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federal register

MONDAY, DECEMBER 6, 1976

highlights

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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.)

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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
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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

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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.

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Title 3—The President

Memorandum of November 19, 1976

Determination Under Section 620(x) of the Foreign Assistance Act of 1961, as Amended, To Permit the Sale of Certain Specified Defense Articles to the Government of Turkey

[Presidential Determination No. 77-8]

Memorandum for the Secretary of State

THE WHITE HOUSE,
Washington, November 19, 1976.

Pursuant to the authority vested in me by Section 620(x) of the Foreign Assistance Act of 1961, as amended, (the Act), I hereby:

(a) Determine that purchase by the Government of Turkey of long lead-time items in the amount of $69.6 million for the procurement of 40 F/RF-4E aircraft is necessary to enable Turkey to fulfill her defense responsibilities as a member of the North Atlantic Treaty Organization, and

(b) Suspend the provisions of Section 620(x) of the Act and of Section 3(c) of the Arms Export Control Act, as amended, for the fiscal year 1977 in order that the aforementioned defense articles may be sold to Turkey and the Turkish procurement of said articles may be financed under the authority of the Arms Export Control Act, as amended, within the limitations specified in Section 620(x) of the Act.

This determination supplements Presidential Determination No. TQ-3 of August 27, 1976 (41 FR 37561), which authorized the sale and financing of the initial long lead-time items for the procurement of the above-described aircraft.

This determination shall be published in the FEDERAL REGISTER.

Gerald R. Ford

[FR Doc.76-35926 Filed 12-2-76;2:40 pm]

rules and regulations

Title 7—Agriculture

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

[Milk Order No. 1063]

PART 1063—MILK IN THE QUAD CITIES-DUBUQUE MARKETING AREA

Order Suspending A Certain Provision

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

Notice of proposed rulemaking was published in the FEDERAL REGISTER (41 FR 49827) concerning a proposed suspension of a certain provision of the order. Interested persons were afforded 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 months of December 1976 and January 1977 the following provision of the order does not tend to effectuate the declared policy of the Act:

Section 1063.13(b)(2), "In any of the months of September through January, milk diverted from the farm of a producer on days in excess of the number of days that milk was delivered to a pool plant from such farm during the months shall not be producer milk."

Statement of consideration. The provision that is hereby suspended limits the amount of producer milk that may be diverted to nonpool plants during the months of September through January. Suspension of the provision will remove this diversion limit during the months of December 1976 and January 1977.

The suspension was requested by Land O'Lakes, Inc., which also submitted views in support of it. None were filed in opposition.

At the present time, Land O'Lakes is transporting milk from farms in the Clinton, Iowa, area to a pool distributing plant located in Cedar Rapids, Iowa, about 85 miles west of Clinton, simply for the purpose of qualifying the milk for pooling. Most of the milk transported from Clinton to Cedar Rapids must be reloaded on the same trucks and transported back to a nonpool plant at Clinton. The situation is aggravated by the fact that milk production is heavier than normal this fall.

In March of this year, a hearing was held to consider merger of the Quad Cities-Dubuque, North Central Iowa, Cedar Rapids-Iowa City, and Des Moines orders. One of the proposals for the merged order would remove the diversion limitation on an individual producer's milk. Instead, diversions would be limited to an aggregate amount, as applied either to a cooperative association acting as a handler on diverted milk or to a pool plant operator with respect to the milk delivered to his plant that is not eligible to be diverted by a cooperative. The proposed provision, which was unopposed at the hearing and in the briefs that were filed after the hearing, would eliminate the problem experienced by Land O'Lakes. Since a recommended decision is still pending, however, it will be impossible to complete amendatory procedures by December of this year. Therefore, suspension of the present diversion limitation is the only practicable means of preventing uneconomic handling of milk during December and January.

It is hereby found and determined that thirty days notice of the effective date of this suspension is impractical, unnecesary, and contrary to the public interest in that this suspension is necessary to reflect current marketing conditions; the suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this suspension.

Therefore, good cause exists for making this order effective December 6, 1976.

It is therefore ordered, That the aforesaid provision of the order is hereby suspended for the months of December 1976 and January 1977.

(Secs. 1–19, 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 an Inflation Impact Statement under Executive Order 11021 and OMB Circular A–107.

Effective date: December 6, 1976.

Signed at Washington, D.C., on November 30 1976.

RICHARD L. FELTNER,
Assistant Secretary.

[FR Doc.76-35754 Filed 12-3-76;8:45 am]

Title 13—Business Credit and Assistance

CHAPTER III—ECONOMIC DEVELOPMENT ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 315—CERTIFICATION AND ADJUSTMENT ASSISTANCE FOR FIRMS AND COMMUNITIES

Certification of Eligibility To Apply for Adjustment Assistance

Correction

In FR Doc. 76–35292 appearing on page 52648 in the issue for Wednesday, December 1, 1976, in the Authority appearing below the table of contents on page 52648, in the second line, "3212 et seq." should have read "3211."

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Airspace Docket No. 76–EA–62]

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

Alteration of Transition Area

On page 43184 of the FEDERAL REGISTER for September 30, 1976, the Federal Aviation Administration published a proposed rule which would alter the Hagerstown, Md., transition area.

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

In view of the foregoing, the proposed regulation is hereby adopted, effective 0901 G.m.t. December 30, 1976.

(Sec. 307(a), Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Jamaica, N.Y., on November 17, 1976.

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

§ 71.181 [Amended]

1. Amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to amend the description of the Hagerstown, Md. transition area by adding the following:

"within 5 miles each side of the St. Thomas, Pa. VORTAC 143° radial, extending from the 8-mile radius area to the St. Thomas, Pa. VORTAC."

[FR Doc.76-35603 Filed 12-3-76;8:45 am]

[Airspace Docket No. 76-NE-26]

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

Alteration of Federal Airways

On September 30, 1976, a notice of proposed rulemaking (NPRM) was published in the FEDERAL REGISTER (41 FR 43184) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 71 of the Federal Aviation Regulations that would realign V-3 and V-39 in the vicinity of Portland, Maine.

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 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., February 24, 1977, as hereinafter set forth.

Section 71.123 (41 FR 307, 20650, 29091, 38761, 47913, 49805) is amended as follows:

In V-3 "INT Pease 004° and Augusta, Maine, 228° radials;" is deleted and "INT Pease 004° and Augusta, Maine, 233° radials;" is substituted therefor.

In V-39 "INT Concord 052° and Augusta, Maine, 228° radials;" is deleted and "INT Concord 046° and Augusta, Maine, 233° radials;" 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 November 26, 1976.

JOHN WATTERSON,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.76-35604 Filed 12-3-76;8:45 am]

[Airspace Docket No. 76-SO-93]

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

Designation of Transition Area

On September 30, 1976, a notice of proposed rulemaking was published in the FEDERAL REGISTER (41 FR 43183), stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Cape Hatteras, N.C. transition area.

Interested persons were afforded an opportunity to participate in the 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., February 24, 1977, as hereinafter set forth.

In § 71.181 (41 FR 440), the following transition area is added:

CAPE HATTERAS, N.C.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Billy Mitchell Airport (lat. 35°14'00" N., long. 75°37'05" W.); excluding the portion outside the continental limits of the United States.

(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 East Point, Ga., on November 24, 1976.

GEORGE R. LACAILLE,
Acting Director, Southern Region.

[FR Doc.76-35607 Filed 12-3-76;8:45 am]

[Airspace Docket No. 76-RM-21]

PART 73—SPECIAL USE AIRSPACE

Alteration of Restricted Area

On September 30, 1976, a notice of proposed rulemaking (NPRM) was published in the FEDERAL REGISTER (41 FR 43186) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 73 of the Federal Aviation Regulations that would alter the altitude ceiling of the Wendover, Utah, restricted areas, R-6405 and R-6406.

Interested persons were afforded an opportunity to participate in the proposed rulemaking through the submission of comments. One comment was received in which no objection was interposed.

In consideration of the foregoing, Part 73 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., February 24, 1977, as hereinafter set forth.

In § 73.64 (41 FR 694) the designated altitudes for R-6405 and R-6406 are amended to read as follows:

1. R-6405 Wendover, Utah. Designated altitudes. Surface to flight level 580.

2. R-6406 Wendover, 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 November 29, 1976.

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

[FR Doc.76-35764 Filed 12-3-76;8:45 am]

[Docket No. 16288; Amdt. No. 1049]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Amendments

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

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

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

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

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

1. Section 97.23 is amended by originating, amending, or canceling the following VOR-VOR/DME SIAPs, effective January 13, 1977.

Window Rock, AZ—Window Rock Arpt., VOR/DME-A Original
Chester, CT—Chester Arpt., VOR-A, Original
Bartow, FL—Bartow Muni Arpt., VOR/DME Rwy 9, Amdt. 2
Newnan, GA—Newnan-Coweta County, VOR/DME-A, Amdt. 2
Peru, IN—Peru Muni Arpt., VOR/DME Rwy 36, Amdt. 1
Sheridan, IN—Sheridan Arpt., VOR/DME-A, Amdt. 2
Butler, PA—Butler-Graham Arpt., VOR-A, Amdt. 3

* * * effective December 30, 1976:

Bainbridge, GA—Commodore Decatur Arpt., VOR-A, Amdt. 1
Bainbridge, GA—Decatur County Industrial Airpark, VOR-B, Amdt. 1
Southern Pines, NC—Pinehurst-Southern Pines Arpt., VOR-A, Amdt. 10

* * * effective December 23, 1976:

Pontiac, MI—Oakland-Pontiac Arpt., VOR Rwy 9R, Amdt. 18

* * * effective December 16, 1976:

Great Falls, MT—Great Falls Int'l Arpt., VOR Rwy 3, Amdt. 14

* * * effective November 19, 1976:

Sault Ste. Marie, MI—Sault Ste. Marie City-County, VOR Rwy 32, Amdt. 12
Knoxville, TN—McGhee Tyson Arpt., VOR Rwy 22R, Amdt. 1

2. Section 97.27 is amended by originating, amending, or canceling the following NDB/ADF SIAPs, effective January 13, 1977:

Point Lookout/Branson/MO—The School of the Ozarks, NDB Rwy 29, Amdt. 2
Merrill, WI—Merrill Muni Arpt., NDB Rwy 16, Amdt. 2

* * * effective December 16, 1976:

Del Rio, TX—Del Rio Int'l Arpt., NDB Rwy 13, Original
Lamesa, TX—Lamesa Muni Arpt., NDB Rwy 33, Original

* * * effective November 19, 1976:

Sault Ste. Marie, MI—Saulte Ste. Marie City-County, NDB Rwy 32, Amdt. 7

3. Section 97.29 is amended by originating, amending, or canceling the following ILS SIAPS, effective December 23, 1976:

Pontiac, MI—Oakland-Pontiac Arpt., ILS Rwy 9R, Amdt. 6

* * * effective December 16, 1976:

Great Falls, MT—Great Falls Int'l Arpt., ILS Rwy 3, Orig

* * * effective November 19, 1976:

Knoxville, TN—McGhee Tyson Arpt., ILS Rwy 22R, Amdt. 2

4. Section 97.31 is amended by originating, amending, or canceling the following RADAR SIAPs, effective January 13, 1977:

Tampa, FL—Tampa Int'l Arpt., RADAR-1, Amdt. 6
Detroit, MI—Detroit Metropolitan-Wayne County, RADAR-1, Amdt. 9
Columbia, SC—Columbia Metropolitan, RADAR-1, Amdt. 2
Bristol, TN—Tri-City, RADAR-1, Amdt. 10

* * * effective December 16, 1976:

Great Falls, MT—Great Falls Int'l Arpt., RADAR-1, Amdt. 6

* * * effective November 19, 1976:

Knoxville, TN—McGhee Tyson Arpt., RADAR-1, Amdt. 16

* * * effective November 18, 1976:

Kahului, HI—Kahului Arpt., RADAR-1, Amdt. 2

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

Southern Pines, NC—Pinehurst-Southern Pines Arpt., RNAV Rwy 23, Amdt. 4

CORRECTION

In Docket No. 16259, Amdt No. 1047, to Part 97 of the Federal Aviation Regulations, published in the FEDERAL REGISTER dated Thursday, November 18, 1976, on page 50806, under § 97.23 * * * change effective date of Elgin, IL—Elgin Arpt., VOR RWY 36, Amdt 3 from December 30, 1976 to February 24, 1977.

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

Issued in Washington, D.C., on November 25, 1976.

JAMES M. VINES,
Chief,
Aircraft Programs Division.

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

[FR Doc.76-35606 Filed 12-3-76;8:45 am]

[Docket No. 12762; Special Federal Aviation Reg. No. 30-1]

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

PART 123—CERTIFICATION AND OPERATIONS: AIR TRAVEL CLUBS USING LARGE AIRPLANES

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS OF SMALL AIRCRAFT

Ground Proximity Warning System

● The purpose of this amendment is to continue in effect until June 30, 1978, the provisions of Special Federal Aviation Regulation (SFAR) No. 30, issued December 4, 1975. SFAR No. 30 provides that airplanes having a maximum passenger capacity of 30 seats or less, a maximum payload capacity of 7,500 pounds or less, and a maximum zero fuel weight of 35,000 pounds or less may be operated under Parts 121, 123, and 135 of the Federal Aviation Regulations without a ground proximity warning system or a ground proximity warning-glide slope deviation system. SFAR No. 30 was adopted to provide this relief on an interim basis pending the determination of whether or not new standards should be developed for operations conducted with those airplanes. ●

The Federal Aviation Administration (FAA) has announced a Regulatory Review Program in the FEDERAL REGISTER (41 FR 38778; September 13, 1976), involving a comprehensive review and upgrading of Part 135, including requirements applicable to "Commuter Air Carrier" operations.

This upgrading will consider the development of new standards and rules for certain aircraft defined by the Civil Aeronautics Board as small aircraft (14 CFR 298.2), which, if adopted, would be more in consonance with the rules of Part 121 pertaining to operations of large aircraft. This program will not be concluded by the December 31, 1976, termination date of SFAR No. 30.

The FAA received two comments submitted in response to SFAR No. 30. The comments from the National Transportation Safety Board (NTSB) opposed the issuance of SFAR No. 30 and recommended that an early compliance date be established. The NTSB has advocated that ground proximity warning devices should be required for use in all commercial passenger flight operations, particularly during nonprecision approaches and believes that these systems would reduce the number of approach and landing accidents. Jet Fleet Corporation, an Air Taxi/Commercial Operator, commented that 19 of their airplanes, which meet the criteria herein, could be operated safely without the ground proximity warning devices and suggested a permanent deletion of the ground proximity warning system requirements. Jet Fleet Corporation contends that a continuous altitude awareness training program is effective in preventing unwanted contact with the ground.

The FAA disagrees with the NTSB since significant flight characteristic differences exist between large and small airplanes, in that larger airplanes generally experience a higher sink rate and longer recovery time and are less responsive to power and control pressures than smaller airplanes.

Further study is therefore considered necessary to determine whether these operational differences warrant major regulatory changes. Accordingly, to discuss this matter, a Regulatory Review Conference was held at the Stouffer's Denver Inn, Denver, Colorado during the week of November 8 through 12, 1976, to accommodate public input regarding FAA-developed proposals for amendments to Part 135.

If SFAR No. 30 were to expire prior to the completion of the rulemaking actions generated by the Part 135 Regulatory Review Program, an undue financial burden could be placed on certain operators of airplanes meeting the criteria specified herein. Therefore, the FAA believes that it is not in the public interest to require the installation of a ground proximity warning system in the subject airplanes pending a determination of whether or not new standards should be developed for operation of such airplanes.

The extension of SFAR No. 30 to June 30, 1978, should provide both industry and the FAA sufficient time to determine what regulatory changes are necessary.

Since this amendment continues in effect the provisions of a currently effective Special Federal Aviation Regulation and imposes no additional burden on any person, I find that notice and public procedure hereon are unnecessary.

This amendment to Special Federal Aviation Regulation No. 30 is issued under the authority of sections 313(a), 601 and 604 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1424), and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

In consideration of the foregoing, Special Federal Aviation Regulation No. 30 is amended, effective January 1, 1977, by deleting the words "December 31, 1976" and inserting the words "June 30, 1978" in place thereof.

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

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

J. W. COCHRAN,
Acting Administrator.

[FR Doc.76-35763 Filed 12-3-76;8:45 am]

Title 20—Employees' Benefits

CHAPTER III—SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Regs. No. 5, Further Amended]

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED (1965 ——)

Principles of Reimbursement for Cost-Basis and Risk-Basis Health Maintenance Organizations

Correction

In FR Doc. 76–32555 appearing on page 49592 in the issue for Tuesday, November 9, 1976, the following changes should be made:

(1) On page 49595, third column, the fifth line of § 405.2041(d), "their" should read "the".

(2) On page 49596, third column, the fourth line of § 405.2042(c)(2), "plant" should read "plan".

(3) On page 49599, in § 405.2043(e), the table should have been labeled "MEDICAL CENTER A".

(4) On page 49599 in § 405.2043(e), the first two lines of column 2 should be the third and fourth lines of column 3.

(5) On page 49605, in § 405.2054(c), the third line of column one now reading "HMO's enrollees who are title XVIII" should read "HMO; or if SSA is satisfied that the pro-".

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–898]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for Independent City of Newport News, Virginia; Correction

The information published by notice on August 9, 1976, at 41 FR 33256 in the FEDERAL REGISTER, showing a Base Flood Elevation of 32 feet at Richneck Road, and a width of the zone boundaries of 100 feet to the left and 190 feet to the right bank of Stony Run, should be totally deleted from the notice.

(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: November 15, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76–35744 Filed 12–3–76;8:45 am]

Title 25—Indians

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

SUBCHAPTER U—ELECTRIC POWER SYSTEM

PART 231—COLORADO RIVER IRRIGATION PROJECT, ARIZONA

Revision and Rates

NOVEMBER 26, 1976.

This notice is published in the exercise of rulemaking authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2. The authority to issue regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and Sections 463 and 465 of the revised statutes (25 U.S.C. 2 and 9).

Beginning on page 37605 of the September 7, 1976 FEDERAL REGISTER, there was published a notice of proposed rulemaking to revise §§ 231.10, 231.14, 231.15, 231.16, 231.27, 231.34, 231.51, 231.52, 231.53, and 231.54 of Part 231, Subchapter U, Chapter I, of Title 25, Code of Federal Regulations, dealing with power rates.

Interested persons were given 30 days to submit written comments, suggestions, or objections to the proposed changes. No comments, suggestions or objections were received, and the proposed revisions are hereby adopted without change, as set forth below.

Effective date. These regulations become effective on January 5, 1976.

JOSE A. ZUMI,
Acting Deputy Commissioner of Indian Affairs.

§ 231.10 Measuring extensions.

In measuring an extension there shall be included all the primary distribution circuit which it is necessary to build and also the length of the secondary circuit, to the point of connection with the consumer's service.

2. By revising paragraphs (b) and (c) of § 231.14 to read as follows:

§ 231.14 Service connections.

* * * * *

(b) The ordinary method of connection with the street mains will be overhead wires. Consumers desiring the feed wires to run underground must run their own wires in approved conduit from the meter to the point where connection is to be made. Conduits on the consumer's service pole must be installed in a manner satisfactory to the officer in charge. Consumers desiring underground service extensions to a pole owned by the Government will provide needed materials to be placed on the pole. All connections to Government owned facilities will be made by Government personnel. Conduit must be provided at the upper end with a suitable weatherproof fitting installed not more than 18 inches below the service drop. The conductors must be of such size that at full load the voltage drop from the point of attachment on the pole to the building entrance will not exceed 2 percent.

(c) Not more than one service will be installed to any one building, except as provided by the applicable codes and approved by the officer in charge.

3. By revising § 231.15 to read as follows:

§ 231.15 Entrance wires, switch, and protection.

(a) All meters will be the socket type. The meter will be furnished and installed by the United States. The meter socket will be furnished and installed by the consumer in a suitable place approved by the officer in charge. All meter sockets shall meet Edison Electric Institute—Association of Edison Illuminating Companies and National Electrical Manufacturers Association standards. On installations where the meter socket is separated from the load center, the consumer shall install the service wires in metal conduit, approved by the National Electrical Code, to the load center. This load center must contain an automatic breaker or fuse disconnect switch of an approved size for the connected demand. An additional grouping of branch fused disconnects or circuit breakers must be installed to serve lights, motors, or appliances as required by the National Electrical Code. The neutral wire shall not be fused.

(b) A main line entrance switch must be placed on the load side of the meter and adjacent thereto. This switch shall be fused on the load side of the switch or an automatic circuit breaker of approved type and capacity shall be installed. If fuses are used, they must be cartridge type when the voltage is in excess of 150 volts to ground. The neutral wire shall not be fused.

(c) Entrance wires must be carried to the meter in approved conduit and so arranged that they can be connected to the line side of the meter, and the load wires to the load side without crossing the wires near the meter.

(d) In the case of mutliple-occupancy installations such as an apartment building, a multiple use commercial building or other structure in which more than one meter is required, the meters shall be assembled at one central location. Each metered location shall be clearly marked so as to make it possible to identify each consumer. Each metered circuit shall have a separate fused disconnecting means or breaker located at a readily accessible point near the meter.

4. By revising paragraphs (c), (f), and (h) and by deleting and reserving paragraph (g) of § 231.16 to read as follows:

§ 231.16 Location and installation of meters.

* * * * *

(c) No meter will be installed more than 6½ feet nor less than 5½ feet above the floor or working level. Meters must not be located above stairways, porch steps, basement entrances, nor in any place where a short step ladder or chair cannot be safely placed for reaching the meter. For underground installation, meters will be placed on approved pedestals.

* * * * *

(f) Where potential or current transformers, associated meter test switches, and terminal blocks are required for use with a meter, ample provision shall be made by the consumer for their mounting in a suitable cabinet furnished by the consumer. A ground wire shall be provided.

(g) [Reserved]

(h) No load wires of any description shall be carried within the same conduit as the supply wires. Tampering or in any way interfering with a meter or its connections is prohibited. The entire service installation must be satisfactory to the officer in charge and must conform to the provisions of the National Electrical Code of the National Board of Fire Underwriters for Electrical Wiring and Apparatus.

5. By revising § 231.27 to read as follows:

§ 231.27 Resale of electric power.

Service will be discontinued should a consumer resell electric energy delivered to such consumer from the Project electric power system.

6. By revising § 231.34 to read as follows:

§ 231.34 Minimum contract period.

The minimum contract period is 1 year. The contract, however, may be terminated if the consumer vacates the premises, except in cases where extension has been constructed to supply the consumer as stated in §§ 231.5 and 231.7. In this event any amount owing the consumer for a construction advance shall be forfeited.

7. By revising § 231.51 to read as follows:

§ 231.51 Rate Schedule No. 1—residential rate.

(a) *Application.* This schedule applies to electrical service required for residential purposes in individual private dwellings and in individually metered apartments delivered through one meter to a customer at one premise either urban or rural, for domestic use only.

(b) *Type of service.* Single phase, 60 Hertz, 120/240 volts.

(c) *Monthly rate.*

(1) $5.00 for the first 100 kilowatt-hours or less.

(2) 4.0 cents per kilowatt-hour for the next 300 kilowatt-hours.

(3) 2.0 cents per kilowatt-hour for the next 600 kilowatt-hours.

(4) 1.5 cents per kilowatt-hour for all additional kilowatt-hours.

(d) *Purchase power cost adjustment.* The energy charge will be adjusted in accordance with any increase or decrease in the cost of purchase power.

8. By revising § 231.52 to read as follows:

§ 231.52 Rate Schedule No. 2—commercial rate.

(a) *Application.* This schedule applies to service required by commercial and industrial customers for all uses when such service is supplied at one point of delivery and measured through one meter.

(b) *Type of service.* Single or three phase, 60 Hertz, at one standard voltage (120/240, 120/208, 277/480 or 480 volts).

(c) *Monthly rate.* (1) Energy charge:

(i) $5.00 for the first 100 kilowatt-hours or less.

(ii) 2.5 cents per kilowatt-hour for the next 900 kilowatt-hours.

(iii) 2.0 cents per kilowatt-hour for the next 4000 kilowatt-hours.

(iv) 1.5 cents per kilowatt-hour for all additional kilowatt-hours.

(2) Demand charge: (i) None of the first 5 kilowatts of billing demand.

(ii) $1.00 per kilowatt for all billing demand over 5 kilowatts.

(3) Minimum charge: $5.00 or $1.00 per kilowatt of billing demand for billing demands over 5 kilowatts, or the amount specified in the contract whichever is greater, except where the officer in charge determines that the customer's requirements are of a distinctly recurring seasonal nature. Then the minimum monthly bill shall not be more than an amount sufficient to make the total charges for the twelve (12) months ending with the current month, equal to twelve times the highest monthly minimum computed for the same twelve month period.

(4) Billing demand: The highest 15 minute integrated demand in kilowatts occurring during the month or the demand specified in a contract, whichever is greater.

(d) *Purchased power cost adjustment.* The energy charge will be adjusted in accordance with any increase or decrease in the cost of purchased power.

9. By revising § 231.53 to read as follows:

§ 231.53 Rate Schedule No. 3—irrigation pumping rate.

(a) *Application.* This schedule shall apply to power used for pumping of irrigation water for irrigation systems when such service is supplied at one point of delivery and measured through one meter and is approved by the officer in charge.

(b) *Type of service.* Three phase, 60 Hertz at one standard voltage (208, 240 or 480 volts).

(c) *Monthly rate.*

(1) Energy charge: 1.5 cents per kilowatt-hour.

(2) Demand charge: $1.00 per kilowatt of billing demand.

(3) Minimum charge: $1.00 per kilowatt of billing demand.

(4) Billing demand: The highest 15 minute integrated demand in kilowatts occurring during a 12-month period ending with the current month or the monthly demand specified in the contract whichever is greater.

(d) *Purchased power cost adjustment.* The energy charge will be adjusted in accordance with any increase or decrease in the cost of purchased power.

10. By revising § 231.54 to read as follows:

§ 231.54 Rate Schedule No. 4—street and area lighting.

(a) *Application.* This rate schedule applies to service for lighting public streets, alleys, thoroughfares, public parks, school yards, industrial areas, parking lots and similar areas where dusk-to-dawn service is desired. The Project will own, operate and maintain the lighting system, including normal lamp and globe replacement.

(b) *Monthly rate.*

Lamps	Per lamp	
	Metered	Unmetered
(1) 250 watts, or less incandescent (2,800 lumens or less)	$2.30	$2.80
(2) 175 watts, Mercury vapor (approximately 6,500 lumens)	4.00	4.50
(3) 250 watts, Mercury vapor (approximately 10,000 lumens)	4.80	5.40
(4) 400 watts, Mercury vapor (approximately 18,000 lumens)	6.00	10.00

(c) *Minimum term service.* The minimum term of service will be 12 months, payable in advance. This advance payment may be waived by the officer in charge.

(d) *Installation charges.* The cost of wood, special steel or aluminum poles or other supports, special fixtures, and the cost of underground service will be charged as determined by the officer in charge.

[FR Doc.76-35761 Filed 12-3-76;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7443]

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

Disclosure Statements Regarding Individual Retirement Accounts, Individual Retirement Annuities and Endowment Contracts

By a notice of proposed rule making appearing in the FEDERAL REGISTER on April 6, 1976 (41 FR 14522), amendments to the Income Tax Regulations (26 CFR Part 1) were proposed in order to provide rules for the issuance of disclosure statements to any individual for whom an individual retirement account, an in-

dividual retirement annuity, or an endowment contract described in section 408(b) of the Internal Revenue Code of 1954 is, or is to be, established or purchased. A public hearing was held on August 12, 1976.

This document sets forth the rules as adopted by the Internal Revenue Service and the Treasury Department. Aside from certain technical changes, the changes in the notice of proposed rule making are summarized below.

Proposed § 1.408–1(d)(4)(ii) is changed to provide that a disclosure statement must be furnished to the benefited individual no later than seven days preceding the date on which the account, annuity, or endowment contract is established or, if earlier, purchased on his behalf. However, a disclosure statement may be furnished not later than the earlier of the date of establishment or purchase if the benefited individual is able to revoke the account, annuity or contract within at least seven days after such establishment or purchase date. In addition, rules are provided as to the requirements necessary for an individual to be treated as having the ability to revoke the account, annuity or contract.

Further, proposed § 1.408–1(d)(4)(ii) is changed to require subsequent disclosure to the benefited individual only in the case of a material adverse change in any previously supplied information, or a material change in the governing instrument used in establishing the account, annuity or contract, during a specified period.

The financial information provisions of the proposed regulations have been modified by substituting the assumption of a $1,000 contribution to the account, annuity, or endowment contract for the assumption of a one dollar contribution.

These regulations do not reflect the amendments made by section 1501 of the Tax Reform Act of 1976 (90 Stat. 1734) relating to retirement savings for certain married individuals. The Internal Revenue Service anticipates issuing in the near future guidelines relating to the effect of such section 1501 on a disclosure statement described in these regulations.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

On April 6, 1976, a notice of proposed rule making was published in the FEDERAL REGISTER (41 FR 14522) to provide rules for the issuance of disclosure statements to any individual for whom an individual retirement account, an individual retirement annuity, or an endowment contract described in section 408(b) of the Internal Revenue Code of 1954 is, or is to be, established or purchased. On August 12, 1976, a public hearing was held with respect to the notice of proposed rule making. After careful consideration of all such relevant matters as were presented by interested persons, certain revisions to the proposed rules have been made. Section 1.408–1(d)(4) of these regulations supersedes § 11.408(i)–1 of the Temporary Income Tax Regulations under the Employee Retirement Income Security Act of 1974 (26 CFR Part 11). Section 1.408–1(d)(4), revised as set forth below, is hereby adopted.

§ 1.408–1 General rules.

* * * * *

(d) *Reports.* * * *

(4) *Disclosure statements.* (i) Under the authority contained in section 408(i), a disclosure statement shall be furnished in accordance with the provisions of this subparagraph by the trustee of an individual retirement account described in section 408(a) or the issuer of an individual retirement annuity described in section 408(b) or of an endowment contract described in section 408(b) to the individual (hereinafter referred to as the "benefited individual") for whom such an account, annuity, or contract is, or is to be, established.

(ii)(A)(*1*) The trustee or issuer shall furnish, or cause to be furnished, to the benefited individual, a disclosure statement satisfying the requirements of subdivisions (iii) through (viii) of this subparagraph, as applicable, and a copy of the governing instrument to be used in establishing the account, annuity, or endowment contract. The copy of such governing instrument need not be filled in with financial and other data pertaining to the benefited individual; however, such copy must be complete in all other respects. The disclosure statement and copy of the governing instrument must be received by the benefited individual at least seven days preceding the earlier of the date of establishment or purchase of the account, annuity, or endowment contract. A disclosure statement or copy of the governing instrument required by this subparagraph may be received by the benefited individual less than seven days preceding, but no later than, the earlier of the date of establishment or purchase, if the benefited individual is permitted to revoke the account, annuity, or endowment contract pursuant to a procedure which satisfies the requirements of subdivision (ii)(A)(*2*) of this subparagraph.

(*2*) A procedure for revocation satisfies the requirements of this subdivision (ii)(A)(*2*) of this subparagraph if the benefited individual is permitted to revoke the account, annuity, or endowment contract by mailing or delivering, at his option, a notice of revocation on or before a day not less than seven days after the earlier of the date of establishment or purchase and, upon revocation, is entitled to a return of the entire amount of the consideration paid by him for the account, annuity, or endowment contract without adjustment for such items as sales commissions, administrative expenses or fluctuation in market value. The procedure may require that the notice be in writing or that it be oral, or it may require both a written and an oral notice. If an oral notice is required or permitted, the procedure must permit it to be delivered by telephone call during normal business hours. If a written notice is required or permitted, the procedure must provide that, if mailed, it shall be deemed mailed on the date of the postmark (or if sent by certified or registered mail, the date of certification or registration) if it is deposited in the mail in the United States in an envelope, or other appropriate wrapper, first class postage prepaid, properly addressed.

(B) If after a disclosure statement has been furnished, or caused to be furnished, to the benefited individual pursuant to paragraph (d)(4)(ii)(A) of this section and—

(*1*) On or before the earlier of the date of establishment or purchase, or

(*2*) On or before the last day on which the benefited individual is permitted to revoke the account, annuity, or endowment contract (if the benefited individual has a right to revoke the account, annuity, or endowment contract pursuant to the rules of subdivision (ii)(A) of this subparagraph),

there becomes effective a material adverse change in the information set forth in such disclosure statement or a material change in the governing instrument to be used in establishing the account, annuity, or contract, the trustee or issuer shall furnish, or cause to be furnished, to the benefited individual such amendments to any previously furnished disclosure statement or governing instrument as may be necessary to adequately inform the benefited individual of such change. The trustee or issuer shall be treated as satisfying this subdivision (ii)(B) of this subparagraph only if material required to be furnished by this subdivision is received by the benefited individual at least seven days preceding the earlier of the date of establishment or purchase of the account, annuity, or endowment contract or if the benefited individual is permitted to revoke the account, annuity, or endowment contract on or before a date not less than seven days after the date on which such material is received, pursuant to a procedure for revocation otherwise satisfying the provisions of subdivision (ii)(A)(*2*) of this subparagraph.

(C) If the governing instrument is amended after the account, annuity, or endowment contract is no longer subject to revocation pursuant to subdivision (ii)(A) or (B) of this subparagraph, the trustee or issuer shall not later than the 30th day after the later of the date on which the amendment is adopted or becomes effective, deliver or mail to the last known address of the benefited individual a copy of such amendment and, if such amendment affects a matter described in subdivisions (iii) through (viii) of this subparagraph, a disclosure statement with respect to such matter meeting the requirements of subdivision (iv) of this subparagraph.

(D) For purposes of subdivision (ii)(A) and (B) of this subparagraph, if a disclosure statement, governing instrument, or an amendment to either, is mailed to the benefited individual, it shall be deemed (in the absence of evidence to the contrary) to be received by

the benefited individual seven days after the date of mailing.

(E) In the case of a trust described in section 408(c) (relating to certain retirement savings arrangements for employees or members of associations of employees), the following special rules shall be applied:

(*1*) For purposes of this subparagraph, references to the benefited individual's account, annuity, or endowment contract shall refer to the benefited individual's interest in such trust, and

(*2*) The provisions of subdivision (ii) of this subparagraph shall be applied by substituting "the date on which the benefited individual's interest in such trust commences" for "the earlier of the date of establishment or purchase" wherever it appears therein.

Thus, for example, if an employer establishes a trust described in section 408(c) for the benefit of employees, and the trustee furnishes an employee with a disclosure statement and a copy of the governing instrument (as required by this subparagraph) on the date such employee's interest in the trust commences, such employee must be given a right to revoke such interest within a period of at least seven days. If any contribution has been made within such period (whether by the employee or by the employer), the full amount of such contribution must be paid to such employee pursuant to subdivision (ii) (A) (*2*) of this subparagraph.

(iii) The disclosure statement required by this subparagraph shall set forth in nontechnical language the following matters as such matters relate to the account, annuity, or endowment contract (as the case may be):

(A) Concise explanations of—

(*1*) The statutory requirements prescribed in section 408(a) (relating to an individual retirement account) or section 408(b) (relating to an individual retirement annuity and an endowment contract), and any additional requirements (whether or not required by law) that pertain to the particular retirement savings arrangement.

(*2*) The income tax consequences of establishing an account, annuity, or endowment contract (as the case may be) which meets the requirements of section 408(a) (relating to an individual retirement account) or section 408(b) (relating to an individual retirement annuity and an endowment contract), including the deductibility of contributions to, the tax treatment of distributions (other than premature distributions) from, the availability of income tax free rollovers to and from, and the tax status of such account, annuity, or endowment contract.

(*3*) The limitations and restrictions on the deduction for retirement savings under section 219, including the ineligibility of certain individuals who are active participants in a plan described in section 219(b)(2)(A) or for whom amounts are contributed under a contract described in section 219(b)(2)(B) to make deductible contributions to an account or for an annuity or endowment contract.

(*4*) The circumstances under which the benefited individual may revoke the account, annuity, or endowment contract, and the procedure therefor (including the name, address, and telephone number of the person designated to receive notice of such revocation). Such explanation shall be prominently displayed at the beginning of the disclosure statement.

(B) Statements to the effect that—

(*1*) If the benefited individual or his beneficiary engages in a prohibited transaction described in section 4975(c) with respect to an individual retirement account, the account will lose its exemption from tax by reason of section 408(e)(2)(A), and the benefited individual must include in gross income, for the taxable year during which the benefited individual or his beneficiary engages in the prohibited transaction, the fair market value of the account.

(*2*) If the owner of an individual retirement annuity or endowment contract described in section 408(b) borrows any money under, or by use of, such annuity or endowment contract, then, under section 408(e)(3), such annuity or endowment contract loses its section 408(b) classification, and the owner must include in gross income, for the taxable year during which the owner borrows any money under, or by use of, such annuity or endowment contract, the fair market value of the annuity or endowment contract.

(*3*) If a benefited individual uses all or any portion of an individual retirement account as security for a loan, then, under section 408(e)(4), the portion so used is treated as distributed to such individual and the benefited individual must include such distribution in gross income for the taxable year during which he so uses such account.

(*4*) An additional tax of 10 percent is imposed by section 408(f) on distributions (including amounts deemed distributed as the result of a prohibited loan or use as security for a loan) made before the benefited individual has attained age 59½, unless such distribution is made on account of death or disability, or unless a rollover contribution is made with such distribution.

(*5*) Sections 2039(e) (relating to exemption from estate tax of annuities under certain trusts and plans) and 2517 (relating to exemption from gift tax of specified transfers of certain annuities under qualified plans) apply (including the manner in which such sections apply) to the account, annuity, or endowment contract.

(*6*) Section 402(a)(2) and (e) (relating to tax on lump sum distributions) is not applicable to distributions from an account, annuity, or endowment contract.

(*7*) A minimum distribution is required under section 408(a)(6) or (7) and 408(b)(3) or (4) (including a brief explanation of the amount of minimum distribution) and that if the amount distributed from an account, annuity, or endowment contract during the taxable year of the payee is less than the minimum required during such year, an excise tax, which shall be paid by the payee, is imposed under section 4974, in an amount equal to 50 percent of the excess of the minimum required to be distributed over the amount actually distributed during the year.

(*8*) An excise tax is imposed under section 4973 on excess contributions (including a brief explanation of an excess contribution).

(*9*) The benefited individual must file Form 5329 (Return for Individual Retirement Savings Arrangement) with the Internal Revenue Service for each taxable year during which the account, annuity, or endowment contract is maintained.

(*10*) The account or contract has or has not (as the case may be) been approved as to form for use as an account, annuity, or endowment contract by the Internal Revenue Service. For purposes of this subdivision, if a favorable opinion or determination letter with respect to the form of a prototype trust, custodial account, annuity, or endowment contract has been issued by the Internal Revenue Service, or the instrument which establishes an individual retirement trust account or an individual retirement custodial account utilizes the precise language of a form currently provided by the Internal Revenue Service (including any additional language permitted by such form), such account or contract may be treated as approved as to form.

(*11*) The Internal Revenue Service approval is a determination only as to the form of the account, annuity, or endowment contract, and does not represent a determination of the merits of such account, annuity, or endowment contract.

(*12*) The proceeds from the account, annuity or endowment contract may be used by the benefited individual as a rollover contribution to another account or annuity or retirement bond in accordance with the provisions of section 408(d)(3).

(*13*) In the case of an endowment contract described in section 408(b), no deduction is allowed under section 219 for that portion of the amounts paid under the contract for the taxable year properly allocable to the cost of life insurance.

(*14*) If applicable, in the event that the benefited individual revokes the account, annuity, or endowment contract, pursuant to the procedure described in the disclosure statement (see subdivision (A)(*4*) of this subdivision (iii)), the benefited individual is entitled to a return of the entire amount of the consideration paid by him for the account, annuity, or endowment contract without adjustment for such items as sales commissions, administrative expenses or fluctuation in market value.

(*15*) Further information can be obtained from any district office of the Internal Revenue Service.

To the extent that information on the matters described in subdivisions (iii)

(A) and (B) of this subparagraph is provided in a publication of the Internal Revenue Service relating to individual retirement savings arrangements, such publication may be furnished by the trustee or issuer in lieu of providing information relating to such matters in a disclosure statement.

(C) The financial disclosure required by paragraph (d)(4)(v), (vi), and (vii) of this section.

(iv) In the case of an amendment to the terms of an account, annuity, or endowment contract described in paragraph (d)(4)(i) of this section, the disclosure statement required by this subparagraph need not repeat material contained in the statement furnished pursuant to paragraph (d)(4)(iii) of this section, but it must set forth in nontechnical language those matters described in paragraph (d)(4)(iii) of this section which are affected by such amendment.

(v) With respect to an account, annuity, or endowment contract described in paragraph (d)(4)(i) of this section (other than an account or annuity which is to receive only a rollover contribution described in paragraph (d)(4)(vi) of this section and to which no deductible contributions will be made), the disclosure statement must set forth in cases where either an amount is guaranteed over period of time (such as in the case of a non-participating endowment or annuity contract), or a projection of growth of the value of the account, annuity, or endowment contract can reasonably be made (such as in the case of a participating endowment or annuity contract (other than a variable annuity) or passbook savings account), the following:

(A) To the extent that an amount is guaranteed,

(*1*) The amount, determined without regard to any portion of a contribution which is not deductible, that would be guaranteed to be available to the benefited individual if (*i*) level annual contributions in the amount of $1,000 were to be made on the first day of each year, and (*ii*) the benefited individual were to withdraw in a single sum the entire amount of such account, annuity, or endowment contract at the end of each of the first five years during which contributions are to be made, at the end of the year in which the benefited individual attains the ages of 60, 65, and 70, and at the end of any other year during which the increase of the guaranteed available amount is less than the increase of the guaranteed available amount during any preceding year for any reason other than decrease or cessation of contributions, and

(2) A statement that the amount described in subdivision (v)(A)(*1*) of this subparagraph is guaranteed, and the period for which guaranteed;

(B) To the extent a projection of growth of the value of the account, annuity, or endowment contract can reasonably be made but the amounts are not guaranteed,

(*1*) The amount, determined without regard to any portion of a contribution which is not deductible, and upon the basis of an earnings rate no greater than, and terms no different from, those currently in effect, that would be available to the benefited individual if (*i*) level annual contributions in the amount of $1,000 were to be made on the first day of each year, and (*ii*) the benefited individual were to withdraw in a single sum the entire amount of such account, annuity, or endowment contract at the end of each of the first five years during which contributions are to be made, at the end of each of the years in which the benefited individual attains the ages of 60, 65, and 70, and at the end of any other year during which the increase of the available amount is less than the increase of the available amount during any preceding year for any reason other than decrease or cessation of contributions, and

(2) A statement that the amount described in paragraph (d)(4)(v)(B)(*1*) of this section is a projection and is not guaranteed and a statement of the earnings rate and terms on the basis of which the projection is made;

(C) The portion of each $1,000 contribution attributable to the cost of life insurance, which would not be deductible, for each year during which contributions are to be made; and

(D) The sales commission (including any commission attributable to the sale of life insurance), if any, to be charged in each year, expressed as a percentage of gross annual contributions (including any portion attributable to the cost of life insurance) to be made for each year.

(vi) With respect to an account or annuity described in paragraph (d)(4)(i) of this section to which a rollover contribution described in section 402(a)(5)(A), 403(a)(4)(A), 408(d)(3)(A) or 409(b)(3)(C) will be made, the disclosure statement must set forth, in cases where an amount is guaranteed over a period of time (such as in the case of a non-participating annuity contract, or a projection of growth of the value of the account or annuity can reasonably be made (such as in the case of a participating annuity contract (other than a variable annuity) or a passbook savings account), the following:

(A) To the extent guaranteed,

(*1*) The amount that would be guaranteed to be available to the benefited individual if (*i*) Such a rollover contribution in the amount of $1,000 were to be made on the first day of the year, (*ii*) No other contribution were to be made, and (*iii*) The benefited individual were to withdraw in a single sum the entire amount of such account or annuity at the end of each of the first five years after the contribution is made, at the end of the year in which the benefited individual attains the ages of 60, 65, and 70, and at the end of any other year during which the increase of the guaranteed available amount is less than the increase of the guaranteed available amount during any preceding year, and

(2) A statement that the amount described in paragraph (d)(vi)(A)(*1*) of this section is guaranteed;

(B) To the extent that a projection of growth of the value of the account or annuity can reasonably be made but the amounts are not guaranteed,

(*1*) The amount, determined upon the basis of an earnings rate no greater than, and terms no different from, those currently in effect, that would be available to the benefited individual if (*i*) such a rollover contribution in the amount of $1,000 were to be made on the first day of the year, (*ii*) no other contribution were to be made, and (*iii*) the benefited individual were to withdraw in a single sum the entire amount of such account or annuity at the end of each of the first five years after the contribution is made, at the end of each of the years in which the benefited individual attains the ages 60, 65, and 70, and at the end of any other year during which the increase of the available amount is less than the increase of the available amount during any preceding year, and

(2) A statement that the amount described in paragraph (d)(4)(vi)(B)(*1*) of this section is a projection and is not guaranteed and a statement of the earnings rate and terms on the basis of which the projection is made; and

(C) The sales commission, if any, to be charged in each year, expressed as a percentage of the assumed $1,000 contribution.

(vii) With respect to an account, annuity, or endowment contract described in paragraph (d)(4)(i) of this section, in all cases not subject to paragraph (d)(4)(v) or (vi) of this section (such as in the case of a mutual fund or variable annuity), the disclosure statement must set forth information described in subdivisions (A) through (C) of this subdivision (vii) based (as applicable with respect to the type or types of contributions to be received by the account, annuity, or endowment contract) upon the assumption of (1) level annual contributions of $1,000 on the first day of each year, (2) a rollover contribution of $1,000 on the first day of the year and no other contributions, or (3) a rollover contribution of $1,000 on the first day of the year plus level annual contributions of $1,000 on the first day of each year.

(A) A description (in nontechnical language) with respect to the benefited individual's interest in the account, annuity, or endowment contract, of:

(*1*) Each type of charge, and the amount thereof, which may be made against a contribution,

(2) The method for computing and allocating annual earnings, and

(3) Each charge (other than those described in complying with paragraph (d)(4)(vii)(A)(*1*) of this section) which may be applied to such interest in determining the net amount of money available to the benefited individual and the method of computing each such charge;

(B) A statement that growth in value of the account, annuity, or endowment

contract is neither guaranteed nor projected; and

(C) The portion of each $1,000 contribution attributable to the cost of life insurance, which would not be deductible, for every year during which contributions are to be made.

(viii) A disclosure statement, or an amendment thereto, furnished pursuant to the provisions of this subparagraph may contain information in addition to that required by paragraph (d)(4)(iii) through (vii) of this section. However, such disclosure statement will not be considered to comply with the provisions of this subparagraph if the substance of such additional material or the form in which it is presented causes such disclosure statement to be false or misleading with respect to the information required to be disclosed by this paragraph.

(ix) The provisions of section 6693, relating to failure to provide reports on individual retirement accounts or annuities, shall apply to any trustee or issuer who fails to furnish, or cause to be furnished, a disclosure statement, a copy of the governing instrument, or an amendment to either, as required by this paragraph.

(x) Section 1.408–1(d)(4) shall be effective for disclosure statements and copies of governing instruments mailed, or delivered without mailing, after December 31, 1976.

(xi) Section 1.408–1(d)(4) does not reflect the amendments made by section 1501 of the Tax Reform Act of 1976 (90 Stat. 1734) relating to retirement savings for certain married individuals.

(Secs. 408(l) and 7805 of the Internal Revenue Code of 1954 (88 Stat. 964 and 68A Stat. 917; 26 U.S.C. 408(l) and 7805))

NOVEMBER 30, 1976

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved:

CHARLES M. WALKER,
Assistant Secretary for Tax Policy.

[FR Doc.76-35806 Filed 12-2-76;9:41 am]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 76-177]

PART 117—DRAWBRIDGE OPERATION Regulation

Coffee Pot Bayou, Florida

This amendment changes the regulations for the Snell Isle Boulevard bridge across Coffee Pot Bayou to allow the draw to remain closed to navigation. This amendment was circulated as a public notice dated September 7, 1976, by the Commander, Seventh Coast Guard District, and was published in the FEDERAL REGISTER as a notice of proposed rule making (CGD 76177) on September 2, 1976 (41 FR 37118). One reply was received which had no objection to the proposal.

Accordingly, Part 117 of Title 33 of the Code of Federal Regulations is amended by revising § 117.245(l)(4) to read as follows:

§ 117.245 **Navigable waters discharging into the Atlantic Ocean south of and including Chesapeake Bay and into the Gulf of Mexico, except the Mississippi River and its tributaries and outlets; bridges where constant attendance of draw tenders is not required.**

* * * * *

(l) * * *

(4) Coffee Pot Bayou, St. Petersburg, Fla. The draw need not open for the passage of vessels, and paragraphs (b) through (e) of this section shall not apply to this bridge.

* * * * *

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

Effective date: This revision shall become effective on January 7, 1977.

(NOTE.—The Coast Guard 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)

Dated: November 30, 1976.

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

[FR Doc.76-35768 Filed 12-3-76;8:45 am]

Title 35—Panama Canal

CHAPTER I—CANAL ZONE REGULATIONS

PART 253—REGULATIONS OF THE SECRETARY OF THE ARMY

Subpart A—General Provisions

EXCLUSIONS

• The purpose of this amendment is to bring certain employees of the Department of Justice in the Canal Zone who are U.S. citizens within the coverage of the statute and regulations that authorize payment of a tropical differential. This change, which affects the positions of U.S. Attorney, Assistant U.S. Attorney, U.S. Marshal, Chief Deputy U.S. Marshal, and Deputy U.S. Marshal, will permit the Department to pay the differential while retaining the authority to fix base salary rates with reference to the compensation schedules that it utilizes for similar positions in other areas.•

In 35 CFR Part 253, paragraph (b)(3) of § 253.8 is revised to read as follows:

§ 253.8 Exclusions.

* * * * *

(b) * * *

(3) The U.S. Attorney and Assistant U.S. Attorneys and the U.S. Marshal, Chief Deputy U.S. Marshal, and Deputy U.S. Marshals for the Canal Zone, except that the incumbents of these positions are eligible to receive the tropical differential authorized by § 146(2) of Subchapter III and by § 253.135 of this part. For purposes of calculating the differential, the base salary rate is that prescribed by the employing department without reference to the aggregate compensation established under §§ 253.131 and 253.134.

* * * * *

Effective date: This amendment is effective September 1, 1976.

(2 C.Z.C. §§ 142(b), 146(2), 155, 76A Stat. 16, 17, 19; 35 CFR 251.2.)

Dated: November 26, 1976.

MARTIN R. HOFFMANN,
Secretary of the Army.

[FR Doc.76-35738 Filed 12-3-76;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 650-5]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Approval of Revision To District of Columbia Implementation Plan

On February 25, 1976, the District of Columbia submitted to the Regional Administrator a proposal requesting that Sections 8–2:704 and 8–2:705 of the District's Air Quality Control Regulations be reviewed and processed as a revision to the District of Columbia State Implementation Plan (SIP) for the attainment and maintenance of national ambient air quality standards. In addition, the District requested that subsections (a) and (b) of 40 CFR 52.476 be withdrawn.

As amended, Section 8–2:704 would continue to allow 1 percent sulfur fuel oil to be burned in the District for twelve months following the effective date of the regulation (March 12, 1976). Section 8–2:705 would continue to allow 1 percent sulfur coal to be burned in the District for twelve months following the effective date of the regulation (March 12, 1976). After the twelve month period has been completed, each section requires that .5 percent sulfur-in-fuel be burned. Both amendments are proposed to replace provisions which require .5 percent sulfur fuel oil and coal to be burned after July 1, 1975.

The District of Columbia has justified this request with the following:

1. The District is presently meeting national ambient air quality standards for SO_2.

2. Since standards are presently being met with sources in the District burning 1 percent sulfur fuel, the switch to .5 percent sulfur fuel would be an unnecessary cost burden.

The District of Columbia submitted proof that a public hearing, with adequate public notice was held on July 3, 1975, to consider public comment on the proposed revision, as required by 40 CFR 51.4.

On June 29, 1976 (41 FR 26706), the Regional Administrator acknowledged receipt of the amendments, proposed them as a revision to the District of

Columbia SIP and provided for a 30 day public comment period, ending July 29, 1976. During this period, no comments were received.

According to ambient air quality data submitted to EPA by the District of Columbia for the 1974 and 1975 calendar years, a 1.0 percent sulfur-in-fuel limitation does not cause violations of either the primary or secondary national ambient air quality standards for sulfur dioxide. Similarly a draft document prepared by the Metropolitan Washington Council of Governments (COG) demonstrates that the 1.0 percent limitation is adequate to meet air quality SO_2 standards through 1977. The amendments were properly submitted in accordance with the provisions of 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of Implementation Plans. The amendments also meet the requirements of section 110(a)(2) of the Clean Air Act.

In view of EPA's evauation, and in the absence of comments, the Administrator hereby approves the amendments to District Regulations 8-2:704 and 8-2:705 as a revision to the District of Columbia State Implementation Plan. According to the provisions of this revision, sources subject to District Regulations 8-2:704 and 8-2:705 will be required to burn 0.5% fuel after March 31, 1977. In view of EPA's determination of approval, the Administrator hereby amends 40 CFR 52.470 (Identification of Plan) to incorporate this revision into the District of Columbia SIP. Similiarly, the Administrator amends 40 CFR 52.476 (Compliance Schedules) to acknowledge the change of the final compliance date for the revised District Regulations 8-2:704 and 8-2:705.

Effective date: In view of the fact that the amendments to Sections 8-2:704 and 8-2:705 of the District of Columbia Health Regulations became effective March 12, 1976, and that it would serve no useful purpose to defer the effective date of this revision for 30 days, the Administrator hereby finds good cause for instituting this rulemaking effective immediately.

Copies of these amendments and the analysis on which they are based are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Curtis Building, Second Floor, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106, ATTN: Harold A. Frankford.

Bureau of Air and Water Quality Control, Department of Environmental Services, 614 H Street, NW., Room LL3, Washington, D.C. 20001, ATTN: John Brink.

Public Information Reference Unit, Room 2922, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

(42 U.S.C. 1857c-5)

Dated: November 29, 1976.

JOHN QUARLES,
Acting Administrator.

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

Subpart J—District of Columbia

1. In § 52.470, paragraph (c)(8) is amended as follows:

§ 52.470 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(8) Amendments to sections 8-2:704 and 8-2:705 of the District of Columbia Air Quality Control Regulations submitted on February 25, 1976 by the Mayor.

* * * * *

2. In § 52.476, paragraph (b) is amended as follows:

§ 52.476 Compliance schedules.

* * * * *

(b) Federal compliance schedules * * *

(2) * * *

(vii) March 31, 1977—Final compliance with the low-sulfur fuel requirements of either section 8-2:704 or 8-2:705 of the Air Quality Control Regulations of the District of Columbia.

(3) * * *

(iv) March 31, 1977—Final compliance with the requirements of section 8-2:705 of the Air Quality Control Regulations of the District of Columbia.

(v) If a performance test is necessary for a determination as to whether compliance has been achieved, such a test must be completed by March 31, 1977. Ten days prior to the test, a notice must be given to the Administrator to afford him the opportunity to have an observer present.

* * * * *

(5) * * *

(iii) Any owner or operator subject to the compliance schedule in either paragraphs (b)(2) or (3) of this section may submit to the Administrator, no later than thirty days after the effective date of this paragraph a proposed alternative compliance schedule. No such final compliance schedule may provide for final compliance after March 31, 1977. If promulgated by the Administrator, such schedule shall satisfy the requirement of this paragraph for the affected source.

* * * * *

[FR Doc.76-35728 Filed 12-3-76;8:45 am]

[FRL 650-4]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Pennsylvania State Implementation Plan; Correction

On March 2, 1976 (41 FR 8956), the Administrator of the Environmental Protection Agency amended the Identification of Plan sections for each subpart of 40 CFR Part 52. The amendment delineates a revised format which provides a more detailed explanation of each approved revision submitted by the respective jurisdictions rather than merely listing the submittal date of a State Implementation Plan (SIP) revision request.

Accordingly, 40 CFR 52.2020 of Subpart NN (Pennsylvania) was amended by adding a paragraph under § 52.2020(c) for each plan revision approved by the Administrator. On December 11, 1972, the Commonwealth of Pennsylvania submitted an amendment pertaining to miscellaneous nonregulatory revisions. Although the Administrator never formally approved this amendment as a revision of the Pennsylvania SIP, the March 2, 1976 notice of rulemaking erroneously listed this amendment under 40 CFR 52.2020(c)(10).

In order to alleviate any confusion that may have resulted by incorporation of the December 11, 1972 amendment into 40 CFR 52.2020, the Administrator hereby rescinds 40 CFR 52.2020(c)(10) at this time.

Effective date: The Administrator's action will become effective on December 6, 1976.

(42 U.S.C. 1857c-5)

Dated: November 29, 1976.

JOHN QUARLES,
Acting Administrator.

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

Subpart NN—Pennsylvania

§ 52.2020 [Amended]

1. In § 52.2020, paragraph (c)(10) is hereby revoked and reserved.

[FR Doc.76-35729 Filed 12-3-76;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 76-1079]

PART 0—COMMISSION ORGANIZATION

Cable Television Bureau

Adopted: November 23, 1976.

Released: December 1, 1976.

Order. In the matter of amendment of Part 0, Subpart A of the Commission's rules and regulations concerning organization of the Cable Television Bureau.

1. On November 23, 1976, the Commission approved the transfer, within the Cable Television Bureau, of the Records and Systems Management Branch from the Special Relief and Microwave Division, and the computer records systems function from the Research Division, into a new division named the Records and Systems Management Division. Consolidation of records management and systems oriented activities within the Cable Bureau will improve both the speed and scope of service to the public and the research and policy-developing capabilities of the Bureau.

2. This order is issued to set forth the functions for the new division.

3. Because this amendment relates to internal Commission organization and practice, the prior notice and effective date provisions of section 4 of the Administrative Procedure Act, 5 U.S.C., 553, do not apply.

4. Authority for the amendment adopted herein is contained in sections 4(i) and 5(b) of the Communications Act of 1934, as amended.

Accordingly, it is ordered, That effective December 10, 1976, Part 0 of the Commission's rules and regulations is amended as set forth below.

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

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

§ 0.83 [Redesignated from § 0.84]

1. Section 0.84 is redesignated § 0.83.

2. Section 0.85 is redesignated § 0.84 and a new paragraph (f) added to read as follows:

§ 0.84 Units in the Bureau.

* * * * *

(f) Records and Systems Management Division.

§ 0.85 [Redesignated from § 0.86]

3. Section 0.86 is redesignated § 0.85.

4. Section 0.87 is redesignated § 0.86 and paragraph (d) is amended to read as follows:

§ 0.86 Certificate of Compliance Division.

* * * * *

(d) Coordinate with the Records and Systems Management Division on procedural changes to improve initial processing of applications for Certificates of Compliance.

* * * * *

§ 0.87 [Redesignated from § 0.88 and Amended]

5. Section 0.88 is redesignated § 0.87 and paragraph (d) is deleted.

§ 0.88 [Redesignated from § 0.89]

6. Section 0.89 is redesignated § 0.88.

§ 0.89 [Redesignated from § 0.90]

7. Section 0.90 is redesignated § 0.89.

8. A new § 0.90 is added to read as follows:

§ 0.90 Records and Systems Management Division.

The Records and Systems Management Division is responsible for the following:

(a) Develops, coordinates, operates and maintains automated data systems for the Bureau, including establishment of standards and comprehensive instructions/procedures.

(b) Maintains liaison with Data Automation Division, Office of Executive Director, to coordinate Bureau's data processing needs.

(c) Provides assistance to other organizational elements of the Bureau to facilitate most efficient use of computer methods.

(d) Manages the receipt, initial examination, routing, storage, retrieval and control of various input documents for the Bureau.

(e) Prepares and issues public notices for the Bureau with regard to applications accepted for filing and authorizations.

(f) Provides facilities and assistance for the Bureau with regard to applicapleadings, and other data on file with the Bureau.

[FR Doc.76-35782 Filed 12-3-76;8:45 am]

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA-PUBLIC FIXED STATIONS

Frequency Coordinating Committee

Adopted: November 22, 1976.

Released: November 24, 1976.

Order. In the matter of editorial amendment of § 81.359 of the rules.

1. Section 81.359 of the rules provides for frequency coordination of applications for new VHF limited coast stations in geographic areas where the Commission has recognized a committee for this purpose. In the body of the rule, such a committee is referred to as "frequency advisory committee" when, in fact, the term "frequency coordinating committee" more accurately describes the function performed. Accordingly, the latter term is hereby substituted, wherever it occurs in the rule, in accordance with the attached below.

2. This action is taken pursuant to § 0.231(d) of the rules. Because the amendment is editorial, the public notice, procedure and effective date provision of 5 U.S.C. 553 do not apply.

3. In accordance with the above: *It is ordered*, That § 81.359 of rules is amended in accordance with the attached below.

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

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

Part 81 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

In § 81.359, paragraphs (a) and (c) (1) and (2) are amended by substituting the term "frequency coordinating committee" for the term "frequency advisory committee", as follows:

§ 81.359 Frequency Coordination.

(a) Except as provided in paragraphs (b) and (c) of this section each application for a new VHF limited coast station license or renewal or modification of an existing license to be located in an area having a recognized frequency coordinating committee shall be accompanied by:

* * * * *

(c)(1) In lieu of the requirements specified in paragraph (a) of this section, a statement from a frequency coordinating committee may be submitted with the application. The committee shall comment on the frequency or frequencies requested or the proposed changes in the authorized station and give the opinion of the committee regarding the probable interference of the proposal to existing stations. The committee shall consider, as a minimum, all stations operating on the frequency or frequencies requested or assigned within 50 miles of the proposed station location. The frequency coordinating committee statement shall also recommend a frequency or frequencies, which in the opinion of the committee, will result in the least amount of interference to proposed and existing stations. In addition, committee recommendations may appropriately include comments on other technical factors and may contain recommended conditions or restrictions which it believes should appear on authorization to lessen the possibility of interference.

(2) A frequency coordinating committee must be so organized that it is representative of all persons who are eligible for VHF limited coast stations within the service area of the recognized frequency coordinating committee. A statement of organization, service area and composition of the committee must be submitted to the Commission for approval. The functions of any coordinating committee shall be purely advisory in character to the applicant and the Commission, and its recommendations cannot be considered as binding upon either the applicant or the Commission.

[FR Doc.76-35605 Filed 12-3-76;8:45 am]

Title 50—Wildlife and Fisheries

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

PART 33—SPORT FISHING

Certain Wildlife Refuges in Oregon

The following special regulations are issued and are effective on Saturday, January 1, 1977.

§ 33.5 Special regulations; sport fishing for individual wildlife refuge areas.

General Conditions: Fishing shall be in accordance with applicable State and Federal regulations and special conditions listed. Portions of refuges which are open to fishing are designated by signs and/or delineated on maps. The maps are available at the respective refuge headquarters and from the office of the Regional Director, Fish and Wildlife Service, P.O. Box 3737, Portland, OR 97208.

Ankeny National Wildlife Refuge, (Headquarters: William L. Finley National Wildlife Refuge, Route 2, Box 208, Corvallis, OR 97330).

Special Conditions: (1) The use of boats is not permitted.

(2) During the open season, fishing shall be permitted each day from one hour before sunrise to one hour after sunset. Use of artificial lights will not be permitted.

(3) The use of archery equipment is not permitted.

Cold Springs National Wildlife Refuge, (Headquarters: Umatilla National Wildlife Refuge, P.O. Box 239, Umatilla, OR 97882).

Special Conditions: (1) The refuge is closed to sport fishing during the migratory waterfowl hunting season.

(2) Boats without motors may be used for purpose of fishing.

Hart Mountain National Antelope Refuge, (Headquarters: Sheldon-Hart Mountain National Antelope Refuge, P.O. Box 111, Lakeview, OR 97630).

Klamath Forest National Wildlife Refuge (Headquarters: Tule Lake National Wildlife Refuge, Route 1, Box 74, Tulelake, CA 96134).

Special Condition: Use of boats is not permitted.

Malheur National Wildlife Refuge, P.O. Box 11, Burns, OR 97720.

Special Conditions: (1) Refuge waters, with the exception of Krumbo Reservoir, are closed to the use of boats for fishing purposes.

(2) The use of motors on boats is not permitted.

McKay Creek National Wildlife Refuge (Headquarters: Umatilla National Wildlife Refuge, P.O. Box 239, Umatilla, OR 97882).

Special Condition: The refuge is closed to sport fishing during the migratory waterfowl hunting season.

Upper Klamath National Wildlife Refuge (Headquarters: Klamath Basin National Wildlife Refuge, Route 1, Box 74, Tulelake, CA 96134).

Special Condition: Speed boats shall not exceed ten miles per hour in any stream, creek, or canal, and that portion of Pelican Bay west of a line beginning at a point on the north shore of Pelican Bay one-fourth mile east of Crystal Creek and extending due south to opposite shore of the lake.

William L. Finley National Wildlife Refuge, (Route 2, Box 208, Corvallis, OR 97330).

Special Conditions: (1) Use of boats is not permitted.

(2) During the open season, fishing shall be permitted each day from one hour before sunrise to one hour after sunset. Use of artificial lights will not be permitted.

(3) The use of archery equipment is not permitted.

The provisions of these special regulations supplement the regulations which govern fishing on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1977.

WILLIAM H. MEYER,
Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc.76-35737 Filed 12-3-76;8:45 am]

Title 10—Energy

CHAPTER I—NUCLEAR REGULATORY COMMISSION

PART 2—RULES OF PRACTICE

Special Procedures Applicable to Adjudicatory Proceedings Involving Restricted Data or Other National Security Information

Section 181 of the Atomic Energy Act of 1954, as amended, provides in part that in the case of Nuclear Regulatory Commission ("Commission") proceedings which involve Restricted Data or defense information, the Commission shall provide by regulation for such parallel procedures as will effectively safeguard and prevent disclosure of Restricted Data or defense information to unauthorized persons with minimum impairment of the procedural rights which would be available if Restricted Data or defense information were not involved.

Commission regulations which implement the above cited portion of section 181 in the case of proceedings involving Restricted Data are set forth in 10 CFR Part 2, Subpart I. Subpart I as it presently appears in 10 CFR Part 2 has remained essentially unchanged for the past fourteen years, and no occasion has yet arisen where Subpart I was required to be fully applied to any licensing proceeding. Nevertheless the occasion may arise in the future when classified information may become included in Commisison proceedings, and the Commission has reviewed Subpart I with a view toward updating the provisions set forth therein. The revised Subpart I set forth below is essentially the same as the old Subpart, except that (1) National Security information has been included along with Restricted Data, (2) The Subpart has been clarified so as to clearly apply to licensing proceedings required by law to be determined on the record after opportunity for an adjudicatory hearing, (3) The Commission itself (rather than the presiding officer) would act on requests for access to classified information where the information originated in another Government agency, (4) Access would not be granted to classified information which originated in another government agency if the originating agency objects in writing to granting of access, and (5) A party requesting access to classified information must execute an agreement not to disclose the information without authority.

In promulgating these amendments the Commission believes it desirable to emphasize that while parties to affected proceedings have an obligation to avoid introducing classified information where it is practicable to do so, this obligation in no way detracts from the concomitant obligation of parties to come forward with relevant and material documents whether or not classified.

As was true for the original Subpart I, the revised Subpart I applies only to classified information in the possession of or under the control of the Commission. It does not apply to discovery of classified information in the possession of or under the control of applicants for Commission licenses or permits or other persons or agencies. Requests for classified information in the possession or control of applicants or other persons or agencies would be governed by 10 CFR 2.740–2.742, and the Commission expects that any significant questions regarding discovery of such classified information in Commission proceedings would be certified to the Atomic Safety and Licensing Appeal Board and Commission for decision. 10 CFR 2.718(i), 2.785(d).

Since the amendments which follow relate to rules of agency procedure and practice, notice of proposed rule making and public procedure thereon are not required by section 553 of title 5 of the United States Code. Accordingly, pursuant to section 181 of the Atomic Energy Act of 1954, as amended, section 201 of the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of title 5 of the United States Code, the following amendment to title 10 of the Code of Federal Regulations, Part 2 is published as a document subject to codification.

§ 2.785 [Amended]

1. In section 2.785(b)(1), the concluding clause "except those functions referred to in § 2.905(c), (g), and (h)." is revised to read "except those functions referred to in § 2.905(c), (e)(2), (g), and (h)(2)."

2. Subpart I of 10 CFR Part 2 is amended in its entirety to read as follows:

Subpart I—Special Procedures Applicable to Adjudicatory Proceedings Involving Restricted Data and/or National Security Information

Sec.

Sec.
2.913 Review of restricted data or other national security information received in evidence.

AUTHORITY: Sec. 181, Pub. L. 83-703, 68 Stat. 953 (42 U.S.C. 2231); sec. 201, Pub. L. 93-438, 88 Stat. 1242 (42 U.S.C. 5841).

Subpart I—Special Procedures Applicable to Adjudicatory Proceedings Involving Restricted Data and/or National Security Information

§ 2.900 Purpose.

This subpart is issued pursuant to section 181 of the Atomic Energy Act of 1954, as amended, and section 201 of the Energy Reorganization Act of 1974, as amended, to provide such procedures in proceedings subject to this part as will effectively safeguard and prevent disclosure of Restricted Data and National Security Information to unauthorized persons, with minimum impairment of procedural rights.

§ 2.901 Scope.

This subpart applies to all proceedings subject to subpart G.

§ 2.902 Definitions.

As used in this subpart:

(a) "Government agency" means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America, which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Government.

(b) "Interested party" means a party having an interest in the issue or issues to which particular Restricted Data or National Security Information is relevant. Normally the interest of a party in an issue may be determined by examination of the notice of hearing, the answers and replies.

(c) The phrase "introduced into a proceeding" refers to the introduction or incorporation of testimony or documentary matter into any part of the official record of a proceeding subject to this part.

(d) "National Security Information" means information that has been classified pursuant to Executive Order 11652, as amended.

(e) "Party," in the case of proceedings subject to this subpart includes a person admitted as a party pursuant to § 2.714 or in interested State admitted pursuant to § 2.715(c).

§ 2.903 Protection of restricted data and national security information.

Nothing in this subpart shall relieve any person from safeguarding Restricted Data or National Security Information in accordance with the applicable provisions of laws of the United States and rules, regulations or orders of any Government Agency.

§ 2.904 Classification assistance.

On request of any party to a proceeding or of the presiding officer, the Commission will designate a representative to advise and assist the presiding officer and the parties with respect to security classification of information and the safeguards to be observed.

§ 2.905 Access to restricted data and national security information for parties; security clearances.

(a) Access to restricted data and national security information introduced into proceedings. Except as provided in paragraph (h) of this section, restricted data or national security information introduced into a proceeding subject to this part will be made available to any interested party having the required security clearance; to counsel for an interested party provided the counsel has the required security clearance; and to such additional persons having the required security clearance as the Commission or the presiding officer determined are needed by such party for adequate preparation or presentation of his case. Where the interest of such party will not be prejudiced, the Commission or presiding officer may postpone action upon an application for access under this subparagraph until after a notice of hearing, answers, and replies have been filed.

(b) Access to Restricted Data or National Security Information not introduced into proceedings. (1) On application showing that access to Restricted Data or National Security Information may be required for the preparation of a party's case, and except as provided in paragraph (h) of this section, the Commission or the presiding officer will issue an order granting access to such Restricted Data or National Security Information to the party upon his obtaining the required security clearance, to counsel for the party upon their obtaining the required security clearance, and to such other individuals as may be needed by the party for the preparation and presentation of his case upon their obtaining the required clearance.

(2) Where the interest of the party applying for access will not be prejudiced, the Commission or the presiding officer may postpone action on an application pursuant to this paragraph until after a notice of hearing, answers and replies have been filed.

(c) The Commission will consider requests for appropriate security clearances in reasonable numbers pursuant to this section. A reasonable charge will be made by the Commission for costs of security clearance pursuant to this section.

(d) The presiding officer may certify to the Commission for its consideration and determination any questions relating to access to Restricted Data or National Security Information arising under this section. Any party affected by a determination or order of the presiding officer under this section may appeal forthwith to the Commission from the determination or order. The filing by the staff of an appeal from an order of a presiding officer granting access to Restricted Data or National Security Information shall stay the order pending determination of the appeal by the Commission.

(e) Application granting access to restricted data or national security information. (1) An application under this section for orders granting access to restricted data or national security information not received from another Government agency will normally be acted upon by the presiding officer, or if a proceeding is not before a presiding officer, by the Commission. (2) An application under this section for orders granting access to restricted data or national security information where the information has been received by the Commission from another Government agency will be acted upon by the Commission.

(f) To the extent practicable, an application for an order granting access under this section shall describe the subjects of Restricted Data or National Security Information to which access is desired and the level of classification (confidential, secret or other) of the information; the reasons why access to the information is requested; the names of individuals for whom clearances are requested; and the reasons why security clearances are being requested for those individuals.

(g) On the conclusion of a proceeding, the Commission will terminate all orders issued in the proceeding for access to Restricted Data or National Security Information and all security clearances granted pursuant to them; and may issue such orders requiring the disposal of classified matter received pursuant to them or requiring the observance of other procedures to safeguard such classified matter as it deems necessary to protect Restricted Data or National Security information.

(h) Refusal to grant access to restricted data or national security information. (1) The Commission will not grant access to restricted data or national security information unless it determines that the granting of access will not be inimical to the common defense and security. (2) Access to Restricted Data or National Security Information which has been received by the Commission from another Government agency will not be granted by the Commission if the originating agency determines in writing that access should not be granted. The Commission will consult the originating agency prior to granting access to such data or information received from another Government agency.

§ 2.906 Obligation of parties to avoid introduction of restricted data or national security information.

It is the obligation of all parties in a proceeding subject to this part to avoid, where practicable, the introduction of Restricted Data or National Security Information into the proceeding. This obligation rests on each party whether or not all other parties have the required security clearance.

§ 2.907 Notice of intent to introduce restricted data or national security information.

(a) If, at the time of publication of a notice of hearing, it appears to the staff that it will be impracticable for it to avoid the introduction of Restricted Data or National Security Information into the proceeding, it will file a notice of intent to introduce Restricted Data or National Security Information.

(b) If, at the time of filing of an answer to the notice of hearing it appears to the party filing that it will be impracticable for the party to avoid the introduction of Restricted Data or National Security Information into the proceeding, the party shall state in the answer a notice of intent to introduce Restricted Data or National Security Information into the proceeding.

(c) If, at any later stage of a proceeding, it appears to any party that it will be impracticable to avoid the introduction of Restricted Data or National Security Information into the proceeding, the party shall give to the other parties prompt written notice of intent to introduce Restricted Data or National Security Information into the proceeding.

(d) Restricted Data or National Security Information shall not be introduced into a proceeding after publication of a notice of hearing unless a notice of intent has been filed in accordance with § 2.908, except as permitted in the discretion of the presiding officer when it is clear that no party or the public interest will be prejudiced.

§ 2.908 Contents of notice of intent to introduce restricted data or other national security information.

(a) A party who intends to introduce Restricted Data or other National Security Information shall file a notice of intent with the Secretary. The notice shall be unclassified and, to the extent consistent with classification requirements, shall include the following:

(1) The subject matter of the Restricted Data or other National Security Information which it is anticipated will be involved;

(2) The highest level of classification of the information (confidential, secret, or other);

(3) The stage of the proceeding at which he anticipates a need to introduce the information; and

(4) The relevance and materiality of the information to the issues on the proceeding.

(b) In the discretion of the presiding officer, such notice, when required by § 2.907(c), may be given orally on the record.

§ 2.909 Rearrangement or suspension of proceedings.

In any proceeding subject to this part where a party gives a notice of intent to introduce Restricted Data or other National Security Information, and the presiding officer determines that any other interested party does not have required security clearances, the presiding officer may in his discretion:

(a) Rearrange the normal order of the proceeding in a manner which gives such interested parties an opportunity to obtain required security clearances with minimum delay in the conduct of the proceeding.

(b) Suspend the proceeding or any portion of it until all interested parties have had opportunity to obtain required security clearances. No proceeding shall be suspended for such reasons for more than 100 days except with the consent of all parties or on a determination by the presiding officer that further suspension of the proceeding would not be contrary to the public interest.

(c) Take such other action as he determines to be in the best interest of all parties and the public.

§ 2.910 Unclassified statements required.

(a) Whenever Restricted Data or other National Security Information is introduced into a proceeding, the party offering it shall submit to the presiding officer and to all parties to the proceeding an unclassified statement setting forth the information in the classified matter as accurately and completely as possible.

(b) In accordance with such procedures as may be agreed upon by the parties or prescribed by the presiding officer, and after notice to all parties and opportunity to be heard thereon, the presiding officer shall determine whether the unclassified statement or any portion of it, together with any appropriate modifications suggested by any party, may be substituted for the classified matter or any portion of it without prejudice to the interest of any party or to the public interest.

(c) If the presiding officer determines that the unclassified statement, together with such uunclassified modifications as he finds are necessary or appropriate to protect the interest of other parties and the public interest, adequately sets forth information in the classified matter which is relevant and material to the issues in the proceeding, he shall direct that the classified matter be excluded from the record of the proceeding. His determination will be considered by the Commission as a part of the decision in the event of review.

(d) If the presiding officer determines that an unclassified statement does not adequately present the information contained in the classified matter which is relevant and material to the issues in the proceeding, he shall include his reasons in his determination. This determination shall be included as part of the record and will be considered by the Commission in the event of review of the determination.

(e) The presiding officer may postpone all or part of the procedures established in this section until the reception of all other evidence has been completed. Service of the unclassified statement required in paragraph (a) of this section shall not be postponed if any party does not have access to Restricted Data or other National Security Information.

§ 2.911 Admissibility of restricted data or other national security information.

A presiding officer shall not receive any Restricted Data or other National Security Information in evidence unless:

(a) The relevance and materiality of the Restricted Data or other National Security Information to the issues in the preceeding, and its competence, are clearly established; and

(b) The exclusion of the Restricted Data or other National Security Information would prejudice the interests of a party or the public interest.

§ 2.912 Weight to be attached to classified evidence.

In considering the weight and effect of any Restricted Data or other National Security Information received in evidence to which an interested party has not had opportunity to receive access, the presiding officer and the Commission shall give to such evidence such weight as is appropriate under the circumstances, taking into consideration any lack of opportunity to rebut or impeach the evidence.

§ 2.913 Review of Restricted data or other National Security Information received in evidence.

At the close of the reception of evidence, the presiding officer shall review the record and shall direct that any Restricted Data or other National Security Information be expunged from the record where such expunction would not prejudice the interests of a party or the public interest. Such directions by the presiding officer will be considered by the Commission in the event of review of the determinations of the presiding officer.

(Sec. 181, Pub. L. 83-703, 68 Stat. 953 (42 U.S.C. 2231); Sec. 201, Pub. L. 93-438, 88 Stat. 1242 (42 U.S.C. 5841).)

Effective date: The foregoing revised subpart becomes effective on January 5, 1977.

Dated at Washington, D.C. this 1st day of December, 1976.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc.76-35810 Filed 12-3-76;8:45 am]

PART 40—LICENSING OF SOURCE MATERIAL

Use of Depleted Uranium In Industrial Products or Devices

On January 10, 1975, the Atomic Energy Commission published in the FEDERAL REGISTER (40 FR 2209) proposed amendments to its regulations in 10 CFR Part 40 to issue a general license to receive, acquire, possess, use, or transfer depleted uranium in industrial products or devices for mass-volume applications, to set out requirements for issuance of specific licenses to manufacture, import,

or transfer industrial products and devices for use under the proposed general license, and to define depleted uranium. Interested persons were invited to submit written comments and suggestions for consideration in connection with the proposed amendments by February 24, 1975.

On January 19, 1975, the Nuclear Regulatory Commission, established by the Energy Reorganization Act of 1974 (Pub. L. 93-438), assumed the licensing and related regulatory functions of the former Atomic Energy Commission.

One commentator recommended that the limiting percentage of uranium-235 in depleted uranium be lowered from 0.711 percent to about 0.3 percent by weight. Defining depleted uranium in § 40.4(o) as uranium in which the isotope uranium-235 is less than 0.711 weight percent is consistent with enrichment service practice and standards for protection against radiation. Depleted uranium is available from enriching services as tails materials in desired assays ranging from 0.20 weight up to 0.70 weight percent uranium-235. In the Nuclear Regulatory Commission's regulation, "Standards for Protection Against Radiation," 10 CFR Part 20, a single value of 3.6×10^{-7} curies per gram of uranium is given as the specific activity of depleted uranium and, therefore, applies to uranium depleted by any amount in the isotope uranium-235.

Several commentators asked if uranium mill tailings are considered depleted uranium and are used in industrial products or devices. Depleted uranium is the tails from the uranium enrichment process (in which a fraction of the uranium-235 is removed from the total uranium present) and not the tails from the milling process (in which a fraction of the total uranium present is removed from ores). The ore residue contains a lower concentration of uranium than the original ore, but the remaining uranium is not depleted in any of its species of atoms of uranium by the milling process. Furthermore, the mill tailings (a sandy ore residue) would not provide the concentrated mass in a small volume sought for the industrial products or devices covered by the general license. Thus, mill tailings are not depleted uranium and cannot be used pursuant to the general license set forth below.

Another commentator expressed the opinion that the proposed amendments of 10 CFR Part 40 comprise a significant action under the National Environmental Policy Act of 1969 and an environmental impact statement is thus required. The January 10, 1975, FEDERAL REGISTER notice stated on page 2210 that the Atomic Energy Commission had determined that an environmental impact statement pursuant to the National Environmental Policy Act of 1969 need not be prepared in connection with the promulgation of the regulations because they will not significantly affect the quality of the human environment. An environmental impact appraisal setting forth the basis for that determination was made available January 8, 1975, and may be inspected at the Nuclear Regulatory Commission's Public Document Room at 1717 H Street NW, Washington, D.C. Single copies of the environmental impact appraisal may be obtained by writing the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Office of Standards Development.

After consideration of the comments received and other factors involved, the Nuclear Regulatory Commission has adopted the proposed amendments with certain modifications which reflect creation of the NRC and include minor editorial changes of a clarifying nature.

In § 40.25(c)(1)(iii), the phrase "procedures furnished under" have been changed to "procedures identified in" because § 40.25(c)(1)(ii) requires a registrant to furnish a statement certifying that procedures have been developed rather than to furnish the procedures themselves.

In §§ 40.25(d) and 40.35(a), the conditions of the licenses have been amended to require that persons who transfer depleted uranium for use under § 40.25 provide a copy of the general license in § 40.25 and a copy of Form NRC 244 to each transferee (plus a note explaining that use of the product or device containing depleted uranium is regulated by the Agreement State in which the transferee is located). Under these conditions, the users will be informed of the need to register and other requirements of the general license.

In § 40.34(a)(1), a new subdivision (iii) has been added to clarify that each industrial product or device for which an application is submitted must provide unique benefits as a result of the presence of depleted uranium for a mass-volume application in the product or device. (Unique benefits means that the demonstrated usefulness of the industrial product or device is enhanced by the physical properties of a concentrated mass of depleted uranium in a small volume of the product or device. When such use offers a clear advantage, even of limited degree, over other materials the "unique" property will be considered to be satisfied.)

In the case of industrial products or devices whose unique benefits are questionable, § 40.34(a)(2) provides that the Commission will approve an application for a specific license only if the product or device under consideration is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment. Thus, § 40.34(a)(2) will eliminate unnecessary regulatory costs by reducing the number of license applications for industrial products or devices having marginal benefit or containing depleted uranium for a trivial mass-volume purpose.

To provide positive identification of industrial products or devices containing depleted uranium, a new paragraph (ii) has been added to § 40.35(a)(2) requiring the labeling or marking of each unit to state that the receipt, possession, use, and transfer of the product or device are subject to a general license or the equivalent and the regulations of the NRC or an Agreement State.

In § 40.35(a)(4)(ii), the phrase "upon request of that Agency" has been deleted from the end of the last sentence. As a result each person licensed under § 40.34(a) will be clearly required to file with each responsible Agreement State Agency a report which would furnish the information specified in § 40.35(a)(4)(ii) or state that no transfers were made to that Agreement State during the reporting period.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of title 5 of the United States Code, the following amendments to Title 10, Chapter I, Code of Federal Regulations, Part 40 are published as a document subject to codification.

1. A new § 40.4(o) is added to 10 CFR Part 40 to read as follows:

§ 40.4 Definitions.

As used in this Part:

* * * * *

(o) "Depleted uranium" means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

2. A new § 40.25 is added to 10 CFR Part 40 to read as follows:

§ 40.25 General license for use of certain industrial products or devices.

(a) A general license is hereby issued to receive, acquire, possess, use, or transfer, in accordance with the provisions of paragraphs (b), (c), (d), and (e) of this section, depleted uranium contained in industrial products or devices for the purpose of providing a concentrated mass in a small volume of the product or device.

(b) The general license in paragraph (a) of this section applies only to industrial products or devices which have been manufactured or imported either in accordance with a specific license issued to the manufacturer or importer of the products or devices pursuant to § 40.34(a) or in accordance with a specific license issued to the manufacturer by an Agreement State which authorizes manufacture of the products or devices for distribution to persons generally licensed by the Agreement State.

(c)(1) Persons who receive, acquire, possess, or use depleted uranium pursuant to the general license established by paragraph (a) of this section shall file Form NRC 244, "Registration Certificate—Use of Depleted Uranium Under General License," with the Director of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. The form shall be submitted within 30 days after the first receipt or acquisition of such depleted uranium. The registrant shall furnish on Form NRC 244 the following information

and such other information as may be required by that form:

(i) Name and address of the registrant;

(ii) A statement that the registrant has developed and will maintain procedures designed to establish physical control over the depleted uranium described in paragraph (a) of this section and designed to prevent transfer of such depleted uranium in any form, including metal scrap, to persons not authorized to receive the depleted uranium; and

(iii) Name and/or title, address, and telephone unmber of the individual duly authorized to act for and on behalf of the registrant in supervising the procedures identified in paragraph (c) (1) (ii) of this section.

(2) The registrant possessing or using depleted uranium under the general license established by paragraph (a) of this section shall report in writing to the Director of Inspection and Enforcement, any changes in information furnished by him in the Form NRC 244 "Registration Certificate—Use of Depleted Uranium Under General License." The report shall be submitted within 30 days after the effective date of such change.

(d) A person who receives, acquires, possesses, or uses depleted uranium pursuant to the general license established by paragraph (a) of this section:

(1) Shall not introduce such depleted uranium, in any form, into a chemical, physical, or metallurgical treatment or process, except a treatment or process for repair or restoration of any plating or other covering of the depleted uranium.

(2) Shall not abandon such depleted uranium.

(3) Shall transfer or dispose of such depleted uranium only by transfer in accordance with the provisions of § 40.51. In the case where the transferee receives the depleted uranium pursuant to the general license established by paragraph (a) of this section, the transferor shall furnish the transferee a copy of this section and a copy of Form NRC 244. In the case where the transferee receives the depleted uranium pursuant to a general license contained in an Agreement State's regulation equivalent to this section, the transferor shall furnish the transferee a copy of this section and a copy of Form NRC 244 accompanied by a note explaining that use of the product or device is regulated by the Agreement State under requirements substantially the same as those in this section.

(4) Within 30 days of any transfer, shall report in writing to the Director of Inspection and Enforcement the name and address of the person receiving the source material pursuant to such transfer.

(5) Shall export such depleted uranium only in accordance with the provisions of §§ 40.23 and 40.33.

(e) Any person receiving, acquiring, possessing, using, or transferring depleted uranium pursuant to the general license established by paragraph (a) of this section is exempt from the requirements of Part 20 of this chapter with respect to the depleted uranium covered by that general license.

3. In 10 CFR Part 40, § 40.32 is amended by amending the section heading, amending paragraph (e) by substituting a semicolon for the final period and adding the word "and" after the semicolon, and adding a new paragraph (f) to read as follows:

§ 40.32 General requirements for issuance of specific licenses.

* * * * *

(f) The applicant satisfies any applicable special requirements contained in § 40.34.

4. A new § 40.34 is added to 10 CFR Part 40 to read as follows:

§ 40.34 Special requirements for issuance of specific licenses.

(a) Depleted uranium contained in industrial products and devices for mass-volume applications: Requirements for license to manufacture, import, or transfer. (1) An application for a specific license to manufacture industrial products and devices containing depleted uranium, or to import or to transfer such products or devices, for use pursuant to § 40.25 or equivalent regulations of an Agreement State, will be approved if:

(i) The applicant satisfies the general requirements specified in § 40.32;

(ii) The applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses, and potential hazards of the industrial product or device to provide reasonable assurance that possession, use, or transfer of the depleted uranium in the product or device is not likely to cause any individual to receive in any period of one calendar quarter a radiation dose in excess of 10 percent of the limits specified in § 20.101(a) of this chapter; and

(iii) The applicant submits sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass-volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

(2) In the case of an industrial product or device whose unique benefits are questionable, the Commission will approve an application for a specific license under this paragraph only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

(3) The Commission may deny an applicant for a specific license under this paragraph if the end uses of the industrial product or device cannot be reasonably foreseen.

5. A new § 40.35 is added to 10 CFR Part 40 to read as follows:

§ 40.35 Conditions of specific licenses issued pursuant to § 40.34.

(a) Each person licensed pursuant to § 40.34(a) shall:

(1) Maintain the level of quality control required by the license in the manufacture of the industrial product or device, and in the installation of the depleted uranium into the product or device;

(2) Label or mark each unit to: (i) Identify the manufacturer or importer of the product or device and the number of the license under which the product or device was manufactured or imported, the fact that the product or device contains depleted uranium, and the quantity of depleted uranium in each product or device; and (ii) State that the receipt, possession, use, and transfer of the product or device are subject to a general license or the equivalent and the regulations of the U.S. NRC or of an Agreement State;

(3) Assure that the depleted uranium before being installed in each product or device has been impressed with the following legend clearly legible through any plating or other covering: "Depleted Uranium";

(4) (i) Furnish a copy of the general license contained in § 40.25 and a copy of Form NRC 244 to each person to whom he transfers source material in a product or device for use pursuant to the general license contained in § 40.25; or

(ii) Furnish a copy of the general license contained in the Agreement State's regulation equivalent to § 40.25 and a copy of the Agreement State's certificate, or alternately, furnish a copy of the general license contained in § 40.25 and a copy of Form NRC 244 to each person to whom he transfers source material in a product or device for use pursuant to the general license of an Agreement State. If a copy of the general license in § 40.25 and a copy of Form NRC 244 are furnished to such person, they shall be accompanied by a note explaining that use of the product or device is regulated by the Agreement State under requirements substantially the same as those in § 40.25; and

(5) (i) Report to the Director of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, all transfers of industrial products or devices to persons for use under the general license in § 40.25. Such report shall identify each general licensee by name and address, an individual by name and/or position who may constitute a point of contact between the Commission and the general licensee, the type and model number of device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within 30 days after the end of each calendar quarter in which such a product or device is transferred to the generally licensed person. If no transfers have been made to persons generally licensed under § 40.25 during the reporting period, the report shall so indicate;

(ii) Report to the responsible Agreement State Agency all transfers of industrial products or devices to persons for use under the general license in the Agreement State's regulation equivalent to § 40.25. Such report shall identify each

general licensee by name and address, an individual by name and/or position who may constitute a point of contact between the Agency and the general licensee, the type and model number of device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within 30 days after the end of each calendar quarter in which such product or device is transferred to the generally licensed person. If no transfers have been made to a particular Agreement State during the reporting period, this information shall be reported to the responsible Agreement State Agency;

(iii) Keep records showing the name, address, and a point of contact for each general licensee to whom he transfers depleted uranium in industrial products or devices for use pursuant to the general license provided in § 40.25 or equivalent regulations of an Agreement State. The records shall be maintained for a period of two years and shall show the date of each transfer, the quantity of depleted uranium in each product or device transferred, and compliance with the report requirements of this section.

Effective date: These amendments become effective on January 5, 1977.

(Secs. 62, 65, 161, 182, 183, Pub. L. 83-703, 68 Stat. 932, 933, 948, 953, 954 (42 U.S.C. 2092, 2095, 2201, 2232, 2233); secs. 201, 301, Pub. L. 93-438, 88 Stat. 1242, 1249 (42 U.S.C. 5841, 5871).)

Dated at Washington, D.C. this 1st day of December 1976.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc.76-35740 Filed 12-3-76;8:45 am]

PART 50—LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

Codes and Standards for Nuclear Power Plants

On September 30, 1976, the Nuclear Regulatory Commission published in the FEDERAL REGISTER (41 FR 43201) proposed amendments to its regulations, 10 CFR Part 50, "Licensing of Production and Utilization Facilities," which would incorporate a new edition and new addenda of referenced national codes.

The proposed amendment to § 50.55a would provide that the edition and addenda of referenced codes whose requirements must be met include only those editions through 1974 and only those addenda through the Summer 1975 Addenda.

Interested persons were invited to submit written comments for consideration in connection with the proposed amendment by November 1, 1976. No comments were received. The Commission has adopted the proposed amendment without modification.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of title 5 of the United States Code, the following amendments to Title 10, Chapter I, Code of Federal Regulations, Part 50 are published as a document subject to codification.

In § 50.55a of 10 CFR Part 50, paragraph (b) is revised to read as follows:

§ 50.55a Codes and Standards.

Each operating license for a boiling or pressurized water-cooled nuclear power facility shall be subject to the conditions in paragraph (g) of this section and each construction permit for a utilization facility shall be subject to the following conditions in addition to those specified in § 50.55:

* * * * *

(b) As used in this section, references[1] to editions of Criteria, Codes and Standards include only those editions through 1974; references[1] to Addenda include only those Addenda through the Summer 1975 Addenda.

* * * * *

Effective date: These amendments become effective on January 5, 1977.

(Secs. 103, 104, 1611, Pub. Law 83-703; 68 Stat. 936, 937, 948 (42 U.S.C. 2133, 2134, 2201(i)).)

Dated at Bethesda, Md. this 3rd day of November 1976.

For the Nuclear Regulatory Commission.

LEE V. GOSSICK,
Executive Director for Operations.

[FR Doc.76-35980 Filed 12-3-76;9:41 am]

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

Crude Oil Prices; One Month Extension of Current Crude Oil Ceiling Prices Pending Further Corrective Action to Comply With Statutory Composite Price Levels

A. *Introduction and summary.* On November 16, 1976, the Federal Energy Administration ("FEA") issued a notice of proposed rulemaking and public hearing (41 FR 50960, November 18, 1976) in order to consider what steps FEA should take to comply with the requirement in section 8(c) of the Emergency Petroleum Allocation Act, as amended ("EPAA"), to make adjustments in crude oil price levels to compensate for actual weighted average first sale prices of domestic crude oil which have exceeded the statutory maximum weighted average first sale price limitations. In its notice of proposed rulemaking, FEA noted that the amounts in excess of the statutory limits appear to have increased significantly in recent months, due primarily to recent statutory and regulatory amendments relating to qualification for stripper well status and the definition of "property," even though upper and lower tier crude oil price ceilings have remained since July 1, 1976, at the maximum levels permissible for June, 1976.

Alternative proposals upon which comments were requested are: (1) A rollback of upper tier price levels by an estimated $1.40 to $1.60 per barrel during December, 1976, and January, 1977, in order to compensate fully by January 31, 1977, for cumulative pricing overages since February which, as of September (preliminary data), totalled nearly $200 million; (2) a continuation of the present limitation on crude oil ceiling prices at their June, 1976, levels through December, 1976, in order to obtain more complete data, followed by appropriate compensatory action extending over a seven-month period (January to July, 1977) in order to compensate fully by July 31, 1977, for cumulative pricing overages through December, 1976, while also minimizing disruptive effects on domestic production which might result from option (1); and (3) depending upon the results of data for December, 1976, under alternative (2), further continue the price freeze pending consideration by Congress of an energy action to be submitted by FEA pursuant to section 8(e) of the EPAA, under which a one-time increase in the statutory composite price for January, 1977, sufficient to compensate for total cumulative receipts projected to exist at that time, would be proposed.

FEA noted that, if preliminary results for September, 1976, are confirmed by available data in December, 1976, a continuation of the present freeze on crude oil price ceilings until July 31, 1977, would be sufficient to correct fully for all crude oil pricing overages which have occurred or which shall have occurred since February, 1976. However, later data may indicate that this course of action would not be sufficient, and in such event FEA would be empowered under this proposal to reduce upper tier ceiling price levels to the extent necessary to reduce cumulative excess revenues to zero by July 31, 1977.

In response to the notice of proposed rulemaking, FEA received 18 written comments, including four late comments. In addition, seven oral presentations were made at the public hearings held on November 29, 1976. FEA considered all of these comments and presentations, as well as other information available to it, in arriving at the regulatory amendments adopted today.

For the reasons indicated below, FEA has today issued Price Schedule No. 4 which extends the current freeze until December 31, 1976, in order to obtain more complete data before taking further corrective action to compensate for pricing overages. In addition, the proposed regulatory amendments, which provide FEA with authority to require price reductions, if necessary, are adopted as proposed. This rulemaking is continued with respect to a final decision on the appropriate action to be taken with respect to crude oil ceiling prices during the period January 1977–July 1977 to achieve compliance with the composite price constraints.

[1] These incorporation by reference provisions were approved by the Director of the Federal Register on March 17, 1972 and May 4, 1973.

B. *Comments on section 8(c) of the EPAA.* Many of the comments received expressed views on the basic question of whether section 8(c) of the EPAA is sufficiently flexible to permit FEA to take any corrective action after January 31, 1977, with respect to some or all of the overages which occurred prior to that date, and thus allow FEA to choose the second or third alternative proposed. All of the comments which addressed this issue indicated that section 8(c) does not require FEA to take full corrective action before February 1, 1977, to compensate for pricing overages which occurred during the period February 1, 1976, through January 31, 1977.

FEA has reviewed these comments carefully and has concluded that there is no statutory prohibition against FEA extending whatever corrective action it determines is appropriate into the third six-month period ending July 31, 1977. Indeed, since the exact nature of the appropriate corrective action is not yet ascertainable due to the lack of complete data on which such action must be premised, it seems obvious that section 8(c) was designed specifically to allow such corrective action as may be necessary and appropriate to occur in the corresponding period after complete data becomes available.

C. *FEA decision.* None of the comments received supported the first alternative proposed (a rollback of upper tier price levels by approximately $1.40 to $1.60 per barrel during December, 1976, and January, 1977, in order to compensate by January 31, 1977, for all projected overages by that date). Comments from consumers and state governments as well as producers supported FEA's initial view that the first alternative might have such adverse effects as a temporary reduction in domestic crude oil production and a cash-flow reduction which might delay or reduce drilling activities planned for 1977. It was also suggested that it would be inappropriate to take a major price-reduction action (unless clearly required by section 8(c) of the EPAA) until more complete data reflecting the effects of the price freeze and recent statutory and regulatory amendments was received.

A majority of the comments received supported alternative three. However, FEA has decided that it would not be appropriate to rely on the possibility that Congress may approve an energy action under which a one-time increase in the statutory composite price, sufficient to compensate for total cumulative receipts, would be proposed. Therefore, FEA has decided to continue the current price freeze until December 31, 1976, as proposed in alternative two, pending receipt of more complete data upon which to determine what further corrective action should be taken, starting January 1, 1977. Accordingly, FEA is today issuing Price Schedule No. 4 pursuant to 10 CFR 212.77, which holds upper and lower tier price levels for an additional month at the ceiling price levels of June, 1976.

Today's action also includes adoption of the proposed amendment to 10 CFR 212.77 without change. This amendment provides FEA with authority to take whatever compensating action appears necessary, including possible reductions in ceiling prices, as determined by FEA, to achieve compliance with section 8(c) of the EPAA. Although no further corrective action is contemplated until the end of December, 1976, today's amendment is necessary to clarify FEA's regulatory authority and to simplify procedures for prompt further corrective action when and to the extent necessary.

For reasons indicated in the notice of proposed rulemaking, the notice was submitted subsequent to its issuance to the Administrator of the Environmental Protection Agency for his comments concerning the impact of the proposed amendments on the quality of the environment. The Administrator had no comments to offer.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, 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, Part 212 of Chapter II, Title 10 of the Code of Federal Regulations is amended as set forth below, effective December 1, 1976.

Issued in Washington, D.C., November 30, 1976.

MICHAEL F. BUTLER,
General Counsel, Federal Energy Administration.

1. Section 212.77 (a) and (c) are revised to read as follows:

§ 212.77 Adjustments to ceiling prices.

(a) *Rule.* Notwithstanding any other provision of this Part, the FEA may, with respect to months commencing after February 29, 1976, provide for adjustments to the ceiling prices established under §§ 212.73 and 212.74 to take into account the impact of inflation, provide a production incentive, and otherwise to achieve compliance with the Act. The adjustment to reflect the impact of inflation shall be measured by the first revision of the quarterly percentage change, seasonally adjusted at annual rates, of the most recent price deflator for the gross national product, except that the combined effect of the adjustment to take into account the impact of inflation and to provide a production incentive may not result in an increase in the maximum weighted average first sale price (as defined in section 8(a) of the Act) in excess of 10 percent per year.

* * * * *

(c) *Application of price adjustments.* (1) Price adjustment schedules issued pursuant to paragraph (b) of this section shall reflect application of the price adjustment to take into account the impact of inflation and to provide a production incentive in the following manner. The combined percentage price adjustment to reflect the production incentive and the impact of inflation shall be applied in the same amount to adjust the lower and the upper tier ceiling price. To the extent that the full amount of the combined percentage price adjustment cannot be so applied, due to the limitations of section 8(a) of the Act, the available combined percentage price adjustment shall be applied in the same amount to adjust the lower and the upper tier ceiling price until only the percentage price adjustment to reflect the impact of inflation remains to be applied. Thereafter, the full percentage price adjustment to reflect the impact of inflation shall continue to be applied to adjust the upper tier ceiling price, and the portion of the percentage price adjustment to reflect the impact of inflation which remains, if any, shall be applied to adjust the lower tier ceiling price; except that in no event shall the weighted average lower tier ceiling price be reduced pursuant to this sentence below the highest level reached through application of price adjustments pursuant to this paragraph.

(2) Notwithstanding paragraph (c) (1) of this section, FEA may issue price adjustment schedules pursuant to paragraph (b) of this section which, to the extent deemed necessary by the FEA to achieve compliance with the Act, restrict further price adjustments or require reductions in ceiling prices.

2. Subpart D of part 212 is amended to add an Appendix to read as follows:

APPENDIX.—*Schedule No. 4 of monthly price adjustments, effective Dec. 1, 1976*

Month	Lower tier May 15, 1973, posted price plus [1]	Upper tier Sept. 30, 1975, posted price less [2]
February 1976	1.35	1.32
March	1.38	1.25
April	1.41	1.18
May	1.45	1.11
June	1.48	1.05
July	1.48	1.05
August	1.48	1.05
September	1.48	1.05
October	1.48	1.05
November	1.48	1.05
December	1.48	1.05

[1] The price referred to in 10 CFR 212.73(b)(1).
[2] The price referred to in 10 CFR 212.74(b)(1).

This schedule of monthly price adjustments was issued by the Federal Energy Administration on November 30, 1976, pursuant to 10 CFR 212.77. It restates without change the lower and upper tier price ceilings applicable to crude oil produced and sold in the months of February through November 1976, as determined under 10 CFR 212.73, 212.74, and 212.77, and holds the lower and upper tier price ceilings applicable to crude oil to be produced and sold in the month of December 1976, at the respective ceiling prices for the month of June 1976. This schedule is effective only until December 31, 1976. Price ceilings for 1977 will be provided by Schedule No. 5, to be issued in late December, 1976.

[FR Doc.76-35724 Filed 12-1-76;9:43 am]

Title 31—Money and Finance: Treasury

CHAPTER II—FISCAL SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER B—BUREAU OF THE PUBLIC DEBT

PART 349—ISSUE AND SALE OF BOOK-ENTRY TREASURY BILLS AND OF DEFINITIVE TREASURY BILLS TO ELIGIBLE ENTITIES

The regulations in Department of the Treasury Circular, Public Debt Series No. 27–76, set forth below, are descriptive of the issue and sale of the 52-week, 26-week and 13-week Treasury bills, and other Treasury bills, which, after specified dates, will be available, with a limited exception, only in book-entry form. The regulations governing such book-entry Treasury bills, following a notice of proposed rule making, have been finally adopted and are being published simultaneously herewith.

Treasury bills issued in book-entry form prior to the dates when they will be available only in such form are maintained under, and will continue to be subject to, the regulations set out in Subpart 0 of Department of the Treasury Circular No. 300, current revision (31 CFR, Part 306). That subpart prescribes an optional book-entry procedure, and the sale and issue of Treasury bills to which it, in part, applies are generally provided for in Department of the Treasury Circular No. 418, Second Revision, dated October 5, 1976 (31 CFR, Part 309). The Treasury bills held under Subpart 0 will continue to be convertible to definitive bills at the request of the party for whose account they are maintained.

As the fiscal policy of the United States is involved in the issue and sale of Treasury securities, it is found unnecessary to issue these regulations with notice and public procedure thereof under 5 U.S.C. 553(b), or subject to the effective date limitation of 5 U.S.C. 553(d).

Dated: December 2, 1976.

DAVID MOSSO,
Fiscal Assistant Secretary.

Chapter II of Title 31 of the Code of Federal Regulations is amended by adding Part 349 as set forth below.

Sec.

AUTHORITY: 80 Stat. 379; sec. 8, 50 Stat. 481, as amended; sec. 5, 40 Stat. 290, as amended; 5 U.S.C. 301; 31 U.S.C. 738a, 754, 754b.

§ 349.0 Authority for issue and sale.

The Secretary of the Treasury is authorized under the Second Liberty Bond Act, as amended, to issue Treasury bills of the United States on an interest-bearing basis, on a discount basis, or on a combination interest-bearing and discount basis, at such price or prices and with interest computed in such manner and payable at such time or times as he may prescribe, but not exceeding one year from the date of issue; and to fix the form, terms, and conditions thereof, and to offer them for sale on a competitive or other basis, under such regulations and upon such terms and conditions as he may prescribe.

§ 349.1 Description of Treasury bills—general—book-entry—definitive.

(a) *General.* Treasury bills are obligations of the United States, issued at a discount, promising to pay a specified amount on a specified date. They are issued only by Federal Reserve Banks and Branches, acting as Fiscal Agents of the United States, and by the Bureau of the Public Debt, Washington, D.C. 20226, pursuant to tenders accepted by the Department of the Treasury.

(b) *Book-entry Treasury bills.* Book-entry Treasury bills under this part are bills issued only in the form of entries on either the records of a Federal Reserve Bank or of the Department of the Treasury, as follows:

(1) 52-week Treasury bills issued after December 1, 1976;

(2) 26-week Treasury bills issued after June 1, 1977;

(3) 13-week Treasury bills issued on or after September 1, 1977; and

(4) Any other Treasury bills issued after September 1, 1977, including, but not limited to, tax anticipation Treasury bills.

(c) *Definitive Treasury bills for eligible entities.* Treasury bills in the form of engraved certificates will be issued on or after the dates specified in paragraph (b) of this section, and for the series shown, in the denomination of $100,000 only, and only until December 31, 1978, solely to entities required by or pursuant to, Federal, State, municipal, or other local law to hold securities in definitive form. Such entities may include, but are not limited to a State, municipality, city, township, county or any other political subdivision, public corporation or other public body, an insurance company, and a fiduciary so required to hold physical securities.

§ 349.2 Regulations.

The Treasury bills, the issue and sale of which are herein provided, shall be subject to the book-entry Treasury bill regulations set forth in Department of the Treasury Circular, Public Debt Series No. 26–76 (31 CFR, Part 350), and, to the extent applicable, to Department of the Treasury Circular No. 300, current revision (31 CFR, Part 306), the general regulations governing United States securities. Copies of the circulars may be obtained from a Federal Reserve Bank or Branch, or the Bureau of the Public Debt.

§ 349.3 Public notice of offering.

When Treasury bills are offered, tenders therefor will be invited, on a competitive and noncompetitive basis, through public notice given by the Secretary of the Treasury in the name of "The Department of the Treasury". In such notice, there will be set forth the amount of Treasury bills for which tenders are being invited, the date of issue, the CUSIP number, the date or dates when such bills will become due and payable, the date and closing hour for the receipt of tenders at the Federal Reserve Banks and Branches, and the Department of the Treasury, and the date on which payment for tenders must be made or completed.

§ 349.4 Amount of tender; price.

Tenders in response to the public notice must be for a minimum of $10,000, and tenders over that amount must be in multiples of $5,000. Definitive Treasury bills will be available, as set forth in § 349.1(c), only in the $100,000 denomination and only for the account of eligible investors. In the case of competitive tenders, the price or prices offered by the bidder for the amount or amounts applied for must be expressed on the basis of 100, with not more than three decimals, e.g., 99.925. Fractions may not be used. Noncompetitive tenders will be accepted at the average price of the competitive tenders accepted.

§ 349.5 Form of tenders.

Tenders may be submitted on printed forms and forwarded in special envelopes available from any Federal Reserve Bank or Branch. If a special envelope is not available, the inscription "Tender for Treasury Bills" should be placed on the envelope used. The instructions on the forms with respect to the submission of tenders should be observed. Tenders for book-entry Treasury bills to be maintained on the accounts of the Department of the Treasury should be submitted on special forms available for that purpose.

§ 349.6 Tenders for customers and for own account.

Banking institutions and dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions with respect to Government securities and borrowings thereon may submit tenders for the accounts of customers, provided the names of the customers are set forth in such tenders. Others will not be permitted to submit tenders except for their own account.

§ 349.7 Deposits with tenders submitted to Federal Reserve Banks.

Tenders submitted to Federal Reserve Banks and Branches by incorporated

banks and trust companies, and responsible and recognized dealers in investment securities, will be received without deposit. Tenders from all others must be accompanied by a payment of such percent of the face amount of the Treasury bills applied for as prescribed in the public notice, except that such deposit will not be required if the tenders are accompanied by an express guaranty of payment in full by an incorporated bank or trust company. Forfeiture of the deposit may be declared by the Secretary of the Treasury, if payment is not completed, in the case of accepted tenders, on the prescribed date.

§ 349.8 Payment with tenders submitted to Treasury.

Tenders for Treasury bills to be issued and maintained on book-entry accounts of the Treasury must be accompanied by full payment of the face amount of the bills applied for. A cash adjustment will be made for the difference between the par payment submitted and the actual issue price of the bills.

§ 349.9 Submission of tenders.

Tenders must be received on or before the time fixed for closing, as set forth in the public notice, at Federal Reserve Banks and Branches, and at the Bureau of the Public Debt, Washington, D.C. 20226. Tenders not timely received will be disregarded.

§ 349.10 Reservation of right.

The Secretary of the Treasury expressly reserves the right on any occasion to accept noncompetitive tenders entered in accordance with specific offerings, to reject any or all tenders or parts of tenders, and to award less than the amount applied for; and any action he may take in any such respect or respects shall be final.

§ 349.11 Acceptance of tenders.

The Department of the Treasury will determine from the tenders received the amount and price range of the accepted bids. Those at the highest prices offered will be accepted in full down to the amount required, and if the same price appears in two or more tenders and it is necessary to accept only a part of the amount offered at such price, the amount accepted at such price will be prorated in accordance with the respective amounts applied for. Public announcement of the acceptance will then be made. Those submitting tenders will be advised of the acceptance or rejection thereof by the Federal Reserve Banks or by the Treasury, depending on where such tenders were received.

§ 349.12 Payment of accepted tenders.

Settlement for accepted tenders submitted to a Federal Reserve Bank must be made or completed at such Bank in cash or other immediately available funds on or before the date specified, except that the public notice inviting tenders may provide: (a) That any qualified depositary may make such settlement by credit, on behalf of itself and its customers, up to any amount for which it shall be qualified in excess of existing deposits, when so notified by the Federal Reserve Bank of its District, or (b) that such settlement may be made in maturing Treasury bills accepted in exchange. Whenever settlement in maturing Treasury bills is authorized, a cash adjustment will be made for the difference between the par value of the maturing bills and the issue price of the new ones.

§ 349.13 Acceptance of book-entry Treasury bills for various purposes.

(a) *Acceptable as security for public deposits.* Book entry Treasury bills will be acceptable at maturity value to secure deposits of public monies.

(b) *Acceptable in payment of taxes where authorized.* The public notice inviting tenders for book-entry Treasury bills may provide that such bills will be acceptable at maturity value, whether at or before maturity, under such rules and regulations as may be prescribed, in payment of income taxes payable under the provisions of the Internal Revenue Code.

(c) *Discounting by Federal Reserve Bank of notes secured by Treasury bills.* Notes secured by book-entry Treasury bills are eligible for discount or rediscount at Federal Reserve Banks as provided under the provisions of section 13 of the Federal Reserve Act, as are notes secured by bonds and notes of the United States.

(d) *Acceptable in connection with foreign obligations held by United States.* Treasury bills will be acceptable at maturity, but not before, in payment of interest or of principal on account of obligations of foreign governments held by the United States.

§ 349.14 Taxation.

The income derived from Treasury bills, issued pursuant to this part, whether interest or gain from the sale or other disposition of the bills, shall not have any exemption, as such, and loss from the sale or other disposition of Treasury bills shall not have any special treatment, as such, under the Internal Revenue Code, or laws amendatory or supplementary thereto. The bills shall be subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but shall be exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, or any of the possessions of the United States, or by any local taxing authority. For purposes of taxation, the amount of discount at which Treasury bills are originally sold by the United States shall be considered to be interest.

§ 349.15 Relief on account of loss.

Relief on account of the loss of any Treasury bills issued pursuant to this part may be given only under the authority of, and subject to the conditions set forth in section 8 of the Act of July 8, 1937 (50 Stat. 481), as amended (31 U.S.C. 738a), and the regulations issued pursuant thereto, as set forth in Department of the Treasury Circular No. 300 (31 CFR, Part 306), insofar as applicable.

§ 349.16 Functions of Federal Reserve Banks.

Federal Reserve Banks and Branches, as Fiscal Agents of the United States, are authorized to perform all such acts as may be necessary to carry out the provisions of this circular and of any public notice or notices issued in connection with any offering of Treasury bills.

§ 349.17 Reservation as to terms of circular.

The Secretary of the Treasury reserves the right further to amend, supplement, revise or withdraw all or any of the provisions of this circular at any time, or from time to time.

[FR Doc.76-36000 Filed 12-3-76;10:23 am]

PART 350—REGULATIONS GOVERNING BOOK-ENTRY TREASURY BILLS

Adoption of Regulations

On November 1, 1976, a notice of proposed rule making was published in the FEDERAL REGISTER (41 FR 47959) with respect to regulations which are to govern the issuance of, and transactions in, all 52-week, 26-week and 13-week Treasury bills and, any other Treasury bills which, after specified dates, are to be issued, with a limited exception, only in book-entry form.

The notice explained that the elimination of securities in the form of engraved certificates would provide substantial benefits to investors, the financial community, and the Treasury by protecting against losses due to theft, mishandling and counterfeiting; by reducing costs of issuing, storing and delivering securities in physical form; and, by moderating the burden of the paperwork created by the growing volume of public debt transactions.

Under the proposed regulations, book-entry Treasury bills would be maintained through accounts either at Federal Reserve Banks or at the Department of the Treasury. Definitive Treasury bills, in the $100,000 denomination only, would be available until December 31, 1978, to investors who establish that they are legally required to hold securities in physical form. By their terms, the regulations would not apply to Treasury bills issued prior to the dates on which they would be available only in book-entry form.

Interested parties were given an opportunity to submit comments on the proposed regulations until November 24, 1976. It is noted that in a series of public meetings and special briefings held during the past several months in various parts of the country, the Department of the Treasury also undertook directly to acquaint investors, financial institutions, securities dealers, etc., about the new mandatory book-entry system, and to solicit their reactions.

Following consideration of the comments submitted in response to the notice, and after reviewing the suggestions otherwise received as a result of its public information program, the Depart-

ment of the Treasury has modified, where appropriate, the proposed regulations. Aside from editorial and other minor changes, the principal differences between the final regulations and those previously proposed are as follows:

1. Proposed § 350.6(a)(2), relating to the identification of accounts held at or through member banks of the Federal Reserve System, was modified to replace the phrase reading "provided identification of each customer account is possible by name, address, taxpayer identifying number, and includes appropriate loan transaction data" with a provision that permits more flexibility in the manner in which accounts may be maintained, and provides specific information as to the data that should be included.

2. Former § 350.7(c), which related to the issuance of confirmations of transactions involving bills in the Treasury book-entry system, was redesignated as Sec. 350.9, and reworded to indicate that its provisions would apply to all transactions affecting bills maintained in a Treasury account. As a result, the proposed § 350.9 was renumbered as § 350.10, and all subsequent sections were successively redesignated.

3. Proposed § 350.8, was modified to provide that book-entry Treasury bills maintained by or through member banks could be transferred through the Federal Reserve Bank communication system to an account maintained at the Treasury, provided such transfer occurred no later than one month before the maturity date of the bills, and was otherwise acceptable under the subpart.

Accordingly, the proposed regulations governing book-entry Treasury bills, as modified, are hereby adopted and added as Part 350 to 31 CFR, and designated as Department of the Treasury Circular, Public Debt Series No. 26–76.

Dated: December 2, 1976.

DAVID MOSSO,
Fiscal Assistant Secretary.

Subpart A—Applicability and Effect—Definitions

AUTHORITY: R.S. 3706; 40 Stat. 288, 502, 844, 1309; 42 Stat. 321; 46 Stat. 20; 48 Stat. 343; 49 Stat. 20; 50 Stat. 481; 52 Stat. 447; 53 Stat. 1359; 56 Stat. 189; 73 Stat. 622; and 85 Stat. 5, 74 (31 U.S.C. 738a, 739, 752, 752a, 753, 754, 754a, and 754b); 5 U.S.C. 301.

Subpart A—Applicability and Effect—Definitions

§ 350.0 Applicability and effect.

(a) *Applicability.* The regulations in this part govern the issuance of, and transactions in, the following Treasury bills:

(1) 52-week Treasury bills issued after December 1, 1976;

(2) 26-week Treasury bills issued after June 1, 1977;

(3) 13-week Treasury bills issued on or after September 1, 1977; and

(4) Any other Treasury bills issued after September 1, 1977, including, but not limited to, tax anticipation Treasury bills.

(b) *Effect.* The Treasury bills described in paragraph (a) shall, after the date specified therefor, be issued only in book-entry form, except as provided in Subpart D.

§ 350.1 Definition of terms in this part.

In this part, unless the context otherwise requires or indicates:

(a) "Treasury bill" means an obligation of the United States issued under Section 5 of the Second Liberty Bond Act, as amended (31 U.S.C. 754).

(b) "Book-entry Treasury bill" means any Treasury bill issued on or after the dates specified in § 350.0(a) in the form of an entry on the records of a Reserve Bank or the records of the Department of the Treasury. (See Department of the Treasury Circular, Public Debt Series No. 27–76, descriptive of the issue and sale of book-entry Treasury bills.) (31 CFR, Part 349)

(c) "Definitive Treasury bill", as used in Subpart D, means a Treasury bill of the $100,000 denomination issued in the form of an engraved certificate.

(d) "Certified request" or "certified statement", as used in Subpart C, means a request or statement signed by or on behalf of a depositor and certified by an officer authorized to certify assignments of Treasury securities under Department of the Treasury Circular No. 300, current revision, the general regulations governing U.S. securities (31 CFR, Part 306).

(e) "Bureau" means Bureau of the Public Debt, Washington, D.C. 20226.

(f) "Depositor", as used in Subpart C, means the individual, fiduciary or other entity in whose name (including, where appropriate, the title of an officer) an account is established and maintained on the books of the Treasury.

(g) "Fiduciary", as used in Subpart C, means an executor, administrator, trustee; a legal guardian, committee, conservator or similar representative appointed by a court for the estate of a minor or incompetent; a custodian under a statute authorizing gifts to minors; a natural guardian of a minor; a voluntary guardian; or a life tenant under a will.

(h) "Member bank" means any national bank, or State bank or other bank or trust company, which is a member of a Reserve Bank.

(i) "Natural guardian", as used in Subpart C, means either parent of a minor or other person acting on the minor's behalf.

(j) "Pledge" includes a pledge of, or any other security interest in, book-entry Treasury bills as collateral for loans or advances, or to secure deposits of public moneys or the performance of an obligation.

(k) "Reserve Bank" means a Federal Reserve Bank and its branches, acting as Fiscal Agent of the United States and, where indicated, acting in its individual capacity.

(l) "Taxpayer identifying number" means the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service, i.e., an individual's social security number or an employer identification number. A social security account number is composed of nine digits separated by two hyphens, for example, 123–45–6789; an employer identification number is composed of nine digits separated by one hyphen, for example, 12–3456789. The hyphens are an essential part of the numbers and must be included.

(m) "Treasury" means Department of the Treasury.

(n) "Voluntary guardian", as used in Subpart C, means the person who is acting for an individual who is incapacitated by reason of age, infirmity, or mental disability.

Subpart B—Book-Entry Treasury Bills—Federal Reserve Banks

§ 350.2 Authority of Reserve Banks.

Each Reserve Bank is hereby authorized, in accordance with this subpart, to (a) issue book-entry Treasury bills by means of entries on its records, which shall include the name of the Bank's depositor, the latter's employer identification number, where appropriate, and the amount and maturity date of the bills, including the CUSIP number of each loan; (b) issue a confirmation of transaction in the form of an advice (serially numbered or otherwise), which specifies the amount, maturity date and CUSIP number of the bills, as well as the date of the transaction; and (c) otherwise service and maintain book-entry Treasury bills.

§ 350.3 Scope and effect of book-entry Treasury bill accounts maintained by Reserve Bank under this subpart.

(a) *Scope and effect of accounts maintained by Reserve Bank.* Except as provided in Subpart D, each Reserve Bank, as Fiscal Agent of the United States, is authorized to maintain book-entry Treasury bills in accounts held in its individual capacity, under terms and conditions which indicate that the Reserve Bank will continue to maintain such deposit accounts in its individual capacity, notwithstanding application of the book-entry procedure to such bills. This paragraph is applicable, but not limited to, book-entry Treasury bills maintained:

(1) As collateral pledged to a Reserve Bank (in its individual capacity) for advances by it;

(2) For a member bank for its sole account;

(3) For a member bank held for the account of its customers (see § 350.6 of this subpart);

(4) In connection with deposits in a member bank of funds of States, municipalities, or other political subdivisions;

(5) In connection with the performance of an obligation or duty under Federal, State, municipal, or local law, or judgments or decrees of courts; or

(6) The maintenance by a Reserve Bank of book-entry Treasury bills under this paragraph shall not derogate from or adversely affect the relationships that would otherwise exist between a Reserve Bank in its individual capacity and the entities for which accounts are maintained. The Reserve Bank is authorized to take all action necessary in respect of book-entry Treasury bills to enable such Reserve Bank in its individual capacity to perform its obligations as depositary with respect to such bills.

(b) *Use as collateral under Treasury circulars.* Each Reserve Bank, as Fiscal Agent of the United States, shall hold in book-entry form Treasury bills pledged as collateral to the United States under current revisions of Department of the Treasury Circulars No. 92 and No. 176 (31 CFR, Parts 203 and 202).

§ 350.4 Transfer or pledge.

(a) *Reserve Bank records.* A transfer or a pledge of book-entry Treasury bills to a Reserve Bank (in its individual capacity or as Fiscal Agent of the United States), or to the United States, or to any transferee or pledgee eligible to maintain an appropriate book-entry account in its name with a Reserve Bank under this subpart, is effected and perfected, notwithstanding any provision of law to the contrary, by a Reserve Bank making an appropriate entry in its records of the Treasury bills transferred or pledged. The making of such an entry in the records of a Reserve Bank shall (1) have the same effect as the delivery of Treasury bills in bearer definitive form; (2) have the effect of a taking of delivery by the transferee or pledgee; (3) constitute the transferee or pledgee a holder; and (4) if a pledge, effect a perfected security interest therein in favor of the pledgee. A transfer or pledge of Treasury bills effected under this paragraph shall have priority over any transfer, pledge, or other interest, theretofore or thereafter effected or perfected under paragraph (b) of this section or in any other manner.

(b) *Member banks and others.* A transfer or a pledge of book-entry Treasury bills, or any interest therein, maintained by a Reserve Bank (in its individual capacity or as Fiscal Agent of the United States) in a book-entry account under this subpart, including book-entry Treasury bills in accounts at the Reserve Bank maintained under Sec. 350.3(a)(3) of this subpart by member banks for the account of their customers, is effected, and a pledge is perfected, by any means that would be effective under applicable law to effect a transfer or to effect and perfect a pledge of the Treasury bills, or any interest therein, if the Treasury bills were maintained by the Reserve Bank in bearer definitive form. For purposes of transfer or pledge hereunder, book-entry Treasury bills maintained by a Reserve Bank shall, notwithstanding any provision of law to the contrary, be deemed to be maintained in bearer definitive form. A Reserve Bank maintaining book-entry Treasury bills either in its individual capacity or as Fiscal Agent of the United States is not a bailee for purposes of notification of pledges of those bills under this paragraph or a third person in possession for purposes of acknowledgment of transfers thereof under this paragraph. A Reserve Bank will not accept notice or advice of a transfer or pledge effected or perfected under this paragraph, and any such notice or advice shall have no effect. A Reserve Bank may continue to deal with its depositor in accordance with the provisions of this subpart, notwithstanding any transfer or pledge effected or perfected under this paragraph.

(c) *Filing and recording unnecessary.* No filing or recording with a public recording office or officer shall be necessary or effective with respect to any transfer or pledge of book-entry Treasury bills or any interest therein.

(d) *Transfer by Reserve Banks.* A transfer of book-entry Treasury bills within a Reserve Bank shall be made in accordance with procedures established by the Reserve Bank not inconsistent with this subpart. The transfer of book-entry Treasury bills by a Reserve Bank may be made through a telegraphic transfer procedure.

(e) *Timeliness of requests.* All requests for transfer or any authorized transaction must be received prior to the maturity of the bills.

§ 350.5 Reserve Bank discharged by action on instructions—delivery of Treasury securities.

A Reserve Bank which has received book-entry Treasury bills and effected pledges, made entries regarding them, or transferred or delivered them according to the instructions of its depositor is not liable for conversion or for participation in breach of fiduciary duty even though the depositor had no right to dispose of or take other action in respect of the securities. A Reserve Bank shall be fully discharged of its obligations under this subpart by the transfer or delivery of book-entry Treasury bills upon the order of its depositor.

§ 350.6 Book-entry Treasury bill accounts.

(a) *Scope and effect of book-entry Treasury bill accounts.*—(1) *Classes of accounts.* Reserve Banks are authorized to maintain book-entry Treasury bills for member banks for bills the member banks hold for their own account, or hold for the account of their customers, and as otherwise specified in § 350.3. Purchasers of book-entry Treasury bills, on original issue or otherwise, may have such bills maintained at member banks, or in accounts maintained at entities providing securities safekeeping services for customers (*e.g.*, nonmember banks or thrift institutions, or securities dealers) which have related accounts at member banks.

(2) *Identification of accounts.* Book-entry accounts may be established in such form or forms as customarily permitted by the entity (*e.g.*, member bank, or other banking or thrift institution, or a securities dealer) maintaining them, except that each account should include data to permit both customer identification by name, address and taxpayer identifying number, as well as a determination of the Treasury bills being held in such account by amount, maturity date and CUSIP number, and of transactions relating thereto.

(3) *Pledges and transfers.* Where book-entry Treasury bills are maintained on the books of an entity for account of the pledgor or transferor thereof, such entity shall, for purposes of perfecting a pledge of such Treasury bills or effecting their delivery to a purchaser under applicable provisions of law, be the bailee to which notification of the pledge of the bills may be given or the third person in possession from which acknowledgment of the holding of the bills for the purchaser may be obtained.

(b) *Servicing book-entry Treasury bills—payment of book-entry Treasury bills at maturity.* Book-entry Treasury bills governed by this part may be transferred between accounts prior to maturity through a wire transfer arrangement maintained by Reserve Banks. At maturity, the bills shall be redeemed and charged by a Reserve Bank in the account of the United States Treasury as of the date of maturity, and the redemption proceeds shall be disposed of in acocrdance with the instructions from the member bank or other Reserve Bank depositor for whose account the Treasury bills shall have been maintained.

Subpart C—Book-Entry Treasury Bills—Department of the Treasury

§ 350.7 Establishing a book-entry Treasury bill account.

(a) *General.* Treasury bills may be held as book-entries in accounts maintained by the Treasury. Such accounts may be established, either upon the original issue of book-entry Treasury bills or upon the subsequent transfer of such bills to the Treasury, but no later than one month prior to their maturity date. Each account shall consist of an entry showing the amount, maturity date and CUSIP number of the bills, the name of the individual, fiduciary or other entity (including, where appropriate, the title of an officer) for whom the account is held, the address, and the taxpayer identifying number. The records shall also include appropriate transaction data.

(b) *Recordation.*—(1) *Individuals.* Accounts for book-entry Treasury bills may be held in the names of individuals in one of two forms: single name, i.e., "John A. Doe (123–45–6789) (address)"; or two names, i.e., "John A. Doe (123–45–6789) (address) or (Mrs.) Mary B. Doe (987–65–4321). No other form of recordation in two names, whether individuals or others, will be permitted, except in the case of co-fiduciaries.

(2) *Others.* Accounts for book-entry Treasury bills may be held in the names of fiduciaries and other entities in the forms indicated by the following examples:

John A. Smith and First National Bank, executors of the will of James B. Smith, deceased (12–3456789) (address).

May A. Queen, trustee under agreement with Thomas J. King, dated June 1, 1971 (12–3456789) (address).

Smith Manufacturing Company, Inc., James C. Brown, Treasurer (12–3456789) (address).

Grey and White (12–3456789), John D. Grey, General Partner (address).

J. Francis Doe, Secretary-Treasurer of Local 100, Brotherhood of Locomotive Engineers, an unincorporated association (12–3456789) (address).

John R. Greene, as natural guardian of Maxine S. Greene (123–45–6789) (address).

John A. Jones, as voluntary guardian of Henry M. Jones (123–45–6789) (address).

§ 350.8 Transfer.

Book-entry Treasury bills maintained under this subpart may not be transferred from one account maintained by the Treasury to another such account, except in cases of lawful succession, as provided in this subpart. They may be withdrawn from an account maintained by the Treasury hereunder and transferred through the Federal Reserve Bank communication system to an account maintained by or through a member bank under Subpart B, which transfer shall be made in the name or names appearing in the account recorded on the books of the Treasury. Such withdrawal may be effected by a certified request therefor by, or on behalf of, the depositor, provided the request therefor is received no earlier than ten business days after the issue date or the date the securities are transferred to the Treasury, whichever is later. The request must: (a) identify the book-entry account by the name of the depositor and title, if any, the address, and the taxpayer identifying number; (b) specify by amount, maturity date and CUSIP number the book-entry Treasury bills to be withdrawn and transferred; and (c) specify the name of the member bank to or through which the transfer is to be effected and, where appropriate, the name of the institution or entity which is to maintain the book-entry account. In the case of book-entry Treasury bills held in the names of two individuals, a certified request by either will be accepted, but the transfer shall be made in the names of both. A transfer after original issue of book-entry Treasury bills from an account maintained by or through a member bank to one maintained by the Treasury may be made through the Federal Reserve Bank communication system, provided the account is to be held in a form authorized by this subpart, and provided the transfer is made no later than one month prior to the maturity date of the bills.

§ 350.9 Confirmation of transaction.

The Treasury will issue to each depositor following any transaction affecting book-entry Treasury bills maintained for such depositor under this subpart a confirmation thereof in the form of an advice (serially numbered or otherwise) which shall describe the amount, maturity date and CUSIP number of the bills, and include pertinent transaction data.

§ 350.10 Attorney-in-fact.

A request by an attorney-in-fact for any transaction in book-entry Treasury bills after their original issue will be recognized in accordance with this subpart if supported by an adequate power of attorney. The original power or a photocopy showing the grantor's autograph signature, properly certified, must be submitted to the Bureau. A request for transfer for the apparent benefit of the attorney-in-fact will not be recognized unless expressly authorized.

§ 350.11 Succeeding fiduciaries, partners, officers—succeeding corporations, unincorporated associations, partnerships.

(a) *Death of fiduciary, partner or officer.* In case of the death, removal or disqualification of a fiduciary, partner or officer of an organization in whose name book-entry Treasury bills have been recorded, the successor or other authorized person will be recognized as the depositor under this subpart. Proof of death, resignation, removal or disqualification, as the case may be, and evidence that the successor or such other person is fully authorized to act must be submitted to the Bureau. Proof of death shall be in the form of a death certificate or photocopy thereof showing the official seal. Evidence of authority should be in the form of a certified statement by: (1) the surviving fiduciary or fiduciaries, if any, stating that application for the appointment of a successor has not been made, is not contemplated and is not necessary under the terms of the trust instrument or otherwise, (2) a surviving partner or partners that the partnership is being continued in the same, or another name, which must be identified, or (3) the secretary or other authorized officer of the corporation or unincorporated association as to the name and title of the successor officer. If there is more than one surviving fiduciary, a request for transfer of the bills must be signed by all, unless evidence is submitted to the Bureau that one is authorized to act for the other or others. If there is more than one surviving partner, evidence should be submitted to the Bureau as to which survivor is authorized to act in behalf of the partnership; otherwise, the signatures of all surviving partners will be required for transfer of the bills.

(b) *Succeeding corporations, unincorporated associations or partnerships.* If a corporation has been succeeded by another corporation, or if an unincorporated association or partnership has been succeeded by a corporation, and such succession is by operation of law or otherwise, as the result of merger, consolidation, reincorporation, conversion or reorganization, or if a lawful succession has occured in any manner whereby the business or activities of the original organization are continued without substantial change, an authorized officer or partner, as the case may be, of the successor organization will be recognized as the depositor under this subpart upon submission to the Bureau of satisfactory evidence of such succession.

§ 350.12 Termination of trust, guardianship estate, life tenancy—dissolution of corporation, partnership, unincorporated association.

(a) *Termination of trust, life tenancy or guardianship estate.*—(1) *Trust or life estate.* Upon the termination of a trust or life estate, the beneficiary or remainderman will be recognized as the depositor under this subpart. The trustee will be required to submit to the Bureau a certified statement concerning the termination of the trust and the respective shares, if there is more than one beneficiary. In the case of a life estate, proof of death in the form of a death certificate or photocopy thereof showing the official seal will be required, together with a certified statement identifying the remainderman, and, if there is more than one, specifying the respective shares.

(2) *Guardianship.* A former minor or incompetent will be recognized as the depositor under this subpart upon submission to the Bureau of a certified statement, or other evidence showing, in the case of a minor, attainment of majority or other removal of the legal disability, and, in the case of an incompetent, his restoration to competency.

(b) *Dissolution of corporations, unincorporated associations and partnerships.* The person or persons (other than creditors) entitled to the assets upon dissolution of a corporation, unincorporated association or partnership will be recognized under this subpart upon proof of dissolution. If there is more than one

person entitled and the book-entry Treasury bills have not matured, no change in the book-entry account will be made pending transfer or redemption at maturity.

§ 350.13 Death of individual (natural person in own right).

Upon the death of an individual in whose name an account is held and who was not acting as a fiduciary or in any other representative capacity, the following person(s), in the order shown below, will be recognized under this subpart as entitled to the book-entry Treasury bills:

(a) The surviving joint designee of an account in the names of two individuals, if any;

(b) Executor or administrator;

(c) Widow or widower;

(d) Child or children of the decedent and descendants of deceased children by representation;

(e) Parents of the decedent or the survivor of them;

(f) Surviving brothers or sisters;

(g) Descendants of deceased brothers or sisters;

(h) Other next-of-kin as determined by the laws of the domicile at the time of death.

(i) Any person or persons entitled in the above order of preference may request payment or other disposition to any person or persons related to the decedent by blood or marriage, but no payment will be made prior to maturity of the bills. The provisions of this section are for the convenience of the Treasury and do not purport to determine ownership of the bills or of their redemption proceeds.

§ 350.14 Reinvestment or payment at maturity.

(a) *Request for reinvestment.* Upon the request of the depositor, book-entry Treasury bills held therein will be reinvested at maturity, i.e., their proceeds at maturity will be applied to the purchase of new Treasury bills at the average price (in three decimals) of accepted competitive bids for such Treasury bills then being offered. The request for a reinvestment may be made on the tender form at the time of purchase; subsequent requests for reinvestment will be accepted if received by the Bureau no later than ten business days prior to the maturity of the bills. The difference between the par value of the maturing bills and the issue price of the new bills will be remitted to the subscriber in the form of a Treasury check. Requests for the revocation of the reinvestment of bills will also be accepted if received no later than ten business days prior to the maturity date.

(b) *Reinvestment in cases of delay.* Where a delay occurs in the submission or receipt of evidence to support a request for transfer, payment or other authorized transaction of book-entry Treasury bills, and such delay is likely to extend beyond the maturity dates of the bills, upon request or prior notice, the bills will be redeemed, at maturity or thereafter, and their proceeds reinvested in new book-entry Treasury bills. The bills purchased upon such reinvestment shall be those having the shortest term to maturity then being offered, and will be issued at the average price (in three decimals) of the accepted competitive bids therefor. The discount representing the difference between the par value of the maturing or matured bills and the issue price of the new bills will be remitted in the form of a Treasury check.

(c) *Payment.* If reinvestment is not effected pursuant to this section, book-entry Treasury bills will be paid as of maturity in regular course.

§ 350.15 Conclusive presumptions.

For the purposes of this subpart and not withstanding any State law or any regulation or any notice to the contrary, it shall be conclusively presumed (a) that any depositor in whose name, or name and title, book-entry Treasury bills are recorded, is a competent adult, (b) that recordation in two names, as prescribed in Sec. 350.7(b)(i) of this subpart, is intended, if there is an attempt to create some other form of recordation in two names, (c) that recordation in the names of the first two is intended, if there is an attempt to name more than two individuals, and (d) that the first name is the depositor in any case (not authorized and not otherwise provided for in this subpart) wherein an attempt is made to have book-entry Treasury bills recorded in two or more names, e.g., two officers of an organization or two partners.

§ 350.16 Transactions in regular course—notices not effective—unacceptable notices.

(a) *Transactions in regular course—notices not effective.* Transfers of book-entry Treasury bills, payment thereof or reinvestment at maturity or any other transaction therein will be conducted in the regular course of business in accordance with this subpart, notwithstanding notice of the appointment of an attorney-in-fact, or a legal guardian or similar representative, or notice of successorship, the termination of an estate, the dissolution of an entity, or the death of an individual, unless the requisite request, proof, and the evidence necessary to establish entitlement under this subpart is received by the Bureau no later than ten business days prior to the maturity date of the bills.

(b) *Unacceptable notices.* The Treasury will not under any conditions accept notices of pending judicial proceedings, or of judgments in favor of creditors or others, or of any claims whatsoever, for the purpose of suspending or modifying any book-entry account or any transaction in book-entry Treasury bills.

Subpart D—Definitive Treasury Bills

§ 350.17 Definitive Treasury bills—available where holding of definitive securities required by law—termination date December 31, 1978.

(a) *General.* Each Reserve Bank is authorized to issue definitive Treasury bills, in the $100,000 denomination only, upon original issue or otherwise (1) to any entity described in paragraph (b), and (2) for the account of any such entity described in paragraph (b), to a securities dealer or broker or any financial institution which in the regular course of its business purchases securities therefor.

(b) *Eligible entities.* Entities eligible to have definitive Treasury bills are those required by or pursuant to Federal, State, municipal or local law to hold or to pledge securities in definitive form, which may include, but are not limited to: a State, municipality, city, township, county or any other political subdivision, public corporation or other public body, an insurance company, and a fiduciary so required to hold securities in definitive form.

(c) *Conversion of book-entry Treasury bills.* Each Reserve Bank is hereby authorized to effect, upon the order of its depositor, conversions from and to book-entry Treasury bills of definitive bills issued pursuant to this subpart.

(d) *Evidence of eligibility.* In order to obtain a definitive Treasury bill on original issue or thereafter (1) an authorized officer on behalf of the entity must furnish to the Reserve Bank a statement that it is required by, or pursuant to, law to hold or pledge securities in definitive form; or (2) a financial institution, dealer, or broker purchasing definitive Treasury bills hereunder for the account of any such entity must submit to the Reserve Bank a statement that the entity has declared that it is required by or pursuant to law to hold or pledge securities in definitive form.

(e) *Redemption requirements.* Where a definitive Treasury bill issued pursuant to this subpart is presented for payment at or after maturity, it must be accompanied by a statement (1) by an authorized officer of the entity making the presentation that such entity is eligible under this subpart to hold definitive securities, or (2) by the institution making the presentation identifying the entity to whose account the redemption proceeds of the bill have been, or are to be credited, and affirming that such entity had declared that it is eligible under this subpart to hold definitive securities.

(f) *Termination date.* The provisions of this subpart will apply only to definitive Treasury bills issued to, or for the account of, eligible entities prior to December 31, 1978.

§ 350.18 Sanctions for abuse of definitive Treasury bill privilege.

The Secretary of the Treasury reserves the right to disqualify any eligible entity described in paragraph (b) of Sec. 350.17 from purchasing or holding definitive Treasury bills if he determines that such entity has disposed of such definitive Treasury bills solely for the purpose of accommodating another party, including a bank, broker, dealer, or other financial institution, or a customer of such institution.

[FR Doc.76-35799 Filed 12-3-76;10:23 am]

proposed rules

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 52]

UNITED STATES STANDARDS FOR GRADES OF CANNED WHITE POTATOES

Proposed Rulemaking

Notice is hereby given that the United States Department of Agriculture is proposing a revision of the United States Standards for Grades of Canned White Potatoes (7 CFR 52.1811—52.1826).[1] These grade standards are issued under the authority of the Agricultural Marketing Act of 1946 (Sec. 205, 60 Stat. 1090, as amended, 7 U.S.C. 1624), which provides for the issuance of official U.S. grades to designate different levels of quality for the voluntary use of producers, buyers and consumers. Official grading services are also provided under this Act upon request of the applicant and upon payment of a fee to cover the cost of such service.

All persons who desire to submit written data, views, or arguments for consideration in connection with the proposal should file the same in duplicate by January 31, 1977 with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250. All written submittals made pursuant to this notice will be available for public review at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

STATEMENT OF CONSIDERATION LEADING TO THE PROPOSED REVISION

The current United States Standards for Grades of Canned White Potatoes have been in effect since February 10, 1950. Since that time, there have been a number of changes in the preparation and marketing of canned white potatoes. These changes have created a need for a revision of the grade standards. Verbal requests for updating the grade standards have been expressed by processors of canned white potatoes. These requests basically urge that the grade standards be revised to provide quality levels that reflect present-day packing practices, consumer acceptability, and methods of evaluating such quality levels.

Therefore, in consideration of such requests, the Department proposes the following major changes and/or additions to the currently effective (1950) grade standards.

[1] Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act or with applicable State laws and regulations.

(1) The Food and Drug Administration's procedure, or equivalent, as set forth in Title 21 CFR Part 128b, ("Good Manufacturing Practices to be Followed in the Manufacture, Processing or Packing of Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers") is required for the processing of canned white potatoes.

(2) The categories of sizes of canned whole white potatoes are increased from three to four and such sizes are designated as tiny, small, medium, and large. The current standards do not provide for a large size.

(3) A "good flavor" for U.S. Grade A and a "reasonably good flavor" for U.S. Grade B are proposed. Only "normal flavor" is described in the current standards.

(4) A standard sample unit size of 20 ounces (567 grams) of drained weight is specified for quality evaluation, regardless of container size. The size of the lot will determine the minimum number of such sample units that must be examined.

(5) Recommended minimum average drained weights are proposed for 8Z Tall (68.3 x 82.6 mm); No. 300 (76.2 x 112.7 mm); and No. 303 (81.0 x 111.1 mm) containers of canned white potatoes, in addition to retaining those which are in the current grade standards for No. 2 (87.3 x 115.9 mm); No. 2½ (103.2 x 119.1 mm) and No. 10 (157.2 x 177.8 mm) containers. Such recommended minimum average drained weights for a given container size will vary somewhat, depending upon the style of the potatoes in the container. "Style" means whether the potatoes are whole, sliced, diced, "Julienne," or pieces. Also, in order to assure a degree of consistency of drained weights among containers of a given can size and to minimize the occurrences of insufficient drained weights, lower limits for drained weights for different individual container sizes and styles of product are set forth.

(6) The definitions and allowances given under the factor of uniformity of size and shape are revised slightly and are presented in tabular form.

(7) The definitions of various types of defects have been revised slightly and the allowances for defects for each grade are presented in tabular form.

(8) The criteria by which compliance with a designated size classification for whole white potatoes is determined are set forth.

(9) A realignment of score points to allow a range of 10 points in each grade and establish U.S. Grade B, rather than U.S. Grade C as the level of quality below U.S. Grade A is proposed. Such alignment conforms with the current practice in most U.S. grade standards for processed fruits and vegetables.

(10) The terms "U.S. Fancy" and "U.S. Extra Standard" are deleted as alterntaive terms to U.S. Grade A and U.S. Grade B, respectively. Letters and studies have indicated consumer preferences for single letter designations to indicate different levels of quality and that the letter "A" most clearly and easily identified a product as being of the best or superior quality; the letter "B" implied a second or next best quality; and so on.

Therefore, in recognition of this preference and in the interest of clarity and understanding, the somewhat confusing alternative terms of "U.S. Fancy" and "U.S. Extra Standard" are deleted from these standards.

(11) Metric equivalents to the English system of weights and measures are included.

The proposed revision is as follows:

Subpart—United States Standards for Grades of Canned White Potatoes

Sec.

AUTHORITY: Agricultural Marketing Act of 1946, secs. 203, 205, 60 Stat. 1087, as amended 1090, as amended 7 U.S.C. 1622, 1624.

Subpart—United States Standards for Grades of Canned White Potatoes

§ 52.1811 Identity.

Canned white potatoes is the product purported to be as defined in the Definitions and Standards of Identity for Canned Vegetables (21 CFR 51.990), issued pursuant to the Federal Food, Drug and Cosmetic Act. The finished product is sufficiently processed by heat to assure its preservation in hermetically sealed containers. The procedure, or equivalent thereof, set forth in Title 21, CFR Part 128 b, issued pursuant to the Federal Food, Drug, and Cosmetic Act shall be used for such processing.

§ 52.1812 Styles.

(a) *General.* For the purposes of this subpart, canned white potatoes shall be properly peeled prior to canning. A "unit" means an individual potato or portion thereof.

(b) "Whole" means that the canned white potatoes have the appearance of being essentially whole, irrespective of size.

(c) "Slices" or "sliced" means canned white potatoes that have been cut into slices of substantially uniform thickness.

(d) "Dice" or "diced" means canned white potatoes that have been cut into approximate cube-shaped units of substantially uniform size.

(e) "Shoestring," "French Style," or "Julienne" mean approximate rectangular canned white potato units having length measurements which are three (3) or more times the width measurements.

(f) "Pieces" means units of canned white potatoes of random size and/or shape or potatoes that have been cut into approximate quarters or wedge-shaped units similar to orange segments.

(g) Any combination of two or more of the foregoing styles constitutes a style and shall be considered as a mixture of the individual styles that comprise the combination.

§ 52.1813 Sizes of whole potatoes.

The size of a whole potato is determined by measuring the greatest diameter through the center for round or nearly round potatoes. For elongated potatoes, the size is considered as the greatest diameter measured at right angles to the longitudinal axis of the unit. The word and number designations of the various sizes of canned whole potatoes are shown in Table I.

TABLE I.—*Sizes of canned whole white potatoes*

Word designation	Number designation	Diameter
Tiny	Size 1	1 in or less (25.4 mm or less).
Small	Size 2	Over 1 in to, and including, 1½ in (over 25.4 mm to, and including, 38.1 mm).
Medium	Size 3	Over 1½ in to, and including, 2 in (over 38.1 mm to and including, 50.8 mm).
Large	Size 4	Over 2 in (over 50.8 mm).

§ 52.1814 Grades.

(a) "U.S. Grade A" is the quality of canned white potatoes that has at least the following attributes:

(1) Similar varietal characteristics;

(2) Good color;

(3) Reasonably uniform size and shape of units;

(4) Practically free from defects;

(5) Good texture;

(6) Good flavor and odor; and

(7) Scores not less than 90 points when scored in accordance with the scoring system outlined in this subpart.

(b) "U.S. Grade B" is the quality of canned white potatoes that has at least the following attributes:

(1) Reasonably good color;

(2) May have considerable variation of size and shape of the units;

(3) Reasonably free from defects;

(4) Reasonably good texture;

(5) Reasonably good flavor and odor; and

(6) Scores not less than 80 points when scored in accordance with the scoring system outlined in this subpart.

(c) "Substandard" is the quality of canned white potatoes that fails to meet the requirements of "U.S. Grade B."

§ 52.1815 Fill of container.

(a) The fill of container is not incorporated in the grades of the finished product since fill of container, as such, is not a factor of quality for the purposes of these grades. Each container shall be filled with white potatoes as full as practicable without impairment of quality and the product and packing medium shall occupy not less than 90 percent of the total capacity of the container.

(b) Total capacity of the container means the maximum weight of distilled water, at 68 degrees Fahrenheit (20 degrees Celsius), which the sealed container will hold.

§ 52.1816 Minimum drained weights.

(a) *General.* The minimum drained weight values are given in Table II. They are not incorporated in the grades of the finished product since drained weight, as such, is not a factor of quality for the purposes of these grades.

(b) *Method for determining drained weight.* The drained weight of canned white potatoes is determined by emptying the contents of the container upon a U.S. Standard No. 8 circular sieve (or equivalent) of the proper diameter containing 8 meshes to the inch (0.0937 inch (2.4 mm), ±3 percent, square openings) so as to distribute the product evenly. Without shifting the product, incline the sieve to a 17 to 20 degree angle to facilitate drainage and allow to drain for two (2) minutes.

The drained weight is the weight of the sieve and white potatoes less the weight of the dry sieve. The diameter of the sieve shall be 8 inches (20.3 centimeters), or equivalent, if the water capacity of the container is less than 3 pounds (1.36 kg) or 12 inches (30.5 centimeters), or equivalent, if such capacity is 3 pounds (1.36 kg) or more.

(c) *Compliance with minimum drained weight values.* Compliance with the minimum drained weight values in Table II is determined by averaging the drained weights from all the containers in the sample which represent a specific lot. Such lot is considered as meeting the minimum drained weight values if the following criteria are met:

(1) The sample average (average of all the containers in the sample) meets the minimum average drained weight value (designated as "$\bar{X}_d$" in Table II); and

(2) The number of sample units which fail to meet the minimum drained weight value for individual containers (designated as "LL" in Table II) does not exceed the acceptance number specified in the applicable sample plan for Lot Inspection in the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Related Products.

TABLE II.—*Minimum drained weights for canned white potatoes English (avoirdupois) system*

Container designation	Container dimensions (inches)		Styles (ounces)									
			Whole		Sliced		Diced		Julienne		Pieces	
	Diameter	Height	$\bar{X}_d$ [1]	LL [2]	$\bar{X}_d$	LL	$\bar{X}_d$	LL	$\bar{X}_d$	LL	$\bar{X}_d$	LL
8Z tall	2 1/16	3 1/16	5.5	4.8	5.5	5.0	5.6	5.1	5.3	4.8	5.5	4.8
No. 300	3	4 7/16	9.5	8.7	9.7	9.0	10.0	9.5	8.8	8.3	9.5	8.7
No. 303	3 3/16	4 9/16	10.2	9.3	10.2	9.4	10.5	9.8	9.3	8.6	10.2	9.3
No. 2	3 7/16	4 9/16	13.0	11.9	13.3	12.4	13.5	12.7	12.3	11.5	13.0	11.9
No. 2½	4 1/16	4 13/16	19.0	17.7	19.5	18.4	20.0	19.0	18.3	17.3	19.0	17.7
No. 10	6 3/16	7	74.0	71.5	75.0	73.0	76.0	74.2	72.0	70.2	74.0	71.5

[1] "$\bar{X}_d$" means the minimum average drained weight from all the containers in the sample.
[2] "LL" means the minimum drained weight for individual sample units.

TABLE IIA.—*Minimum drained weights for canned white potatoes metric system (systeme international)*

Container designation	Container dimensions (millimeters)		Styles (grams)									
			Whole		Sliced		Diced		Julienne		Pieces	
	Diameter	Height	$\bar{X}_d$ [1]	LL [2]	$\bar{X}_d$	LL	$\bar{X}_d$	LL	$\bar{X}_d$	LL	$\bar{X}_d$	LL
8Z tall	68.3	82.6	155.9	136.1	155.9	141.7	158.8	144.6	150.3	136.1	155.9	136.1
No. 300	76.2	112.7	269.3	246.6	275.0	255.1	283.5	269.3	249.5	235.2	269.3	246.6
No. 303	81.0	111.1	289.2	263.7	289.2	266.5	297.7	277.8	263.7	243.8	289.2	263.7
No. 2	87.3	115.9	368.5	337.4	377.0	351.5	382.7	360.0	348.7	326.0	368.5	337.4
No. 2½	103.2	119.1	538.6	501.8	552.8	521.6	567.0	538.6	518.8	490.4	538.6	501.8
No. 10	157.2	177.8	2097.9	2027.0	2126.2	2069.5	2154.6	2103.5	2041.2	1990.1	2097.9	2027.0

[1] "$\bar{X}_d$" means the minimum average drained weight from all the containers in the sample.
[2] "LL" means the minimum drained weight for individual sample units.

§ 52.1817 Sample unit size.

(a) *General.* Determination of compliance with requirements for factors of quality, except harmless extraneous material, of canned white potatoes shall be based on a sample unit consisting of 20 ounces (567 grams) of drained product. A sample unit may be comprised of:

(1) The entire contents of a container.

(2) A combination of the contents of two or more containers; or

(3) A representative portion of the contents of a container;

Provided: That not more than one (1) sample unit is derived from any one single container.

(b) *Definition of a sample.* Any number of sample units used for the evaluation of the factors of quality, except harmless extraneous material, as outlined in this subpart.

(c) *Evaluating harmless extraneous material.* Determination of compliance for harmless extraneous material will be based upon the total contents of all the containers used to comprise individual sample units.

§ 52.1818 Determining the grade of a sample unit.

(a) *General.* The grade of a sample unit of canned white potatoes is determined by considering the factor of similar varietal characteristics, when applicable, and the factor of flavor and odor which are not scored; the ratings for the factors of color, uniformity of size and shape, defects, and texture, which are scored; the total score; and the limiting rules which apply.

(b) *Definitions of flavor and odor.* (1) "Good flavor and odor" means a good, distinctive flavor and odor which is characteristic of properly prepared and properly processed canned white potatoes (including any permitted safe and suitable optional ingredient(s)) that are free from objectionable flavors or odors of any kind.

(2) "Reasonably good flavor and odor" means that the canned white potatoes (including any permitted safe and suitable optional ingredient(s)) may be lacking in good flavor and odor but are free from objectionable flavors or odors of any kind.

(c) *Factors rated by score points.* The relative importance of each factor which is scored is expressed numerically on the scale of 100. The maximum number of points that may be given each factor is:

Factors	*Points*
Color	20
Uniformity of size and shape	20
Defects	30
Texture	30
Total score	100

§ 52.1819 Determining the rating for the factors which are scored.

The essential variations within each factor which is scored are so described that a value may be determined for each factor and expressed numerically. The numerical range within each factor which is scored is inclusive (for example, "18 to 20 points" means 18, 19, or 20 points).

§ 52.1820 Color.

(a) *General.* The evaluation of color of canned white potatoes is made as quickly as possible after opening the container. The evaluation of color is based upon the degree of brightness, intensity of color, and degree of uniformity.

(b) *(A) Classification.* Canned white potatoes that have a good color may be given a score of 18 to 20 points. "Good color" means that the canned white potatoes, exclusive of the units that are blemished by discoloration, are practically free from oxidation or light greenish coloration, and have a bright, practically uniform, light color, typical of canned white potatoes processed from potatoes of similar varietal characteristics.

(c) *(B) Classification.* Canned white potatoes that have a reasonably good color may be given a score of 16 or 17 points. Canned white potatoes that fall into this classification shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a limiting rule). "Reasonably good color" means that the following conditions, singly or in combination, may be present, but not to the degree that the appearance of the sample unit is seriously affected:

(1) Variation of color;

(2) Slight oxidation or slight discoloration(s) which would not be considered as blemished;

(3) Greenish-white, grayish-white, yellow-white, or watery-white (semi-translucent) color;

(4) Dull, but not off color; or

(5) Any condition which adversely affects the color of the sample unit.

(d) *(SStd.) Classification.* Canned white potatoes that fail to meet the requirements of U.S. Grade B shall be given a score of 0 to 15 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

§ 52.1821 Uniformity of size and shape.

(a) *(A) Classification.* Canned white potatoes that are practically uniform in size and shape may be given a score of 18 to 20 points. "Practically uniform in size and shape" means that a sample unit of canned white potatoes does not exceed the allowances specified in Table III, as applicable.

(b) *(B) Classification.* Canned white potatoes that are reasonably uniform in size and shape may be given a score of 16 or 17 points. "Reasonably uniform in size and shape" means that a sample unit of canned white potatoes does not exceed the allowances specified in Table IV, as applicable.

(c) *(SStd.) Classification.* Canned white potatoes that fail to meet the requirements of U.S. Grade B shall be given a score of 0 to 15 points and shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a partial limiting rule).

TABLE III.—*Allowances for size and shape variations of canned white potatoes*

[Grade A classification]

Styles	Measurements and/or shape of individual unit(s)	Uniformity within sample unit of 20 oz (567 g) of product
Whole	Essentially whole potatoes, irrespective of size.	The weight of the largest whole potato is not more than 3 times the 2d smallest intact whole potato.
Sliced or slices	Diameter is the shortest diameter of the larger of the 2 cut surfaces of the slice. Maximum thickness, measured at the thickest portion, does not exceed ¾ in (19 mm).	Diameter of largest slice does not exceed diameter of 2d smallest slice by more than 50 pct.
Diced or dice	Approximate uniform cube-shaped units	Maximum 2 oz (56.7 g) total of units which are noticeably larger or smaller than representative prevalent cube size or which are irregular in shape.
"Shoestring" or "French-style" or "Julienne."	Approximate uniformly thick rectangular units having length measurements which are 3 or more times the width measurement.	Maximum 2 oz (56.7 g) less than ½ in (12.7 mm) in length.
Pieces	"Quartered" or wedge-shaped units resembling orange segments or units of random size and/or shape.	Not more than 1 oz (28.4 g) total of units may weigh less than ¼ oz (7.1 g) and of all units ¼ oz (7.1 g) or greater, the largest unit may not be more than twice the weight of the 2d smallest unit.

TABLE IV.—*Allowances for size and shape variations of canned white potatoes*

[Grade B classification]

Styles	Measurements and/or shape of individual unit(s)	Uniformity within sample unit of 20 oz (567 g) of product
Whole	Essentially whole potatoes, irrespective of size.	The weight of the largest whole potato is not more than 4x the 2d smallest intact whole potato.
Sliced or slices	Diameter is the shortest diameter of the larger of the 2 cut surfaces of the slice. Maximum thickness, measured at the thickest portion of the slice, does not exceed 1 in (25.4 mm).	Diameter of the largest slice is not more than twice the diameter of the 2d smallest slice.
Diced or dice	Approximate uniform cube-shaped units	Maximum 5 oz (141.8 g) total of units which are noticeably larger or smaller than representative prevalent cube size or which are irregular in shape.
"Shoestring" or "French-style" or "Julienne."	Approximate uniformly thick rectangular units having length measurements which are 3 or more times the width measurement.	Maximum 5 oz (141.8 g) less than ½ in (12.7 mm) in length.
Pieces	"Quartered" or wedge-shaped units resembling orange segments or units of random size and/or shape.	Not more than 2 oz (56.7 g) total of units may weigh less than ¼ oz (7.1 g) and of all units ¼ oz (7.1 g) or greater, the largest unit may not be more than 4 times the weight of the 2d smallest unit.

§ 52.1822 Defects.

(a) *General.* The factor of defects concerns the degree of freedom from defects as defined in paragraph (b) of this section or from any other defects present which detract from the appearance of the product.

(b) *Definitions of types of defects.* (1) "Insignificant imperfections" refer to very slight abnormalities, scars, discolorations, or any other imperfections on the individual unit which may affect the appearance very slightly but which do not affect the edibility of the unit.

(2) "Blemished unit" means any unit which has any brown or black area(s) or any internal or external imperfection or discoloration which, singly or in the aggregate, materially affect the appearance of the unit. Such units may include, but are not limited to, discolored eyes, unpeeled areas, hollow heart, or scab.

(3) "Seriously blemished unit" means any unit which has any black or dark brown area(s) or any internal or external imperfection or discoloration which, singly or in the aggregate, seriously affect the appearance of the unit. Such units may include, but are not limited to, those with pathological or insect injury.

(4) "Damaged by mechanical injury" means crushed, broken, or cracked units or units damaged by excessive trimming or gouges; or similarly damaged units.

(5) "Harmless extraneous material" means vegetable substances such as weeds, grass, or leaves or portions thereof which are harmless.

(6) "Sand, grit, or silt" means any kind of fine or coarse earthy material.

(c) (*A*) *Classification.* Canned white potatoes that are practically free from defects may be given a score of 27 to 30 points. "Practically free from defects" means that:

(1) Any defects, whether or not specifically defined or listed herein, and including any harmless extraneous material which may be present, do not materially affect the appearance of the sample unit;

(2) The sample unit complies with the allowances specified in Table V; and

(3) A sample average of not more than one (1) piece of harmless extraneous material per 60 ounces (1.7 kg) of net weight may be present.

(d) (*B*) *Classification.* Canned white potatoes that are reasonably free from defects may be given a score of 24 to 26 points. Canned white potatoes that fall into this classification shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a limiting rule). "Reasonably free from defects" means that:

(1) Any defects, whether or not specifically defined or listed herein, and including any harmless extraneous material which may be present, do not seriously affect the appearance of the sample unit;

(2) The sample unit complies with the allowances specified in Table VI; and

(3) A sample average of not more than one (1) piece of harmless extraneous material per 20 ounces (567 grams) of net weight may be present.

(e) (*SStd.*) *Classification.* Canned white potatoes that fail to meet the requirements of U.S. Grade B may be given a score of 0 to 23 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

TABLE V.—*Allowances for defects in canned white potatoes grade A classification*

[Maximum defects allowed in a sample unit of 20 oz (567 g) drained weight of product [1]]

Type of defect	Style		
	Whole	Sliced or pieces	Diced or shoestring
Insignificant imperfections (evaluated collectively in each sample unit).	Do not materially detract from the appearance of the product.		
Damaged by mechanical injury; blemished units; and seriously blemished units (total).	4 oz (113.4 g)	3 oz (85 g)	2 oz (56.7 g).
Provided, That blemished and seriously blemished do not exceed—	2 oz (56.7 g)	2 oz (56.7 g)	0.8 oz (22.7 g).
And further provided, That seriously blemished do not exceed—	1 oz (28.4 g)	0.5 oz (14.2 g)	0.2 oz (5.7 g).
Sand, grit, or silt	None	None	None.
Harmless extraneous material individually or in combination with other defects.	Does not materially detract from the appearance or edibility of the product.		
Total of all defects; whether or not listed herein	4 oz (113.4 g)	3 oz (85 g)	2 oz (56.7 g).
And/or	Do not materially detract from the appearance or edibility of the product.		

[1] When applicable, permit the specified weight or 1 normally shaped unit per sample unit, whichever is greater.

TABLE VI.—*Allowances for defects in canned white potatoes grade B classification*

[Maximum defects allowed in a sample unit of 20 oz (567 g) drained weight of product [1]]

Type of defect	Style		
	Whole	Sliced or pieces	Diced or shoestring
Insignificant imperfections (Evaluated collectively in each sample unit).	Do not seriously detract from the appearance of the product.		
Damaged by mechanical injury; blemished units; and seriously blemished units (total).	6 oz (170.1 g)	4.5 oz (127.6 g)	3 oz (85 g).
Provided, That blemished and seriously blemished do not exceed.	4 oz (113.4 g)	3 oz (85 g)	1.2 oz (34 g).
And, further provided, That seriously blemished do not exceed.	2 oz (56.7 g)	1 oz (28.4 g)	0.4 oz (11.3 g).
Sand, grit, or silt	Trace	Trace	Trace.
Harmless extraneous material individually or in combination with other defects.	Does not seriously detract from the appearance or edibility of the product.		
Total of all defects, whether or not listed herein	6 oz (170.1 g)	4.5 oz (127.6 g)	3 oz (85 g).
And/or	Do not seriously detract from the appearance or edibility of the product.		

[1] When applicable, permit the specified weight or 1 normally shaped unit per sample unit, whichever is greater.

§ 52.1823 Texture.

(a) *General.* The factor of texture refers to the tenderness of the canned white potatoes and to the degree of freedom from sloughing and from hard or objectionably coarse units.

(b) (*A*) *Classification.* Canned white potatoes that have a "good texture" may be given a score of 27 to 30 points. "Good texture" means that the texture of the potatoes is practically uniform and is typical of properly prepared and properly processed potatoes and that the potatoes are firm and have a fine and even grain. There may be sloughing to a degree that does not more than slightly affect the appearance of the product.

(c) (*B*) *Classification.* Canned white potatoes that have a "reasonably tender texture" may be given a score of 24 to 26 points. Canned white potatoes that fall into this classification shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a limiting rule). "Reasonably good texture" means that the potatoes are reasonably tender, and may be variable in texture, ranging from somewhat soft to firm, but are not tough or hard nor mushy. There may be a moderate amount of sloughing that does not seriously affect the appearance of the product.

(d) (*SStd.*) *Classification.* Canned white potatoes that fail to meet the requirements of U.S. Grade B may be given a score of 0 to 23 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

§ 52.1824 Determining the grade of a lot.

The grade of a lot of canned white potatoes covered by these standards is determined by the procedures set forth in the "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, and Related Product," §§ 52.1 through 52.83.

§ 52.1825 Determining size classification for whole potatoes.

(a) Sample units of 20 ounces (567 grams) drained weight of whole potatoes are considered a single size if the following criteria are met:

(1) At least 16 ounces (453.6 grams) of the whole potatoes are within the diameter dimensions of one of the sizes for whole potatoes set forth in these standards (See § 52.1813);

(2) Not more than 2 ounces (56.7 grams) of the whole potatoes may be of the next larger size classification except for Size 1 whole potatoes where 4 ounces (113.4 grams) of the whole potatoes may measure up to, and including, 1½ inches (38.1 mm);

(3) None of the whole potatoes exceed the maximum diameter of the next larger size classification;

(4) Not more than 2 ounces (56.7 grams) of the whole potatoes may be of the next smaller size; and

(5) None of the whole potatoes are smaller than the next smaller size classification.

(b) A lot of whole potatoes shall be assigned a single size designation when all of the sample units representing the lot meet the requirements of one single size.

(c) A lot of whole potatoes which fails the requirements for a single size classification shall be declared in terms of the size designations present in the individual sample units.

§ 52.1826 Score sheet.

Size and kind of container	------
Container marks or identification	------
Label	------
Net weight	------
Vacuum (in inches)	------
Drained weight	------
Style	------
Size (of whole potatoes)	------
Count (of whole potatoes)	------

Factors		Score points
Color	20	(A) 18-20 (B) [1] 16-17 (SStd) 0-15
Uniformity of size and shape	20	(A) 18-20 (B) 16-17 (SStd) [2] 0-15
Defects	30	(A) 27-30 (B) [1] 24-26 (SStd) [1] 0-23
Texture	30	(A) 27-30 (B) [1] 24-26 (SStd) [1] 0-23
Total, score	100	
Flavor and odor		Good—A. Reasonably good—B. Off—Substandard.
Grade		

[1] Indicates limiting rule.
[2] Indicates partial limiting rule.

Dated: November 30, 1976.

WILLIAM T. MANLEY,
Deputy Administrator,
Program Operations.

[FR Doc.76-35598 Filed 12-3-76;8:45 am]

[7 CFR Part 52]

UNITED STATES STANDARDS FOR GRADES OF DATES

Withdrawal of Notice of Proposed Rulemaking

On Friday, April 23, 1976, a notice of proposed rulemaking was published in the FEDERAL REGISTER (41 FR 16969) (FR Docket No. 76-11849), regarding an amendment of the United States Standards for Grades of Dates. The proposal would eliminate the tolerance for pits. The FDA has established an action level for this material, which is less restrictive. Interested persons were given the opportunity to submit written data, views or arguments in connection with that proposal.

The California Date Administrative Committee, representing the date growers and packers, voted unanimously to object to the proposed amendment. No other response was received.

As a result of the views of the date producers, the Department hereby withdraws the proposal, published April 23, 1976, from further consideration.

Done at Washington, D.C., this 1st day of December 1976.

WILLIAM T. MANLEY,
Deputy Administrator,
Program Operations.

[FR Doc.76-35755 Filed 12-3-76;8:45 am]

[7 CFR Part 928]

PAPAYAS GROWN IN HAWAII

Proposed Limitation of Handling

This document gives notice and invites written comment not later than December 20, 1976, with respect to a proposed amendment to the rules and regulations under Marketing Agreement and Order No. 928, regulating the handling of papayas grown in Hawaii. The proposed amendment would continue through March 31, 1977, the additional terms and conditions with respect to the handling of immature papayas, which will expire on December 31, 1976.

All persons who desire to submit written data, views, or arguments for consideration in connection with the proposed amendment shall file the same, in quadruplicate, with the Hearing Clerk, United States Department of Agriculture, Room 112, Administration Building Washington, D.C. 20250, not later than December 20, 1976. All written submissions made 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)).

The rules and regulations (Subpart-Rules and Regulations; 7 CFR 928.141-928.160) are effective pursuant to the applicable provisions of the marketing agreement, and Order No. 928, (7 CFR Part 928), regulating the handling of papayas grown in Hawaii, hereinafter referred to as the "order". This is a regulatory program effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The proposed amendment to the rules and regulations was unanimously recommended by the Papaya Administrative Committee, established under the order as the agency to administer its terms and provisions. On October 5, 1976, an amendment to the rules and regulations was published in the FEDERAL REGISTER (41 FR 43909) to prescribe additional terms and conditions with respect to the handling of immature papayas during the period October 3 through December 31, 1976. This proposed amendment would continue the current provision through March 31, 1977, with the additional requirement that such immature papayas otherwise meet the grade and size requirements of the order during that time period. The committee reports that it has not had sufficient time to assess whether the certain prescribed markets should be opened indefinitely to immature papayas, which are used by certain ethnic groups in cooking. A trial period was originally recommended to make certain adequate control could be exercised to assure that immature papayas would not be handled for uses and in markets designed for mature papayas. Therefore, the committee recommends the additional time period as indicated.

Such proposal reads as follows:

Amend the provisions of paragraph (a) (3) and (a) (4) to read as follows:

§ 928.152 Maturity exemption.

(a) * * *

(3) Immature papayas are papayas which do not meet the maturity requirements of the State of Hawaii Department of Agriculture's Wholesale Standards for Hawaii-Grown Papayas (Subsection 5.32) but otherwise meet the requirements of at least Hawaii No. 1 grade, are of pyriform shape and weigh not less than 10 ounces each for export destinations, and for destinations within the production areas weigh at least 14 ounces for Hawaii No. 1 papayas and 16 ounces for papayas handled as Hawaii Fancy grade.

(4) Outlets authorized by the committee for resale of papayas specified in this section are the State of Hawaii, and during the period January 1, 1977, through March 31, 1977, the States of California, Oregon, and Washington.

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

Dated: December 1, 1976.

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

[FR Doc.76-35757 Filed 12-3-76;8:45 am]

[Docket No. AO-71-A72]

[7 CFR Part 1002]

MILK IN NEW YORK-NEW JERSEY MARKETING AREA

Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

Notice is hereby given of the filing with the Hearing Clerk of this recommended

decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the New York-New Jersey marketing area.

Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250, by December 21, 1976. Six copies of the exceptions should be filed. All written submissions made 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)).

The above notice of filing of the decision and of opportunity to file exceptions thereto is issued pursuant to the provisions of the Agricultural Marketing 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).

PRELIMINARY STATEMENT

The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order as amended, were formulated, was conducted at New York, New York, on September 16, 1976, pursuant to notice thereof which was issued on August 26, 1976 (41 FR 36668).

The material issues on the record of the hearing relate to:

1. Partial payments to producers and cooperatives; and

2. The dates by which payments should be made to producers and cooperatives, and to and from the producer-settlement fund.

FINDINGS AND CONCLUSIONS

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Partial payments to producers and cooperative associations.* The New York-New Jersey order (Order 2) should not be amended to require handlers to make a partial payment for milk received from producers and cooperatives during the first 15 days of the month.

Amendments requiring partial payments for milk were proposed by a group of nine cooperatives representing about 30 percent of the market's producers. As proposed, handlers would be required to pay not less than the preceding month's Class II price for milk received from cooperatives and producers during the first 15 days of the month. Such payments to cooperatives would be due by the 5th day of the following month and payments to individual producers would be due on the 7th day.

The witness for proponents contended that adoption of the proposal would assure a uniform and more orderly system of partial payments for all producers and Cooperative associations supplying the market. He indicated that for those producers not now receiving partial payments the order changes would reduce the period of time some must wait to be paid for at least a portion of their deliveries to handlers. The witness also contended that mandatory partial payments would eliminate certain handler inequities which he alleged exist under the voluntary partial payment practices that now prevail in the market. The spokesman asserted that such inequities contribute to market disorder by creating competitive advantages for some handlers. The witness also claimed that order-imposed partial payments would help reduce the risk of losses by cooperatives and producers if a handler became financially unable to pay for his milk receipts.

In support of partial payments, the witness pointed out that such payments are required under most other Federal orders. He contended that adoption of partial payments for the New York-New Jersey market would better align the payment provisions of Order 2 with other orders, thereby promoting greater intermarket equity for handlers, producers, and cooperative associations.

Mandatory partial payments were opposed by several handlers on the basis that most cooperatives and producers now receive partial payments at rates that generally exceed the proposed rate. The handlers contended that producers are satisfied with the current partial payment practices. The spokesman for a major cooperative association indicated that there appeared to be little need at this time for establishing prescribed partial payment procedures for the market.

The evidence adduced at the hearing indicates that most of the handlers in the market are making partial payments to producers and cooperatives that supply them milk. However, payment practices do vary. For example, various cooperatives bill handlers for partial payments on the basis of class prices, estimated class prices, or estimated blend prices. The dates on which such billings are submitted and the subsequent payments received also vary. In the case of nonmembers, some handlers make partial payments to just those producers who request them, while others make partial payments to all producers from whom they receive milk. Also, the date on which such partial payments are made may vary from handler to handler by several days.

Partial payment practices in this market clearly lack uniformity. Yet, aside from that expressed by the proponent cooperatives, there appears to be little dissatisfaction with the present voluntary arrangements. Although one handler expressed concern about handler equity, he nevertheless was opposed to having the order require partial payments. Handler spokesman otherwise did not express concern that certain handlers might gain a competitive advantage by not making partial payments, or by making such payments at lower rates than paid by other handlers. Also, the record provides no evidence that producers or cooperatives that wish to receive a partial payment for milk are unable to obtain such payments.

As pointed out by witnesses, recent legislation applicable in the State of New York is tending to result in somewhat greater uniformity of payment practices in the Order 2 market. Under the New York State Security Fund Law for assuring payments to producers, handlers who make semi-monthly payments in a prescribed manner are entitled to a reduction in the amount of the surety bond or other security filed by them in lieu of making payments to the security fund. It is recognized that this applies only to handlers receiving milk from New York producers. Nevertheless, such legislation apparently is lessening the differences in payment practices in this market.

The fact that other Federal orders require partial payments in itself provides no basis for adopting similar provisions in the Order 2 market. There was no demonstration, however, that the lack of prescribed partial payment requirements in this market is causing problems for handlers or producers because of the application of such payment requirements in other markets.

The record in this proceeding does not provide a compelling basis for concluding that partial payment provisions are essential to maintain stable and orderly marketing conditions in the Order 2 market. Accordingly, such provisions should not be adopted.

2. *Due dates for the payment of certain obligations.* The dates by which certain payments under the order are to be made should be changed as follows: (1) Handler payments to cooperatives for milk purchased at class prices should be received by such cooperatives by the 19th day after the month in which the milk was delivered; (2) Handler payments to the producer-settlement fund should be received by the market administrator by the 21st day of the month; and (3) Payments to handlers from the producer-settlement fund should be made by the market administrator by the 22nd day of the month. If the due date for payments to or from the producer-settlement fund falls on a Saturday or Sunday or a national holiday, such payment should not be due until the next day the market administrator's office is open for public business.

The order also should be clarified with respect to the handling of producer-authorized deductions from payments for their milk, and with respect to the collection of lump-sum payments at the blend price by a cooperative on behalf of its member producers.

Handler payments to cooperatives at class prices currently are required by the 15th day of the month, and payments to and from the producer-settlement fund are due on the 18th and 20th days, respectively. Handler payments to producers and cooperatives at the uniform price, which would not be changed, are due on the 25th day of the month.

The group of nine cooperatives referred to under Issue No. 1 proposed that

handlers pay cooperatives for milk purchased at class prices by the 16th day of the month following the month of delivery, rather than on the 15th day. These cooperatives also proposed that the due date for paying producers and cooperatives at the uniform price be changed from the 25th to the 22nd day of the month. Two other cooperatives proposed that handler payments to cooperatives at class prices be due by the 19th instead of the 15th day of the month. Also, they proposed that payments to and from the producer-settlement fund be made by the 20th and 21st days, respectively, of each month, rather than on the 18th and 20th days.

In the case of both groups, the basic thrust of their proposals was a reduction in the amount of time between payments to cooperatives at class prices and payments to individual producers and cooperatives at the blend price. Presently, the time between payment dates is 10 days, the difference between the 15th and the 25th days of the month. Both groups contended that the 10-day difference in payment dates tends to provide handlers with an economic incentive to buy milk from nonmember producers rather than from cooperatives that are selling milk at class prices, since the cooperatives must be paid 10 days earlier.

While the cooperatives were in agreement on the need for reducing the 10-day difference in payment dates, the two groups proposed different sets of dates to accomplish this. The witness for the nine cooperatives indicated that producers should be paid as soon as possible and urged that the final payment date be advanced from the 25th to the 22nd day of the month. It was his position that the current deadline (the 25th) provides an unjustified extension of credit to handlers. Also, he claimed that an earlier payment date would be somewhat more in line with the payment deadlines under other Federal orders. The witness indicated, on the other hand, that the final payment date should not be advanced more than 3 days because of problems associated with adjustments in other payment dates. In this regard, he urged that payments to cooperatives at class prices be due on the 16th rather than the 15th day of the month so that handlers would have an additional day for making their payments.

Witnesses for the other cooperatives stressed that the payment dates must be structured so as to afford handlers a reasonable opportunity to comply with the regulations. They indicated that requiring payments to cooperatives at class prices and to producers at the blend price on the 19th and 25th days, respectively, would best accommodate the existing settlement arrangements in the market. They pointed out, however, that if these dates are adopted corollary changes would need to be made in the dates by which payments to and from the producer-settlement fund must be made.

The order prescribes various dates throughout the month for actions that must be completed. The present sequence begins with te announcement of class prices by the 5th day of each month. Handlers' reports of receipts and utilization must be mailed to the market administrator by the 8th day, or physically delivered to him by the 10th day. By the 15th day of the month the market administrator announces the uniform price, with his billings to handlers mailed immediately thereafter. Handler payments to cooperatives for milk purchased at class prices also are due on the 15th day. Handler obligations to the producer-settlement fund are due by the 18th, followed by payments to other handlers from the fund by the 20th. Finally, handler payments to producers are due by the 25th day of the month. It is within the context of this sequence of dates that the proposed changes must be considered.

It is necessary that the payment dates prescribed in the order allow adequate time for the required transfers of money. Otherwise, handlers could be placed in the position of being unable to comply with the order simply because the dates are not realistic in view of mailing times and other factors that affect the payment of obligations. The changes in dates adopted herein are intended to provide handlers a reasonable opportunity to comply with the order in making the required payments.

Basically, the various payment dates must be coordniated with the date for announcing the uniform price to producers. Presently, the market administrator must announce this price by the 15th day of the month. It is only then that the obligations to and from the producer-settlement fund can be determined and final payments made to producers and cooperatives.

With this announcement date for the blend price, it is not reasonable to require that payments to the producer-settlement fund be completed before the 21st day of the month. Once the uniform price has been announced, the market administrator must then notify handlers of their obligation to the producer-settlement fund. The handlers in turn must submit their payments to the market administrator. Thus, in setting the date for such payments, it is necessary that adequate recognition be given to the time needed to carry out these steps.

Customarily, both the notification to handlers and the payments to the producer-settlement fund are done by mail. Although other procedures could be used that would involve less time, it is more convenient for both the handlers and the market administrator to rely upon the mail service. This necessarily requires, then, that handlers be given until the 21st of the month to get their payments to the market administrator. Payments not received by the market administrator by the close of business on the 21st day would be considered late.

Payments to handlers from the producer-settlement fund should then be made by the market administrator by the 22nd day of the month. This will provide 3 days for handlers to receive their money from the producer-settlement fund and, in turn, make final payments to producers by the 25th day.

The dates when payments to and from the producer-settlement fund are due occasionally will fall on weekends or holidays when the market administrator's office is not open for public business. On such occasions, the due date should be the next day that the market administrator's office is open for business. The order should provide, however, that if payments to the market administrator are so delayed, payments by the market administrator to handlers also may be delayed by the same number of days.

From a review of the various procedures just outlined, it is evident that final payments to producers and cooperatives at the blend price should not be required before the 25th day of the month. Requiring such payments at an earlier date would not permit the timely completion of the various payment procedures necessary under the order.

It is possible, however, to accommodate the desire of the cooperatives to reduce the time between payments to cooperatives at class prices and payments to producers and cooperatives at the blend price. The order requires that when a cooperative in its capacity as a handler sells milk to other handlers, it must account to the pool at the classified use value of the milk. If the value of the milk at class prices exceeds its value at the uniform price, the cooperative must pay the difference to the producer-settlement fund. It is essential, then, that the cooperative receive payment for the milk from handlers at the appropriate class prices in time to make the necessary payment to the producer-settlement fund.

As provided herein, handlers (including cooperatives) would not be required to get their payments to the market administrator until the 21st day of the month. Accordingly, cooperatives that must submit payments to the market administrator need not receive payments from their handler-buyers until the 19th of the month, rather than on the 15th as the order now provides. Under such scheduling, cooperatives should be able to make their payments to the producer-settlement fund on a timely basis. At the same time, such scheduling would reduce from 10 days to 6 days the difference in time between payments to cooperatives at class prices and final payments to producers at the blend price.

On the basis of questions raised at the hearing relative to various payment practices in the market, certain clarifying changes should be made in the order in conjunction with the handling of the principal issues of this proceeding. The record indicates that some handlers receive milk from producers who are members of a cooperative association that is not acting as the handler for such milk. However, rather than paying the individual producers, the handler pays the cooperative an amount equal to the total amount due the in-

dividual producers at the blend price. The cooperative, in turn, distributes the funds to its member producers.

The order lacks specific provisions for the accommodation of this payment practice. Accordingly, the order should clearly specify that a cooperative may collect from handlers on behalf of its members the total amount due such producers at the blend price. Such payments should be subject to the following conditions: (1) The cooperative has been authorized by each such producer to collect payment for his milk delivered to the handler; (2) The cooperative has requested the handler in writing to make such payment to the cooperative; and (3) The cooperative has certified to the market administrator in writing that it has authority to collect payments for milk on behalf of its member producers.

At the hearing a witness suggested that lump-sum payments to cooperatives at the blend price be required two days earlier than the final payments to individual producers. He contended that cooperatives need to receive such payments from handlers at the earlier time in order for the cooperatives to make payments to members on the same date that proprietary handlers pay their producers.

The order should provide that payments to cooperatives that are collecting on behalf of their members be made by the same date that final payments are due individual producers—the 25th day of the month. As indicated earlier, the market administrator's payments to handlers from the producer-settlement fund would not be required until the 22nd day. In most cases, this schedule would not provide sufficient time for handlers to receive their payments from the market administrator and pay the cooperatives on the 23rd of the month.

Another issue raised at the hearing was the procedure for handling producer-authorized deductions from blend price payments to producers. Handlers are making payments to third parties on behalf of producers and deducting such amounts when making payment for milk received from the producers. Amounts covering the value of supplies purchased from the handler also are being deducted from producer payments. The order lacks specific language concerning the treatment of such deductions.

The order should clearly provide for producer-authorized deductions. Deductions for assignments and supplies should be allowed, however, only if the producer has authorized the handler in writing to make such deductions and such authorization is retained by the handler for verification by the market administrator. It is expected, of course, that amounts deducted by handlers would be paid to assignees by the time payment is made to producers. This will ensure that handlers are paying the minimum prices for their producer milk by the date required in the order. Likewise, deductions for supplies should cover only such supplies as the producer has received by the date payment for his milk is due.

In conjunction with other changes adopted herein, the date by which handlers are required to pay their administrative assessment to the market administrator also should be changed. Such payments are now due on the 18th day of the month, which is the same date that handler payments to the producer-settlement fund are now due. As described earlier, the latter payments would not be due under the changes adopted herein until the 21st day of the month. No purpose would be served by requiring handlers to make separate payments to the administrative expense and producer-settlement funds on different dates. Accordingly, payments to the administrative expense fund should be due on the same date that payments to the producer-settlement fund are due.

In conjunction with other proposed changes to the section of the order dealing with class prices, it also was proposed that a proviso applicable to the Class I–A milk price be removed because it no longer is operative.

The proviso, adopted effective February 11, 1975: *Provided*, That the Class I–A price for the remainder of February 1975 and for March 1975 be based on the basic formula price for the preceding month, rather than for the second preceding month. The proviso's application thus was limited to that period of time. Since no purpose would be served by retaining order language no longer in effect, the proviso should be deleted.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conculsions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

At the hearing, a representative of several handlers requested a deferral of the decision on the issues being considered so that handlers could have an opportunity to submit other proposals for consideration. This request was renewed in the handlers' brief.

The record in this proceeding does not demonstrate a need for granting the request. There has been no showing of how the submission of additional proposals would be helpful to a full review of the issues under consideration. Also, the handlers in question have not demonstrated how they would be adversely affected should the Department not grant their request. Accordingly, their request is denied.

General Findings

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

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the New York-New Jersey marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

1. In § 1002.50a, the introductory text and paragraph (a) are revised to read as follows:

§ 1002.50a Class prices.

For pool milk received during each month from dairy farmers or cooperative associations of producers, each handler shall pay per hundredweight not less than the prices set forth in this section, subject to the differentials and adjustments in §§ 1002.51 and 1002.81. Any handler who purchases or receives milk during any month from a cooperative association of producers which is also a handler but which does not operate the plant or the unit receiving the milk from producers shall pay the cooperative association on or before the 19th day of the following month for such milk at not less than the class prices pursuant to this section, subject to the differentials and adjustments set forth in §§ 1002.51, 1002.81 and 1002.82(b) applicable at the location where the milk was received from producers. Any handler who purchases or receives milk dur-

ing any month from a cooperative association of producers which is also a handler and which operates the plant or the unit receiving the milk from producers shall pay the cooperative association on or before the 19th day of the following month for such milk at not less than the class prices pursuant to this section, subject to the differentials and adjustments set forth in §§ 1002.51, 1002.81, and 1002.82(b) applicable at the plant at which the milk was first received.

(a) For Class I–A milk the price shall be the basic formula price for the second preceding month plus $2.40.

* * * * *

2. In § 1002.80, paragraphs (a), (b), (c), and (d) are redesignated as paragraphs (c), (d), (e), and (f), respectively, the introductory text of the section is designated as paragraph (a) and is revised, and a new paragraph (b) is added to read as follows:

§ 1002.80 Time and rate of payments.

(a) On or before the 25th day of each month, each handler shall make payment pursuant to paragraphs (b), (c), (d), (e), and (f) of this section to each producer for all pool milk delivered by such producer during the preceding month at not less than the uniform price, subject to the following adjustments:

(1) Appropriate differentials set forth in §§ 1002.81 and 1002.82;

(2) Proper deductions for the month that were authorized in writing by producers from whom the handler received milk; and

(3) For milk received in a bulk tank unit, there may be deducted, as proper and as authorized in writing by the producer, or by a cooperative association authorized to act on behalf of such producer, a tank truck service (transportation) charge of up to 10 cents per hundredweight, which in no event shall exceed in the case of Class II milk on which a transportation credit is applicable pursuant to § 1002.55 the actual transportation costs in excess of 10 cents and otherwise actual transportation costs, and in either circumstance only to the extent transportation was actually provided by the handler or at his expense. Any such deduction with respect to bulk tank milk must be made by the handler not later than the date on which the producer is required to be paid for the milk involved. If authorization for such deduction is canceled by the producer or by the cooperative by notifying the handler in writing, such cancellation shall be effective on the first day of the month following its receipt by the handler.

(b) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its producer-members to collect payment for their milk, each handler, on or before the date on which the payments are otherwise due individual producers, shall pay the cooperative association for milk received during the month from the producer-members of such association an amount equal to not less than the total amount otherwise due such producer-members as determined pursuant to paragraph (a) of this section.

* * * * *

3. Section 1002.85 is revised to read as follows:

§ 1002.85 Payments to the producer-settlement fund.

On or before the 21st day of each month, each handler shall make full payment to the market administrator of the debit balance, if any, of such handler shown on the last statement of account rendered pursuant to § 1002.84. If the date by which such payments must be received by the market administrator falls on a Saturday or Sunday or a national holiday, such payments shall not be due until the next day that the market administrator's office is open for public business.

4. Section 1002.86 is revised to read as follows:

§ 1002.86 Payments out of the producer-settlement fund.

(a) On or before the 22nd day of each month, the market administrator shall make payment to each handler of the credit balance, if any, of such handler shown on the last statement of account rendered pursuant to § 1002.84. If the date by which such payments are to be made falls on a Saturday or Sunday or a national holiday, such payments need not be made until the next day that the market administrator's office is open for public business. If payments to the producer-settlement fund under § 1002.85 were delayed because the due date fell on a Saturday or Sunday or a national holiday, payments under this paragraph may be delayed by the same number of days.

(b) If the balance in the producer-settlement fund is insufficient to make the full payment required under paragraph (a) of this section, the market administrator shall reduce uniformly the payments to each handler and shall complete such payments as soon as the necessary funds are available. No handler who, on the 25th day of the month, has not received such payments in full from the market administrator shall be deemed to be in violation of §§ 1002.80 through 1002.82 if he reduces his total payments to producers for milk delivered by such producers during the preceding month by not more than the amount of the reduction in payment from the producer-settlement fund.

5. Section 1002.90 is revised to read as follows:

§ 1002.90 Payment by handlers.

As his pro rata share of the expense of administration of this part, each handler shall, on or before the date specified for making payment to the producer-settlement fund pursuant to § 1002.85, pay to the market administrator a sum not exceeding 4 cents per hundredweight on the total quantity of pool milk received from dairy farmers at plants or from farms in a unit operated by such handler, directly or at the instance of a cooperative association of producers and on the quantity for which payment is made pursuant to § 1002.70(d)(2), the exact amount to be determined by the market administrator subject to review by the Secretary. This section shall not be deemed to duplicate any similar payment by any handler under an order issued by the Commissioner of Agriculture and Markets of the State of New York, or the Director of the Division of Dairy Industry of the New Jersey Department of Agriculture, with respect to the marketing area. Whenever verification by the market administrator discloses an error in the payment made by any handler, such error shall be adjusted not later than the date next following such disclosure on which payments are due pursuant to this section.

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 A107.

Signed at Washington, D.C., on November 30, 1976.

WILLIAM T. MANLEY,
Deputy Administrator,
Program Operations.

[FR Doc.76-35756 Filed 12-3-76;8:45 am]

[7 CFR Part 1205]

[Docket No. CRPA-2]

COTTON RESEARCH AND PROMOTION ORDER

Decision on Proposed Amendment of the Cotton Research and Promotion Order

A public hearing was held upon proposed amendment of the Cotton Research and Promotion Order (7 CFR Part 1205) (hereinafter referred to as the "order") providing for a supplemental assessment for research and promotion and for reimbursement to the Department of Agriculture for referendum, supervisory and administrative costs. The hearing was held, pursuant to the provisions of the Cotton Research and Promotion Act, as amended (80 Stat. 279 et seq., 90 Stat. 991; 7 U.S.C. 2101–2118), and the applicable rules of practice (7 CFR Part 1205), at Memphis, Tennessee on September 20–21, 1976, at Atlanta, Georgia on September 23, 1976, at Dallas, Texas on September 28, 1976, and at Phoenix, Arizona on September 30, 1976 pursuant to notice thereof issued on September 3, 1976 (41 FR 37337).

Based upon the evidence introduced at the hearing and the record thereof, the Administrator on November 15, 1976 (41 FR 50270) filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto. Forty individuals and

organizations filed comments or exceptions.

The material issues, findings and conclusions, rulings and general findings of the November 15, 1976 recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. In Finding and Conclusion No. 3, the last paragraph is revised and two new paragraphs are added.

2. In Finding and Conclusion No. 4, the first sentence in the last paragraph is revised.

Material issues. The material issues presented on the record of hearing are as follows:

(1) The need for supplemental funds to finance a research and promotion program that will continue to effectuate the declared policy of the act;

(2) The amount of a supplemental assessment necessary to finance an effective program;

(3) The method of implementing the collection of the supplemental assessment;

(4) The reimbursement of the Secretary of Agriculture for certain expenses incurred by the Department of Agriculture in connection with the research and promotion program;

(5) Provision for such changes as may be necessary to make the order conform with amendatory action resulting from the hearing.

Findings and conclusions. The findings and conclusions on the material issues are based upon the evidence presented at the hearing and the record thereof, and are as follows:

1. It is concluded from the record evidence that the cotton industry needs additional funding to finance an adequate and needed research and promotion program. Therefore, the order should be amended to provide for a supplemental assessment in addition to the current $1 per bale assessment to provide such additional funds to carry out the programs authorized under the Act.

It will take more money to strengthen cotton's competitive position and to maintain and expand domestic and foreign markets and uses for United States cotton. The effects of inflation and the recent decrease in $1 per bale collections due to the smaller crops, plus the elimination of federal funds under Section 610 of the Agriculture Act of 1970, have resulted in an immediate need for supplemental funds to continue current efforts and to initiate new programs to encourage increased utilization of cotton and its products.

It is estimated that in 1975 a total of $230 million was spent in synthetic fiber research compared to cotton producers' $5.4 million. In the same year, synthetic producers put $60 million into fiber advertising versus cotton producers' $3.4 million.

Testimony indicated the greatest need for additional funding was in the sales promotion area to help retain and regain markets for cotton here and abroad. It was also indicated at the hearing that substantial increases in funding are needed in many research areas, including durable press, fire retardance, byssinosis, and programs to lower the costs of production of cotton.

2. The order should be amended to provide for a supplemental assessment rate of four-tenths of one percent of the value of cotton to begin with the 1977 crop. Furthermore, the order should provide, beginning with the 1978 crop, authority for the Cotton Board, with approval of the Secretary, to increase or decrease the rate of assessment from time to time so long as any such increases do not result in the total supplemental assessment exceeding one percent of the value of cotton as determined by the Cotton Board and the Secretary.

In addition to the immediate need for increased funding, a long-range finance plan is necessary that would provide for maximum program effectiveness and utilizing, if necessary, the highest assessment level allowed by law—one percent of the value of cotton as determined by the Cotton Board and the Secretary.

Testimony indicated that a supplemental assessment of four-tenths of one percent of the value of cotton would generate sufficient funds to carry out present research and promotion programs more effectively and to begin the initial phases of new and expanded programs designed to increase the utilization of cotton and its products. Based on cotton prices for the 1975 crop, a supplemental assessment of four-tenths of one percent on a 10 million bale crop would yield approximately $10 million. Testimony also indicated the need for authority for the Cotton Board and the Secretary to increase the supplemental assessment beginning with the 1978 crop provided the total supplemental assessment does not exceed one percent of the value of cotton.

The order also should provide the Cotton Board and the Secretary with authority to decrease as well as increase the rate of the supplemental assessment. This flexibility is necessary in order to adjust to the financial needs of the program.

3. The order should be amended to provide that the Secretary shall determine the method for implementing the supplemental assessment.

The amendment to the Act provides that the supplemental assessment shall not exceed one percent of the value of cotton as determined by the Cotton Board and the Secretary. Two methods of implementing the collection of the supplemental assessment received considerable support and were examined in depth during the hearing. The Cotton Board's proposal as stated in the notice of hearing provides that the supplemental assessment shall be at a rate of four-tenths of one percent of the gross sales price per bale of cotton. During the hearing another method was proposed by the American Cotton Shippers Association which would retain the rate of four-tenths of one percent contained in the Cotton Board's proposal but the rate would be applied to an average historical value of cotton and converted to a fixed amount for each bale of cotton.

The principal merits of the Cotton Board's proposal of four-tenths of one percent of the gross sales price of the bale of cotton are as follows:

(a) It would be equitable to a producer as his assessment would be directly related to price actually received for his cotton. If he sells high, his assessment is correspondingly high. If he misses a good market price and sells at a low price, his assessment would likewise be less.

(b) It provides a relatively stable level of funds from year to year which would facilitate effective budget planning and program execution. Generally, when cotton production is low, prices are high and vice versa. Therefore, assessment on a percentage basis of the gross sales price would tend to limit undesirable income fluctuations from year to year.

(c) It is a workable collection system even though the calculation and reporting of assessments would not be as simple as a flat rate assessment and would require additional time and expense on the part of collecting handlers.

One area of concern with this proposal is the absence of a common understanding of the gross sales price on which the four-tenths of one percent is to be applied. There are many methods of buying and selling cotton across the Cotton Belt and many different terms of sale. It was brought out that a "gin yard" price would generally eliminate the possibility that the assessment would be applied to charges that normally accrue on cotton after it leaves the gin, such as transportation, receiving charges at the warehouse, and warehouse storage charges. The record establishes that the percentage assessment should be applied uniformly to all sales. In this respect there was considerable testimony that the "gin yard" price for cotton would be the most uniform price on which to determine the assessment although other possibilities do exist. In view of this situation, the Cotton Board and the Secretary should develop a definition of value of cotton which could be based upon the relevant factors making up a gross sales price of cotton and such definition should be published in the Cotton Board rules and regulations. Section 1205.327 of the existing Cotton Research and Promotion order provides authority for the Cotton Board to make such regulations, subject to approval of the Secretary.

The other method for implementing the collection of a supplemental assessment was proposed by the American Cotton Shippers Association whose membership collects and remits the $1 per bale assessment on about 70 percent of annual production.

Their proposal would retain the rate of assessment contained in the Cotton Board's proposal but the rate would be applied to an average historical value of cotton and converted to a fixed amount for each bale of cotton.

The principal merits of this method of assessment are as follows:

(a) It would be easily understood by producers because it would fall in the same pattern as the current $1 per bale assessment. Producers could be advised of the supplemental per bale assessment before the beginning of each crop year. The value of cotton for this purpose could be established in Cotton Board rules and regulations. The hearing record reflects that there are several options which the Cotton Board and Secretary could use for determining the average value of cotton, including past and/or current prices.

(b) It would be simple for collecting handlers to collect, report, and remit assessments. The supplemental assessment could be collected in the same manner as the present $1 per bale assessment.

(c) It would be easy to administer by the Cotton Board at little or no extra staff expenses from the standpoint of collections, compliance, and refunds.

Both of the methods discussed above for implementing the additional assessment have considerable merit and meet the criteria of the Report of the House Committee on Agriculture on H.R. 10930, the legislation authorizing the supplemental assessment, which states that "* * * the amended order could provide either a flat dollar and cents rate per bale or a rate based on a percentage of value per bale using past or current cotton prices * * *"

Over a period of time either method would provide an equitable assessment to producers and would generate approximately the same amount of funds. Both methods are workable from a collection and administrative standpoint. Certain of the comments and exceptions recommended that the order specify that the rate of assessment be based on the gross sales price of cotton. Other comments favored this method for determining the supplemental assessment but did not take exception to amending the order to provide authority to utilize either of the methods for implementing the collection of the supplemental assessment. Comments from other parties, mostly collecting handlers and organizations representing collecting handlers, recommended that the order provide only for the method of implementation that would convert the rate of assessment to a fixed amount for each bale of cotton.

These comments and exceptions largely reiterate evidence and comments presented at the public hearing and in the briefs thereafter filed. As indicated previously, both methods have merit and providing authority to utilize either method for collecting the supplemental assessment allows added flexibility to the program in that the method could be selected that best meets the program's fiscal and administrative requirements. Therefore, the order should be amended to allow the Secretary flexibility in determining which method should be used in implementing the increased assessment. If the amendment to the order is approved in the grower referendum, the Secretary will issue regulations specifying the method to be used in implementing the supplemental assessment.

An exception submitted by the Cotton Board recommended that the Secretary consult with the Cotton Board before prescribing by regulation which method would be used to collect the supplemental assessment. Eleven other comments either stated or implied that the Secretary and the Cotton Board should jointly determine the method to be used in collecting the supplemental assessment. It is contemplated that the Secretary would seek advice and recommendations from the Cotton Board, cotton producers, collecting handlers, and other interested parties in the cotton industry prior to issuing regulations specifying the method to be used in implementing the supplemental assessment.

4. The order should be amended to provide for the reimbursement of the Secretary for expenses up to $200,000 incurred by him in connection with any referendum conducted under the Cotton Research and Promotion Act, and for expenses incurred by him for administrative costs and supervisory work up to five employee years annually.

The Act, as amended provides for the reimbursement of the Secretary for expenses up to $200,000 for any referendum conducted under the Cotton Research and Promotion Act, and for expenses incurred by him for administrative costs and supervisory work up to five employee years annually.

It is the intention of Congress that the full costs of the program be borne by producer assessments. All organizations and practically all individuals who participated in the hearing either approved or voiced no objection to reimbursement of such costs.

The Secretary should be reimbursed for costs associated with the preparation for and holding of any referendum, including the costs of the referendum announced herein. For the purpose of reimbursing the Secretary for administrative costs and supervisory work an employee year would consist of salaries or portions of salaries, travel expenses, per diem, portions of overhead operating expenses, such as telephone, utilities, supplies and printing, or any other cost of these employees or their support facilities which relate directly to an administrative or supervisory role. The actual detailed procedures for reimbursing the Secretary for these referendum, administrative and supervisory costs should be covered in a memorandum of understanding between the Cotton Board and the Secretary.

5. A proposal in the notice of hearing provided that consideration be given to making such other changes in the order as may be necessary to make the entire order conform to any amendments that may result from this proceeding. This proposal was supported at the hearing without opposition.

Minor modifications should be made in the order in two places changing singular assessment to plural assessments to conform with the conclusions recommended herein.

Rulings on briefs of interested persons. At the conclusion of the hearing, the Administrative Law Judge fixed October 20, 1976, as the final date for interested persons to file proposed findings and conclusions, and written arguments or briefs, based upon the evidence received at the hearing.

Briefs and proposed findings and conclusions were filed on behalf of certain interested persons. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth herein. To the extent that the suggested findings and conclusions filed by interested persons are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or to reach such conclusions are denied.

General findings. Upon the basis of the record, it is found that:

(1) The findings hereinafter set forth are supplementary, and in addition, to the previous findings and determinations which were made in connection with the issuance of the Cotton Research and Promotion order.

Except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein, all of said prior findings and determinations are hereby ratified and affirmed;

(2) The Cotton Research and Promotion Order as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act.

Rulings on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions to the recommended decision was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Annexed hereto and made a part hereof is a document entitled "Amendment of the Cotton Research and Promotion Order" which has been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

Referendum order. Pursuant to the applicable provisions of the Cotton Research and Promotion Act as amended (80 Stat. 279 et seq., 90 Stat. 991; 7 U.S.C. 2101–2118), it is hereby directed that a referendum be conducted among the cotton producers who, during calendar year 1976 (which period is hereby determined to be the representative period for the purpose of such referendum) have been engaged in the production of upland cotton in the United States for the 1976 crop to determine whether such producers favor the issuance of the Cotton Research and Promotion Order, as amended.

The procedure applicable to the referendum shall be the procedure for the conduct of referenda in connection with cotton research and promotion orders set forth in CFR 1205.200 et seq., as

amended and published on November 19, 1976 (41 FR 5103). The referendum period shall be December 13 through 17, 1976.

The ASCS county office will send each eligible voter an appropriate ballot, instructions on the voting procedure, and a summary of the terms and conditions of the said annexed amendment of the Cotton Research and Promotion Order. If any eligible voter does not receive a ballot on or prior to December 13, 1976, he may obtain one during the referendum period from the ASCS county office for the county in which he is eligible to vote.

It is hereby ordered, That all of this decision, referendum order, and annexed order amending the Cotton Research and Promotion Order be published in the FEDERAL REGISTER.

Dated: December 2, 1976.

RICHARD L. FELTNER,
Assistant Secretary.

Final Decision—*Cotton Research and Promotion Order*[1] *amending the Cotton Research and Promotion Order.*

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

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Cotton Research and Promotion Act, as amended (80 Stat. 279 et seq., 90 Stat. 991; 7 U.S.C. 2101–2118), and the applicable rules of practice and procedure governing the formulation and amendments of cotton research and promotion orders (7 CFR Part 1205), a public hearing was held upon proposed amendment of the Cotton Research and Promotion Order.

Upon the basis of the record it is found that:

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

(2) All cotton produced and handled in the United States is in the current interstate or foreign commerce, or directly burdens, obstructs, or affects interstate or foreign commerce in cotton and cotton products.

The provisions of the proposed order amending the order, contained in the recommended decision issued by the Administrator on November 11, 1976 and published in the FEDERAL REGISTER on November 15, 1976 (41 FR 50270), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein:

1. Revise § 1205.302 to read:

§ 1205.302 Act.

"Act" means the Cotton Research and Promotion Act, as amended (80 Stat. 279 et seq., 90 Stat. 991; 7 U.S.C. 2101–2118).

§ 1205.327 [Amended]

2. Amend § 1205.327(b) by adding "s" to the word "assessment".

3. Revise § 1205.330 to read:

§ 1205.330 Expenses.

(a) The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart.

(b) The Board shall reimburse the Secretary (1) for expenses up to $200,000 incurred by him in connection with any referendum conducted under the Act and (2) for expenses incurred by the Department of Agriculture for administrative and supervisory costs up to five employee years annually.

(c) The funds to cover such expenses incurred under paragraphs (a) and (b) of this section shall be paid from assessments received pursuant to § 1205.331.

4. Revise § 1205.331 to read:

§ 1205.331 Assessments.

Each cotton producer or other person for whom cotton is being handled shall pay to the handler thereof designated by the Cotton Board pursuant to regulations issued by the Board and such handler shall collect from the producer or other person for whom the cotton, including cotton owned by the handler, is being handled, and shall pay to the Cotton Board, at such times and in such manner as prescribed by regulations issued by the Board, assessments as prescribed in paragraphs (a) and (b) of this section to be used for such expenses and expenditures, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Cotton Board and the Secretary under this subpart:

(a) An assessment at the rate of $1 per bale of cotton handled.

(b) A supplemental assessment on cotton handled which shall not exceed one percent of the value of such cotton as determined by the Cotton Board and approved by the Secretary and published in Cotton Board rules and regulations. For the 1977 and subsequent crops of cotton this supplemental assessment shall be at the rate of fourtenths of one percent of the value of cotton: *Provided,* That for any crop of cotton, beginning with the 1978 crop, the rate of the supplemental assessment may be increased or decreased by the Cotton Board with the approval of the Secretary. The Secretary shall prescribe by regulation whether the assessment rate shall be levied on (1) the current value of cotton, or (2) an average value determined from current and/or historical cotton prices and converted to a fixed amount for each bale.

§ 1205.334 [Amended]

5. Amend § 1205.334(c) by adding "s" to the word "assessment".

[FR Doc.76-35897 Filed 12-3-76;8:45 am]

[1] This order shall not become effective unless and until the requirements of § 1205.15 of the rules of practice and procedure governing proceedings to formulate Orders Under the Cotton Research and Promotion Act have been met.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 39]

[Airworthiness Docket No. 76-WE-14-AD]

McDONNELL DOUGLAS DC-9 SERIES AIRPLANES

Withdrawal of Proposed Airworthiness Directive

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring inspection and rework of the lower center of the emergency exit doorjamb in the aft pressure bulkhead on McDonnell Douglas DC-9 Series airplanes without the aft ventral stair was published in 41 FR 34649.

Upon further consideration, and in the light of comments received in response to the Notice of Proposed Rule Making, the agency has determined that the fatigue cracking does not presently exist to the extent originally believed. Inspection of 173 of the 225 affected airplanes revealed only 4 additional small cracks. Additionally, the agency believes that the crack propagation data determined from an analysis of the failed parts, combined with the normal maintenance inspection program, provide assurance that fatigue cracks will be detected and repaired before they become detrimental to the airworthiness of the airplane. Therefore, the proposed AD is not required at this time.

Withdrawal of this notice of proposed rulemaking constitutes only such action, and does not preclude the agency from issuing another Notice in the future, or commit the agency to any course of action in the future.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 F.R. 13697), the proposed airworthiness directive published in the FEDERAL REGISTER on August 16, 1976 (41 FR 34649), is hereby withdrawn.

Issued in Los Angeles, Calif. on November 23, 1976.

ROBERT H. STANTON,
Director, Federal Aviation Administration Western Region.

[FR Doc.76-35765 Filed 12-3-76;8:45 am]

[14 CFR Part 91]

[Docket No. 13824; Notice No. 74-21A]

REPLENISHING AND MAINTENANCE OF OXYGEN SYSTEMS

Supplemental Notice of Proposed Rule Making

On June 10, 1974, the Federal Aviation Administration published a notice of proposed rulemaking (Notice 74-21; 39 FR 20382), relating to replenishment and maintenance of oxygen systems. Specifically, the notice proposed to amend Part 91 of the Federal Aviation Regulations to prescribe safety requirements governing the presence of persons aboard a civil aircraft of U.S. registry when certain work is being performed on the oxygen system of the aircraft.

An examination of the comments received indicates that several items require further explanation, and in some cases, changes in the proposals made in the notice. Accordingly, the FAA is issuing this supplemental notice of proposed rulemaking, and requests that interested persons review their comments in the light of the following discusion, and if appropriate, submit additional comments.

All comments with respect to this supplemental notice received on or before February 7, 1977, will be considered by the Administrator before taking action on the proposed rule. Communications should identify the regiatory docket or notice number and be submitted in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue, SW., Washington, D.C. 20591. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Any person may obtain a copy of this supplemental notice of proposed rule making by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 425-8058. Communications must identify the notice number of this supplemental notice. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

In Notice 74-21 the FAA proposed to amend Part 91 to prohibit a person from replacing an oxygen cylinder or performing maintenance on the oxygen system of an aircraft while persons other than those performing maintenance on the aircraft were aboard, unless certain conditions were met; and to prohibit the recharging of an oxygen cylinder installed in an aircraft while persons other than those performing maintenance were aboard the aircraft. In addition, the notice proposed to require all oxygen cylinders be equipped with a slow opening type valve to limit the aircraft oxygen pressure.

The FAA received forty-three comments in response to Notice 74-21. A number of these comments contained recommendations for changes to the proposals. In this connection, under the proposal, the only persons permitted to be aboard an aircraft during the recharging of an oxygen cylinder were those persons whose presence was necessary for performing maintenance on the aircraft. Comments received objected to the proposal on the grounds that it would seriously disrupt operations and cause delays, since it would exclude crewmembers and cabin service personnel. Since such personnel are sufficiently familiar with emergency procedures to safely evacuate an aircraft in the event that problems arise, the FAA agrees that it is unnecessary to prohibit them from being aboard the aircraft during the recharging of an oxygen cylinder. Accordingly, the proposal has been changed so that only passengers are prohibited from being on board the aircraft during the recharging of an oxygen cylinder installed in the aircraft.

Other commentators recommended that the applicability of the rule be limited to replacement of nonportable oxygen cylinders in the aircraft. The FAA agrees and the proposal has been revised accordingly. In addition, in response to comments received, the qualifying word "gaseous" is used in this proposal to exclude chemical oxygen systems from its applicability, since it is recognized by the FAA that chemical systems are inert until activated and pose a very minimum hazard during servicing.

Finally, various commentators suggested the need for clarification of the rule proposed in Notice 74-21 which would have permitted passengers to remain aboard an aircraft while an oxygen cylinder was being replaced, or other maintenance was being performed on a portion of an oxygen system, only if the pressure leaving the oxygen cylinder was limited to a maximum of 450 psig and an evacuation route and personnel to supervise an evacuation were provided by the aircraft operator. Upon further consideration of this proposal, in light of these comments, the FAA believes it is consistent with the objective of the proposal to propose a requirement that would permit passengers to remain aboard an aircraft during the replacement of an oxygen cylinder, or the performance of other maintenance (not involving recharging of an oxygen cylinder) on any portion of an oxygen system, only if operation of the aircraft is governed by those provisions of Part 91, 121, 123, 127 or 135 of the Federal Aviation Regulations that require flight attendants and those attendants are aboard. Requirements for flight attendants are currently prescribed in §§ 91.215, 121.391, 123.27, 127.147 and 135.54. Such a proposal would ensure the presence of a sufficient number of flight attendants trained in emergency evacuation procedures, depending upon the passenger seating capacity of the aircraft involved, and would impose no additional burden on the operator of those aircraft. The proposal has, therefore, been revised accordingly. As a consequence, when the aircraft operation does not require flight attendants under any of the provisions of Part 91, 121, 123, 127 or 135 of the Federal Aviation Regulations, the proposal would not permit any passengers to be aboard the aircraft during the replacement of a nonportable gaseous oxygen cylinder or the performance of other maintenance.

A review of the comments received and further evaluation of systems for replenishing oxygen systems aboard aircraft indicates that proposing standards for valves is not practical at this time, since operators cannot meet the proposed standard with existing equipment. Therefore, the FAA is not proposing any requirements pertaining to pressure reduction, flow limiting, slow opening valves or other specific valve or pressure requirements.

In accordance with Department of Transportation Regulatory Reform Policy, an evaluation of the anticipated impacts of this proposal has been made. The adoption of this action is expected to be neither costly nor controversial and will not impose a burden on the private sector, on consumers, or on Federal, State, or local governments.

This proposal is made under the authority of sections 313(a), 601 and 604 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1424), and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

In consideration of the foregoing, it is proposed to amend Part 91 of the Federal Aviation Regulations by adding a new § 91.168 after § 91.167 to read as follows:

§ 91.168 Replenishing and maintenance of gaseous oxygen systems.

(a) No person may replenish a gaseous oxygen system by recharging an oxygen cylinder while it is installed in an aircraft if passengers are aboard that aircraft.

(b) No person may replace a nonportable gaseous oxygen cylinder while it is installed in an aircraft or perform other maintenance (not involving recharging an oxygen cylinder) on any portion of a gaseous oxygen system in an aircraft if passengers are aboard that aircraft, unless the provisions of this part or Part 121, 123, 127 or 135 of this chapter require a minimum number of flight attendants for the particular aircraft operation involved, and the aircraft operator has those flight attendants aboard that aircraft to supervise any passenger evacuation.

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 November 26, 1976.

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

[FR Doc.76-35602 Filed 12-3-76;8:45 am]

FEDERAL TRADE COMMISSION

[16 CFR Part 450]

ADVERTISING OF OVER-THE-COUNTER DRUGS

Notification of Disposition of Petition

On November 11, 1975, the Commission published in the FEDERAL REGISTER (40 FR 52631) an initial notice of a proposed trade regulation rule relating to advertising of over-the-counter drugs, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. 41, et seq., the provisions of Part I, Subpart B of the Commission's Procedures and Rules of Practice, 16 CFR 1.7, et seq., and section 553 of Subchapter II, Chapter 5, Title 5 of the U.S. Code (Administrative Procedure).

On September 16, 1976, pursuant to the same authority and more specifically to the authority of § 1.12 of the Commission's procedures and rules of practice, the duly appointed Presiding Officer for this proceeding published the Final Notice of proposed rulemaking in the FEDERAL REGISTER (41 FR 39768), including therein certain designated issues for consideration in accordance with § 1.13(d) (5) and (d) (6) of the rules.

Subsequent to publication of the Final Notice, the Proprietary Association has, under § 1.13(c) (2) (ii) of the Commission's rules of practice, petitioned the Commission for additions to the issues designated by the Presiding Officer in the OTC Drug Advertising Rulemaking for treatment in accordance with §§ 1.13 (d) (5) and (d) (6) of the rules. A submission in support of the Proprietary Association's petition was filed by Plough, Inc.

The Commission has considered the petition and concluded that none of the issues proposed by the Proprietary Association are disputed issues of fact that are "material and necessary to resolve" within the meaning of § 1.13(d) (1) (i) of the rules. It also has determined not to designate any of the proposed issues as a matter of discretion under § 1.13(d) (1) (ii). With respect to the issues designated by the Presiding Officer, the Commission has determined that they are appropriate for designation, but makes no determination as to whether they are more appropriately designated under § 1.13(d) (1) (i) or § 1.13(d) (1) (ii). However, the Presiding Officer may in his discretion employ, in whole or in part, the procedures of §§ 1.13(d) (5) and (d) (6) for any issues raised in this proceeding.

Although the Commission has decided not to designate any further issues in this proceeding, it believes that it would be fruitful to direct attention to and invite comments by interested persons on the following questions which, although not warranting designation, could help in focusing the arguments of persons interested in the rulemaking. The Commission recognizes that these questions elicit discussions of issues of fact, law, and policy. These questions are in addition to, and not substitutes for, the questions and statements on which comment was invited in Part F of the Presiding Officer's Final Notice (41 FR 39768, September 16, 1976).

The FDA has limited OTC drug labels to certain specified terms for some purposes. For example, to show indications for use, the label of an antacid product must identify the product only as an "antacid" to alleviate the symptoms "heartburn," "sour stomach," and/or "acid indigestion." 21 CFR 331.30(a), as amended, 40 FR 11718 (March 13, 1975). The Commission's proposed trade regulation rule would forbid OTC drug advertising to make any "claim," directly or by implication, which the Commissioner of Food and Drugs has determined, in a final order under the monograph program, may not appear in the labeling for that drug. This rulemaking proceeding explores the relationship between FDA's exclusive permissible "terms" in labeling, and the implication of such FDA determinations for "claims" in advertising. Several particular questions should be addressed:

1. For what reasons does FDA require exclusive terms in labeling under its monograph program? What criteria are applied in requiring exclusive terms for some purposes and not for others? What criteria are applied in permitting certain terms and refusing to permit other terms? Are there legal or policy considerations implicit in the FDA's approach toward specification of language to be utilized in labeling which bear upon whether the FTC should similarly limit language in advertising?

2. FDA may specify particular exclusive terms for several different types of claims appearing in labeling (e.g., indications for use, mechanisms for drug action, and other characteristics of therapeutic performance such as speed where directly related to safety or efficacy). If there are reasons for specifying exclusive terms in advertising as well as in labeling, should the Commission require those terms in all instances where FDA has specified labeling terms? In other words, are there restrictions on some labeling claims which it would not be appropriate to apply to corresponding advertising?

3. Do these reasons argue for limiting claims in advertising to the specific words approved by FDA for labeling, or for some other approach such as establishing prerequisites or qualifications to be stated in advertising that, if present, would allow other words to be utilized as well?

4. If prerequisites or qualifications are to be specified for allowing words in advertising in addition to those specified by FDA for labeling, should they:

(a) Consist in the prescription of a test procedure for determining that words proposed as alternates have the same meaning as the words that FDA has permitted? What test procedure?

(b) Allow for the use of some alternate words even if their meaning is not identical to the words permitted by FDA? If so, how should the baseline meaning of the FDA words be established, and what should the nature and degree of permitted variance from the baseline meaning be?

(c) Consist in accompanying disclosures? If so, what disclosures?

5. What types of claims are not covered by the OTC review program? How can an advertiser determine what those types of claims are? For those types of claims that are covered, should the rule address only those claims within a given type (e.g., indications for use) that are specifically considered by the FDA Commissioner? If so, how can it be determined which claims were so considered? Should all claims within a given type be deemed to have been considered by the Commissioner?

6. What would be the effect on consumer behavior, on competition among OTC drug manufacturers, including small businesses, on the ability of manufacturers or others to market new or existing products, and on FDA's OTC Drug Review Program of:

(a) Limiting claims in advertising to the specific words approved by FDA for labeling, where FDA has excluded other words; or

(b) Developing prerequisites or other qualifications for allowing other words to be utilized as well?

7. The FDA has stated that, in order for an OTC drug to be generally recognized as safe and effective and not misbranded, the drug must satisfy the following condition, among others: "The advertising for the product prescribes, recommends, or suggests its use only under the conditions stated in the labeling." 21 CFR 330.1(d). What is the meaning of this regulation? To what extent, if any, does it bear upon the proposed rule?

Issued: December 6, 1976.

By direction of the Commission.

CHARLES A. TOBIN,
Secretary.

[FR Doc.76-35762 Filed 12-3-76;8:45 am]

COMMODITY FUTURES TRADING COMMISSION

[17 CFR Parts 1, 145]

FUTURES COMMISSION MERCHANTS

Financial and Reporting Requirements; Extension of Comment Period

On October 6, 1976, the Commodity Futures Trading Commission ("Commission") proposed certain amendments to §§ 1.10, 1.17 and 1.18 of the regulations under the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. 1-22, 17 CFR 1.10, 1.17 and 1.18, and new regulations 1.10(a) and 1.16, 41 FR 45706 (October 15, 1976). The effect of these proposals would be (1) To require that financial reports submitted by futures commission merchants be audited an-

nually be independent public accountants, (2) To increase the frequency of financial reports, (3) To expand the content of such reports, (4) To require that copies of these annual reports be sent to customers, (5) To require that futures commission merchants compute their minimum capital requirements on a monthly basis, and (6) To make these requirements uniform throughout the industry. Only futures commission merchants who are members of a contract market and conform to minimum financial and related reporting requirements set by the contract market and approved by the Commission pursuant to section 4f(2) of the Act subsequent to the effective date of the proposed rules and rule amendments would be exempt from these requirements. At the same time, the Commission also proposed the amendment of that portion of the Commission's regulations which implement the Freedom of Information Act, 17 CFR Part 145, to classify a futures commission merchant's Computation of Minimum Capital requirements and the report of the independent public accountant as public records.

In announcing these proposed rules and rule amendments, the Commission stated that it would accept comments on the proposed rules and rule amendments through Tuesday, November 30, 1976. In response to this announcement, interested persons have requested that this comment period be extended to afford them further opportunity to prepare comments on the proposed rules and rule amendments. The Commission has therefore decided to extend this comment period through January 3, 1977. Comments should be addressed to the Commodity Futures Trading Commission, 2033 "K" Street, NW., Washington, D.C. 20581, Attention: Secretariat.

Issued in Washington, D.C., on November 29, 1976, by the Commission.

WILLIAM T. BAGLEY,
Chairman, Commodity Futures Trading Commission.

[FR Doc.76-35722 Filed 12-3-76;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Parts 239, 240, 270, 275]

[Release Nos. 33-5772, 34-13024, IC-9547, IA-554; File No. S7-660]

DISCLOSURE OF BROKERAGE PLACEMENT PRACTICES BY INVESTMENT MANAGERS

Proposed Rulemaking

The Securities and Exchange Commission today announced a proposed rulemaking pursuant to sections 3(a)(35)(C) (15 U.S.C. 78c(a)(35)(C)), 23(a) (15 U.S.C. 78w(a)), and 28(e)(2) (15 U.S.C. 78bb(e)(2)) of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) ("Securities Exchange Act"); sections 10(c) and (d) (15 U.S.C. 77j(c) and (d)) of the Securities Act of 1933 (15 U.S.C. 77a et seq.) ("Securities Act"); section 204 (15 U.S.C. 80b-4) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) ("Investment Advisers Act"); and section 20(a) (15 U.S.C. 80a-20(a)) of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) ("Investment Company Act") to require investment companies registered under the Investment Company Act, certain investment advisers registered under the Investment Advisers Act, and some other types of accounts (including certain H.R. 10 "Keogh" plans, employee benefit plans, and collective funds or separate accounts for the assets of such plans interests or participations in which are registered under the Securities Act) to make disclosures to investors about brokerage placement practices and policies, including the use of brokerage commissions to purchase research services.

Section 28(e)(1) of the Securities Exchange Act (15 U.S.C. 78bb(e)(1)) provides that no person who exercises "investment discretion"[1] with respect to an account shall be deemed to have acted unlawfully, or to have breached a fiduciary duty existing under state or federal law solely by reason of his having caused the account to pay an amount of commission to a broker or dealer for effecting any securities transaction that is in excess of the amount of commission another broker or dealer would have charged for effecting the same transaction, if such person determines in good faith that such an amount of commission is reasonable in relation to the value of the brokerage and research services provided by the executing broker, viewed in terms of either the particular transaction or the person's overall responsibilities with respect to the accounts as to which he exercises investment discretion.

Section 28(e)(2) (15 U.S.C. 78bb(e)(2)) provides that persons exercising investment discretion with respect to an account shall make such disclosure of their policies and practices with respect to commissions paid for effecting securities transactions as the Commission, or, in the case of banks, the other appropriate regulatory agencies, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.[2] Although section 28(e)(1) provides that the payment of commissions at rates in excess of the lowest available rates shall not be unlawful if the money manager determines in good faith that the amount of the commission is reasonable in relation to the value of the brokerage and research services provided by the broker, it also preserves the Commission's powers under other provisions of the Securities Exchange Act and otherwise. Thus, while section 28(e)(2) gives the Commission additional authority to adopt disclosure rules, the adoption or non-adoption of such rules by the Commission or the other appropriate regulatory agencies does not afford any protection to money managers who fail to disclose material facts in a manner violative of anti-fraud provisions which are otherwise applicable.

[1] "Investment discretion" is defined in section 3(a)(35) (15 U.S.C. 78c(a)(35)).

[2] The appropriate regulatory agencies for persons exercising investment discretion with respect to an account are specified in section 3(a)(34)(F) (15 U.S.C. 78c(a)(34)(F)).

PERSONS SUBJECT TO THE PROPOSED RULES

1. *Investment Managers.* Proposed Rule 28e2-1 defines "investment manager" to mean any registered investment adviser exercising investment discretion with respect to a customer account, except any such adviser who does not determine or suggest the broker or brokers through whom or the commission rates at which securities transactions for the account are effected; and "managed account" is defined to mean an account as to which a person acts as investment manager.[3] Investment managers would be required to provide an initial written disclosure statement to a client or prospective client not less than 48 hours prior to entering a contract or agreement establishing a managed account. Thereafter, and as to managed accounts in existence at the effective date of the rule, an annual written disclosure statement would be required to be provided within 90 days of the close of each fiscal year of the managed account. The information to be included in the initial and annual written disclosure statements is specified in paragraphs (c) and (d) of proposed Rule 28e2-1, respectively. Supplemental written disclosure statements would be required to be provided within 45 days after any material change occurs in the information included in such statements.

[3] Section 3(a)(35) of the Securities Exchange Act (15 U.S.C. 78c(a)(35)) provides:

A person exercises "investment discretion" with respect to an account if, directly or indirectly, such person (A) is authorized to determine what securities or other property shall be purchased or sold by or for the account, (B) makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions, or (C) otherwise exercises such influence with respect to the purchase and sale of securities or other property by or for the account as the Commission, by rule, determines, in the public interest or for the protection of investors, should be subject to the operation of the provisions of this title and the rules and regulations thereunder.

Proposed Rule 28e2-1(e) would provide that for purposes of section 28(e), and rules adopted thereunder, a person exercises investment discretion with respect to an account under the circumstances specified in clauses (A) and (B) of section 3(a)(35) or if such person determines through what broker or at what commission rates securities transactions on behalf of the account are effected. The need for this clarification has been indicated, among other things, by inquiries the staff has received as to whether investment advisers to registered investment companies exercise investment discretion when a company's board of directors makes a decision as to securities to be purchased or sold, but the adviser otherwise has discretion as to the timing, price, and commission rate with respect to the transaction. However, the definition would not be limited to investment company advisers.

No additional disclosure statement would be required upon the renewal or extension of an existing advisory agreement. However, if information previously provided became materially inaccurate, a written correction and explanation would have to be provided not less than 48 hours in advance of any extension or renewal.

Also, the proposed amendment to Rule 204–2 under the Investment Advisers Act (17 CFR 275.204–2) would require investment advisers to maintain copies of disclosure statements provided pursuant to proposed Rule 28e2–1 as part of their books and records.

2. *Registered Investment Companies.* The proposed amendments to Forms S–4 and S–5 under the Securities Act (17 CFR 239.14 and 239.15) would require investment companies registered under the Investment Company Act to include the information specified in paragraph (d) of proposed Rule 28e2–1 in their prospectuses. In addition, the proposed amendment to Rule 20a–2 under the Investment Company Act (17 CFR 270.20a–2) would require the same information to be included in proxy statements of registered investment companies.[4]

3. *Other Issuers.* The proposed amendments to Forms S–1 and S–8 under the Securities Act (17 CFR 239.11 and 239.16b) would require the information specified in paragraph (d) of proposed Rule 28e2–1 to be included in prospectuses required under the Securities Act for certain interests or participations issued in connection with employee benefit plans which are similar to investment companies. These include interests in retirement plans for self employed persons (commonly called "Keogh" plans), collective trusts maintained by banks, or separate accounts of insurance companies for the assets of such plans where such interests are required to be registered under the Securities Act, and interests in other qualified employee benefit plans or trusts which are required to be registered under the Securities Act.

Information To Be Disclosed

The information to be disclosed pursuant to the proposed rules is specified in paragraph (d) of proposed Rule 28e2–1, except that the information to be included by investment managers in initial written disclosure statements is specified in paragraph (c) of such rule. In general, paragraph (d) would require (1) a description of how brokers are selected to effect transactions for the managed account and how evaluations are made of the overall reasonableness of commissions paid; (2) a brief description of any research services which the investment manager obtains in return for brokerage commissions, the extent to which such research is obtained for the purpose of benefiting accounts generally or specific managed accounts of the investment manager, and any other research services provided for the managed account; (3) a brief description of certain other services and items of value received from brokers by the investment manager or affiliated persons[5] of the investment manager and an estimate of their fair market value; and (4) a statement of the total brokerage commissions paid by the managed account during the preceding year as a dollar amount and as a percentage of average assets, the amount of any brokerage commissions paid to the investment manager or its affiliated persons, and the average rates for commissions paid by the account on all transactions and on any transactions executed by the investment manager or its affiliated persons.[6]

In addition, under the proposed amendments to the proxy requirements applicable to investment companies and to the registration forms under the Securities Act for investment companies and other issuers covered by the proposed rules, some of the figures relating to brokerage commissions paid would be required for three years, rather than only one year, together with a brief explanation of any material changes in such figures.

Paragraph (c) of proposed Rule 28e 2–1, relating to initial written disclosure statements provided by investment managers, would require disclosure of information very comparable to that specified in paragraph (d), except that no information relating to past periods would be required.

In addition to the requirements set forth in paragraphs (c) and (d), consideration has been given to requiring disclosure of the amount of brokerage commissions paid by managed accounts for research servies. However, to make such a disclosure, it would be necessary to separate a single commission into its component execution and research parts. For example, the research component might be approximated by deducting an amount equivalent to rates charged for available execution services from the overall brokerage commission paid by the managed account. While a number of these services now appear to be available, it may still not be appropriate to require such a calculation, since section 28(e) covers bona fide payments for superior execution services (as well as research services), which may be important in effecting very large institutional-size transactions. Nevertheless, comments are specifically invited on the feasibility and desirability of requiring disclosure of specific dollar amounts paid through brokerage commissions for research services as an alternative (or addition) to the proposed disclosure requirements.

Scope of the Proposed Rules

Under section 28(e)(2), the Commission may adopt disclosure requirements concerning brokerage placement policies and practices for *any person*, other than a bank, who exercises investment discretion as defined by section 3(a)(35) or by Commission rule.[7] Therefore, rules adopted under section 28(e) could be broadened to cover such additional persons and entities as broker-dealers exercising investment discretion solely incidental to their brokerage business and not for special compensation; insurance companies with respect to their general accounts; separate accounts of insurance companies and pension funds interests in which are exempt from registration as provided in section 3(a)(2) of the Securities Act (15 U.S.C. 77c(a)(2)); endowments of foundations; individual, non-professional trustees and executors; and companies other than investment companies having substantial securities portfolios.

In general, the proposed rules limit the disclosure requirements to persons who hold themselves out as professional money managers, and as to whom the Commission would be able effectively to enforce such requirements. The Commission, however, requests that persons commenting on the proposed rules address the following points: (1) The desirability of extending the disclosure requirements to any additional categories of persons; (2) the costs of compliance by persons who would be subject to the rules; (3) any ways in which such costs might appropriately be reduced; and (4) the competitive impact which the proposed rules would have.

In this connection, proposed Rule 28e2–1 would require registered investment advisers who manage discretionary accounts to provide their clients with an annual disclosure document. Currently, most such advisers do, as a matter of business practice, provide their clients with an account statement at least annually, although this is not required under the federal securities laws. These statements typically do not contain specific information about brokerage commissions,[8] but do include such information as schedules of assets with historical costs and current values, sched-

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[4] Of course, all material details of an adviser's brokerage placement policies and practices, including information such as that called for by proposed Rule 28e2–1(d), should be disclosed to the directors of registered investment companies and considered by them in evaluating the terms of advisory contracts as required by section 15(c) of the Investment Company Act (15 U.S.C. 80a–15(c)).

[5] "Affiliated person" is defined in section 3(a)(19) of the Securities Exchange Act (15 U.S.C. 78c(a)(19)) and section 2(a)(3) of the Investment Company Act (15 U.S.C. 80a–2(a)(3)).

[6] The Commission specifically invites comments on the desirability of substantive limitations on the payment of more than normal execution charges to a broker affiliated with the investment manager in return for research services (see Securities Act Release No. 5250 (May 9, 1972) (37 FR 9988 (1972))), and what, if any, additional disclosures would be appropriate with respect to such practices.

[7] Also, section 28(e) specifically provides that nothing therein shall be construed to impair or limit the power of the Commission under any other provision.

[8] The Commission has been informed, however, that in most cases, investment advisers subject to the rules have available the necessary data to compile specific information about brokerage commissions, since brokers executing securities transactions for discretionary accounts managed by investment advisers normally send confirmations of such transactions to the adviser, as well as to the customer.

ules of purchase and sale transactions, and various presentations of account performance. Investment advisers would be free to satisfy the annual disclosure requirement of proposed Rule 28e2–1 by including the prescribed disclosures in these or other routine communications with their customers.

Also, in March 1975, the Commission proposed Rule 206(4)–4 under the Investment Advisers Act,[9] which would require investment advisers to provide clients with written disclosure statements containing certain specified information at least 48 hours prior to entering into any investment advisory contract, and to provide written corrections within 45 days if such information becomes materially inaccurate. These statements would include, among other things, the general source or sources of information used by the investment adviser as the basis for any investment advice rendered to clients and the methods employed by the investment adviser to analyze or evaluate such information. In addition, under some circumstances, the adviser would also be required to disclose whether and to what extent the investment adviser may have discretionary authority to select brokers or dealers to execute transactions in securities for its clients or for the accounts of its clients, and, if so, the factors considered in making such selections. Although the requirements under proposed Rule 28e2–1 differ in a number of respects from those under proposed Rule 206(4)–4, if both rules are adopted, investment advisers would be free to satisfy the initial disclosure requirement of proposed Rule 28e2–1 by including the prescribed disclosures as part of or as a supplement to the written disclosure statement required by proposed Rule 206(4)–4.

EFFECTIVE DATE OF PROPOSED RULES

It is anticipated that if the Commission adopts rules similar in form and substance to those proposed herein, such rules would become effective 45 days after adoption. Registration statements and annual updating amendments which are filed by registered investment companies and employee benefit funds subject to the rules and which are to become effective subsequent to the effective date of the rules would of course be required to comply therewith. In addition, it is anticipated that prospectuses used subsequent to the effective date of the rules and containing financial statements for fiscal years ending December 31, 1976 and thereafter would normally be required to include the disclosures prescribed by such rules, even though a registration statement or annual updating amendment not including such disclosures may have become effective prior to the effective date of the rules.[10]

[9] See Investment Advisers Act Release No. 442 (Mar. 5, 1975) (40 FR 11897 (1975)).

[10] Where such disclosures are provided by means of an amended prospectus, and no post-effective amendment to the registration statement is filed, copies of the amended prospectus should be filed with the Commission in compliance with Rule 424(c) under the Securities Act (17 CFR 230.424(c)).

COMMISSION ACTION

I. It is proposed to amend Part 240 of Chapter II of Title 17 of the Code of Federal Regulations, General Rules and Regulations, Securities Exchange Act of 1934, by adding a new § 240.28e2–1 (Rule 28e2–1) as follows:

§ 240.28e2–1 Brokerage placement disclosure requirements for investment managers.

(a) *Investment managers; managed accounts.* For the purposes of this rule, "investment manager" means a registered investment adviser exercising investment discretion, as defined in paragraph (e) of this section, with respect to a customer account, except any such adviser who does not determine or suggest the broker or brokers through whom or the commission rates at which securities transactions for the account are effected; and "managed account" means an account with respect to which a person is an investment manager.

(b) *Written disclosure statements.* (1) Every investment manager shall provide the customer or other person or persons authorized to engage the services of the investment manager for a managed account with an initial written disclosure statement containing the information specified in paragraph (c) of this section not less than 48 hours prior to entering into a written or oral contract or agreement establishing the managed account: *(Provided,* That this requirement shall not apply to the extension or renewal of any contract or agreement as in effect immediately prior to such extension or renewal); and thereafter, and as to managed accounts established prior to the effective date of this rule, every investment manager shall provide the customer or other person or persons authorized to engage the services of the investment manager with an annual written disclosure statement containing the information specified in paragraph (d) of this section within not more than 90 days following the close of each fiscal year of the managed account ending after the effective date of this rule, so long as the advisory contract or agreement respecting the managed account continues or is extended or renewed.

(2) If a material change occurs in the information provided to any customer or other person pursuant to paragraph (b)(1) of this section, the investment manager shall provide such customer or other person with a written statement describing such change and the reasons therefor within 45 days after the date such information becomes materially inaccurate or misleading, but in no case less than 48 hours prior to extension or renewal of an advisory contract or agreement respecting the managed account.

(c) *Information required in initial written disclosure statements.* (1) A description of how brokers will be selected to effect securities transactions for the managed account, the factors to be considered in making such selections, and the process by which evaluations will be made of the overall reasonableness of commissions paid.

(2) A brief description of (i) any research services, whether or not for the benefit of the managed account, which are intended to be obtained during the forthcoming year in return for commissions paid by the managed account or by any other managed account of the investment manager to brokers who may execute transactions for the managed account; (ii) the extent to which such research will be obtained for the purpose of benefiting managed accounts generally, or any specific managed accounts of the investment manager; and (iii) any other research services which are intended to be provided for the managed account.

(3) A brief description of any services or items of value not described in response to subparagraph (2)(i) of this paragraph, whether or not for the benefit of the managed account, which are intended to be obtained during the forthcoming year by the investment manager or by any affiliated person of the investment manager from brokers who may execute transactions for the managed account. Not required to be included are (i) any service or item to be obtained in return for brokerage commissions paid by any account which is not a managed account of the investment manager; (ii) any service or item to be obtained in bona fide purchase and sale transactions otherwise than in return for brokerage commissions; or (iii) any incidental business gift, entertainment, food or recreation not having a substantial value.

(d) *Information required in annual written disclosure statements.* (1) A description of how brokers are selected to effect securities transactions for the managed account, the factors considered in making such selections, and the process by which evaluations are made of the overall reasonableness of commissions paid.

(2) A brief description of (i) any research services, whether or not for the benefit of the managed account, which were obtained during the preceding fiscal year of the managed account, and any such services intended to be obtained in the current year, in return for commissions paid by the managed account or by any other managed account of the investment manager to brokers who executed or may execute transactions for the managed account; (ii) the extent to which such research was or will be obtained for the purpose of benefiting managed accounts generally, or any specific managed accounts of the investment manager; and (iii) any other research services which were or are intended to be provided for the managed account.

(3) A brief description of any services or items of value not described in response to subparagraph (2)(i) of this paragraph, whether or not for the benefit of the managed account, which were obtained during the preceding fiscal year of the managed account, and any such services or items of value intended to be obtained in the current year, by the investment manager or by any affiliated person of the investment manager from brokers who executed or may execute transactions for the managed account,

and an estimate of the approximate aggregate fair market value thereof during the preceding year. Not required to be included are (i) any service or item obtained in return for brokerage commissions paid by any account which is not a managed account of the investment manager; (ii) any service or item received in bona fide purchase and sale transactions otherwise than in return for brokerage commissions; or (iii) any incidental business gift, entertainment, food, or recreation not having a substantial value.

(4) With respect to the preceding fiscal year of the managed account, a statement of (i) the total amount of brokerage commissions paid by the managed account expressed both as a dollar amount and as a percentage of the average net assets of the account (calculated on the basis of the same period as the advisory fee is calculated); (ii) the total dollar amount of such commissions paid to the investment manager or to brokers who are affiliated persons of the investment manager; and (iii) the average commission rate paid by the managed account (A) on all transactions involving the payment of commissions to any broker and (B) on all transactions involving the payment of commissions to the investment manager or brokers who are affiliated persons of the investment manager. Average commission rates are to be calculated by dividing the total dollar amount of commissions paid.

(e) *Investment discretion.* For purposes of section 28(e) of the Act (15 U.S.C. 78bb(a)) and this rule, a person exercises investment discretion with respect to an account under the circumstances specified in clauses (A) and (B) of section 3(a)(35) of the Act (15 U.S.C. 78c(a)(35)(A) and (B)), or if such person determines through what broker or at what commission rates securities transactions on behalf of the account are effected.

II. It is proposed to amend Part 270 of Chapter II of Title 17 of the Code of Federal Regulations, Rules and Regulations, Investment Company Act of 1940, by amending and revising paragraph (a)(1) of § 270.20a-2 (Rule 20a-2) to read as follows:

§ 270.20a-2 Information pertaining to investment adviser and investment advisory contracts.

(a) * * *

(1) State the name and address of the investment adviser, the date of the existing investment advisory contract, the date on which it was last submitted to a vote of security holders of the investment company and the purpose of such submission. Briefly describe the terms of the contract, including the rate of compensation of the investment adviser. State the aggregate amount of the investment adviser's fee and the amount and purpose of any other material payment by the investment company to the investment adviser during the last fiscal year of the investment company. Set forth the information specified in paragraph (d) of Rule 28e2-1 under the Securities Exchange Act of 1934 (17 CFR 240.28e2-1(d)) regarding brokerage placement policies and practices of investment managers. Include the information required by items (4)(i) and (4)(ii) of such paragraph (d) for the three most recent fiscal years of the investment company and a brief explanation of any material changes in such figures. For purposes of this rule, the investment company is a "managed account," and each adviser to the investment company who determines or suggests through what broker or brokers or at what commission rates securities transactions for the company are effected is an "investment manager" within the meaning of paragraph (d) of Rule 28e2-1. If any person is acting as an investment adviser of the investment company otherwise than pursuant to a written contract which has been approved by the security holders of such company, identify such person and describe the nature of the services and arrangements therefor.

* * * * *

III. It is proposed to amend Part 275 of Chapter II of Title 17 of the Code of Federal Regulations, rules and regulations, Investment Advisers Act of 1940, by adding a new § 275.204-3 (rule 204-3) to read as follows:

§ 275.204-3 Brokerage placement disclosure requirements for investment advisers.

Every registered investment adviser shall provide clients for which it acts as an investment manager as defined in Rule 28e2-1 under the Securities Exchange Act of 1934 (17 CFR 240.28e2-1) with written disclosure statements regarding its brokerage placement policies and practices in accordance with that rule.

IV. It is proposed to amend Part 275 of Chapter II of Title 17 of the Code of Federal Regulations, Rules and Regulations, Investment Advisers Act of 1940, by adding a new paragraph (a)(15) to § 275.204-2 (Rule 204-2) to read as follows:

§ 275.204-2 Books and records to be maintained by investment advisers.

(a) * * *

(15) A copy of each written disclosure statement and amendment or revision thereof provided to any person pursuant to Rule 204-3 (17 CFR 275.204-3) under the Act and Rule 28e2-1 under the Securities Exchange Act of 1934 (17 CFR 240.28e2-1) and a record of the dates and persons to whom such disclosure statements, amendments or revisions were provided.

* * * * *

V. It is proposed to amend and revise Item 9 of Form S-1 under the Securities Act (17 CFR 239.11) by ading an Instruction 10 to the Instructions to paragraph (a) of Item 9 to read as follows:

§ 239.11 Form S-1, registration statement under the Securities Act of 1933.

* * * * *

Item 9.—Description of Business.

* * * * *

10. If the securities being registered represent interests or participations in any single or collective fund, trust or separate account issued in connection with an employees' stock bonus, pension, profit-sharing or annuity plan, provide the information specified in paragraph (d) of Rule 28e2-1 under the Securities Exchange Act of 1934 (17 CFR 240.28e2-1(d)) regarding brokerage placement policies and practices of investment managers. Include the information specified in clauses (4)(i) and (4)(ii) of such paragraph (d) for the three most recent fiscal years of the registrant and a brief explanation of any material changes in such figures. For purposes of this item, the fund, trust or account is a "managed account," and every adviser who determines or suggests through what broker or brokers or at what commission rates securities transactions for such fund, trust or account are effected is an "investment manager" within the meaning of paragraph (d) of Rule 28e2-1.

VI. It is proposed to amend and revise Item 5 of Form S-4 under the Securities Act (17 CFR 239.14) by adding an Instruction 3 to the Instructions to Item 5 to read as follows:

§ 239.14 Form S-4, for closed-end management investment companies registered on Form N-8B-1.

* * * * *

Item 5.—Information Required by Items of Form N-8B-1.

* * * * *

3. The information specified in paragraph (d) of Rule 28e2-1 under the Securities Exchange Act of 1934 (17 CFR 240.28e2-1(d)) regarding brokerage placement policies and practices of investment managers shall be included in the prospectus in the response to Item 22 or Item 25 of Form N-8B-1 (17 CFR 274.11) relating to advisers and advisory contracts and compensation. Include the information specified in clauses (4)(i) and (4)(ii) of such paragraph (d) for the three most recent fiscal years of the registrant and a brief explanation of any material changes in such figures. For purposes of this item, the registrant is a "managed account," and each adviser who determines or suggests through what broker or brokers or at what commission rates securities transactions for the registrant are effected is an "investment manager" within the meaning of paragraph (d) of Rule 28e2-1.

VII. It is proposed to amend and revise paragraph 1 of Form S-5 under the Securities Act (17 CFR 239.15) by adding a paragraph 1(d) to read as follows:

§ 239.15 Form S-5, for open-end management investment companies registered on Form N-8B-1.

* * * * *

1. *Information Required by Items of Form N-8B-1.* * * *

(d) The information specified in paragraph (d) of Rule 28e2-1 under the Securities Exchange Act of 1934 (17 CFR 240.28e2-1(d)) regarding brokerage placement practices and policies of investment managers shall be included in the prospectus in the response to Items 22 or 25 of Form N-8B-1 (17 CFR 274.11) relating to advisers and advisory contracts and compensation. Include

the information specified in items (4)(i) and 4(ii) of such paragraph (d) for the three most recent fiscal years of the registrant and a brief explanation of any material changes in such figures. For purposes of this item, the registrant is a "managed account," and each adviser who determines or suggests through what broker or brokers or at what commission rates securities transactions for the registrant are effected is an "investment manager" within the meaning of paragraph (d) of Rule 28e2–1.

VIII. It is proposed to amend and revise Item 9 of Form S–8 under the Securities Act (17 CFR 239.16b) [11] by adding a new paragraph (d) to read as follows:

§ 239.16b Form S–8, for registration under the Securities Act of 1933 of securities to be offered to employees pursuant to certain plans.

* * * * *

Item 9.—Investment of Funds.

* * * * *

(d) If a substantial part of the assets of the plan are invested in securities other than those of the employer, its parents, or subsidiaries, provide the information specified in paragraph (d) of Rule 28e2–1 under the Securities Exchange Act of 1934 (17 CFR 240.28e2–1(d)) regarding brokerage placement practices and policies of investment managers. Include the information specified in items (4)(i) and (4)(ii) of such paragraph (d) for the three most recent fiscal years of the registrant and a brief explanation of any material changes in such figures. For this purpose, the plan or any fund, trust, or account in which assets of the plan are invested in a "managed account," and every adviser who determines or suggests through what broker or brokers or at what commission rates securities transactions for such plan, fund, trust or account are effected is an "investment manager" within the meaning of paragraph (d) of Rule 28e2–1.

All interested persons are invited to submit their views and comments on the above proposals in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, on or before January 13, 1977. Such comments should refer to File No. S7–660, and will be available for public inspection.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

NOVEMBER 30, 1976.

[FR Doc.76–35719 Filed 12–3–76;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR Part 1917]

[Docket No. FI–2318]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Town of Williamstown, Massachusetts; Correction

The notice published on October 27, 1976, at 41 FR 47074 in the FEDERAL REGISTER and in "The North Adams Transcript" on September 16, 1976 and September 17, 1976, showing the Proposed Flood Elevation of the Green River at Main Street (Route 2) to read 618 feet above mean sea level, should be corrected to read 616 feet above mean sea level.

(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: November 25, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76–35743 Filed 12–3–76;8:45 am]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

RESERVES FOR LOSSES ON LOANS OF BANKS

Public Hearing On Proposed Regulations

Proposed regulations under section 585 of the Internal Revenue Code of 1954, relating to reserves for losses on loans of banks, appear in the FEDERAL REGISTER for September 20, 1976 (41 FR 40477).

A public hearing on the provisions of such proposed regulations will be held on January 6, 1977, beginning at 10 a.m. in the IRS 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.) 202–566–3935. Under such § 601.601(a)(3), persons who have submitted written comments within the time prescribed in the notice of proposed rule making (including the extension thereof) 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 27, 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.

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 January 5, 1977, by telephoning (Washington, D.C.) 202–566–3935.

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

[FR Doc.76–35807 Filed 12–2–76;10:45 am]

DEPARTMENT OF THE INTERIOR

Geological Survey

[30 CFR Part 211]

Bureau of Land Management

[43 CFR Part 3041]

SURFACE MANAGEMENT COAL MINING OPERATING REGULATIONS

Notice of Proposed Rulemaking

On May 17, 1976, a complete revision of 30 CFR Part 211, Coal Mining Operating Regulations and a new 43 CFR Subpart 3041, Surface Management were published in the FEDERAL REGISTER, 41 FR 20252, and made effective on that date. On August 4, 1976, the Federal Coal Leasing Amendments Act of 1975, P.L. 94–377, 90 Stat. 1083, became law. It is necessary to revise 30 CFR Part 211 and 43 CFR Subpart 3041 to conform to the provisions of the new statute, and the following proposed rulemaking has been prepared for this purpose. The proposed rulemaking reflects required substantive changes; it is recognized that additional changes in wording, such as a deletion of references to the issuance of prospecting permits, will also be required in the regulations when they are republished as final rulemaking.

Interested persons are invited to submit their comments in writing on the proposed rulemaking on or before January 6, 1976. Comments on the proposed changes in 30 CFR Part 211 should be submitted to the Director, United States Geological Survey, The National Center, Reston, Virginia 22092. Comments on the proposed changes in 43 CFR Part 3041 should be submitted to the Director, Bureau of Land Management (210), Washington, D.C. 20240.

It is proposed that 30 CFR Part 211 and 43 CFR Subpart 3041 be amended as follows:

§ 211.1 [Amended]

1. The thirteenth line of 30 CFR 211.1(b) is amended by the insertion of "economic" between "maximum" and "recovery".

§ 211.2 [Amended]

2. 30 CFR 211.2(r) is amended as follows:

(r) *Lessee* means any person or persons, partnership, association, corporation, public body, or governmental entity to whom a coal lease is issued, subject to the regulations in this Part, or an assignee of such a lease under an approved assignment.

3. 30 CFR 211.2(s) is amended by the substitution of a comma for the period at the end and the addition of the following: "or any person, association, corporation, public body, or governmental entity to whom an exploration

[11] Securities Act Release No. 5767 (November 22, 1976) (41 FR 52662 (1976)).

license is issued pursuant to section 201 (b) of Title 30 of the United States Code."

§ 211.5 [Amended]

4. 30 CFR 211.5(b) is amended by the insertion of "exploration and" following "All proposed" at the beginning of the first sentence.

§ 211.10 [Amended]

5. The first sentence in 30 CFR 211.10 (a)(1) is amended to read as follows:

(a) *General.* (1) Before conducting any operation on leased, permitted, or licensed land other than casual use, the operator shall submit to the Mining Supervisor, and obtain his approval of, an exploration or mining plan; on any lease issued or readjusted after August 4, 1976, the first mining plan [1] shall be submitted to the Mining Supervisor not later than three years after the effective date of the lease or three years after the date of readjustment, whichever is later.

6. 30 CFR 211.10(c)(6)(ii) is amended to read as follows:

(ii) The method of mining, including mining sequence and proposed production rate; the plan for any lease issued or readjusted after August 4, 1976, must provide for the mining of all the reserves of the logical mining unit of which the lease is a part in a period of not more than forty years; that period shall begin on the date of approval of the first mining plan for that logical mining unit.

[43 CFR Part 3040]

§ 3041.0–4 [Amended]

7. The last two words of 43 CFR 3041.0–4(b) are replaced by the following: ", permits, and exploration licenses."

8. The last sentence of 43 CFR 3041.0–4 (f) is deleted and replaced by the following: Leases may not be issued for lands the surface of which is under the jurisdiction of any Federal agency other than the Bureau of Land Management unless that other agency has consented to the issuance of the lease and unless the lease contains such terms and conditions as that other agency may prescribe with respect to the use and protection of the nonmineral interests in those lands.

§ 3041.1 [Amended]

9. 43 CFR 3041.0–6(p) is amended by the deletion of the words "or municipality" and the substitution therefor of the following: ", public body, or governmental entity."

10. 43 CFR 3041.0–6(q) is amended as follows: (q) "Licensee" means any individual, association of individuals, or municipality to whom a license is issued pursuant to section 208 of Title 30 of the United States Code or any person, association, corporation, public body, or governmental entity to whom an exploration license is issued pursuant to section 201(b) of Title 30 of the United States Code."

11. 43 CFR 3041.0–6(u) is amended by the addition of the following: "As amended by the Federal Coal Leasing Amendments Act, section 2(d)(2) of the Mineral Leasing Act provides for a "mining plan" while section 7(c) requires an "operation and reclamation plan." Both references are deemed to be to the same kind of plan and the term "mining plan" is used in these regulations to refer to both."

12. The second and third sentences of 43 CFR 3041.1(b) are amended as follows:

This evaluation shall also consider effects which mining of the coal lease tract may have on an impacted community or area including, but not limited to, impacts on agricultural or other economic activities, and on public services; and take into account alternative uses of the land and its natural resources, the need for the proposed coal development, and the socio-economic considerations relevant to multiple-use management principles. To aid him in this evaluation and in the selection of proposed coal lease tracts, such authorized officer shall issue a call for information and nominations for tracts to be leased competitively and for areas which should not be leased, as set forth in Subpart 3520 of this Chapter; shall request and consider the views and recommendations of the Geological Survey and other appropriate Federal agencies; shall hold public hearings in the area after appropriate notice and prior to lease sale, and shall consult with applicants, nominators, State and appropriate local agencies, organizations, industries, and surface owners if other than the United States.

13. 43 CFR 3041.1 is amended by renumbering existing paragraphs (c), (d), (e), and (f) as paragraphs (d), (e), (f), and (g) respectively and by adding a new paragraph (c) as follows:

(c) If a proposal is made to offer for leasing coal deposits lying within the boundaries of a National Forest, and the proposal would authorize surface mining of such deposits, the Director shall submit the leasing proposal to the Governor of each State within which the coal deposits to be subject to such leasing are situated. No leases may be issued for a period of sixty days beginning on the date the leasing proposal is delivered to the Governor or Governors of the State or States involved. If any Governor to whom the leasing proposal is submitted objects to the issuance of leases, no lease may be issued before the expiration of a six-month period beginning on the date the Secretary is notified by the Governor of his objections. During such six-month period the Director shall review any statement of reasons why a lease should not be issued which is submitted by an objecting Governor and on the basis of such statement reconsider the issuance of any lease.

14. Paragraph (f) of 43 CFR 3041.1 (as renumbered above) is amended by adding a new sentence at the end which shall read as follows:

(f) * * * No lease covering lands the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior may be issued without the consent of the Federal agency having jurisdiction over the surface of the lands and any lease issued shall contain such reasonable terms and conditions as that other Federal agency may prescribe with respect to the use and protection of the nonmineral interests in the lands involved.

§ 3041.1–1 [Amended]

15. 43 CFR 3041.1–1 is amended as follows:

Any person, association, corporation, or public body, including Federal agencies, rural electric corporatives or nonprofit corporations controlled by such entities who desires a lease, permit or license for coal development to be issued on his own motion shall file an application in the proper BLM office, in accordance with the regulations in this Chapter.

§ 3041.2 [Amended]

16. The first sentence of 43 CFR 3041.2 is amended by the insertion, immediately after "Mining Supervisor" of the following: "as to (1) and (2) below and subject to the guidance of the Mining Supervisor as to (3),".

17. 43 CFR 3041.2(a) is amended by the substitution of a semicolon for the period at the end of (2) and the addition of the following:

; and (3) An evaluation and comparison of the effects of recovering coal by deep mining, by surface mining, and by any other method to determine which method or methods or sequence of methods would achieve the maximum economic recovery of the coal within the proposed tract and operation.

§ 3041.4 [Amended]

18. 43 CFR 3041.4(c) (1) and (2) shall be amended as follows:

(c) Public participation. (1) A public hearing shall be conducted prior to lease sale and issuance of a lease subject to the provisions of these regulations or determination of any specific terms and conditions thereof. A public meeting may be conducted prior to approval of final abandonment, including release of bonds, of any operation or portion thereof.

(2) Prior to the making of any decision or the taking of any action described in subparagraph (1) hereof, a notice of availability of such proposed lease sale, decision, or action shall be published in a newspaper of general circulation in the county in which the coal lease tracts are situated once a week for three consecutive weeks. In addition, not less than 20 days prior to the making of any such decision such notice shall be posted at the appropriate State or regional offices of the Bureau of Land Management and the Geological Survey, mailed to the operator, to all appropriate Federal and State agencies, including all agencies

[1] As amended by the Federal Coal Leasing Amendments Act, section 2(d)(2) of the Mineral Leasing Act provides for a "mining plan" while section 7(c) requires an "operation and reclamation plan." Both references are deemed to be to the same kind of plan and the term "mining plan" is used in these regulations to refer to both.

whose concurrence or consultation is sought or required, and to the surface owner if other than the United States; and published in the Federal Register.

19. 43 CFR 3041.4(c)(4) is amended as follows:

(4) The public meeting or hearing requirements of paragraph (c)(1) of this section shall be in addition to (a) a public hearing conducted upon an environmental statement containing the affected lands or tracts pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, and (b) public meetings or hearings in connection with a proposed Bureau of Land Management land use plan or land use analysis covering the affected lands, or in connection with selection of tracts for coal leasing under the Bureau's Energy Minerals Activity Recommendation System (EMARS).

§ 3041.8 [Amended]

20. 43 CFR 3041.8(f) is amended by the addition at the end of the words "or land use analysis."

Dated: November 30, 1976.

WILLIAM W. LYONS,
Deputy Under Secretary.

[FR Doc.76-35783 Filed 12-3-76;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 117]

[CGD 76-217]

AIWW, NORTH PALM BEACH, FLORIDA

Drawbridge Operation Regulations

At the request of the Village of North Palm Beach, the Coast Guard is considering amending the regulations for the Parker Bridge (U.S. 1) across the Atlantic Intracoastal Waterway, mile 1013.7, to require that the draw open on the hour and one-half hour from 7 a.m. to 7 p.m., daily. From 7 p.m. to 7 a.m the draw would open on signal. The draw presently opens on signal at all times. This change is being considered because of a significant increase in vehicular traffic from 7 a.m. to 7 p.m.

Interested persons may participate in this proposed rule making by submitting written data, views, or arguments to the Commander (oan), Seventh Coast Guard District, Room 1018, Federal Building, 51 S.W. 1st Avenue, Miami, Florida 33130. Each person submitting comments should include his name and address, identify the bridge, and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Seventh Coast Guard District.

The Commander, Seventh Coast Guard District, will formard any comments received before January 4, 1977, with his recommendations to the Chief, Office of Marine Environment and Systems, U.S. Coast Guard Headquarters, Washington, D.C., who will evaluate all communications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations, be amended by adding a new § 117.438c immediately after § 117.438b to read as follows:

§ 117.438c Parker Bridge, U.S. 1, AIWW, North Palm Beach, Florida.

(a) The draw shall open on signal from 7 p.m. to 7 a.m. Except as provided in paragraph (b), from 7 a.m. to 7 p.m., the draw need open only on the hour and half-hour.

(b) The draw shall open at any time for the passage of public vessels of the United States, tugs with tows, cruise boats operated on a regular schedule or vessels in distress. The opening signal from these vessels is four blasts of a whistle, horn, or by shouting.

(c) The owner of or agency controlling this bridge shall post, on both sides of the bridge, signs that state the conditions of this regulation. These signs shall be of such size that they may be easily read from an approaching vessel at any time.

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

(NOTE.—The Coast Guard 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.)

Dated: November 24, 1976.

A. F. FUGARO,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.76-35767 Filed 12-3-76;8:45 am]

[33 CFR Part 117]

[CGD 76-219]

PEQUONNOCK RIVER, YELLOW MILL CHANNEL, AND JOHNSON CREEK, CONN.

Drawbridge Operation Regulations

At the request of the City of Bridgeport, Connecticut, and the Penn Central Transportation Company, the Coast Guard is considering revising the regulations for several bridges across the Pequonnock River, Yellow Mill Channel, and Johnson Creek.

The proposed regulations for the Congress Street Bridge require 8 hours notice from midnight to 8 a.m., and provide that the draw open on signal at all other times except during certain peak vehicular traffic periods. The eight hour requirement is being considered because of infrequent openings during the midnight to 8 a.m. period. The opening signals are being changed to eliminate possible confusion because the present signal is the danger signal.

The proposed regulations for the railroad bridge across the Pequonnock River, mile 0.3, would provide for an opening between 9 p.m. and 5 a.m. if notice is given prior to 4 p.m. The proposal provides that the draw open on signal between 5 a.m. and 9 p.m. except during certain periods of heavy train traffic.

Other additional changes are proposed for clarity.

Interested persons may participate in this proposed rulemaking by submitting written data, views, or arguments to the Commander (oan), Third Coast Guard District, Governors Island, New York, N.Y. 10004. Each persons submitting comments should include his name and address, identify the bridge, and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Third Coast Guard District.

The Commander, Third Coast Guard District, will forward any comments received before January 11, 1977, with his recommendations to the Chief, Office of Marine Environment and Systems, who will evaluate all communications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

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

1. Revising § 117.130 to read as follows:

§ 117.130 Pequonnock River, Yellow Mill Channel, and Johnson Creek, Bridgeport, Connecticut; bridges.

(a) *Pequonnock River.*—(1) *Stratford Avenue Bridge.* The draw shall open on the signal of one long blast and one short blast except that the draw need not open during the following periods:

6:45 a.m. to 7:15 a.m.
7:45 a.m. to 8:15 a.m.
11:45 a.m. to 1:15 p.m.
4:30 p.m. to 6:10 p.m.

(2) *Penn Central Railroad Bridge.* (i) The draw shall open on the signal of three short blasts from 5 a.m. to 9 p.m. except that:

(A) Monday through Friday, excluding holidays or an emergency, the draw need not open from 6:45 a.m. to 7:15 a.m., from 7:45 a.m. to 8:15 a.m., and from 4:30 p.m. to 6:10 p.m.; and

(B) Monday through Friday, excluding holidays or an emergency, the draw need not open more than once during each of the following periods:

5:45 a.m. to 6:45 a.m.
7:15 a.m. to 7:45 a.m.
8:15 a.m. to 9:00 a.m.
6:10 p.m. to 8:15 p.m

(ii) From 9:00 p.m. to 5:00 a.m., the draw shall open on signal if the vessel operator gives notice to the chief dispatcher of the railroad before 4:00 p.m. on the day of the intended passage.

(iii) A delay of up to seven minutes in the opening of the draw may be expected if a train is approaching the bridge so closely that the train may not be safely stopped.

(3) *Congress Street Bridge.* (i) The draw shall open on the signal of two long blasts and two short blasts from 8:00 a.m. to 12:00 midnight except that the draw

need not open during the following periods:

8:00 a.m. to 8:15 a.m.
11:45 a.m. to 1:15 p.m.
4:30 p.m. to 6:10 p.m.

(ii) The draw shall open on signal from 12:00 midnight to 8:00 a.m. if at least 8 hours notice is given except that the draw need not open during the following periods:

6:45 a.m. to 7:15 a.m.
7:45 a.m. to 8:00 a.m.

(4) *East Washington Street Bridge.* The draw shall open on the signal of one long blast and two short blasts if at least 24 hours notice is given.

(5) *Grand Street Bridge.* The draw shall open on the signal of one long blast and one short blast if at least 24 hours notice is given.

(b) *Yellow Mill Channel Bridge.* The draw shall open on the signal of one long blast and one short blast if at least 24 hours notice is given.

(c) *Johnson Creek, Pleasure Beach Bridge.* The draw shall open on the signal of one long blast and one short blast except that the draw need not open during the following periods:

6:45 a.m. to 7:15 a.m. 11:45 a.m. to 1:15 p.m.
7:45 a.m. to 8:15 a.m. 4:30 p.m. to 6:10 p.m.

(d) Public vessels of the United States and vessels in distress shall be passed though the draw of each bridge listed in this section during closed periods when drawtenders are on duty, and as soon as possible if advance notice is required. The opening signal from these vessels is four short blasts.

(e) If the draw of a bridge listed in this section cannot open immediately when opening signals are received from vessels, a red flag or ball by day, or a red light at night shall be conspicuously displayed on the bridge.

(f) The owner of or agency controlling each bridge shall keep a copy of the pertinent regulations in this section and information stating how notice is to be given to the authorized representative of the bridge owner posted both upstream and downstream, either on the bridge or elsewhere in such a manner that it can easily be read from an approaching vessel at all times.

§ 117.131 [Revoked]

2. By revoking § 117.131.

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

(NOTE.—The Coast Guard 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.)

Dated: November 29, 1976.

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

[FR Doc.76-35766 Filed 12-3-76;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 260]

[FRL 635-5]

ENVIRONMENTAL RADIATION PROTECTION STANDARDS FOR HIGH-LEVEL RADIOACTIVE WASTE

Advance Notice of Proposed Rulemaking

It is proposed to establish Sub-chapter J, Radiation, and Part 260, Environmental Radiation Protection Standards for High-Level Radioactive Waste. Notice is also given that the U.S. Environmental Protection Agency intends to develop environmental radiation protection standards for high-level radioactive wastes to assure protection of the public health and the general environment from these wastes. These standards will be developed under authority transferred to the Agency from the former Atomic Energy Commission by Reorganization Plan No. 3 of 1970. This transfer involved "* * * such functions of the Commission of establishing generally applicable environmental standards for the protection of the general environment from radioactive material. As used herein, standards mean limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons processing or using radioactive material."

Radioactive wastes vary greatly both in their physical and chemical characteristics and in their relative biological hazards. The complexity of the problem is further increased when the properties of the environmental disposal media are introduced for the various disposal options. An important characteristic of radioactive wastes is the length of time over which they will be hazardous. The implications of providing radiation protection for long time periods are an important consideration in establishing vironmental radiation protection standards for radioactive wastes and will be thoroughly examined in the EPA process. It is also important to reduce risks, to levels which will assure adequate protection of the public health and the environment both for this generation and future generations. Such risks predominantly involve accidents of low probability, but with potentially large consequences in terms of health impact and environmental contamination. In addition, there are the longer-term risks which include a possible major failure of a waste disposal method through either acts of God or the unexpected simultaneous failure of multiple barriers used in the disposal method. Further, longer-term risks exist which can produce an insidious failure of a disposal method and can lead to chronic radiation exposure of a population. This latter risk concept is expected to have a higher probability of occurrence but significantly lower consequences. These various risks will be investigated in the process of establishing environmental radiation protection standards for high-level radioactive waste.

In the course of this effort, the Agency intends to develop applicable environmental criteria for all radioactive wastes. The development of these criteria will involve examination of basic concepts and the definition of key terms in order to produce meaningful public discussion of the waste problem. It is also important that all currently available information on long-term implications of radioactive wastes and the risks associated with wastes be considered in the development of criteria and standards. In order to obtain such information and related viewpoints, the Agency plans to hold workshops on these three subjects over the next three months. The dates and locations of such workshops will be published at a later date.

Any information pertinent to the establishment of environmental radiation protection standards for high-level waste is particularly requested, especially in the following areas:

1. The capability of various types of source encapsulation to retain as a function of time high activity wastes or long-lived alpha wastes, respectively.

2. The retention capabilities for long periods of time for various geologic media of engineering options to contain high activity wastes or long-lived alpha wastes and costs of such options.

3. Geologic media that may be used to contain high activity wastes, long-lived alpha wastes, or combined wastes and the retention capabilities of such media over long periods of time.

4. Predictions of the most likely transfer co-efficients of radioactive material for selected combinations of source encapsulation, engineering containerization, geologic media, and predicted environmental levels for long periods of time.

5. The probability and risks associated with accidental disturbances, either occurring naturally or as a result of institutional failures, and the impact on predictions that are made in No. 4 above.

6. Factors important to providing reasonable assurance that environmental protection standards would be satisfied and methods that can be employed to implement environmental protection standards.

Comments and other contributions that would assist the Agency in the development of environmental criteria or standards for high-level radioactive wastes would be welcome. These should be addressed to the Technology Assessment Division, Office of Radiation Programs (AW-459), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Such information would be of most value if received by March 1, 1977.

Dated: November 30, 1976.

RUSSELL E. TRAIN,
Administrator.

[FR Doc.76-35800 Filed 12-3-76;8:45 am]

FEDERAL MARITIME COMMISSION

[46 CFR PART 531]

[Docket No. 76-40]

FILING OF FREIGHT AND PASSENGER RATES, FARES AND CHARGES IN THE DOMESTIC OFFSHORE TRADE, PUBLICATION AND POSTING

Extension of Time for Comments

Upon request of Hearing Counsel, and good cause appearing, time within which its reply to comments shall be filed in this proceeding is enlarged to and including December 17, 1976. Answers to Hearing Counsel's reply shall be filed on or before January 7, 1977.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76-35785 Filed 12-3-76;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

Forest Service

ALGAECIDE TREATMENT OF SNOW & QUEMADO LAKES

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for Algaecide Treatment of Snow & Quemado Lakes in New Mexico, USDA–FS–R3 DES Adm 77–01.

The environmental statement considers probable environmental effects of the proposed project.

The draft environmental statement was transmitted to CEQ on December 1, 1976.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, So. Agriculture Bldg., Rm. 3230, 14th & Independence Ave., SW, Washington, D.C. 20250.
USDA, Forest Service, Southwestern Region, 517 Gold Avenue, SW, Albuquerque, New Mexico 87102.
Gila National Forest, 2610 North Silver Street, Silver City, New Mexico 88061.

Single copies are available upon request to Forest Supervisor, Gila National Forest, 2610 North Silver Street, Silver City, New Mexico 88061. Please refer to the name and number of the environmental statement when ordering.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ guidelines.

Comments are invited from the public, State, and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to the Forest Supervisor, Gila National Forest, 2610 North Silver Street, Silver City, New Mexico 88061. Comments must be received within 60 days from the date the statement was transmitted to CEQ in order to be considered in the preparation of the final environmental statement.

THOMAS G. SCHMECKPEPER,
Acting Regional Forester.

DECEMBER 1, 1976.

[FR Doc.76-35723 Filed 12-3-76;8:45 am]

NORTHERN CALIFORNIA SUBCOMMITTEE PACIFIC CREST NATIONAL SCENIC TRAIL ADVISORY COUNCIL

Meeting

Correction

In FR Doc. 76–34965, appearing on page 52504, in the issue for Tuesday, November 30, 1976, the fifth line of the document should read "ber 17, 1976, at the Custom Building,".

CIVIL AERONAUTICS BOARD

[Docket 29123, Agreement C.A.B. 26210 R–1 through R–23 Agreement C.A.B. 26213 R–1 through R–20; Order 76–11–141]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Relating to Western Hemisphere Fares

Issued under delegated authority November 29, 1976.

Agreements have been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of the Traffic Conferences of the International Air Transport Association (IATA). The agreements, adopted at the 1976 Miami Composite Passenger Traffic Conference held during September/October, would establish U.S.-Caribbean and U.S.-longhaul South/Central America passenger fares for the period through March 31, 1978.[1]

U.S.-CARIBBEAN

Proposed for effectiveness April 15, 1977,[2] Agreement C.A.B. 26210 would increase U.S.-Caribbean area first-class and first-class excursion fares by approximately 7 and 10 percent, respectively. Except for the U.S.-Venezuela/Bermuda / Bahamas markets, normal economy fares would be increased 4 percent with the resultant round-trip dollar increase applied to the applicable promotional fares within the structure. However, U.S.- Venezuela normal economy, economy excursion and individual inclusive-tour fares would be increased 5 percent and group fares 2 to 4 percent. U.S.-Bermuda/Bahamas normal economy and promotional fares would take an across-the-board increase of approximately 4 percent.

[1] There is no agreement covering passenger fares in the U.S.-Columbia sub-area.

[2] Except U.S.-Bermuda fares which are proposed for April 1, 1977 effectiveness.

Structural changes include a new July–August peak season period for certain promotional fares, redefinition of the weekend period on southbound departures on area promotional fares, and reduction from 7 to 3 days in the minimum stay associated with U.S.-Venezuela Group Inclusive Tour (GIT) fares as well as cancellation of this fare from certain U.S. west-coast points.

Finally the agreement introduces a new U.S.-Netherlands Antilles GIT fare plan for minimum-sized groups of 40 persons with a minimum/maximum stay period of 3/14 days and a minimum tour price of $50 for the minimum stay and $10 or $15 one-way ($20 or $30 roundbe set at levels representing discounts ranging from 47 to 58 percent from the applicable normal economy fare and would be blacked-out during weekends of the peak season.

U.S.-LONGHAUL SOUTH/CENTRAL AMERICA

Agreement C.A.B. 26213, proposed for May 1, 1977 effectiveness, would increase U.S.-South America first-class fares to 155 percent of the normal economy fares. The economy fares would be increased $10 or $15 one-way ($20 or $30 round-trip) with the round-trip dollar amount applied as an increase to all promotional fares in the structure. U.S.-Central America first-class fares would be increased 5 percent; normal economy fares, 3 to 4 percent; and promotional fares, 4 to 17 percent.

Contemplated structural changes include elimination of affinity/own use/incentive group fares; limitation of stopovers permitted on U.S.-Central America excursion fares to a total of three with additional stopovers at $20 each; cancellation of permitted stopovers on U.S.-South American 45-day excursion fares; institution of a new peak season fare on Brazil-orginating group excursion travel to the U.S.; and application of U.S.-Central America/Panama GIT fares to travel originating in either direction with new weekend period fares established at a level $30 higher than for midweek travel.

The purpose of this order is to establish procedural dates for the submission of carrier justification in support of each agreement and comments from interested persons. The carriers' justification for each agreement should be set out in the tabular format suggested in Order 75–7–83, July 15, 1975, with historical data as reported to the Board in Form 41 reports by functional account for total Western Hemisphere services for the period ending September 30, 1976, adjusted

to exclude those market areas not covered by a particular agreement[3] and all scheduled cargo and charter operations pertaining to the U.S.-Caribbean and U.S.-longhaul markets so as to establish the present economic status of scheduled passenger services in each market area covered by the agreements.

The carriers will also be expected to submit forecast results for each agreement for the year ending March 31, 1978, both including and excluding the increased fares for which approval is sought. The carriers are expected to assign costs attributable to scheduled passenger service under both the "space method" stipulated by the Board in its April 2, 1970 decision in Docket 18381, Nonpriority Mail Rates, Orders 70–4–9 and 70–4–10 and the "revenue-offset method," adopted April 2, 1971 in Phase 7 of the Domestic Passenger-Fare Investigation, Docket 21866–7, Orders 71–4–59 and 71–4–60.[4] In addition, for each agreement the carriers are required to submit detailed traffic data showing revenue passegner-miles and revenue by specific fare category as well as capacity and load-factor information both for the historical period and for the forecast period and including and excluding the increased fares for which approval is sought.

Finally, in view of the steep discounts proposed in the new U.S.-Netherlands Antilles GIT fare, described above, we will expect full and specific justification for this fare from the carriers.

Acccordingly, *it is ordered*, That:

1. All United States air carrier members of the International Air Transport Association providing service within the areas covered by the agreements shall file within 15 calendar days after the date of service of this order, full documentation and economic justification for the fares and related conditions embodied in the subject agreements;

2. Comments and objections from interested persons and parties shall be submitted within 15 calendar days after the date of service of this order;

3. Replies to submissions received in response to ordering paragraph 1 above and replies to comments reviewed pursuant to ordering paragraph 2 above shall be submitted within 25 calendar days after the date of service of this order; and

4. Insofar as air transportation as defined by the Act is concerned, tariffs implementing the subject agreements shall not be filed in advance of Board approval of the subject agreements.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.76–35784 Filed 12–3–76;8:45 am]

[3] U.S.-Mexico for both agreements. Also U.S.-longhaul in the case of the U.S.-Caribbean fares agreement and U.S.-Caribbean in the case of the U.S.-longhaul fares agreement.

[4] In furnishing the data requested, each carrier is expected to attach complete explanatory data to describe the methods used in making each allocation.

DEPARTMENT OF COMMERCE

Maritime Administration

[Docket No. S–523, Sub–1]

AMERICAN PRESIDENT LINES, LTD.

Amended Notice of Application

In FR Doc. No. 76–34903 appearing in the FEDERAL REGISTER on November 26, 1976 (41 F.R. 52097) notice was given that American President Lines, Ltd., (APL) had filed an application pursuant to section 805(a) of the Merchant Marine Act, 1936, as amended (the Act) requesting written permission for domestic rights for vessles operating in a proposed eastbound Round-the-World service in a proposed operating-differential subsidy contract (which has been the subject of proceedings pursuant to section 605(c) of the Act in Dockets Nos. S–493 and S–493 Sub-2) to carry cargo between California ports and Atlantic coast ports.

APL has now withdrawn said application and the aforesaid notice of November 26, 1976 is hereby cancelled.

Dated: December 1, 1976.

By Order of the Assistant Secretary of Commerce for Maritime Affairs.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.76–35796 Filed 12–3–76;8:45 am]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

CERTAIN COTTON RAINCOATS EXPORTED TO THE UNITED STATES FROM THE POLISH PEOPLE'S REPUBLIC

Prohibition of Entry After December 6, 1976

DECEMBER 2, 1976.

On November 6, 1975, in furtherance of the objectives of, and under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, the Governments of the United States and the Polish People's Republic concluded a bilateral textile agreement concerning exports of cotton textiles and cotton textile products from the Polish People's Republic to the United States over a three-year period beginning on January 1, 1975 and extending through December 31, 1977. Paragraph 3 of the agreement provides for designated consultation levels for certain specified cotton textile products.

Exports of cotton raincoats in Category 48 from the Polish People's Republic to the United States have exceeded the designated consultation level of 20,000 dozen for the twelve-month period which began on January 1, 1976.

To prevent shipments in Category 48 from further exceeding the current year's consultation level, the Chairman of the Committee for the Implementation of Textile Agreements is directing the Commissioner of Customs, effective on December 7, 1976 and until further notice, to prohibit entry for consumption or withdrawal from warehouse for consumption of cotton textile products in Category 48, exported to the United States from the Polish People's Republic after December 6, 1976. That directive, dated December 2, 1976 and published below, is subject to termination or revision as a result of further consultations between the Governments of the United States and the Polish People's Republic.

RONALD I. LEVIN,
Acting Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce.

UNITED STATES DEPARTMENT OF COMMERCE,
The Assistant Secretary for Domestic and International Business, Washington, D.C., December 2, 1976.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS, *Department of the Treasury, Washington, D.C.*

DEAR MR. COMMISSIONER: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, pursuant to the Bilateral Cotton Textile Agreement of November 6, 1975, between the Governments of the United States and the Polish People's Republic, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective on December 7, 1976 and until further notice, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 48, produced or manufactured in the Polish People's Republic, which have been exported to the United States after December 6, 1976.

Cotton textile products in Category 48 which have been released from the custody of the U.S. Customs service under the provisions of 19 U.S.C. 1448(b) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of Category 48 in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on February 3, 1975 (40 F.R. 5010), as amended on December 31, 1975 (40 F.R. 60220).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The action taken with respect to the Government of the Polish People's Republic and with respect to imports of cotton textile products from the Polish People's Republic have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

RONALD I. LEVIN,
Acting Chairman, Committee for the Implementation of Textile Agreements, Department of Commerce.

[FR Doc.76–35953 Filed 12–3–76;8:45 am]

CERTAIN MAN-MADE FIBER TEXTILE PRODUCTS FROM HAITI

Establishing Import Levels

DECEMBER 2, 1976.

On March 22, 1976, in furtherance of the objectives of, and under the terms of, the Arrangement Regarding Inter-

national Trade in Textiles done at Geneva on December 20, 1973, the Governments of the United States and Haiti concluded a comprehensive bilateral textile agreement concerning exports of cotton, wool and man-made fiber textile products from Haiti to the United States over a period of three years beginning on January 1, 1976 and extending through December 31, 1978. Among the provisions of the agreement, as amended, is one establishing consultation levels for categories not given specific limits. Under the terms of paragraph 17 of the agreement, the United States has decided to control imports of man-made fiber textile products in Category 215 (hosiery) in the same manner as those having specific limits for the remainder of the agreement year which began on January 1, 1976.

Accordingly, there is published below a letter of December 2, 1976, from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, directing that entries into the United States for consumption or withdrawals from warehouse for consumption of man-made fiber textile products in Category 215, exported from Haiti during the twelve-month period which began on January 1, 1976, be limited to 74,473 dozen pairs. This level has been adjusted to reflect entries in Category 215 during the nine-month period which began on January 1, 1976 and extended through September 30, 1976. When the data are available, the level will be further adjusted to reflect entries during the period extending from October 1, 1976 through the effective date of this action.

This letter and the actions taken pursuant thereto are not designed to implement all of the provisions of the bilateral agreement, as amended, but are designed to assist only in the implementation of certain of its provisions.

Effective date: December 6, 1976.

RONALD I. LEVIN,
Acting Chairman, Committee for the Implementation of Textile Agreements, United States Department of Commerce.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DECEMBER 2, 1976.

DEAR MR. COMMISSIONER: This directive amends, but does not cancel, the directive issued to you on April 13, 1976 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton and man-made fiber textile products produced or manufactured in Haiti.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of March 22, 1976, as amended, between the Governments of the United States and Haiti, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, you are directed, effective on December 6, 1976, and for the twelve-month period beginning on January 1, 1976 and extending through December 31, 1976, to prohibit entry into the United States for consumption of man-made fiber textile products in Category 215 in excess of an amended level of restraint of 74,473 dozen pairs.[1]

Man-Made fiber textile products in Category 215 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on February 3, 1975 (40 F.R. 5010), as amended on December 31, 1975 (40 F.R. 60220).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Haiti and with respect to imports of cotton and man-made fiber textile products from Haiti have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

RONALD I. LEVIN,
Acting Chairman, Committee for the Implementation of Textile Agreements, Department of Commerce.

[FR Doc.76-35952 Filed 12-3-76;8:45 am]

[1] This level has been adjusted to reflect entries during the period, January 1, 1976 through September 30, 1976.

CERTAIN MAN-MADE FIBER TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN HAITI

Adjustment of Import Level

DECEMBER 2, 1976.

On April 16, 1976, there was published in the FEDERAL REGISTER (41 FR 16203) a letter dated April 13, 1976 from the Chairman, Committee for the Implementation of Textile Agreements, to the Commissioner of Customs, implementing those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of March 22, 1976, as amended, between the Governments of the United States and Haiti, which establish specific export limitations on certain cotton and man-made fiber textile products produced or manufactured in Haiti and exported to the United States during the twelve-month period beginning on January 1, 1976. As set forth in that letter, the levels of restraint are subject to adjustment according to the terms of paragraph 6(a)(ii) of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of March 22, 1976, as amended, which provides that specific levels of restraint may be exceeded by up to 6 percent, but with the amount of the increase to be deducted from the applicable levels of the succeeding agreement year.

Accordingly, at the request of the Government of Haiti and pursuant to the provision of the bilateral agreement referred to above, there is published below a letter of December 2, 1976 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs further amending the level of restraint applicable to man-made fiber textile products in Category 238 for the twelve-month period which began on January 1, 1976.

Effective date: December 6, 1976.

RONALD I. LEVIN,
Acting Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENT

DECEMBER 2, 1976.

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: On April 13, 1976, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry of cotton and man-made fiber textile products in certain specified categories, produced or manufactured in Haiti and exported to the United States during the twelve-month period beginning on January 1, 1976, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, pursuant to paragraph 6(a)(ii) of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of March 22, 1976, as amended, between the Governments of the United States and Haiti, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, you are directed further to amend, effective on December 6, 1976, the previously amended level of restraint established for man-made fiber textile products in Category 238 to the following amount:

Category:	*Amended twelve-month level of restraint,*[2] *dozen*
238	333,483

[2] The level of restraint has not been adjusted to reflect any entries made after December 31, 1975.

The actions taken with respect to the Government of Haiti and with respect to imports of man-made fiber textile products from Haiti have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of March 23, 1976, as amended, between the Governments of the United States and Haiti which provide, in part, that: 1) within the aggregate and applicable group limits, specific levels of restraint may be exceeded by 7 percent; 2) these levels may be increased for carryover and carryforward up to 11 percent of the applicable category limit; and 3) administrative arrangements or adjustments may be made to resolve minor problems.

affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

RONALD I. LEVIN,
Acting Chairman, Committee for the Implementation of Textile Agreements, Department of Commerce.

[FR Doc.76-35954 Filed 12-3-76;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/6A; FRL 651-8]

PESTICIDE PROGRAMS

Rebuttable Presumption Against Registration and Continued Registration of Pesticide Products Containing Benzene Hexachloride (BHC); Correction

On October 19, 1976, the Environmental Protection Agency (EPA) published in the FEDERAL REGISTER (40 FR 46024) a notice of "Rebuttable Presumption Against Registration and Continued Registration of Pesticide Products Containing Benzene Hexachloride (BHC)" (FR Doc. 76-30315). Since that date, three errors in the document have come to the attention of the Agency, and the following corrections should therefore be made:

1. To the listing of Federally registered products in which BHC is an active ingredient, found at page 46030, the following addition should be made.

Registrant No.	Name and address	Product No. and name
000829	Southern Agricultural Insecticides, Inc., P.O. Box 218, Palmetto, Fla. 33561.	000221, OSA-50 BHC Spray Concentrate.

2. To the listing of applicants for Federal Registration of products in which BHC is an active ingredient, found at page 46031, the entry "032380 Menna Industrial Supply Co., 1 Riverside Rd. * * *" should be removed and the following entries should be added, to read as follows:

Registrant	Name and address	Product No. and name	State
003238	Agrico Chemical Co., P.O. Box 3451, Tulsa, Okla. 74101.	00200, Standard Flea Dust (or Spray).	Florida.
005967	Moyer Chemical Co., Box 945, San Jose, Calif. 95108.	00121, BHC 12-W.	California.

In the original notice of rebuttable presumption against products containing BHC as an active ingredient, the registrants and applicants for registration were given until November 29, 1976, to submit evidence in rebuttal of the presumption against registration or continued registration of their BHC-containing products. Because Southern Agricultural Insecticides, Inc., and Agrico Chemical Co. were not notified by certified mail of the rebuttable presumption existing against their products at the same time as were the other registrants/applicants, these two firms have been given until December 4, 1976, and December 5, 1976, respectively, to submit evidence in rebuttal to the presumption against the registration/continued registration of their products. The omission of the Moyer Chemical Co. product however, was simply an editorial error, the firm was informed of the presumption against its products at the time of original notification. Moyer Chemical Co., therefore, has until November 29, 1976, to submit evidence of rebuttal of the presumption against registration of the BHC containing products.

As stated in the October 19, 1976 notice, the Administrator may, for good cause shown, grant an additional 60 days in which such evidence of rebuttal may be submitted. Notice of such an extension, if granted, will appear in the FEDERAL REGISTER.

Dated: November 26, 1976.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.76-35567 Filed 12-3-76;8:45 am]

[FRL 652-7]

CLARKSBURG-BOYDS AQUIFER

Amendment to Petition for EPA Determination

On September 12, 1975, the Environmental Protection Agency received a petition submitted by the Tenmile Creek Conservation Committee pursuant to section 1424(a) of the Public Health Service Act, as amended by the Safe Drinking Water Act, Pub. L. 93-523, to determine whether the Clarksburg-Boyds aquifier in the upper reaches of Tenmile Creek is the sole or principal source of drinking water for the area and which, if contaminated, would create a significant hazard to public health. On October 1, 1975, the Clarksburg Community Association submitted an additional application involving the same area. The petitioners are concerned with the impact that a proposed Landfill Site (Site No. 30) might have on the aquifer in this area.

On June 8, 1976, the text of both petitions were published in the FEDERAL REGISTER with a request that comment be submitted to EPA on or before June 28, 1976.

A letter dated June 28, 1976, was addressed to EPA by both petitioners requesting that their petitions be considered under section 1424(e) of the Safe Drinking Water Act and not under section 1424(a) as it was originally intended.

Section 1424(e) states that:

If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the FEDERAL REGISTER. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

In order to make a decision under 1424(e), EPA requests that information be submitted to the Agency on the following: (i) existing or planned major Federal financially assisted project which could contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, (ii) a map showing the location and boundaries of the aquifer and recharge zones of the aquifer, (iii) the source or sources of recharge to the aquifer and the location of such source or sources and (iv) population in the area which is solely or principally dependent on the aquifer for water supply. In separate letters, the State of Maryland's Secretary of Health and Mental Hygiene and the Director, Water Resources Administration have been informed of the petitions, and requested to submit to EPA data the States may have available in order to make an informed decision.

Comments, data, and references in response to this notice should be submitted in writing on or before January 21, 1977, to the Regional Administrator, Environmental Protection Agency, Region III, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, Attention: Water Supply Branch. All documents and exhibits submitted by the petitioners are available for inspection at the same address.

Dated: November 24, 1976.

DANIEL SNYDER III,
Regional Administrator.

[FR Doc.76-35731 Filed 12-3-76;8:45 am]

[FRL 652-8]

GROUNDWATER SYSTEM OF CENTRAL FRESNO COUNTY, CALIFORNIA

Request for EPA Determination Regarding Aquifers

Section 1424(e) of the Safe Drinking Water Act (Pub. L. 93-523) authorizes the Administrator to determine, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health. After such a determination is made, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health.

A petition has been submitted by Mr. Gerald V. Lysdahl, 9100 South Rowell Avenue, Fresno, California 93725, requesting the Administrator of the EPA to determine that the groundwater system of central Fresno County is the sole or principal drinking water source for the central area of Fresno County, and that contamination of this source would create a significant hazard to public health. This petition, as submitted to Mr. Russell Train, EPA Administrator, is reprinted in full below:

Pursuant to the "Safe Drinking Water Act" of 1974 (Pub. L. 93-523) specific provisions of Section 1424(e), I hereby petition you, as the Administrator of the Environmental Protection Agency, to now determine and to declare that the following designated portion of Fresno County in the State of California has an aquifer which is the sole drinking water source.

That entire portion of the county within the boundaries of:

(1) The center of the San Joaquin River on the north,

(2) The Fresno County boundary line on the south,

(3) The Friant-Kern Canal on the east,

(4) The Fresno Slough on the west,

(5) A possible exception of that portion of the Town of Friant located in the extreme northeast corner of this designated area. Such town is partially dependent upon San Joaquin River water for domestic supply.

Now complying with each of those petition requirements as set forth and supplied by your office July 6, 1976, all requested information is submitted herein. Such information is identified in a sequence of items (a) through (i) which follows the sequence of your guidelines.

(a) For this record; My name is Gerald V. Lysdahl, my address is 9100 South Rowell Avenue, Fresno, Fresno County, California 93725. My telephone numbers are Area Code 209, 834-3279 and 834-5165.

(b) I attest that my interest in the Administrator's determination in the request of this petition is the individual interest of a concerned homeowner and lifetime resident of the designated area.

Opinions, conclusions or allegations expressed herein are my own. All such opinions are based upon several years of investigative study and research which has been conducted independently.

I have no occupational affiliation or connection with any agency, public office, or any special interest group concerned with the use of water.

I further attest that there is no undeclared motivation as a basis for the matters and concern of this petition.

I am deeply concerned that the quality of groundwater in this area is steadily deteriorating. Maximum contaminant levels for certain inorganic chemicals are exceeded by double and triple levels in some domestic water supply wells within this area.

State and local agencies have been ineffective in controlling groundwater contamination within the subject area. See supplement to this petition; ITEM "B".

The sole source of drinking water (other than bottled water) in this entire described area is from wells.

(c) The subject aquifer comprises the north portion of an essentially closed groundwater basin now designated as the Tulare Lake Basin in the southern San Joaquin Valley.

This aquifer consists of unconsolidated alluvial deposits of interbedded layers of sand, gravel, silt, sandy clay, clay and localized cobble zones. The aquifer overlays a basement complex of consolidated rocks of the Sierra Nevada batholith.

Within the designated area, the depth of the basement complex ranges from surface out-croppings at the eastern boundary to depths of several thousands of feet below the western boundary.

This aquifer is underlain by unusable saline water at great depth.

Depths to groundwater range from less than 30 feet in the eastern areas to below 200 feet in the western areas.

Within this area, thousands of wells are in use for both supplemental and full irrigation, municipal and industrial use, and for rural domestic supply.

Yields for some wells within this area exceed several thousand gallons per minute.

The native groundwater quality is excellent due to recharge originating from runoff from the Sierra Navada mountains. Such groundwater within the described aquifer generally moves southwest toward the Fresno Slough and present discharge is largely to pumping wells.

(d) A map, marked ITEM "D", is included as a supplement to this petition. This map outlines the boundaries of that portion of Fresno County having an aquifer which is the sole source of drinking water.

(e) Population of the subject area was listed by the 1970 Census as 382,126. A steady and notable growth within this area has continued. Accurate population figures at this date are not available.

Alternative drinking water sources for this population is subject to question: Alternative sources of drinking water are available everywhere. The question here is, is it economically feasible to develop the alternative source?

The City of Fresno has current rights to 60,000 acre feet per year of San Joaquin River surface water. Spokesmen for the City of Fresno indicate that the only feasible way to utilize this surface water is through groundwater recharge into the subject aquifer.

There are many constraints that make direct use of this surface water unfeasible.

Pumpage in the total urban area currently averages about 120,000 acre feet per year. There is no surface water available for one half of the present demand, even if it could be feasibly supplied. Drinking water in the remaining area is supplied entirely by wells and no rights to surface water exist.

The urban area is growing rapidly and concern has been recently expressed about recharge problems of the area northeast within the subject aquifer.

(f) A map showing the location and boundaries of the recharge zones for the subject aquifer is included as a supplement to this petition and it is marked as ITEM "F".

(g) The sources of recharge are listed herein. The map supplied as ITEM "F" outlines the designated area of the subject aquifer as the principal recharge zone. That map also outlines the watershed areas of the San Joaquin and Kings rivers as the zone of the major recharge supply source for the subject aquifer.

Recharge sources include:

(1) Rainfall over the entire area averaging 11 inches per year. Within the mountain watershed area, rainfall and snowmelt waters are controlled by dams for release into and through the subject aquifer via a system of canals.

(2) Lateral groundwater movement away from the riverbeds of the San Joaquin and Kings rivers.

(3) Seasonal summer recharge from the system of unlined irrigation canals and ditches which stem principally from the Kings river. This system supplies excellent quality irrigation water but the volume is less than fifty percent of the areas needs. Due to historical water rights established through irrigation districts, distribution within the subject area is neither complete or equitable.

(4) An unknown percentage of pumped irrigation water which is percolated back into the groundwater source.

(5) Injection wells from cooling and other system sources are located throughout the described area.

(6) Flood control drainage basins within the metropolitan area of Fresno and elsewhere within the described boundaries.

(7) Industrial wastewater percolation lagoons.

(8) Municipal sewage disposal percolation lagoons and effluent releases for crop irrigation.

(9) Individual sewage disposal septic system leach fields and drain well installations.

(10) Wastewater from livestock and dairy operation facilities.

(h) This petition is not submitted to target any specific existing or planned Federal financially assisted projects.

It is the firm opinion of the petitioner that the subject aquifer groundwater is deteriorating under an expanding demand upon this vital resource. Protection from increasing abuse and neglect of this aquifer must be established.

Population increases within the described area makes future Federal financially assisted projects highly predictable. No public funds should assist any project here that had not first received educated evaluation concerning effect upon the aquifer.

Federal financial assisted projects could be carried out both in the tributary watershed areas and directly over the aquifer. Such projects may be undertaken by a number of agencies who have Federal financial assistance, such as;

U.S. Army Corps of Engineers
National Park Service
National Forest Service
Cities within Fresno County
The County of Fresno
Fresno-Clovis Metropolitan Flood Control District
Kings River Water Conservation District

(i) In the view of this petitioner, contamination of the subject aquifer is essentially irreversible. Such contamination would thus result in a significant hazard to public health as this aquifer is the area's sole source of drinking water.

The California State Department of Health and the Fresno County Health Department are interested in the protection of groundwater in relation to public health. (See ITEM "B" supplement, Editorial on Dirty Drinking Water.)

Nitrates, stable organics, chlorides, detergents and trace elements are examples of specific contaminants that have been found in the groundwater of the subject aquifer.

Many references are available on groundwater, water quality and contamination for the Fresno area.

Sources for these references include:

California Department of Water Resources
Central Valley Regional Water Quality Control Board
Agricultural Research Service
County of Fresno
Fresno Irrigation District
Private Reports

Further detail or supportive data will be supplied upon request of your office if any portion of this petition is deemed inadequate in filing those requirements of the EPA under provisions of the cited "Safe Drinking Water Act".

Respectfully submitted,

Gerald V. Lysdahl, 9100 South Rowell Avenue, Fresno, Fresno County, California 93725.

EPA intends to decide whether to make the requested determination at the earliest time consistent with a complete review of the relevant data and information, and a full opportunity for public participation. In this regard, the Agency solicits comments, data, and references to additional sources of information which will contribute to the factual record. In particular, EPA seeks information relevant to (a) that portion of the hydrologic system underlying central Fresno County which should be designated for protection as an aquifer which provides drinking water; (b) the surface boundary of the recharge area for the aquifer, which is the area that would be subject to regulation under this provision; (c) boundary of the recharge source zone, that is, any area which drains into the recharge zone and thus contributes to the recharge of the aquifer; (d) the source or sources of recharge to the aquifer and the location of such source or sources; (e) alternative sources of drinking water for this area; (f) any current or anticipated Federal financially assisted projects which may cause contamination of the aquifer; and (g) any other information deemed relevant to the determination.

Comments, data and references should be submitted in writing to the Regional Administrator, Region IX, Environmental Protection Agency, 100 California Street, San Francisco, California 94111, ATTN: Central Fresno County Aquifer Designation, on or before January 31, 1977. Information which is available to the Agency concerning the Groundwater System of Central Fresno County, California, will be available to the public for inspection at this address.

Dated: November 25, 1976.

R. L. O'CONNELL,
Acting Regional Administrator.

[FR Doc.76-35732 Filed 12-3-76;8:45 am]

[FRL 653-1]

MONTANA

Approval and Promulgation of Implementation Plans; Plan Revisions

On May 31, 1972 (37 FR 10842) pursuant to section 110 of the Clean Air Act and 40 CFR Part 51, the Administrator approved, with specific exceptions, the Montana plan for implementation of the national ambient air quality standards.

On October 8, 1976, the Governor of Montana sbumitted a revision to regulation 16-2.14(1)—S 14082 of the Montana Administrative Code (Standard of Performance for New Stationary Source). This regulation, as revised, effectively incorporates the Federal New Source Performance Standards for fossil fuel-fired steam generators, sulfuric acid plants, incinerators, portland cement plants, nitric acid plants, asphalt concrete plants, petroleum refineries, storage vessels for petroleum liquids, secondary lead smelters, secondary brass and bronze ingot production plants, iron and steel plants, sewage treatment plants, primary copper smelters, primary lead smelters, primary zinc smelters, primary aluminum reduction plants, wet process phosphoric acid plants, superphosphoric acid plants, diammonium phosphate plants, triple superphosphate plants granular triple superphosphate plants, coal preparation plants, and steel plant electric arc furnaces. The latter seven source categories are added by this action.

In addition, the Governor submitted a new regulation, 16-2.14(1)—S 14048 of the Montana Administrative Code (Emission Standards for Hazardous Air Pollutants), which effectively incorporates Federal Regulation 40 CFR Part 61, July 1, 1975, as amended October 14, 1975. Public hearing for both regulations was held on July 18, 1975.

Preliminary review indicates that the subject revision meets all the requirements of 40 CFR Part 51, and EPA proposes to approve it. The proposed Montana revision is available for public inspection at the office of the State agency and the offices of the EPA listed below:

Department of Health and Environmental Sciences, Environmental Sciences Division, Air Quality Bureau, Cogswell Building, Helena, Montana 59601.

Environmental Protection Agency, Region VIII, Office of Public Affairs, Suite 900, 1860 Lincoln Street, Denver, Colorado 80203.

Environmental Protection Agency, Room 329, 401 M Street, SW., Washington, D.C. 20460.

Interested persons are encouraged to submit written comments on any of the proposed revisions. Such comments will be accepted for consideration until January 5, 1977. Comments should be addressed to the Office of Regional Counsel, Environmental Protection Agency, Region VIII, Suite 900, 1860 Lincoln Street, Denver, Colorado 80203. All comments will be available for public inspection during normal business hours at the offices of the Environmental Protection Agency noted above.

(Sec. 110, Clean Air Act (42 U.S.C. 1857c-5).)

Dated: November 19, 1976.

JOHN A. GREEN,
Regional Administrator.

[FR Doc.76-35730 Filed 12-3-76;8:45 am]

[OPP-50268; FRL 653-5]

DEPARTMENT OF THE INTERIOR

Receipt of Application for Experimental Use Permit To Use Sodium Cyanide in M-44 Devices

Pursuant to section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.), the Fish and Wildlife Service of the U.S. Department of the Interior (hereafter referred to as the "Applicant") has applied to the Environmental Protection Agency (EPA) for an experimental use permit allowing use of approximately 443.9 grams of sodium cyanide in the M-44 device; this permit would allow use of the device in Texas, Arizona, Nebraska, Utah, and California as a survey tool to determine the response of coyote populations to scent-station lines before and after removal of known numbers of coyotes via the M-44. This application for an experimental use permit is subject to the provisions of 40 CFR Part 172; Part 172 was pubilshed in the FEDERAL REGISTER on April 30, 1975 (40 FR 18780), and defines EPA procedures with respect to the use of pesticides for experimental purposes.

According to the section 5 regulations, the Administrator shall publish notice in the FEDERAL REGISTER of receipt of an application for an experimental use permit upon finding that issuance of the permit may be of regional or national significance; the determination has been made that this application falls within that category. Accordingly, all interested parties are invited to submit written comments pertinent to the application to the Federal Register Section, Room E-401, Technical Services Division (WH-569), Office of Pesticide Programs, EPA, 401 M Street, S.W., Washington, D.C. 20460. Three copies of the comments should be submitted to facilitate the work of the Agency and others interested in inspecting the submissions. The comments must be received on or before December 28, 1976, and should bear the identifying notation OPP-50268. All written comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4:00 p.m. during normal work days.

This document contains a summary of information required by regulation to be included in the notice and does not indicate a decision by this Agency on the application. For more detailed information, interested parties are referred to the application on file with the Registration Division (WH-567), Office of Pesticide Programs, Room E-315, located at the Headquarters address mentioned above.

According to the Applicant, the Fish and Wildlife Service is currently using scent-station lines as a means of determining trends in coyote populations throughout the western United States. This method yields data concerning coyote distribution and indices of year-to-year changes in scent-station responses that are believed to reflect changes in population density. Past experience with capture/recapture procedures for estimating absolute numbers of coyotes shows that such methods are expensive and generally unsuccessful, the Applicant states. This study plan is based on an alternative approach — the removal method of population estimation. The Applicant indicates that it is extremely important that the "populations" of coyotes exposed to scent-stations be identical with those from which individual coyotes are removed. For this reason, the Applicant decided that the M-44 devices seemed more appropriate than aerial gunning or other methods that might inadvertently remove indi-

vidual coyotes that did not frequent the roads along which scent-stations are located, and thus would not have the opportunity to respond to scent-stations.

Problems due to population recruitment and loss can be decreased by: (1) Restricting the time frame to a period of one month or less from beginning to end of the experiment; (2) Establishing a reference line along which coyotes would not be removed, near each line along which coyotes would be removed as part of this experiment; and (3) By restricting selection of study areas to locales in which such population changes are expected to be minimal.

In order to elicit M–44 "pulls," the attractant used on M–44 devices must necessarily be different from the standard scent-station attractant (FAS). This raises the problem of differential response by some coyotes to the two attractants. Such differences will be assessed by employing both attractants along the reference lines and using any response difference observed as a basis for adjusting the treatment (removal) line data. M–44 devices would not be used along reference lines, but "mock-M–44" stations would be established by driving a large nail into the ground through a ball of cotton and then daubing the M–44 attractant on the cotton.

A maximum of five initial study areas will be selected—one each in Texas, Arizona, Nebraska, Utah, and California—on the basis of (a) the availability of research personnel to conduct the experiment, (b) abundance of coyotes, and (c) adequate road networks to satisfy experimental requirements. Each replicate (study area) of this experiment will involve a treatment line and a reference line separated by seven to ten miles. Each line will follow a generally linear route along an unimproved (dirt or gravel) road and will consist of five segments separated by three miles. Each segment will contain ten sites 0.3 miles apart. Each site will consist of a scent-station and an M–44 or mock M–44 station on opposite shoulders of the road. Scent-stations and M–44 stations will be prepared similarly and consist of a three-foot circle of sifted earth suitable for detecting coyote tracks. Scent-stations will alternate on the left and right sides of the road.

The experiment will be conducted in seven 3-day sequences. On the treatment (coyote removal) line, three day sequences of scent-station exposure and M–44 use will alternate. On the reference lines, mock M–44 stations will be used in place of the M–44 sequences and visits to the mock M–44 stations will be recorded just as for the scent-stations. All stations (200 total) will be established before the experiment is begun. Fresh attractant (including new capsules and new cotton balls) will be used for each three-day sequence of the experiment. Data will be recorded for scent-stations and mock M–44 stations.

During M–44 sequences, all units discharged will be recorded along with the species and sex of the animals responsible for the pulls. If the responsible animal is not recovered, that information will be noted also. Carcasses will be disposed of a minimum of 5 miles away from the line. All M–44 stations will be marked with warning signs in compliance with official policy for the duration of the experiment. In the event of precipitation or windstorms interfering with any scent-station sequence, the work would be interrupted (and all capsules removed) until the weather improves, whereupon the sequence would be started over. If interference occurs during an M–44 sequence, the M–44 devices can be left in place (and checked daily), but the mock M–44's should be pulled and replaced for the 3-day sequence when the weather permits. Upon completion of the experiment, data will be analyzed, and the results reported.

As stated, the objectives of the experiment are (1) to determine the response of coyote populations to scent-station lines before and after removal of known numbers of coyotes via M–44 devices, and (2) to relate the scent-station index to absolute numbers of coyotes.

Dated: December 1, 1976.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.76-35803 Filed 12-3-76;8:45 am]

[FRL 653-4; OPP-42032]

STATE OF SOUTH DAKOTA

Approval of State Plan for Certification of Pesticide Applicators

Section 4(a)(2) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 7 U.S.C. 136), and the implementing regulations of 40 CFR Part 171, require each State desiring to certify applicators to submit a plan to EPA for its certification program. Any State certification program under this section shall be maintained in accordance with the State Plan approved under this section.

On October 22, 1976, notice was published in the FEDERAL REGISTER (41 FR 46646) of the intent of the Regional Administrator, EPA Region VIII, to approve, on a contingency basis, the South Dakota State Plan for Certification of Pesticide Applicators (South Dakota State Plan). Contingency approval was requested by the State of South Dakota pending promulgation of implementing regulations. Copies of the South Dakota State Plan were made available for public inspection at the South Dakota Department of Agriculture office in Pierre, South Dakota, EPA Region VIII office in Denver, Colorado, and the Office of Pesticide Programs, EPA Headquarters, Washington, D.C.

The South Dakota State Plan will remain available for public inspection at the South Dakota Department of Agriculture, Anderson Building, Pierre, South Dakota.

No comments were received concerning the South Dakota State Plan. Therefore, it has been determined that the South Dakota State Plan will satisfy the requirements of the amended FIFRA and of 40 CFR Part 171, if the regulations described in the State Plan, which are necessary for its implementation, are promulgated by the South Dakota Department of Agriculture. In 41 FR 46646, EPA announced its intent not to accept those commercial applicators as certified who were previously licensed by passing the State's general examination and one or more of the State's specific category examinations. However, EPA did announce its intent to accept the State's category examinations listed in the State Plan and would only require commercial applicators to take a new general examination which covers the standards outlined in 40 CFR 171.4(b). The State of South Dakota has agreed to this determination and will re-examine these commercial applicators.

This contingency approval shall expire September 30, 1977 if these terms and conditions are not satisfied by that time. On or before the expiration of the period of contingency approval, a notice shall be published in the FEDERAL REGISTER concerning the extent to which these terms and conditions have been satisfied, and the approval status of the South Dakota State Plan as a result thereof.

EFFECTIVE DATE

Pursuant to section 4(d) of the Administrative Procedures Act, 5 U.S.C. 553 (d), the Agency finds that there is good cause for providing that the contingency approval granted herein to the South Dakota State Plan shall be effective upon signature of this notice. Neither the South Dakota State Plan itself nor this Agency's contingency approval of the Plan creates any direct or immediate obligation on pesticide applicators or other persons in the State of South Dakota. Delays in starting the work necessary to implement the Plan such as may be occasioned by providing some later effective date for this contingency approval are inconsistent with the public interest. Accordingly, this contingent approval shall become effective immediately.

JOHN A. GREEN,
Regional Administrator, EPA Region VIII.

NOVEMBER 24, 1976.

[FR Doc.76-35802 Filed 12-3-76-8:45 am]

[FRL 653-3]

MANAGEMENT ADVISORY GROUP TO THE MUNICIPAL CONSTRUCTION DIVISION

Open Meeting

Pursuant to Pub. L. 92–463, notice is hereby given that a meeting of the Management Advisory Group to the Municipal Construction Division, (formerly the Technical Advisory Group) will be held at 9:00 a.m. on January 11–12, 1977. The meeting will be held at the County Sanitation Districts of Orange County California in Fountain Valley, California.

The purpose of the meeting is to review and discuss the Construction Grants program of the Municipal Construction Division; Construction Grants

Funding; Legislative Situation and Results of EDA/EPA "Jobs Bill" Cooperation; Needs Survey Results and a discussion of National Water Quality Commission's Report.

The meeting will be open to the public. Any member of the public wishing to attend should contact the Executive Secretary, Mr. Harold Cahill, Director, Municipal Construction Division, EPA, Washington, D.C. 20460. The telephone number is area code 202–426–8986.

ANDREW W. BREIDENBACH,
Assistant Administrator
for Water and Hazardous Materials.

NOVEMBER 30, 1976.

[FR Doc.76-35801 Filed 12-3-76;8:45 am]

FEDERAL ENERGY ADMINISTRATION

RATE DESIGN INITIATIVE 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 Monday, December 20, 1976, at 1:30 p.m., Room 5041B, FEA Headquarters Building, 12th & Pennsylvania 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. FEA Presentation of Status Report on Preparation of the February 14 Submittal to Congress and the Quantative Modeling Contract.
2. Discussion of Material Previously Mailed.
3. Committee Discussion—Current Efforts, Future Needs.
4. Comments From the General Public.

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 and copying in the FEA Freedom of Information Office, Room 2107, FEA Headquarters, 12th & Pennsylvania Avenue, NW, Washington, D.C.

Issued at Washington, D.C. on December 1, 1976.

MICHAEL F. BUTLER,
General Counsel.

[FR Doc.76-35751 Filed 12-1-76;12:06 pm]

FEDERAL MARITIME COMMISSION

PUERTO RICO MARITIME SHIPPING AUTHORITY MARINE TRANSPORT, INC. AND SEATRAIN GITMO, INC.

Agreement Filed

Correction

In FR Doc. 76–34744, appearing at page 51870, in the issue of Wednesday, November 24, 1976, on page 51870, column 2, in the 2nd paragraph, the comment date appearing on lines 13 and 14 should be corrected to read "December 6, 1976".

FEDERAL POWER COMMISSION

[Docket Nos. CS76–1157, *et al.*]

L. JACK GROSS PRODUCTION, ET AL.

Applications for "Small Producer" Certificates [1]

NOVEMBER 26, 1976.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before December 20, 1976, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Applicant
CS76-1157	Sept. 24, 1976	L. Jack Gross Production, P.O. Box 188, Borger, Tex. 79007.
CS77-55	Nov. 11, 1976	Revere Corp., 625 Garrison Ave., Fort Smith, Ariz.
CS77-60	Nov. 9, 1976	Tee Oil, Inc., 3635 Lemmon Ave., Dallas, Tex. 75219.
CS77-70	Nov. 10, 1976	Wheeler Properties, 2010 Fort Worth National Bank Bldg., Fort Worth, Tex. 76102.
CS77-71	Oct. 10, 1976	Stipe, Gossett & Stipe, a partnership, 323 East Carl Albert Parkway, McAlester, Okla. 74501.
CS77-72	Nov. 11, 1976	Chester N. Posey, P.O. Box 2442, Houston, Tex. 77001.
CS77-73	Nov. 12, 1976	SMS Oil Co., P.O. Box 96, Iraan, Tex. 79744.
CS77-74	do	Mountaineer Oil & Gas Co. (Murphy Well No. 2), P.O. Box 3327, Charleston, W. Va. 25333.
CS77-75	do	J. W. Haynes, 2720 Chase, Wichita Falls, Tex. 76308.
CS77-76	Nov. 15, 1976	Elizabeth H. White, P.O. Box 10281, Albuquerque, N. Mex.
CS77-77	do	F. Dall Harper, individually, 1470 E First National Center, Oklahoma City, Okla. 73102.
CS77-78	do	Mary Valicenti, 155 East 49th St., New York, N.Y. 10017.
CS77-79	do	D. B. McClinton, P.O. Box 97, Livonia, La. 70755.
CS77-80	Nov. 16, 1976	Ross Jacobs, 405 West Mayfield, Grand Junction, Colo. 81501.
CS77-81	Nov. 17, 1976	Richard S. Gold, 1300 Corinth St., Dallas, Tex. 75215.
CS77-82	do	Allen J. Gold, 1300 Corinth St., Dallas, Tex. 75215.

[FR Doc.76-35629 Filed 12-3-76;8:45 am]

[Docket Nos. ER76–209 and ER76–492]

METROPOLITAN EDISON CO.

Settlement Agreement

DECEMBER 2, 1976.

Take notice that on November 19, 1976, Metropolitan Edison Company filed with the Presiding Administrative Law Judge a proposed Settlement Agreement in the above referenced dockets requesting that it, along with the record, be certified to the Commission for approval. In the Settlement Agreement the parties thereto state that the agreement is in full settlement of all issues in the requested rate increase in Docket No. ER 76–209. Issues concerning a temporary surcharge in the consolidated Docket No. ER76–492, have not been settled, and remain for Commission determination.

In the proposed Settlement Agreement it is requested that the proposed settlement rates be made effective January 1, 1976.

Any person desiring to be heard or to protest said Settlement Agreement should file comments with the Federal

Power Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, on or before December 15, 1976. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of the Agreement are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-35924 Filed 12-3-76;8:45 am]

[Docket No. ER-77-75]

NEW ENGLAND POWER CO.

Filing of Tariff Change

DECEMBER 2, 1976.

Take notice that New England Power Company ("NEP") on November 19, 1976, tendered for filing proposed changes in its Service Agreement for Primary Service for Resale with the Narragansett Electric Company ("Narragansett") for service under its FPC Electric Tariff, Original Volume No. 1. The proposed changes would decrease the fixed credits allowed Narragansett on its purchased power billing by NEP in the amount of $584,500 annually based on the 12 month period ending December 31, 1977. NEP requests its proposed change be made effective January 1, 1977.

NEP, conjunctively with its affiliate Narragansett, reviews annually that part of Narragansett's system which is used by it in providing all-requirements service to Narragansett, and upon their finding of a substantial change in circumstance files with the Commission revised generation and transmission credits. NEP asserts that the instant revision is primarily due to the substantial decrease in Production Plan occasioned by the cumulative effect of increased depreciation expense during the past several years. Data in support of its tender were submitted by NEP. However, the full filing requirements of the Commission's Regulations have not been tendered and, instead, NEP requests that Sections 35.13(b)(1) and 35.13(b)(4)(iii) of the Regulations, to the extent applicable to this filing, be waived.

Copies of the filing were served upon Narragansett and the Rhode Island Public Utilities Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol St., NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 10, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-35922 Filed 12-3-76;8:45 am]

[Docket Nos. RI76-117; RI76-119; RI76-132; RI76-133; RI76-135]

SUN OIL CO. ET AL.

Amended Petition for Special Relief

DECEMBER 2, 1976.

In the matter of: Sun Oil Company; Anadarko Production Company; Northern Michigan Exploration Company; Clark Oil Producing Company; Diamond Shamrock Corporation.

Take notice that on November 18, 1976, Sun Oil Company (Petitioner), P.O. Box 20, Dallas, Texas 75221, filed a proposed settlement agreement in the above-captioned dockets which amends its petition for special relief filed February 12, 1976 and published at 41 FR 8543, February 27, 1976, for natural gas produced in waters more than 250 feet deep, pursuant to § 2.56a(g)(2) of the Commission's Rules of Practice and Procedure. By this amendment petitioner seeks a flat rate of approximately $1.75 per Mcf, commencing January 1, 1977, for all gas attributable to its 46.66 percent working interest in West Cameron Block 639, Offshore Louisiana. Petitioner, on the basis of the record submitted to date, was seeking a comparable rate of approximately $1.95.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before December 13, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-35923 Filed 12-3-76;8:45 am]

[Docket No. CP77-69]

TENNESSEE GAS PIPELINE CO. AND COLUMBIA GULF TRANSMISSION CO.

Joint Application

DECEMBER 2, 1976.

Take notice that on November 23, 1976, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, and Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001 (Applicants), filed a joint application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate, and for temporary authorization, to commence the transportation of natural gas for Gulf Energy and Minerals Company-U.S., a Division of Gulf Oil Corporation (Gulf), on a best efforts basis and for a limited period to expire no later than June 30, 1977, through existing facilities of Applicants in the Eugene Island Area, Offshore Louisiana.

Applicants state that the volumes they propose to transport for Gulf are volumes available from Gulf's interest in the Eugene Island Block 313 Field producible from Platform A (Eugene Island 313), up to one-half of the total volume of gas produced from Eugene Island 313. The gas is to be sold by Gulf to Texas Eastern Transmission Corporation (Texas Eastern) pursuant to outstanding certificate authorization in Docket No. CI64-26.

Columbia Gulf proposes to take receipt of Gulf's gas on Platform A in Eugene Island 313 and to transport such gas through its existing 12-inch pipeline (CGT line) for delivery to Tennessee at the point of interconnection of the CGT line with the pipeline facilities jointly owned by Applicants and Natural Gas Pipeline Company of America (CNT) in Eugene Island 314. Tennessee will take receipt of Gulf's gas at that point and transport such gas through its existing facilities for redelivery onshore to Texas Eastern, at mutually agreeable existing points, for Gulf's account.

Applicants indicate that they are able and willing to undertake the proposed transportation for Gulf only for the interim period during which Gulf's own pipeline facilities for delivering its Eugene Island 313 gas to Texas Eastern are completed and installed, but in no event beyond June 30, 1977. For their respective transportation services, Columbia Gulf proposes to charge Tennessee 1.00¢ per Mcf of Gulf's gas handled in the CGT line, and Tennessee proposes to charge Gulf 14.13¢ per Mcf for Gulf's gas received into the CNT line and handled in Tennessee's existing facilities.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before December 13, 1976, file with the Federal Power Commission,

Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear to be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-35921 Filed 12-3-76;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Resources Administration

NATIONAL COUNCIL ON HEALTH PLANNING AND DEVELOPMENT

Change in Meeting Place

In FEDERAL REGISTER Document 76-33929, appearing at page 50724 in the issue for Wednesday, November 17, 1976, the meeting of the National Council on Health Planning and Development scheduled on December 10, 1976, has been changed from Room 6821 to Room 1813, Federal Building No. 8, 200 C Street, SW, Washington, D.C. 20024. All other information is correct as it appears.

Dated: November 29, 1976.

JAMES A. WALSH,
Associate Administrator for Operations and Management.

[FR Doc.76-35735 Filed 12-3-76;8:45 am]

Public Health Service

OFFICE OF QUALITY STANDARDS

Statement of Organization, Functions, and Delegations of Authority

Part 11 (Office of the Assistant Secretary for Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health, Education, and Welfare (38 FR 18571, July 12, 1973, as amended by 40 FR 48960, October 20, 1975) and Part 3 (Health Services Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health, Education, and Welfare (39 FR 10463-70, March 20, 1974, as amended by 40 FR 27505 June 30, 1975) are amended to reflect the transfer of the Office of Health Maintenance Organizations and Compliance (3AA109) in its entirety from the Office of the Administrator, Health Services Administration to the Office of Quality Standards (HAC), Office of the Assistant Secretary for Health. This action will result in a greater separation of the regulation responsibility from the development responsibility to avoid any inherent conflict of interest from having those who develop Health Maintenance Organizations also responsible for regulating them.

Section 11-B Organization and Functions is amended as follows:

1. Under the heading Office of Quality Standards (1N04), change the code from 1N04 to HAC and add the following as the last sentence of text: "Serves as the Departmental focal point in the areas of Health Maintenance Organization qualification, ongoing regulations, and employer compliance efforts."

2. Insert the following statement after the "Office of Quality Standards (HAC)":

Office of Health Maintenance Organizations Qualification and Compliance (HAC1). The Office: (1) Determines the qualifications of entities seeking an identification as a qualified Health Maintenance Organization (HMO) (excluding any involvement in the grant and contract award process); (2) is responsible for the ongoing activities necessary to assure the continued compliance of HMOs with the statutory and regulatory requirements of the HMO program; (3) is responsible for assuring compliance with a mandatory offering of the HMO alternative in employee health benefits plans; (4) provides technical support to the Office of the Assistant Secretary for Health, the Office of General Counsel, and other elements of the Federal government in the recommendation and preparation of legal action against HMOs, entities claiming to qualify as health maintenance organizations, and employers considered not to be in compliance with the statutory and regulatory requirements; and (5) serves as the Departmental focal point in the areas of HMO qualification, ongoing regulation, and employer compliance efforts.

Sec. 3-B Organization and Functions is amended as follows:

Under the heading entitled "Immediate Office of the Administrator (3AA1)," delete the statement entitled "Office of Health Maintenance Organizations Qualification and Compliance (3AA109)" in its entirety.

Dated: November 29, 1976.

JOHN OTTINA,
Assistant Secretary for Administration and Management.

[FR Doc.76-35781 Filed 12-3-76;8:45 am]

National Institutes of Health

NATIONAL COMMISSION ON ARTHRITIS AND RELATED MUSCULOSKELETAL DISEASES

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Commission on Arthritis and Related Musculoskeletal Diseases, December 13, 1976, at the National Institutes of Health, Building 31, Room 11A10, Bethesda, Maryland.

The entire meeting will be open to the public from 9:00 a.m. to 5:00 p.m. at the above address. The meeting is being held to secure advice with regard to the implementation of the Arthritis Plan.

Earlier notice of this meeting was impossible due to the short time provided by the law for administrative processing.

Messrs. James N. Fordham or Leo E. Treacy, Office of Scientific and Technical Reports, NIAMDD, National Institutes of Health, Building 31, Room 9A04, Bethesda, Maryland 20014, (301) 496-3583, will provide summaries of the meeting and rosters of the committee members.

(Catalog of Federal Domestic Assistance Program No. 13.846, National Institutes of Health.)

Date: December 2, 1976.

SUZANNE L. FREMEAU,
Committee Management Officer, NIH.

[FR Doc.76-36001 Filed 12-3-76;10:23 am]

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[INT DES 76-48]

MASTER PLAN FOR WILSON'S CREEK NATIONAL BATTLEFIELD, MISSOURI

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement for a master plan for Wilson's Creek National Battlefield, Missouri.

The statement considers the development, management and use of Wilson's Creek National Battlefield, Missouri.

Written comments on the environmental statement are invited and will be accepted for on or before January 21, 1977. Comments should be addressed to the Superintendent, George Washington Carver National Monument.

Copies of the draft environmental statement are available from or for inspection at the following locations:

Midwest Regional Office, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102.
Superintendent, George Washington Carver National Monument, P.O. Box 38, Diamond, Missouri 64840.
Management Assistant, Wilson's Creek National Battlefield, Route 2, Box 75, Republic, Missouri 65738.

Dated: November 26, 1976.

STANLEY D. DOREMUS,
Deputy Assistant Secretary of the Interior.

[FR Doc.76-35779 Filed 12-3-76;8:45 am]

[INT DES 76-49]

PROPOSED WILDERNESS CEDAR BREAKS NATIONAL MONUMENT, UTAH

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act, the Department of the Interior has prepared a draft environmental statement for proposed wilderness designation of 4830 acres (78.5 percent) of Cedar Breaks National Monument.

Ecological, social, and economic impacts are discussed. Additional legislative protection would be provided for natural resources. Backcountry facility developments would be prohibited.

Written comments on the environmental statement are invited and will be accepted on or before January 21, 1977. Comments should be addressed to the Superintendent, Cedar Breaks National Monument.

Copies of the draft environmental statement are available from or for inspection at the following locations:

Rocky Mountain Regional Office, National Park Service, 655 Parfet Street, Post Office Box 25287, Denver, Colorado 80225.
Superintendent, Cedar Breaks National Monument, Post Office Box 749, Cedar City, Utah 84720.
Superintendent, Zion National Park, Springdale, Utah 84767.
Utah State Office, National Park Service, 125 South State Street, Room 2208, Salt Lake City, Utah 84138.

Dated: November 29, 1976.

STANLEY D. DOREMUS,
Deputy Assistant Secretary of the Interior.

[FR Doc.76-35780 Filed 12-3-76;8:45 am]

NATIONAL CAPITAL PLANNING COMMISSION

[OMB Circular A-95 (Revised)]

PROJECT REVIEW AND NOTIFICATION SYSTEM

Procedures

NOVEMBER 11, 1976.

The National Capital Planning Commission, at its meeting on November 11, 1976, adopted the following procedures implementing the requirements in Section 2.a. of Part I of Attachment A to Office of Management and Budget Circular No. A-95 (Revised) on Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects, dated January 2, 1976, respecting notification to the National Capital Planning Commission:

A. INTRODUCTION

These procedures describe the Commission's Project Review and Notification System promulgated pursuant to Part I of Attachment A to Office of Management and Budget (OMB) Circular A-95 (Revised).

B. NOTIFICATION OF INTENT

Any agency of State or local government or any other organization or any individual undertaking to apply for assistance to a project or major substantive modifications thereto under a Federal program covered by Part I of OMB Circular A-95 (Revised), involving land or water use and development or construction in the National Capital Region, shall notify the Commission of its intent to apply for assistance at such time as it determines it will develop an application and, in any event, at least thirty (30) days prior to the submission of such application. The National Capital Region, as defined in section 1(b) of the National Capital Planning Act of 1952, as amended, consists of the District of Columbia; Montgomery and Prince George's Counties in Maryland; Arlington, Fairfax, Loudoun and Prince William Counties in Virginia; and all cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries of the combined area of said counties. These notification requirements pertain to all types of applications, as defined in the instructions to Standard Form 424 prescribed by GSA, Federal Management Circular 74-7, except augmentation applications.

C. SUMMARY DESCRIPTION OF PROJECT

Notification shall be submitted to the Commission on Standard Form 424 and shall include a summary description of the project for which assistance will be sought. The summary description shall contain the following information:

(1) Identity of the applicant.

(2) A map depicting the project's geographic boundaries.

(3) A brief description of the proposed project, including estimated cost and beneficiaries. Where appropriate, drawings or other graphics shall be submitted.

(4) A list of Federal installations affected, if any, and other project characteristics which will enable the Commission to identify agencies of the Federal government in the National Capital Region having plans, programs, or projects which may be affected by the project.

(5) A statement as to whether the applicant has been advised by the funding agency from which assistance is being sought that it will be required to submit environmental impact information in connection with the proposed project.

(6) The Federal program title and number and agency under which assistance will be sought as indicated in the latest "Catalog of Federal Domestic Assistance." In the case of programs not listed therein, programs shall be identified by Public Law number or U.S. Code citation.

(7) The estimated date the applicant expects to formally file an application.

D. PROCESSING OF NOTIFICATION OF INTENT

1. The Secretary of the Commission shall promptly acknowledge receipt of the notification.

2. Within thirty (30) days of receipt of the notification, the Executive Director shall comment, on behalf of the Commission, on any project or activity which he determines to be consistent with the Comprehensive Plan for the National Capital; municipal, county, subregional or regional plans previously reviewed by the Commission; Federal facility master plans and site and building plans approved by the Commission; or other relevant statements of Commission policies.

3. All other projects or activities shall be presented to the Commission for review and comment at its meeting next following the receipt of notifications therefor.

DANIEL H. SHEAR,
Secretary, National Capital Planning Commission.

[FR Doc.76-35778 Filed 12-3-76;8:45 am]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

FEDERAL GRAPHICS EVALUATION ADVISORY PANEL

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the Federal Graphics Evaluation Advisory Panel to the National Council on the Arts will be held on December 17, 1976, in Room 1127, Columbia Plaza Building, 2401 E Street, NW, Washington, D.C. The meeting is to evaluate

the graphics materials of the Agency for International Development (AID).

A portion of this meeting will be open to the public on December 17, from 9:30 a.m.–12:30 p.m. and 2:30 p.m.–4:30 p.m., on a space available basis. Accommodations are limited. Interested persons may submit written statements with the committee. The agenda for the open sessions will include discussions, with representatives of AID, of personnel and organizational problems related to their graphics program.

The remaining sessions of this meeting on December 17, from 1:30 p.m.–2:30 p.m., are for the purpose of Panel review, discussion, evaluation, and recommendation on Federal Graphics under the National Foundation on the Arts and the Humanities Act of 1965, as amended in accordance with the President's Directives of May 16, 1972, August 23, 1974, and June 26, 1975, on Improvement of Federal Graphics. In accordance with the determination of the Chairman published in the FEDERAL REGISTER of June 16, 1975, these sessions, which involve matters exempt from the requirements of public disclosure under the provision of the Freedom of Information Act (5 U.S.C. 552(b)(5)), will not be open to the public.

Further information with reference to this meeting can be obtained from Mr. Robert M. Sims, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634–6377.

ROBERT M. SIMS,
Administrative Officer, National Endowment for the Arts National Foundation on the Arts and the Humanities.

[FR Doc.76–35758 Filed 12–3–76;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS, SUBCOMMITTEE ON THE DAVIS-BESSE NUCLEAR POWER STATION, UNIT 1

Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232 b.), the ACRS Subcommittee on the Davis-Besse Nuclear Power Station, Unit No. 1, will hold a meeting on December 21, 1976 in Room 1146, 1717 H Street, N.W., Washington, DC 20555. The purpose of this meeting is to review the application of the Toledo Edison Company and the Cleveland Electric Illuminating Company for a license to operate Unit 1.

The agenda for subject meeting shall be as follows:

TUESDAY, DECEMBER 21, 1976

8:30 A.M.–9:00 A.M.

The Subcommittee with any of its consultants who may be present will meet in open Executive Session to explore their preliminary opinions, based upon their independent review of safety reports, regarding matters which should be considered during the open session in order to formulate a Subcommittee report and recommendations to the full Committee.

9:00 A.M. UNTIL THE CONCLUSION OF BUSINESS

The Subcommittee will meet in open session to hear presentations by representatives of the NRC Staff, the Toledo Edison Company, the Cleveland Electric Illuminating Company, and their consultants, and will hold discussions with these groups pertinent to this review.

At the conclusion of the open session, the Subcommittee may caucus in a brief, closed session to determine whether matters have been adequately covered and whether the project is ready for review by the full Committee. During the session Subcommittee members and consultants will discuss their final opinions and recommendations on these matters. Upon conclusion of this caucus, the Subcommittee will meet again in brief open session to announce its determination.

In addition to the closed deliberative session, it may be necessary for the Subcommittee to hold one or more closed sessions for the purpose of exploring with the NRC Staff and Applicant matters involving proprietary information, particularly with regard to specific features of the plant design and plans related to plant security.

I have determined, in accordance with Subsection 10(d) of Public Law 92–463, that it is necessary to conduct the above closed sessions to protect the free interchange of internal views in the final stages of the Subcommittee's deliberative process (5 U.S.C. 552(b)(5)) and to protect confidential proprietary information (5 U.S.C. 552(b)(4)). Separation of factual material from individual's advice, opinions, and recommendations while closed Executive Sessions are in progress is considered impractical.

Practical considerations may dictate alterations in the above agenda or schedule. The Chairman of the Subcommittee is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incompleted open session from one day to the next.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda may do so by providing a readily reproducible copy to the Subcommittee 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 sending a readily reproducible copy thereof in time for consideration at this meeting. Comments postmarked no later than December 14, 1976, to Mr. R. L. Wright, Jr., ACRE, NRC, Washington, D.C. 20555, will normally be received in time to be considered at this meeting.

Background information concerning items to be considered at this meeting can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H St., NW., Washington, D.C. 20555 and at the Ida Rupp Public Library, 310 Madison Street, Port Clinton, Ohio 43452.

(b) Those persons wishing to make an oral statement at the meeting should make a written request to do so, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements on topics relevant to the Committee's purview at an appropriate time chosen by the Chairman of the Subcommittee.

(c) Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call on December 20, 1976 to the Office of the Executive Director of the Committee (telephone 202/634–1919, Attn: Mr. R. L. Wright, Jr.) between 8:15 a.m. and 5:00 p.m., EST.

(d) Questions may be propounded only by members of the Subcommittee and its consultants.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(f) Persons with agreements or orders permitting access to proprietary 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 three working days prior to the meeting so that the agreement can be confirmed and a determination can be made regarding the applicability of the 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 Mr. R. L. Wright, Jr. of the ACRS Office, prior to the beginning of the meeting.

(g) A copy of the transcript of the open portion of the meeting will be available for inspection on or after December 30, 1976 at the NRC Public Document Room, 1717 H St., NW., Washington, DC 20555, and at the Ida Rupp Public Library, 310 Madison Street, Port Clinton, Ohio 43452.

Copies of the minutes of the meeting will be made available for inspection at the NRC Public Document Room, 1717 H St., N.W., Washington, DC 20555 after March 21, 1977. Copies may be obtained upon payment of appropriate charges.

Dated: December 2, 1976.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc.76–35977 Filed 12–3–76;9:40 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS, SUBCOMMITTEE ON THE D. C. COOK NUCLEAR PLANT, UNIT 1

Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the ACRS Subcommittee on the D. C. Cook Nuclear Plant, Unit 1 will hold a meeting on December 22, 1976 in Room 1046, 1717 H Street, N.W., Washington, DC 20555. The purpose of this meeting is to review the application of the Indiana and Michigan Power Company to operate Unit 1 at the rated power of 3250 megawatts thermal during fuel cycle 2.

The agenda for subject meeting shall be as follows:

WEDNESDAY, DECEMBER 22, 1976

8:30 A.M.–8:50 A.M.

The Subcommittee will meet in closed Executive Session, with any of its consultants who may be present to exchange opinions and discuss preliminary views and recommendations relating to the proposed operation of the nuclear plant.

8:50A.M. UNTIL THE CONCLUSION OF BUSINESS

The Subcommitte will meet in open session to hear presentations by representatives of the NRC Staff, the Indiana and Michigan Power Company, and their consultants, and will hold discussions with these groups pertinent to this review.

At the conclusion of the open session, the Subcommittee may caucus in a brief, closed session to determine whether the matters identified in the initial closed session have been adequately covered and whether the project is ready for review by the full Committee. During the session Subcommittee members and consultants will discuss their final opinions and recommendations on these matters. Upon conclusion of this caucus, the Subcommittee will meet again in brief open session to announce its determination.

In addition to these closed deliberative sessions, it may be necessary for the Subcommittee to hold one or more closed sessions for the purpose of exploring with the NRC Staff and Applicant matters involving proprietary information, particularly with regard to specific features of the plant design and plans related to plant security.

I have determined, in accordance with Subsection 10(d) of Public Law 92–463, that it is necessary to conduct the above closed sessions to protect the free interchange of internal views in the final stages of the Subcommittee's deliberative process (5 U.S.C. 552(b)(5)) and to protect confidential proprietary or plant security information (5 U.S.C. 552(b)(4)). Separation of factual material from individual's advice, opinions, and recommendations while closed Executive Sessions are in progress is considered impractical.

Practical considerations may dictate alterations in the above agenda or schedule. The Chairman of the Subcommittee is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incompleted open session from one day to the next.

The Advisory Committee on Reactor Safeguards is an independent group established by Congress to review and report on each application for a construction permit and on each application for an operating license for a reactor facility and on certain other nuclear safety matters. The Committee's reports become a part of the public record. Although ACRS meetings are ordinarily open to the public and provide for oral or written statements to be considered as a part of the Committee's information gathering procedure concerning the health and safety of the public, they are not adjudicatory type hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety & Licensing Board as part of the Commission's licensing process. ACRS meetings do not normally treat matters pertaining to environmental impacts outside the safety area.

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 may do so by providing a readily reproducible copy to the Subcommittee 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 sending a readily reproducible copy thereof in time for consideration at this meeting. Comments postmarked no later than December 15, 1976, to Mr. G. R. Quittschreiber, ACRS, NRC, 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 NRC Public Document Room, 1717 H St., NW., Washington, DC 20555 and at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

(b) Those persons wishing to make an oral statement at the meeting should make a written request to do so, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements on topics relevant to the Committee's purview at an appropriate time chosen by the Chairman of the Subcommittee.

(c) Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call on December 21, 1976 to the Office of the Executive Director of the Committee (telephone 202/634–1374, Attn: Mr. G. R. Quittschreiber) between 8:15 a.m. and 5:00 p.m., EST.

(d) Questions may be propounded only by members of the Subcommittee and its consultants.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(f) Persons with agreements or orders permitting access to proprietary 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 three working days prior to the meeting so that the agreement can be confirmed and a determination can be made regarding the applicability of the 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 Mr. G. R. Quittschreiber, of the ACRS Office, prior to the beginning of the meeting.

(g) A copy of the transcript of the open portion(s) of the meeting where factual information is presented will be available for inspection on or after December 30, 1976 at the NRC Public Document Room, 1717 H St., N.W., Washington, D.C. 20555 and at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

Copies of the minutes of the meeting will be made available for inspection at the NRC Public Document Room, 1717 H St., N.W., Washington, D.C. 20555 after March 22, 1977. Copies may be obtained upon payment of appropriate charges.

Dated: December 2, 1976.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc.76-35978 Filed 12-3-76;8:40 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS, SUBCOMMITTEE ON EMERGENCY CORE COOLING SYSTEMS

Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the ACRS Subcommittee on Emergency Core Cooling Systems (ECCS) will hold a meeting on December 21, 1976 in Room 1046, 1717 H Street, N.W., Washington, D.C. 20555. The purpose of this meeting is to review Exxon Nuclear Company, Inc., analytical models formulated to meet current ECCS criteria for fuel fabricated by Exxon for pressurized water reactors, and to review the application of these models to Units No. 1 of the Donald C. Cook and the Oyster Creek Nuclear Power Plants, respectively.

The agenda for subject meeting shall be as follows:

TUESDAY, DECEMBER 21, 1976

8:30 A.M. UNTIL THE CONCLUSION OF BUSINESS

The Subcommittee with any of its consultants who may be present will meet in open session for discussion with the NRC Staff and representatives of the Exxon Nuclear Company, Inc. of evaluation models formulated to meet ECCS criteria, and with representatives of the Indiana and Michigan Power Company and the Jersey Central Power and Light Company regarding application of the evaluation models to Units No. 1 of the Donald C. Cook and the Oyster Creek Nuclear Power Plants, respectively.

It may be necessary for the Subcommittee to hold one or more closed sessions with the NRC Staff and participants for the purpose of discussing proprietary information.

Practical considerations may dictate alterations in the above agenda or schedule. The Chairman of the Subcommittee is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incompleted open session from one day to the next.

I have determined, in accordance with Subsection 10(d) of Public Law 92-463, that it may be necessary to conduct closed sessions to protect proprietary information (5 U.S.C. 552(b)(4)).

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 may do so by providing a readily reproducible copy to the Subcommittee 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 sending a readily reproducible copy thereof in time for consideration at this meeting. Comments postmarked no later than December 14, 1976 to Mr. Thomas G. McCreless, ACRS, NRC, 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 NRC Public Document Room, 1717 H St., N.W., Washington, DC 20555; at the Maude Preston Palenske Memorial Library, 500 Market St., St. Joseph, MI 49085 (regarding the Donald C. Cook Plant); and at the Ocean County Library, 15 Hooper Avenue, Toms River, NJ 08753 (regarding the Oyster Creek Plant).

(b) Those persons wishing to make an oral statement at the meeting should make a written request to do so, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements on topics relevant to the Committee's purview at an appropriate time chosen by the Chairman of the Subcommittee.

(c) Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call on December 20, 1976 to the Office of the Executive Director of the Committee (telephone 202/634-1374, Attn: Mr. Thomas G. McCreless) between 8:15 a.m. and 5:00 p.m., EST.

(d) Questions may be propounded only by members of the Subcommittee and its consultants.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(f) Persons with agreements or orders permitting access to proprietary 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 three working days prior to the meeting so that the agreement can be confirmed and a determination can be made regarding the applicability of the 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 Mr. Thomas G. McCreless of the ACRS Office, prior to the beginning of the meeting.

(g) A copy of the transcript of the open portion of the meeting will be available for inspection on or after December 30, 1976 at the NRC Public Document Room, 1717 H St., N.W., Washington, DC 20555; at the Maude Preston Palenske Memorial Library, 500 Market St., St. Joseph, MI 49085; and at the Ocean County Library, 15 Hooper Avenue, Toms River, NJ 08753.

Copies of the minutes of the meeting will be made available for inspection at the NRC Public Document Room, 1717 H St., N.W., Washington, DC 20555 after March 21, 1977. Copies may be obtained upon payment of appropriate charges.

Dated: December 2, 1976.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc.76-35979 Filed 12-3-76;9:41 am]

NATIONAL TRANSPORTATION POLICY STUDY COMMISSION

EXECUTIVE DIRECTOR RECRUITMENT AD HOC COMMITTEE

Meeting

Pursuant to subsection 10(a) of the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given that a meeting of the National Transportation Policy Study Commission Ad Hoc Committee on Executive Director Recruitment, will be held on December 9, 1976.

The meeting will not be open to the public as the Commission will discuss matters relating solely to its internal personnel and practices under 5 U.S.C. 552 (b)(2) and will examine personnel and similar files, the disclosure of which would constitute an unwarranted invasion of privacy under (b)(6) of the same section.

This notice is filed late because of time constraints placed upon the Commission in its Executive Director Recruitment activities and its relationship to the members' availability for a full Commission meeting.

Dated: December 2, 1976.

BUD SHUSTER,
Chairman.

[FR Doc.76-35966 Filed 12-3-76;8:45 am]

INTERNAL PERSONNEL AND PRACTICES

Meeting

Pursuant to subsection 10(a) of the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given that a meeting of the National Transportation Policy Study Commission will be held on December 18, 1976.

The meeting will not be open to the public as the Commission will be discussing matters that are related solely to its internal personnel and practices under 5 U.S.C. 552 (b)(2) and will examine personnel and similar files, the disclosure of which would constitute an unwarranted invasion of privacy under (b)(6) of the same section.

Dated: November 23, 1976.

BUD SHUSTER,
Chairman.

[FR Doc.76-35965 Filed 12-3-76;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[812-4037]

AMERICAN GENERAL MUNICIPAL BOND FUND, INC. AND MARYLAND CASUALTY CO.

Application for Order Exempting Proposed Transaction and for Order and Rule 17d-1 Thereunder Permitting Proposed Transaction

NOVEMBER 26, 1976.

In the Matter of American General Municipal Bond Fund, Inc., 2777 Allen Parkway, Houston, Texas 77017, and Maryland Casualty Co., 3910 Keswick Road, Baltimore, Maryland 21211.

Notice is hereby given that American General Muncipal Bond Fund, Inc. ("Fund"), an open-end, diversified, management investment company registered under the Investment Company Act of 1940 ("Act"), and Maryland Casualty Company ("Casualty"), a wholly-owned subsidiary of American General Insurance Company ("Insurance") (referred to collectively with Fund as "Ap-

plicants"), filed an application on October 7, 1976, and amendments thereto on November 12, 1976, and November 16, 1976, pursuant to Section 17(b) of the Act, for an order of the Commission exempting from the provisions of Section 17(a) of the Act a proposed option agreement under which Fund would have the right to purchase specified municipal bonds from Casualty, and for an order pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder permitting the proposed option. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that Fund's investment objective is to seek as high a level of current interest income exempt from Federal income tax as is consistent with preservation of capital through investing in municipal bonds. Fund's investment adviser is American General Capital Management, Inc. ("Adviser"), which is a wholly-owned subsidiary of Insurance.

Subsequent to the filing of a Form S–5 Registration Statement under the Securities Act of 1933, but prior to the Registration Statement's effective date, which was November 9, 1976, Casualty purchased or committed to purchase certain municipal bonds described below, having a par value of $19,400,000 at a cost of $19,556,603. Applicants state that Fund proposes to acquire an option from Casualty pursuant to which Fund has the right, but not the obligation, to purchase for a period of 30 days from the date that the Commission enters the order herein requested or the date of the Fund's Closing Date referred to in its Form S–5 Registration Statement, (currently November 30, 1976, but which may be extended to a date not beyond December 31, 1976), whichever is later, any or all of the municipal bonds acquired by Casualty. The municipal bonds subject to this option are described as follows:

State/description	Ratings [1]		Par amount	Unit cost to Maryland casualty	Principal cost to Maryland Casualty	Interest cost to Maryland Casualty	Total cost to Maryland Casualty	Current yield (percent)	Coupon (percent)	1976 purchase date
	Moody's	S. & P.								
Connecticut: Connecticut Resources Recovery Authority, Nov. 15, 1990.	A–1	AA	$400,000	$101.397	$405,588	$2,013.89	$407,601.89	6.10	6¼	Oct. 5
Florida:										
Florida State Board of Education, May 1, 1997.[2]	Aa	AA	500,000	97.64	488,245	1,118.06	489,363.06	5.88	5¾	Sept. 29[3]
Dade County, Fla. Nov. 1, 1995	A–1	A+	500,000	100	500,000	583.33	500,583.33	6	6	Oct. 7
Dade County, Fla. Nov. 1, 1996	A–1	A+	500,000	100	500,000	583.33	500,583.33	6	6	Do.
Georgia:										
Atlanta, Ga., Dec. 1, 1998	Aa	AA	200,000	96.95	193,900	4,216.67	198,116.67	5.93	5¾	Sept. 29
Atlanta, Ga., Dec. 1, 1999	Aa	AA	100,000	96.886	96,886	2,108.33	98,994.33	5.93	5¾	Do.
Metropolitan Atlanta Rapid Transit Authority, Georgia, July 1, 1999.[2]	A	A+	500,000	99.50	497,500	11,399.31	508,899.31	6.15	6⅛	Oct. 21[3]
Illinois: State of Illinois, May 1, 1999	Aaa	AAA	500,000	102.284	511,420	14,183.34	525,603.34	5.80	6	Oct. 1
Kentucky: Kentucky Housing Corp.—1976 series C, July 1, 1995.	Aa	AA	1,000,000	100	1,000,000	3,769.44	1,003,769.44	5.90	5.90	Oct. 15
Louisiana:										
Louisiana Stadium and Exposition District, July 1, 1995.[2]	Aa	AA	1,000,000	100	1,000,000	22,333.33	1,022,333.33	6	6	Oct. 28[3]
New Orleans, La., Aug. 1, 1999	A–1	A+	400,000	97.513	390,052	5,494.44	395,546.44	5.89	5¾	Oct. 7
Minnesota: Minnesota Housing Finance Agency, Feb. 1, 1918.	A–1	AA	1,000,000	100	1,000,000	6,547.22	1,006,547.22	7.25	7¼	Sept. 10
Nebraska: Nebraksa Public Power District Nuclear Facility Authority, Jan. 1, 2004.	A–1	AA	1,000,000	100	1,000,000	17,850.00	1,017,850.00	6.30	6.30	Oct. 5
New Hampshire:										
New Hampshire Housing Finance Agency, Jan. 1, 2008.	A–1	AA	500,000	99	495,000	4,487.85	499,487.85	6.94	6⅞	Sept. 30
New Hampshire Housing Finance Agency, Jan. 1, 2008.	A–1	AA	500,000	101.50	507,500	4,678.82	512,178.82	6.74	6¾	Oct. 13
New Jersey: New Jersey Housing Finance Agency, Nov. 1, 2015.[2]	A–1	AA	500,000	99.875	499,375	1,434.03	500,809.03	7.38	7⅜	Oct. 1[3]
New York: New York State Power Authority, general purpose—Series E, Jan. 1, 2010.	A	A	1,000,000	100	1,000,000	3,625.00	1,003,625.00	7.25	7¼	Oct. 12
Ohio: State of Ohio Public Facilities Commission higher education facilities—Series 1976 B, May 17, 1998.	Aa	AA	500,000	100	500,000	1,000.00	501,000.00	6	6	Oct. 5
Pennsylvania: Forest Hill School Authority, Pennsylvania (MBIA) Dec. 1, 1994.	NR	AAA	500,000	99.25	496,250	583.34	496,833.34	6.04	6	Oct. 19
South Carolina: South Carolina Public Service Authority expansion revenue, July 1, 2010.	A–1	AA	1,000,000	101.375	1,013,750	18,239.58	1,031,989.58	6.34	6⅜	Oct. 6
Tennessee: Memphis Tenn.—Electric system revenue, Jan. 1, 1998	Aa	AA	1,000,000	100	1,000,000	21,961.11	1,021,961.11	5.90	5.90	Oct. 12[3]
Texas:										
Texas Municipal Power Agency, Sept. 1, 2005.	A	A+	500,000	100	500,000	3,630.21	503,630.21	6.375	6⅜	Oct. 4
Texas Municipal Power Agency, Sept. 1, 2005.	A	A+	500,000	100	500,000	3,807.29	503,807.29	6.375	6⅜	Oct. 6
Port of Beaumont Navigation District, Texas, Mar. 1, 1999.	A	A	500,000	100	500,000	2,965.28	502,965.28	6.10	6.10	Sept. 29
Bryan, Tex.—Utility revenue, July 1, 1995	A	A+	100,000	102.409	102,409	1,805.96	104,214.96	6	6¼	Oct. 7
Chelford One Municipal Utility District, Texas, Nov. 15, 1996.	NR	NR	100,000	100	100,000	None	100,000.00	7.70	7.70	Oct. 27[3]
Chelford One M7nicipal Utility District, Texas, Nov. 15, 1997.	NR	NR	100,000	100	100,000	None	100,000.00	7.70	7.70	Do.[3]
Chelford One Municipal Utility District Texas, Nov. 15, 1998.	NR	NR	100,000	100	100,000	None	100,000.00	7.70	7.70	Do.[3]
Coastal Industrial Water Authority, Texas, Dec. 15, 2007.	Aa	AA	500,000	102.25	511,250	9,828.13	521,078.03	6.21	6⅜	Sept. 29
Dallas-Fort Worth Regional Airport, Texas, Nov. 1, 1999.	A	A	1,000,000	100	1,000,000	2,527.78	1,002,527.78	6.50	6½	Oct. 19
Washington:										
State of Washington, Sept. 1, 2000	Aa	AA	500,000	97.745	488,725	3,359.38	492,084.38	5.75	5¾	Oct. 4
Washington Public Power Supply System, July 1, 2017.	Aaa	AAA	1,000,000	101.25	1,012,500	7,763.89	1,020,263.89	6.41	6½	Oct. 6
Seattle, Wash., Sept. 1, 2009	Aa	AA	500,000	90.218	451,090	3,131.94	454,221.94	6.09	5½	Oct. 4
Thurston County, Wash., Apr. 1, 1999	A–1	A+	200,000	99.02	188,040	1,469.17	199,509.17	6.21	6.15	Do.
Thurston County, Wash., Apr. 1, 2001	A–1	A+	200,000	99.625	199,250	1,481.11	200,731.11	6.22	6.20	Do.
Wisconsin: Wisconsin Housing Finance Agency, Nov. 1, 2019.	Aa	AA	500,000	101.112	505,560	2,333.33	507,893.33	6.91	7	Oct. 18

[1] A–1 is Moody's rating between A and Aa. A+ is S.&P.'s rating between A and AA.

[2] All costs approximated based upon a settlement date of Nov. 18, 1976.
[3] Not settled.

Applicants state that the option to Fund is irrevocable during the option period; that the option may be exercised by Fund by giving written notice to Casualty and by delivery of the purchase price of the bonds, and that the option is nontransferrable without the prior written consent of Casualty and Insurance. Applicants further state that, should the option be exercised, the purchase price of the bonds will be the lower of their cost to Casualty or their market value at the time of exercise of said option by Fund; that Fund will not be required to pay any transfer fee; and that the purchase of any or all of the bonds will meet, at the time of exercise of the option, Fund's investment policies and restrictions.

Applicants state that the bonds subject to the option are or will be fully paid for by and owned by Casualty, and that the granting of the option will expedite the investment of the proceeds following the proposed sale of shares in the initial offering of Fund's common stock. Applicants state that because the proceeds of the initial offering of Fund's common stock will be available at one time, in a substantially greater amount than is expected to be received on a daily basis following commencement of a continuous offering, and because investing such a large sum consistent with obtaining the best quality securities and yields possible would require considerable time, the proposed option would facilitate the speedy and yet deliberate investment of the proceeds of the initial offering in accordance with Fund's investment policies and objectives, and diminish the need for temporary investments, the income from which may or may not be taxable to Fund shareholders. Applicants also state that some of the securities subject to the option might not be available or, if available, would not be acquired on terms as favorable as at the time of their acquisition by Casualty, at the time of receipt of proceeds of the initial offering. Applicants further state that if the application for exemption is granted, Adviser will recommend and the directors of the Fund not affiliated with Adviser will determine which bonds, if any, will be acquired by Fund. Should Fund not exercise the option, the bonds will be retained in the portfolio of Casualty subject to the investment decisions of Casualty.

Applicants state that it is the contention of Insurance that the granting of the option and the exercise thereof by Fund will not result in the taking of a corporate opportunity of Insurance. The management of Insurance arranged for the purchase of the bonds subject to the option through Casualty for the sole purpose of granting the option to Fund, but for which Insurance would not have otherwise caused Casualty to purchase such bonds. Insurance has agreed to indemnify and hold Casualty harmless for any loss it might incur at the time of exercise of the option by Fund. Applicants state that the Management of Insurance proposed to grant this option because, in their good faith business judgment, such option would not only benefit the future shareholders of Fund, by expediting the investment of proceeds following the initial investment of Fund's shares, but also benefit the shareholders of Insurance by promoting the sale of Fund shares thus increasing the aggregate net asset value of Fund, and thereby increasing the management fee payable to Adviser, a wholly-owned subsidiary of Insurance. Applicants state that this anticipation is the consideration for granting the proposed option to Fund.

Applicants represent that none of the management of Insurance will benefit personally from the proposed transaction except to the extent that they may be shareholders of Insurance or of Fund, and then in no way different from any other shareholder.

Casualty and Adviser, as wholly-owned subsidiaries of Insurance, may be deemed to be under the common control of Insurance and are thus affiliated persons of each other under Section 2(a)(3) of the Act. Adviser is an affiliated person of Fund under Section 2(a)(3) of the Act. Accordingly, Casualty, as an affiliated person of an affiliated person of Fund, is, in the absence of receipt of an order, prohibited by Section 17 (a) and (d) from granting the option and selling the municipal bonds subject to the option to Fund.

Section 17(a) of the Act provides, in pertinent part, that it shall be unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, knowingly to sell to or to purchase from such registered investment company any security or other property subject to certain exceptions. Section 17(b) of the Act provides that the Commission, upon application, may exempt a proposed transaction from the provisions of Section 17(a) of the Act if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each investment company concerned and with the general purposes of the Act.

Section 17(d) of the Act and Rule 17d-1 thereunder provide, in pertinent part, that it shall be unlawful for any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, to participate in or effect any transaction in connection with any joint enterprise or arrangement in which any such registered company, or company controlled by such registered company, is a participant unless an application regarding such arrangement has been granted by an order of the Commission. In passing upon such application, the Commission will consider whether the participation of such registered or controlled company in such arrangement is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants. A joint enterprise or arrangement is defined in Rule 17d-1 as a written or oral plan, contract, authorization or arrangement, or any practice or undertaking whereby registered investment company or a controlled company thereof, and any affiliated person of such person, have a joint or a joint and several participation, or share in the profits of such enterprise or undertaking.

Applicants agree that any order issued by the Commission pursuant to this notice may be conditioned upon the requirement that Applicants will file with the Commission within 15 days after the exercise of the option, if exercised, a copy of all records with respect to the option and the subject bonds required to be kept pursuant to Rule 31a-1(b)(10) and Rule 31a-1(b)(11) promulgated under the Act.

Notice is further given that any interested person may, not later than December 16, 1976, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law, by certification) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

SHIRLEY E. HOLLIS,
Assistant Secretary.

[FR Doc.76-35549 Filed 12-3-76;8:45 am]

[Rel. No. 34-12992; File No. SR-PSE-76-19]

PACIFIC STOCK EXCHANGE INC.

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on June 17, 1976, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule

change as follows (brackets indicate deletions, italics indicate additions):

RULE X

CONDUCT OF ACCOUNTS

Section 18.

(c) Suitability

(1) No change.

(2) No member, member organization [firm] or registered person thereof shall effect with or for any customer of such member or member organization [firm] any transaction whereby such customer writes or, after writing, is obligated as a writer with respect to:

(a) a call option contract with respect to an underlying stock which is not long in the customer's account with the member or member organization [firm] or which, at the time of writing, is not concurrently purchased by such customer for such account, provided that an account shall be deemed long an underlying stock if it is long in a security immediately exchangeable or convertible, pursuant to the provisions of Rule XI (Margins), into such underlying stock; or

(b) a put option contract [with respect to an underlying stock in which the customer has a short position or, at the time of writing, has effected concurrently a short sale of the underlying stock to which such option contract relates], unless on the basis of information obtained by such member, member organization [firm] or registered person from such customer, after reasonable inquiry, and any other information known by such member, member organization [firm] or registered person, such member, member organization [firm] or registered person has a reasonable basis for believing that the customer, at the time of the transaction, is capable of evaluating the additional risks in such transaction, and has the financial capability to meet reasonably foreseeable margin calls, pursuant to applicable margin requirements with respect to the proposed position in such call option contract or put option contract and the related short position in the underlying stock.

EXCHANGE'S STATEMENT OF BASIS AND PURPOSES

The basis and purpose of the foregoing proposed rule change is as follows:

The proposed amendment to section 18 (c)(2) would apply the same suitability standard presently applied to recommendations of uncovered call option writing transactions to recommendations of all put option writing, whether or not the short put position is "covered". Although analytically only the put writer who is also short the underlying security is subject to risks comparable to those of an uncovered call writer, the Exchange has determined to follow the more conservative approach of applying the special suitability standards of section 18(c)(2) of Rule X to all recommended put writing transactions.

The proposed Rule change relates to the Exchange's capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the Act, and the rules and regulations thereunder, to the promotion of just and equitable principles of trade, and to the protection of investors and the public interest.

Comments on the proposed Rule change have not been solicited from Exchange members and member organizations, and none have been received.

The proposed rule change will not impose any burden on competition.

On or before January 11, 1977, or within such longer period (i) as the Commission may designate up to ninety (90) days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filings will also be available for inspection at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted within 14 days of the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

NOVEMBER 17, 1976.

[FR Doc.76-35790 Filed 12-3-76;8:45 am]

CENTURY PETROLEUM CORP.

Order Permanently Suspending Regulation B Exemption

NOVEMBER 30, 1976.

In the Matter of Schedule D Offering Sheets filed by CENTURY PETROLEUM CORP., Dallas, Texas: Adolph Kuffman (File No. 20-2093A1, 3-4809); Earl L. Brown (File No. 20-2093A3, 3-4810); Earl L. Brown (File No. 20-2093A4, 3-4811); Earl L. Brown (File No. 20-209-3A5, 3-4812); Vance N. Harms (File No. 20-2093A6, 3-4813).

On October 23, 1975 the Commission issued orders temporarily suspending the Regulation B exemption in the captioned offering sheets filed by Century Petroleum Corp., stating that it had reasonable cause to believe that:

No exemption is available for these offerings under Regulation B according to Rule 306(a)(2) [17 CFR 230.306(a)(2)] because William J. Briggs, now president of Century Petroleum Corporation, was restrained and enjoined permanently on February 14, 1975 by the Supreme Court of the State of New York, from offering or selling securities within and from the State of New York, including securities in the form of working interests in oil leases, without complying with Article 23-A of the General Business Law; and further was restrained and enjoined from violating the provisions of Article 23-A of the General Business Law of the State of New York.

No exemption is available for these offerings under Regulation B because the offering sheets used failed to comply with Rule 330 (a) and (b) of Regulation B [17 CFR 230.330 (a) and (b)] by failing to disclose that on February 14, 1975, William J. Briggs, now president of Century Petroleum Corporation, was restrained and enjoined permanently by the Supreme Court of the State of New York, in and for the County of New York, from offering or selling securities within and from the State of New York, including securities in the form of working interests in oil leases, without complying with Article 23-A of the General Business Law; and further was restrained and enjoined from violating the provisions of Article 23-A of the General Business Law of the State of New York.

No hearing having been requested by the issuer within 30 days after the entry of the orders temporarily suspending the exemption under Regulation B, the Commission finds that it is in the public interest and for the protection of the investors that the exemption be permanently suspended.

Accordingly, *It is ordered*, pursuant to Rule 334 of Regulation B under the Securities Act of 1933, that the exemption from registration with respect to Century Petroleum Corporation's Adolph Kuffman (20-2093A1), Earl L. Brown (20-2093A3), Earl L. Brown (20-2093A4), Earl L. Brown (20-2093A5) and Vance N. Harms (20-2093A6) offerings be, and hereby are, permanently suspended.

For the Commission, by its Secretary, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-35770 Filed 12-3-76;8:45 am]

[File No. 81-231]

MONSANTO INTERNATIONAL FINANCE CO.

Application and Opportunity for Hearing

NOVEMBER 23, 1976.

Notice is hereby given that Monsanto International Finance Company (the "Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for a finding that an exemption from the requirement to file reports pursuant to section 13 of the 1934 Act would not be inconsistent with

the public interest or the protection of investors.

Section 13 of the 1934 Act provides that every issuer of a security registered pursuant to section 12 of the 1934 Act shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate for the proper protection of investors and to ensure fair dealing in the security, such information and documents required to be included in or filed with an application or registration statement filed pursuant to such Section 12 and such annual reports and such quarterly reports as the Commission may prescribe.

Section 12(h) of the 1934 Act empowers the Commission to exempt, in whole or in part, any issuer or class of issuers from the periodic reporting provisions of section 13 if the Commission finds, by reason of the number of public investors, amount of trading interest in the securities, income or assets of the issuer or otherwise, that such exemption is not inconsistent with the public interest or the protection of investors.

The Applicant states in part:

1. Applicant, a Delaware corporation, was organized by Monsanto Company ("Monsanto") to raise funds abroad for use in financing the capital requirements of Monsanto's operations outside the United States and Canada in a manner consistent with the Foreign Direct Investment Program. All of the outstanding stock of Applicant is owned directly by Monsanto. Monsanto is engaged in the manufacture and sale of a widely diversified line of chemical, plastic, and fibre products derived primarily from petroleum, natural gas, phosphate ore and other raw materials.

2. In November 1965, Applicant issued $25,000,000 principal amount of 4½ percent Guaranteed Sinking Fund Debentures due 1985 (the "Debentures"), of which about $22,496,000 aggregate principal amount remain outstanding.

3. Monsanto has guaranteed unconditionally the payment of principal, interest, and premium (if any) on the Debentures should the Applicant default on its obligations with regard to these Debentures.

4. None of the securities of the Applicant (other than debt securities) are presently held by any person other than Monsanto.

In the absence of an exemption, Applicant is required to file certain periodic reports with the Commission pursuant to Section 13 of the 1934 Act.

Accordingly, Applicant believes that the exemptive order requested is appropriate in view of the fact that none of the securities of the Applicant (other than the Debentures) are held by any person other than Monsanto and that, since the Debentures are guaranteed unconditionally by Monsanto, a reasonable investor would be primarily interested in the reports of Monsanto filed under section 13 of the 1934 Act and not those of Applicant.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street, Washington, D.C.

Notice is further given that any interested person not later than December 17, 1976, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed to: Secretary, Securities and Exchange Commission, 500 North Capitol Street, NW., Washington, D.C. 20549 and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application in whole or in part may be issued upon request or upon the Commission's own motion.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-35771 Filed 12-3-76;8:45 am]

PACIFIC STOCK EXCHANGE, INC.

Application for Unlisted Trading Privileges and of Opportunity for Hearing

NOVEMBER 30, 1976.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the security of the company as set forth below, which security is listed and registered on one or more other national securities exchanges:

Houston Oil & Minerals Corp., Common Stock, $.10 Par Value, File No. 7-4882.

Upon receipt of a request, on or before December 15, 1976 from any interested person, the Commission will determine whether the application with respect to the company named shall be set down for hearing. Any such request should state briefly the title of the security in which that person is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no request for a hearing with respect to the particular application is made, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-35772 Filed 12-3-76;8:45 am]

PHILADELPHIA STOCK EXCHANGE

Application for Unlisted Trading Privileges and of Opportunity for Hearing

NOVEMBER 30, 1976.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the security of the company as set forth below, which security is listed and registered on one or more other national securities exchanges:

Champion Spark Plug Company, Common Stock, 30¢ Par Value, File No. 7-4888.

Upon receipt of a request, on or before December 15, 1976 from any interested person, the Commission will determine whether the application with respect to the company named shall be set down for hearing. Any such request should state briefly the title of the security in which that person is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no request for a hearing with respect to the particular application is made, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-35774 Filed 12-3-76;8:45 am]

PHILADELPHIA STOCK EXCHANGE

Application for Unlisted Training Privileges and of Opportunity for Hearing

NOVEMBER 30, 1976.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the security of the company as set forth below, which security is listed and registered on one or more other national securities exchanges:

Centronics Data Computer Corporation, Common Stock, 1¢ Par Value, File No. 7-4887.

Upon receipt of a request, on or before December 15, 1976 from any interested person, the Commission will determine whether the application with respect to the company named shall be set down for hearing. Any such request should state briefly the title of the security in which that person is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no request for a hearing with respect to the particular application is made, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-35775 Filed 12-3-76;8:45 am]

[Release No. 13016]

PHILADELPHIA STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

NOVEMBER 29, 1976.

In the matter of Philadelphia Stock Exchange, Inc., 17th Street and Stock Exchange Place, Philadelphia, Pennsylvania 19103, (SR-PHLX-76-15).

On July 9, 1976, the Philadelphia Stock Exchange, Inc. (the "PHLX") filed with the Commission, pursuant to Section 19 (b) of the Securities Exchange Act of 1934 (the "Act"), as amended by the Securities Acts Amendments of 1975, and Rule 19b-4 thereunder, copies of proposed rule changes. The proposed changes to PHLX rules 213 and 454 would permit PHLX stock specialists to trade listed options on their specialty securities, and would permit other PHLX floor members to trade, on the PHLX equity floor, securities for which they have positions in listed options.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-12618 (July 12, 1976)), and by publication in the FEDERAL REGISTER (41 FR 29922 (July 20, 1976)).

PHLX rules 454 and 213 were adopted at the urging of the Commission in 1935 for the purpose of deterring options-related manipulation of underlying stocks by specialists, odd-lot dealers and floor traders. On the other hand, absent such restrictions it is argued that the PHLX market could operate more efficiently. Recently the Commission advised the NASD of its view that, "in an environment of vigorous competitive market making, it would be appropriate to permit marketmakers, if they choose, to make markets in both the options and the underlying securities."[1] The Commission recognized that the market operated through the NASDAQ system was "relatively free of anti-competitive restraints and should therefore provide an opportunity to test the extent to which competition can be an effective regulator of a unified market for options and their underlying securities."[2]

Currently, the market operated by PHLX is less free of anti-competitive restraints than is the case for the NASDAQ system. PHLX rules, for example, prohibit certain members from effecting off-board principal transactions in PHLX-traded stocks, and several PHLX rules establish a system of on-floor preferences for the regular odd-lot dealer specialist; such rules may impose burdens on competition which, on examination, may not be necessary or appropriate or which may impede the development of "an environment of vigorous competitive market making."[3] On the other hand, since PHLX's share of the total market volume in securities for which options trading would be permitted by the proposed rule changes averages less than 1.7 percent, the manipulative potential inherent in changing the current restrictions, appears insignificant.

The Commission finds, therefore, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Sections 3(a)(36), 6(b)(5), 6(b)(8), 9, 11(b), 11A(a)(1)(C)(ii), 11A(c)(1)(F), and 15(c)(5), and the rules and regulations thereunder without giving separate consideration at this time to their interaction with other PHLX rules of the types refered to above.

It is therefore ordered, pursuant to section 19(b(2) of the Act, that the above-mentioned proposed rule changes be, and they hereby are, approved.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-35773 Filed 12-3-76;8:45 am]

[File No. 81-227]

S W INDUSTRIES, INC.

Application and Opportunity for Hearing

NOVEMBER 29, 1976.

Notice is hereby given that the successor in interest of S W Industries, Inc. (the "Applicant") has filed an application pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended, (the "Act") for an order exempting the Applicant from the provisions of Sections 13 and 15(d) of the Act subsequent to July 9, 1976.

Section 15(d) of the Act requires, in part, that each issuer which has filed a registration statement under the Securities Act of 1933 which registration statement contains an undertaking which became operative pursuant to this subsection 15(d) as then in effect, shall file with the Commission in accordance with appropriate rules and regulations of the Commission such information and reports as may be required pursuant to Section 13 of the Act in respect of a security registered pursuant to Section 12 of the Act. In general such requirements are suspended as to any fiscal year at the beginning of which the issuer had less than 300 shareholders of its equity securities, or during such time as the issuer's securities are registered under Section 12 of the Act.

Section 12(h) of the Act empowers the Commission to exempt, in whole or in part, any issuer or class of issuers from the periodic reporting provisions of the Act under Sections 13 and 15(d) thereof, if the Commission finds by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities, income or assets of the issuer, or otherwise, that such exemption is not inconsistent with the public interest or the protection of investors.

The application of the Applicant states in part:

(1) S W Industries, Inc. ("S W"), pursuant to shareholder approval at a meeting for which proxies were solicited in accordance with Regulation 14A under the Act, merged in accordance with the laws of the Commonwealth of Massachusetts into an indirect wholly owned subsidiary of BTR Limited, a corporation incorporated in England, effective on July 9, 1976.

(2) As a result of this merger each shareholder of S W became entitled to receive $42 in cash for each of his shares of S W common stock, $1.00 par value. S W shareholders no longer have any interest in S W or its successor.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street, N.W., Washington, D.C. 20549.

Notice is further given that any interested person not later than December 27, 1976 may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to con-

[1] Letter dated September 24, 1976, from Roderick M. Hills, Chairman, Securities and Exchange Commission, to Gordon Macklin, President, National Association of Securities Dealers, Inc.

[2] Id.

[3] Id.

trovert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-35776 Filed 12-3-76;8:45 am]

DEPARTMENT OF STATE

Agency for International Development

PEST MANAGEMENT ACTIVITIES

Extension of Time for Filing Comments On Draft Environmental Impact Statement

On September 30, 1976, the Agency for International Development (A.I.D.) gave notice of its issuance of a draft programmatic environmental impact statement concerning its pest management activities, including such activities conducted, supported or otherwise assisted by it for the procurement or use of pesticides (41 FR 43202). Comments were invited from the public and from Federal agencies who had not otherwise been requested to provide comments. November 30, 1976 was established as the final day for receipt of comments for consideration.

As a result of requests from several concerned private organizations and Federal agencies the time for filing of comments has been extended to December 15, 1976. Comments must be received by this date in order to be considered in the preparation of the final environmental statement. Copies of the draft environmental statement remain available for public inspection during regular working hours at the Agency for International Development, Room 105, Rosslyn Plaza C Building, 1601 North Kent Street, Arlington, Virginia (Phone No. (703) 235-8936); or single copies may be available on request to Environmental Coordinator Albert Printz, Room 2841, New State, Agency for International Development, Washington, D.C., 20523.

Comments concerning the draft environmental impact statement and requests for additional information should be addressed to Environmental Coordinator, Room 2841, New State, Agency for International Development, Washington, D.C., 20523.

Dated: November 30, 1976.

CURTIS FARRAR,
Assistant Administrator for Technical Assistance.

[FR Doc.76-35777 Filed 12-3-76;8:45 am]

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. EX75-4; Notice 4]

C. H. WATERMAN INDUSTRIES

Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard

This notice grants a petition by C. H. Waterman Industries of Athol, Massachusetts, for a temporary exemption from S7.1.1 of Motor Vehicle Safety Standard No. 208. The exempted vehicle is an electric powered passenger car. The basis of the exemption is that it would facilitate the development and field evaluation of a low-emission motor vehicle.

Notice of the petition was published in September 9, 1976 (41 FR 38203), and an opportunity afforded for comment.

Waterman has previously been granted an exemption expiring May 1, 1977, from all or a portion of 15 Federal motor vehicle safety standards, for a European passenger car that it converts to electric propulsion (40 FR 24549). Thus far the company has imported seven such vehicles for tests, and none have been sold for public use. Waterman's current petition stated that it had experienced difficulty in locating passenger restraint systems that incorporate "automatic and/or emergency locking and adjusting features" which, it said, must be designed "in conjunction with the design of the vehicle structure in order to integrate the two in a practicable manner." Waterman has not found it possible to date to install in its automobile a restraint system of the type required by Standard No. 208.

Petitioner argued that the exemption would not unreasonably degrade the safety of the vehicle as it will be equipped with non-retractable Type 2 belt systems in the front seats, and Type 1 lap belts in the rear, offering protection equivalent to conforming systems. Waterman argued that it is in the public interest to develop its alternative to the internal combustion engine "despite the small inconveniences of a manually adjusted restraint system."

One comment was received on the petition, from Consumers Union (CU) which opposed it. CU stated that some "popular low-price imported cars" use self-contained belt systems with retractors in "boxes" that are located between the anchor bolt and the tang. It suggested that petitioner could purchase them "from the U.S. parts distributors for these imported cars."

Given the small number of vehicles that have been imported pursuant to the present exemption and the fact that the vehicles will be equipped with protective belt systems of a type previously acceptable under Standard No. 208, it has been determined that this exemption will not unreasonably degrade the safety of the vehicle. By affording Waterman further opportunity to experiment with conversion of vehicles to electric power it has been further determined that the exemption will facilitate the development and field evaluation of a law-emssion motor vehicle. However, because of the importance of the occupant protection standard, Standard No. 208, an exemption is provided only until May 1, 1977, when Waterman's other exemptions expire and when its future marketing plans and its ability to meet all standards will be clearer than at present.

In consideration of the foregoing, NHTSA Exemption No. 75-4 is hereby amended to exempt C. H. Waterman Industries from paragraph S7.1.1 of 49 CFR 571.208, Motor Vehicle Safety Standard No. 208, expiring May 1, 1977.

(Sec. 3, Pub. L. 92-548, 86 Stat. 1159 (15 U.S.C. 1410); delegation of authority at 49 CFR 1.50)

Issued on November 26, 1976.

JOHN W. SNOW,
Administrator.

[FR Doc.76-35578 Filed 12-3-76;8:45 am]

HIGHWAY SAFETY PROGRAMS

Qualified Products List for Devices to Measure Calibrating Units for Breath Alcohol Testers

This notice establishes the list of calibrating units for breath alcohol testers found to qualify under the Performance Standard for Calibrating Units for Breath Alcohol Testers (40 FR 36167, August 19, 1975) and that may therefore be purchased with Federal funds under sections 402(a) and 403 of the Highway Safety Act, 23 U.S.C. 402(a), 403.

To guide States and local jurisdictions in choosing among a growing number of calibrating units for breath alcohol testers, NHTSA requested the National Bureau of Standards to develop a performance standard to evaluate calibrating unit and to provide a basis for a qualified products list. After submitting the draft standard for comment to the States, to the breath tester manufacturers and to other experts in the field, NHTSA published the Standard in the FEDERAL REGISTER on August 19, 1975 (40 FR 36167).

In accordance with the schedule outlined in the FEDERAL REGISTER, the DOT Transportation Systems Center in Cambridge, Massachusetts began tests in January 1976 on units submitted by the manufacturers. Upon completing the tests, NHTSA advised the manufacturers of the tentative results and afforded them a brief period in which to diagnose and correct any deficiencies that might have appeared. The qualified products list issued hereby consists of those calibrating units that NHTSA found capable of meeting the standard's performance requirements, either upon initial testing or upon retesting after modification.

The qualified products list will not be a static list. NHTSA plans to revise it periodically in response to the following events:

a. Periodic test of devices on the lists and of candidate devices.
b. Revisions to the standard.
c. Manufacturing changes in calibrating units on the list.
d. Complaints from agencies using the calibrating units.
e. Results of the Government sponsored Standard Compliance Information System.

A calibrating unit tested but rejected may be resubmitted for retesting 6 months after issuance of the edition of the list for which it was submitted. A manufacturer whose unit is threatened with removal from the list will be given 30 days in which to cure the deficiency.

The qualified products, meeting all

performance requirements, are as follows, listed alphabetically by manufacturer:

Calibrating unit	*Manufacturer*
1. Breath Alcohol Simulator BAS311	Century Systems, Inc., Arkansas City, Kans.
2. Synebirate -----	Intoximeters, Inc., St. Louis, Mo.
3. Simulator -----	Luckey Laboratories, Inc., San Bernardino, Calif.
4. Mark II–A Simulator	Smith & Wesson Electronic Co., Springfield, Mass.

(23 U.S.C. 402, 403)

Issued on: November 30, 1976.

FRED W. VETTER, Jr.,
Associate Administrator,
Traffic Safety Program.

[FR Doc.76-35687 Filed 12-3-76;8:45 am]

DEPARTMENT OF THE TREASURY

Office of the Secretary

AUTOMOBILE BODY DIES FROM JAPAN

Discontinuance of Antidumping Investigation

Information was received on January 21, 1976, from counsel acting on behalf of the National Tool, Die and Precision Machining Association, of Washington, D.C., alleging that automobile body dies from Japan were being sold at less than fair value, thereby causing injury to, or likelihood of injury to, or the prevention of the establishment of an industry in the United States, within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). On the basis of this information and subsequent preliminary investigation by the Customs Service, an "Antidumping Proceeding Notice" was published in the FEDERAL REGISTER of February 26, 1976 (41 FR 8400).

A "Notice of Tentative Discontinuance of Antidumping Investigation" was published in the FEDERAL REGISTER of September 2, 1976 (41 FR 37136). The tentative discontinuance was made in accordance with the provisions of section 201 (b)(1)(C) of the Act (19 U.S.C. 160(b)(1)(C)), and § 153.33(a)(1), Customs Regulations (19 CFR 153.33(a)(1)).

FINAL DISCONTINUANCE

On the basis of the information developed in the Customs' investigation and for the reasons noted below, pursuant to § 153.33(d) of the Customs Regulations (19 CFR 153.33(d)), I hereby discontinue the antidumping investigation concerning automobile body dies from Japan.

STATEMENT OF REASONS ON WHICH THIS DISCONTINUANCE IS BASED

The reasons and bases for the above discontinuance are as follows:

a. *Scope of the Investigation.* It appears that approximately 78 percent of all imports of the subject merchandise from Japan were manufactured by Ogihara Iron Works Company, Ltd., Ohta City, Japan. Therefore, the investigation was limited to this manufacturer.

b. *Basis of Comparison.* For the purpose of considering whether the merchandise in question is being or is likely to be, sold at less than fair value within the meaning of the Act, the proper basis of comparison is between purchase price and the constructed value of the imported merchandise. Purchase price, as defined in section 203 of the Act (19 U.S.C. 162), was used since all export sales were made to an unrelated United States purchaser. Constructed value, as defined in section 206 of the Act (19 U.S.C. 165), was used since there were no sales of such or similar merchandise in the home market or to third countries.

In accordance with § 153.31(b), Customs Regulations (19 CFR 153.31(b)), pricing information was obtained concerning sales to the United States of automobile body dies from Japan during the 8-month period August 1, 1975, through March 31, 1976, as well as appropriate constructed value information.

c. *Purchase Price.* For the purposes of this discontinuance, adjustments have been made on the following bases. In the import transactions, all of the merchandise was purchased or agreed to be purchased, prior to the time of exportation, by the person by whom or for whose account it was imported, within the meaning of the Act. The purchase price has been calculated on the basis of the packed, c.i.f., U.S. delivered price, to an unrelated U.S. purchaser. Deductions have been made for Japanese inland freight, ocean freight, insurance, U.S. duty and brokerage fees, U.S. inland freight, handling, and commissions paid to the U.S. sales agent.

d. *Constructed Value.* For the purposes of this discontinuance, constructed value has been calculated on the basis of the sum of the cost of materials and of fabrication of the merchandise, an amount for general expenses and profit related to the manufacture and sale of merchandise of the same general class or kind as the merchandise under consideration, and the cost of all containers and coverings used to pack the merchandise ready for shipment to the United States.

e. *Results of Fair Value Comparisons.* Using the above criteria, the comparisons made on 100 percent of the sales of the subject merchandise to the United States by Ogihara Iron Works Co., Ltd., during the representative period, indicate that, in some instances, purchase price was less than the constructed value of the imported merchandise. However, these margins amounted to roughly one-half of one percent when weighted over 100 percent of sales and these have been determined to be minimal in terms of the volume of sales involved. In addition, formal assurances have been received from counsel acting on behalf of Ogihara Iron Works Co., Ltd., that Ogihara will make no future sales at less than fair value within the meaning of the Act.

For the reasons stated above, the antidumping investigation of automobile body dies from Japan is discontinued in accordance with section 201(b)(3) of the Act (19 U.S.C. 160(b)(3), and § 153.33(d), Customs Regulations (19 CFR 153.33(d))).

This notice is published pursuant to § 153.33(d), Customs Regulations (19 CFR 153.33(d)).

PETER O. SUCHMAN,
Acting Assistant Secretary
of the Treasury.

NOVEMBER 30, 1976.

[FR Doc.76-35733 Filed 12-3-76;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 204]

ASSIGNMENT OF HEARINGS

DECEMBER 1, 1976.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 127042 (Sub-No. 172), Hagen, Inc., now assigned January 6, 1976, at Chicago, Ill., is postponed indefinitely.

MC 124692 Sub 162, Sammons Trucking, A Corporation, now being assigned February 23, 1977 (3 days), at Phoenix, Ariz., in a hearing room to be later designated.

W-C 29, Pacific Towboat & Salvage Co.—Investigation of Operations, now being assigned February 28, 1977 (1 day), at Los Angeles, Calif., in a hearing room to be later designated.

MC 117823 Sub 50, Dunkley Refrigerated Transport, Inc., now being assigned March 1, 1977 (1 day), at Los Angeles, Calif., in a hearing room to be later designated.

MC 141730, Andrews & Sons Trucking Inc., now being assigned March 2, 1977 (1 day), at Los Angeles, Calif., in a hearing room to be later designated.

MC 134035 Sub 14, Douglas Trucking Company, A Corporation, now being assigned March 3, 1977 (2 days), at Los Angeles, Calif., in a hearing room to be later designated.

MC 114211 Sub 270, Warren Transport, Inc., now being assigned March 7, 1977 (1 day), at Los Angeles, Calif., in a hearing room to be later designated.

MC 141722, Norm's Delivery Service, Inc., now being assigned March 8, 1977 (2 days), at Los Angeles, Calif., in a hearing room to be later designated.

MC 141804 Sub 11, Western Express, Division of Interstate Rental Inc., now being assigned March 10, 1977 (2 days), at Los Angeles, Calif., in a hearing room to be later designated.

MC 23441 Sub 21, Lay Trucking, Inc., now being assigned January 11, 1977 (1 day), in Courtroom 1944-C, Everett McKinley Dirksen Bldg., 219 South Dearborn Street, Chicago, Ill.

MC 124714 Sub 105, Momsen Trucking Co., now being assigned January 12, 1977 (1

day) in Courtroom 1944–C, Everett McKinley Dirksen Bldg., 219 South Dearborn Street, Chicago, Ill.

AB 19 (Sub-No. 10), Buffalo, Rochester and Pittsburgh Railway Company and Baltimore and Ohio Railroad Company Abandonment Portion Indiana Branch at Black Lick Junction, In Indiana County, Pennsylvania, now assigned December 8, 1976, at Indiana, Pa. will be held at the History House, 2nd Floor, South 6th St. & Wayne.

MC 124839 (Sub-No. 27), Building Transport, Inc., now being assigned for continued hearing on December 13, 1976, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 105881 (Sub-50), M.R. & R. Trucking Company; MC 109533 (Sub-67), Overnite Transportation Company and MC 113528 (Sub-26), Mercury Freight Lines, Inc., have been continued to December 7, 1976, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 124939 (Sub-9), Food Haul, Inc., now being assigned January 11, 1977 (1 day), at Columbus, Ohio; in a hearing room to be later designated.

MC 119632 (Sub-68), Reed Lines, Inc., now being assigned January 12, 1977 (1 day), at Columbus, Ohio; in a hearing room to be later designated.

MC 138991 (Sub-14), K. J. Transportation, Inc., now being assigned January 13, 1977 (1 day), at Columbus, Ohio; in a hearing room to be later designated.

MC 140484 (Sub-19), Lester Goggins Trucking, Inc., now being assigned January 14, 1977 (1 day), at Columbus, Ohio; in a hearing room to be later designated.

AB-19 (Sub-19), Baltimore and Ohio Railroad Company Abandonment Portion of the Ohio and Little Kanawha Branch Between Relief and Philo, in Muskingum, Morgan and Washington Counties, Ohio, now being assigned January 17, 1977 (1 week), at McConnelsville, Ohio; in a hearing room to be later designated.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-35789 Filed 12-3-76;8:45 am]

[Notice No. 81]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include a request for oral hearing, must be filed with the Commission on or before January 5, 1977. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants' representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

No. MC–FC–35474, filed October 4, 1976. Lessee: ROSS EXPRESS INC., P.O. Box 42, Penacook, New Hampshire 03303. Lessor: B. & B. TRANSPORTATION, INC., 39 Ryder Avenue, Cranston, Rhode Island 02920. Applicants' representative: Edward C. Blinkhorn, 37 Ryder Avenue, Cranston, Rhode Island 02920. Authority sought for lease by lessee of a portion of the operating rights of lessor, as set forth in Certificate No. MC 51143, issued May 11, 1961, as follows: Shoe racks, shoe findings, beverages, groceries, wool, woolen goods, and boxes, from points in Essex County, Mass., to points in New Hampshire. Lessee presently holds authority as a contract carrier under No. MC 128842. Application has not been filed for temporary authority.

No. MC–FC–76627, filed September 2, 1976. Transferee: S. Harris & Sons, Inc., 10 Ridgeway Street, Lynn, Mass. 01902. Paul W. Harris, Doing Business As S. Harris & Sons, 41 Russell Street, Somerville, Mass. 02144. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC–60345, issued June 3, 1949, as follows: Household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467, over irregular routes, between Somerville, Mass., and points in Massachusetts within 10 miles of Somerville, on the one hand, and, on the other, points in Massachusetts, New Hampshire, Maine, Vermont, Rhode Island, Connecticut, New York, and New Jersey. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC–FC–76628, filed September 26, 1976. Transferee. Beamon & Lassiter, Inc., 5748 Southern Boulevard, Virginia Beach, Va. 23462. Transferor: W. A. Beamon and J. R. Lassiter, A Partnership, Doing Business As Beamon and Lassiter, 5748 Southern Boulevard, Virginia Beach, Va. 23462. Applicants' representative: M. Bruce Morgan, Esquire, 104 Azar Building, Glen Burnie, Md. 21061. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC–133160, issued September 9, 1969, as follows: General commodities having an immediately prior or immediately subsequent movement by aircraft (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Norfolk, Va., on the one hand, and, on the other, points in Nansemond and Isle of Wight Counties, Va., points in a described part of Southampton County, Va., points in Hertford, Bertie, Gates, Chowan, Perquimans, Pasquotank, Camden, and Currituck Counties, N.C., points in described parts of Martin, Washington, Tyrrell, and Dare Counties, N.C., and points in a described part of Northampton County, N.C. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC–FC–76695, filed August 10, 1976. Transferee: Bulk Transportation, A Corporation, 415 Lemon Avenue, Walnut, Calif. 91789. Transferor: FWS Development Co., Inc., Doing Business as FWS (Jim D. Smith, Trustee in Bankruptcy), A Corporation, Rte. 3, Box 11, Yuma, Ariz. 85364. Transferor's representative: William J. Monheim, Registered Practitioner, 15942 Whittier Blvd., P.O. Box 1756, Whittier, Calif. 90609. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC–135215, issued July 2, 1973, as follows: Chemical fertilizers, in bulk, except liquid fertilizers, from Fontana, Brea, Nitroshell, Vernon, and San Diego, Calif., and points in the Los Angeles, Calif., Harbor Commercial Zone as defined by the Commission, to points in Maricopa, Pinal, Cochise, Yuma, Pima; and Graham Counties, Ariz.; and chemical fertilizer, in bags, when moving in the same vehicle, and at the same time with chemical fertilizer in bulk, from the above-named origin points to the above-named destination points. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC–FC–76703, filed August 11, 1976. Transferee: Madden's Transfer & Storage, Inc., 12 Lake Flower Avenue, Saranac Lake, N.Y. 12938. Transferor: Acme Moving & Storage Corporation, (Internal Revenue Service, Successor-in-Interest), 5408 Silver Hill Road, Suitland, Md. 20028. Transferee's representative: W. Norman Charles, Esquire, 80 Bay Street, Glens Falls, N.Y. 20028. Authority sought for purchase by transferee of that portion of the operating rights of transferor, as set forth in Certificate No. MC 88904 (Sub 2), issued August 8, 1960, as follows: Household goods as defined by the Commission, between Knoxville, Md., and points in Maryland, Virginia, and West Virginia within 20 miles of Knoxville, Md., on the one hand, and, on the other, points in Kentucky and Tennessee. Transferee is presently authorized to operate as a common carrier under Certificate No. MC 94170 and subs thereafter, and as a contract carrier under Permit No. MC 101915 and subs thereunder. Application has not been filed for temporary authority under Section 210a(b).

No. MC–FC–76704, filed November 19, 1976. Transferee: Hancock Moving & Storage, Inc., 1455 Pando Avenue, Colo-

rado Springs, CO 80906. Transferor: Lawrence Hancock, Jr. and Rosemarie Hancock, doing business as Hancock Moving & Storage, 1455 Pando Avenue, Colorado Springs, CO 80906. Applicants' representative: John H. Lewis, Attorney-at-Law, The 1650 Grant St. Bldg., Denver, CO 80203. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC 140017, issued May 9, 1975, as follows: Used household goods, between points in Douglas, Elbert, El Paso, Fremont, Pueblo, and Teller Counties, Colo. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC–FC–76767, filed November 22, 1976. Transferee: Frances B. O'Neal, doing business as O'Neal Travel Service, 812 Olive Street, Room 1189, St. Louis, MO 63101. Transferor: D. T. O'Neal, (Frances B. O'Neal, Heir-at-Law), doing business as O'Neal Travel Services, 812 Olive St., Room 1189, St. Louis, Mo. 63101. Authority sought for purchase by transferee of the operating rights set forth in License No. MC 12635 (Sub-No. 1), issued March 24, 1958, in the name of transferor, authorizing operations as a broker at St. Louis, Mo., in connection with the transportation by motor vehicle in interstate or foreign commerce, of passengers and their baggage, in all-expense, round-trip tours, beginning and ending at St. Louis, Mo., and extending to points in Illinois, Indiana, and Missouri. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC–FC–76795, filed November 1, 1976. Transferee: Adams Transfer & Storage, Inc., 1429 W. Reno, Oklahoma City, Okla. Transferor: A. E. Adams, Doing Business As Adams Transfer & Storage Company, (Mary Ann Weeks, Executrix), 1429 W. Reno, Oklahoma City, Okla. Applicants' representative: Harvey L. Marmon, Jr., Esquire, 600 Fidelity Plaza, Oklahoma City, Okla. 73102. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC 59629, issued November 2, 1941, as follows: Building materials from Oklahoma City, Okla., to points in a described portion of Texas; canned goods from points in Carroll County, Ark., to Oklahoma City, Okla.; and household goods between Oklahoma City, Okla., and points within 60 miles thereof on the one hand, and, on the other, points in Texas, Kansas, Arkansas, and Missouri. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC FC 76810, filed November 26, 1976. Transferee: Mid-States Industries, Inc., 1305 Marshall St., Shreveport, La. 71101. Transferor: Herrin Transfer and Warehouse Company, Inc., 1305 Marshall St., Shreveport, La. 71101. Applicants' representative: J. R. Herrin, Jr., P.O. Box 1487, Shreveport, La. 71164. Authority sought for purchase by transferee of the operating rights of transferor set forth in Certificates Nos. MC 1414 and MC 1414 (Sub-No. 2), issued January 7, 1941, and June 17, 1944, respectively, as follows: Household goods, between points in Louisiana, Arkansas, Texas, and Mississippi; and between points in Louisiana, on the one hand, and, on the other, points in Oklahoma, Alabama, and Georgia. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC–FC–76813, filed November 2, 1976. Transferee: Pacific Stages Limited, 970 Burrard Street, Vancouver, B.C. V6Z 1Y3, Canada. Transferor: British Columbia Hydro and Power Authority, A Crown Corporation, DBA Pacific Stage Lines and Royal Blue Line Motor Tours, Vancouver, British Columbia, Canada. Applicants' representatives: David G. Macdonald, Esq., Macdonald & McInerny, 1000 Sixteenth St., N.W., Washington, D.C. 20036. William D. Mitchell, Esq., Secretary and General Solicitor, B.C. Hydro and Power Authority, 970 Burrard St., Vancouver, B.C., V6Z 1Y3, Canada. Authority sought for the purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC 124568 and No. MC 124568 (Sub-No. 3), issued February 6, 1964 and January 8, 1970, respectively, as follows: Passengers and their baggage, in special operations, in round-trip sightseeing tours, in foreign commerce only, between the ports of entry on the United States-Canada Boundary line at Blaine, Sumas, and Lynden, Wash., on the one hand, and, on the other, points in Skagit and Island Counties, Wash., restricted to traffic originating and terminating in Canada; Passengers and their baggage, in the same vehicle with passengers, in special operations, in foreign commerce only, between the boundary of the United States and Canada at Blaine, Sumas, and Lynden, Wash., on the one hand, and, on the other, points in Whatcom County, Wash., with restrictions; Passengers and their baggage in the same vehicle with passengers, in charter operations, beginning and ending at ports of entry in Washington on the United States-Canada Boundary line and at ports of entry in Washington which are termini of ferry services operating between the United States and Canada, and extending to points in Washington, Oregon and California; and passengers and their baggage in the same vehicle with passengers, in charter operations, beginning and ending at ports of entry in Washington, on the United States-Canada Boundary line, and at ports of entry in Washington which are the termini of ferry services operating between the United States and Canada, and extending to points in Idaho and Nevada. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority.

No. MC–FC–76828, filed November 17, 1976. Transferee: Glenn Babcock, Inc., Route 2, Box 334C, Elkhorn, Wis. 53121. Transferor: Glenn Babcock, Jr., Route 2, Box 334C, Elkhorn, Wis. 53121. Applicants' representative: William C. Dineen, Attorney-at-Law, 710 North Plankinton Ave., Milwaukee, Wis. 53203. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Permit No. MC–134744, issued February 2, 1971, as follows: Lumber and building materials as described in Appendix VI to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209, from the site of Wickes Lumber Co., near Elkhorn, Wis., to points in Lake, McHenry, Boone, Winnebago, Stephenson, Jo Daviess, Carroll, Whiteside, Lee, Ogle, DeKalk, Kane, Kendall, Cook, Du Page, and Will Counties, Ill.; and returned shipments of the above-specified commodities, from the above-specified destination points, to the site of Wickes Lumber Co., near Elkhorn, Wis. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-35787 Filed 12-3-76;8:45 am]

[Notice No. 162]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

DECEMBER 1, 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 2202 (Sub-No. 522TA), filed November 23, 1976. Applicant: ROADWAY EXPRESS, INC., 1077 Gorge Blvd., P.O. Box 471, Akron, Ohio 44309. Applicant's representative: William O. Turney, Suite 1010, 7101 Wisconsin Ave., Washington, D.C. 20014. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the plantsite of Iminac Corporation, located at or near Angleton, Tex., as an off-route point in connection with applicant's present regular routes. Applicant intends to tack its existing authority with MC 2202 and subs thereto and will effect interchange at all points served. Applicant also intends to interline at all points if interchange, for 180 days. Supporting shipper: Iminac, Inc., 4003 S. Hwy. 288, Angleton, Tex. 77515. Send protests to: James Johnson, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 181 Federal Office Bldg., 1240 E. Ninth St., Cleveland, Ohio 44199.

No. MC 32213 (Sub-No. 8TA), filed November 23, 1976. Applicant: PORTER TRUCK SERVICE, INC., 1217 W. Cherokee, Sioux Falls, S. Dak. 57101. Applicant's representative: A. J. Swanson, 521 S. 14th St., P.O. Box 81849, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products and articles distributed by meat packinghouses* (except hides and commodities in bulk), from the facilities of Meilman Food Industries, Inc., at or near Sioux Falls, S. Dak., to points in Los Angeles and Orange Counties, Calif.; and points in the commercial zones of Spokane and Seattle, Wash.; Portland, Salem and Sublimity, Oreg.; Oklahoma City and Tulsa, Okla.; and Dallas and Fort Worth, Tex., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Meilman Food Industries, Inc., P.O. Box 215, Whitehall, Wis. 54773. Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 369 Federal Bldg., Pierre, S. Dak. 57501.

No. MC 55891 (Sub-No. 5TA) (Correction), filed October 6, 1976, published in the FEDERAL REGISTER issue of October 19, 1976, and republished as corrected this issue. Applicant: I. B. GILL AND L. L. GILL, doing business as GILL TRUCKING CO., 5301 S. High, Oklahoma City, Okla. 73129. Applicant's representative: Edward W. Smith, 2525 Northwest Expressway, Oklahoma City, Okla. 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Machinery, materials, supplies and equipment* incidental to, or used in, the construction, development, operation and maintenance of facilities for the discovery, development and production of natural gas and petroleum shipments, limited to 14,000 pounds, moving in expedited on "hot shot" service, between Oklahoma City, Okla., and points in Colorado, New Mexico and Wyoming, for 180 days. Supporting shippers: Baroid Div., NL Ind., Inc., 6600 Wheatland Road; Land & Marine Rental Company, P.O. Box 75278; and FMC Corporation, P.O. Box 15070, Oklahoma City, Okla. Wilson Downhole-Div. of Wilson Ind., 5616 S. Rockwell, Wheatland, Okla. Send protests to: Joe Green, District Supervisor, Room 240 Old Post Office Bldg., 215 NW. Third St., Oklahoma City, Okla. 73102. The purpose of this republication is to correct the commodity description in this proceeding.

No. MC 103066 (Sub-No. 49TA), filed November 22, 1976. Applicant: STONE TRUCKING COMPANY, P.O. Box 2014, 4927 S. Tacoma, Tulsa, Okla. 74101. Applicant's representative: Eugene D. Anderson, 910 Seventeenth St. NW., Suite 428, Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Floor coverings and supplies* used in the installation of floor coverings, from the plants of Congoleum Corporation, at or near Trenton, N.J., and Marcus Hook, Pa., to ports of entry on the United States-Canada Boundary line located in Washington, Idaho, Montana and North Dakota, between Blaine, Wash., and Pembina, N. Dak., inclusive, for 180 days. Supporting shipper: Congoleum Corporation, 195 Belgrove Drive, Kearny, N.J. 07032. Send protests to: Joe Green, District Supervisor, Room 240 Old Post Office Bldg., 215 NW. 3rd St. Oklahoma City, Okla. 73102.

No. MC 103993 (Sub-No. 874TA) (Correction), filed November 1, 1976, published in the FEDERAL REGISTER issue of November 16, 1976, and republished as corrected this issue. Applicant: MOGAN DRIVE AWAY, INC., 28651 U.S. 20 West, Elkhart, Ind. 46514. Applicant's representative: Paul D. Borghesant (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Emergency vehicles*, in secondary movements, from the plantsite of Lu-O Wax Corporation, located at or near Elkhart, Ind., to points in the United States (except Alaska and Hawaii), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Lu-O Wax Corporation, Box 57738, Route No. 3, Elkhart, Ind. 46514. Send protests to: J. H. Gray, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 345 W. Wayne St., Room 204, Fort Wayne, Ind. 46802. The purpose of this republication is to correct the territorial description in this proceeding.

No. MC 106398 (Sub-No. 760TA), filed November 22, 1976. Applicant: NATIONAL TRAILER CONVOY, INC., 525 S. Main, P.O. Box 3329, Tulsa, Okla. 74101. Applicant's representative: Irvin Tull (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Mobile homes*, irrespective of their intended use, in initial movements, in truckaway service, from the plantsite of Modular Structures, Inc., in Clarksville, Tenn., to points in Kentucky, Missouri, North Carolina and West Virginia, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Modular Structures Division, P.O. Box 2296, Clarksville, Tenn. 37040. Send protests: to Joe Green, District Supervisor, Room 240 Old Post Office Bldg., 215 NW. Third St., Oklahoma City, Okla. 73102.

No. MBC 109533 (Sub-No. 81TA), filed November 24, 1976. Applicant: OVERNITE TRANSPORTATION COMPANY, 1000 Semmes Ave., Richmond, Va. 23224. Applicant's representative: C. H. Swanson, P.O. Box 1216, Richmond, Va. 23209. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between Cincinnati, Ohio, serving all intermediate points; from Cincinnati over Interstate Highway 71 to junction U.S. Highway 35, thence over U.S. Highway 35 to Chillicothe, Ohio, thence over U.S. Highway 23 to Portsmouth and return over the same route. Applicant intends to tack its existing authority with MC 109533 (Subs-48 and 71), applicant also intends to interline at Cincinnati, Ohio; Charleston, W. Va., Atlanta, Ga.; Baltimore, Md.; Richmond, Va.; Charlotte, N.C., and Birmingham, Ala., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately 32 statements of support attached to the application, which may be examined at the Intrestate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Paul D. Collins, District Supervisor, Bureau of Operations, Room 10-502, Federal Bldg., 400 N. 8th St., Richmond, Va. 23240.

No. MC 116254 (Sub-No. 169TA) filed November 23, 1976. Applicant: CHEM HAULERS, INC., P.O. Box 339, Florence, Ala. 35630. Applicant's representative: Hampton M. Mills (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: (1) *Carbon scrap*, in bulk, in dump trucks, from Pascagoula, Miss., to Lowndes County and Birmingham, Ala.; Granite City, Ill.; Albion, Mich.; Columbus, Ohio and Greenup, Ky.; and (2) *Carbon scrap, calcined petroleum coke, coke breeze, graphite ore and artificial graphite*, from Greenup, Ky., to points in Missouri, Arkansas, Louisiana, Mississippi, Alabama, Georgia, Florida, Tennessee, South

Carolina, North Carolina, Virginia, Maryland, Delaware, New York, New Jersey, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, Maine and Pennsylvania, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: American Colloid Company, P.O. Box 228, Skokie, Ill. 60076. Send protests to: Clifford W. White, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 1616 2121 Bldg., Birmingham, Ala. 35203.

No. MC 117765 (Sub-No. 214TA) (Correction) filed October 1, 1976, published in the FEDERAL REGISTER issue of October 13, 1976, and republished as corrected this issue. Applicant: HAH TRUCK LINE, INC., 5315 N.W. 5th St., P.O. Box 75218, Oklahoma City, Okla. 73107. Applicant's representative: R. E. Hagan (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Non-frozen foodstuffs*, in containers (except meat, meat products, meat byproducts, dairy products and articles distributed by meat packing houses), from the plantsite and facilities of Beaver Valley Canning Company, Grimes, Reinbeck and Storm Lake, Iowa, to points in Arkansas, Kansas, Missouri, New Mexico, Oklahoma and Texas, for 90 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Beaver Valley Canning Company, 512 N. Main, Grimes, Iowa 50111. Send protests to: Joe Green, District Supervisor, Room 240 Old Post Office Bldg., 215 N.W. Third St., Oklahoma City, Okla. 73102. The purpose of this republication is to correct the commodity description in this proceeding.

No. MC 117940 (Sub-No. 197TA) filed November 23, 1976. Applicant: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain, Minn. 55359. Applicant's representative: Allan L. Timmerman (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel tubing*, in boxes or crates, from Pearl Creek, N.Y., and Cynthiana, Ky., to St. Cloud, Minn., restricted to traffic destined to the facilities of Franklin Manufacturing Company, located at St. Cloud, Minn., for 180 days. Supporting shipper: Franklin Manufacturing Company, 701 33rd Ave., North, St. Cloud, Minn. 56301. Send protests to: Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg., and U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 117940 (Sub-No. 198TA) filed November 23, 1976. Applicant: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain, Minn. 55359. Applicant's representative: Morton E. Kiel, Suite 6193 5 World Trade Center, New York, N.Y. 10048. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by or used in the operation of retail department stores (except foodstuffs, commodities in bulk and household goods as defined by the Commission), between points in the New York, N.Y. Commercial Zone, on the one hand, and, on the other, points in Texas, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Allied Stores Marketing Corporation, 1114 Avenue of Americas, New York, N.Y. 10036. Send protests to: Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg., and U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 117940 (Sub-No. 199TA) filed November 23, 1976. Applicant: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain, Minn. 55359. Applicant's representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, N.Y. 10048. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by or used in the operation of retail department stores (except foodstuffs, commodities in bulk and household goods as defined by the Commission), between points in the New York Commercial Zone, on the one hand, and, on the other, points in Minnesota, for 180 days. Supporting shipper: Allied Stores Marketing Corporation, 1114 Avenue of Americas, New York, N.Y. Send protests to: Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg., and U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 119741 (Sub-No. 61TA), filed November 22, 1976. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., P.O. Box 1235, R.F.D. 2, Fort Dodge, Iowa 50501. Applicant's representative: D. L. Robson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Meat, meat products, meat by-products and articles distributed by meat packing plants and foodstuffs* (except hides and commodities in bulk), from the plantsite and/or warehouse facilities utilized by Geo. A. Hormel & Co., at or near Ottumwa, Iowa, to points in Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin, restricted to traffic originating at named origin and destined to named states; and (2) *Meat, meat products, meat by-products and articles distributed by meat packing plants, foodstuffs, packing plant materials, equipment and supplies* (except hides and commodities in bulk), from points in Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin, to the plantsite and/or warehouse facilities utilized by Geo. A. Hormel & Co., at or near Ottumwa, Iowa, restricted to traffic originating at named states and destined to named destination, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Geo. A. Hormel & Co., P.O. Box 800, Austin, Minn. 55912. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Bldg., Des Moines, Iowa 50309.

No. MC 119880 (Sub-No. 88TA), filed November 22, 1976. Applicant: DRUM TRANSPORT, INC., P.O. Box 2056, 617 Chicago St., East Peoria, Ill. 61611. Applicant's representative: B. N. Drum (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Grain spirits, alcohol and alcoholic liquors*, in bulk, in tank vehicles, from Peoria and Delavan, Ill., to points in New York, South Carolina and Virginia, for 180 days. Supporting shipper: Hiram Walker & Sons, Inc., D. J. Anderson, General Traffic Manager, Foot of Edmund St., Peoria, Ill. 61601. 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 119880 (Sub-No. 89TA), filed November 22, 1976. Applicant: DRUM TRANSPORT, INC., P.O. Box 2056, 617 Chicago St., East Peoria, Ill. 61611. Applicant's representative: B. N. Drum (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Whiskey*, in bulk, in tank vehicles, from Pekin, Ill., to Cleveland, Ohio, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: The American Distilling Company, Also L. Monti, General Traffic Manager, South Front St., Pekin, Ill. 61554. 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 123255 (Sub-No. 93TA) filed November 19, 1976. Applicant: B & L MOTOR FREIGHT, INC., 140 Everett Ave., Newark, Ohio 43055. Applicant's representative: James W. Muldoon, 50 W. Broad St., Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Adhesives*, in mixed shipments with paper and paper products, from Chillicothe, Ohio, to point in Illinois, Indiana, the lower peninsula of Michigan, St. Louis, Mo.; and Louisville, Ky. Note: Applicant presently has authority to transport paper and paper products, from the above described origin to the requested destination territory, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: The Mead Corporation, Talbott Towers, Dayton, Ohio 43215. 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 125023 (Sub-No. 43TA) filed November 22, 1976. Applicant: SIGMA–4 EXPRESS, INC., 3825 Beech Ave., P.O. Box 9117, Erie, Pa. 16504. Applicant's representative: Richard G. McCurdy (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, in containers, from Chicago, Ill., to Asheville, N.C., and Anderson, Columbia, Greenville and Spartanburg, S.C., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Peter Hand Brewing Company, 1000 W. North Ave., Chicago, Ill. 60622. Send protests to: John J. England, District Supervisor, Interstate Commerce Commission, 2111 Federal Bldg., 1000 Liberty Ave., Pittsburgh, Pa. 15222.

No. MC 126612 (Sub-No. 6TA) filed November 23, 1976. Applicant: SALVATORE GIARRAPUTO, doing business as SEMOLINE HAULAGE COMPANY, 86 Kent Ave., Brooklyn, N.Y. 11211. Applicant's representative: Murray S. Bornstein, 253 Broadway, New York, N.Y. 10007. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Bulk flour*, in tank vehicles, from the Brooklyn, Eastern District Terminal, Brooklyn, N.Y., to the Country Home Bakery, Inc., Bridgeport, Conn., under a continuing contract with Country Home Bakery, Inc., for 180 days. Supporting shipper: Country Home Bakery, Inc., 1722 Barnum Ave., Bridgeport, Conn. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 128273 (Sub-No. 238TA) filed November 23, 1976. Applicant: MIDWESTERN DISTRIBUTION, INC., P.O. Box 189, 121 Humboldt St., Ft. Scott, Kans. 66701. Applicant's representative: James W. Muldoon, 50 W. Broad, Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Adhesives*, when moving in mixed shipments with paper and paper products, from Chillicothe and Schooleys, Ohio, to points in Arizona, Arkansas, California, Colorado, Idaho, Iowa, Kansas, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington and Wyoming, for 180 days. Supporting shipper: The Mead Corporation, Talbott Towers, Dayton, Ohio 45215. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101A Litwin Bldg., 110 N. Market, Wichita, Kans. 67202.

No. MC 136166 (Sub-No. 27TA) filed November 23, 1976. Applicant: CF TANK LINES, INC., 175 Linfield Drive, Menlo Park, Calif. 94025. Applicant's representative: Robert M. Bowden, P.O. Box 3062, Portland, Oreg. 97208. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Quicklime*, in bulk, between points on the International Boundary between the United States and Canada, at or near Blaine, Linden and Sumas, Wash., on the one hand, and, on the other, Longview, Centralia, Hoquiam, Port Angeles, Port Townsend and Camas, Wash., for 180 days. Supporting shipper: Texada Lime, Ltd., Suite 309, 198 W. Hastings St., Vancouver, B.C. Send protests to: Claud W. Reeves, District Supervisor, 211 Main, Suite 500, San Francisco, Calif. 94105.

No. MC 139495 (Sub-No. 179TA) filed November 23, 1976. Applicant: NATIONAL CARRIERS, INC., P.O. Box 1358, 1501 E. 8th St., Liberal, Kans. 67901. Applicant's representative: Frederick J. Coffman, P.O. Box 81849, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products and lubricating oils*, in containers, from the plantsite and warehouses of Mobil Oil Corporation, at or near Kansas City, Kans., to points in Colorado, *and return of empty containers*, from points in Colorado, to Kansas City, Kans., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Mobil Oil Corporation, 8350 N. Central Expressway, Suite 522, Dallas, Tex. 75206. Send protests to: M. E Taylor, District Supervisor, Interstate Commerce Commission, 101A Litwin Bldg., 110 N. Market, Wichita, Kans. 67202.

No. MC 140980 (Sub-No. 3TA) filed November 22, 1976. Applicant: JACK LOWE, doing business as TOPPENISH TOWING, 320 E. First St., Toppenish, Wash. 98948. Applicant's representative: Royce V. Erwin, Rt. 2, Box 2685, Toppenish, Wash. 98948. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Shakes and cedar products*, from Washington, to points in Oregon, Idaho, California, Wyoming, Oklahoma, Utah, Kansas, Nebraska, Texas, Arizona, Missouri and Colorado, for 180 days. Supporting shipper: Golf Shakes, Rt. 3, Box 272, Elma, Wash. 98541. Send protests to: R. V. Dubay, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, Portland, Oreg. 97204.

No. MC 141776 (Sub-No. 2TA) filed November 23, 1976. Applicant: FOODTRAIN, INC., Spring and South Centre Sts., Ringtown, Pa. 17967. Applicant's representative: Richard Rueda, Suite 612, Two Penn Center Plaza, Philadelphia, Pa. 19102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy and confectioneries NOI, candy cough drops, and hollow mold chocolate candy*, from the plant and warehouse sites of Luden's, Incorporated, to Cleveland and Cincinnati, Ohio; Detroit and Grand Rapids, Mich.; Melrose Park, Ill.; Milwaukee, Wis.; Minneapolis, Minn.; Des Moines, Iowa, and New Orleans, La., with the right to return refused, exchanged, rejected or damaged merchandise, for 180 days. Supporting shipper: Luden's Incorporated, Reading, Pa. 19603. Send protests to: Paul J. Kenworthy, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 314 U.S. Post Office Bldg., Scranton, Pa. 18503.

No. MC 142065 (Sub-No. 4TA), filed November 22, 1976. Applicant: DAVID BENEUX PRODUCE AND TRUCKING, INC., P.O. Box 232, Mulberry, Ark. 72947. Applicant's representative: Don Garrison, 204 Highway 71 North, Suite 3, Springdale, Ark. 72764. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fencing, fencing materials, wire and wire products and steel wire carriers*, (1) from Van Buren, Ark., to points in Arizona, Alabama, California, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nevada, New Mexico, Ohio, Oklahoma, Nebraska, Tennessee and Texas; and (2) from Reno, Nev., to Van Buren, Ark., for 180 days. Supporting shipper: Bekaert Steel and Wire Corporation, P.O. Box 668, Van Buren, Ark. 72956. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Bldg., 700 W. Capitol, Little Rock, Ark. 72201.

No. MC 142588 (Sub-No. 1TA), filed November 23, 1976. Applicant: R. N. B., INC., Box 457, Flora, Ill. 62839. 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: *Silica sand*, in bulk, from Ottawa, Minn., to Flora and Crossville, Ill., and Henderson, Ky., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Allan Parker, Traffic Manager, Halliburton Services, a Division of Halliburton Company, P.O. Box 1431, Duncan, Okla. 73533. Send protests to: Harold C. Jolliff, District Supervisor, Interstate Commerce Commission, P.O. Box 2418, Springfield, Ill. 62705.

No. MC 142666TA, filed November 22, 1976. Applicant: J & J TRUCKING, East Wood St., Paris, Ark. 72855. Applicant's representative: James M. Duckett, 1021 Pyramid Life Bldg., Little Rock, Ark. 72201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, in bulk, in dump vehicles, between points in Franklin, Johnson, Logan and Pope Counties, Ark.; and from points in these counties, to Fort Smith and Van Buren, Ark.; restricted to transportation of traffic having a prior or subsequent movement by rail, for 180 days. Supporting shipper: B & D Construction, Inc., Star Rt. 2, Ozark, Ark. 72949. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Bldg., 700 West Capitol, Little Rock, Ark. 72201.

No. MC 142667TA, filed November 22, 1976. Applicant: BILL MILLWOOD, 518 N. Second St., Nashville, Ark. 71852. Ap-

plicant's representative: Don Garrison, 204 Highway 71 North, Suite 3, Springdale, Ark. 72764. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Table slides, steel; table slides, wooden; and table hardware, steel*, from the plantsite of B. Walter & Company, Inc., at or near Jamestown, Tenn., to Fort Smith, Ark.; Phoenx, Ariz.; Clarksville and Houston, Tex.; and San Diego, Los Angeles and Sacramento, Calif., for 180 days. Supporting shipper: B. Walter & Company, Inc., P.O. Box 278, Factory St., Wabash, Ind. 46992. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Bldg., 700 West Capitol, Little Rock, Ark. 72201.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-35788 Filed 12-3-76;8:45 am]

GENERAL SERVICES ADMINISTRATION

TRANS-ALASKA PIPELINE

Priorities Assistance for Construction

This notice continues the provisions contained in the joint General Services Administration and Federal Energy Administration notices of October 4, 1976 (41 FR 44476), April 30, 1975 (40 FR 19238), January 31, 1975 (40 FR 5409), December 30, 1974 (40 FR 26), and September 23, 1974 (39 FR 34608). Together, these notices, subject to the terms and conditions contained therein, authorize priorities assistance and allocations support under the Defense Production Act of 1950, as amended, for the development and production of Alaska North Slope oil resources.

The continuation of priorities assistance and allocations support is necessary because the construction schedule for the third flow station and associated facilities (Increment 3) on the east field has been delayed pending resolution of issues relating to unitization of the Prudhoe Bay field. In addition, severe weather conditions and uncertain transportation capability constitute an added threat to the timely delivery of equipment and supplies.

In the formulation of this notice, there has been consultation with representatives of industries receiving the priorities and allocations support, and consideration has been given to their recommendations. Additional consultation with representatives of other industries, including trade associations, was rendered impracticable because this notice applies to numerous trades and industries.

By virtue of the authority vested in the President by subsection 101(a) of the Defense Production Act of 1950, as amended (50 USC App. 2071(a), and delegated to the Administrator of General Services pursuant to Executive Orders 10480 of August 14, 1953, and 11725 of June 27, 1973, the joint notices of December 30, 1974, January 31, 1975, and October 4, 1976, are hereby amended to extend the expiration date appearing in those notices to read December 31, 1976. The December 31, 1976, expiration date is hereby further amended to extend to June 30, 1978, if an agreement among the operating companies providing a basis for the placement of orders for required materials and equipment is presented to the Director of the Federal Preparedness Agency on or before December 31, 1976.

The notices are further amended to limit the use of the priorities assistance and allocations support to the construction schedule for the third flow station and associated facilities on the eastern half of the Prudhoe Bay field for the materials and equipment to be shipped to Prudhoe Bay through the summer of 1978.

This notice is effective as of December 1, 1976.

Dated: December 1, 1976.

LESLIE W. BRAY, Jr.,
Director, Federal Preparedness Agency, General Services Administration.

[FR Doc.76-35981 Filed 12-3-76;9:41 am]

federal register

MONDAY, DECEMBER 6, 1976

PART II:

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

■

HUMAN SERVICE DELIVERY BY STATE AND LOCAL GOVERNMENTS

Waiver of Requirements Impeding Improvement

Proposed Rulemaking

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

[45 CFR Part 74]

WAIVER OF DEPARTMENTAL REQUIREMENTS IMPEDING IMPROVEMENT OF HUMAN SERVICE DELIVERY BY STATE AND LOCAL GOVERNMENTS

Proposed Rule Making

For several years both the Congress and the Executive Branch of the Federal Government have attempted to strengthen the role of State and local governments in the Federal grant-in-aid system. The express purpose of legislation such as General Revenue Sharing, Comprehensive Employment and Training, Housing and Community Development, and Title XX of the Social Security Act is to increase State and local authority and responsibility for the planning and delivery of governmental services. In the area of human services, this Department is committed to assisting State and local general purpose governments in their efforts to improve planning and management activities.

State and local governments themselves have initiated significant reforms both in strengthening the role of their elected officials and in reorganizing government to deliver services more effectively. In over half of the 50 States, health and welfare programs formerly located in separate departments have been consolidated into Departments of Human Resources or similar umbrella-like agencies. Other States have created vehicles for better coordination and delivery of services by instituting human service policy councils under the leadership of the governor. Similarly, organizational changes and new techniques for service delivery have been adopted in many city and county governments as mayors, city managers, and county commissioners increasingly recognize the importance of their roles in improving the efficiency and effectiveness with which human services are delivered.

In an effort to delineate the problems of State and local governments in establishing efficient and effective human service delivery systems, HEW conducted a National Management Planning Study through the Region X Office. One finding of the study is that Federal regulations often stand in the way of attempts to link and coordinate human services. While it is recognized that regulations drafted to implement individual programs are required to ensure program quality and the proper use of Federal funds, nevertheless State and local governments have indicated to the Department that when these numerous individual requirements are applied in their plans to establish multi-purpose, comprehensive, or integrated human service delivery systems, the regulations sometimes have the effect of impeding or limiting otherwise obtainable improvements in service delivery.

In the Management Planning Study, State and local governments expressed the need for a procedure that would allow for substantial flexibiltiy in the way in which they organize or administer the delivery of human services. Accordingly, the Department has developed a new regulation for assisting State and local governments to meet Federal program requirements without sacrificing program quality or fiscal accountability. Notice is hereby given that the Department proposes to adopt procedures under which State and local governments can request waivers of specific Departmental requirements where these governments can demonstrate that these requirements are impeding their ability to develop more comprehensive human service systems. The proposed procedures would not affect those Federal requirements prescribed by legislation; they apply only to those requirements which the Department of Health, Education, and Welfare has adopted in the exercise of its authority to administer legislatively authorized programs.

The proposed procedures are available for public comment for a period of 45 days from the date of this publication. The Department particularly invites comments on the major issues raised by HEW agencies in their review of the proposed procedure. These include: (1) Whether the guidelines for granting waivers are too broad and general, opening the possibility of varying interpretations and lawsuits alleging uneven administration; (2) whether there are sufficient provisions for insuring that the quality of a program is maintained when a waiver is granted; and (3) whether the participation of private, non-profit service providers is unmanageable and the authority to request waivers should be limited to State and local governments and education agencies. The Department is also interested in comments on the estimated volume of waiver requests agencies might submit, with examples of the types of regulations which are candidates for waiver. Finally, the Department invites comments on the general desirability of the waiver procedure: whether the goal of removing obstacles to improved service delivery will best be served by the procedure or might better be served by another alternative.

All comments received on or before January 21, 1977 will be considered by the Department. Comments should be addressed to the Director, Office of Intergovernmental Systems, Department of Health, Education, and Welfare, Room 440D (South Portal), 200 Independence Avenue, S.W., Washington, D.C. 20201. All comments on or before January 21, 1977 will be available for inspection at the above address during normal business hours.

Therefore, it is proposed to amend Part 74 of Title 45 by adding a new Subpart R, to read as set forth below.

It is hereby certified that this proposal has been screened pursuant to Executive Order No. 11821, and does not require an Inflation Impact Evaluation.

Dated: November 29, 1976.

EDWARD AGUIRRE,
Commissioner of Education.

Dated: November 23, 1976.

EMERSON J. ELLIOTT,
Acting Director,
National Institute of Education.

Dated: November 29, 1976.

MARJORIE LYNCH,
Acting Secretary.

Subpart R is added to Part 74 of 45 CFR to read as follows:

* * * * *

Subpart R—Waiver of Departmental Requirements Impeding Improvement of Human Service Delivery by State and Local Governments

Sec.
74.180 Purpose.
74.181 Definitions.
74.182 Policy.
74.183 Waiver Procedures.

APPENDIX to Subpart R: Internal Procedures for Waiver of Departmental Requirements Impeding Improvement of Human Service Delivery by State and Local Governments.

Subpart R—Waiver of Departmental Requirements Impeding Improvement of Human Service Delivery by State and Local Governments

§ 74.180 Purpose.

This regulation establishes procedures under which State and local general purpose governments, and other grantees (or grant applicants) of the Department described under § 74.183, acting through their chief elected officials, may apply for and receive from the Department of Health, Education, and Welfare waivers of certain Federal requirements which have the effect of impeding improved management or delivery of human services. The regulation applies only to requirements adopted by HEW in the exercise of its authority to administer legislatively authorized programs, and not to requirements which are legislatively mandated or requirements promulgated by other agencies.

(5 U.S.C 301.)

§ 74.181 Definitions.

As used in this Subpart, the words and terms defined in this section shall have the meanings set forth below.

"Chief elected official" means the highest elected official of a State or local general purpose government who typically, and on a continuing basis, exercises policymaking or policy management functions. These officials include, but are not limited to, governors, county executives, mayors, and their equivalents in other general purpose governments.

"Federal requirements" mean those rules and regulations which the Department has adopted, or may in the future adopt, under the procedures prescribed by the Administrative Procedure Act and those additional administrative requirements, statements of policy, or interpretations which have been issued, or which in the future may be issued by the Department in the course of administering its legislatively established grant activities. "Federal requirements" do not include any requirements established by Federal statute, the Constitution of the

United States, or requirements established by other Federal agencies.

"State and local general purpose government" means the government of any of the several States, the District of Columbia, the Commonwealths of Puerto Rico and of the Marianas, the territories or possessions of the United States, the Trust Territories of the Pacific Islands, and any local unit of government including a city, county, parish, town, township, or village, or an Indian Tribe as defined in Sec. 3(C) of the Indian Financing Act (88 Stat. 77).

"Waiver" means a written, affirmative action taken by a duly authorized official of the Department to permit, or allow, an applicant to undertake any action which is otherwise contrary to, or refrain from undertaking any action which is otherwise required by, established Departmental regulatory requirements or statements of policy and their interpretations.

"Human service" means any service or financial assistance provided to individuals or their families to help them achieve or maintain personal independence and economic self-sufficiency, including health, education, manpower, social, vocational rehabilitation, aging, food and nutrition, and housing services.

(5 U.S.C. 301.)

§ 74.182 Policy.

(a) The Department is committed to assisting State and local general purpose governments in their efforts to improve the planning and management of human services. The special emphasis of this policy is on those activities which relate to more than one of the Department's financial assistance programs.

(b) This Subpart sets forth procedures under which the chief elected officials of State and local general purpose governments, and certain other grantees (or grant applicants) may request waivers of Federal requirements imposed by Departmental policies, procedures, and program regulations where those requirements impede better management or delivery of human services. Underlying these procedures is a commitment by the Department to make its regulations and procedures as flexible as possible—within the express limits of the Department's legislative authorities and within standards clearly required to discharge the Department's mandated responsibilities—to encourage and enable State and local governments to continue their efforts to improve and integrate services, and to respond to their increasing responsibilities in the human services area.

(5 U.S.C. 301.)

§ 74.183 Waiver procedures.

(a) *Applicability.* (1) This Subpart establishes procedures for the granting of waivers of Federal requirements relating to any program administered by the Department of Health, Education, and Welfare. Specific Internal procedures to be followed by the Department in the processing and granting of waiver requests are set forth in the Appendix to this Subpart.

(2) The waiver procedures established herein do not replace or limit the effect of other Departmental procedures which provide for the granting of waivers of Federal requirements. An applicant which meets the qualifications of paragraph (c) of this section may request waiver of a Federal requirement under the process established in this Subpart or under any other applicable Departmental procedure.

(3) This Subpart applies only to waiver of those Federal requirements which are established by the Department in the exercise of its discretionary authority to administer Departmental grant programs, and it does not apply to those requirements which are expressly prescribed by Federal legislation, the Constitution of the United States, or established by Federal agencies other than this Department, including Federal-wide requirements promulgated by the Office of Management and Budget, the General Services Administration and the Treasury Department.

(4) This Subpart does not apply to the evaluation criteria used in the awarding of discretionary grants by the Department, and it does not apply to the administration of Titles II, XVI, and XVIII of the Social Security Act.

(b) *Prospective nature of waivers.* Waivers may not be granted under this Subpart for any action already taken, or any action refrained from, prior to the granting of the waiver.

(c) *Who may apply for waivers.* The following officials and agencies may apply for waivers under this Subpart:

(1) Chief Elected Officials of General Purpose Governments. The chief elected official of a State or local general purpose government in his or her capacity as head of the unit of government is eligible to apply for waivers under this Subpart.

(2) Chief Officials of State or Local Education Agencies. The chief official of a state education agency or the chief official of a local education agency in his or her capacity as head of the education agency is eligible to apply for waivers under this Subpart.

(3) Private, Non-Profit Agencies. Those private, non-profit agencies which are funded directly by the Department under State-administered or State-supported programs are eligible to apply for waivers under this Subpart.

(d) *Opportunity for comment and required comments and approvals.* (1) A summary of each waiver request must be prepared by the applicant in a prescribed format for publication in the FEDERAL REGISTER, and submitted by the Regional Director for publication when the waiver is requested, to give interested parties an opportunity to comment on the request.

(2) Waiver requests initiated by a local general purpose government with respect to Federal requirements of a State administered or State-supported program must be approved by the Governor of the State in which the requestor is located.

(3) Waiver requests initiated by a private, non-profit agency with respect to Federal requirements of a State administered or State-supported program shall be approved by the Governor except in the case of programs authorized under a statute vesting administrative authority for the program in an official or State agency other than the Governor, in which case the request shall be approved by such official or agency.

(4) Waiver requests initiated by a local education agency with respect to Federal requirements of a State administered or State-supported program must be approved by the Chief State School Officer. A copy of each waiver request which requires the support of the Chief State School Officer shall be transmitted to the Governor for his or her information prior to submission of the waiver request to this Department.

(e) *Basis for waiver of Federal requirements.* The Secretary of the Department, or any other authorized official, shall grant a request for waiver of a Federal requirement where a qualified applicant demonstrates that:

(1) The Federal requirement prevents the applicant from undertaking, or substantially impedes the applicant's efforts to achieve:

(i) The integration, coordination or linking of human services which receive, or are eligible to receive, funds under *two or more* of the Department's financial assistance programs; and

(ii) One or more of the following:

(A) Integrated budgeting, planning, or evaluation of human services;

(B) Joint funding of human services;

(C) Consolidated central administrative support;

(D) Physical location of previously separate human services at a common site;

(E) Joint intake, screening, and eligibility determination for potential human service clients;

(F) Joint information and referral systems;

(G) Joint activities to inform potential human service clients and recipients of available services;

(H) Coordinated transportation programs;

(I) Joint planning for delivery of services;

(J) Integrated case management techniques, procedures, or systems;

(K) Such other coordinative or integrative techniques or procedures which have the effect of improving the efficiency or effectiveness of human service delivery; and

(2) The granting of the waiver will not result in the expenditure of Federal funds for purposes other than those for which they are appropriated; and

(3) The effects of the requested waiver will (i) be consistent with the objectives of the Federal program to which it pertains, as indicated by the authorizing legislation and its accompanying legislative history, and (ii) insure that the quality of the program will be maintained or strengthened.

(f) *Submission of waiver requests.* (1) To request a waiver, the applicant shall complete and forward, in the form pre-

scribed under paragraph (g) of this section, a *Request For Waiver of U.S. Department of Health, Education, and Welfare Requirements: Facilitating State and Local Program Management*, as well as a summary of that request in prescribed form for publication in the FEDERAL REGISTER. In the case of waiver requests submitted by general purpose governments or by State or local education agencies, three copies of the request shall be forwarded to the Regional Director for the Department's Regional Office which encompasses the applicant's jurisdiction. In the case of a private, nonprofit applicant, three copies of the request shall be forwarded to the Regional Director for the Department's Regional Office which encompasses the State in which the human services affected by the waiver request are located.

(2) Regional Offices of the Department will make every effort to assist State and local governments in the preparation of the waiver requests, and will process these requests as quickly as possible.

(g) *Form of request for waiver.* Each request for waiver under this Subpart shall be drafted in accordance with the following:

(1) *Title.* The request document should clearly specify that the request for waiver is authorized under procedures set out in Title 45, Part 74, Subpart R of the Code of Federal Regulations and should be entitled, *Request for Waiver of Requirements of the U.S. Department of Health, Education, and Welfare: Facilitating State and Local Program Management.*

(2) *Subject requirements.* This section should specifically and fully identify each regulation or requirement which is the subject of the request for waiver. Where pertinent, the specific citations of the subject regulation, policy, or interpretation should be stated.

(3) *Applicant's activities affected by subject requirements.* This section should describe the applicant's current or proposed activities which are governed by the Federal requirements for which a waiver is requested. These activities shall be specifically related to the appropriate categories of activities listed in paragraph (e)(1)(ii) of this section.

(4) *Identification of effects of subject requirements.* This section should describe and specify, to the extent possible in quantifiable terms, the decreased program efficiencies or effectiveness which result from compliance with the subject requirements.

(5) *Identification of probable effects of granting of waivers.* This section should describe and specify, to the extent possible in quantifiable terms, the increased program efficiencies or effectiveness that will result from the granting of the waiver.

(6) *Assurance of program compliance.* This section should identify and describe the applicant's proposed policies and practices which will insure compliance with the applicable Federal legislation and with the intent of the requirements proposed for waiver. The applicant shall demonstrate that:

(i) The granting of the waiver will not resultin the expenditure of Federal funds for purposes other than those for which they were appropriated;

(ii) The activity for which the waiver is sought is consistent with the objectives of the Federal program to which it pertains; and

(iii) The quality of the Federal program to which the waiver pertains will be maintained or strengthened.

(7) *Comments and concurrences.* The waiver request shall provide all comments and approvals by the official(s) designated in Paragraph (d) of this section.

(h) *Duration and termination of waiver.* A waiver shall apply only to the particular application for which it is granted, and only for the fiscal year for which it is granted. The applicant may request renewal of the waiver for succeeding fiscal years. In requesting renewal of the waiver, the applicant shall demonstrate that neither the factual situation nor the applicable regulations have changed, and shall cite the original application. If the Regional Director and the Regional Official from the HEW Agency which has jurisdiction over the regulation concur with these findings, then the request for renewal of the waiver shall be granted.

(5 U.S.C. 301)

APPENDIX TO SUBPART R—INTERNAL PROCEDURES FOR WAIVER OF DEPARTMENTAL REQUIREMENTS IMPEDING IMPROVEMENT OF HUMAN SERVICE DELIVERY BY STATE AND LOCAL GOVERNMENTS

A. PURPOSE

This appendix describes the procedures to be followed in response to all waiver requests submitted under Title 45, Part 74, Subpart R of the Code of Federal Regulations, "Waiver of Departmental Requirements Impeding Improvement of Human Service Delivery by State and Local Governments."

(5 U.S.C. 301)

B. APPLICABILITY

This chapter applies to requests for waivers submitted under the provisions of 45 CFR Part 74, Subpart R and is applicable to all programs administered by the Department.

(5 U.S.C. 301)

C. POLICY

(1) The Regional Director is the focal point in the Department for all waiver requests received by the Department under 45 CFR Part 74, Subpart R. The Regional Director has the responsibility to insure that all requests for waivers receive fair and prompt responses. Where the Regional Director does not have the authority to grant the waiver, he or she is authorized to initiate the process by which the responsible Agency official and or the Secretary shall consider the request and, when justified, grant the waiver. The procedures which the Regional Director and the Agencies shall follow are set forth in Section D below.

(2) Authority to approve a request for waiver may not be delegated to the Regional Director where Federal legislation prohibits such delegation of authority.

(3) This subpart does not affect the authority or responsibility of duly authorized officials of the Department, including Agency Heads and Regional Commissioners, to promulgate regulations and guidelines necessary to carry out current HEW legislation and programs.

(5 U.S.C. 301)

D. PROCESSING WAIVER REQUESTS

(1) *Procedures to be followed.*—(a) *Action to be taken upon receipt.* Upon receipt of a waiver request under 45 CFR Part 74, Subpart R, the Regional Director will: (i) submit the summary of the waiver request prepared by the applicant for publication in the FEDERAL REGISTER in order to give interested parties an opportunity for comment; (ii) obtain the advice and comments of the Regional Commissioners or Program Administrators responsible for the administration of the program to which the waiver request pertains, the Regional Attorney, and such other staff members as he or she may deem appropriate; and (iii) send one copy of the waiver request to the Director of the Office of Intergovernmental Systems and one copy to the Head of the Principal Operating Component(s) responsible for administration of the program(s) under which the requirement requested to be waived was issued. In advising the Regional Director, the Regional officials shall be guided by Federal law, the provisions of Subpart R, and the nature and substance of the waiver request.

(b) *Procedures where the regional director determines that the requirements of Subpart R have not been met.* If the Regional Director determines that the requirements of Subpart R have not been met, then the Regional Director shall notify the applicant official that the waiver is denied and shall provide the applicant with a written statement of the reasons for denial.

(c) *Procedures where the regional director has authority to grant the waiver.* After consultation with the Regional officials specified in Section D.(1)(a)(i) of this Appendix, if the Regional Director determines that he or she has been delegated the authority to grant the waiver and is satisfied that the requirements of Subpart R have been met, the Regional Director shall notify the applicant that the waiver is granted.

(d) *Procedures where a regional agency official has authority to grant the waiver.* (i) After consultation with the Regional officials specified in Section D.(1)(a)(i) of this Appendix, if the Regional Director determines that he or she has not been delegated the authority to grant the waiver, but that a Regional Agency official has been delegated such authority, the request shall be referred to that official. If the Regional Agency official is satisfied that the requirements of Subpart R have been met, he or she shall grant the waiver and the Regional Director shall notify the applicant of the approval of the request.

(ii) If the Regional Agency official has been delegated the authority to grant the waiver but does not agree with the Regional Director that the request meets the requirements of Subpart R, then the Regional Director shall submit to the proper Departmental Agency Head the waiver request, together with his or her comments and those of the Regional Agency official.

(e) *Procedures where the departmental agency head has authority to grant the waiver.* (i) Upon receipt of a waiver request forwarded for approval by a Regional Director, the Departmental Agency Head shall review the materials relating to the waiver and determine whether the request should be granted. If the Departmental Agency Head determines that the request meets the requirements of Subpart R, he or she shall grant the waiver and so inform the Regional Director, who in turn shall notify the applicant of the approval of the request.

(ii) If the Departmental Agency Head determines that the waiver request does not meet the criteria of Subpart R and the Regional Director then concurs with the determination of the Agency Head, the Regional Director shall notify the applicant that the waiver has been denied.

(iii) In the case of waiver requests relating to requirements of programs administered by the Office of Education, the National Institute of Education, the Assistant Secretary for Education, the Rehabilitation Services Administration, the Administration on Aging, or the Office of Child Support Enforcement, the appropriate Agency Head shall obtain the comments and recommendations of the Assistant Secretary for Planning and Evaluation, the lead Regional Director for Intergovernmental Affairs, and other appropriate agencies and staff offices that the ASPE shall deem appropriate, prior to making a final determination denying a waiver request.

(iv) Except in the case of programs administered by the Office of Education, the National Institute of Education, the Assistant Secretary for Education, the Rehabilitation Services Administration, the Administration on Aging, or the Office of Child Support Enforcement, if the Departmental Agency Head determines that this waiver request does not meet the requirements of Subpart R, but the Regional Director does not concur with such determination, the Regional Director shall forward the waiver request to the Assistant Secretary for Planning and Evaluation, together with a written statement indicating the Agency Head's decision and the reasons therefore.

(v) The Assistant Secretary for Planning and Evaluation shall immediately refer the waiver request, together with the appropriate documenting materials, to appropriate agencies and staff offices and the lead Regional Director for Intergovernmental Affairs, in order to obtain their recommendations. After the Assistant Secretary for Planning and Evaluation reviews these recommendations, he or she will forward them, together with his or her own recommendation to the Secretary, who shall make the final determination whether or not the waiver is approved.

(2) *Time allowed for processing waiver requests.* Those notifications of final determinations on waiver requests which are made by Regional Directors shall be made, where possible, within 45 days after receipt of the waiver request in the Regional Office. Those notifications of final determinations on waiver requests which are made by Agency Heads shall be made, where possible, within 90 days after receipt of the waiver requests in the Regional Office.

(3) *Public's right to inspect and copy waiver requests.* Each Regional Office shall maintain a file of each waiver request submitted under Subpart R, together with documents constituting the final action taken in response to the request. Such files will be made available upon request to any member of the public so that the person requesting the documents may inspect and copy their contents.

(4) *Publication of approved waiver requests.* The Office of the Assistant Secretary for Planning and Evaluation shall submit for publication in the FEDERAL REGISTER a summary of each waiver request that is granted or denied under the provisions of Subpart R as well as a summary of the decision on the request. The summary of the decision should address the objections to the decision made in the public comments.

(5 U.S.C. 301)

E. MONITORING THE IMPACT OF WAIVERS

(1) Prior to the end of the fiscal year, the applicant shall submit to the Regional Director a report on the impact of the waiver. This report should (i) describe the applicant's activities affected by the waiver, (ii) describe and specify, to the extent possible in quantifiable terms, the efficiencies or increased effectiveness resulting from the grant of the waiver, and (iii) demonstrate that the quality of the Federal program to which the waiver pertains has been maintained or strengthened.

(2) The Regional Director shall send one copy of this report, together with his comments on the impact of the waiver, to the Director of the Office of Intergovernmental Systems and one copy to the Head of the Principal Operating Component(s) responsible for administration of the program(s) under which requirements were waived.

(5 U.S.C. 301)

[FR Doc.76-35611 Filed 12-3-76;8:45 am]

federal register

MONDAY, DECEMBER 6, 1976

PART III:

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

■

COASTAL ZONE MANAGEMENT

Program Development Grants

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[15 CFR Part 920]

COASTAL ZONE MANAGEMENT PROGRAM DEVELOPMENT GRANTS

The National Oceanic and Atmospheric Administration (NOAA) hereby proposes to adopt regulations pursuant to section 305 of the Coastal Zone Management Act of 1972 as amended, (16 U.S.C. 1451, et seq.), hereinafter referred to as the "Act," for the purpose of defining procedures by which coastal States can meet the new planning requirements contained in subsections 305(b)(7), (8) and (9) of the Act and by which States can meet the requirements of preliminary approval found in subsection 305(d) of the Act.

These new requirements were contained in Pub. L. 94-370, signed on July 26, 1976, which makes substantial changes in the Act. Previously, final regulations detailing procedures for receiving program development grants pursuant to section 305 of the Act were published as 15 CFR Part 920 on November 29, 1973.

To effect these changes NOAA proposes the following:

(1) Adding three new sections to Subpart B of Part 920 to address the new planning requirements;

(2) Adding a new Subpart E to Part 920 to address preliminary approval;

(3) Recodifying existing Part 920 to accommodate the addition of the new subparts;

(4) Adding a new section to recodified Subpart E of Part 920 to address new grant application procedures related to subsections 305(b) and (d).

NOAA proposes to amend Part 920 to add a new § 920.17 to Subpart B to address the requirements of subsection 305(b)(7) of the Act. Subsection 305(b)(7) states:

> The management program for each coastal state shall include * * * a definition of the term 'beach' and a planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological or cultural value.

NOAA interprets the primary purposes of this planning process to provide:

(1) An emphasis, within the framework of a State's developing or approved coastal management program, on protection of and access to public shorefront areas for purposes of general public recreational, asthetic appreciation, and preservation purposes, as appropriate;

(2) An expansion of existing relevant program development efforts to incorporate this special emphasis, rather than development of new and separate processes and programs;

(3) A tie between development of the planning process called for in § 920.17 and development of appropriate management components; and

(4) A tie between this planning process and the identification of areas to be acquired using access acquisition funds pursuant to section 315(2) of the Act.

The planning process in § 920.17 requires a State to develop the capability to identify public shorefront areas (including public beaches and other public coastal areas) that are appropriate for additional protection and/or increased access, as well as to develop necessary management techniques.

Prior to issuance of these proposed regulations, NOAA distributed a draft paper on subsection 305(b)(7). A number of comments from State agencies were received questioning the interpretation of the terms "access to" and "public." In response to these comments, the proposed regulations define "public" in terms of both ownership and/or demonstrated public interest. The proposed regulations consider "access to" as having a lateral dimension, particularly for future acquisition purposes, when provision of perpendicular access alone would be insufficient to meet the basic objective of providing increased public access to shortfront amenities.

NOAA proposes to amend Part 920 by adding a new § 920.18 to Subpart B to address the requirements of subsection 305(b)(8) of the Act. Subsection 305(b)(8) states:

> The management program for each coastal state shall include * * * a planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including, but not limited to, a process for anticipating and managing the impacts from such facilities.

Like the planning process found in subsection 305(b)(7), NOAA interprets the primary purposes of the energy facility planning process to provide:

(1) An emphasis, within the framework of a State's developing or approved coastal management program, on the ability to identify, anticipate and manage impacts from energy facilities that may locate in or affect a State's coastal zone;

(2) An expansion of relevant program development efforts to incorporate this special emphasis, rather than development of new and separate processes and programs;

(3) A tie between development of the planning process called for in § 920.18 and development of appropriate management components, and

(4) A tie between this planning process and the site-specific energy facility planning process developed pursuant to section 308(c) of the Act. (15 CFR Part 931—Coastal Energy Impact Regulations).

The planning process proposed in § 920.18 requires a State to develop the capability to identify those energy facilities that may be located in or significantly affect the State's coastal zone, with particular emphasis on the development of a capability to anticipate and manage the impacts from such facilities.

Prior to issuance to these proposed regulations, NOAA distributed a draft paper on subsection 305(b)(8) of the Act. Comments received indicated that: (1) The relationship of the designated State coastal agency to other State agencies involved in energy planning was unclear; (2) The planning process requirements should be expanded and/or made more specific; and (3) There seemed to be an emphasis on existing rather than future facilities. In response to these comments, the proposed regulations provide that the designated State coastal agency does not have to develop the elements of the planning process. This may be accomplished by another entity but, at a minimum, in coordination with the designated State coastal agency. The present proposed regulations expand the planning process requirements to include specifically the consideration of interstate energy plans, where such exist. The planning elements have not been expanded to require a critical assessment of demand projections or an allocation of these demands between coastal versus inland locations (as had been suggested) because it is felt these requirements would be beyond the capability and purview of coastal management programs at this time. However, State's are encouraged, if possible, to include these elements in the development of this specific planning process. Finally, the proposed regulations focus upon the anticipation and management of the impacts of future energy facilities.

NOAA proposes to amend Part 920 to add a new § 920.19 to subpart B to address the requirements of subsection 305(b)(9) of the Act, as amended. Subsection 305(b)(9) states:

> The management program for each coastal state shall include * * * a planning process for (A) assessing the effects of shoreline erosion (however caused), and (B) studying and evaluating ways to control, or lessen the impact of, such erosion, and to restore areas adversely affected by such erosion.

Like the subsection 305(b)(7) planning process, NOAA interprets the primary purposes of the shoreline erosion/mitigation planning process to provide:

(1) An emphasis, within the framework of a State's developing or approved coastal management program, on assessing the effects of shoreline erosion and, if appropriate, developing a strategy to deal with shoreline erosion;

(2) An expansion of relevant program development efforts to incorporate this special emphasis, rather than development of new and separate processes and program; and

(3) A tie between development of the planning process called for in § 920.19 and development of a management component to provide an appropriate means for dealing with erosion-related problems over time.

The planning process proposed in § 920.19 requires a State to develop the capability to assess shoreline erosion problems and, as appropriate, to develop strategies for dealing with these problems.

Prior to issuance of these proposed regulations, NOAA distributed a draft

paper on subsection 305(b)(9). A number of State agencies commented that a non-structural response to erosion control did not appear to have a equal emphasis with structural responses. Questions were raised whether erosion that was the result of tidal action along river banks or of subsidence should be included in the planning process called for in this section. In response to these comments, the proposed regulations explicitly note that: "where the policy of a State is not to control erosion, further study of ways to control or mitigate erosion will not be necessary," provided the State policy and its rationale is clearly stated. The proposed regulations provide that erosion can include loss of land along coastal river banks. Losses due to subsidence are not included in the requirements of this particular planning process.

With respect to all three new planning processes, it should be noted that nothing in these specific requirements is meant to preclude States from focusing on related aspects of these requirements as part of general program development. Such topics as subsidence, acquisition of new public shorefront areas, and industrial siting may be given specific emphasis in overall coastal management programs if it is felt that these related aspects are critical to effective coastal management.

NOAA proposed to replace present Subpart E of Part 920 with a new Subpart E—Preliminary Approval to address the requirements of subsection 305(d) of the Act. Subsection 305(d) states:

* * * (2) a coastal state is eligible to receive grants under this subsection if it has—(A) developed a management program which—(i) is in compliance with the rules and regulations promulgated to carry out subsection (b), but (ii) has not yet been approved by the Secretary under section 306; (B) specifically identified, after consultation with the Secretary, any deficiency in such program which makes it ineligible for approval by the Secretary pursuant to section 306, and has established a reasonable time schedule during which it can remedy any such deficiency; (C) specified the purposes for which any such grant will be used; (D) taken or is taking adequate steps to meet any requirement under section 306 or 307 which involves any Federal official or agency; and (E) complied with any other requirement which the Secretary, by rules and regulations, prescribes as being necessary and appropriate to carry out the purposes of this subsection. (3) No management program for which grants are made under this subsection shall be considered an approved program for purposes of section 307.

The primary purpose of preliminary approval is to provide funding to support initial implementation of a State's coastal management program for which requisite section 306 legal authorities and administrative capabilities already are in place, provided that the overall description of the program would be approvable when fully implemented.

The second major objective is to allow a State additional time to fully implement a coastal management program which in its description meets the requirements of section 306 of the Act for approval purposes. In providing preliminary approval recognition is given to those deficiencies precluding full section 306 approval, and the specifics of remedying these deficiencies plus the timetable within which this is to occur are provided for in the subsection 305(d) work program.

Preliminary approval is not seen as part of a necessary continuum from section 305 to section 306 status. In other words, States may move directly from subsection 305(c) program development grants to section 306 program implementation grants. Relatedly, progression from subsection 305(c)—program development status to subsection 305(d)—preliminary approval status is not automatic. Application for subsection 305(d) consideration requires consultation with the Associate Administrator.

The provision for preliminary approval is meant to apply to a fully developed management program for a State's entire coastal zone. Accordingly, segments are not eligible for approval pursuant to subsection 305(d) but shall continue to be considered under the rules and regulations (15 CFR 923.43) dealing specifically with segmentation.

The basic criteria for eligibility for subsection 305(d) consideration are (a) at any time during section 305 program development when a State has elements of a program to implement and meets the basic approval requirement (that the overall program as described would be approvable when fully implemented) or (b) after a State has used all four of its subsection 305(c) development grants and meets the basic approval requirement but still has no aspects of the management program for which to begin initial and partial implementation.

The basic criteria for awarding preliminary approval are:

(1) The management program fulfills the requirements of subsection 305(b) of the Act;

(2) The program as described would be fully approvable when implemented;

(3) For those elements to be implemented under subsection 305(d), the legal authorities and organizational structures necessary for implementation are adequate to meet the relevant section 306 requirements;

(4) Deficiencies that prohibit achievement of section 306 approval are identified, and the means and timetable for remedying these deficiencies are specified;

(5) The purposes for which the subsection 305(d) grant, particularly with respect to (3) and (4) above, are specified; and

(6) Adequate demonstration is provided that requirements under sections 306 or 307 of the Act, which involve Federal agencies, have been and/or are being taken.

Federal consistency as provided for in section 307 of the Act does not apply to programs for which grants have been made under subsection 305(d). However, this prohibition does not extend to use of subsection 305(d) funds to further develop or refine proposed consistency procedures.

It is anticipated that State's will come to be considered for preliminary approval either as the result of direct application for such approval or as the result of deficiencies, uncovered during the combined Federal agency/Environmental Impact Statement (EIS) review process of a section 306 application, which deficiencies preclude section 306 approval but do not preclude preliminary approval.

NOAA proposes two slightly differing review and approval procedures based on the manner by which the State comes to be considered for preliminary approval. If a State applies directly for premilinary approval (which assumes informal presubmission consultation with the Associate Administrator), the Associate Administrator, upon receipt of a formal submission document, shall review such document in terms of the basic approval criteria noted above. Following this review, the Associate Administrator proposes to issue preliminary approval, if appropriate. Subsequent to this approval, the Associate Administrator will distribute to Federal agencies that now receive section 306 submissions, copies of a State's approved subsection 305(d) submission and the Associate Administrator's findings with respect to the submission. Federal agencies will have the ensuing three months to review and comment on the proposed management program both to the Associate Administrator and directly to the State. States will be required to take into consideration Federal comments, resulting from this three month review period, as part of a State's subsection 305(d) work program.

If a State applies for preliminary approval as the result of major problems surfacing during the section 306 Federal agency/EIS review process, then the Associate Administrator proposes to issue preliminary approval at that point in the section 306 review process when problems are of such a nature as to preclude section 306 approval but not to preclude preliminary approval. States will be required to take into consideration Federal comments, resulting from the section 306 Federal agency/EIS review process already underway, as part of a State's subsection 305(d) work program.

Where a State applies directly for preliminary approval, one condition for consideration will be the inclusion of an Environmental Impact Assessment (EIA) as part of the submission in order to enable the Associate Administrator to make a case-by-case determination as to the necessity of issuing an EIS prior to subsection 305(d) approval. In the case of States that have already begun the section 306 review process, a DEIS already will have been issued.

Prior to issuance of these proposed regulations, NOAA distributed a draft paper on subsection 305(d). Comments were received questioning the necessity of including an EIA in the subsection 305(d) submission and conversely ques-

tioning not issuing an EIS as a matter of course prior to preliminary approval. Another major area of comment had to do with the efficacy of getting Federal review comments prior to section 305(d) approval (as was proposed in the draft paper) if these comments would not suffice and substitute for the Federal agency section 306 review. In response to these comments, the present proposed regulations provide for Federal review during the first three months a subsection 305 (d) grant is in effect. It is hoped that this approach will accomplish two objectives: (a) Allow for timely approval of subsection 305(d) grants and (b) allow sufficient time for Federal agencies to review proposed management programs, and, for states to consider these review comments prior to submission for section 306 approval. With respect to EIA/EIS requirements, NOAA proposes to make a case-by-case determination of the necessity of issuing an EIS, based, in large measure, on a State's EIA. It is anticipated that in the majority of cases a negative determination will be sufficient. However, where any new major action significantly affecting the quality of the human environment is proposed (as a possible example, new legislative authorities are proposed for partial or initial implementation), the likelihood exists that an EIS will have to be prepared prior to preliminary approval.

NOAA proposes to recodify sections of Part 920 as follows:

(1) Change Subpart E to Subpart F: Application for Development Grants;

(2) Change 15 CFR 920.40–920.49 to 15 CFR 920.50–920.59.

This recodification is necessitated by the addition of a new Subpart on preliminary approval, which will become the new Subpart E.

NOAA proposes to amend Part 920 by adding § 920.60 to recodified Subpart F to address special grant application considerations with respect to the three new planning requirements.

Subsection 305(b) states "no management program is required to meet the requirements in paragraphs (7), (8) and (9) before October 1, 1978". Subsection 305(h) provides that funding to complete these new requirements shall be provided out of section 305 appropriations, even for management programs approved under section 306 prior to October 1, 1978.

The proposed regulations provide information for State programs approved prior to October 1, 1978 on applying for section 305 funds for the purpose of fulfilling the new planning requirements prior to that date.

Information on this amendment was contained in the draft papers on subsections 305(b)(7), (8) and (9) which were widely distributed prior to issuance of these proposed regulations. No comments were received on this item.

NOAA proposes to amend Part 920 by adding a new § 920.61 to recodified Subpart F to address subsection 305(d) grant application procedures.

These procedures are similar to those already established for subsection 305 (c) program development grants (section 920.45, now revised to § 920.55) except that Part IV, Program Narrative shall include a description of major tasks to be undertaken to resolve section 306 deficiencies and a specific timetable for remedying these deficiencies, and a description of implementation activities for approved management components.

Information on this amendment was contained in the draft paper on subsection 305(d) which was widely distributed prior to issuance of these proposed regulations. No comemnts were received on this item.

NOAA proposed to amend Subpart A—General by revising the definition contained in § 920.2(a)—"Act" to update the statutory reference.

NOAA proposes to further amend Subpart A by revising the definition of § 920.2(f)—"Secretary" to specifically include the Associate Administrator of the National Oceanic and Atmospheric Administration for Coastal Zone Management, as a Secretarial designee. Such reference to the Associate Administrator is included in light of duly executed delegations of authority from the Secretary to the Administrator of NOAA and from the Administrator to the Associate Administrator for Coastal Zone Management. The other purpose of revising the definition of Secretary is to remove sex-bias language.

NOAA proposes to further amend Subpart A to add a new § 920.2(j) to define the term "Associate Administrator". This position was created by Pub. L. 94–370.

NOAA has reviewed these proposed regulations pursuant to the National Environmental Policy Act of 1969 and has determined that promulgation of these regulations will have no significant impact on the environment.

Compliance with Executive Order 11821. The economic and inflationary impact of these proposed regulations has been evaluated in accordance with OMB Circular A–107 and it has been determined that no major inflationary impact will result.

NOAA invites public comment on these proposed regulations so that they may be modified, where necessary and legally permissible, to reflect fully the needs of the public and parties affected by the provisions.

Written comments should be submitted to the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Page Building 1, 3300 Whitehaven Street, NW., Washington, D.C. 20235 on or before January 5, 1977. Following the close of the comment period, and after review of comments, these proposed regulations may be amended to reflect necessary and permissible changes. Final regulations will then be published in the FEDERAL REGISTER.

Dated: December 1, 1976.

T. P. GLEITER,
Assistant Administrator for Administration.

In consideration of the foregoing, 15 CFR Part 920 is proposed to be amended as follows: In Subpart A, § 920.2 is amended by revising paragraphs (a) and (f) and by adding new paragraph (j). Subpart B is amended by adding §§ 920.17, 920.18 and 920.19. Old Subpart E (§§ 920.40 through 920.49) is redesignated as Subpart F (§§ 920.50–920.59). Sections 920.60 and 920.61 are being added to Subpart F. New Subpart E is added consisting of new §§ 920.40–920.43.

Subpart A—General

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Subpart B—Content of Management Programs

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920.17 Shortfront access planning.
920.18 Energy facility planning.
920.19 Shoreline erosion/mitigation planning.

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Subpart E—Preliminary Approval

920.40 General.
920.41 Eligibility for consideration.
920.42 Approval criteria.
920.43 Review/approval procedures.

Subpart F—Applications for Development Grants

920.50 General.
920.51 Administration of the program.
920.52 State responsibility.
920.53 Allocation.
920.54 Geographical segmentation.
920.55 Application for initial grant.
920.56 Approval of applications.
920.57 Amendments.
920.58 Application for second year grants.
920.59 Application for third year grants.
920.60 Applications for three new planning elements.
920.61 Preliminary approval of grant applications.

AUTHORITY: (Sec. 305, Coastal Zone Management Act of 1972. Pub. L. 92–583, 86 Stat. 1280, as amended by Pub. L. 94–370, 90 Stat. 1013).

Subpart A—General

§ 920.2 **Definitions.**

* * * * *

(a) The term "Act" means the Coastal Zone Management Act of 1972, as amended (Pub. L. 94–370, 90 Stat. 1013).

* * * * *

(f) The term "Secretary" means the Secretary of Commerce or his/her designee, including especially the Associate Administrator for Coastal Zone Management based on duly executed delegations of authority from the Secretary to the Administrator of NOAA, by Amendment 5 of the Department of Commerce Organization Order 25–5A, dated October 13, 1976; and from the Administrator to the Associate Administrator for Coastal Zone Management; by NOAA Circular 76–82, effective October 13, 1976.

* * * * *

(j) The term "Associate Administrator" means the Associate Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

Subpart B—Content of Management Programs

§ 920.17 **Shorefront access planning.**

(a) *Requirement.* In order to fulfill the requirements contained in subsec-

tion 305(b)(7) of the Act, the management program must show evidence that the State has developed a planning process that can identify public shorefront areas appropriate for protection and/or increased access. This process should include:

(1) A definition of the term "beach" and an identification of public areas subject to the definition;

(2) A procedure for assessing public areas requiring access and/or protection as part of the process outlined in § 920.13;

(3) Development of State policies pertaining to shortfront access and/or protection;

(4) A method for designation, if appropriate, of shorefront areas as areas of particular concern (either as a class or as specific sites) for protection and/or access purposes;

(5) A mechanism for continuing refinement and implementation of necessary management techniques; and

(6) An identification of existing programs that can be applied to meet management needs.

(b) *Comment.* Statutory Citation: Subsection 305(b)(7)

The management program for each coastal state shall include * * * (a) definition of the term 'beach' and a planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological, or cultural value.

(1) The purpose of defining the term "beach" is to aid in the identification of those existing public beach areas requiring further access and/or protection as a part of the State's management program. States should define "beach" in terms of characteristic physical elements (e.g., submerged lands, tidelands, foreshore dry sand area, line of vegetation) and in terms of public characteristics (e.g., local, State or Federal ownership, or other demonstrated public interest). States should also take into account special features such as composition (e.g., non-sand beaches), location (e.g., urban or riverine beaches), origin (e.g., man-made beaches) and fragility (e.g., areas of shifting dunes). Where access may be complicated by questions of ownership and use of the foreshore and dry sand beach, States are encouraged to define beach in terms of its component parts, especially at the mean high tide line. Finally, in defining the term "beach," States shall provide a rationale explaining the relationship between the definition developed and access and protection needs.

(2) In developing a procedure for identifying access and/or protection requirements for public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological or cultural value, States should make use of the analyses and considerations of statewide concern developed to meet the requirements of § 920.13. It is also recommended that information contained in completed State Comprehensive Outdoor Recreation Plans be considered. If islands have not been included in the areas considered under § 920.13, then they should be given specific consideration for access and/or protection needs under this subsection. This identification procedure shall include a description of the appropriate types of access and/or protection, taking into account governmental and public preferences, resource capabilities and priorities. In determining access requirements, States should consider both physical and visual access. Physical access may include, but need not be limited to, footpaths, boardwalks, jitneys, rickshaws, parking facilities, ferry services and other public transport. To the extent that the provision of perpendicular access is insufficient to meet the purposes intended by this subsection, it is appropriate for States to consider lateral access. Where a State does not have a reasonable amount of public shorefront areas above mean high tide, then provision of perpendicular access would not serve a useful purpose in terms of increasing or enhancing the public's ability to get to and to enjoy shorefront amenities. In such cases, consideration of lateral access needs will be appropriate. Visual access may include, but not be limited to, viewpoints, setback lines, building height restrictions, and light requirements. The term "protection of" may include protection of public coastal areas for such purposes as environmental, esthetic or ecological preservation (including protection from overuse and mitigation of erosion or natural hazards) and/or protection for public use benefits (including recreational, historic or cultural uses) and/or for the preservation of islands for low intensity public use purposes and/or recreational usage and/or such other protection as may be necessary to insure the maintenance of environmental, recreational, historic, esthetic, ecological or cultural values of existing public shorefront attractions.

(3) As part of this general planning process, States should develop a procedure to identify specific areas for which access through acquisition (including funding under the provisions of section 315(2) of the Act) will be appropriate during program implementation. It should be noted that the access referred to in this subsection is broader than the types of access that may be acquired using section 315(2) funds which is limited to the acquisition of lands or interests in lands for purposes of providing access to public shorefront attractions and/or for the preservation of islands.

(4) In conjunction with developing a procedure for identifying specific acquisitions, States shall identify other local, State or Federal sources for accomplishing particular access and/or protection proposals. Particular attention should be given to coordination of management objectives contained here with funding programs pursuant to section 315(2) of the Act, and pursuant to the Land and Water Conservation Fund (16 U.S.C. 460 et. seq.) and other statutes as may be appropriate.

§ 920.18 Energy facility planning.

(a) *Requirement.* In order to fulfill the requirements contained in subsection 305(b)(8) of the Act, the management program must show evidence that the State has developed a planning process that can anticipate and manage the impacts from energy facilities in or affecting the State's coastal zone. This process should include:

(1) A means of identifying energy facilities which are likely to be located in or which may significantly affect the coastal zone;

(2) A procedure for assessing impacts for such facilities;

(3) Development of State policies and other techniques for the management of energy facility impacts; and

(4) A mechanism for coordination and/or cooperative working arrangements, as appropriate, between the State coastal management agency and other relevant State, Federal, and local agencies involved in energy facility planning.

(b) *Comment.* Statutory Citation: Subsection 305(b)(8):

The management program for each coastal state shall include * * * (a) planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including, but not limited to, a process for anticipating and managing the impacts from such facilities.

(1) The purpose of identifying energy facilities which may significantly affect the coastal zone is to assure the consideration of energy facilities as land or water uses having a direct and significant impact on coastal waters and subject to the management program. In determining which energy facilities may significantly affect the coastal zone, States should include, at a minimum, those facilities included in subsection 304(5) of the Act. Petrochemical refineries and support services facilities with potential impacts in the coastal zone should also be included. "Significantly affect" should be considered within the context of the National Environmental Policy Act of 1969 (Pub. L. 91-190, as amended by Pub. L. 94-83) and should include the following concepts:

(i) Effects which are noteworthy in an overall, cumulative way, considering the impacts of a given energy facility and related facilities, either existing or contemplated;

(ii) Effects which may be positive, negative or both;

(iii) Effects which may come about or increase in magnitude because of the particular location of an energy facility; and

(iv) Effects which cover a broad range of environmental, social and economic impacts.

(2) In developing a procedure for assessing impacts from energy facilities, it will be important to create a planning process that can take adequate account of all three impact categories—economic, social and environmental. The emphasis given these impacts may, of course, vary depending on the location and likely consequences of a particular type of facility. States may want to include in their planning process those impacts from energy facilities that will be required for consideration under the Coastal Energy Impact Program (section 308 of the Act, 15

CFR Part 931). These include, but are not limited to, increased population, changed employment patterns, changed demands for public facilities and services, local price inflation, changed patterns of tax or user fee revenues, effects on fishing resources, effects on beaches and sand dunes, shoreline erosion, effects on air and water quality, and ecological effects.

(3) In developing State policies and other techniques for the management of energy facility impacts, State management agencies are encouraged to develop, in cooperation with other appropriate agencies, procedures for assessing need/demand projections; for allocating these needs among coastal and inland locations; for identifying potential coastal impacts; and for determining site suitability of alternate locations for particular facilities. The actual analysis of particular sites for suitability may be accomplished using planning funds authorized under subsection 308(c) of the Act, as amended. The nature of State policies and management techniques that will be developed as part of the overall implementation program will vary depending on the extent and type of energy facility siting procedures and impact management techniques already existing in a particular State, as well as on existing Federal and local authorities. Accordingly, as part of meeting requirements in § 920.14, States should include as part of their listing of relevant constitutional provisions, legislative enactments, regulations, judicial decisions and other appropriate official documents or actions, those items specifically relating to anticipating and managing energy facility impacts.

(4) In assuring the coordination of relevant agencies involved in energy facility planning, States should give particular attention to State and Federal agencies already involved in various aspects of energy planning. At a minimum, where interstate plans exist as referred to in subsection 306(c)(8) of the Act, these plans should be taken into consideration. Cooperative arrangements, whenever possible, should extend to use of energy data, projections, estimates of facility needs, and policies that have been developed by others. Sources for such information include State and Federal energy agencies, energy industries, and State utility commissions. States should take steps to ensure their access to such information through cooperative agreement or, in the case of energy industries, through reporting requirements (if the reporting requirements of other State agencies do not suffice).

§ 920.19 Shoreline erosion/mitigation planning.

(a) *Requirement.* In order to fulfill the requirements contained in subsection 305(b)(9) of the Act, the management program must show evidence that the State has developed a planning process that can assess the effects of shoreline erosion and evaluate ways to mitigate, control or restore areas adversely affected by erosion. This process should include:

(1) A method for assessing the effects of shoreline erosion;

(2) A procedure for handling erosion effects;

(3) Development of State policies pertaining to erosion;

(4) A method for designation, if appropriate, of areas for erosion control, mitigation and/or restoration as areas of particular concern or areas for preservation/restoration; and

(5) A mechanism for continuing refinement and implementation of necessary management policies and techniques.

(b) *Comment.* Statutory Citation: Subsection 305(b)(9)

> The management program for each coastal state shall include * * * (a) planning process for (A) assessing the effects of shoreline erosion (however caused), and (B) studying and evaluating ways to control, or lessen the impact of, such erosion, and to restore areas adversely affected by such erosion.

(1) In developing a method for assessing the effects of shoreline erosion, States should consider loss of land along the shoreline or along coastal river banks, whether this loss is caused by actions of man or of natural forces, and whether these actions are regularly occurring or one-time events. In assessing the effects of erosion, States should examine the major effects of erosion and make some judgments as to their relative as well as collective importance. The purpose of such assessment will be to determine how, if at all, States will want to handle erosion control, mitigation and/or restoration.

(2) In developing policies and procedures for dealing with effects of erosion, States will want to consider both non-structural and structural techniques, as appropriate. Where the policy is not to control erosion, further study of ways to control or mitigate erosion will not be necessary. In this case, however, the State policy and its rationale should be explicitly stated. The process for evaluating ways to control/lessen erosion impacts either through non-structural or structural techniques, should include such considerations as geography, extent of the problem, costs of alternate solutions, and incorporation of existing management techniques.

(3) In developing a procedure for designating areas for restoration, if appropriate, States may consider complete re-establishment of the pre-erosion shoreline or other rebuilding of an eroded area to a more limited extent. Both natural and developed areas may be considered for restoration purposes. While not all means of restoration proposed by States may be eligible for implementation funding or funding under other sections of the Act, States should not feel restricted as to the means of restoration proposed as part of the management program. While a procedure for identifying potential candidates for restoration efforts should be developed as part of this particular planning process, actual identification of specific restoration sites need not be made until such time, during implementation, as specific program/actions for restoration purposes are undertaken.

Subpart E—Preliminary Approval

§ 920.40 General.

(a) This section establishes criteria to be employed in receiving, reviewing and approving preliminary coastal management programs submitted by coastal States and for the awarding of grants pursuant to subsection 305(d) of the Act;

(b) The basic purpose of preliminary approval is to provide funding to support initial implementation of selected elements of a State's coastal management program, provided that the overal description of the program would be approvable when fully implemented. For these selected elements, section 306 legal authorities and administrative capabilities must already be in place.

(c) A second major objective is to allow a State additional time to fully implement a coastal management program which in its design and description meets the requirements of section 306 of the Act. In granting preliminary approval, recognition is given to the need to include in a subsection 305(d) work program those deficiencies precluding section 306 approval, the specifics of remedying these deficiencies, and a timetable within which this is to occur.

(d) The following are examples of situations under which States may apply for preliminary approval:

(1) States may be able to describe the legislative authority they need in order to meet the requirements under section 306 to have an approvable program, and to draft a bill carrying this out, but not be able to enact same within the time period allowed pursuant to subsection 305(c). This could be because the legislature meets only every two years or because the process is too complicated to accomplish in a matter of months.

(2) A State program may call on local units of government to prepare their own coastal plans in accordance with State guidelines. However, one or even two years may be required for these units to carry out their work. Under this example, it should be noted that, depending on the nature of the State-local relationships and existing legal authorities, this activity can also be accomplished as part of a State's subsection 305(c) program development grant and/or as part of a section 306 program administration grant.

(3) A State may need to reorganize within the Executive branch before a program can gain approval and funding under section 306.

(4) States may be encountering problems resolving differences with one or a number of Federal agencies with respect to specific aspects of a State's coastal management program.

(e) Preliminary approval is not seen as a necessary continuum from section 305 to section 306 status. States may move directly from subsection 305(c) (program development) grants to sec-

tion 306 (program implementation) grants. However, progression from subsection 305(c) (program development) status to subsection 305(d) (preliminary approval) status is not automatic. Application for preliminary approval requires consultation with the Assistant Administrator to insure that the State meets the eligibility conditions and approval criteria.

(f) Provision for preliminary approval pursuant to subsection 305(d) is meant to apply to a fully developed coastal management program for a State's entire coastal zone. Accordingly, segments are not eligible for approval pursuant to this subsection but shall continue to be considered under provisions of section 923.43 dealing specifically with segmentation.

§ 920.41 Eligibility for consideration.

(a) *Requirement.* In order to be eligible for consideration for preliminary approval, pursuant to subsection 305(d), a State must be in one of the following situations:

(1) At any time during section 305 program development when a State has elements of its coastal management program to implement and meets the basic approval requirement (that the overall program as described would be approvable when fully implemented); or

(2) After all subsection 305(c) program development grants have been expended and the program at that point meets the basic approval criteria but there are still no aspects of the program for which to begin implementation; or

(3) During the course of section 306 review, problems are uncovered that preclude section 306 approval but not preliminary approval.

§ 920.42 Approval criteria.

(a) *Requirement.* In order for a State's coastal management program to receive preliminary approval pursuant to subsection 305(d)(2) of the Act, the State must show evidence that:

(1) The management program fulfills the requirements of section 305(b) of the Act and implementing regulations;

(2) Deficiencies that prohibit achievement of section 306 program approval are identified after consultation with the Associate Administrator, and the means and timetable for remedying these deficiences are specified;

(3) The purposes for which the subsection 305(d) grant are to be used are specified;

(4) Adequate steps have been or are being taken to meet the requirements under sections 306 or 307 of the Act, which involve Federal officials or agencies;

(5) The program as described and proposed for implementation would be fully approvable when implemented; and

(6) For those elements to be implemented under subsection 305(d), the legal authorities and organizational structures necessary for implementation are adequate and in place.

(b) *Comment.* (1) Pursuant to paragraph 305(d)(2)(A) of the Act, "(a) coastal state is eligible to receive grants under this subsection if it has * * * developed a management program which * * * (i) is in compliance with rules and regulations promulgated to carry out subsection (b), but (ii) has not yet been approved by the Secretary under section 306". The rules and regulations referred to above are the Part 920 regulations issued November 29, 1973 and as incorporated into the Part 923 regulations issued January 9, 1975. Where there are differences in these sets of regulations, the Part 923 requirements should be held to be controlling. In order to satisfy this paragraph, all the requirements of subsection 305(b)(1)–(6) of the Act shall be completed in accordance with the provisions and procedures set forth in corresponding §§ 923.11 through 923.14 and §§ 923.21 and 923.22. Where fulfillment of these requirements is dependent on State legislative action, such legislation must describe these elements in a manner sufficient to allow the Associate Administrator to make the judgment that, if enacted, the descriptions contained in the legislation will meet the subsection 305(b) and related requirements. This means that the substance as well as the procedures addressing the subsection 305(b)(1)–(6) elements must be contained in such legislation. Thus, for example, it will not be sufficient for purposes of preliminary approval for State legislation to describe the procedure by which a management boundary will be determined. Rather that legislation must describe the geographic area to be contained within the management boundaries.

(2) Pursuant to paragraph 305(d)(2)(B) of the Act, "(a) coastal State is eligible to receive grants under this subsection if it has * * * specifically identified, after consultation with the Secretary, any deficiency in such program which makes it ineligible for approval * * * pursuant to section 306, and has established a reasonable time schedule during which it can remedy any such deficiency." The only deficiencies that will not render a State ineligible for preliminary approval under this subsection are those that relate to implementing capability. Deficiencies bearing on the adequacy of program design, description or implementing strategy cannot be addressed as part of a subsection 305(d) program but rather should continue to be addressed as part of the basic subsection 305(c) program development process. An acceptable subsection 305(d) program can be deficient only in its lack of having translated fully described but pending implementing actions into accomplished fact. To meet the requirements of paragraph 305(d)(2)(B) of the Act, States should describe the nature of the deficiency, the reason for it, the specific means and timetable by which the deficiency/deficiencies shall be overcome. The schedule for remedying deficiencies should be sufficiently long to be realistic given the nature and number of deficiencies, and the particulars of a State's situation. At the same time, it should be sufficiently tight to insure an enhanced and expeditious State effort. In no case shall the timeable for remedying section 306 deficiencies extend beyond fiscal year 1979.

(3) Pursuant to paragraph 305(d)(2)(C) of the Act, "(a) coastal state is eligible to receive grants under this subsection if it has * * * specified the purposes for which any such grant will be used." In specifying the purposes for which grants shall be used. States are advised that the following represent allowable subsection 305(d) costs:

(i) Resolving section 306 deficienices;

(ii) Meeting the new planning requirements of subsections 305(b)(7), (8) and (9); and

(iii) Implementing those portions of a State's coastal management program judged as adequate for purposes of section 306.

Examples of fundable items to remedy section 306 deficiencies include, but are not limited to:

(i) Pass-throughs to local/regional units of government to develop master programs/local ordinances conforming to State guidelines;

(ii) Efforts necessary to enact/refine needed legislation;

(iii) Federal coordination efforts, including establishment of procedures for determining Federal consistency once a coastal management program is fully approved under section 306; and

(iv) Negotiation of memoranda of understanding and instituting other arrangements for State agencies interactions.

Fundable items that will help to meet the new planning requirements include:

(i) Development of shorefront access and protection planning process;

(ii) Development of energy facility planning process; and

(iii) Development of shoreline erosion/mitigation planning process.

Examples of fundable items to initiate implementation of selected aspects of a State's coastal management program include, but are not limited to:

(i) Personnel/equipment necessary to administer approved permit and other authorities;

(ii) Signs, publications, etc., relative to approved management practices;

(iii) General maintenance/resource management activities; and

(iv) Personnel for establishing consistency procedures.

(4) Pursuant to paragraph 305(d)(2)(D) of the Act, "(a) coastal state is eligible to receive grants under this subsection if it has * * * taken or is taking adequate steps to meet any requirement under section 306 or 307 which involves any Federal official or agency." For purposes of this paragraph, the particular sections of 306 and 307 are:

(i) Subsection 306(a)(1)—identification of excluded Federal lands;

(ii) Subsection 306(c)(1) — opportunity for full participation by relevant Federal agencies;

(iii) Subsection 306(c)(8)—adequate consideration of the national interest involved in planning for, and in the siting of, facilities necessary to meet require-

ments which are other than local in nature;

(iv) Subsection 307(c)—development of procedures for certifying Federal consistency with respect to Federal activities, development projects, and Federal licenses or permits;

(v) Subsection 307(d) — development of procedures for certifying Federal consistency with respect to Federal assistance to State and local governments; and

(vi) Subsection 307(h)(1)—participation in mediation procedures, if appropriate.

(5) Pursuant to paragraph 305(d)(2)(E) of the Act, "(a) coastal state is eligible to receive grants under this subsection if it has * * * complied with any other requirement which the Secretary, by rules and regulations, prescribes as being necessary and appropriate to carry out the purposes of this subsection." By virtue of these rules and regulations, the following are prescribed as necessary and appropriate for States to complete in order to merit preliminary approval under this paragraph:

(i) A description of the overall management program of sufficient detail and addressing all section 306 findings (necessary for program approval) to allow a determination that, when implemented, these elements will constitute an approvable section 306 management program.

(ii) For those aspects to be implemented under subsection 305(d), a demonstration that the legal authorities and organizational capability necessary for implementation exist at time of preliminary approval.

(iii) An Environmental Impact Assessment (EIA) on the overall management program proposed for eventual implementation, with particular emphasis on those elements which will be funded for implementation purposes pursuant to subsection 305(d).

Submission of the EIA will enable NOAA to make a case-by-case determination as to the necessity of issuing an Environmental Impact Statement (EIS) prior to preliminary approval.

§ 920.43 Review/approval procedures.

(a) If a State applies directly for preliminary approval (having previously consulted with the Associate Administrator regarding this course of action), the Associate Administrator shall review the formal submission document in terms of the approval criteria contained in § 920.42. If a State meets the approval criteria, the Associate Administrator will issue preliminary approval along with a set of findings with respect to deficiencies that must be remedied, and the timetable for resolution of such deficiencies. Subsequent to this approval, the Associate Administrator will distribute to Federal agencies that now receive section 306 submissions, copies of a State's approved subsection 305(d) submission and the Associate Administrator's findings. Federal agencies will have the ensuing three months to review and comment on the preliminarily approved coastal management program. States will be required to take into consideration Federal comments resulting from this three month review period as part of State's subsection 305(d) work programs. While this review process will not automatically substitute for the section 306 Federal review/EIS procedure, Federal agencies are advised that subsection 305(d) programs submitted for their review are found to be adequate for approval in terms of the Associate Administrator's threshold criteria and that, with respect to those elements in the subsection 305(d) submission, the document submitted for section 306 approval will be substantially the same as the subsection 305(d) submission. Therefore, Federal agencies are encouraged to review thoroughly the subsection 305(d) submission to insure adequate resolution of identified section 306 deficiencies during the subsection 305(d) grant period.

(b) If a State applies for preliminary approval after formal section 306 program review has begun, preliminary approval will be issued at that point in the section 306 review process when the formal Federal agency review and corresponding DEIS review reveal problems of a sufficient nature to preclude full program approval and implementation but not sufficient to preclude preliminary approval. States will be required to take into consideration those items raised by the Federal agency/DEIS reviews as part of the subsection 305(d) work program.

Subpart F—Applications for Development Grants

§ 920.60 Applications for three new planning elements.

(a) For those States receiving program development grants up to and/or through October 1, 1978 pursuant to subsections 305(c) or 305(d), the work program and funding request for the subsection 305(b) (7), (8) and (9) planning elements should be developed as part of the overall work program and grant application pursuant to the procedures contained in § 920.55 (c), (d), (e), (5), (6) and (7) (as recodified for subsection 305(c) program development grants, or pursuant to § 920.61 for subsection 305(d) grants.

(b) For States that have an approved management program or will have an approved management program by October 1, 1978, those States may receive program development grants for the express purpose only of fulfilling the subsection 305(b) (7), (8) and (9) requirements prior to October 1, 1978. States with programs approved prior to or by October 1, 1978 must fulfill these three requirements by that date. States with program implementation grants which also wish to receive the above program development grants for the specified purpose and within the specified time limit should follow the application procedures contained in (recodified) § 920.55 (c), (d), (e), (5), (6) and (7).

(c) *Comment.* Statutory Citation: Subsection 305(b):

No management program is required to meet the requirements in paragraphs (7), (8) and (9) before October 1, 1978.

(d) *Comment.* Statutory Citation: Subsection 305(h):

Whenever the Secretary approves the management program of any coastal State under section 306, such State thereafter—(1) shall not be eligible for grants under this section; except that such State may receive grants under subsection (c) in order to comply with the requirements of paragraphs (7), (8) and (9) of subsection (b) * * *

§ 920.61 Applications for preliminary approval grants.

(a) The primary purposes of preliminary approval grants made under subsection 305(d) of the Act are to provide for initial implementation of approved management elements and to assist a State in insuring ultimate implementation of a fully developed program design. Additionally, subsection 305(d) funding may be used to meet the requirements of subsection 305(b)(7), (8) and (9). The purpose of these guidelines is to define the procedures by which grantees apply for and administer grants under the Act. The guidelines contained herein shall be used and interpreted in conjunction with the Grants Management Manual for Grants under the Coasal Zone Management Act, hereinafter referred to as the "Manual." The Manual incorporates a wide range of Federal requirements, including those established by the Office of Management and Budget, the General Services Administration, the Department of the Treasury, the General Accounting Office, and the Department of Commerce.

(b) Grants shall not exceed eighty percent of the total cost of subsection 305(d) programs. Federal funds received from other sources cannot be used to match grants under subsection 305(d) of the Act.

(c) No subsection 305(d) grant will be made after September 30, 1979.

(d) All applications are subject to the provisions of OMB Circular A-95 (revised).

(e) Costs claimed as charges to the grant project must be beneficial and necessary to the objectives of the grant project. As used herein the terms "costs" and "grant project" pertain to both the Federal grant and the matching share. The allowability of costs will be determined in accordance with the provisions of FMC 74-4: Cost Principles Applicable to Grants and Contracts with State and Local Governments, and with the guidance contained in § 920.42(b)(3).

(f) The Form CD-292, Application for Federal Assistance (Non-Construction Programs), constitutes the formal application and must be submitted 60 days prior to the desired grant beginning date. The application must be accompanied by evidence of compliance with A-95 requirements including the resolution of any problems raised by the proposed project. The Associate Administrator will not accept applications substantially deficient in adherence to A-95 requirements.

(g) In Part IV, Program Narrative, of the Form CD-292, the applicant should respond to the following requirements:

(1) Set forth a work program describing the activities to be undertaken dur-

ing the grant period. This work program shall include:

(i) A precise description of each major task to be undertaken to resolve section 306 deficiencies, and a specific timetable for remedying these deficiencies;

(ii) A precise description of implementation activities for approved management components, including a demonstration that these implementation funds will not be applied outside the approved coastal management boundaries;

(iii) A precise description of any other tasks necessary for and allowable under subsection 305(d);

(iv) For each task, identify any "Other Entities", as defined in the "Manual", that will be allocated responsibility for carrying out all or portions of the task, and indicate the estimated cost of the subcontract for each allocation. Identify, if any, that portion of the task that will be carried out under contract with consultants and indicate the estimated cost of such contract(s); and

(v) For each task, indicate the estimated total cost. Also, indicate the estimated total man-months, if any, allocated to the task from the applicant's staff.

(2) The sum of all task costs in the above paragraph should equal the total estimated grant project costs.

(3) Using two categories, Professional and Clerical, indicate the total number of personnel in each category on the applicant's staff, that will be assigned to the grant project. Also indicate the number assigned full time and the number assigned less that full time in the two categories. Additionally indicate the number of new positions created in the two categories, as a result of the grant project.

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federal register

MONDAY, DECEMBER 6, 1976

PART IV:

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

■

SURFACE MANAGEMENT OF PUBLIC LAND UNDER U.S. MINING LAWS

Proposed Procedures to Minimize Adverse Environmental Impacts

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Part 3800]

SURFACE MANAGEMENT OF PUBLIC LAND UNDER U.S. MINING LAWS

Proposed Procedures to Minimize Adverse Environmental Impacts

This proposed rule-making sets forth rules and procedures to minimize adverse environmental impacts on the surface resources of public domain and other lands from operations authorized by the United States mining laws (30 U.S.C. 22–54). The regulations cover only actions which cause significant surface disturbance. In addition, the proposed rules would better facilitate multiple-use management. They also insure a greater degree of safety for the various public land user groups.

The proposed rules are designed to insure consistency with the spirit and intent of (a) The Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a); (b) The National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347); (c) Executive Order No. 11514 (35 FR 4247 (1970) relating to protection and enhancement of environmental quality; (d) Executive Order No. 11593 (36 FR 8921 (1971) relating to protection and enhancement of the cultural environment; (e) Executive Order No. 11752 (38 FR 34793 (1973) relating to prevention, control and abatement of environmental pollution of Federal facilities; and (f) Sections 4–7 of the Act of July 23, 1955 (30 U.S.C. 612–615), providing for multiple-use of the surface of mining claims on the public lands. They are also designed to implement section 302(b) of the Federal Land Policy and Management Act of 1976 (Pub. L. 94–579; 90 Stat. 2743; 43 U.S.C. 1701) which requires that the Secretary take any action necessary to prevent unnecessary or undue degredation of the public lands. They are issued pursuant to section 2319 of the Revised Statutes (30 U.S.C. 22) which provides that the exploration, location, and purchase of valuable mineral deposits shall be "under regulations prescribed by law," and section 2478 of the Revised Stitutes, as amended.

The rules would add a new subpart (3809) to the regulations to provide for surface management.

It is recognized that NEPA did not abrogate the Secretary's mandate under the Mining Law of 1872, and that without these proposed regulations, prospecting, exploration, and mining, which have non-discretionary authorization under the Mining Law of 1872, will continue with resultant impacts on the environment.

The proposed regulations do not authorize or commit the Federal Government to a course of action leading to disturbance of the environment. The proposed rules merely establish procedures for administering the non-discretionary requirements of existing law and mitigating impacts therefrom in keeping with the policy of the United States as expressed in the Mining and Minerals Policy Act of 1970 and the National Environmental Policy Act of 1969. The proposed rules also establish procedures for compliance with the non-discretionary requirements of the Endangered Species Act of 1973, the National Historic Sites Act of 1935, and the American Antiquities Act of 1906.

It is hereby determined that the publication of this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)9c) is required. An environmental analysis will be prepared on individual or groups of related actions where significant impacts on the quality of the human environment are identified a statement pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 will be prepared.

In accordance with the requirements of section 310 of the Federal Land Policy and Management Act of 1976 in rulemaking, interested parties may submit written comments, suggestions, or objections with respect to the proposed rules to the Direct (210), Bureau of Land Management, Washington, D.C. 20240 on or before January 5, 1977.

Copies of comments, suggestions, or objections made pursuant to the notice will be available for public inspection in the Division of Legislation and Regulatory Management, Bureau of Land Management, Room 5555, Interior Building, Washington, D.C. during regular business hours (7:45 a.m.–4:15 p.m.).

The Department of the Interior 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.

Chapter II of Title 43 of the Code of Federal Regulations is amended as follows:

1. Part 3800 is added to read:

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS:

GENERAL

Subpart 3809—Surface Management

GENERAL

Subpart 3809—Surface Management

§ 3809.0–1 Purpose.

The purpose of the rules is to set procedures to minimize adverse environmental impacts on the surface resources of public lands from operations authorized by the United States mining laws (30 U.S.C. 22–54). The regulations cover only those actions which cause significant surface disturbance.

§ 3809.0–2 Objectives.

The objectives of these regulations are to:

(a) Allow and not unduly hinder location, entry, and operations pursuant to the United States mining laws, and

(b) Insure maximum consistency with the spirit and intent of the Mining and Minerals Policy Act of 1970, the National Environmental Policy Act of 1969, the Act of July 23, 1955, Executive Orders 11593, 11514, and 11752.

§ 3809.0–3 Authority.

These regulations are issued pursuant to the authority vested in the Secretary of the Interior by the General Mining Law (30 U.S.C. 22–54); sections 4–7 of the Act of July 23, 1955 (30 U.S.C. 612–615) providing for multiple use of the public lands; 43 U.S.C. 2 and 1201 relating to the general authority of the Secretary; the National Historic Preservation Act of 1966 (16 U.S.C. 470); the Historic Sites Act of 1935 (16 U.S.C. 461); Endangered Species Act of 1973 (16 U.S.C. 1531–1543); sections 3 and 5 of the Alaska Public Sales Act of August 30, 8921 (1971) relating to protection and enhancement of the cultural environment; Executive Order No. 11514 (35 FR 4247 (1970)), relating to protection and enhancement of the environment; Executive Order No. 11752 (38 FR 34793 (1973)) relating to prevention, control and abatement of environmental pollution at Federal facilities; and sections 302(b) and 310 of the Federal Land Policy and Management Act of 1976 (Pub. L. 94–579; 90 Stat. 2743; 43 U.S.C. 1701), requiring the Secretary to take action, by regulation, to prevent unnecessary or undue degradation of the public lands and carry out the purposes of the Federal Land Policy and Management Act.

§ 3809.0–4 Responsibilities.

(a) *Bureau of Land Mangement* is responsible for the administration of these regulations as to (1) public domain lands

and other lands, except where such lands are included in paragraphs (b) or (c) of this section, and (ii) lands where the surface has been patented and the locatable minerals have been reserved by the United States.

(b) *U.S. Forest Service* is responsible for administration of similar regulations in 36 CFR 252 as to National Forest lands.

(c) *Other surface management agencies* are responsible for administration of these regulations as to Public Domain Lands, the surface of which is managed by those agencies; except that mining operations conducted on land within any area of the National Park System shall be subject to regulations issued by the National Park Service in Title 36 of the Code of Federal Regulations pursuant to section 2 of the Act of September 28, 1976 (16 U.S.C. 1902).

§ 3809.0–5 Definitions.

As used in this subpart:

(a) "Mining Operations" means all functions, work, facilities and activities in connection with prospecting, exploration, surveying, development, mining or processing of mineral resources locatable under the United States mining laws and all uses reasonably incident thereto, including roads and other means of access on lands subject to the regulations in this subpart, regardless of whether the operations take place on or off unpatented mining claims.

(b) "Exploration" or "prospecting" means the search for minerals, by geological, geophysical, geochemical or other techniques, including, but not limited to, sampling, drilling, or any surface or underground works needed to determine the type, extent, or quantity of minerals present.

(c) "Operator" means a person or his successor in interest conducting or proposing to conduct mining operations.

(d) "Person" means any individual, partnership, corporation, association, or other legal entity.

(e) "Mining claim" means any unpatented mining claim, unpatented millsite or tunnel site authorized by the United States mining laws of May 10, 1872 (30 U.S.C. 22, et seq.).

(f) "Significant disturbance" means any disturbance to the environment other than casual use as determined by the authorized officer.

(g) "Casual use" means activities that involve practices which do not ordinarily lead to any appreciable disturbance or damage to the environment and improvements. For example, activities are considered "casual use" if they do not involve cutting of vegetation, use of heavy equipment or explosives, or do not involve use of motorized vehicles. However, use of motorized vehicles over established and open roads, as defined in 43 CFR 6290.0–5, is considered "casual use" so long as the vehicles conform to the operating regulations and vehicle standards contained in 43 CFR 6291.1 and 6293. (Also see § 3809.2–2 (a), (b) and (c).

(h) "Reclamation" means the process of returning affected lands to a stable condition and form consistent with their premining productivity or other approved post-mining land use.

(i) "Bureau" means the Bureau of Land Management.

(j) "Authorized officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this part.

(k) "Environment" means surface and subsurface resources, both tangible and intangible including air, water, scenic, cultural, vegetative, soil, wildlife, and fish resources.

(l) "Proper BLM office" means the Bureau of Land Management office having jurisdiction over the lands subject to these regulations.

(m) "Plan of Operations" means a detailed plan submitted to the authorized officer before operations commence showing the location and type of work to be conducted, environmental protection procedures, roads, and reclamation procedures to be followed.

(n) "Contemporaneously as practicable" means with respect to reclamation of mineral or otherwise disturbed areas, the commencement, conduct and completion of reclamation activity as soon after disturbance as possible, without undue physical interference with ongoing operations, leaving a minimum of land unreclaimed, consistent with the requirements for surface protection set forth in this subpart.

§ 3809.0–6 Policy.

It is the policy of this Department to encourage the development of the mineral resources under its jurisdiction where mining operations are authorized. Under the 1872 mining law, prospectors, locators, claimants and miners have a statutory right consistent with Departmental regulations, to go upon the open (unappropriated and unreserved) public domain lands for the purposes of geological reconnaissance, mineral prospecting, exploration, development and production. Departmental statutory responsibilities and the public interest require that mining operations pursuant to the 1872 mining law include adequate and reasonable measures to avoid, minimize, or control damage to the environment and to avoid, minimize, or control hazards to the public health and safety. The regulations in this subpart prescribe procedures to that end.

§ 3809.0–7 Scope.

(a) These regulations apply to mining operations conducted under the United States mining laws (30 U.S.C. 22–54), as they effect surface resources on all "Public Domain lands" and "other lands" (See 43 CFR 3000), whether managed by the Bureau or by another surface management agency, except those within units of the National Park System. These regulations also apply to lands where the surface has been patented and the locatable mineral rights have been reserved by the United States. "Other lands" include, but are not limited to, lands on which the following take place:

(1) Mining operations under a right of entry granted by section 9 of the Act of December 29, 1916 (39 Stat. 864; 43 U.S.C. 299), commonly referred to as the Stock-Raising Homestead Act;

(2) Mining operations on lands within stock driveway withdrawals pursuant to the Act of January 29, 1929 (45 Stat. 1144; 43 U.S.C. 300);

(3) Mining operations on lands under the general mining law in reclamation withdrawals pursuant to the Act of April 23, 1932 (47 Stat. 136; 43 U.S.C. 154);

(4) Mining operations conducted on the revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands conducted pursuant to the Act of April 8, 1949 (62 Stat. 162); or

(5) Mining Operations under the provisions of the Alaska Public Sales Act of August 30, 1949 (63 Stat. 679, 48 U.S.C. 364a–364e).

(b) Mining operations conducted on National Forest System lands under the jurisdiction of the Department of Agriculture pursuant to the United States Mining laws, and areas of the National Forest lands covered by a Special Act of Congress (16 U.S.C. 482a–482q) are subject to the regulations of the U.S. Forest Service, 36 CFR Part 252.

(c) In cases of conflict between this subpart and Part 3820, pertaining to lands subject to special mining laws, the more stringent rule shall apply.

(d) Mining operations conducted on units within the National Park System shall be subject to such regulations as are issued by the National Park Service in Title 36 of the Code of Federal Regulations under section 2 of the Act of September 28, 1976 (16 U.S.C. 1902).

§ 3809.0–8 Cross references.

(a) Regulation of off-road vehicles 43 CFR Part 6290.

(b) Trespass actions 43 CFR Part 9230, 43 CFR Part 3602.

(c) Preservation of American antiquities including archaeological sites, ruins, and historic monuments 43 CFR Part 3.

(d) U.S. Forest Service regulations on Surface Management requirements 36 CFR Part 252.

(e) Areas subject to special mining laws 43 CFR Part 3820.

(f) Procedures for the protection of historic and cultural properties 36 CFR Part 800.

§ 3809.1 Notice of intent.

§ 3809.1–1 Filing of notice of intent.

(a) No mining operations which might cause significant disturbance of surface resources shall be conducted or initiated on lands subject to these regulations until the operator has filed a Notice of intent in the proper BLM office and action has been taken under § 3809.1–3. The authorized officer shall make the final determination concerning mining operations which might cause significant

disturbance of surface resources. A Plan of Operations may be filed in lieu of the Notice.

(b) When the Notice concerns lands the surface of which is managed by another agency, the authorized officer shall immediately upon receipt of the Notice forward it to that agency for comment. Comments of the other surface management agency must be returned to the authorized officer within 15 days of receipt thereof by that agency. Comments not received by the authorized officer in time to permit notification of the operator within the time prescribed by the regulations in this subpart may not be considered by the authorized officer.

§ 3809.1–2 Contents of Notice of intent.

(a) No specific form is required.

(b) Notice will include, if not already on file in the proper BLM office, the following information:

(1) The name and legal mailing address of each operator or person intending to enter the public domain;

(2) If surveyed, a legal description of the area of operations by subdivision, section, township, range, and meridian. If unsurveyed, a description of the area of operations by legal subdivision in accordance with an approved protraction diagram, or, if no such diagram exists, by metes and bounds, giving courses and distances between successive angle points, and connected by course and distances to an official corner of the public land surveys;

(3) A map or maps with a scale of not less than 1''–1 mile delineating the area of mining operations and showing the topography of the land, drainage patterns, present roads and trails location, proposed road and trail locations and other surface areas to be disturbed by mining operations;

(4) A statement describing the nature of the proposed mining operation, the method of transport and the measures proposed to protect the environment and improvements;

(5) The approximate dates of commencement and termination of operations; and

(6) The serial number(s) assigned to the claim or claims by the authorized officer upon filing the official copy of the notice or certificate of location of the mining claim(s), mill site(s) or tunnel site(s) pursuant to the Federal Land Policy and Management Act of 1976 (Pub. L. 94–579; 90 Stat. 2743; 43 U.S.C. 1701) and 43 CFR Subpart 3833.

§ 3809.1–3 Action on Notice.

(a) After a Notice of Intent has been filed, the authorized officer will, within 15 working days or, in the case of a Notice concerning lands the surface of which is managed by another agency, 30 working days of receipt thereof, notify the operator whether a Plan of Operations is required.

(b) Failure of the authorized officer to notify the operator within 15 working days (30 working days where the surface of the lands involved are managed by another agency) shall constitute notice that a Plan of Operations is not required by the operator for only those mining operations described in the Notice of Intent. (c) Mining operations that might cause significant disturbance of surface resources shall not begin until a Notice has been acted on or 15 working days (30 working days in the case of lands the surface of which is managed by another agency) after the authorized officer is notified.

§ 3809.2–1 Plan of Operations.

§ 3809.2–1 When Plan of Operations required.

(a) Prior to commencing mining operations which will cause significant surface resource disturbance the operator will have an approved Plan of Operations.

(b) Any operator who intends to construct or improve roads, trails, bridges, landing area for aircraft, (or the like), or other facilities for any other means of access, is required to have an approved Plan of Operations.

(c) No operator shall construct or place any structure on a mining claim without first obtaining an approved Plan of Operations.

§ 3809.2–2 When Plan not required.

A Plan of Operations shall not be required for:

(a) Individuals desiring to search for and occasionally remove small mineral samples or specimens such as provided for in 43 CFR 6010.2 (this allows only hobby or recreational scale mineral collecting and does not authorize use of motorized vehicles),

(b) Prospecting and sampling which will not cause significant surface resource disturbance and will not involve removal of more than a reasonable amount of the mineral deposit for analysis and study,

(c) Marking and monumenting a mining claim and

(d) Subsurface mining operations which will not cause significant surface resource disturbance.

§ 3809.2–3 Contents of Plan.

(a) No special form shall be required in connection with the submission of a Plan of Operations.

(b) The Plan of Operations submitted by the operator shall include, if not already on file in the proper BLM office, the following information:

(1) The name and legal mailing address of each operator, person or agent who proposes to conduct surface disturbing mining operations. Any change of operator or change in legal mailing address of the operator shall be reported promptly to the authorized officer;

(2) A map, preferably a topographic map, with a scale of not less than 1''=1 mile, showing drainage patterns, present road and trail locations, proposed road and trial locations, and location and size of areas where surface resources will be disturbed;

(3) Information sufficient to describe or identify either the entire operation proposed (See paragraph (c) of this section) or reasonably foreseeable operations (See § 3809.2–5) and how they would be conducted, i.e., drilling, shaft sinking, trenching, blasting, etc.;

(4) The type and standard of existing and proposed roads or access routes, the means of transportation used or to be used as set forth in § 3809.4–4, and the period during which the proposed activity will take place;

(5) If surveyed, a legal description of the area of operations, i.e., section, township, range, meridian, and State. If unsurveyed, a description of the area of operations by legal subdivision in accordance with an approved protraction diagram, or, if no such diagram exists, by metes and bounds, giving courses and distances between successive angle points, and connected by courses and distances to an official corner of the public land surveys;

(6) Measures to be taken to meet the requirements for environmental protection in § 3808.3; and

(7) The serial number(s) assigned to the claim or claims by the authorized officer upon filing in the proper BLM office a copy of the official notice or certificate of location of the mining claim(s), mill site(s) or tunnel site(s) pursuant to the Federal Land Policy and Management Act of 1976 (Pub. L. 94–579; 90 Stat. 2743; 43 U.S.C. 1701) and 43 CFR Subpart 3833.

(c) The Plan of Operations submitted by the operator shall cover the entire operation for the full estimated period of activity except as provided for in § 3809.2–5.

§ 3809.2–4 Plan approval.

(a) In those instances when a Plan of Operations is required, mining operations shall be conducted in accordance with an approved Plan of Operations and the regulations in this subpart.

(b) Within 30 working days of receipt of the Plan of Operations, the authorized officer shall review the proposal and:

(1) Notify the operator in writing that the Plan of Operations is approved, or rejected and the reasons therefore; or

(2) Notify the operator in writing that the proposed operations will not cause significant surface disturbance and thus will not require a Plan of Operations; or

(3) Notify the operator in writing of any changes in, or additions to, the Plan of Operations deemed necessary to meet the purpose of the regulations in this subpart; or

(4) Notify the operator in writing that the plan is being reviewed, but that more time, not to exceed an additional 60 working days, is necessary to complete such review, setting forth the reasons why additional time is needed. Periods during which the area of operations is inaccessible for inspection due to climatic conditions, fire hazards, or other physical conditions or legal impediments, shall not be included when computing the 60 day period.

(c) If the authorized officer does not act on the Plan of Operations within the 30 day period or the 60 day extension provided in paragraph (b) of this section, the plan will be considered approved.

(d) Pending final approval of the Plan of Operations, the authorized officer will approve such operations as may be necessary for timely compliance with requirements of Federal and State laws. Such operations shall be conducted so as to minimize environmental impacts as prescribed by the authorized officer in accordance with the standards contained in § 3809.3–2.

(e) *Cultural Resources.* A Plan of Operations will not be approved, except as to operations conducted in accordance with paragraph (d) of this section, until a cultural resources inventory of the area to be disturbed has been made by the authorized officer under the provisions of the National Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 470) and the Antiquities Act of 1906 (34 Stat. 1225; 431–433). An appropriate level of cultural resources inventory consists of a review of existing cultural resource data. If the data reviewed reveals the potential existence of cultural resources in the area or that the data available is not sufficient to make an accurate assessment of the potential existence of the cultural resources, a field sampling of the area to be disturbed shall be conducted. The cultural resources inventory shall be completed within the time allowed by the regulations in this subpart for approval of the Plan. If National Register or eligible National Register cultural resources might be affected, no actions will be authorized until compliance with section 106 of the National Historic Preservation Act and section 2(b) of Executive Order 11593 has been accomplished. Should it be determined that significant cultural resources exist, no operations will be permitted until appropriate avoidance, salvage, or other mitigation measures are accomplished by the Government. Nothing herein shall be interpreted as requiring the operator to do or to pay for a cultural resources inventory.

§ 3809.2–5 Modification of Plan.

(a) If the development of a plan for an entire operation is not possible, the operator shall file an initial plan setting forth his proposed operation to the degree reasonably foreseeable at that time. Thereafter, he shall file a supplemental plan or plans prior to undertaking any significant surface disturbance not covered by the initial plan.

(b) At any time during operations under an approved Plan of Operations, the authorized officer may require the operator to furnish a modification of the plan detailing the means of minimizing significant disturbance of the surface resources that was unforeseen at the time of filing the Plan of Operations. If the operator does not furnish a modification within a time deemed reasonable by the authorized officer, appropriate action, including suspension of operations, will be initiated to assure compliance with these regulations and protection of the environment.

(1) The authorized officer's request for a modification of a Plan of Operation must include a statement setting forth in detail the facts and reasons why it is believed such a modification is required.

(2) Operations may continue in accordance with the approved plan until either a modified or supplemental plan(s) is approved. If the authorized officer determines that operations, which were not covered by an initial plan or were unforeseen at the time of filing of an approved plan, are unnecessarily or unreasonably causing irreparable damage to the environment, he shall order a suspension of only the operations that caused the damage.

(c) A supplemental Plan of Operations or a modification of an approved Plan of Operations shall be subject to approval by the authorized officer in the same manner as the initial Plan of Operations.

§ 3809.2–6 Existing operations.

(a) Persons conducting mining operations on the effective date of these regulations, who would be required to submit a Plan of Operations under § 3809.2–1 may continue operations but shall within 90 days thereafter submit a Plan of Operations. Upon a showing of good cause, the authorized officer will grant an extension of time for submission of a Plan of Operations, not to exceed an additional 180 days.

(b) Operations may continue according to the submitted plan during its review. If the authorized officer determines that the operations are unnecessarily or unreasonably causing irreparable damage to the environment, he shall advise the operator of those measures needed to avoid such damage. If such immediate damage cannot be avoided, the authorized officer shall order the suspension of only the operations that caused the damage.

(c) Upon approval of a Plan of Operations, mining operations shall be conducted in accordance with the approved plan.

§ 3809.2–7 Bond requirements.

(a) Any operator required to file a Plan of Operations shall furnish a bond prior to the commencement of such operations.

(b) In lieu of a bond, the operator may deposit and maintain in a Federal depository, as directed by the authorized officer, cash in an amount equal to the required dollar amount of the bond or negotiable securities of the United States having market value at the time of deposit of not less than the required dollar amount of the bond.

(c) A blanket bond covering nationwide or statewide operations may be furnished if the terms and conditions as determined by the authorized officer are sufficient to comply with the regulations in this part. The minimum statewide bond shall be $100,000. The minimum nationwide bond shall be $300,000.

(d) In determining the amount of the bond, the authorized officer will consider the estimated cost of stabilizing, rehabilitating, and reclaiming all areas disturbed by the operations consistent with § 3809.3–2(h).

(e) In the event that an approved Plan of Operations is modified in accordance with § 3809.2–5, the authorized officer will review the initial bond for adequacy and, if necessary, will adjust the amount of bond required to conform to the Plan of Operations, as modified.

(f) When a mining claim is patented, the authorized officer shall release the operator from any performance bond and Plan of Operations.

(g) (1) When all or any portion of the reclamation has been completed in accordance with § 3809.3–2 (g) and (h), the operator will notify the authorized officer, and the authorized officer shall promptly make a joint inspection with the operator. After inspection of the operations, the authorized officer will notify the operator whether the performance under the Plan of Operations is accepted. When the authorized officer has accepted as completed any portion of the reclamation, he shall reduce proportionally the amount of bond thereafter to be required with respect to the remaining reclamation; *Provided, however,* That the operator will not be released from responsibility and liability under the bond for the amount necessary for revegetation of each planting area for a minimum period of at least five years, not to exceed 10 years, after the first vegetative planting, as determined by the authorized officer.

(2) When during such period of extended liability, the authorized officer determines that because of natural conditions the potential for successful vegetation is uncertain, he may further extend liability of the operator for a period of up to five years beyond the period initially established, if the financial liability that would be incurred by the operator as a result is reasonably commensurate with the probability of successful revegetation.

(3) When during the minimum five year period of extended liability, the authorized officer determines that natural conditions favor rapid revegetation and that revegetation is likely to occur before the expiration of such minimum period, he may release the operator from the extended liability under the bond for revegetation of the planting area.

§ 3809.3 Environmental protection.

§ 3809.3–1 Technical examination/environmental analysis.

(a) When a Plan of Operations or significant modification is filed, the authorized officer shall make a technical examination/environmental analysis. The technical examination shall identify the resources and land uses within the general area. The environmental analysis shall identify the impact of the proposed mining operations upon the living and non-living components of the environment. Following completion of the technical examination/environmental analysis, the authorized officer shall recommend stipulations to be included in the Plan of Operations for the protection of the environment and for reconciliation of conflicts between identified uses and the proposed mining Operations.

(b) The authorized officer may solicit comments and suggestions from the public and governmental agencies as part of the preparation of the technical exami-

nation. Comments will be solicited immediately after the filing of a Plan of Operations or significant modification.

(c) If the surface resources of the lands involved are administered by an agency other than the Bureau, that agency will be responsible for the technical examination. In cases of mixed administration, the agencies will make a joint technical examination.

§ 3809.3–2 Requirements for surface protection.

All operations shall be conducted so as to minimize adverse environmental impacts, including, but not limited to, the following requirements:

(a) *Air Quality.* The operators shall comply with applicable Federal and State air quality standards, including the requirements of the Clean Air Act (42 U.S.C. 1857 et. seq.);

(b) *Water Quality.* The operator shall comply with applicable Federal and State water quality standards, including regulations issued pursuant to the Federal Water Pollution Control Act (33 U.S.C. 1151 et seq.). These regulations include:

(1) Effluent guidelines and standards for mineral mining and processing point source category (40 CFR 436; 40 FR 48652 and 48665 (1975)), and

(2) Effluent guidelines for ore mining (40 CFR 440, 40 FR 51722 (1975));

(c) *Solid Wastes.* The operator shall comply with applicable Federal and State standards for the disposal and treatment of solid wastes. All garbage, refuse, or waste shall either be removed from the affected lands or disposed of or treated to minimize, so far as is practicable, its impact on the environment and the surface resources. All tailings, waste rock, trash, deleterious materials or substances and other waste produced by operations shall be deployed, arranged, disposed of or treated to minimize adverse impact upon the environment and surface resources;

(d) *Visual Resources.* The operator shall, to the extent practicable, harmonize operations with the visual resources through such measures as the design and location of operating facilities, including roads and other means of access, vegetative screening of operations, and construction of structures and improvements to blend with the landscape;

(e) *Fisheries, Wildlife and Plant Habitat.* In addition to compliance with water quality and solid waste disposal standards required by this section, the operator shall take such action as may be needed to minimize, control or prevent adverse impact upon plants, fish, and wildlife, especially threatened or endangered species, and their habitat which may be affected by the operations;

(f) *Cultural Resources.* (1) The operator shall not injure, alter, destroy, or collect any site, structure, object, or other value of historical, archaeological, paleontological, or other cultural scientific importance.

(2) The operator shall immediately bring to the attention of the authorized officer any cultural and/or scientific resource that might be altered or destroyed by his operation and shall leave such discovery intact until told to proceed by the authorized officer. The authorized officer will evaluate the discoveries brought to his attention, and will determine within five working days what action will be taken with respect to such discoveries.

(3) The responsibility for, and cost of investigations and salvage of such values that are discovered during operations will be that of (i) the operator if discovered during the conduct of extraction or processing of mineral resources or (ii) the Government if discovered during any other type of mining operation.

(4) Failure to comply with this stipulation may constitute a violation of the Antiquities Act (16 U.S.C. 431–433).

(g) *Roads.* Roads that are constructed by the operator shall be constructed and maintained so as to assure adequate drainage and to minimize or eliminate damage to soil, water, and other resource values. Unless otherwise approved by the authorized officer, roads no longer needed for operations shall be closed to normal vehicular traffic, bridges and culverts shall be removed, cross drains, dips or water bars shall be constructed and the road surface shall be shaped to as near a natural contour as practicable, be stabilized, and revegetated as required in the Plan of Operations;

(h) *Reclamation.* (1) Unless a longer time is allowed by the authorized officer, the operator will perform reclamation of the surface pursuant to his approved plan as contemporaneously as practicable with operations.

(2) Reclamation will include: (i) Control of erosion and landslides, (ii) control of water runoff, (iii) isolation, removal or control of toxic materials, (iv) reshaping and revegetation of disturbed areas so as to provide a diverse vegetative cover, native to the area and capable of self-regeneration, at least equal in density and permanence to the natural vegetation, and (v) rehabilitation of fisheries and wildlife habitat; and

(i) *Protection of survey monuments.* The operator shall protect all survey monuments, witness corners, reference monuments and bearing trees against destruction, obliteration, or damage from mining operations. If any monuments, corners or accessories are destroyed, obliterated, or damaged by such mining operations, the operator shall hire the appropriate county surveyor or a registered land surveyor to reestablish or restore at the same location the monuments, corners, or accessories using surveying procedures in accordance with the "Manual of Instructions for the Survey of the Public Lands of the United States" and shall record such survey in appropriate county records. The authorized officer may prescribe in writing additional requirements for the protection of monuments, corners, and bearing trees.

§ 3809.3–3 Certification by other agencies.

Certification or other approval issued by State agencies or other Federal agencies of compliance with laws and regulations relating to mining operations will be generally accepted as compliance with similar or parallel requirements of these regulations. Such certification will not relieve the surface management agency of its responsibilities.

§ 3809.4 General provisions.

§ 3809.4–1 Suspension of operations.

If mining operations are ordered suspended to avoid irreparable damage to the environment in accordance with § 3809.2–5(b) and § 3809.2–6(b), the authorized officer will work promptly with the operator to determine those measures required to minimize or prevent damage and end the suspension.

§ 3809.4–2 Noncompliance.

(a) Mining operations which cause significant disturbance and that are undertaken either before the operator has filed a Notice of Intent and action taken under § 3809.1–3, or if required, without having an approved Plan of Operations or are continued after ordered suspended in accordance with §§ 3809.2–5(b), 3809.2–6(b) and paragraph (d) of this section, will be considered a trespass against the United States. Trespassers will be liable for damages and be subject to prosecution for such unlawful acts. (See 43 CFR Part 9230).

(b) Whenever the authorized officer determines that an operator is failing or has failed to comply with the requirements of an approved Plan of Operations, or with the provisions of applicable regulations in this subpart, he shall serve a notice of noncompliance upon the operator by delivery in person to him or his authorized agent, or by certified mail addressed to his last known address.

(c) A notice of noncompliance shall specify in what respects the operator is failing or has failed to comply with the requirements of the Plan of Operations or the provisions of applicable regulations, and shall specify the actions which are in violation of the plan or regulations and the actions which must be taken to correct the noncompliance and the time limits, usually 30 days, within which corrective action must be taken.

(d) If the operator fails to take action in accordance with the notice of noncompliance, the authorized officer may order the forfeiture of all or a portion of the performance bond and shall order suspension of only those operations specified in the notice of noncompliance as not in compliance with the approved plan or the provisions of applicable regulations.

§ 3809.4–3 Access.

(a) An operator will be granted access to his mining operations consistent with provisions of the United States Mining Laws and Departmental regulations.

(b) Proposals for construction, improvement or use of such access as part of a Plan of Operations shall include a description of the type and standard of the proposed means of access, a map, preferably a topographic map, showing the proposed route of access, and a description of the means of transportation to be used.

(c) Approval of the means of such access as part of a Plan of Operations

shall specify the location of the access route, design standards, means of transportation, and other conditions necessary to protect the environment and surface resources, including measures to protect scenic values and to insure against erosion and water or air pollution.

(d) The operator shall permit free and unrestricted public access to lands subject to the regulations in this subpart for all lawful and proper purposes except in areas where such access would unduly interfere with authorized operations or would constitute a hazard to health and safety. Restrictions by the operator on use of public access will not be allowed without prior approval from the authorized officer.

§ 3809.4–4 Multiple-use conflicts.

In the event that uses under any lease, license, permit or other authorization, pursuant to the provisions of any other Act, shall conflict, interfere with or endanger operations in plans approved under this subpart, the conflicts shall be reconciled, as much as practicable, by the authorized officer.

§ 3809.4–5 Fire prevention and control.

The operator shall comply with all applicable Federal and State fire laws and regulations and shall take all reasonable measures to prevent and suppress fires on the area of mining operations.

§ 3809.4–6 Maintenance and public safety.

During all mining operations, the operator shall maintain his structures, equipment, and other facilities in a safe and neat manner. Hazardous sites or conditions resulting from operations shall be marked by signs, fenced, or otherwise identified to protect the public in accordance with applicable Federal and State laws and regulations.

§ 3809.4–7 Inspection.

The authorized officer shall periodically inspect mining operations to determine if the operator is complying with the regulations in this subpart and the approved Plan of Operations.

§ 3809.4–8 Notice of suspension of operations.

(a) Except for seasonal suspension, the operator shall notify the authorized officer of any suspension of mining operations within 30 days of such suspension. This notice shall include:

(1) Verification of intent to maintain structures, equipment, and other facilities, and

(2) The expected reopening date. A notice shall be filed every year in the event operations are not reactivated.

(b) The operator shall maintain the operating site, structure and other facilities in a neat and safe condition during nonoperating periods.

(c) The operator shall comply with the Plan of Operations during nonoperating periods.

(d) The name and address of the operator shall be clearly posted and maintained in a prominent place within the limits of the area of mining operations during periods of nonoperation.

§ 3809.5 Cessation of operations.

The operator shall within one year following cessation of mining operations, remove all structures, equipment and other facilities and clean up the site of mining operations. Additional time may be granted by the authorized officer upon a showing of good cause by the operator.

§ 3809.6 Appeals.

(a) A person adversely affected by a decision of the authorized officer made pursuant to the provisions of this subpart shall have a right of appeal to the Board of Land Appeals, Office of Hearings and Appeals pursuant to 43 CFR Part 4.

(b) In any case involving lands under the jurisdiction of any agency other than the Department of the Interior, or an office of the Department of the Interior other than the Bureau, the officer rendering a decision shall designate the authorized officer of such agency as an adverse party on whom a copy of any notice of appeal and any statement of reasons, written arguments, or briefs must be served.

§ 3809.7 Public availability of information.

(a) Except as provided herein, all information and data submitted by the operator shall be available for examination by the public at the office of the authorized officer in accordance with the provisions of the Freedom of Information Act (F.O.I.A.).

(b) Information and data submitted by the operator and specifically identified as and containing trade secrets or confidential or privileged commercial or financial information will not be available for public examination as long as disclosure of the material is not required under the F.O.I.A.

(c) The determination concerning specific information which may be withheld from public examination will be made in accordance with the rules in 43 CFR Part 2.

(d) Plans of Operations submitted under § 3809.2 of this subpart will be made available for public inspection in the office of the authorized officer.

JACK HORTON,
Assistant Secretary of the Interior.

NOVEMBER 30, 1976.

[FR Doc.76–35734 Filed 12–3–76;8:45 am]

federal register

MONDAY, DECEMBER 6, 1976

PART V:

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

■

FEDERAL PROCUREMENT REGULATIONS SYSTEM

Miscellaneous Amendments

Title 41—Public Contracts and Property Management

SUBTITLE A—FEDERAL PROCUREMENT REGULATIONS SYSTEM

CHAPTER 18—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[PRD No. 76–10]

Miscellaneous Amendments

NOTE.—The Office of the Federal Register (OFR), in a combined effort with the National Aeronautics and Space Administration (NASA), has proposed acceptance of the agency's 1976 edition of the NASA Procurement Regulations (NASA PR) for publication in the Code of Federal Regulations (CFR). Previously, the OFR has edited the NASA version to conform with the CFR codification system. NASA has agreed to provide the OFR with a magnetic tape to be used in the publication of the CFR.

A document announcing adoption of the NASA PR will be published in the FEDERAL REGISTER at the time that NASA submits, and OFR accepts the magnetic tape.

Pending the adoption of the basic NASA PR's, the following PRD No. 76–10 is being published at this time in order to give notice of specific amendments. Since references in this document are to paragraphs of the NASA PR, the OFR has prepared the following table. Entries in the left column are in NASA PR codification, while entries in the right column show the corresponding CFR units being amended by this PRD.

PRD	*CFR*
1.304–1	18–1.304–1.
1.351	18–1.351.
3.501	18–3.501.
3.805–1	18–3.805–1.
5.5101	18–5.5101.
7.104–9	18–7.104–9.
7.104–50	18–7.104–50.
7.104–61	18–7.104–61.
7.204–9	18–7.204–9.
7.204–50	18–7.204–50.
7.204–61	18–7.204–61.
7.303–50	18–7.303–50.
7.303–61	18–7.303–61.
7.350–3	18–7.350–3.
7.403–50	18–7.403–50.
7.403–61	18–7.403–61.
7.452–50	18–7.452–50.
7.452–61	18–7.452–61.
7.460–9	18–7.460–9.
7.705–1	18–7.705–1.
7.705–13	18–7.705–13.
7.902–58	18–7.902–58.
Part 9, Subpart 2	Chapter 18, Part 9, Subpart 2.

The NASA PR publication is a loose leaf version that is periodically updated by Procurement Regulation Directives (PRD's). Changes will either be in the form of "pen and ink changes" or "replacement pages". "Pen and ink changes" are a list of changes to be made by the subscribers in their individual copies. "Replacement pages" have new or revised material worked into the NASA PR text. Subscribers then substitute the new page for the old. The replacement pages contain not only the new text, but also the unaffected portions of the old text. A vertical bar on the side indicates the material which is new or revised.

The following will show the correlation of NASA PR terminology and CFR terminology:

NASA PR	CFR
Regulation	Chapter
Part	Part
Subpart	Subpart
Paragraph	Section

The numbering of individual paragraphs and pages is not necessarily consecutive, and is designed to permit subsequent insertion of additional paragraphs and pages within the appropriate Part and Subpart. The number of a particular paragraph indicates the Part and Subpart where it is set forth, and also indicates whether it is subordinate to a preceding paragraph. The first portion of a paragraph number indicates the Part, and the first digit of the second portion (preceded by a decimal) indicates the Subpart, in which the particular paragraph is set forth; thus, paragraph 1.109 indicates Part 1, Subpart 1, paragraph 9. When the number of a paragraph ends with a digit preceded by a dash (as 1.109–2), this indicates that it is a part of the basic paragraph (as 1.109). The scope of any Part, when given, will be set forth in a separate introductory paragraph, the second portion of which number will be 000 (as 9.000); and the scope of any Subpart, when given, will be set forth in a separate paragraph at the beginning of that Subpart but with the second portion of its numbering being 100, 200, 300, etc., depending on the number of the Subpart (for example, paragraph 1.100 sets forth the scope of Subpart 1 of Part 1). The first digit of the number of a particular page indicates the Part to which the page relates. To convert the NASA numbering system to the CFR numbering system, an 18– should be placed before each paragraph designation. For example: 1.109 in the NASA regulations would become 18–1.109 under the CFR numbering system.

The numbering for the pages in NASA PR can be found in either the upper left-hand or right-hand corner. Such a page number might read "9–2:1". This indicates that it is Part 9, Subpart 2, page 1 of that particular subpart. A series of numbers also appears along the bottom of the pages. When on an even page, it indicates the subpart or paragraph that begins on that page. When on an odd page, it indicates the last subpart or paragraph that begins on that page.

This NASA Procurement Regulation Directive as issued by the Assistant Administrator for Procurement, NASA Headquarters, under authority delegated by the Administrator (NMD/A 5101.8E) pursuant to the National Aeronautics and Space Act of 1958 (Public Law 85–568, 72 Stat. 426).

NASA Procurement Regulation material published in this Directive is effective January 3, 1977; but compliance with this material is authorized upon receipt hereof.

Comments regarding this revision may be submitted to Assistant General Counsel for Patent Matters (Code GP), Office of General Counsel, NASA Headquarters, Washington, DC 20546.

DATA AND COPYRIGHTS

Part 9, Subpart 2 is revised. This revision (i) provides a basic rights in data clause for use in both research and development and supply contracts; (ii) includes provisions under which a contractor's privately developed computer software may be protected; (iii) provides for limited access to a contractor's trade secrets and/or privately developed computer software under prescribed circumstances; and (iv) makes other general modifications to data clauses and procedures for use thereof.

Accordingly, the NASA PR is revised as set forth below:

(a) Paragraph 3.501(b)(xlv) is revised to read as set forth in attached replacement page number 3–5:4.

(b) A new paragraph 3.501(b)(lxxxv) is inserted to read as set forth in attached replacement page number 3–5:11.

(c) Part 9, Subpart 2, is revised to read as set forth in attached replacement pages numbered 9–2:1—9–2:18.

PEN AND INK CHANGES

The following Pen and Ink Changes will be reflected in the 1976 Edition of the NASA PR, which is currently under preparation.

(a) In paragraph 1.304–1 change the term "Proprietary Data" wherever it appears, including the title, to "Protectible Data."

(b) In paragraphs 1.351(c)(i) and 5.5101 (a) and (b) change the referenced paragraph number "9.204–52" to read "9.203–6."

(c) Delete the current paragraph in 3.805–1(b)(vii) and insert the following:

(vii) Where it is considered necessary for NASA to have access during contract performance to proposal technical data which has been qualified by the offeror as protectible data, and will be excluded from the clause in 9.203–7(a), such access may be obtained under the provisions of 9.203–7(b).

(d) Delete current paragraphs in 7.104–9 and 7.204–9 and insert the following:

Rights in Data. If data is to be furnished NASA under the contract, insert the appropriate "Rights in Data" clause or clauses as prescribed in 9.203.

(e) Delete the text under paragraphs 7.104–50, 7.204–50, 7.303–50, 7.403–50 and 7.452–50, and insert the following:

Optional Data Requirements. In accordance with the requirements of 9.203–2, insert the clause set forth therein.

(f) Change paragraphs 7.104–61, 7.204–61, 7.303–61, 7.403–61, 7.452–61, 7.705–13 and 7.902–58 to read as follows:

Rights in Data for Potentially Hazardous Items. In accordance with the re-

quirements of 9.203–6, insert the clause specified therein.

(g) In paragraph 7.705–1, change the first sentence to read "In accordance with the requirements of 9.203, insert the appropriate clause or clauses prescribed therein."

(h) Change paragraphs 7.350–3 and 7.460–9 to read:

Rights in Data. Insert the appropriate clause as prescribed by 9.203.

STUART J. EVANS,
Assistant Administrator
for Procurement.

SOLICITATION OF PROPOSALS AND QUOTATIONS

(xxxiv) requirement that information be furnished with respect to any Government-owned facilities, industrial equipment, or special tooling intended to be used in the performance of the contract the value thereof, identification of the Government contract under which acquired, rental provisions, and other relevant information;

(xxxv) requirement that additional facilities to be provided by the Government be described and identified by category, such as "Land," "Buildings," "Machinery," "Equipment," etc., (see 13.601-1 for format);

(xxxvi) requirement that additional special test equipment to be provided by the Government be described and its intended use, estimated cost, and proposed location be shown;

(xxxvii) clear statement of option provisions (see Part 1, Subpart 15 and 12.1050);

(xxxviii) requirement for the contractor to furnish data, when the requirement for data is known in advance of making the contract and delivery of data is definitely to be required in the performance of the contract (see Part 9, Subpart 2 for detailed instructions and required clauses; see also 3.852-3);

(xxxix) special provisions necessary for the particular procurement, relating to such matters as patents, data, copyrights (see Part 9); liquidated damages (see 1.310); progress payments (see 7.104-35);

(xl) requirement for information to be furnished on management engineering and consultant services specified in 4.5205-2;

(xli) when NASA Financial Management Reporting is to be applicable to the procurement (7.104-53), offerors will be advised that the successful contractor will be required to report contract cost/manpower on a regular basis as set forth in NASA Handbook 9501.2A, "Procedures for Contractor Reporting Correlated Cost and Performance Data."

(xlii) a statement as follows:

UNNECESSARILY ELABORATE CONTRACTOR'S PROPOSALS
(NOVEMBER 1965)

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective proposal are not desired and may be construed as an indication of the offeror's lack of cost consciousness. Elaborate art work, expensive paper and bindings and expensive visual or other presentation aids are neither necessary nor desired.

The above statement shall be appropriately modified where included in a request for quotations;

(xliii) if the contract is to be conditioned on the availability of funds, a clear statement of such condition (see 1.318);

(xliv) requirement for submission of a proposed "Make or Buy" program (see Part 3, Subpart 9);

PROCUREMENT BY NEGOTIATION

(xlv) In accordance with the policies of 1.304-2(d) and 9.202-2(d) and the procedures of 9.202-3(e) the following shall be included in all requests for proposals:

TREATMENT OF TECHNICAL DATA

(a) The proposal submitted in response to this request may contain technical data which the offeror, or his subcontract offeror, does not want used or disclosed for any purpose other than evaluation of the proposal. The use and disclosure of any such technical data may be so restricted, provided the offeror marks the cover sheet of the proposal with the following Notice, specifying the pages of the proposal which are to be restricted in accordance with the conditions of the Notice. The Government assumes no liability for disclosure or use of unmarked technical data and may use or disclose such data for any purpose.

NOTICE

Technical data contained in pages _____ of this proposal shall not be used or disclosed, except for evaluation purposes, provided that if a contract is awarded to this submitter as a result of or in connection with the submission of this proposal, the Government shall have the right to use or disclose this technical data to the extent provided in the contract. This restriction does not limit the Government's right to use or disclose technical data obtained from another source without restriction.

(b) Offerors are futher advised that should a contract be awarded on a proposal submitted in response to this RFP, it is NASA policy, in consideration of the award, to obtain unlimited rights for the Government to the technical information contained in the proposal unless the prospective contractor establishes to the contracting officer's satisfaction that portions of the technical information qualifies as "protectible data" as defined in NASA PR 9.201(d), or that portions of such technical information do not relate directly to or will not be utilized in the work to be funded under the contract. In such instances the established information will be excluded from the Government rights by inserting the appropriate proposal page numbers in the "Rights to Proposal Data (Technical)" clause (NASA PR 9.203-7) included in the contract. The responsibility, however, of raising the question of possible exclusion of such technical information and qualifying it rests with the prospective contractor. Financial and business information contained in the proposal shall remain under the policy of NASA PR 1.304-4.

(xlvi) Requests for Proposal which will result in the placement of rated orders or Authorized Controlled Material Orders (see 1.307) shall contain the following statement.

Contracts or purchase orders to be awarded as a result of this solicitation shall be assigned a (DX or DO as appropriate) rating or DMS allotment number (as appropriate) in accordance with the provisions of BDC Regulation 2 and/or DMS Regulation 1.

(xlvii) [Reserved]

(xlviii) if leases are involved, the facilities nondiscrimination paragraph set forth in 1.350-4;

(xlix) when the use of Automatic Data Processing Equipment is applicable to the procurement (see 3.804-2(c)(2) and Part 3, Subpart 11), inclusion of the following provision:

"The Government reserves the right to require the preparation and submission of feasibility and lease versus purchase studies by the successful contractor if the use of Automatic Data Processing Equipment is proposed."

(l)(A) In accordance with 3.1203(a), the following notice:

DISCLOSURE STATEMENT-COST ACCOUNTING PRACTICES AND CERTIFICATION (JANUARY 1976)

Any contract in excess of $100,000 resulting from this solicitation, except (i) when the price negotiated is based on: (A) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (B) prices set by law or regulation, or (ii) are otherwise exempt (see 4 CFR 331.30(b)) shall be subject to the requirements of the

[Next page is 3-5:5]

(lxxxiv) The certification of Minority Business Enterprise required by 1.332-1(e).

(lxxxv) In accordance with the policy of 9.202-2(b) and the procedures of 9.202-3(c) the following statement shall be included in all requests for proposals:

IDENTIFICATION OF PROTECTIBLE DATA

(This provision is applicable only if the "Rights in Data-General" clause of NASA PR 9.203-3 is to be included in the contract)

This Request for Proposal (RFP) contains an identification of known requirements for data to be furnished NASA under the proposed contract. Should any of this data involve a proposer's protectible data as defined in the "Rights in Data-General" clause (NASA PR 9.203-3), the clause permits the Contractor to meet the requirements for data by furnishing form, fit, and function data in lieu of its protectible data. This withholding technique is the primary means by which the Contractor may protect its equitable position in its protectible data.

While NASA normally can achieve its contractual objectives with the use of form, fit, and function data in lieu of protectible data, there are circumstances where its needs require access to protectible data. In such instances appropriate provisions may be included in the "Rights in Data" clause to provide for the delivery of protectible data under restricted rights or limited rights conditions.

To provide visibility, and as an aid in determining whether a real need exists for NASA access to protectible data, proposers shall state in the proposal that the contract requirements for data have been reviewed, and further, shall either (1) state that none of the required data qualifies as protectible data, or (2) identify which of the required data qualifies as protecible data.

If it be determined that access is required to any protectible data so identified, then NASA intends to include paragraphs (f) and/or (g) of NASA PR 9.203-2(b) and (c) to the "Rights in Data" clause.

(c) In addition to the information specified in (b) above, for contracts in excess of $1,000,000 the request for proposal should contain requirements for the following information to be furnished by the offeror in his proposal, if applicable. This information may be required in the request for proposal for inclusion in contracts of lesser dollar value if deemed appropriate.

(1) Technical Proposal.

(i) method by which the offeror proposes to solve the technical problems of the project, other than information to be furnished elsewhere as a part of program or project support plan summaries. (See 3.501(c)(1)(vii) below).

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(ii) specification of exceptions to proposed technical requirements;

(iii) statement of background experience in fields relating to the procurement;

(iv) names and resumes of experience of key technical personnel who will be employed on the project and extent to which each will participate in the performance of the project; an organization chart of the segment of offeror's organization which will be directly assigned to the project, listing names and job categories;

(v) description and location of the company-owned research test and production equipment and facilities which will be available for use on the project; separate list of any additional facilities or equipment required in the performance of the work; separate list of existing Government facilities available to the contractor and required for use on the project;

(vi) hourly time estimates (without pricing information) by labor class for each phase or segment of the project; extent to which these estimates are based on the use of employees presently on the offeror's payrolls who will be available for the work as required; indication of number and types of personnel necessary to be hired and arrangements made to obtain them; and

(vii) For negotiated procurements conducted under Source Evaluation Board procedures where detailed program or project support plans will be required as part of the offeror's proposal, and when such plans are not considered to be important discriminators in the evaluation process but only provide technical or management support to the primary product or service being offered, the requirements for these plans shall be described in separate Appendices to the Statement of Work. As part of their original proposal, offerors will be required to submit an estimate of the cost and manpower to perform major tasks under each requirement separately identified, and a summary of the major task elements to perform each requirement. Offerors will also be required to indicate that they understand that a detailed program or project support plan will be ultimately required if they are selected for negotiations, and that such plans will be negotiated into the proposed contract prior to award.

(2) Business Management Proposal.

(i) organization proposed for carrying out the project, including organization charts showing interrelationship of business management, technical management and subcontract management; indication of all levels of operation and management, from lower levels through intermediate management to top level management;

(ii) resume of experience of all key personnel who will conduct the managerial affairs of the project;

(iii) contractual procedures proposed for the project to effect administrative and engineering changes; describing differences from existing procedures;

(iv) extent to which offeror has invested corporate funds in research and development work in the project

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area or directly related areas and plans for future expenditures for such work; extent, if any, to which offeror is willing to participate in the cost of the project (see 3.405-3);

(v) statement as to capacity at which company-owned research test, and production equipment and facilities required in the performance of the work are currently working; extent to which such facilities and equipment could handle the additional workload imposed by this project; cost of any additional facilities or equipment required in the performance of the work with information as to whether such additional facilities or equipment will be contractor-furnished or Government-furnished; statement of value of existing Government facilities available to offeror and required for use on the project, showing the Government agencies and facilities contracts involved;

(vi) statement of past performance and experience including:

(A) list of Government contracts in excess of $1,000,000 received in past three years or currently in negotiation involving mainly research and development work, showing each contract number, Government agency placing the contract, type of contract, and brief description of the work;

(B) for each cost-type contract, specify amounts of cost overruns or underruns, reasons therefor, and percentage of fixed fee;

(C) for each contract, give record of contract completion as against completion date anticipated at time of entering into contract, giving explanations for completion delays;

(D) identify and explain any terminations for default or Government convenience;

(vii) balance sheet for offeror's last fiscal year, accompanied by profit and loss statement;

(viii) detailed cost or price proposal, furnished as a separate, detachable element of the business management proposal;

(ix) in soliciting proposals for support services requiring price quotations for a cost reimbursement type contract the request for proposals should set forth available data respecting the quantity and quality of supplies and services required. These data should be set forth in terms of man hours of identifiable categories of labor, including experience and related qualifications, and in terms of quantities of supplies, all exclusive of costs. To be responsive, a proposer must submit a detailed cost or price proposal based on the effort described or estimated in the request for proposals. If the proposer feels that the work can be accomplished more efficiently with organizational plans, staffing, management or equipment other than those indicated in the request for proposal, he may also submit an alternate proposal, supported by a detailed cost or price proposal;

(d) Requests for proposals, which are subject to the

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review and approval of a Source Evaluation Board, should be developed in accordance with the above paragraphs and the requirements of paragraph 403 of the NASA Source Evaluation Board Manual (NHB 5103.6).

(e) Request for proposals for procurements which are subject to Title VI of the Civil Rights Act of 1964 (Public Law 88-352; 42 U.S.C. 2000 d-1), shall include a requirement for obtaining an "Assurance of Compliance" (NASA Form 1206) in accordance with the provisions of paragraph 1.355.

PART 9—PATENTS, DATA, AND COPYRIGHTS

Subpart 1—Innovations, Inventions, and Patents

Subpart 2—Data and Copyrights

Subpart 2-Data and Copyrights

9.200 Scope of Subpart. This Subpart sets forth NASA policy, implementing procedures, and contract clauses with respect to acquisition of data, rights in data, and copyrights.

9.201 Definitions. For the purpose of this Subpart, the following terms have the meanings set forth below:

(a) "Data" means recorded information, such as but not limited to writings, drawings, recordings, and pictorial representations, regardless of form or the media on which it may be recorded. The term does not include information incidental to contract administration, such as financial and business reports.

(b) "Computer Software" means data in the form of computer programs, computer data bases, and documentation thereof.

(c) "Subject Data" means data specified to be or which are in fact delivered pursuant to a contract, and data first produced in performance of a contract.

(d) "Protectible Data" means:

(1) Data which constitute a contractor's trade secrets, but only to the extent that such data relate to items, components, or processes, including minor modifications thereof, which were developed at private expense; and

(2) Computer software developed at private expense which has been protected by a contractor from unrestricted use, duplication, or disclosure by others.

However, as to (d)(1) above, the term "protectible data" does not include training manuals, or instructional material for installation, operation, routine maintenance or repair.

(e) "Form, Fit, and Function Data" means data pertaining to items, components, or processes which identify sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements; except that for computer software it means source, function, and performance data.

(f) "Unlimited Rights" means the right to use, duplicate, and disclose, in whole or in part, in any manner and for any purpose whatsoever, and have others so do.

(g) "Limited Rights" means the right to duplicate and use noncomputer software type of protectible data with the express limitation that such data will not be disclosed outside the Government nor used for purposes of manufacture without permission of the contractor; provided, however, that the Government may disclose this data for use by onsite employees of support service contractors where such contractors have agreed to protect this data from unauthorized use or disclosure.

(h) "Restricted Rights" means that the Government may not duplicate, use, nor disclose computer software type of protectible data except as provided in the minimum rights set forth below or such additional rights as may be provided in the contract.

The Government may:

(1) Use computer software with the computer for which it was acquired, including use at any Government installation to which the computer may be transferred;

(2) Use computer software with a backup computer if the computer for which it was acquired is inoperative;

(3) Copy computer software for safekeeping (archives) or backup purposes;

(4) Modify computer software or combine it with other software, subject to the provision that where the derivative software contains portions which remain identifiable as protectible data, such portions shall be subject to the same restricted rights;

(5) Disclose computer software for use by onsite employees of support service contractors, providing such contractors agree to protect such computer software from unauthorized use or disclosure; and

(6) Treat computer software, if it bears a copyright notice, as a published copyrighted work licensed to the Government with minimum rights in accordance with subparagraphs (1) throught (4) above.

9.202 Acquisition of Data and Rights in Data.

9.202-1 Background. In order for NASA to carry out its statutory responsibility to perform research and development in the fields of aeronautics and space and to provide for the widest practicable and appropriate dissemination of the results of these activities, it is necessary that NASA acquire many kinds of data developed under or used in the performance of its contracts. At the same time NASA recognizes that its contractors have a valid economic interest in data resulting from private investment. The protection of this data is desirable in order to encourage qualified contractors to participate in NASA programs. The policies, procedures, and clauses set forth herein strike a balance between NASA's needs and a contractor's equities.

9.202-2 Policy.

(a) Acquisition of Data-General.

(1) Distinction Between Data Acquisition and Data Rights. It is important to recognize and maintain the conceptual distinction between contract provisions whose purpose is to identify data to be delivered or furnished to the Government, and other contract provisions whose purpose is to specify the respective legal rights of the Government and the contractor in such data. Paragraphs (a), (b), and (c) herein pertain to policy dealing with acquisition of data. Paragraphs (d) and (e) pertain to policy dealing with rights in data.

(2) Known Requirements for Data. It is NASA's policy to determine, to the extent feasible, its known requirements for data in time for inclusion in Requests for Proposals and Invitations for Bids. Such requirements for data will be further considered during negotiations and included in any resulting contract.

(3) Optional Data Requirements. Recognizing that NASA's requirements for data may not be determinable fully at the time of contracting, it is NASA's policy

to preserve a contractual right to later acquire additional data when such requirements have been determined.

(b) Limitation on Acquisition.

(1) When privately-developed items, components, or processes are involved in the performance of work under a contract, and the contractor has related protectible data, it is NASA's policy normally to permit the contractor to meet NASA's requirements for data by furnishing form, fit, and function data for such items, components, or processes in lieu of providing the protectible data. This policy of normally permitting the contractor to withhold its protectible data is the primary means by which the contractor may protect its equitable position.

(2) In order to ascertain whether form, fit, and function data will be adequate to satisfy NASA's needs, prospective contractors will be required to identify in their proposals, to the extent feasible, any of the required data which qualifies as protectible data.

The contractor's response will assist NASA in determining, prior to contracting, whether its procurement needs can be satisfied with form, fit, and function data, or whether arrangements must be made for access to such protectible data.

(3) NASA's policy of normally permitting its contractors to furnish form, fit, and function data in lieu of protectible data does not extend to contracts or elements thereof which have as a significant requirement the development of computer software. It is NASA policy in these procurements to require the delivery of all computer software specified in the contract. In those instances where the contractor has a significant equitable position in the computer software, contract provisions may provide for portions of the software to be subject to restricted rights.

(c) Acquisition of Protectible Data. Normally, under NASA's policy, protectible data may be withheld by the contractor, provided that form, fit, and function data is furnished in its place. This policy puts the least burden on the Government in regards to its obligation to safeguard protectible data, and affords the maximum protection to the contractor. Therefore, this is NASA's preferred contracting approach. It is recognized, however, that there will be certain instances where NASA's procurement needs cannot be met unless there is access to a contractor's protectible data. In those special instances it is NASA policy to provide contract provisions which will permit NASA to require delivery of protectible data with limited and/or restricted rights. The Government's agreement to use the protectible data only for authorized purposes constitutes an alternate means by which the contractor may protect its equitable position.

(d) Rights in Data-Government. In general, it is NASA policy to obtain unlimited rights in all subject data. However, if a contractor's protectible data is to

be furnished under contract, it normally may be furnished with limited rights or restricted rights, as appropriate. If greater rights are needed by the Government in such protectible data a separate fair price will be negotiated. In no instance will NASA require a contractor to forfeit its rights to protectible data as a condition of receiving a contract.

While protection is available for data contained in contract proposals during the period of evaluation, it is NASA policy to obtain unlimited rights in the technical data contained in successful proposals. However, such rights normally will not extend to portions of the proposal not contracted for, nor for data which qualifies as protectible data.

NASA reserves the right to correct, cancel, or ignore any unauthorized notice or legend on data received under contracts.

(e) Rights in Data-Contractors. In general, NASA contractors have the right to use, duplicate, and disclose data which they first produce under NASA contracts. Also, NASA contractors normally have the right to withhold and not furnish their protectible data. In those cases where protectible data is to be furnished, NASA contractors have the right to affix a "Restrictive Rights" or a "Limited Rights" notice to such data.

On a case-by-case basis contractors may be permitted to copyright data first produced under a contract. In certain types of procurements contractors will be required to obtain NASA approval prior to publishing or releasing computer software first produced under contract.

(f) Copyright.

(1) Data First Produced Under Contract. Contractors must obtain NASA approval prior to copyrighting data first produced under contract. Approvals will be granted where it is established that such copyright will best serve NASA's statutory obligation to provide for the widest practicable and appropriate dissemination of NASA-developed information. NASA reserves for the Government, and others acting on its behalf, a royalty-free, nonexclusive, irrevocable, worldwide license for Governmental purposes to publish, distribute, translate, copy, exhibit, and perform any such data copyrighted by the contractor.

(2) Data Not First Produced Under Contract. As a general rule, contractors shall not incorporate copyrighted material in subject data not first produced under its contract unless:

(i) the contractor grants to the Government, and others acting on its behalf, without expense to the Government, a royalty-free, nonexclusive, irrevocalbe, worldwide license for Governmental purposes, to publish, distribute, translate, copy, exhibit, and perform such copyrighted subject data; or

(ii) the contractor obtains the written permission of the contracting officer; or

(iii) with respect to computer software type of protectible data, other rights are specified in the contract.

9.202-3 Procedures.

(a) Procedure for Determining NASA's Requirements for Data. As part of determining the contract requirements, the cognizant technical office shall determine what data will be required during contract performance, and when it shall be delivered. These requirements and delivery schedule will be made known to the contracting officer in time for inclusion in requests for proposals and invitations for bids. The requirements may, for example, include progress reports, maintenance manuals, detailed technical drawings, quality assurance plans, and many other kinds of data. It is necessary that all data to be furnished be specified in the contract as a requirement. In order to avoid unnecessary costs, it is also important that the contract requirements for data be limited to the Government's real needs. Thus, the determination of contract requirements for data must be individually considered for each procurement.

(b) Procedure for Considering a Contractor's Request to Copyright. Under NASA's policy, contractors may be granted permission to copyright data first produced under their contracts where such copyright will best serve NASA's statutory obligation to provide for the widest practicable and appropriate dissemination of NASA development information. A contractor must request such permission in writing from the contracting officer. This request shall identify or furnish a copy of the data which he desires to copyright and provide his plans and intentions for publication and dissemination. The contracting officer shall forward the request to the installation patent counsel who, after consultation with appropriate officials, will advise the contracting officer as to whether permission is recommended. Where permission is granted the contractor will be required to include a credit line on the copyrighted material to insure that members of the public as well as interested Government personnel are given notice of Government rights in the published work as provided for in the contract.

NASA normally will not grant permission to the contractor to copyright in the following situations:

(i) the work consists of a report which represents the official views of the agency or which the agency is required to prepare by statute; or

(ii) the work is intended primarily for internal use by the Government; or

(iii) the work is a computer program, computer data base, or documentation relating thereto which NASA intends to disseminate to the public.

(c) Procedure for Determining Need for Including Paragraphs (f) and/or (g) in the "Rights in Data-General" Clause (9.203-3). As explained in 9.202-2(b), NASA contracts normally permit contractors to satisfy contract requirements for data by furnishing form, fit, and function data in lieu of protectible data. However,

where a real need is established for access to a contractor's protectible data, paragraphs (f) and/or (g) of 9.203-3(b) and (c) may be added to the "Rights in Data-General" clause which then permits NASA to call up protectible data under limited rights or restricted rights conditions. To provide visibility, and as an aid in determining when a real need exists, NASA RFP's instruct proposers to state in the proposal that the contract requirements for data have been reviewed, and further, shall either (1) state that none of the required data qualifies as protectible data, or (2) identify which of the required data qualifies as protectible data.

If required data is identified in the proposal as protectible, the cognizant technical officer shall determine whether the contract objectives can be met with form, fit, and function data. If not, the rationale for requiring access to protectible data shall be documented in a request to the installation Procurement Officer for authority to include paragraphs (f) and/or (g) in the "Rights in Data-General" clause. The Procurement Officer, after consulting with patent counsel, may authorize inclusion of one or both paragraphs upon his determination that a real need exists. In any case, the question of whether any of the required data qualifies as protectible data will be specifically discussed during contract negotiations to assure that both parties have a clear understanding of the other's position, and the results of such discussion shall be reflected in the minutes of the negotiation.

(d) Procedure for Acquiring Protectible Data Under Paragraphs (f) and/or (g) of the "Rights in Data-General" Clause (9.203-3). NASA has adopted the "withholding" approach as the primary means for protecting a contractor's protectible data. (See 9.202-2(b) and (c) above). The fact that optional paragraph (f) and/or (g) may be added to the "Rights in Data-General" clause does not change this fact. If a contractor wishes to continue protection of its protectible data, it must still comply with the withholding provisions of paragraph (e) of that clause. Contractors are not authorized to affix a "Limited Rights" notice or a "Restricted Rights" notice of any data unless and until the contracting officer has made a written request pursuant to paragraph (f) and/or (g) for data specifically identified, or the contract specifically provides that the data is subject to limited rights or restricted rights. Marked data submitted under contract without such specific authorizations shall be treated as data with unauthorized notices or legends, and the contractor stands to lose rights in such data. Accordingly, it is important that this procedure be followed carefully.

The acquisition of a contractor's protectible data with limited or restricted rights carries with it an obligation on the part of all NASA employees who may have access to such data to safeguard it against unauthorized use or disclosure. Since the responsibility

also represents an administrative burden, every effort shall be made to satisfy NASA's needs through the use of form, fit, and function data in lieu of a contractor's protectible data. It is encumbent on contracting officers to verify NASA's real need before making a request pursuant to paragraphs (f) and/or (g), and to limit the request to data specifically identified.

(e) Procedure for Acquiring Rights to Data (Technical) in Successful Proposals. To implement NASA's policy of acquiring unlimited rights in the technical data contained in successful proposals, the clause of 9.203-7 shall be included in all contracts, the award of which is based upon a solicited or unsolicited proposal. Prospective contractors are informed of this policy in the RFP (see 3.501(b)(xlv), and during negotiations of a contract on unsolicited proposals, and are advised that if a contract is awarded they are entitled to and may request that certain technical data be excluded from the rights granted to the Government by this clause. Exclusion of proposal data is permissible where the prospective contractor establishes to the contracting officer's satisfaction that portions of such data qualify as "protectible data" as defined in 9.201(d), or that portions of such technical data do not relate directly to or will not be utilized in the work to be funded under the contract. In those instances such data shall be excluded by inserting the appropriate page numbers in the clause. The responsibility for raising the question of possible exclusion of such data and qualifying it rests with the prospective contractor.

In the event it is considered necessary for NASA to have access during contract performance to protectible data excluded from the clause provisions, such access may be obtained under the provisions set forth in 9.203-7(b).

9.203 Clauses.

9.203-1 Overview.

(a) This paragraph contains instructions for selecting the appropriate data clauses for use in NASA contracts. All NASA contracts contain provisions specifying the data (as defined in 9.201(a)) to be furnished thereunder, to the extent that NASA's requirements for data can be determined at the time of contracting. However, when contracting for research and development and related services, usually it is not feasible to determine all the requirements for data at the time of contracting. Thus an "Optional Data Requirements" clause is provided to give NASA an option to require delivery of additional data first produced or specifically used during contract performance. (See 9.203-2 for the use of the "Optional Data Requirements" clause.)

(b) All contracts requiring data to be furnished to NASA require a clause to delineate the rights of both the Government and the contractor in such data. The basic and most frequently used data rights clause is

the "Rights in Data-General" clause set forth in 9.203-3. It is suitable for use in most experimental, developmental, research, or study contracts, as well as contracts for supplies and services which require data to be furnished. Additional paragraphs may also be added to this basic clause to enable access to a contractor's protectible data (as defined in 9.201(d)) under limited rights or restricted rights conditions when there is an established need for such access. See 9.202-3(c) for procedures for use of these additional paragraphs and 9.202-3(d) for procedures for acquiring such protectible data.

(c) Some contracts, however, will require the use of different data rights clauses because of differences in the subject matter of the contract or of different rights needed. Contracts, or portions thereof, which have as a primary purpose or as a signifcant requirement the development of computer software require the use of the "Rights in Data-Special Situations" clause of 9.203-4. Contracts, or portions thereof, for the production of motion pictures, preparation of scripts, musical compositions, sound tracks, video recordings, translations, adaptations, and the like intended for general release to the public require certain release restrictions and indemnity provisions provided by the "Rights in Data-Motion Pictures" clause of 9.203-5. To assure access to data pertaining to potentially hazardous items, the "Rights in Data-Potentially Hazardous Items" clause of 9.203-6 is provided for use in conjunction with the basic clause of 9.203-3, in contracts having items designated therein as potentially hazardous.

(d) To assure an understanding of the rights of the Government and the contractor to the technical data contained in successful proposals, the clause of 9.203-7 is provided.

(e) The clause of 9.203-8 is provided for contracts where all or the preponderance of the work is to be performed outside of the United States.

(f) Special instructions with accompanying rights in data clauses are provided for contracts (1) for purchase of existing books and similar items (9.203-9), (2) for purchase of existing motion pictures or television recordings (9.203-10), and (3) for purchase of existing computer software (9.203-11).

9.203-2 Optional Data Requirements.

The clause set forth below shall be included in experimental, developmental, research, or study contracts. It may also be used in other contracts which have as a significant requirement the first production of data. The installation Procurement Officer is authorized, after consultation with patent counsel, to make changes in the clause to meet special circumstances.

OPTIONAL DATA REQUIREMENTS (JANUARY 1977)

In addition to the data specified elsewhere in this contract to be furnished, the Contracting Officer may at any time during the contract performance or within one year after final payment require the Contractor to furnish any data first produced or specifically used in the performance of this contract or any subcontract hereunder. The terms of the "Rights in Data" clause included in this contract are applicable to data required under this clause. When data is furnished under this clause the Contractor shall be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

9.203-3 Rights in Data-General

(a) The clause set forth below shall be used in all contracts calling for the delivery of data, unless another clause is specifically required by subsequent provisions:

RIGHTS IN DATA - GENERAL (JANUARY 1977)

(a) Definitions.

(1) "Data" means recorded information, such as but not limited to writings, drawings, recordings, and pictorial representations, regardless of form or the media on which it may be recorded. The term does not include information incidental to contract administration, such as financial and business reports.

(2) "Computer Software" means data in the form of computer programs, computer data bases, and documentation thereof.

(3) "Subject Data" means data specified to be or which are in fact delivered pursuant to this contract, and data first produced in performance of this contract.

(4) "Protectible Data" means:

(i) data which constitutes Contractor's trade secrets but only to the extent that such data relates to items, components, or processes including minor modifications thereof, which were developed at private expense; and

(ii) computer software developed at private expense which has been protected by the Contractor from unrestricted use, duplication, or disclosure by others.

However, as to (a)(4)(i) above, the term "Protectible Data" does not include training manuals, or instructional material for installation, operation, routine maintenance or repair.

(5) "Form, Fit, and Function Data" means data pertaining to items, components, or processes which identify sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements; except that for computer software it means source, function, and performance data.

(b) Rights.

(1) The Government shall have the right to use, du-

plicate, and disclose, in whole or in part, in any manner and for any purpose whatsoever, and have others so do, all subject data unless otherwise limited below.

(2) The Government shall have the right at any time to correct, cancel, or ignore any restrictive notice or legend on subject data not authorized by the terms of this contract. Restrictive notices are authorized only in the event paragraphs (f) and/or (g) are included in this contract and the contract specifically provides that data subject to these paragraphs is to be furnished, or the Contracting Officer has made a written request for protectible data pursuant to such paragraphs.

(c) Copyright.

(1) Subject Data First Produced Under This Contract. The Contractor shall not, without prior written permission of the Contracting Officer, establish a claim to statutory copyright in any subject data first produced under this contract. The Government, and others acting on its behalf, shall have a royalty-free, nonexclusive, irrevocable, worldwide license for Governmental purposes to publish, distribute, translate, copy, exhibit, and perform any such data copyrighted by the Contractor. Where the Contractor publishes or releases computer software first produced under this contract without claim of copyright, it shall simultaneously furnish the Contracting Officer with a copy of such software and a statement as to the circumstances of the publication or release.

(2) Subject Data Not First Produced Under This Contract. Except for computer software to be furnished pursuant to paragraph (g) herein, the Contractor shall not incorporate copyrighted data in subject data not first produced under this contract unless:

(i) the Contractor grants to the Government, a royalty-free, nonexclusive, irrevocable, worldwide license for Governmental purposes, to publish, distribute, translate, copy, exhibit, and perform such copyrighted subject data; or

(ii) the Contractor obtains the written permission of the Contracting Officer.

(d) Relationship to Patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(e) Withholding of Protectible Data.

(1) Except as provided in (2) below, where data which is specified in the contract to be furnished meets the definition of protectible data in (a)(4) above, the Contractor, if it desires to continue protection of such data, shall withhold such data and not furnish it to the Government under this contract. However, as a condition to withholding, the Contractor must identify the protectible data being withheld, and furnish in lieu thereof form, fit, and function data.

(2) In the event a protectible data acquisition provision is included in this clause (paragraphs (f) and/or (g) below), the Contracting Officer may require the furnishing of protectible data in accordance with the terms of such provisions.

(f) (Reserved).

(g) (Reserved).

(End of clause)

(b) The following paragraph (f) is authorized for insertion in the above clause (either at the time of contracting or subsequently by amendment) where it has been determined pursuant to 9.202-3(c) above that there is a real need for NASA to acquire a contractor's noncomputer software type of protectible data.

(f) Acquisition of Protectible Data-Noncomputer Software. Upon written request of the Contracting Officer for any of the noncomputer software type of data which has been withheld pursuant to paragraph (e) of this clause, the Contractor shall promptly furnish such data. The following notice is authorized to be affixed to the data furnished and the Government will thereafter treat the data in accordance with such notice:

LIMITED RIGHTS NOTICE

This data is a trade secret of _____, and is submitted in confidence under NASA contract No. _____(and subcontract _____, if appropriate) on _____(date). It may be duplicated and used by the Government with the express limitation that it will not, without permission of the Contractor, be disclosed outside the Government, or used for purposes of manufacture. However, the Government may disclose this data for use by onsite employees of support service contractors, providing such Contractors have agreed in writing to protect this data from unauthorized use or disclosure. These restrictions shall terminate seven (7) years from the submittal date specified in this notice. This notice shall be marked on any reproduction of this data, in whole or in part.

(c) The following paragraph (g) is authorized for insertion in the above clause (either at the time of contracting or subsequently by amendment) where it has been determined pursuant to 9.202-3(c) above that there is a real need for NASA to acquire a contractor's computer software type of protectible data:

(g) Acquisition of Protectible Data-Computer Software. Upon written request of the Contracting Officer for any computer software which has been withheld pursuant to paragraph (e) of this clause, the Contractor shall promptly furnish such data. The following notice is authorized to be affixed to the data furnished and the Government will thereafter treat the data in accordance with such notice:

PATENTS, DATA AND COPYRIGHTS

RESTRICTED RIGHTS NOTICE

This computer software is the property of _____ and is furnished under NASA contract No. _____ (and subcontract _____, if appropriate). It may not be used, duplicated, nor disclosed by the Government except as provided below or as otherwise stated in the contract.

The Government may:

(i) use this computer software with the computer for which it was acquired, including use at any Government installation to which the computer may be transferred;

(ii) use this computer software with a backup computer if the computer for which it was acquired is inoperative;

(iii) copy this computer software for safekeeping (archives) or backup purposes;

(iv) modify this computer software or combine it with other software, subject to the provision that where the derivative software contains portions which remain identifiable as protectible data, such portions shall be subject to the same restricted rights;

(v) disclose this computer software for use by onsite employees of support service contractors providing such contractors agree to protect such computer software from unauthorized use or disclosure; and

(vi) treat this computer software, if it bears a copyright notice, as a published copyrighted work licensed to the Government with minimum rights in accordance with subparagraphs (i) through (iv) above.

Any greater rights which the Government may have acquired in this computer software are stated in the contract. This notice shall be marked on any reproduction of this computer software, in whole or in part.

Where it is impractical to include the above notice on computer software in machine readable form, the following short form notice may be used in lieu thereof:

RESTRICTED RIGHTS NOTICE (SHORT FORM)

Duplication, use, or disclosure is subject to restrictions stated in contract No. _____ with _____ (name of Contractor).

9.203-4 Rights in Data-Special Situations.

(a) The following clause shall be used in lieu of the clause of 9.203-3(a) in contracts having as a principal purpose the development of computer software, and shall also be used in addition to the clause of 9.203-3(a) in contracts which have, as a portion of the total effort, a significant requirement for the development of computer software. In the latter case the contract shall specify which portion of the contract work is covered by which clause.

DATA AND COPYRIGHTS

RIGHTS IN DATA-SPECIAL SITUATIONS (JANUARY 1977)

(a) Definitions.

(1) "Data" means recorded information, such as but not limited to writings, drawings, recordings, and pictorial representations, regardless of form or the media on which it may be recorded. The term does not include information related to contract administration, such as financial and business reports.

(2) "Computer Software" means data in the form of computer programs, computer data bases, and documentation thereof.

(3) "Subject Data" means data specified to be or which are in fact delivered pursuant to this contract, and data first produced in performance of this contract.

(4) (Reserved).

(b) Rights.

(1) The Government shall have the right to use, duplicate, and disclose, in whole or in part, in any manner and for any purpose whatsoever, and have others so do, all subject data unless otherwise limited below.

(2) The Government shall have the right at any time to correct, cancel, or ignore any restrictive notice or legend on subject data not authorized by the terms of this contract. Restrictive notices are authorized only in the event paragraph (g) is included in this clause.

(c) Copyright.

(1) Subject Data First Produced Under This Contract. The Contractor shall not, without prior written permission of the Contracting Officer, (i) establish a claim to statutory copyright in any subject data first produced under this contract, nor (ii) publish or release to others computer software first produced in the performance of this contract. The Government and others acting on its behalf, shall have a royalty-free, nonexclusive, irrevocable, worldwide license for Governmental purposes to publish, distribute, translate, copy, exhibit, and perform any such data copyrighted by the Contractor.

(2) Subject Data Not First Produced Under This Contract. Except for computer software to be furnished pursuant to paragraph (g) herein, the contractor shall not incorporate copyrighted data in subject data not first produced under this contract unless:

(i) the Contractor grants to the Government, and others acting on its behalf, without expense to the Government, a royalty-free, nonexclusive, irrevocable, worldwide license for Governmental purposes, to publish, distribute, translate, copy, exhibit, and perform such copyrighted subject data; or

(ii) the Contractor obtains the written permission of the Contracting Officer.

(d) Relationship to Patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(e) (Reserved).

PATENTS, DATA AND COPYRIGHTS

(f) (Reserved).
(g) (Reserved).
(End of clause)

(b) The following paragraphs (a)(4) and (g) are authorized for insertion in the above clause where it has been determined pursuant to 9.202-3(c) above that the computer software to be furnished under a contract includes a contractor's computer software type of protectible data which the contractor wishes to protect:

(a)(4) "Protectible Data" means computer software developed at private expense which has been protected by Contractor from unrestricted use, duplication, or disclosure by others.

(g) Acquisition of Protectible Data-Computer Software. Computer software may be identified in the contract as being subject to this paragraph (g). Provided such data qualifies as protectible data under paragraph (a)(4) and if the Contractor desires to continue protection of such data, the following notice shall be affixed to the data furnished and the Government will thereafter treat the data in accordance with such notice:

RESTRICTED RIGHTS NOTICE

This computer software is the property of _____ and is furnished under NASA contract No. _____ (and subcontract _____, if appropriate). It may not be used, duplicated, nor disclosed by the Government except as provided below or as otherwise stated in the contract.

The Government may:

(i) use this computer software with the computer for which it was acquired, including use at any Government installation to which the computer may be transferred;

(ii) use this computer software with a backup computer if the computer for which it was acquired is inoperative;

(iii) copy this computer software for safekeeping (archives) or backup purposes;

(iv) modify this computer software or combine it with other software, subject to the provision that where the derivative software contains portions which remain identifiable as protectible data, such portions shall be subject to the same restricted rights;

(v) disclose this computer software for use by onsite employees of support service contractors providing such contractors agree to protect such computer software from unauthorized use or disclosure; and

(vi) treat this computer software, if it bears a copyright notice, as a published copyrighted work licensed to the Government with minimum rights in accordance with subparagraphs (i) through (iv) above. Any greater rights which the Government may have acquired in this computer software are stated in the contract.

DATA AND COPYRIGHTS

This notice shall be marked on any reproduction of this computer software, in whole or in part.

Where it is impractical to include the above notice on computer software in machine readable form, the following short form notice may be used in lieu thereof:

RESTRICTED RIGHTS NOTICE (SHORT FORM)

Use, duplication, or disclosure is subject to restrictions stated in contract No. _____ with _____(name of Contractor).

9.203-5 Rights in Data-Production of Motion Pictures. The "Rights in Data-Special Situations" clause of 9.203-4, with the additions of paragraphs (h) and (i) below, shall be used in contracts for the production of motion pictures, preparation of scripts, musical compositions, sound tracks, video recordings, translations, adaptations and the like intended for general release to the public (as opposed to using motion pictures to record scientific and technical data). The clause in 9.203-4 with the addition of paragraphs (h) and (i) below shall also be used in addition to the "Rights in Data-General" clause of 9.203-3(a), where works of the type set forth above are only a portion of the work specified in the contract, in which case the contract shall specify which portion of the contract work is covered by which clause.

(h) Release Restrictions. Unless otherwise specifically provided for by this contract, the Contractor shall not use for purposes other than this contract, nor copy, publish, or release any subject data first produced in the performance of this contract nor authorize others so to do without permission of the Contracting Officer.

(i) Indemnity. The Contractor shall indemnify, and save and hold harmless, the Government, its officers, agents, and employees, acting within the scope of their official duties, and on behalf of the Government, against any liability, including costs and expenses for (i) the violation of proprietary rights, copyright, or right of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract; and (ii) any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply to material furnished to the Contractor by the Government and incorporated in subject data.

9.203-6 Rights in Data-Potentially Hazardous Items. (a) When procuring items designated in accordance with 1.351 as potentially hazardous, the policies and instructions set forth in this paragraph shall prevail over all other policies and instructions contained in

this Subpart 2. The term "items" as used herein includes components of items.

(b) The "Rights in Data-General" clause set forth in 9.203-3(a) shall be included in the contract calling for such items and the following clause shall also be made a part of the contract.

RIGHTS IN DATA-POTENTIALLY HAZARDOUS ITEMS (JANUARY 1977)

(a) Paragraph (e) of the "Rights in Data-General" clause of this contract shall not apply to, and therefore there shall be no withholding of, data identified in the contract as being required to be delivered for items or components of items which are designated as being potentially hazardous.

(b) In the event any of the identified and required data for potentially hazardous items qualifies as protectible data under the definition of (a)(4) of the "Rights in Data-General" clause of this contract, and the Contractor desires to continue protection of such data he shall affix the "Limited Rights" notice set forth in 9.203-3(b).

9.203-7 Rights to Proposal Data (Technical)

(a) The following clause shall be included in all contracts resulting from a solicited or unsolicited proposal. This clause shall not be expanded to cover rights to financial and business information contained in a proposal which information remains under NASA's policy for treatment of privileged business information included in proposals as prescribed in 1.304-4.

RIGHTS TO PROPOSAL DATA (TECHNICAL)(JANUARY 1977)

Except for technical data contained on pages _____, it is agreed that as a condition of the award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have the right to use, duplicate, and disclose and have others so do for any purpose whatsoever, the technical data contained in the proposal upon which this contract is based.

(b) Where it is considered necessary for NASA to have access during contract performance to proposal technical data which qualifies as protectible data (see 9.201(d)), the following provision shall be added to the "Rights to Proposal Data (Technical)" clause:

Technical data on pages ____ shall be subject to the "Limited Rights" notice provided in NASA PR 9.203-3(b), which the Government shall affix to the proposal.

9.203-8 Contracts with Foreign Sources to be Performed Outside the United States.

(a) Except as otherwise provided in 9.203-5 and 9.203-9, 10, 11, in contracts with foreign sources

whereunder the work is to be performed outside the United States, it possessions, and Puerto Rico, insert the following clause when the United States Government is to acquire unlimited rights in all technical data, including reports, drawings, and blueprints, and all computer software, specified to be delivered to the Government.

RIGHTS IN DATA-FOREIGN (JANUARY 1977)

The United States Government may use, duplicate, and disclose, in any manner and for any purpose and have others so do, all information and data, including reports, drawings, blueprints, and computer software, which are specified to be or which are in fact delivered pursuant to this contract.

(b) Where, however, the same rights are to be obtained as would be obtained in contracting with United States firms the clause of 9.203-3 or 9.203-4, or both, as appropriate, shall be included in the contract. The clause or clauses may be modified after consultation with patent counsel, to meet the requirements necessary for and peculiar to a foreign country, provided such modifications are in basic agreement with the policies set forth in 9.202-2.

9.203-9 Contracts for Purchase of Existing Books and Similar Items.

Notwithstanding the instructions of any other paragraph of this Subpart, no contract clause contained in this Subpart need be included in contracts for the separate, sole procurement of data, other than motion pictures or computer software, in the exact form in which such material exists prior to the initiation of a request for purchase (such as the off-the-shelf purchases of existing products) unless the right to reproduce such data is an objective of the contract.

9.203-10 Contracts for Purchase of Existing Motion Pictures or Television Recordings.

(a) The following clause shall be used in contracts exclusively for the procurement of existing motion pictures or television recordings. The Schedule of the contract may set forth limitations consistent with the purposes for which the material covered by the contract is being procured. Examples of these limitations are (i) means of exhibition or transmission, (ii) time, (iii) type of audience, and (iv) geographical location. Paragraph (b) of the clause should be modified after consultation with patent counsel, to make the indemnity coextensive with the rights acquired under paragraph (a) of the clause as limited by the Schedule of the contract.

RIGHTS IN DATA-EXISTING WORKS (JANUARY 1977)

(a) Except as otherwise provided in the Schedule of this contract, the Contractor hereby grants to the Gov-

ernment a royalty-free, nonexclusive, irrevocable license to distribute, perform, use, and exhibit the material called for under this contract for Governmental purposes throughout the world, and to authorize others to do so.

(b) The Contractor shall indemnify, and save and hold harmless the Government, its officers and employees, acting within the scope of their official duties, and on behalf of the Government, against any liability, including costs and expenses for (i) the violation of proprietary rights, copyright, or right of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract; (ii) any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply to material furnished to the Contractor by the Government and incorporated in subject data.

(b) In contracts which call for modification of existing motion pictures or television recordings through editing, translation, or addition of subject matter, the clause in 9.203-5 shall be used to specify the rights of the modification or additional subject matter.

9.203-11 Contracts for the Purchase or Lease of Existing Computer Software.

When purchasing or leasing existing computer software directly, rather than from a Federal Supply Schedule contract, it is important that the contract adequately describe the computer program or the computer data base, the form (tape, punch cards, disk packs) of the program to be delivered, and all the necessary documentation pertaining thereto. The contract should also specify the rights of the Government and any limitations on the right of the Government to use or copy the computer software, such as the physical location, number of uses, or other conditions under which the computer software may be utilized. The provisions of 9.203-3(c) should be used as a guide to assure that the Government obtains the necessary minimum rights to the purchased or leased computer software. The contracting officer shall consult with local patent sounsel in drafting such rights provisions for these contracts.

GPO 908-426

[FR Doc.76-35588 Filed 12-3-76;8:45 am]

federal register

MONDAY, DECEMBER 6, 1976

PART VI:

COMMISSION ON CIVIL RIGHTS

■

PRIVACY ACT OF 1974

Systems of Records

COMMISSION ON CIVIL RIGHTS
PRIVACY ACT OF 1974
Systems of Records

Pursuant to 5 U.S.C. 552a(e)(4), the United States Commission on Civil Rights hereby publishes the systems of records as currently maintained by the agency. The systems were originally published at page 40786-40791, Federal Register of September 3, 1975 and were amended at page 45739 of the Federal Register on October 2, 1975. Additional changes not previously published in the the Federal Register are itemized below:

The address of the Mountain States Regional Office in Denver has been changed in System Notices number CRC 003, CRC 008, and CRC 009.

The proposed amendments published at page 26950 of the Federal Register on June 30, 1976 included a change in routine use for all 10 systems of the agency. No comments on the routine use were received and the routine use is hereby adopted. Each system is amended as follows:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Dated: November 22, 1976.

John A. Buggs,
Staff Director.

Alphabetical Listing and Table of Contents to Notices of Systems of Records Pursuant to the Privacy Act

CRC—001

System name: Appeals, Grievances and Complaints (internal)

System location:

Office of Management
Personnel Office
U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W., Room 507
Washington, D.C. 20425

Categories of individuals covered by the system: Applicants for Federal employment, current and former employees, agencies and annuitants who appeal a determination made by the Commission.

Categories of records in the system: This system of records contains information or documents relating to a decision and determination made by the Commission affecting an individual. The records consist of the initial grievance, complaint, or appeal, letters of notices to the individual, records of hearings when conducted, materials placed into the record to support the decision or determination, affidavits or statements, testimony of witnesses, investigative reports, notice of decision and related correspondence, opinions and recommendations.

Authority for maintenance of the system:

42 U.S.C. sec. 1975d(a)
Federal Personnel Regulation (FPM) 293
Federal Personnel Regulation (FPM) 771
Federal Personnel Regulation (FMP) 752

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: The records and information in the records may be used to respond to a request from a member of Congress regarding the status of an appeal, complaint or grievance; to provide information to the public on the decision of an appeal, complaint or grievance required by the Freedom of Information Act; to respond to a court subpena and/or refer to a district court in connection with a civil suit; to adjudicate an appeal, complaint, or grievance; as a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or personnel resources studies; may also be utilized to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act or to locate a specific individual for personnel research or other personnel management functions; and to provide information or disclose to a Federal agency, in response to another agency's request, in connection with the hiring or retention of an employee.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system: Storage—These records are maintained in secured file folders, and index card. Retrievability—These records are indexed by the names of the individuals on whom they are maintained. Safeguards—Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure. Retention and Disposal—The records are maintained up to two years and are transferred to the National Personnel Records Center, St. Louis, Missouri. They are destroyed by the Federal Records Center when the records are seven (7) years old.

System manager(s) and address:

Office of Management
Personnel Officer
U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C. 20425

Notification procedure: Individuals who have filed appeals or grievances are aware of that fact and have been provided a copy of the record. They may, however, contact the:

Office of General Counsel
U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W., Room 600
Washington, D.C. 20425

Record access procedures: Same as above with appeal to the Staff Director.

Record source categories: Individuals to whom the record pertains; agency and/or Commission officials; affidavits or statements from employees; testimony of witnesses; official documents relating to the appeal, grievance, or complaints; and correspondence from specific organizations or persons.

Exemptions: The reasons for possibly asserting the exemptions are to prevent subjects of investigation from frustrating the investigatory process, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources.

CRC—002

System name: Applications for Employment

System location:

U.S. Commission on Civil Rights
Office of Management
Personnel Division
1121 Vermont Avenue, N.W., Room 507
Washington, D.C. 20425 Occasionally located on a temporary basis in divisional or regional offices.

Categories of individuals covered by the system: Applicants seeking employment with the U.S. Commission on Civil Rights.

Categories of records in the system: The system comprises S.F. 171's, personal resumes, and in many instances Civil Service Commission examination scores of individuals seeking employment with the Commission on Civil Rights.

Authority for maintenance of the system: 5 U.S.C. secs. 1302, 3109, 3301, 3302, 3304, 3306, 3307, 3309, 3313, 3317, 3318, 3319, 3326, 3349, 4103, 5532, 5533, 5723, and Executive Orders 1057 and 11103. 42 U.S.C. 1975d.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Information in these

records may be used to refer applicants to the various offices of the Commission for purposes of consideration for placement in positions for which the applicants have applied and are qualified. The records are available to personnel specialists who review the applicants' qualifications and consider them for appropriate agency vacancies.

Records including Standard Forms 85, 86, 87 and 171 are also transmitted to the Civil Service Commission for investigative purposes and assistance to the Agency in selecting employees.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system: Storage—The records are maintained in file folders. Retrievability—In some regional and divisional offices, the records are retrieved by name. In the Personnel Office, the records are recorded by name and grade in a log book. They can also be retrieved, however, by grade classification. Safeguards—Access to these records are restricted to those with appropriate function within the agency. Retention and Disposal—In divisional or regional offices, the records are retained for an indefinite period of time. They are then forwarded to the Personnel Office or discarded. In the Personnel Office, every year the applications are returned to the applicants for update and resubmission if applicants are still interested in employment with the Commission.

System manager(s) and address:

Personnel Officer
Office of Management, Room 507
U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C. 20425

Notification procedure:

General Counsel
Office of General Counsel, Room 600
U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C. 20425

Record access procedures: Address inquiries same as Notification, with appeals to the Staff Director.

Record source categories: Information submitted by applicants seeking employment with the Commission.

CRC—003

System name: Complaints

System location:

U.S. Commission on Civil Rights
Office of Federal Civil Rights Enforcement, Complaints Division, Office of General Counsel, and Office of Field Operations
1121 Vermont Avenue, N.W.
Washington, D.C. 20425

Regional Offices:
Central States Regional Office, U.S.C.C.R.
911 Walnut Street
Kansas City, Missouri 64106
Mid-Atlantic Regional Office, U.S.C.C.R.
2120 L Street, N.W. (Room 510)
Washington, D.C. 20037
Midwestern Regional Office, U.S.C.C.R.
230 South Dearborn Street, 32nd Floor
Chicago, Illinois 60604
Mountain States Regional Office, U.S.C.C.R.
Executive Tower Inn
1405 Curtis Street, Suite 1700
Denver, Colorado 80202
Northeastern Regional Office, U.S.C.C.R.
26 Federal Plaza (Room 1639)
New York, New York 10007
Southern Regional Office, U.S.C.C.R.
Citizens Trust Bank Building (Room 362)
75 Piedmont Avenue, N.E.
Atlanta, Georgia 30303
Southwestern Regional Office, U.S.C.C.R.
New Moore Building (Room 249)
106 Broadway
San Antonio, Texas 78205
Western Regional Office, U.S.C.C.R.
312 North Spring Street (Room 1015)
Los Angeles, California 90012

Categories of individuals covered by the system: Records are maintained by the name of the person filing the complaint and by the name of the person or organization the complaint is filed against.

Categories of records in the system: The record contains the complaint alleging a denial of equal protection based on race, color, religion, national origin, or sex or in the Administration of Justice and the action taken by the Commission on that complaint.

Authority for maintenance of the system: 42 U.S.C. sec. 1975c(a)(1) and (5)

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: The record is used to assist in resolving complaints alleging denials of rights based on race, color, religion, national origin, or sex or in the Administration of Justice. Users of the record are the person or persons, groups, corporations or governmental agencies against whom the complaint is made and the Commissioners and Commission staff dealing with the complaint, as well as Federal or State agencies to which complaints may be referred. (Subject to the requirements of 42 U.S.C. sec. 1975a(e).)

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system: Storage—Records are maintained on paper. Retrievability—Records are indexed by subject matter, name of the complaining person or persons and the name of the persons, groups, corporations or governmental agencies against whom the complaint is brought. Retention and Disposal—Records are maintained in file cabinets during the course of the complaint investigation and for a reasonable period of time afterwards until they are retired to the National Archives.

System manager(s) and address:

Director
Office of Management
U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C. 20425

Notification procedure:

General Counsel
U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C. 20425

Record access procedures: General Counsel

Contesting record procedures:

Staff Director
U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C. 20425

Record source categories: Complaints are received from the public; responses are received from those the complaint is filed against; further information is developed by Commission staff during the course of dealing with complaints.

Exemptions: The reasons for possibly asserting the exemptions are to prevent subjects of investigation from frustrating the investigatory process, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources.

CRC—004

System name: Commission projects

System location:

U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C. 20425

Categories of individuals covered by the system: Members of the public from whom the Commission has sought information; individuals active or interested in civil rights issues who have information on project subject areas; public and private individuals with civil rights responsibilities; and Congress persons.

Categories of records in the system: Reports from staff field investigations; interview reports; hearing files; transcripts; letters to and from individuals regarding civil rights; reports and publications prepared by governmental agencies and private groups and individuals concerning civil rights; reports from Commissioners regarding civil rights; communications between the Commission and other governmental agencies and between the Commission and private groups and individuals generated in the course of project investigations; Commission reports and publications.

Project files have been compiled by the following offices: Office of Staff Director; Office of General Counsel; Office of Research, Office of National Civil Rights Issues; Women's Rights Program Unit; Office of Program and Policy Review; Office of Federal Civil Rights Evaluation; Office of Field Operations.

Authority for maintenance of the system: 42 U.S.C. sec. 1975c

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Records are used to determine what projects the Commission should initiate; records are used as background and supporting material for the conduct of Commission projects; records are used during Commission hearings; records are used as background and supporting material in the preparation of Commission reports and publications. Primary users of these records are Commissioners and staff of the U.S. Commission on Civil Rights in the conduct of projects. The 51 State Advisory Committees to the Commission make use of project records in carrying out their advisory functions. Records are also available, in part, to use by the public upon request under the Freedom of Information Act. (Subject to 42 U.S.C. sec. 1975a(e).)

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system: Storage—Material is maintained in the form of typed paper copy. Retriveability—System is indexed by project title, subject matter, and by name of person or organization. Retaining—Records are kept in file cabinets during the project and for a reasonable time thereafter, and are retired to the National Archives when the records no longer serve a continuing use.

System manager(s) and address:

Director
Office of Management
U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C. 20425

Notification procedure:

General Counsel
U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C. 20425

Record access procedures: Same as above with appeal to the Staff Director.

Record source categories: Members of the public, Commissioners, State Advisory Committee members, and Commission staff.

Exemptions: The reasons for possibly asserting the exemptions are to prevent subjects of investigation from frustrating the investigatory process, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources.

CRC—005

System name: Information on Commissioners, staff and State Advisory Committee members, past and present.

System location:

U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C. 20425
Office of the Staff Director
Office of Information and Publication
Office of Field Operations
All Regional Offices

Categories of individuals covered by the system: Commissioners who are appointed by the President and confirmed by members of the Senate; State Advisory Committee members appointed by the Commissioners, and information on past Commissioners and advisory committee members. Limited information is kept on former employees in this system; also limited information is included on potential State Advisory Committee members.

Categories of records in the system: Contains rosters of Commissioners, State Advisory Committee members and staff; biographical information, and correspondence between the individual Commissioners, Advisory Committee members and staff. Staff lists reflect position and grade level.

Authority for maintenance of the system: 42 U.S.C. sec. 1975; and sec. 1975d(a) and (c)

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Information (names, rosters) is maintained for distribution to the public, and for mailing Commission materials and publications. Rosters containing names of employees, position and grade level are used to review staffing patterns, personnel practices, hirings and separations. Biographical data on advisory committee members is reviewed by the Commissioners and staff in selecting, reappointing or rechartering State Advisory Committees. Biographical data on the Commissioners is also made available to the public.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system: Storage—Information is stored in file folders. Retrievability—Information is retrieved by subject matter, i.e., Commissioners, a named State Advisory Committee, or staff; and then by individual name. Safeguards—Information is contained in unlocked file drawers with access limited to staff who manage or assist in activities relating to the categories of individuals covered. Retention and Disposal—Information is kept in files during current tenure of Commissioners, Advisory Committee members, and staff. Upon resignation or change of membership files are retained for 2-3 years and then retired to the National Archives.

System manager(s) and address:

Director
Office of Management
U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W., Room 502A
Washington, D.C. 20425 For State Advisory Committee files:
Assistant Staff Director, Office of Field Operations
U.S. Commission on Civil Rights
Office of Field Operations
1121 Vermont Avenue, N.W., Room 500
Washington, D.C. 20425
Director
Office of Information and Publications
1121 Vermont Ave., N.W.
Washington, D.C. 20425

Notification procedure:

General Counsel
U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C. 20425

Record access procedures: Same as above for notification with appeals to the Staff Director.

Record source categories: Individual to whom the record pertains; personnel office and some members of the general public.

CRC—006

System name: Other Employee Programs: Equal Employment Opportunity, Troubled Employee and Upward Mobility

System location:

Office of Staff Director
Director of Equal Employment Opportunity
U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C. 20425

Categories of individuals covered by the system: Equal Employment Opportunity: all employees of the Commission. Troubled Employee Program: employees with personal problems which detract from job effectiveness (alcoholism, drug abuse, mental stress, etc.). Upward Mobility: clerical employees who are eligible for entry into the program or who are participating in the program.

Categories of records in the system: Equal Employment Opportunity: open and restricted investigative files pertaining to equal employment opportunity complaints and problems. Troubled Employee Program: records are confidential and contain data regarding employees enrolled in the program, what assistance or counselling is received, and related information. Upward Mobility: records of enrollment in training or educational programs, class progress and grades, as well as promotions or advancements within the Commission.

Authority for maintenance of the system: Executive Order 11478; 42 U.S.C. sec. 1975d(a) and Federal Personnel Regulations, Chapter 293, 42 U.S.C. sec. 2000e

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Equal Employment Opportunity: Used by Equal Employment Opportunity director, counsellors, investigators and other agency officials where appropriate to resolve discrimination complaints. After disposition is made of the case, files are reviewed by the Office of General Counsel and where appeals are taken, files are reviewed by hearing officers and Civil Service Board of Appeals and Review. Where court actions are filed, records are reviewed by the courts and attorneys for the parties.

Equal Employment Opportunity records are used to meet Civil Service Commission and Federal employment reporting requirements.

Troubled Employee Program files are used by the Equal Employment Opportunity director and supervisory or management personnel in determining the prognosis, need for counselling, or other action in individual cases.

Upward Mobility files are used to counsel employees and supervisors; to monitor the effectiveness of the program, the training received, on-the-job experience and overall progress of the participants. Records in the Equal Employment Opportunity and Upward Mobility Programs are used to assist the agency in developing its Affirmative Action program.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system: Records are maintained in the Office of the Director, Equal Employment Opportunity with access limited to the staff of that office. Investigative files (Equal Employment Opportunity) are retained in secured file cabinets. Troubled Employee files are maintained in locked file cabinets and are unavailable to agency staff (except the Equal Employment Opportunity Director) in their entirety, however extractions are made as necessary for management decisions.

Upward Mobility files are maintained in the same office. The Equal Employment Opportunity director and the Federal Women's Program Coordinator are the primary users of these records with extracts made available to Personnel, supervisors or others within management. Upon completion of the program some of this data may be placed in the Official Personnel Folder.

System manager(s) and address:

Director of Equal Employment Opportunity
Office of Staff Director
U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C. 20425

Notification procedure:

General Counsel
U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C. 20425

Record access procedures: Same as above with appeals to the Staff Director.

Record source categories: The employee in the program, supervisors, management and co-workers. Educational institutions, trainers, medical officials and other third parties dealing with covered employees.

Exemptions: The reasons for asserting the exemptions are to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information, to avoid endangering these sources and, primarily, to facilitate proper selection or continuance of the best applicants or persons for a given position.

CRC—007

System name: Personnel Records

System location:

U.S. Commission on Civil Rights
Office of Management
Personnel Division
1121 Vermont Avenue, N.W., Room 507
Washington, D.C. 20425
Office of the Staff Director
Office of Management
Office of Information and Publications
Office of General Counsel
Office of Program and Policy Review
Office of Field Operations
Office of Research
Office of Federal Civil Rights Evaluation
Office of National Civil Rights Issues
All Regional Offices

Categories of individuals covered by the system: Current Commission employees and those formerly employed by the Commission.

Categories of records in the system: This system consists of a variety of records relating to personnel actions and determinations made about an individual while employed at the Commission. These records contain information about an individual relating to his birth date; Social Security Number; veterans preference; tenure; handicap; past and present salaries, grades, and position titles; letters of commendation, reprimand, charges, and decisions on charges; notice of reduction-in-force; locator files; personnel actions, including but not limited to, appointment, reassignment, demotion, detail, promotion, transfer, and separation; training; minority group designator; records relating to life insurance, health benefits, and designation of beneficiary; training; performance ratings, data documenting the reasons for personnel actions or decisions made about an individual; awards; and other information relating to the status of the individual.

Authority for maintenance of the system: 42 U.S.C. sec. 1975d(a); and Federal Personnel Regulations, Chapter 293

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Information in these records is used or a record may be used by agency officials for purposes of review in connection with appointments, transfers, promotions, reassignments, adverse actions, disciplinary actions, and determination of qualifications of an individual. Records are used to provide information to a prospective employer of a Commission employee or former employee.

These records are used in accordance with Civil Service Commission notices of Systems of Personnel Records including as a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies; may also be utilized to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act or to locate specific individuals for personnel research or other personnel management functions.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system: Storage—Records are maintained in file folders, in file cabinets with access limited to those persons whose official duties require access. Personnel screening is employed to prevent unauthorized disclosure. Retention and Disposal—The Official Personnel Folder (OPF) is retained indefinitely. The OPF is sent to the National Personnel Records Center within 30 days of the date of the employee's separation from the Federal service. Some records such as letters of reprimand, indebtedness, and vouchers are maintained for two years or destroyed when an individual resigns, transfers, or is separated from the Federal service.

System manager(s) and address:

Office of Management
Personnel Officer
1121 Vermont Avenue, N.W., Room 507
Washington, D.C. 20425

Notification procedure:

General Counsel
U.S. Commission on Civil Rights

1121 Vermont Avenue, N.W.
Washington, D.C. 20425

Record access procedures: Same as above with appeals to the Staff Director. Former Federal employees who wish to contest their records should direct such a request in writing to:

Director
Bureau of Manpower Information Systems
U.S. Civil Service Commission
1900 E Street, N.W.
Washington, D.C. 20415

Record source categories: Information in this system of records either comes from the individual to whom it applies or is derived from information he/she supplied, except information provided by agency officials.

CRC—008

System name: Resource and Consultant

System location:

U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C. 20425
Office of Staff Director, Room 800
Women's Rights Program Unit, Room 503
Office of General Counsel, Room 600
Office of Information and Publications, Room 700 All Regional Offices:
Central States Regional Office, U.S.C.C.R.
911 Walnut Street
Kansas City, Missouri 64106
Mid-Atlantic Regional Office, U.S.C.C.R.
2120 L Street, N.W., Room 510
Washington, D.C. 20037
Midwestern Regional Office, U.S.C.C.R.
230 South Dearborn Street, 32nd Floor
Chicago, Illinois 60604
Mountain States Regional Office, U.S.C.C.R.
Executive Tower Inn
1405 Curtis Street, Suite 1700
Denver, Colorado 80202
Northeastern Regional Office, U.S.C.C.R.
26 Federal Plaza, Room 1639
New York, New York 10007
Southern Regional Office, U.S.C.C.R.
Citizens Trust Bank Building, Room 362
75 Piedmont Avenue, N.E.
Atlanta, Georgia 30303
Southwestern Regional Office, U.S.C.C.R.
New Moore Building, Room 249
106 Broadway
San Antonio, Texas 78205
Western Regional Office, U.S.C.C.R.
312 North Spring Street, Room 1015
Los Angeles, California 90012

Categories of individuals covered by the system: Individuals with expertise and experience in civil rights matters; consultants, conference participants, appointees to Federal employment, boards of directors, state advisory committees, contractors, and other organizations.

Categories of records in the system: This system contains resumes, biographical sketches, mailing lists, rosters, sone some employment data and interview reports, newspaper clippings, magazine articles, and miscellaneous information about individuals.

Authority for maintenance of the system: 42 U.S.C. sec. 1975d(a) and (c), and sec. 1975c(a)(4)

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Information is referred to other Commission offices upon request for use in recruitment of employees, for use in obtaining information on persons interested in serving on advisory committees, or providing potential resource or consultant assistance to the agency. Data is shared with non-agency requesters where individuals have consented or data is of a public nature. Mailing lists and rosters are used for correspondence between the Commissioners, staff, advisory committees and members of the public; also for dissemination of information where appropriate.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system: Records are on paper in file folders. Most data are stored strictly by project and subject title. Project directors and division heads are primary personnel using the system. Women's Rights Program Unit: Resumes are filed by name in the Unit's locked file cabinets; access is available to Unit staff and, on occasion, to other Commission supervisory staff and hiring officials. Office of General Counsel and Office of Information and Publication: Data is stored in file cabinets with limited access. These records are kept for an indefinite period of time within the agency and subsequently retired to the National Archives when the project file is inactive.

System manager(s) and address:

Director
Office of Management
U.S. Commission on Civil Rights, Room 502A
1121 Vermont Avenue, N.W.
Washington, D.C. 20425

Notification procedure:

Office of General Counsel, Room 600
U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C. 20425

Record access procedures: Same as above with appeal to the Staff Director.

Record source categories: Biographical information and background information is obtained from the individual; resumes and S.F. 171's are also obtained from the individual. Other information is obtained from newspapers, magazines, and public sources.

CRC—009

System name: State Advisory Committee Project Files

System location:

Office of Field Operations
U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C. 20425 Regional Offices:
Central States Regional Office, U.S.C.C.R.
911 Walnut Street
Kansas City, Missouri 64106
Mid-Atlantic Regional Office, U.S.C.C.R.
2120 L Street,N.W., Room 510
Washington, D.C. 20037
Midwestern Regional Office, U.S.C.C.R.
230 South Dearborn Street, 32nd Floor
Chicago, Illinois 60604
Mountain States Regional Office, U.S.C.C.R.
Executive Tower Inn
1405 Curtis Street, Suite 1700
Denver, Colorado 80202
Northeastern Regional Office, U.S.C.C.R.
26 Federal Plaza, Room 1639
New York, New York 10007
Southern Regional Office, U.S.C.C.R.
Citizens Trust Bank Building, Room 362
75 Piedmont Avenue, N.E.
Atlanta, Georgia 30303
Southwestern Regional Office, U.S.C.C.R.
New Moore Building, Room 249
106 Broadway
San Antonio, Texas 78205
Western Regional Office, U.S.C.C.R.
312 North Spring Street, Room 1015
Los Angeles, California 90012

Categories of individuals covered by the system: Members of the public from whom staff or advisory committee members seek information in connection with a project or their advisory function; individuals active or interested in civil rights issues in their States and local communities; public and private individuals with civil rights responsibilities.

Categories of records in the system: Reports from staff field investigations; interview reports; informal hearings or open meetings files; transcripts; letters to and from individuals regarding civil rights, reports and publications prepared by governmental agencies and private groups and individuals concerning civil rights; reports from State Advisory Committee members concerning civil rights; communications between the State Advisory Committees and State, local and Federal governmental agencies and between the State Ad-

visory Committees and private individuals and groups generated during the course of State Advisory Committee project investigations; Commission reports and investigations. (Subject to the requirements of 42 U.S.C. sec. 1975a(e).)

Project files by the 51 State Advisory Committees have been compiled by the Office of Field Operations in Washington, D.C. and in the following regional offices:

Central States Regional Office: Iowa; Kansas; Missouri; Nebraska.

Mid-Atlantic Regional Office: Delaware; District of Columbia; Maryland; Pennsylvania; Virginia; West Virginia.

Midwestern Regional Office: Illinois; Indiana; Michigan; Minnesota; Ohio: Wisconsin.

Mountain States Regional Office: Arizona; Colorado; Montana; North Dakota; South Dakota; Utah; Wyoming.

Northeastern Regional Office: Connecticut; Maine; Massachusetts; New Hampshire; New Jersey; New York; Rhode Island; Vermont.

Southern Regional Office: Alabama; Florida; Georgia; Kentucky; Mississippi; North Carolina; South Carolina; Tennessee.

Southwestern Regional Office: Arkansas; Louisiana; Oklahoma; Texas; New Mexico.

Western Regional Office: Alaska; California; Hawaii; Idaho; Nevada; Oregon; Washington.

Authority for maintenance of the system: 42 U.S.C. sec. 1975d(c)

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Records are used to determine what projects State Advisory Committees should initiate and as background and supporting material for the conduct of State Advisory Committee projects; records are used by State Advisory Committees as background and supporting material for the preparation of State Advisory Committee reports and recommendations to the U.S. Commission on Civil Rights. Primary users of these records are State Advisory Committee members and Commission staff assisting State Advisory Committees in the conduct of projects. State Advisory Committee records are available, in part, to the public upon request under the Freedom of Information Act. (Subject to 42 U.S.C. sec. 1975a(e).)

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system: Storage—records are stored on paper. Retrievability—records are indexed by project title, subject matter and within these categories by name of individuals and organization. Retention—records are maintained by the Office of Field Operations in the headquarters office in Washington, D.C. and in the regional offices.

System manager(s) and address:

Assistant Staff Director
Office of Field Operations
U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C. 20425

Notification procedure:

General Counsel
U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C. 20425

Record access procedures: Same as above with appeal to the Staff Director.

Record source categories: Members of the public, State Advisory Committee members, Commissioners and Commission staff.

Exemptions: The reasons for possibly asserting the exemptions are to prevent subjects of investigation from frustrating the investigatory process, to prevent disclosure of investigative techniques, to maintain the ability of obtain necessary information, to fulfill comitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources.

CRC—010

System name: Travel, payroll, time and attendance of Commissioners, staff, consultants, and State Advisory Committee members.

System location:

Office of Management
U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W., Room 502
Washington, D.C. 20425 All divisional offices All regional offices

Categories of individuals covered by the system: Commissioners, staff, consultants, and State Advisory Committee members.

Categories of records in the system: Records consist of manual files containing payroll related information for staff and consultants. Payroll and time and attendance records and information includes many records or information also maintained in the Official Personnel Folder and related files maintained in accordance with Civil Service Commission regulations and of which notice has been given by the Civil Service Commission in its notice of government-wide systems of personnel records. Payroll and related information consists of various forms which discloses on a biweekly, year-to-date, and in some cases, an annual basis, payroll and leave data for staff and consultants relating to rate and amount of pay, leave, and hours worked, and leave balances; tax and retirement deductions; life insurance and health insurance deductions; savings allotments, savings bond and charity deductions.

For all categories of individuals covered, records include mailing addresses and home addresses, travel requests and travel vouchers where appropriate, statements of per diem and expense allowances.

Official travel records for the Commission are maintained by the General Services Administration.

Authority for maintenance of the system: 42 U.S.C. 1975d(a), Federal Personnel Manual and Treasury Fiscal Requirements Manual.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Relevant records in this system are referred to the General Services Administration for preparation of payroll; to meet government payroll recordkeeping and reporting requirements; and for retrieving and supplying payroll and leave information as required for agency needs. Travel records or vouchers may be used for purposes of providing reimbursements to covered individuals for travel expenses and/or record ofof official travel. Relevant records in this system may be referred as a routine use, to the Department of Justice or other appropriate Federal agency for investigating or prosecuting any violation of any Federal law or requirement thereunder.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system: Storage—Maintained in individual folders for each category of individuals covered. Retrievability—Files are maintained in alphabetical order by category and by name. Safeguards—Maintained in areas to which access is controlled by or restricted to Commission management personnel. Retention and Disposal—In accordance with General Services Administration requirements for financial/ payroll/travel related records.

System manager(s) and address:

Budget and Finance Officer
Office of Management
U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C. 20425

Notification procedure:

Office of General Counsel
U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C. 20425

Record access procedures: Same as above with appeal to the Staff Director.

Record source categories: Provided by Civil Rights Commission employees and all categories of individuals covered.

[FR Doc.76-35299 Filed 11-24-76;10:12 am]

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