for 23 Standard Metropolitan Statistical Areas (SMSAs) and for the four Census Regions on the basis of changes in the Consumer Price Index (CPI) for rents and utilities that occurred in the last year. Because of the unavailability of CPI data for all housing market areas, the Department is requesting comments from members of the general public on alternate approaches or data sources which could provide information on smaller sized areas than those being published at this time. Such comments may relate to national or regional data, to methodology, or to limited areas.

These are the first Schedule C Automatic Annual Adjustment Factors to be published in the FEDERAL REGISTER. Since the anniversary dates for a number of Housing Assistance Payments Contracts (Contracts) have already occurred and the Contract Rents are eligible for adjustments which cannot be computed until the factors are published, the Assistant Secretary for Housing-Federal Housing Commissioner has determined it reasonable and in the public interest that Section C Automatic Annual Adjustment Factors and the revision of Subpart B be effective immediately upon publication in the FEDERAL REGISTER, and that the adjustment in Contract Rents shall be applicable to the period beginning on the anniversary date of the Contract for those units for which the anniversary date occurred prior to this publication (see § 888.204).

The Assistant Secretary for Housing—Federal Housing Commissioner has determined it to be reasonable and in the public interest to provide for a six month comment period from the date of this publication. HUD will consider all comments received, and any adjustments made as a result of such comments will be applicable to the period beginning on the Contract anniversary dates occurring prior to the publication of those adjustments, as provided in § 888.204.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. In addition, The Department has determined, pursuant to Office of Management and Budget Circular A-107, that an Economic Impact Statement is not required. Copies of these findings are available for public inspection during regular business hours in Room 10141, Rules Docket Clerk, Office of the Secretary, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. It is hereby certified that the economic and inflationary impact of this publication has been carefully evaluated in accordance with OMB Circular A-107.

Accordingly, Title 24, Part 888 is amended by adding new §§ 888.203 and 888.204 to Subpart B and by publishing schedule C factors for effect as set forth below; and Subpart B as revised is republished as follows:

Subpart B—Contract Rent Automatic Annual Adjustment Factors

§ 888.201 Purpose and applicability.

Schedule C of this Part sets forth the Automatic Annual Adjustment Factors as determined by HUD for the Section 8 Housing Assistance Payments Program—New Construction, Substantial Rehabilitation, and Housing Finance and Development Agencies (see 24 CFR 880, 881, and 883, respectively).

§ 888.202 Manner of publication.

Schedule C Adjustment Factors will be published in the FEDERAL REGISTER at least annually. Interim revisions may be published as market conditions dictate.

§ 888.203 Use of contract rent automatic annual adjustment factors.

(a) To compute an adjustment to a Contract Rent, find the schedule of Automatic Annual Adjustment Factors for the appropriate Census Region or Standard Metropolitan Statistical Area, as indicated in Schedule C.

(1) If the Contract Rent includes all utilities, use the factor shown on the basic schedule for the rent bracket within which the particular Contract Rent falls and for the applicable size of unit (by number of bedrooms).

(2) If the Contract Rent does not include all utilities but does include the highest cost energy source of fuel, use the appropriate factor shown on the basic schedule (see paragraph (b) of this section).

(3) If the Contract Rent does not include any utilities or includes some utilities but not the highest cost energy source of fuel, use the Annual Adjustment Factor for Contract Rent (Excluding Utilities).

(b) The adjusted monthly amount of the Contract Rent of a dwelling unit shall be determined by multiplying the Contract Rent in effect on the anniversary date of the Contract by the applicable Automatic Annual Adjustment Factor (see paragraph (a) of this section) and rounding the result to the next higher whole dollar amount.

§ 888.204 Period for which adjustment is applicable.

(a) Where the anniversary date for a Housing Assistance Payments Contract occurred prior to the first publication of Automatic Annual Adjustment Factors on November 5, 1976, the adjustment to the Contract Rents shall be applicable for the period beginning on the anniversary date of the Contract.

(b) In the event of any revision to the Automatic Annual Adjustment Factors as a result of comments received on Schedule C as published on November 5, 1976, the Contract Rents for any Housing Assistance Payments Contracts which had an anniversary date prior to the publication of such revision, including an anniversary date occuring prior to November 5, 1976, shall be subject to additional adjustments on the basis of such revision applicable to the period beginning with the Contract anniversary date.

Effective date: These schedules and amendments shall become effective on November 8, 1976.

AUTHORITY: Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)); Sec. 5(b), U.S. Housing Act of 1937 (42 U.S.C. 1437c(b)); Sec. 8, U.S. Housing Act of 1937 (42 U.S.C. 1437f).

JAMES L. YOUNG,
Assistant Secretary for Housing—Federal Housing Commissioner.

SCHEDULE C AUTOMATIC ANNUAL ADJUSTMENT FACTOR FOR UPDATING SECTION 8 CONTRACT RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION. (INCLUDING THE HOUSING FINANCE & DEVELOPMENT AGENCIES PROGRAM)

NORTHCENTRAL CENSUS REGION

MONTHLY GROSS RENT	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4+BEDROOMS
UNDER $75	1.068	1.076	1.089	1.102	1.114
75 - 99	1.063	1.068	1.078	1.087	1.095
100 - 124	1.060	1.064	1.071	1.079	1.085
125 - 149	1.058	1.061	1.067	1.073	1.078
150 - 174	1.056	1.059	1.064	1.069	1.074
175 - 199	1.055	1.058	1.062	1.067	1.070
200 - 224	1.054	1.057	1.061	1.064	1.068
225 - 249	1.054	1.056	1.059	1.063	1.066
250 - 274	1.053	1.055	1.058	1.061	1.064
275 - 299	1.053	1.055	1.058	1.060	1.063
300 - 324	1.053	1.054	1.057	1.059	1.062
325 - 349	1.052	1.054	1.056	1.059	1.061
350 - 374	1.052	1.053	1.056	1.058	1.060
375 - 399	1.052	1.053	1.055	1.057	1.059
400 - 424	1.052	1.053	1.055	1.057	1.059
425 - 449	1.051	1.053	1.054	1.056	1.058
450 - 474	1.051	1.052	1.054	1.056	1.057
475 - 499	1.051	1.052	1.054	1.056	1.057
500 OR MORE	1.051	1.052	1.054	1.055	1.057

ANNUAL ADJUSTMENT FACTOR FOR CONTRACT RENT (EXCLUDING UTILITIES) IS 1.049

NOTE: THE NORTHCENTRAL CENSUS REGION INCLUDES THE FOLLOWING STATES:

ILLINOIS
INDIANA
IOWA
KANSAS
MICHIGAN
MINNESOTA
MISSOURI
NEBRASKA
NORTH DAKOTA
OHIO
SOUTH DAKOTA
WISCONSIN

SCHEDULE C AUTOMATIC ANNUAL ADJUSTMENT FACTOR FOR UPDATING SECTION 8 CONTRACT RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION. (INCLUDING THE HOUSING FINANCE & DEVELOPMENT AGENCIES PROGRAM)

NORTHEAST CENSUS REGION

MONTHLY GROSS RENT	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4+BEDROOMS
UNDER $75	1.068	1.071	1.074	1.077	1.080
75 - 99	1.067	1.069	1.071	1.073	1.076
100 - 124	1.066	1.067	1.069	1.071	1.073
125 - 149	1.066	1.067	1.068	1.070	1.071
150 - 174	1.065	1.066	1.067	1.069	1.070
175 - 199	1.065	1.066	1.067	1.068	1.069
200 - 224	1.065	1.065	1.066	1.067	1.068
225 - 249	1.065	1.065	1.066	1.067	1.068
250 - 274	1.065	1.065	1.066	1.067	1.067
275 - 299	1.064	1.065	1.066	1.066	1.067
300 - 324	1.064	1.065	1.065	1.066	1.067
325 - 349	1.064	1.065	1.065	1.066	1.067
350 - 374	1.064	1.065	1.065	1.066	1.066
375 - 399	1.064	1.065	1.065	1.066	1.066
400 - 424	1.064	1.064	1.065	1.065	1.066
425 - 449	1.064	1.064	1.065	1.065	1.066
450 - 474	1.064	1.064	1.065	1.065	1.066
475 - 499	1.064	1.064	1.065	1.065	1.066
500 OR MORE	1.064	1.064	1.065	1.065	1.065

ANNUAL ADJUSTMENT FACTOR FOR CONTRACT RENT (EXCLUDING UTILITIES) IS 1.063

NOTE: THE NORTHEAST CENSUS REGION INCLUDES THE FOLLOWING STATES:

CONNECTICUT
MAINE
MASS.
NEW HAMP
NEW JERSEY
NEW YORK
PENNSYLVANIA
PUERTO RICO
RHODE ISLAND
VERMONT
VIRGIN IS

SCHEDULE C AUTOMATIC ANNUAL ADJUSTMENT FACTOR FOR UPDATING SECTION 8 CONTRACT RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION. (INCLUDING THE HOUSING FINANCE & DEVELOPMENT AGENCIES PROGRAM)

SOUTH CENSUS REGION

MONTHLY GROSS RENT	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4+BEDROOMS
UNDER $75	1.070	1.083	1.103	1.123	1.141
75 - 99	1.062	1.071	1.085	1.100	1.112
100 - 124	1.057	1.064	1.075	1.086	1.096
125 - 149	1.054	1.060	1.069	1.078	1.086
150 - 174	1.052	1.057	1.064	1.072	1.079
175 - 199	1.050	1.054	1.061	1.068	1.074
200 - 224	1.049	1.053	1.059	1.065	1.070
225 - 249	1.048	1.051	1.057	1.062	1.067
250 - 274	1.047	1.050	1.055	1.060	1.064
275 - 299	1.047	1.049	1.054	1.058	1.062
300 - 324	1.046	1.049	1.053	1.057	1.060
325 - 349	1.046	1.048	1.052	1.055	1.059
350 - 374	1.045	1.047	1.051	1.054	1.057
375 - 399	1.045	1.047	1.050	1.053	1.056
400 - 424	1.045	1.047	1.050	1.053	1.055
425 - 449	1.044	1.046	1.049	1.052	1.054
450 - 474	1.044	1.046	1.049	1.051	1.054
475 - 499	1.044	1.046	1.048	1.051	1.053
500 OR MORE	1.044	1.045	1.048	1.050	1.052

ANNUAL ADJUSTMENT FACTOR FOR CONTRACT RENT (EXCLUDING UTILITIES) IS 1.040

NOTE: THE SOUTH CENSUS REGION INCLUDES THE FOLLOWING STATES:

ALABAMA
ARKANSAS
DELAWARE
D.C.
FLORIDA
GEORGIA
KENTUCKY
LOUISIANA
MARYLAND
MISSISSIPPI
N. CAROLINA
OKLAHOMA
S. CAROLINA
TENNESSEE
TEXAS
VIRGINIA
W. VIRGINIA

SCHEDULE C AUTOMATIC ANNUAL ADJUSTMENT FACTOR FOR UPDATING SECTION 8 CONTRACT RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION. (INCLUDING THE HOUSING FINANCE & DEVELOPMENT AGENCIES PROGRAM)

WEST CENSUS REGION

MONTHLY GROSS RENT	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4+BEDROOMS
UNDER $75	1.065	1.069	1.076	1.083	1.089
75 - 99	1.062	1.065	1.070	1.075	1.079
100 - 124	1.060	1.063	1.067	1.070	1.074
125 - 149	1.059	1.061	1.064	1.068	1.070
150 - 174	1.059	1.060	1.063	1.066	1.068
175 - 199	1.058	1.060	1.062	1.064	1.066
200 - 224	1.058	1.059	1.061	1.063	1.065
225 - 249	1.057	1.058	1.060	1.062	1.064
250 - 274	1.057	1.058	1.060	1.061	1.063
275 - 299	1.057	1.058	1.059	1.061	1.062
300 - 324	1.057	1.058	1.059	1.060	1.062
325 - 349	1.057	1.057	1.059	1.060	1.061
350 - 374	1.056	1.057	1.058	1.060	1.061
375 - 399	1.056	1.057	1.058	1.059	1.060
400 - 424	1.056	1.057	1.058	1.059	1.060
425 - 449	1.056	1.057	1.058	1.059	1.060
450 - 474	1.056	1.057	1.058	1.058	1.059
475 - 499	1.056	1.057	1.057	1.058	1.059
500 OR MORE	1.056	1.056	1.057	1.058	1.059

ANNUAL ADJUSTMENT FACTOR FOR CONTRACT RENT (EXCLUDING UTILITIES) IS 1.055

NOTE: THE WEST CENSUS REGION INCLUDES THE FOLLOWING STATES:

ALASKA
ARIZONIA
CALIFORNIA
COLORADO
HAWAII
IDAHO
MONTANA
NEVADA
NEW MEXICO
OREGON
UTAH
WASHINGTON
WYOMING

SCHEDULE C AUTOMATIC ANNUAL ADJUSTMENT FACTOR FOR UPDATING SECTION 8 CONTRACT RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION. (INCLUDING THE HOUSING FINANCE & DEVELOPMENT AGENCIES PROGRAM)

SMSA: ATLANTA, GA

MONTHLY GROSS RENT	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4+BEDROOMS
UNDER $75	1.046	1.053	1.065	1.077	1.087
75 - 99	1.041	1.046	1.055	1.063	1.070
100 - 124	1.038	1.042	1.049	1.055	1.061
125 - 149	1.037	1.040	1.045	1.051	1.055
150 - 174	1.035	1.038	1.043	1.047	1.051
175 - 199	1.034	1.037	1.041	1.045	1.048
200 - 224	1.034	1.036	1.039	1.043	1.046
225 - 249	1.033	1.035	1.038	1.041	1.044
250 - 274	1.033	1.034	1.037	1.040	1.043
275 - 299	1.032	1.034	1.037	1.039	1.041
300 - 324	1.032	1.034	1.036	1.038	1.040
325 - 349	1.032	1.033	1.035	1.038	1.039
350 - 374	1.032	1.033	1.035	1.037	1.039
375 - 399	1.031	1.033	1.034	1.036	1.038
400 - 424	1.031	1.032	1.034	1.036	1.037
425 - 449	1.031	1.032	1.034	1.035	1.037
450 - 474	1.031	1.032	1.034	1.035	1.036
475 - 499	1.031	1.032	1.033	1.035	1.036
500 OR MORE	1.031	1.032	1.033	1.034	1.036

ANNUAL ADJUSTMENT FACTOR FOR CONTRACT RENT (EXCLUDING UTILITIES) IS 1.029

SCHEDULE C AUTOMATIC ANNUAL ADJUSTMENT FACTOR FOR UPDATING SECTION 8 CONTRACT RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION. (INCLUDING THE HOUSING FINANCE & DEVELOPMENT AGENCIES PROGRAM)

SMSA: BALTIMORE, MD

MONTHLY GROSS RENT	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4+BEDROOMS
UNDER $75	1.059	1.063	1.068	1.074	1.078
75 - 99	1.057	1.060	1.063	1.067	1.071
100 - 124	1.056	1.058	1.061	1.064	1.066
125 - 149	1.055	1.057	1.059	1.061	1.064
150 - 174	1.054	1.056	1.058	1.060	1.062
175 - 199	1.054	1.055	1.057	1.059	1.060
200 - 224	1.054	1.055	1.056	1.058	1.059
225 - 249	1.053	1.054	1.056	1.057	1.058
250 - 274	1.053	1.054	1.055	1.057	1.058
275 - 299	1.053	1.054	1.055	1.056	1.057
300 - 324	1.053	1.054	1.055	1.056	1.057
325 - 349	1.053	1.053	1.054	1.055	1.056
350 - 374	1.053	1.053	1.054	1.055	1.056
375 - 399	1.053	1.053	1.054	1.055	1.056
400 - 424	1.053	1.053	1.054	1.055	1.055
425 - 449	1.052	1.053	1.054	1.055	1.055
450 - 474	1.052	1.053	1.054	1.054	1.055
475 - 499	1.052	1.053	1.054	1.054	1.055
500 OR MORE	1.052	1.053	1.053	1.054	1.055

ANNUAL ADJUSTMENT FACTOR FOR CONTRACT RENT (EXCLUDING UTILITIES) IS 1.051

SCHEDULE C AUTOMATIC ANNUAL ADJUSTMENT FACTOR FOR UPDATING SECTION 8 CONTRACT RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION. (INCLUDING THE HOUSING FINANCE & DEVELOPMENT AGENCIES PROGRAM)

SMSA: BOSTON, MA

MONTHLY GROSS RENT	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4+BEDROOMS
UNDER $75	1.048	1.050	1.052	1.055	1.057
75 - 99	1.047	1.048	1.050	1.052	1.053
100 - 124	1.047	1.048	1.049	1.050	1.051
125 - 149	1.046	1.047	1.048	1.049	1.050
150 - 174	1.046	1.047	1.048	1.049	1.049
175 - 199	1.046	1.046	1.047	1.048	1.049
200 - 224	1.046	1.046	1.047	1.048	1.048
225 - 249	1.046	1.046	1.047	1.047	1.048
250 - 274	1.046	1.046	1.047	1.047	1.048
275 - 299	1.046	1.046	1.046	1.047	1.047
300 - 324	1.045	1.046	1.046	1.047	1.047
325 - 349	1.045	1.046	1.046	1.047	1.047
350 - 374	1.045	1.046	1.046	1.046	1.047
375 - 399	1.045	1.046	1.046	1.046	1.047
400 - 424	1.045	1.046	1.046	1.046	1.047
425 - 449	1.045	1.045	1.046	1.046	1.046
450 - 474	1.045	1.045	1.046	1.046	1.046
475 - 499	1.045	1.045	1.046	1.046	1.046
500 OR MORE	1.045	1.045	1.046	1.046	1.046

ANNUAL ADJUSTMENT FACTOR FOR CONTRACT RENT (EXCLUDING UTILITIES) IS 1.045

SCHEDULE C AUTOMATIC ANNUAL ADJUSTMENT FACTOR FOR UPDATING SECTION 8 CONTRACT RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION. (INCLUDING THE HOUSING FINANCE & DEVELOPMENT AGENCIES PROGRAM)

SMSA: BUFFALO, NY

MONTHLY GROSS RENT	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4+BEDROOMS
UNDER $75	1.101	1.116	1.140	1.164	1.184
75 - 99	1.091	1.101	1.118	1.136	1.150
100 - 124	1.085	1.093	1.107	1.120	1.132
125 - 149	1.082	1.088	1.099	1.110	1.119
150 - 174	1.079	1.085	1.094	1.103	1.111
175 - 199	1.077	1.082	1.090	1.098	1.105
200 - 224	1.076	1.080	1.087	1.094	1.100
225 - 249	1.075	1.079	1.085	1.091	1.097
250 - 274	1.074	1.077	1.083	1.089	1.094
275 - 299	1.073	1.076	1.081	1.087	1.091
300 - 324	1.072	1.075	1.080	1.085	1.089
325 - 349	1.072	1.075	1.079	1.083	1.087
350 - 374	1.071	1.074	1.078	1.082	1.086
375 - 399	1.071	1.073	1.077	1.081	1.084
400 - 424	1.071	1.073	1.077	1.080	1.083
425 - 449	1.070	1.073	1.076	1.079	1.082
450 - 474	1.070	1.072	1.075	1.079	1.081
475 - 499	1.070	1.072	1.075	1.078	1.081
500 OR MORE	1.070	1.071	1.074	1.077	1.080

ANNUAL ADJUSTMENT FACTOR FOR CONTRACT RENT (EXCLUDING UTILITIES) IS 1.065

SCHEDULE C AUTOMATIC ANNUAL ADJUSTMENT FACTOR FOR UPDATING SECTION 8 CONTRACT RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION.
(INCLUDING THE HOUSING FINANCE & DEVELOPMENT AGENCIES PROGRAM)
SMSA: DALLAS-FORT WORTH , TX

MONTHLY GROSS RENT	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4+BEDROOMS
UNDER $75	1.074	1.085	1.102	1.120	1.135
75 - 99	1.067	1.074	1.087	1.099	1.110
100 - 124	1.062	1.068	1.078	1.088	1.096
125 - 149	1.060	1.065	1.073	1.081	1.088
150 - 174	1.058	1.062	1.069	1.076	1.081
175 - 199	1.057	1.060	1.066	1.072	1.077
200 - 224	1.056	1.059	1.064	1.069	1.074
225 - 249	1.055	1.058	1.062	1.067	1.071
250 - 274	1.054	1.057	1.061	1.065	1.069
275 - 299	1.054	1.056	1.060	1.063	1.067
300 - 324	1.053	1.055	1.059	1.062	1.065
325 - 349	1.053	1.055	1.058	1.061	1.064
350 - 374	1.052	1.054	1.057	1.060	1.063
375 - 399	1.052	1.054	1.057	1.059	1.062
400 - 424	1.052	1.053	1.056	1.059	1.061
425 - 449	1.052	1.053	1.056	1.058	1.060
450 - 474	1.051	1.053	1.055	1.058	1.060
475 - 499	1.051	1.053	1.055	1.057	1.059
500 OR MORE	1.051	1.052	1.054	1.057	1.058

ANNUAL ADJUSTMENT FACTOR FOR CONTRACT RENT (EXCLUDING UTILITIES) IS 1.048

SCHEDULE C AUTOMATIC ANNUAL ADJUSTMENT FACTOR FOR UPDATING SECTION 8 CONTRACT RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION.
(INCLUDING THE HOUSING FINANCE & DEVELOPMENT AGENCIES PROGRAM)

SMSA: CHICAGO, IL

MONTHLY GROSS RENT	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4+BEDROOMS
UNDER $75	1.050	1.055	1.062	1.070	1.076
75 - 99	1.047	1.050	1.056	1.061	1.066
100 - 124	1.045	1.048	1.052	1.056	1.060
125 - 149	1.044	1.046	1.049	1.053	1.056
150 - 174	1.043	1.045	1.048	1.051	1.053
175 - 199	1.043	1.044	1.047	1.049	1.051
200 - 224	1.042	1.043	1.046	1.048	1.050
225 - 249	1.042	1.043	1.045	1.047	1.049
250 - 274	1.041	1.043	1.044	1.046	1.048
275 - 299	1.041	1.042	1.044	1.046	1.047
300 - 324	1.041	1.042	1.043	1.045	1.046
325 - 349	1.041	1.042	1.043	1.045	1.046
350 - 374	1.041	1.042	1.043	1.044	1.045
375 - 399	1.041	1.041	1.043	1.044	1.045
400 - 424	1.041	1.041	1.042	1.043	1.044
425 - 449	1.040	1.041	1.042	1.043	1.044
450 - 474	1.040	1.041	1.042	1.043	1.044
475 - 499	1.040	1.041	1.042	1.043	1.044
500 OR MORE	1.040	1.041	1.042	1.043	1.043

ANNUAL ADJUSTMENT FACTOR FOR CONTRACT RENT (EXCLUDING UTILITIES) IS 1.039

SCHEDULE C AUTOMATIC ANNUAL ADJUSTMENT FACTOR FOR UPDATING SECTION 8 CONTRACT RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION. (INCLUDING THE HOUSING FINANCE & DEVELOPMENT AGENCIES PROGRAM)

SMSA: CINCINNATI, OH-KY-IN

MONTHLY GROSS RENT	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4+BEDROOMS
UNDER $75	1.067	1.079	1.098	1.116	1.133
75 - 99	1.059	1.067	1.081	1.094	1.106
100 - 124	1.054	1.061	1.071	1.082	1.091
125 - 149	1.052	1.057	1.065	1.074	1.081
150 - 174	1.050	1.054	1.061	1.069	1.075
175 - 199	1.048	1.052	1.058	1.065	1.070
200 - 224	1.047	1.050	1.056	1.062	1.066
225 - 249	1.046	1.049	1.054	1.059	1.063
250 - 274	1.045	1.048	1.053	1.057	1.061
275 - 299	1.045	1.047	1.051	1.056	1.059
300 - 324	1.044	1.047	1.050	1.054	1.058
325 - 349	1.044	1.046	1.050	1.053	1.056
350 - 374	1.044	1.046	1.049	1.052	1.055
375 - 399	1.043	1.045	1.048	1.051	1.054
400 - 424	1.043	1.045	1.048	1.050	1.053
425 - 449	1.043	1.044	1.047	1.050	1.052
450 - 474	1.043	1.044	1.047	1.049	1.051
475 - 499	1.042	1.044	1.046	1.049	1.051
500 OR MORE	1.042	1.044	1.046	1.048	1.050

ANNUAL ADJUSTMENT FACTOR FOR CONTRACT RENT (EXCLUDING UTILITIES) IS 1.039

SCHEDULE C AUTOMATIC ANNUAL ADJUSTMENT FACTOR FOR UPDATING SECTION 8 CONTRACT RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION. (INCLUDING THE HOUSING FINANCE & DEVELOPMENT AGENCIES PROGRAM)

SMSA: CLEVELAND, OH

MONTHLY GROSS RENT	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4+BEDROOMS
UNDER $75	1.055	1.059	1.065	1.071	1.076
75 - 99	1.053	1.055	1.060	1.064	1.068
100 - 124	1.051	1.053	1.057	1.060	1.063
125 - 149	1.050	1.052	1.055	1.058	1.060
150 - 174	1.050	1.051	1.053	1.056	1.058
175 - 199	1.049	1.051	1.053	1.055	1.056
200 - 224	1.049	1.050	1.052	1.054	1.055
225 - 249	1.049	1.050	1.051	1.053	1.054
250 - 274	1.048	1.049	1.051	1.052	1.053
275 - 299	1.048	1.049	1.050	1.052	1.053
300 - 324	1.048	1.049	1.050	1.051	1.052
325 - 349	1.048	1.049	1.050	1.051	1.052
350 - 374	1.048	1.048	1.049	1.051	1.051
375 - 399	1.048	1.048	1.049	1.050	1.051
400 - 424	1.048	1.048	1.049	1.050	1.051
425 - 449	1.048	1.048	1.049	1.050	1.051
450 - 474	1.047	1.048	1.049	1.050	1.050
475 - 499	1.047	1.048	1.049	1.049	1.050
500 OR MORE	1.047	1.048	1.049	1.049	1.050

ANNUAL ADJUSTMENT FACTOR FOR CONTRACT RENT (EXCLUDING UTILITIES) IS 1.046

SCHEDULE C AUTOMATIC ANNUAL ADJUSTMENT FACTOR FOR UPDATING SECTION 8 CONTRACT RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION.
(INCLUDING THE HOUSING FINANCE & DEVELOPMENT AGENCIES PROGRAM)
SMSA: DETROIT, MI

MONTHLY GROSS RENT	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4+BEDROOMS
UNDER $75	1.091	1.111	1.142	1.172	1.199
75 - 99	1.078	1.092	1.114	1.136	1.155
100 - 124	1.071	1.082	1.099	1.116	1.131
125 - 149	1.066	1.075	1.089	1.103	1.115
150 - 174	1.063	1.070	1.082	1.094	1.105
175 - 199	1.061	1.067	1.077	1.088	1.097
200 - 224	1.059	1.064	1.074	1.083	1.091
225 - 249	1.057	1.062	1.071	1.079	1.086
250 - 274	1.056	1.061	1.068	1.076	1.082
275 - 299	1.055	1.059	1.066	1.073	1.079
300 - 324	1.054	1.058	1.064	1.071	1.076
325 - 349	1.054	1.057	1.063	1.069	1.074
350 - 374	1.053	1.057	1.062	1.067	1.072
375 - 399	1.053	1.056	1.061	1.066	1.070
400 - 424	1.052	1.055	1.060	1.064	1.069
425 - 449	1.052	1.055	1.059	1.063	1.067
450 - 474	1.051	1.054	1.058	1.062	1.066
475 - 499	1.051	1.054	1.058	1.062	1.065
500 OR MORE	1.051	1.053	1.057	1.061	1.064

ANNUAL ADJUSTMENT FACTOR FOR CONTRACT RENT (EXCLUDING UTILITIES) IS 1.045

SCHEDULE C AUTOMATIC ANNUAL ADJUSTMENT FACTOR FOR UPDATING SECTION 8 CONTRACT RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION. (INCLUDING THE HOUSING FINANCE & DEVELOPMENT AGENCIES PROGRAM)

SMSA: HONOLULU, HI

MONTHLY GROSS RENT	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4+BEDROOMS
UNDER $75	1.065	1.075	1.089	1.104	1.117
75 - 99	1.059	1.066	1.076	1.087	1.096
100 - 124	1.056	1.061	1.069	1.077	1.084
125 - 149	1.053	1.058	1.064	1.071	1.077
150 - 174	1.052	1.055	1.061	1.067	1.072
175 - 199	1.051	1.054	1.059	1.064	1.068
200 - 224	1.050	1.053	1.057	1.061	1.065
225 - 249	1.049	1.052	1.056	1.059	1.063
250 - 274	1.049	1.051	1.054	1.058	1.061
275 - 299	1.048	1.050	1.053	1.057	1.059
300 - 324	1.048	1.050	1.053	1.056	1.058
325 - 349	1.048	1.049	1.052	1.055	1.057
350 - 374	1.047	1.049	1.051	1.054	1.056
375 - 399	1.047	1.048	1.051	1.053	1.055
400 - 424	1.047	1.048	1.050	1.053	1.055
425 - 449	1.047	1.048	1.050	1.052	1.054
450 - 474	1.046	1.048	1.050	1.052	1.053
475 - 499	1.046	1.047	1.049	1.051	1.053
500 OR MORE	1.046	1.047	1.049	1.051	1.052

ANNUAL ADJUSTMENT FACTOR FOR CONTRACT RENT (EXCLUDING UTILITIES) IS 1.043

SCHEDULE C AUTOMATIC ANNUAL ADJUSTMENT FACTOR FOR UPDATING SECTION 8 CONTRACT RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION. (INCLUDING THE HOUSING FINANCE & DEVELOPMENT AGENCIES PROGRAM)

SMSA: HOUSTON, TX

MONTHLY GROSS RENT	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4+BEDROOMS
UNDER $75	1.108	1.119	1.136	1.153	1.168
75 - 99	1.101	1.109	1.121	1.133	1.144
100 - 124	1.097	1.103	1.112	1.122	1.130
125 - 149	1.094	1.099	1.107	1.115	1.122
150 - 174	1.093	1.097	1.103	1.110	1.116
175 - 199	1.091	1.095	1.101	1.106	1.111
200 - 224	1.090	1.093	1.098	1.104	1.108
225 - 249	1.090	1.092	1.097	1.101	1.105
250 - 274	1.089	1.091	1.095	1.100	1.103
275 - 299	1.088	1.091	1.094	1.098	1.101
300 - 324	1.088	1.090	1.093	1.097	1.100
325 - 349	1.088	1.089	1.093	1.096	1.099
350 - 374	1.087	1.089	1.092	1.095	1.098
375 - 399	1.087	1.089	1.091	1.094	1.097
400 - 424	1.087	1.088	1.091	1.093	1.096
425 - 449	1.086	1.088	1.090	1.093	1.095
450 - 474	1.086	1.088	1.090	1.092	1.094
475 - 499	1.086	1.087	1.090	1.092	1.094
500 OR MORE	1.086	1.087	1.089	1.091	1.093

ANNUAL ADJUSTMENT FACTOR FOR CONTRACT RENT (EXCLUDING UTILITIES) IS 1.083

SCHEDULE C AUTOMATIC ANNUAL ADJUSTMENT FACTOR FOR UPDATING SECTION 8 CONTRACT RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION. (INCLUDING THE HOUSING FINANCE & DEVELOPMENT AGENCIES PROGRAM)

SMSA: KANSAS CITY, MO-KS

MONTHLY GROSS RENT	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4+BEDROOMS
UNDER $75	1.044	1.048	1.053	1.059	1.064
75 - 99	1.042	1.045	1.048	1.052	1.056
100 - 124	1.041	1.043	1.046	1.049	1.051
125 - 149	1.040	1.042	1.044	1.047	1.049
150 - 174	1.039	1.041	1.043	1.045	1.047
175 - 199	1.039	1.040	1.042	1.044	1.045
200 - 224	1.039	1.040	1.041	1.043	1.044
225 - 249	1.038	1.039	1.041	1.042	1.043
250 - 274	1.038	1.039	1.040	1.042	1.043
275 - 299	1.038	1.039	1.040	1.041	1.042
300 - 324	1.038	1.039	1.040	1.041	1.042
325 - 349	1.038	1.038	1.039	1.040	1.041
350 - 374	1.038	1.038	1.039	1.040	1.041
375 - 399	1.038	1.038	1.039	1.040	1.041
400 - 424	1.038	1.038	1.039	1.040	1.040
425 - 449	1.037	1.038	1.039	1.039	1.040
450 - 474	1.037	1.038	1.039	1.039	1.040
475 - 499	1.037	1.038	1.038	1.039	1.040
500 OR MORE	1.037	1.038	1.038	1.039	1.040

ANNUAL ADJUSTMENT FACTOR FOR CONTRACT RENT (EXCLUDING UTILITIES) IS 1.036

SCHEDULE C AUTOMATIC ANNUAL ADJUSTMENT FACTOR FOR UPDATING SECTION 8 CONTRACT RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION. (INCLUDING THE HOUSING FINANCE & DEVELOPMENT AGENCIES PROGRAM)

SMSA: MILWAUKEE, WI

MONTHLY GROSS RENT	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4+BEDROOMS
UNDER $75	1.092	1.102	1.118	1.134	1.148
75 - 99	1.085	1.092	1.104	1.115	1.125
100 - 124	1.081	1.087	1.096	1.105	1.112
125 - 149	1.079	1.084	1.091	1.098	1.104
150 - 174	1.077	1.081	1.087	1.093	1.099
175 - 199	1.076	1.079	1.085	1.090	1.095
200 - 224	1.075	1.078	1.083	1.088	1.092
225 - 249	1.074	1.077	1.081	1.085	1.089
250 - 274	1.074	1.076	1.080	1.084	1.087
275 - 299	1.073	1.076	1.079	1.082	1.086
300 - 324	1.073	1.075	1.078	1.081	1.084
325 - 349	1.073	1.074	1.077	1.080	1.083
350 - 374	1.072	1.074	1.077	1.080	1.082
375 - 399	1.072	1.074	1.076	1.079	1.081
400 - 424	1.072	1.073	1.076	1.078	1.080
425 - 449	1.072	1.073	1.075	1.078	1.080
450 - 474	1.071	1.073	1.075	1.077	1.079
475 - 499	1.071	1.073	1.075	1.077	1.078
500 OR MORE	1.071	1.072	1.074	1.076	1.078

ANNUAL ADJUSTMENT FACTOR FOR CONTRACT RENT (EXCLUDING UTILITIES) IS 1.068

SCHEDULE C AUTOMATIC ANNUAL ADJUSTMENT FACTOR FOR UPDATING SECTION 8 CONTRACT RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION. (INCLUDING THE HOUSING FINANCE & DEVELOPMENT AGENCIES PROGRAM)

SMSA: MINNEAPOLIS-ST PAUL, MN

MONTHLY GROSS RENT	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4+BEDROOMS
UNDER $75	1.060	1.065	1.075	1.084	1.092
75 - 99	1.056	1.060	1.066	1.073	1.079
100 - 124	1.053	1.057	1.062	1.067	1.072
125 - 149	1.052	1.055	1.059	1.063	1.067
150 - 174	1.051	1.053	1.057	1.060	1.064
175 - 199	1.050	1.052	1.055	1.058	1.061
200 - 224	1.050	1.051	1.054	1.057	1.059
225 - 249	1.049	1.051	1.053	1.056	1.058
250 - 274	1.049	1.050	1.053	1.055	1.057
275 - 299	1.049	1.050	1.052	1.054	1.056
300 - 324	1.048	1.050	1.051	1.053	1.055
325 - 349	1.048	1.049	1.051	1.053	1.054
350 - 374	1.048	1.049	1.051	1.052	1.054
375 - 399	1.048	1.049	1.050	1.052	1.053
400 - 424	1.048	1.049	1.050	1.051	1.053
425 - 449	1.048	1.048	1.050	1.051	1.052
450 - 474	1.048	1.048	1.050	1.051	1.052
475 - 499	1.047	1.048	1.049	1.051	1.052
500 OR MORE	1.047	1.048	1.049	1.050	1.051

ANNUAL ADJUSTMENT FACTOR FOR CONTRACT RENT (EXCLUDING UTILITIES) IS 1.046

SCHEDULE C AUTOMATIC ANNUAL ADJUSTMENT FACTOR FOR UPDATING SECTION 8 CONTRACT RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION. (INCLUDING THE HOUSING FINANCE & DEVELOPMENT AGENCIES PROGRAM)

SMSA: NEW YORK CITY, NY-NJ

MONTHLY GROSS RENT	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4+BEDROOMS
UNDER $75	1.072	1.073	1.074	1.076	1.077
75 - 99	1.071	1.072	1.073	1.074	1.075
100 - 124	1.071	1.071	1.072	1.073	1.074
125 - 149	1.070	1.071	1.072	1.072	1.073
150 - 174	1.070	1.071	1.071	1.072	1.072
175 - 199	1.070	1.070	1.071	1.071	1.072
200 - 224	1.070	1.070	1.071	1.071	1.072
225 - 249	1.070	1.070	1.071	1.071	1.071
250 - 274	1.070	1.070	1.071	1.071	1.071
275 - 299	1.070	1.070	1.070	1.071	1.071
300 - 324	1.070	1.070	1.070	1.071	1.071
325 - 349	1.070	1.070	1.070	1.071	1.071
350 - 374	1.070	1.070	1.070	1.070	1.071
375 - 399	1.070	1.070	1.070	1.070	1.071
400 - 424	1.070	1.070	1.070	1.070	1.071
425 - 449	1.070	1.070	1.070	1.070	1.070
450 - 474	1.070	1.070	1.070	1.070	1.070
475 - 499	1.070	1.070	1.070	1.070	1.070
500 OR MORE	1.070	1.070	1.070	1.070	1.070

ANNUAL ADJUSTMENT FACTOR FOR CONTRACT RENT (EXCLUDING UTILITIES) IS 1.069

SCHEDULE C AUTOMATIC ANNUAL ADJUSTMENT FACTOR FOR UPDATING SECTION 8 CONTRACT RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION. (INCLUDING THE HOUSING FINANCE & DEVELOPMENT AGENCIES PROGRAM)

SMSA: PHILADELPHIA, PA-NJ

MONTHLY GROSS RENT	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4+BEDROOMS
UNDER $75	1.067	1.064	1.059	1.054	1.050
75 - 99	1.069	1.067	1.063	1.060	1.057
100 - 124	1.070	1.068	1.066	1.063	1.061
125 - 149	1.071	1.069	1.067	1.065	1.063
150 - 174	1.071	1.070	1.068	1.066	1.065
175 - 199	1.072	1.071	1.069	1.067	1.066
200 - 224	1.072	1.071	1.070	1.068	1.067
225 - 249	1.072	1.071	1.070	1.069	1.068
250 - 274	1.072	1.072	1.070	1.069	1.068
275 - 299	1.072	1.072	1.071	1.070	1.069
300 - 324	1.073	1.072	1.071	1.070	1.069
325 - 349	1.073	1.072	1.071	1.070	1.069
350 - 374	1.073	1.072	1.071	1.071	1.070
375 - 399	1.073	1.072	1.072	1.071	1.070
400 - 424	1.073	1.072	1.072	1.071	1.070
425 - 449	1.073	1.072	1.072	1.071	1.071
450 - 474	1.073	1.073	1.072	1.071	1.071
475 - 499	1.073	1.073	1.072	1.071	1.071
500 OR MORE	1.073	1.073	1.072	1.072	1.071

ANNUAL ADJUSTMENT FACTOR FOR CONTRACT RENT (EXCLUDING UTILITIES) IS 1.074

SCHEDULE C AUTOMATIC ANNUAL ADJUSTMENT FACTOR FOR UPDATING SECTION 8 CONTRACT RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION.
(INCLUDING THE HOUSING FINANCE & DEVELOPMENT AGENCIES PROGRAM)
SMSA: PHOENIX, AZ

MONTHLY GROSS RENT	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4+BEDROOMS
UNDER $75	1.082	1.097	1.122	1.147	1.169
75 - 99	1.071	1.082	1.100	1.118	1.133
100 - 124	1.065	1.074	1.088	1.101	1.113
125 - 149	1.061	1.068	1.080	1.091	1.101
150 - 174	1.059	1.065	1.074	1.084	1.092
175 - 199	1.057	1.062	1.070	1.079	1.086
200 - 224	1.055	1.060	1.067	1.075	1.081
225 - 249	1.054	1.058	1.065	1.071	1.077
250 - 274	1.053	1.057	1.063	1.069	1.074
275 - 299	1.053	1.056	1.061	1.067	1.071
300 - 324	1.052	1.055	1.060	1.065	1.069
325 - 349	1.051	1.054	1.059	1.063	1.067
350 - 374	1.051	1.054	1.058	1.062	1.066
375 - 399	1.050	1.053	1.057	1.061	1.064
400 - 424	1.050	1.052	1.056	1.060	1.063
425 - 449	1.050	1.052	1.056	1.059	1.062
450 - 474	1.049	1.052	1.055	1.058	1.061
475 - 499	1.049	1.051	1.054	1.058	1.060
500 OR MORE	1.049	1.051	1.054	1.057	1.060

ANNUAL ADJUSTMENT FACTOR FOR CONTRACT RENT (EXCLUDING UTILITIES) IS 1.044

SCHEDULE C AUTOMATIC ANNUAL ADJUSTMENT FACTOR FOR UPDATING SECTION 8 CONTRACT RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION. (INCLUDING THE HOUSING FINANCE & DEVELOPMENT AGENCIES PROGRAM)

SMSA: ST LOUIS, MO-IL

MONTHLY GROSS RENT	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4+BEDROOMS
UNDER $75	1.047	1.053	1.063	1.073	1.082
75 - 99	1.043	1.047	1.054	1.061	1.068
100 - 124	1.040	1.044	1.049	1.055	1.060
125 - 149	1.039	1.041	1.046	1.051	1.055
150 - 174	1.038	1.040	1.044	1.048	1.051
175 - 199	1.037	1.039	1.042	1.046	1.049
200 - 224	1.036	1.038	1.041	1.044	1.047
225 - 249	1.036	1.037	1.040	1.043	1.045
250 - 274	1.035	1.037	1.039	1.042	1.044
275 - 299	1.035	1.036	1.039	1.041	1.043
300 - 324	1.035	1.036	1.038	1.040	1.042
325 - 349	1.035	1.036	1.038	1.039	1.041
350 - 374	1.034	1.035	1.037	1.039	1.040
375 - 399	1.034	1.035	1.037	1.038	1.040
400 - 424	1.034	1.035	1.037	1.038	1.039
425 - 449	1.034	1.035	1.036	1.038	1.039
450 - 474	1.034	1.035	1.036	1.037	1.039
475 - 499	1.034	1.035	1.036	1.037	1.038
500 OR MORE	1.034	1.034	1.036	1.037	1.038

ANNUAL ADJUSTMENT FACTOR FOR CONTRACT RENT (EXCLUDING UTILITIES) IS 1.032

SCHEDULE C AUTOMATIC ANNUAL ADJUSTMENT FACTOR FOR UPDATING SECTION 8 CONTRACT RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION. (INCLUDING THE HOUSING FINANCE & DEVELOPMENT AGENCIES PROGRAM)

SMSA: LOS ANGELES-LONG BEACH, CA

MONTHLY GROSS RENT	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4+BEDROOMS
UNDER $75	1.058	1.059	1.060	1.061	1.062
75 - 99	1.058	1.058	1.059	1.060	1.060
100 - 124	1.058	1.058	1.058	1.059	1.060
125 - 149	1.057	1.058	1.058	1.059	1.059
150 - 174	1.057	1.058	1.058	1.058	1.059
175 - 199	1.057	1.057	1.058	1.058	1.058
200 - 224	1.057	1.057	1.058	1.058	1.058
225 - 249	1.057	1.057	1.058	1.058	1.058
250 - 274	1.057	1.057	1.057	1.058	1.058
275 - 299	1.057	1.057	1.057	1.058	1.058
300 - 324	1.057	1.057	1.057	1.058	1.058
325 - 349	1.057	1.057	1.057	1.057	1.058
350 - 374	1.057	1.057	1.057	1.057	1.058
375 - 399	1.057	1.057	1.057	1.057	1.057
400 - 424	1.057	1.057	1.057	1.057	1.057
425 - 449	1.057	1.057	1.057	1.057	1.057
450 - 474	1.057	1.057	1.057	1.057	1.057
475 - 499	1.057	1.057	1.057	1.057	1.057
500 OR MORE	1.057	1.057	1.057	1.057	1.057

ANNUAL ADJUSTMENT FACTOR FOR CONTRACT RENT (EXCLUDING UTILITIES) IS 1.057

SCHEDULE C AUTOMATIC ANNUAL ADJUSTMENT FACTOR FOR UPDATING SECTION 8 CONTRACT RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION. (INCLUDING THE HOUSING FINANCE & DEVELOPMENT AGENCIES PROGRAM)

SMSA: SAN DIEGO, CA

MONTHLY GROSS RENT	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4+BEDROOMS
UNDER $75	1.066	1.072	1.083	1.094	1.103
75 - 99	1.061	1.066	1.074	1.081	1.088
100 - 124	1.059	1.062	1.068	1.074	1.079
125 - 149	1.057	1.060	1.065	1.070	1.074
150 - 174	1.056	1.059	1.063	1.067	1.070
175 - 199	1.055	1.057	1.061	1.064	1.068
200 - 224	1.055	1.057	1.060	1.063	1.066
225 - 249	1.054	1.056	1.059	1.061	1.064
250 - 274	1.054	1.055	1.058	1.060	1.063
275 - 299	1.053	1.055	1.057	1.059	1.061
300 - 324	1.053	1.054	1.057	1.059	1.060
325 - 349	1.053	1.054	1.056	1.058	1.060
350 - 374	1.053	1.054	1.056	1.057	1.059
375 - 399	1.052	1.054	1.055	1.057	1.058
400 - 424	1.052	1.053	1.055	1.057	1.058
425 - 449	1.052	1.053	1.055	1.056	1.057
450 - 474	1.052	1.053	1.054	1.056	1.057
475 - 499	1.052	1.053	1.054	1.055	1.057
500 OR MORE	1.052	1.053	1.054	1.055	1.056

ANNUAL ADJUSTMENT FACTOR FOR CONTRACT RENT (EXCLUDING UTILITIES) IS 1.050

SCHEDULE C AUTOMATIC ANNUAL ADJUSTMENT FACTOR FOR UPDATING SECTION 8 CONTRACT RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION.
(INCLUDING THE HOUSING FINANCE & DEVELOPMENT AGENCIES PROGRAM)
SMSA: SAN FRANCISCO-OAKLAND, CA

MONTHLY GROSS RENT	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4+BEDROOMS
UNDER $75	1.068	1.078	1.094	1.109	1.123
75 - 99	1.062	1.069	1.080	1.091	1.101
100 - 124	1.058	1.063	1.072	1.081	1.088
125 - 149	1.056	1.060	1.067	1.074	1.081
150 - 174	1.054	1.058	1.064	1.070	1.075
175 - 199	1.053	1.056	1.061	1.067	1.071
200 - 224	1.052	1.055	1.059	1.064	1.068
225 - 249	1.051	1.054	1.058	1.062	1.066
250 - 274	1.051	1.053	1.057	1.060	1.064
275 - 299	1.050	1.052	1.056	1.059	1.062
300 - 324	1.050	1.052	1.055	1.058	1.061
325 - 349	1.049	1.051	1.054	1.057	1.060
350 - 374	1.049	1.051	1.053	1.056	1.059
375 - 399	1.049	1.050	1.053	1.055	1.058
400 - 424	1.049	1.050	1.052	1.055	1.057
425 - 449	1.048	1.050	1.052	1.054	1.056
450 - 474	1.048	1.050	1.052	1.054	1.056
475 - 499	1.048	1.049	1.051	1.053	1.055
500 OR MORE	1.048	1.049	1.051	1.053	1.055

ANNUAL ADJUSTMENT FACTOR FOR CONTRACT RENT (EXCLUDING UTILITIES) IS 1.045

SCHEDULE C AUTOMATIC ANNUAL ADJUSTMENT FACTOR FOR UPDATING SECTION 8 CONTRACT RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION.
(INCLUDING THE HOUSING FINANCE & DEVELOPMENT AGENCIES PROGRAM)

SMSA: SEATTLE-EVERETT, WA

MONTHLY GROSS RENT	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4+BEDROOMS
UNDER $75	1.104	1.103	1.101	1.099	1.097
75 - 99	1.105	1.104	1.103	1.101	1.100
100 - 124	1.106	1.105	1.104	1.103	1.102
125 - 149	1.106	1.105	1.104	1.104	1.103
150 - 174	1.106	1.106	1.105	1.104	1.103
175 - 199	1.106	1.106	1.105	1.105	1.104
200 - 224	1.106	1.106	1.105	1.105	1.104
225 - 249	1.107	1.106	1.106	1.105	1.105
250 - 274	1.107	1.106	1.106	1.105	1.105
275 - 299	1.107	1.106	1.106	1.105	1.105
300 - 324	1.107	1.106	1.106	1.106	1.105
325 - 349	1.107	1.107	1.106	1.106	1.105
350 - 374	1.107	1.107	1.106	1.106	1.106
375 - 399	1.107	1.107	1.106	1.106	1.106
400 - 424	1.107	1.107	1.106	1.106	1.106
425 - 449	1.107	1.107	1.106	1.106	1.106
450 - 474	1.107	1.107	1.106	1.106	1.106
475 - 499	1.107	1.107	1.106	1.106	1.106
500 OR MORE	1.107	1.107	1.107	1.106	1.106

ANNUAL ADJUSTMENT FACTOR FOR CONTRACT RENT (EXCLUDING UTILITIES) IS 1.107

SCHEDULE C AUTOMATIC ANNUAL ADJUSTMENT FACTOR FOR UPDATING SECTION 8 CONTRACT RENTS FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION.
(INCLUDING THE HOUSING FINANCE & DEVELOPMENT AGENCIES PROGRAM)

SMSA: WASHINGTON, DC-MD-VA

MONTHLY GROSS RENT	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4+BEDROOMS
UNDER $75	1.071	1.073	1.077	1.080	1.083
75 - 99	1.070	1.071	1.074	1.076	1.078
100 - 124	1.069	1.070	1.072	1.074	1.076
125 - 149	1.069	1.070	1.071	1.073	1.074
150 - 174	1.068	1.069	1.070	1.072	1.073
175 - 199	1.068	1.069	1.070	1.071	1.072
200 - 224	1.068	1.068	1.069	1.070	1.071
225 - 249	1.068	1.068	1.069	1.070	1.071
250 - 274	1.067	1.068	1.069	1.070	1.070
275 - 299	1.067	1.068	1.069	1.069	1.070
300 - 324	1.067	1.068	1.068	1.069	1.070
325 - 349	1.067	1.068	1.068	1.069	1.069
350 - 374	1.067	1.068	1.068	1.069	1.069
375 - 399	1.067	1.067	1.068	1.069	1.069
400 - 424	1.067	1.067	1.068	1.068	1.069
425 - 449	1.067	1.067	1.068	1.068	1.069
450 - 474	1.067	1.067	1.068	1.068	1.069
475 - 499	1.067	1.067	1.068	1.068	1.068
500 OR MORE	1.067	1.067	1.068	1.068	1.068

ANNUAL ADJUSTMENT FACTOR FOR CONTRACT RENT (EXCLUDING UTILITIES) IS 1.066

[FR Doc.76-32557 Filed 11-5-76;8:45 am]

federal register

MONDAY, NOVEMBER 8, 1976



PART V:

INTER-AMERICAN FOUNDATION

■

PRIVACY ACT OF 1974

Systems of Records

INTER-AMERICAN FOUNDATION
PRIVACY ACT OF 1974
Systems of Records

Pursuant to 5 U.S.C. 552a(e)(4), the Inter-American Foundation hereby publishes the systems of records as currently maintained by the Foundation. The systems were originally published on August 19, 1975.

The Inter-American Foundation is publishing an additional routine use for the system designated "General Financial Records—5." This will go into effect December 8, 1976, unless otherwise noted in the Federal Register.

Hugh B. Key,
Acting President.

IAF—1

System name: Conflict of Interest Files—IAF.

System location: Inter-American Foundation, 1515 Wilson Blvd., Rosslyn, Va. 22209.

Categories of individuals covered by the system: Employees of Foundation at GS 13 level and above.

Categories of records in the system: Title; Date of Appointment; Employment and financial interests, position in organization, nature of financial interest; names and addresses of creditors, character of indebtedness; interests in real property, nature of interest, type of property and address; name, address, and nature of subject matter of other persons supplying information.

Authority for maintenance of the system: 44 USC 3101.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Information is used "in house".

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

(b) A record from this system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) A record from this system of records may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

Storage: Paper Files.

Retrievability: Manual. Identifier—Name.

Safeguards: Filed in locked, steel cabinets; records available to authorized persons only.

Retention and disposal: Destroyed after two years of inactivity (Being negotiated).

System manager(s) and address: General Counsel, Inter-American Foundation, 1515 Wilson Blvd., Rosslyn, Va. 22209.

Notification procedure: Contact individual listed above, or Director, Administration and Finance, Inter-American Foundation, 1515 Wilson Blvd., Rosslyn, Va. 22209.

Record access procedures: IAF access procedures are contained in Rules Safeguarding Personal Information in IAF Record.

Contesting record procedures: Contesting Record Procedures are contained in Rules Safeguarding Personal Information in IAF Records.

Record source categories: Individual himself and people named by individual to supply information.

IAF—2

System name: Foundation Fellowship Program Files—IAF.

System location: Inter-American Foundation, 1515 Wilson Blvd., Rosslyn, Virginia 22209.

Categories of individuals covered by the system: Candidates for Fellowship Program who have submitted applications and Fellows chosen for the program.

Categories of records in the system: General personnel information including home and work phone numbers, citizenship, date and place of birth, age, name and citizenship of spouse, social security number, number and ages of children, educational history, employment history, travel experience, health status, language capability, honors and publications, personal resume, letters of recommendation, grade transcripts, comments by Screening Committee, research prospectus.

Authority for maintenance of the system: 44 USC 3101.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Information is used "in house" for personnel evaluation and management.

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

(b) A record from this system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) A record from this system of records may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

Storage: Paper Files.

Retrievability: Manual. Identifier—Name.

Safeguards: Filed in locked, steel cabinets; records available to authorized persons only.

Retention and disposal: Disposed after three years of inactivity. (Being negotiated).

System manager(s) and address: Fellowship Coordinator, Inter-American Foundation, 1515 Wilson Blvd., Rosslyn, Va. 22209.

Notification procedure: Contact individual listed above, or Director, Administration and Finance, Inter-American Foundation, 1515 Wilson Blvd., Rosslyn, Va. 22209.

Record access procedures: IAF access procedures are contained in Rules Safeguarding Personal Information in IAF Records.

Contesting record procedures: Contesting Record Procedures are also contained in Rules Safeguarding Personal Information.

Record source categories: Individual himself, educational institutions attended; medical doctors named by individual; letters of recommendation by people identified by individual.

IAF—3

System name: Informal Personnel Files—IAF.

System location: Inter-American Foundation, 1515 Wilson Blvd., Rosslyn, Va. 22209.

Categories of individuals covered by the system: Applicants for Employment and Employees.

Categories of records in the system: General personnel information including position descriptions, training records, request for notification of personnel action, performance appraisals, time and at-

tendance records, security clearances, employment history, home address, titles, service comp dates, date of birth, grade and salary, age, social security number, home telephone number, resume, letters of recommendation, security investigation data for non-sensitive/non-critical positions, personal qualifications statement, recommendation for performance recognition, employment staffing report, payroll change slip, notice of injury or occupational disease.

Authority for maintenance of the system: 44 USC 3101.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Information is used "in house" (non-routine uses) for personnel evaluation and management.

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

(b) A record from this system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) A record from this system of records may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

Storage: Paper Files.

Retrievability: Manual. Identifier—Name.

Safeguards: Filed in locked, steel cabinets; records available to authorized persons only.

Retention and disposal: Destroyed after three years of inactivity (Being negotiated).

System manager(s) and address: Personnel Officer, Inter-American Foundation, 1515 Wilson Blvd., Rosslyn, Va. 22209.

Notification procedure: Contact individual listed above, or Director, Administration and Finance, Inter-American Foundation, 1515 Wilson Blvd., Rosslyn, Va. 22209.

Record access procedures: IAF access procedures are contained in Rules Safeguarding Personal Information in IAF records.

Contesting record procedures: Contesting Record Procedures are also contained in Rules Safeguarding Personal Information.

Record source categories: Individual himself; educational institutions; previous employers; letters of recommendations named by individual himself.

IAF—4

System name: Travel Records—IAF.

System location: Inter-American Foundation, 1515 Wilson Blvd., Rosslyn, Virginia 22209.

Categories of individuals covered by the system: IAF employees who travel and invitational persons.

Categories of records in the system: Passports, Travel Vouchers, Official Travel Authorizations, Home address, home telephone number, date and place of birth, marital status, citizenship, social security number, spouse's name, number of children, immunizations records, travel advances.

Authority for maintenance of the system: 44 USC 3101.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Information is used "in house" for management of travel.

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

(b) A record from this system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) A record from this system of records may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

Storage: Paper Files.

Retrievability: Manual. Identifier—Name.

Safeguards: Filed in locked file drawer at desk; records available to authorized persons only.

Retention and disposal: Destroyed after three years of inactivity (Being negotiated).

System manager(s) and address: Administrative Assistant, Travel Division, Administration and Finance, Inter-American Foundation, 1515 Wilson Blvd., Rosslyn, Va. 22209.

Notification procedure: Contact individual listed above, or Director, Administration and Finance, Inter-American Foundation, 1515 Wilson Blvd., Rosslyn, Va. 22209.

Record access procedures: IAF access procedures are contained in Rules Safeguarding Personal Information in IAF Records.

Contesting record procedures: Contesting Record Procedures are contained in Rules Safeguarding Personal Information in IAF Records.

Record source categories: Individual himself.

IAF—5

System name: Inter-American Foundation—General Financial Records.

System location: General Services Administration, Region 3 Office; copies held by Inter-American Foundation. (GSA holds records for the Foundation under contract.)

Categories of records in the system: Varied payroll records, including, among other documents, time and attendance cards; payment vouchers; comprehensive listing of employees; health benefits records, requests for deductions; tax forms, W-2 forms, overtime requests; leave data; retirement records. Records are used by the Foundation and GSA employees to maintain adequate payroll information for the Foundation employees, and otherwise by Foundation and GSA employees who have a need for the record in the performance of their duties.

Authority for maintenance of the system: 31 U.S.C., generally. Also, 91-175.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: See Appendix. Records also are disclosed to GAO for audits; to the Internal Revenue Service for investigation; and to private attorneys, pursuant to a power of attorney.

A copy of an employee's Department of the Treasury Form W-2, Wage and Tax Statement, also is disclosed to the State, city, or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the State, city, or other local jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517, or 5520, or, in the absence thereof, in response to a written request from an appropriate official of the taxing jurisdiction to the Executive Officer, Inter-American Foundation, 1515 Wilson Blvd., Rosslyn, Va. 22209. The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax the employee is based on place of residence, place of employment, or both.

Pursuant to a withholding agreement between a city and the Department of the Treasury (5 U.S.C. 5520), copies of executed city tax withholding certificates shall be furnished the city in response to written request from an appropriate city official to the Executive Officer.

In the absence of a withholding agreement, the Social Security Number will be furnished only to a taxing jurisdiction which has furnished this agency with evidence of its independent authority to compel disclosure of the Social Security Number, in accordance with Section 7 of the Privacy Act, Public Law 93-579.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Paper and microfilm.

Retrievability: Social Security Number.

Safeguards: Stored in guarded building; released only to authorized personnel.

Retention and disposal: Disposition of records shall be in accordance with the HB GSA Records Maintenance and Disposition System (OAD P 1820.2).

System manager(s) and address: Accountant, Administration and Finance, Inter-American Foundation, 1515 Wilson Blvd, Rosslyn, VA. 22209.

Notification procedure: Refer to IAF access regulations contained in 22 CFR 1003.

Record access procedures: Refer to IAF access regulations contained in 22 CFR 1003.

Contesting record procedures: Refer to IAF access regulations contained in 22 CFR 1003.

Record source categories: The subject individual: the Inter-American Foundation.

APPENDIX—INTER-AMERICAN FOUNDATION

In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigation or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

A record from this system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant or other benefit.

A record from this system of records may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

A record from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. A record from this system of records may be disclosed to the United States Civil Service Commission in accordance with the agency's responsibility for evaluation and oversight of federal personnel management.

A record from this system of records may be disclosed to officers and employees of a federal agency for purposes of audit.

The information contained in this system of records will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

A record from this system of records may be disclosed as a routine use to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the request of the individual about whom the record is maintained.

A record from this system of records may be disclosed to officers and employees of the General Services Administration in connection with administrative services provided to this agency under agreement with GSA.

[FR Doc.76-31950 Filed 10-28-76;9:38 am]