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THURSDAY, JANUARY 6, 1977

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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.

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

Title 26—Internal Revenue

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SUBCHAPTER A—INCOME TAX

[T.D. 7456]

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

Allocation and Apportionment of Deductions to Gross Income

By a notice of proposed rulemaking appearing in the FEDERAL REGISTER for November 8, 1976 (41 FR 49160), as corrected by a notice appearing in the FEDERAL REGISTER for November 15, 1976 (41 FR 50299), amendments to the Income Tax Regulations (26 CFR Part 1) were proposed in order to provide rules under section 861(b) of the Internal Revenue Code of 1954 for allocation and apportionment of deductions to gross income to determine taxable income from sources within and without the United States. In addition, certain supplementary technical amendments were proposed to the regulations under sections 863 and 905(b) of the Code.

Comments were received in response to the notice of proposed rule making and a public hearing was held on December 16, 1976. After consideration of all relevant matter presented by interested persons regarding the proposed rules, those rules are adopted as revised in certain respects by this document. The revisions made are relatively minor to the scope of the rules as a whole and were made primarily in an effort to clarify the rules. Some of the more important revisions are as follows:

1. For purposes of apportioning on a pro rata basis deductions which are not definitely related to gross income, gross income shall be treated as including exempt, excluded, and eliminated items of income. See § 1.861-8 (d) (2).

2. The apportionment of the deduction for interest expenses under the asset method on the basis of book values has been clarified. See § 1.861-8 (e) (2) (v).

3. A special limited rule has been added permitting apportionment of interest expense on obligations incurred before January 1, 1977 in accordance with the rules existing prior to this Treasury decision. However, a taxpayer making use of such rule may not apportion interest expense under any optional gross income method pursuant to § 1.861-8(e)(2)(vi). See § 1.861-8(e)(2)(vii).

4. In apportioning research and development expenses, account must be taken of amounts received on equipment leases as if such amounts were sales receipts. See § 1.861-8 (e) (3) (ii) (B).

5. In apportioning research and development expenses, the volume of sales of a controlled party taken into account may be reduced in certain instances where the control is less than 100 percent. See § 1.861-8(e)(3)(ii)(D).

6. Apportionment of research and development expense on the basis of an optional gross income method has been clarified with respect to its application to affiliated groups filing consolidated returns. See § 1.861-8(e)(3)(iii).

7. The apportionment of supportive expenses and stewardship expenses is more sharply delineated. See § 1.861-8(e)(4).

8. The rules for apportioning net operating loss deductions are expanded. See § 1.861-8(e)(8).

9. In determining effectively connected taxable income of foreign persons, provision is made for the application of income tax treaties where determinative. See § 1.861-8(f)(1)(iv).

10. New examples (25) and (26) are added illustrating allocation and apportionment of deductions for State income taxes.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

On November 8, 1976, a notice of proposed rulemaking was published in the FEDERAL REGISTER (41 F.R. 49160) (and corrected by a notice appearing in the FEDERAL REGISTER for November 15, 1976 (41 F.R. 50299)) with respect to amending the Income Tax Regulations (26 CFR Part 1) under section 861(b) of the Internal Revenue Code of 1954 to provide rules for allocation and apportionment of deductions to gross income to determine taxable income from sources within and without the United States. In addition, certain supplementary technical amendments were proposed to the regulations under sections 863 and 905(b) of the Code. After consideration of all relevant matter presented by interested persons regarding the proposed rules, such regulations are hereby amended as set forth in such notice of proposed rulemaking (as corrected), except that the following paragraphs of § 1.861-8 are revised or added to read as set forth below:

1. Paragraph (a)(2) and (4) is revised.
2. Paragraph (b)(3) is revised.
3. Paragraph (c)(1) is revised.
4. Paragraph (d)(1) and (2) is revised.
5. Paragraph (e)(2)(i), (iv)(A)(3) and the flush language following (5), (v), that portion of (vi) which precedes (A) thereof, and (vi)(B) is revised.
6. A new subdivision (vii) is added after paragraph (e)(2)(vi) and present subdivision (vii) of paragraph (e)(2) is redesignated as subdivision (viii).
7. Paragraph (e)(3)(i)(B), (ii)(B) and (D), that portion of (iii) which precedes (A) thereof, and (iii)(B) is revised.
8. A new subdivision (iv) is added at the end of paragraph (e)(3).
9. Paragraph (e)(4) is revised.
10. Paragraph (e)(6) is revised.
11. Paragraph (e)(8) is revised.
12. Paragraph (f)(1)(i) and (iv) is revised.
13. Paragraph (f)(1)(vi)(E) is revised.
14. Paragraph (g) example (1)(i) and (iii), example (2)(i) and (iii), example (5)(i) and (iii), example (6)(i), example (8)(i), example (9)(i), example (18), example (19), example (20)(i), and example (21)(i) are revised and new examples (25) and (26) are added after example (24).

Paragraph 1. Section 1.861-8 is amended to read as follows:

§ 1.861-8 Computation of taxable income from sources within the United States and from other sources and activities.

(a) *In general*—(1) *Scope.* Sections 861(b) and 863(a) state in general terms how to determine taxable income of a taxpayer from sources within the United States after gross income from sources within the United States has been determined. Sections 862(b) and 863(a) state in general terms how to determine taxable income of a taxpayer from sources without the United States after gross income from sources without the United States has been determined. This section provides specific guidance for applying the cited Code sections by prescribing rules for the allocation and apportionment of expenses, losses, and other deductions (referred to collectively in this section as "deductions") of the taxpayer. The rules contained in this section apply in determining taxable income of the taxpayer from specific sources and activities under other sections of the Code, referred to in this section as operative sections. See paragraph (f)(1) of this section for a list and description of operative sections. The operative sections include, among others, sections 871(b) and 882 (relating to taxable income of a nonresident alien individual or a foreign corporation which is effectively connected with the conduct of a trade or business in the United States), section 904(a)(1) (as in effect before enactment of the Tax Reform Act of 1976, relating to taxable income from sources within specific foreign countries), and section 904(a)(2) (as in effect before enactment of the Tax Reform Act of 1976, or section 904(a) after such enact-

ment, relating to taxable income from all sources without the United States).

(2) *Allocation and apportionment of deductions in general.* A taxpayer to which this section applies is required to allocate deductions to a class of gross income and, then, if necessary to make the determination required by the operative section of the Code, to apportion deductions within the class of gross income between the statutory grouping of gross income (or among the statutory groupings) and the residual grouping of gross income. Except for deductions, if any, which are not definitely related to gross income (see paragraphs (c)(2) and (e)(9) of this section) and which, therefore, are ratably apportioned to all gross income, all deductions of the taxpayer (except the deductions for personal exemptions enumerated in paragraph (e)(11) of this section) must be so allocated and apportioned. As further detailed below, allocations and apportionments are made on the basis of the factual relationship of deductions to gross income. If an affiliated group of corporations joins in filing a consolidated return under section 1501, the provisions of this section are to be applied separately to each member in that affiliated group for purposes of determining such member's taxable income.

(3) *Class of gross income.* For purposes of this section, the gross income to which a specific deduction is definitely related is referred to as a "class of gross income" and may consist of one or more items (or subdivisions of these items) of gross income enumerated in section 61, namely:

(i) Compensation for services, including fees, commissions, and similar items;

(ii) Gross income derived from business;

(iii) Gains derived from dealings in property;

(iv) Interest;

(v) Rents;

(vi) Royalties;

(vii) Dividends;

(viii) Alimony and separate maintenance payments;

(ix) Annuities;

(x) Income from life insurance and endowment contracts;

(xi) Pensions;

(xii) Income from discharge of indebtedness;

xiii) Distributive share of partnership gross income;

(xiv) Income in respect of a decedent;

(xv) Income from an interest in an estate or trust.

(4) *Statutory grouping of gross income and residual grouping of gross income.* For purposes of this section, the term "statutory grouping of gross income" or "statutory grouping" means the gross income from a specific source or activity which must first be determined in order to arrive at taxable income" from such specific source or activity under an operative section. (See paragraph (f)(1) of this section.) Gross income from other sources or activities is referred to as the "residual grouping of gross income" or "residual grouping". For example, for purposes of determining taxable income from sources within specific foreign countries and possessions of the United States, in order to apply the per-country limitation to the foreign tax credit (as in effect before enactment of the Tax Reform Act of 1976), the statutory groupings are the separate gross incomes from sources within each country and possession. Moreover, if the taxpayer has income subject to section 904(d) (as in effect after enactment of the Tax Reform Act of 1976), such income constitutes one or more separate statutory groupings. In the case of the per-country limitation, the residual grouping is the aggregate of gross income from sources within the United States. In some instances, where the operative section so requires, the statutory grouping or the residual grouping may include, or consist entirely of, excluded income. See paragraph (d)(2) of this section with respect to the allocation and apportionment of deductions to excluded income.

(5) *Effective date.* The provisions of this section shall be applicable to taxable years beginning after December 31, 1976. For taxable years beginning before January 1, 1977, § 1.861-8 as in effect on October 23, 1957 (T.D. 6258), as amended on August 22, 1966 (T.D. 6892) and on September 29, 1975 (T.D. 7378), will apply.

(b) *Allocation*—(1) *In general.* For purposes of this section, the gross income to which a specific deduction is definitely related is referred to as a "class of gross income" and may consist of one or more items of gross income. The rules emphasize the factual relationship between the deduction and a class of gross income. See paragraph (d)(1) of this section which provides that in a taxable year there may be no item of gross income in a class or less gross income than deductions allocated to the class, and paragraph (d)(2) of this section which provides that a class of gross income may include excluded income. Allocation is accomplished by determining, with respect to each deduction, the class of gross income to which the deduction is definitely related and then allocating the deduction to such class of gross income (without regard to the taxable year in which such gross income is received or accrued or is expected to be received or accrued). The classes of gross income are not predetermined but must be determined on the basis of the deductions to be allocated. Although most deductions will be definitely related to some class of a taxpayer's total gross income, some deductions are related to all gross income. In addition, some deductions are treated as not definitely related to any gross income and are ratably apportioned to all gross income. (See paragraph (e)(9) of this section.) In allocating deductions it is not necessary to differentiate between deductions related to one item of gross income and deductions related to another item of gross income where both items of gross income are exclusively within the same statutory grouping or exclusively within the residual grouping.

(2) *Relationship to activity or property.* A deduction shall be considered definitely related to a class of gross income and therefore allocable to such class if it is incurred as a result of, or incident to, an activity or in connection with property from which such class of gross income is derived. Where a deduction is incurred as a result of, or incident to, an activity or in connection with property, which activity or property generates, has generated, or could reasonably have been expected to generate gross income, such deduction shall be considered definitely related to such gross income as a class whether or not there is any item of gross income in such class which is received or accrued during the taxable year and whether or not the amount of deductions exceeds the amount of the gross income in such class. See paragraph (d)(1) of this section and example (17) of paragraph (g) of this section with respect to cases in which there is an excess of deductions. In some cases, it will be found that this subparagraph can most readily be applied by determining, with respect to a deduction, the categories of gross income to which it is not related and concluding that it is definitely related to a class consisting of all other gross income.

(3) *Supportive functions.* Deductions which are supportive in nature (such as overhead, general and administrative, and supervisory expenses) may relate to other deductions which can more readily be allocated to gross income. In such instance, such supportive deductions may be allocated and apportioned along with the deductions to which they relate. On the other hand, it would be equally acceptable to attribute supportive deductions on some reasonable basis directly to activities or property which generate, have generated, or could reasonably have been expected to generate gross income. This would ordinarily be accomplished by allocating the supportive expenses to all gross income or to another broad class of gross income and apportioning the expenses in accordance with paragraph (c)(1) of this section. For this purpose, reasonable departmental overhead rates may be utilized. For examples of the application of the principles of this paragraph (b)(3) other than to expenses attributable to stewardship activities, see examples (19) through (21) of paragraph (g) of this section. See paragraph (e)(4) of this section for the allocation and apportionment of deductions attributable to stewardship activities.

(4) *Deductions related to a class of gross income.* See paragraph (e) of this section for rules relating to the allocation and apportionment of certain specific deductions definitely related to a class of gross income. See paragraph (c)(1) of this section for rules relating to the apportionment of deductions.

(5) *Deductions related to all gross income.* If a deduction does not bear a definite relationship to a class of gross income constituting less than all of gross income, it shall ordinarily be treated as definitely related and allocable to all of the taxpayer's gross income except where provided to the contrary under paragraph (e) of this section. Paragraph (e)(9) of this section lists various deductions which generally are not definitely related to any gross income and are ratably apportioned to all gross income.

(c) *Apportionment of deductions*—(1) *Deductions definitely related to a class of gross income.* Where a deduction has been allocated in accordance with paragraph (b) of this section to a class of gross income which is included in one statutory grouping and the residual grouping, the deduction must be apportioned between the statutory grouping and the residual grouping. Where a deduction has been allocated to a class of gross income which is included in more than one statutory grouping, such deduction must be apportioned among the statutory groupings and, where necessary, the residual grouping. If the class of gross income to which a deduction has been allocated is included in its entirety in either a single statutory grouping or the residual grouping, there is no need to apportion that deduction. If a deduction is not definitely related to any gross income, it must be apportioned ratably as provided in paragraph (c)(2) of this section. A deduction is apportioned by attributing the deduction to gross income (within the class to which the deduction has been allocated) which is in the statutory grouping or in each of the statutory groupings and to gross income (within the class) which is in the residual grouping. Such attribution must be accomplished in a manner which reflects to a reasonably close extent the factual relationship between the deduction and the grouping of gross income. In apportioning deductions, it may be that for the taxable year there is no gross income in the statutory grouping or that deductions will exceed the amount of gross income in the statutory grouping. See paragraph (d)(1) of this section with respect to cases in which there is an excess of deductions. In determining the method of apportionment for a specific deduction, examples of bases and factors which should be considered include, but are not limited to—

(i) Comparison of units sold attributable to the statutory grouping and attributable to the residual grouping;

(ii) Comparison of the amount of gross sales or receipts;

(iii) Comparison of costs of goods sold;

(iv) Comparison of profit contribution;

(v) Comparison of expenses incurred, assets used, salaries paid, space utilized, and time spent which are attributable to the activities or properties giving rise to the class of gross income; and

(vi) Comparison of the amount of gross income in the statutory grouping with the amount in the residual grouping.

Paragraphs (e)(2) through (e)(8) of this section provide the applicable rules for allocation and apportionment of deductions for interest, research, and development expenses, and certain other deductions. The effects on tax liability of the apportionment of deductions and the burden of maintaining records not otherwise maintained and making computations not otherwise made shall be taken into consideration in determining whether a method of apportionment and its application are sufficiently precise. A method of apportionment described in this paragraph (c)(1) of this section may not be used when it does not reflect, to a reasonably close extent, the factual relationship between the deduction and the groupings of income. The principles set forth above are applicable in apportioning both deductions definitely related to a class which constitutes less than all of the taxpayer's gross income and to deductions related to all of the taxpayer's gross income. If a deduction is not definitely related to any class of gross income, it must be apportioned ratably as provided in paragraph (c)(2) of this section.

(2) *Deductions not definitely related to any gross income.* If a deduction is not definitely related to any gross income (see paragraph (e)(9) of this section), the deduction must be apportioned ratably between the statutory grouping (or among the statutory groupings) of gross income and the residual grouping. Thus, the amount apportioned to each statutory grouping shall be equal to the same proportion of the deduction which the amount of gross income in the statutory grouping bears to the total amount of gross income. The amount apportioned to the residual grouping shall be equal to the same proportion of the deduction which the amount of the gross income in the residual grouping bears to the total amount of gross income.

(d) *Excess of deductions and excluded and eliminated income*—(1) *Excess of deductions.* Each deduction which bears a definite relationship to a class of gross income shall be allocated to that class in accordance with paragraph (b)(1) of this section even though, for the taxable year, no gross income in such class is received or accrued or the amount of the deduction exceeds the amount of such class of gross income. In apportioning deductions, it may be that, for the taxable year, there is no gross income in the statutory grouping (or residual grouping), or that deductions exceed the amount of gross income in the statutory grouping (or residual grouping). If there is no gross income in a statutory grouping or the amount of deductions allocated and apportioned to a statutory grouping exceeds the amount of gross income in the statutory grouping, the effects are determined under the operative section. If the taxpayer is a member of a group filing a consolidated return, such excess of deductions allocated or apportioned to a statutory grouping of income of such member is taken into account in determining the consolidated taxable income from such statutory grouping, and such excess of deductions allocated or apportioned to the residual grouping of income is taken into account in determining the consolidated taxable income from the residual grouping. See § 1.1502–4(d)(1) and the last sentence of § 1.1502–12. For an illustration of the principles of this paragraph (d)(1), see example (17) of paragraph (g) of this section.

(2) *Allocation and apportionment to exempt, excluded or eliminated income.* In allocating or apportioning deductions to classes or statutory groupings of gross income, including apportionment pursuant to paragraph (c)(2) of this section (deductions not definitely related to any class of gross income), gross income shall include amounts which are otherwise exempt or excluded (such as the income of a nonresident alien individual or foreign corporation which is not effectively connected income) or which are otherwise eliminated in the computation of consolidated taxable income reported for the taxable year on a consolidated return (but deferred intercompany transactions, as defined in § 1.1502–13, shall not be included until the year they are included in taxable income). Hence, a deduction may be allocated and apportioned to exempt, excluded, or eliminated income. See example (24) of paragraph (g) of this section. No deduction shall be allowed, under this section, for any amount, or part thereof, allocable and apportionable to a class of exempt, excluded, or eliminated income, if such amount is not allowed as a deduction under another section of the Code. See section 265 and the regulations thereunder.

(e) *Allocation and apportionment of certain deductions*—(1) *In general.* Subparagraphs (2) and (3) of this paragraph contain rules with respect to the allocation and apportionment of interest expense and research and development expenditures, respectively. Subparagraphs (4) through (8) of this paragraph contain rules with respect to the allocation of certain other deductions. Subparagraph (9) of this paragraph lists those deductions which are ordinarily considered as not being definitely related to any class of gross income. Subparagraph (10) of this paragraph lists special deductions of corporations which must be allocated and apportioned. Subparagraph (11) of this paragraph lists personal exemptions which are neither allocated nor apportioned. Examples of allocation and apportionment are contained in paragraph (g) of this section.

(2) *Interest*—(i) *In general.* The method of allocation and apportionment for interest set for th in this paragraph (e)(2) is based on the approach that money is fungible and that interest expense is attributable to all activities and property regardless of any specific purposes for incurring an obligation on which interest is paid. This approach recognizes that all activities and property require funds and that management has a great deal of flexibility as to the source and use of funds. Normally, credi-

tors of a taxpayer subject the money advanced to the taxpayer to the risk of the taxpayer's entire activities and look to the general credit of the taxpayer for payment of the debt. When money is borrowed for a specific purpose, such borrowing will generally free other funds for other purposes and it is reasonable under this approach to attribute part of the cost of borrowing to such other purposes.

(ii) *Allocation of interest.* Except as provided in subdivisions (iii) and (iv) of this subparagraph, the aggregate of deductions for interest shall be considered related to all income producing activities and properties of the taxpayer and, thus, allocable to all the gross income which the income producing activities and properties of the taxpayer generate, have generated, or could reasonably have been expected to generate.

(iii) *Certain nonbusiness interest.* Interest expense deductible under section 163 which is not paid or incurred during the taxable year

(A) In carrying on any trade or business,

(B) For the production or collection of income,

(C) For the management, conservation, or maintenance of property held for the production of income, or

(D) In connection with the determination, collection, or refund of any tax

shall be considered a deduction which is not definitely related to any class of gross income. For example, interest paid or incurred by an individual on a mortgage which constitutes part or all of the purchase price of his personal residence shall normally be considered a deduction which is not definitely related to any class of gross income.

(iv) *Allocation of interest to specific property.* (A) If the existence of all of the facts and circumstances described below is established, the deduction for interest shall be considered definitely related solely to the class of gross income which the specific property generates, has generated, or could reasonably have been expected to generate. Such facts and circumstances are as follows:

(*1*) The indebtedness on which the interest was paid was specifically incurred for the purpose of purchasing, maintaining, or improving the specific property;

(*2*) The proceeds of the borrowing were actually applied to the specified purpose;

(*3*) The creditor can look only to the specific property (or any lease or other interest therein) as security for payment of the principal and interest of the loan and, thus, cannot look to any other property or the borrower with respect to payment of the loan;

(*4*) It may be reasonably assumed that the return (cash flow) on or from the property will be sufficient to fulfill the terms and conditions of the loan agreement with respect to the amount and timing of payment of principal and interest; and

(*5*) There are restrictions in the loan agreement on the disposal or use of the property consistent with the assumptions described in (*3*) and (*4*) of this subdivision (iv)(A).

Even though the above facts and circumstances are present in substance as well as in form, a deduction for interest will not be considered definitely related to specific property where the motive for structuring the transaction in the manner described above was without any economic significance.

(B) Where an interest deduction is definitely related solely to specific property under (A) of this subdivision (iv), such interest deduction and such property, or the portion thereof, to which such interest deduction relates shall not be included in the allocation described in subdivision (ii) of this paragraph (e)(2). Instead, the interest deduction shall be allocated solely to the gross income derived from the specific property and apportioned accordingly. Thus, if an apportionment is made on the basis of book values and it is determined that the deduction for certain interest is definitely related to $800,000 of book value of certain property which has a total book value of $1 million, only the $200,000 balance will be included for purposes of allocating and apportioning the remaining portion of the interest deduction which is related to all other activities and properties.

(v) *Apportionment of interest—asset method.* Normally, the deduction for interest expense relates more closely to the amount of capital utilized or invested in an activity or property than to the gross income generated therefrom, and therefore the deduction for interest should normally be apportioned on the basis of asset values. Indebtedness permits the taxpayer to acquire or retain different kinds of assets which may produce substantially different yields of gross income in relation to their value. Thus, apportionment of an interest deduction on such basis as gross income may not be reasonable. If a taxpayer consistently apportions the deduction for interest on the basis of the tax book value (original cost for tax purposes less depreciation allowed for tax purposes) of its assets, that method will ordinarily be accepted. Alternatively, if a taxpayer can apportion the deduction on the basis of the fair market value of his assets and he can establish the fair market value to the satisfaction of the Commissioner, that method will also be acceptable. However, once the taxpayer uses fair market value the taxpayer must continue to use such method unless expressly authorized by the Commissioner to change his method. For purposes of determining values of assets under this subdivision (v), an average of values (book or market) shall be computed for the year on the basis of values of assets at the beginning and end of the year. Where a substantial distortion of asset values would result from the use of such an averaging basis, an appropriate method satisfactory to the Commissioner shall be used.

(vi) *Apportionment of interest—optional gross income methods.* If the conditions of either (A) or (B) of this subdivision (vi) are met, in lieu of apportioning the deduction for interest expense (allocable under subdivision (ii) of this paragraph (e)(2)) under subdivision (v) of this paragraph (e)(2), a taxpayer may for any taxable year apportion such deduction, as prescribed in this (A) or (B), between the statutory grouping (or among the statutory groupings) of gross income and the residual grouping of gross income. However, if any member of an affiliated group which files a consolidated return apportions its interest expense for a taxable year under this subdivision (vi), then all members joining that return must use this subdivision (vi) for such taxable year.

(A) *Option one.* If, when apportioned ratably on the basis of gross income between the statutory grouping (or among the statutory groupings) of gross income and the residual grouping of gross income in the same proportions that the amount of gross income in the statutory grouping (or groupings) and the amount of gross income in the residual grouping bear, respectively, to the total amount of gross income,

(*1*) The amount of interest expense ratably apportioned to the statutory grouping (or groupings in the aggregate) is not less than fifty percent (50%) of the amount which would have been so apportioned if the taxpayer had used the method described in subdivision (v) of this paragraph (e)(2), and

(*2*) The amount of interest expense ratably apportioned to the residual grouping is not less than fifty percent (50%) of the amount which would have been so apportioned if the taxpayer had used the method described in subdivision (v) of this paragraph (e)(2), then the taxpayer may apportion his interest expense ratably on the basis of gross income.

(B) *Option Two.* If, when the amount of interest expense is apportioned ratably on the basis of gross income, either condition (*1*) or (*2*) of (A) of this subdivision (vi) is not met, the taxpayer may either:

(*1*) Where condition (*1*) of (A) of this subdivision (vi) is not met, apportion fifty percent (50%) of the amount of interest expense which would have been apportioned to the statutory grouping (or groupings in the aggregate) under subdivision (v) of this paragraph (e)(2), to such statutory grouping (or to such statutory groupings in the aggregate and then among such groupings ratably on the basis of gross income within each grouping), and apportion the balance of the amount of interest expense to the residual grouping; or

(*2*) Where condition (*2*) of (A) of this subdivision (vi) is not met, apportion fifty percent (50%) of the amount of the interest expense which would have been apportioned to the residual grouping, under subdivision (v) of this paragraph (e)(2) to such residual grouping, and apportion the balance to the statutory grouping (or to the statutory groupings in the aggregate and then among

such groupings ratably on the basis of gross income within each grouping).

(vii) *Apportionment of interest—obligations incurred before January 1, 1977.* At the option of the taxpayer, the rules of § 1.861-8 as in effect on October 23, 1957 (T.D. 6892) and on September 29, 1975 (T.D. 7378) may be applied with respect to interest paid on obligations incurred before January 1, 1977. For taxpayers using this option, the interest on obligations to which this option does not apply will be allocated and apportioned under the rules of this paragraph (e)(2), other than subdivision (vi): For purposes of this subdivision (vii), obligations payable on demand shall be deemed to have been incurred on or after January 1, 1977. A taxpayer who, for any taxable year, apportions his interest deduction using either of the optional gross income methods of subdivision (vi) of this paragraph (e)(2) shall not for such taxable year or for any taxable year thereafter have the option provided in this subdivision (vii).

(xiii) *Examples.* Examples (1) and (2) of paragraph (g) of this section illustrate the allocation and apportionment of interest deductions.

(3) *Research and experimental expenditures*—(i) *Allocation*—(A) *In general.* The methods of allocation and apportionment of research and development set forth in this paragraph (e)(3) recognize that research and development is an inherently speculative activity, that findings may contribute unexpected benefits, and that the gross income derived from successful research and development must bear the cost of unsuccessful research and development. Expenditures for research and development which a taxpayer deducts under section 174 shall ordinarily be considered deductions which are definitely related to all income reasonably connected with the relevant broad product category (or categories) of the taxpayer and therefore allocable to all items of gross income as a class (including income from sales, royalties, and dividends) related to such product category (or categories). For purposes of this allocation, the product category (or categories) which a taxpayer may be considered to have shall be limited to the following list. Ordinarily a taxpayer's research and development expenditures may be divided between the relevant product categories. Where research and development is conducted with respect to more than one product category, the taxpayer may aggregate the categories for purposes of allocation and apportionment; however, the taxpayer may not subdivide the categories in this list. Where research and development is not clearly identified with any product category (or categories), it will be considered conducted with respect to all the taxpayer's product categories. The individual products included within each category are enumerated in Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual, 1972 (or later edition, as available).

SIC Major Groups	*Nonmanufactured categories*
(01, 02, 07, 08, 09).	Agriculture, forestry and fisheries.
(10, 11, 12)	Hard mineral mining.
(13)	Crude petroleum, and natural gas.
(14)	Nonmetallic minerals.
(15, 16, 17)	Construction services.
(40, 41, 42, 43, 44, 45, 46, 47).	Transportation services.
(48)	Communication.
(49)	Electric, gas and sanitary services.
(50, 51)	Wholesale trade (not applicable with respect to sales by the taxpayer of goods and services from any other of the taxpayer's product categories and not applicable with respect to a domestic international sales corporation for which the taxpayer is a related supplier of goods and services from any other of the taxpayer's product categories).
(52, 53, 54, 55, 56, 57, 58, 59).	Retail trade (not applicable with respect to sales by the taxpayer of goods and services from any other of the taxpayer's product categories, except Wholesale trade, and not applicable with respect to a domestic international sales corporation for which the taxpayer is a related supplier of goods and services from any other of the taxpayer's product categories, except Wholesale trade).
(60, 61, 62, 63, 64, 65, 66, 67).	Finance, insurance, and real estate.
(70, 72, 73, 75, 76, 78, 79, 80, 81, 82, 83, 84, 86, 88, 89).	Other services.

Sic Major Groups	*Manufactured categories*
(20)	Food and kindred products.
(21)	Tobacco manufactures.
(22)	Textile mill products.
(23)	Apparel and other finished products made from fabrics and similar materials.
(24)	Lumber and wood products, except furniture.
(25)	Furniture and fixtures.
(26)	Paper and allied products.
(27)	Printing, publishing, and allied industries.
(28)	Chemicals and allied products.
(29)	Petroleum refining and related industries.
(30)	Rubber and miscellaneous plastics products.
(31)	Leather and leather products.
(32)	Stone, clay, glass and concrete products.
(33)	Primary metal industries.
(34)	Fabricated metal products, except machinery and transportation equipment.
(35)	Machinery, except electrical.
(36)	Electrical and electronic machinery, equipment and supplies.
(37)	Transportation equipment.
(38)	Measuring, analyzing, and controlling instruments; photographic, medical and optical goods; watches and clocks.
(39)	Miscellaneous manufacturing industries.

(B) *Exception.* Where research and development is undertaken solely to meet legal requirements imposed by a political entity with respect to improvement or marketing of specific products or processes, and the results cannot reasonably be expected to generate amounts of gross income (beyond de minimis amounts) outside a single geographic source, the deduction for such research and development shall be considered definitely related and therefore allocable only to the grouping (or groupings) of gross income within that geographic source as a class (and apportioned, if necessary, between such groupings as set forth in subdivisions (ii)(B) and (iii) of this paragraph (e)(3)). For example, where a taxpayer performs tests on a product in response to a requirement imposed by the U.S. Food and Drug Administration, and the test results cannot reasonably be expected to generate amounts of gross income (beyond de minimis amounts) outside the United States, the costs of testing shall be allocated solely to gross income from sources within the United States.

(ii) *Apportionment of research and development—sales method*—(A) *Exclusive apportionment.* Where an apportionment based upon geographic sources of income of a deduction for research and development is necessary (after applying the exception in subdivision (i)(B) of this paragraph (e)(3)), an amount equal to—

(1) Fifty percent (50%), in the case of a taxable year beginning during 1977,

(2) Forty percent (40%), in the case of a taxable year beginning during 1978,

(3) Thirty percent (30%), in the case of a taxable year beginning during 1979, and thereafter,

of such deduction for research and development shall be apportioned exclusively to the statutory grouping of gross income or the residual grouping of gross income, as the case may be, arising from the geographic source where the research and development activities which account for more than fifty percent (50%) of the amount of such deduction were performed. If the fifty percent test of the preceding sentence is not met, then no part of the deduction shall be apportioned under this subdivision (ii)(A). This exclusive apportionment reflects the view that research and development is often most valuable in the country where it is performed, for two reasons. First, research and development often benefits a broad product category,

consisting of many individual products, all of which may be sold in the nearest market but only some of which may be sold in foreign markets. Second, research and development often is utilized in the nearest market before it is used in other markets, and, in such cases, has a lower value per unit of sales when used in foreign markets. The taxpayer may establish to the satisfaction of the Commissioner that, in its case, one or both of the conditions mentioned in the preceding sentences warrant a significantly greater percent than the relevant percent specified in (*1*), (*2*), *or* (*3*) of this subdivision (ii)(A) because the research and development is reasonably expected to have very limited or long delayed application outside the geographic source where it was performed. For purposes of establishing that only some products within the product category (or categories) are sold in foreign markets, the taxpayer shall compare the commercial production of individual products in domestic and foreign markets made by itself, by uncontrolled parties (as defined under (C) of this subdivision (ii)) of products involving intangible property which was licensed or sold by the taxpayer, and by those controlled corporations (as defined under (D) of this subdivision (ii)) which can reasonably be expected to benefit directly or indirectly from any of the taxpayer's research expense connected with the product category (or categories). The individual products compared for this purpose shall be limited, for nonmanufactured categories, solely to those enumerated in Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual*, 1972 (or later edition, as available), and, for manufactured categories, solely to those enumerated at a 7-digit level on pages 5 through 200 of U.S. Bureau of the Census, *Census of Manufactures: 1972, Numerical List of Manufactured Products (New (1972) SIC Basis)*, 1973, (or later edition, as available). Examples (9), (10), and (13) in paragraph (g) of this section illustrate the application of this rule. For purposes of establishing the delayed application of research findings abroad, the taxpayer shall compare the commercial introduction of its own particular products and processes (not limited by those listed in the *Standard Industrial Classification Manual* or the *Numerical List of Manufactured Products*) in the United States and foreign markets, made by itself, by uncontrolled parties (as defined under (C) of this subdivision (ii)) of products involving intangible property which was licensed or sold by the taxpayer, and by those controlled corporations (as defined under (D) of this subdivision (ii)) which can reasonably be expected to benefit, directly or indirectly, from the taxpayer's research expense. For purposes of evaluating the delay in the application of research findings in foreign markets, the taxpayer shall use a safe haven discount rate of 10 percent per year of delay unless he is able to establish, by reference to the cost of money and the number of years during which economic benefit can be directly attributable to the results of the taxpayer's research, that another discount rate is more appropriate (see examples (9) through (12) in paragraph (g) of this section).

(B) *Remaining apportionment.* The amount equal to the remaining portion of such deduction for research and development, not apportioned under (A) of this subdivision (ii), shall be apportioned between the statutory grouping (or among the statutory groupings) within the class of gross income and the residual grouping within such class in the same proportions that the amount of sales from the product category (or categories) which resulted in such gross income within the statutory grouping (or statutory groupings) and in the residual grouping bear, respectively, to the total amount of sales from the product category (or categories). For the purposes of this paragraph (e)(3), amounts received from the lease of equipment during a taxable year shall be regarded as sales receipts for such taxable year. Amounts apportioned under this paragraph (e)(3) may exceed the amount of gross income related to the product category within the statutory grouping. In such case, the excess shall be applied against other gross income within the statutory grouping. See paragraph (d)(1) of this section for instances where the apportionment leads to an excess of deductions over gross income within the statutory grouping.

(C) *Sales of uncontrolled parties.* For purposes of the apportionment under (B) of this subdivision (ii), the sales from the product category (or categories) by each party uncontrolled by the taxpayer, of particular products involving intangible property which was licensed or sold by the taxpayer to such uncontrolled party shall be taken fully into account both for determining the taxpayer's apportionment and for determining the apportionment of any other member of a controlled group of corporations to which the taxpayer belongs if the uncontrolled party can reasonably be expected to benefit directly or indirectly (through any member of the controlled group of corporations to which the taxpayer belongs) from the research expense connected with the product category (or categories) of such other member. In the case of licensed products, if the amount of sales of such products is unknown (for example, where the licensed product is a component of a large machine), a reasonable estimate should be made. In the case of sales of intangible property, and in cases where a reasonable estimate of sales of licensed products cannot be made, the sales taken into account shall be an amount which is ten times the amount received or accrued for the intangible during the taxpayer's taxable year. For purposes of this subdivision (ii)(C), the term "uncontrolled party" means a party which is not a person with a relationship to the taxpayer (specified in section 267(b)), or is not a member of a controlled group of corporations to which the taxpayer belongs (within the meaning of section 993(a)(3)). An uncontrolled party can reasonably be expected to benefit from the research expense of a member of a controlled group of corporations to which the taxpayer belongs if such member can reasonably be expected to license, sell, or transfer intangible property to that uncontrolled party, or transfer secret processes to that uncontrolled party, directly or indirectly through a member of the controlled group of corporations to which the taxpayer belongs.

(D) *Sales of controlled parties.* For purposes of the apportionment under (B) of this subdivision (ii), the sales from the product category (or categories) of the taxpayer shall be taken fully into account and the sales from the product category (or categories) of a corporation controlled by the taxpayer shall be taken into account to the extent provided in (*1*) or (*2*) of this subdivision (ii)(D) for determining the taxpayer's apportionment, if such corporation can reasonably be expected to benefit directly or indirectly (through another member of the controlled group of corporations to which the taxpayer belongs) from the taxpayer's research expense connected with the product category (or categories). However, sales from the product category (or categories) between or among such controlled corporations or the taxpayer shall not be taken into account more than once; in such a situation, the amount sold by the selling corporation to the buying corporation shall be subtracted from the sales of the buying corporation. For purposes of this subdivision (ii)(D), the term "a corporation controlled by the taxpayer" means any corporation other than an "uncontrolled party" as defined in (C) of this subdivision (ii). A corporation controlled by the taxpayer can reasonably be expected to benefit from the taxpayer's research expense if the taxpayer can be expected to license, sell, or transfer intangible property to that corporation, or transfer secret processes to that corporation, either directly or indirectly through a member of the controlled group of corporations to which the taxpayer belongs. Past experience with research and development shall be considered in determining reasonable expectations. However, if the corporation controlled by the taxpayer has entered into a bonafide cost-sharing arrangement, in accordance with the provisions of § 1.482-2(d)(4), with the taxpayer for the purpose of developing intangible property, then that corporation shall not reasonably be expected to benefit from the taxpayer's share of the research expense. The sales from the product category (or categories) of a corporation controlled by the taxpayer taken into account shall be the greater of—

(*1*) The amount of sales that would have been taken into account under paragraph (e)(3)(ii)(C) of this section if the controlled corporation were an uncontrolled party and if any in-

tangible property contributed by the taxpayer to the controlled corporation were treated as a license of that intangible property; or

(2) The amount of sales that bear the same proportion to total sales of the controlled corporation as the taxpayer's direct or indirect ownership, as defined in section 1563, of the total combined voting power of all classes of stock entitled to vote of such corporation bears to the total outstanding combined voting power of all such classes of stock of such corporation.

(iii) *Apportionment of research and development—optional gross income methods.* If the conditions of either (A) or (B) of this subdivision (iii) are met, in lieu of apportioning the deduction for research and development expense under subdivision (ii) of this paragraph (e)(3), a taxpayer may, at his option, for any taxable year apportion such deduction, as prescribed in (A) or (B) of this subdivision (iii), between the statutory grouping (or among the statutory groupings) of gross income and the residual grouping of gross income. These optional methods must be applied to the taxpayer's entire deduction for research and development expense remaining after applying the exception in subdivision (i)(B) of this paragraph (e)(3), and may not be applied on a product category basis. However, if any member of an affiliated group which files a consolidated return apportions its research and development expense for a taxable year under this subdivision (iii), then all members joining that return must use this subdivision (iii) for such taxable year.

(A) *Option One.* If, when apportioned ratably on the basis of gross income between the statutory grouping (or among the statutory groupings) of gross income and the residual grouping of gross income in the same proportions that the amount of gross income in the statutory grouping (or groupings) and the amount of gross income in the residual grouping bear, respectively, to the total amount of gross income,

(1) The amount of research and development expense ratably apportioned to the statutory grouping (or groupings in the aggregate) is not less than fifty percent (50%) of the amount which would have been so apportioned if the taxpayer had used the method described in subdivision (ii) of this paragraph (e)(3), and

(2) The amount of research and development expense ratably apportioned to the residual grouping is not less than fifty percent (50%) of the amount which would have been so apportioned if the taxpayer had used the method described in subdivision (ii) of this paragraph (e)(3),

then the taxpayer may apportion his research and development expense ratably on the basis of gross income.

(B) *Option Two.* If, when the amount of research and development expense is apportioned ratably on the basis of gross income, either condiiton (1) or (2) of (A) of this subdivision (iii) is not met, the taxpayer may either:

(1) Where condition (1) of (A) of this subdivision (iii) is not met, apportion fifty percent (50%) of the amount of research and development expense which would have been apportioned to the statutory grouping (or groupings in the aggregate) under subdivision (ii) of this paragraph (e)(3) to such statutory grouping (or to such statutory groupings in the aggregate and then among such groupings on the basis of gross income within each grouping), and apportion the balance of the amount of research and development expenses to the residual grouping; or

(2) Where condition (2) of (A) of this subdivision (iii) is not met, apportion fifty percent (50%) of the amount of research and development expense which would have been apportioned to the residual grouping under subdivision (ii) of this paragraph (e)(3) to such residual grouping, and apportion the balance of the amount of research and development expenses to the statutory grouping (or to the statutory groupings in the aggregate and then among such groupings ratably on the basis of gross income within each grouping).

(iv) *Examples.* Examples (3) through (16) and example (23) of paragraph (g) of this section illustrate the allocation and apportionment of research and development deductions.

(4) *Stewardship expenses attributable to dividends received.* If a corporation renders services for the benefit of a related corporation and the corporation charges the related corporation for such services (see section 482 and the regulations thereunder which provide for an allocation where the charge is not on an arm's length basis as determined therein), the deductions for expenses of the corporation attributable to the rendering of such services are considered definitely related to the amounts so charged and are to be allocated to such amounts. However, the regulations under section 482 (§ 1.482-2(b)(2)(ii)) recognize a type of activity which is not considered to be for the benefit of a related corporation but is considered to constitute "stewardship" or "overseeing" functions undertaken for the corporation's own benefit as an investor in the related corporation, and therefore, a charge to the related corporation for such stewardship or overseeing functions is not provided for. Services undertaken by a corporation of a stewardship or overseeing character generally represent a duplication of services which the related corporation has independently performed for itself. For example, assume that a related corporation, which has a qualified financial staff, makes an analysis to determine the amount and source of its borrowing needs and submits a report of its findings and a plan of borrowing to the parent corporation, and the parent corporation's financial staff reviews the findings and plans to determine whether to advise the related corporation to reconsider its plan. The services of review performed by the parent corporation for its own benefit are of a stewardship or overseeing character. The deductions resulting from stewardship or overseeing functions are incurred as a result of, or incident to, the ownership of the related corporation and, thus, shall be considered definitely related and allocable to dividends received or to be received from the related corporation. If a corporation has a foreign or international department which exercises stewardship or overseeing functions with respect to related foreign corporations and, in addition, the department has other functions which are attributable to other foreign-source income (such as fees for services rendered outside of the United States for the benefit of foreign related corporations, foreign royalties, and gross income of foreign branches) to which its deductions are also to be allocated, some part of the deductions with respect to that department are considered definitely related to the other foreign-source income. In some instances, the operations of a foreign or international department will also be attributable to United States source income (such as fees for services performed in the United States) to which its deductions are to be allocated. Methods of apportionment which could possibly be utilized with respect to stewardship expenses include comparisons of time spent by employees weighted to take into account differences in compensation, or comparisons of each related corporation's gross receipts, gross income, or unit sales volume, assuming that stewardship activities are not substantially disproportionate to such factors. See paragraph (f)(5) of this section for the type of verification that may be required in this respect. See examples (17) and (18) of paragraph (g) of this section for the allocation and apportionment of stewardship expenses. See paragraph (b)(3) of this section for the allocation and apportionment of deductions attributable to supportive functions other than stewardship activities.

(5) *Legal and accounting fees and expenses.* Fees and other expenses for legal and accounting services are ordinarily definitely related and allocable to specific classes of gross income or to all the taxpayer's gross income, depending on the nature of the services rendered (and are apportioned as provided in paragraph (c)(1) of this section). For example, accounting fees for the preparation of a study of the costs involved in manufacturing a specific product will ordinarily be definitely related to the class of gross income derived from (or which could reasonably have been expected to be derived from) that specific product. The taxpayer is not relieved from his responsibility to make a proper allocation and apportionment of fees on the grounds that the statement of services rendered does not identify the services performed beyond a generalized designation such as "professional," or does not provide any

type of allocation, or does not properly allocate the fees involved.

(6) *Income taxes.* The deduction for State, local, and foreign income, war profits and excess profits taxes allowed by section 164 shall be considered definitely related and allocable to the gross income with respect to which such taxes are imposed. For example, if a domestic corporation is subject to State income tax and the amount of such State income tax is imposed in part on the amount of foreign source income, that part of such State income tax attributable to foreign source income is definitely related and allocable to foreign source gross income. Examples (25) and (26) of paragraph (g) of this section illustrate the application of this subparagraph (6).

(7) *Losses on the sale, exchange, or other disposition of property*—(i) *Allocation.* The deduction allowed for loss recognized on the sale, exchange, or other disposition of a capital asset or property described in section 1231(b) shall be considered a deduction which is definitely related and allocable to the class of gross income to which such asset or property ordinarily gives rise in the hands of the taxpayer. Where the nature of gross income generated from the asset or property has varied significantly over several taxable years of the taxpayer, such class of gross income shall generally be determined by reference to gross income generated from the asset or property during the taxable year or years immediately preceeding the sale, exchange, or other disposition of such asset or property. Thus, for example, where an asset generates primarily sales income from domestic sources in the early years of its operation and then is leased by the taxpayer to a foreign subsidiary in later years, the class of gross income to which the asset gives rise will be considered to be the rental income derived from the lease and will not include sales income from domestic sources.

(ii) *Apportionment of losses.* Where in the unusual circumstances that an apportionment of a deduction for losses on the sale, exchange, or other disposition of a capital asset or property described in section 1231(b) is necessary, the amount of such deduction shall be apportioned between the statutory grouping (or among the statutory groupings) of gross income (within the class of gross income) and the residual grouping (within the class of gross income) in the same proportion that the amount of gross income within such statutory grouping (or statutory groupings) and such residual grouping bear, respectively, to the total amount of gross income within the class of gross income. Apportionment will be necessary where, for example, the class of gross income to which the deduction is allocated consists of gross income (such as royalties) attributable to an intangible asset used both within and without the United States, or gross income (such as from sales or services) attributable to a tangible asset used both within and without the United States.

(8) *Net operating loss deduction.* A net operating loss deduction allowed under section 172 shall be treated as a deduction definitely related and allocable to the class of gross income to which the activity or property which generated the net operating loss gave rise or could reasonably have been expected to give rise. The net operating loss deduction shall be apportioned between the statutory grouping of gross income (or groupings) and the residual grouping of gross income within the class of gross income on the basis of amounts of the net operating loss attributable to the respective groupings of income in the year when the net operating loss arose.

(9) *Deductions which are not definitely related.* Deductions which shall generally be considered as not definitely related to any gross income, and therefore are ratably apportioned as provided in paragraph (c)(2) of this section, are—

(i) The deduction allowed by section 163 for interest described in subparagraph (2)(iii) of this paragraph (e);

(ii) The deduction allowed by section 164 for real estate taxes on a personal residence or for sales tax on the purchase of items for personal use;

(iii) The deduction for medical expenses allowed by section 213;

(iv) The deduction for charitable contributions allowed by sections 170, 873 (b)(2), and 882(c)(1)(B); and

(v) The deduction for alimony payments allowed by section 215.

(10) *Special deductions.* The special deductions allowed in the case of a corporation by section 241 (relating to the deductions for partially tax exempt interest, dividends received, etc.), section 922 (relating to Western Hemipshere trade corporations), and section 941 (relating to China Trade Act corporations) shall be allocated and apportioned consistent with the principles of this section.

(11) *Personal exemptions.* The deductions for the personal exemptions allowed by section 151, 642(b), or 873(b)(3) shall not be taken into account for purposes of allocation and apportionment under this section.

(f) *Miscellaneous matters*—(1) *Operative sections.* The operative sections of the Code which require the determination of taxable income of the taxpayer from specific sources or activities and which give rise to stautory groupings to which this section is applicable include the sections described below.

(i) *Overall limitation to the foreign tax credit.* Under the overall limitation to the foreign tax credit, as provided in section 904(a)(2) (as in effect before enactment of the Tax Reform Act of 1976, or section 904(a) after such enactment) the amount of the foreign tax credit may not exceed the tentative U.S. tax (i.e., the U.S. tax before application of the foreign tax credit) multiplied by a fraction, the numerator of which is the taxable income from sources without the United States and the denominator of which is the entire taxable income. Accordingly, in this case, the statutory grouping is foreign source income (including, for example, interest received from a domestic corporation which meets the tests of section 861(a)(1)(B), dividends received from a domestic corporation which has an election in effect under section 936, and other types of income specified in section 862). Pursuant to sections 862(b) and 863(a) and §§ 1.862–1 and 1.863–1, this section provides rules for identifying the deductions to be taken into account in determining taxable income from sources without the United States. See section 904(d) (as in effect after enactment of the Tax Reform Act of 1976) and the regulations thereunder which require separate treatment of certain types of income. See example (3) of paragraph (g) of this section for one example of the application of this section to the overall limitation.

(ii) *Per-country limitation to the foreign tax credit.* Under the per-country limitation to the foreign tax credit, as provided in section 904(a)(1) (as in effect before enactment of the Tax Reform Act of 1976), the amount of the foreign tax credit for income taxes paid to a specific foreign country (or possession of the United States) may not exceed the tentative U.S. tax (i.e., the U.S. tax before application of the foreign tax credit) multiplied by a fraction, the numerator of which is the taxable income from sources within the foreign country and the denominator of which is the entire taxable income. Pursuant to § 1.863–6, the gross income and the taxable income from sources within a specific foreign country are determined under the same principles as are applied in determining gross income from sources within the United States (generally §§ 1.861–1 to 1.861–7) and taxable income from sources within the United States (generally this section). See section 904(d) (as in effect after enactment of the Tax Reform Act of 1976) and the regulations thereunder which require separate treatment of certain types of income. See example (16) of paragraph (g) of this section for an example of the application of this section to the per-country limitation.

(iii) *DISC taxable income.* Section 994 provides rules for determining the taxable income of a DISC with respect to qualified sales and leases of export property and qualified services. The "50–50" combined taxable income method available for making such determination provides, without consideration of export promotion expenses, that the taxable income of the DISC shall be 50 percent of the combined taxable income of the DISC and the related supplier derived from such sales and leases of export property and such services. Pursuant to regulations under section 994, this section provides rules for determining the deductions to be taken into account in determining such combined taxable income, except to the extent modified by the marginal costing rules set forth in the regulations under section 994(b)(2) if used by the taxpayer as provided therein. See examples (22) and (23) of paragraph (g) of this section. In addition, the computation of combined taxable income is necessary to determine

the applicability of both the general and special "no loss" rules of the regulations under section 994.

(iv) *Effectively connected taxable income.* Nonresident alien individuals and foreign corporations engaged in trade or business within the United States, under sections 871(b) and 882, are taxable at ordinary rates, as provided in section 1 or 1201(b), and section 11 or 1201(a), on taxable income which is effectively connected with the conduct of a trade or business within the United States. Such taxable income is determined in most instances by initially determining, under section 864(c), the amount of gross income which is effectively connected with the conduct of a trade or business within the United States. Pursuant to sections 873 and 882(c), this section is applicable for purposes of identifying the deductions from such gross income to be taken into account in determining such taxable income. In certain cases the provisions of an income tax treaty between the United States and a foreign country may apply in determining the taxable income of a nonresident alien individual or foreign corporation. In such cases the provisions of the treaty shall take precedence over this section. See example (21) of paragraph (g) of this section.

(v) *Foreign base company income.* Section 954 defines the term "foreign base company income" with respect to controlled foreign corporations. Section 954(b)(5) provides that in determining foreign base company income the gross income shall be reduced by the deductions of the controlled foreign corporation "properly allocable to such income". This section provides rules for identifying which deductions are properly allocable to foreign base company income.

(vi) *Other operative sections.* The rules provided in this section also apply in determining—

(A) The amount of foreign source items of tax preference under section 58 (g) determined for purposes of the minimum tax;

(B) The amount of foreign mineral income under section 901(e);

(C) The amount of interest income and the income from certain distributions from a DISC or former DISC to which the foreign tax credit limitation is applied separately under section 904(d) (as in effect after enactment of the Tax Reform Act of 1976);

(D) The amount of foreign oil and gas extraction income and the amount of foreign oil related income under section 907;

(E) The tax base for citizens entitled to the benefits of section 931 and the section 936 tax credit of a domestic corporation which has an election in effect under section 936;

(F) The exclusion for income from Puerto Rico for residents of Puerto Rico under section 933;

(G) The limitation under section 934 on the maximum reduction in income tax liability incurred to the Virgin Islands;

(H) The income derived from Guam by an individual who is subject to section 935;

(I) The special deduction granted to China Trade Act corporations under section 941;

(J) The amount of certain U.S. source income excluded from the subpart F income of a controlled foreign corporation under section 952(b);

(K) The amount of income from the insurance of U.S. risks under section 953(b)(5);

(L) The international boycott factor and the specifically attributable taxes and income under section 999; and

(M) The taxable income attributable to the operation of an agreement vessel under section 607 of the Merchant Marine Act of 1936, as amended, and the Capital Construction Fund Regulations thereunder (26 CFR, pt. 3). See 26 CFR 3.2(b)(3).

(2) *Application to more than one operative section.* Where more than one operative section applies, it may be necessary for the taxpayer to apply this section separately for each applicable operative section. In such a case, the taxpayer is required to use the same method of allocation and the same principles of apportionment for all operative sections.

(3) *Special rules of section 863(b)*—(i) *In general.* Special rules under section 863(b) provide for the application of rules of general apportionment provided in §§ 1.863-3 to 1.863-5, to worldwide taxable income in order to attribute part of such worldwide taxable income to U.S. sources and the remainder of such worldwide taxable income to foreign sources. The activities specified in section 863(b) are—

(A) Transportation or other services rendered partly within and partly without the United States,

(B) Sales of personal property produced by the taxpayer within and sold without the United States, or produced by the taxpayer without and sold within the United States, and

(C) Sales within the United States of personal property purchased within a possession of the United States.

In the instances provided in §§ 1.863-3 and 1.863-4 with respect to the activities described in (A), (B), and (C) of this subdivision, this section is applicable only in determining worldwide taxable income attributable to these activities.

(ii) *Relationship of sections 861, 862, 863(a), and 863(b).* Sections 861, 862, 863(a), and 863(b) are the four provisions applicable in determining taxable income from specific sources. Each of these four provisions applies independently. Where a deduction has been allocated and apportioned to income under one of these four provisions, the deduction shall not again be allocated and apportioned to gross income under any of the other three provisions. However, two or more of these provisions may have to be applied at the same time to determine the proper allocation and apportionment of a deduction. The special rules under section 863(b) take precedence over the general rules of Code sections 861, 862 and 863(a). For example, where a deduction is allocable in whole or in part to gross income to which section 863(b) applies, such deduction or part thereof shall not otherwise be allocated under section 861, 862, or 863(a). However, where the gross income to which the deduction is allocable includes both gross income to which section 863(b) applies and gross income to which section 861, 862, or 863 (a) applies, more than one section must be applied at the same time in order to determine the proper allocation and apportionment of the deduction.

(4) *Adjustments made under other provisions of the Code*—(i) *In general.* If an adjustment which affects the taxpayer is made under section 482 or any other provision of the Code, it may be necessary to recompute the allocations and apportionments required by this section in order to reflect changes resulting from the adjustment. The recomputation made by the District Director shall be made using the same method of allocation and apportionment as was originally used by the taxpayer, provided such method as originally used conformed with paragraph (a)(5) of this section and, in light of the adjustment, such method does not result in a material distortion. In addition to adjustments which would be made aside from this section, adjustments to the taxpayer's income and deductions which would not otherwise be made may be required before applying this section in order to prevent a distortion in determining taxable income from a particular source of activity. For example, if an item included as a part of the cost of goods sold has been improperly attributed to specific sales, and, as a result, gross income under one of the operative sections referred to in paragraph (f)(1) of this section is improperly determined, it may be necessary for the District Director to make an adjustment to the cost of goods sold, consistent with the principles of this section, before applying this section. Similarly, if a domestic corporation transfers the stock in its foreign subsidiaries to a domestic subsidiary and the parent continues to incur expenses in connection with the supervision of the foreign subsidiaries (see paragraph (e)(4) of this section), it may be necessary for the District Director to make an allocation under section 482 with respect to such expenses before making allocations and apportionments required by this section, even though the section 482 allocation might not otherwise be made.

(ii) *Example.* X, a domestic corporation, purchases and sells consumer items in the United States and foreign markets. Its sales in foreign markets are made to related foreign subsidiaries. X reported $1,500,000 as sales during the taxable year of which $1,000,000 was domestic sales and $500,000 was foreign sales. X took a deduction for expenses incurred by its marketing department during the taxable year in the amount

of $150,000. These expenses were determined to be allocable to both domestic and foreign sales and are apportionable between such sales. Thus, X allocated and apportioned the marketing department deduction as follows:

To gross income from domestic sales:

$150,000 × $\frac{\$1,000,000}{1,500,000}$ $100,000

To gross income from foreign sales:

$150,000 × $\frac{\$500,000}{1,500,000}$ 50,000

Total 150,000

On audit of X's return for the taxable year, the District Director adjusted, under section 482, X's sales to related foreign subsidiaries by increasing the sales price by a total of $100,000, thereby increasing X's foreign sales and total sales by the same amount. As a result of the section 482 adjustment, the apportionment of the deduction for the marketing department expenses is redetermined as follows:

To gross income from domestic sales:

$150,000 × $\frac{\$1,000,000}{1,600,000}$ $93,750

To gross income from foreign sales:

$150,000 × $\frac{\$600,000}{1,600,000}$ 56,250

Total 150,000

(5) *Verification of allocations and apportionments.* Since, under this section, allocations and apportionments are made on the basis of the factual relationship between deductions and gross income, the taxpayer is required to furnish, at the request of the District Director, information from which such factual relationships can be determined. In reviewing the overall limitation to the foreign tax credit of a domestic corporation, for example, the District Director should consider information which would enable him to determine the extent to which deductions attributable to functions performed in the United States are related to earning foreign source income, United States source income, or income from both sources. In addition to functions with a specific international purpose, consideration should be given to the functions of management, the direction and results of an acquisition program, the functions of operating units and personnel located at the head office, the functions of support units (including but not limited to engineering, legal, budget, accounting, and industrial relations), the functions of selling and advertising units and personnel, the direction and uses of research and development, and the direction and uses of services furnished by independent contractors. Thus, for example when requested by the District Director, the taxpayer shall make available any of its organization charts, manuals, and other writings which relate to the manner in which its gross income arises and to the functions of organizational units, employees, and assets of the taxpayer and arrange for the interview of such of its employees as the District Director deems desirable in order to determine the gross income to which deductions relate. See section 7602 and the regulations thereunder which generally provide for the examination of books and witnesses. See also section 905(b) and the regulations thereunder which require proof of foreign tax credits to the satisfaction of the Secretary or his delegate.

(g) *General examples.* The following examples illustrate the principles of this section. In each example, unless otherwise specified, the operative section which is applied and gives rise to the statutory grouping of gross income is the overall limitation to the foreign tax credit under section 904(a). In addition, in each example, where a method of allocation or apportionment is illustrated as an acceptable method, it is assumed that such method is used by the taxpayer on a consistent basis from year to year (except in the case of the optional method for apportioning interest under paragraph (e)(2)(vi) of this section or the optional method for apportioning research and development expense under paragraph (e)(3)(iii) of this section). Further, it is assumed that each party named in each example operates on a calendar year accounting basis and, where the party is a U.S. taxpayer, files returns on a calendar year basis.

Example (1)—Interest—(i) *Facts.* X, a domestic corporation, conducts a trade or business in the United States and owns all the stock of Y, a foreign corporation. In 1977, X takes a deduction for interest expense of $150,000. No portion of this interest expense relates to an obligation issued before January 1, 1977. In 1977, X has gross receipts of $968,000, cost of goods sold of $600,000, and gross income of $368,000. X also receives a total of $32,000 in gross income from Y, consisting of $20,000 in dividends, $8,000 in royalties, and $4,000 in interest payments.

(ii) *Allocation.* No portion of the $150,000 deduction is definitely related solely to specific property within the meaning of paragraph (e)(2)(iv) of this section. Thus, X's deduction for interest is related to all of its activities and properties.

(iii) *Apportionment.* Since X computes its foreign tax credit limitation under the overall method there is one statutory grouping, gross income from sources outside the United States, and one residual grouping, gross income from sources within the United States. The interest deduction of $150,000 must be apportioned between these two groupings. In accordance with paragraph (e)(2)(v) and (vi) (but not (vii)) of this section, X calculates the apportionment of the interest deduction under both the asset and gross income methods. X determines the amount of capital utilized or invested in its income producing activities and properties by computing an average book value for the year for all of its assets on the basis of book values of assets as of the beginning and end of its year. In this example, it is assumed that a substantial distortion does not result from the use of beginning and end of year balances.

Tentative apportionment on the basis of assets

[Average beginning-end of year]

Assets (net of depreciation) which relate to activities and properties that generate U.S.-source income (including inventory, working capital for U.S. business, trade accounts receivable, factory equipment)	$3,200,000
Assets (net of depreciation) which relate to activities and properties that generate foreign-source income (including X's investment in Y and loan to Y, trade accounts receivable, a portion of X's home office based on space and equipment utilized for subsidiary supervision and working capital required for such supervision)	800,000
Total	4,000,000

As a result of the above computations, X would apportion its interest deduction as follows:

To gross income from sources within the United States (residual grouping):

$150,000 × $\frac{\$3,200,000}{\$4,000,000}$ 120,000

To gross income from sources outside the United States (statutory grouping):

$150,000 × $\frac{\$800,000}{\$4,000,000}$ 30,000

Total 150,000

Tentative apportionment on the basis of gross income

Interest expense apportioned to the residual grouping, gross income from sources within the U.S.:

$150,000 × $\frac{\$368,000}{\$400,000}$ $138,000

Interest expense apportioned to the statutory grouping, gross income from sources outside the U.S:

$150,000 × $\frac{\$20,000 + \$8,000 + \$4,000)}{\$400,000}$ 12,000

Total 150,000

Since the tentative apportionment ($12,000) to the statutory grouping on the basis of gross income is only 40 percent of the tentative apportionment ($30,000) on the basis of assets, X may use Option Two of the gross income method (paragraph (e)(2)(vi)(B) of this section) and apportion to the statutory grouping fifty percent (50%) of the $30,000 apportioned to that grouping under the asset method. Thus X's actual apportionment to the statutory grouping would be $15,000.

Example (2)—Interest—(i) *Facts.* X, a domestic corporation, has two wholly owned subsidiaries, Y and Z, which operate in foreign countries. In 1977, X, incurs an interest expense of $200,000 (not in any part attributable to an obligation issued before January 1, 1977) and has gross income of $500,000 consisting of: $392,000 from its domestic activities; $30,000 of dividends from foreign corporation Y; and $78,000 of dividends from foreign corporation Z. X's balance sheets show an average of beginning and ending asset values as follows: $3,200,000 in book value of assets related to its domestic source income; $800,000 in book value of assets related to its income from Y; and $1,000,000 in book value of assets related to its income from Z. X uses the overall method for calculating the limit on its foreign tax credit.

(ii) *Allocation.* No portion of X's $200,000 deduction for interest expense is definitely related solely to specific property within the meaning of paragraph (e)(2)(iv) of this section. Thus, X's deduction for interest is related to all of its income producing activities and properties.

(iii) *Apportionment.* For purposes of applying the overall limitation, there is one statutory grouping, gross income from sources outside the United States, and the residual grouping, gross income from sources within the United States. X's interest expense must be apportioned between these two groupings. Corporation X calculates tentative apportionments under the asset and gross income methods, in accordance with paragraph (e)(2)(v) and (vi) (but not (vii)) of this section, as follows:

Tentative apportionment on the basis of assets

Interest expense apportioned to sources outside the United States (statutory grouping):

$$\$200{,}000\times\frac{(\$800{,}000+\$1{,}000{,}000)}{(\$800{,}000+\$1{,}000{,}000+\$3{,}200{,}000)}\cdots\ \$72{,}000$$

Interest expense apportioned to sources within the United States (residual grouping):

$$\$200{,}000\times\frac{\$3{,}200{,}000}{(\$800{,}000+\$1{,}000{,}000+\$3{,}200{,}000)}\cdots\ 128{,}000$$

Total apportioned interest expense 200,000

Of which—
Apportioned to statutory grouping 72,000
Apportioned to residual grouping 128,000

Tentative apportionment on the basis of gross income

Interest expense apportioned to sources outside the United States (statutory grouping):

$$\$200{,}000\times\frac{(\$30{,}000+\$78{,}000)}{(\$30{,}000+\$78{,}000+\$392{,}000)}\cdots\ \$43{,}200$$

Interest expense apportioned to sources within the United States (residual grouping):

$$\$200{,}000\times\frac{\$392{,}000}{(\$30{,}000+\$78{,}000+\$392{,}000)}\cdots\ 156{,}800$$

Total apportioned interest expense 200,000

Of which—
Apportioned to sources outside the United States statutory grouping 43,200
Apportioned to residual grouping 156,800

The total interest expense apportioned to the statutory grouping ($43,200) under the gross income method is 60 percent of the total amount apportioned to the statutory grouping ($72,000) under the asset method. Thus, X may use Option One of the gross income method (paragraph (e)(2)(vi)(A) of this section) and apportion $43,200 of its interest expense to the statutory grouping.

Example (3)—Research and Development—(i) *Facts.* X, a domestic corporation, is a manufacturer and distributor of small gasoline engines for lawn mowers. Gasoline engines are a product within the category, Machinery, except electrical (SIC Major Group 35). Y, a wholly owned foreign subsidiary of X also manufactures and sells these engines abroad. During 1977, X incurred expenditures of $60,000 on research and development, which it deducts as a current expense, to invent and patent a new and improved gasoline engine. All of the research and development was performed in the United States. In 1977, the domestic sales by X of the new engine total $500,000 and foreign sales by Y total $300,000. X provides technology on the manufacture of engines to Y as a contribution to capital, for which no royalty is paid. In 1977, X's income is $150,000, of which $140,000 is from domestic sales and $10,000 is a dividend from Y.

(ii) *Allocation.* The research and development expenditures were incurred in connection with small gasoline engines and they are definitely related to the items of gross income to which the research gives rise, namely gross income from the sale of small gasoline engines in the United States and dividends received from subsidiary Y, a foreign manufacturer of gasoline engines. Accordingly, the expenses are allocable to this class of gross income.

(iii) *Apportionment.* For purposes of applying the overall limitation, the statutory grouping is gross income from sources without the United States and the residual grouping is gross income from sources within the United States. Since the related class of gross income derived from the use of engine technology consists of both gross income from sources without the United States (dividends from Y) and gross income from sources within the United States (gross income from engine sales), X's deduction of $60,000 for its research and development expenditure must be apportioned between the statutory and residual grouping before the overall limitation may be applied. Because more than 50 percent of X's research and development activity was performed in the United States, 50 percent of that deduction can be apportioned exclusively to the residual grouping of gross income, gross income from sources within the United States. The remaining 50 percent of the deduction can then be apportioned between the residual and statutory groupings on the basis of sales by X and Y. Alternatively, X's deduction for research and development can be apportioned under the optional gross income method. The apportionment for 1977 is as follows:

Tentative apportionment on the basis of sales

Research and development expense to be apportioned between residual and statutory groupings of gross income $60,000
Less:
Exclusive apportionment of research and development expense to the residual grouping of gross income:
$60,000×50 percent 30,000

Research and development expense to be apportioned between residual and statutory groupings of gross income on the basis of sales 30,000

Apportionment of research and development expense to the residual grouping of gross income:

$$\$30{,}000\times\frac{\$500{,}000}{(\$500{,}000+\$300{,}000)}\cdots\ 18{,}750$$

Apportionment of research and development expense to the statutory grouping of gross income:

$$\$30{,}000\times\frac{\$300{,}000}{(\$500{,}000+\$300{,}000)}\cdots\ 11{,}250$$

Total: Apportioned deduction for research and development 60,000

Of which—
Apportioned to the residual grouping ($30,000 +$18,750) 48,750
Apportioned to the statutory grouping 11,250

Tentative apportionment on the basis of gross income

Research and development expense apportioned to sources within the United States (residual grouping):

$$\$60{,}000\times\frac{\$140{,}000}{(\$140{,}000+\$10{,}000)}\cdots\ \$56{,}000$$

Research and development expense apportioned to sources within country Y (statutory grouping):

$$\$60{,}000\times\frac{\$10{,}000}{(\$140{,}000+\$10{,}000)}\cdots\ 4{,}000$$

Of which—
Apportioned to the residual grouping 56,000
Apportioned to statutory grouping 4,000

The total research and development expense apportioned to the statutory grouping ($4,000) under the gross income method is approximately 36 percent of the amount apportioned to the statutory grouping under the sales method. Thus, X may use Option Two of the gross income method (paragraph (e)(3)(iii)(B) of this section) and apportion to the statutory grouping fifty percent (50%) of the $11,250 apportioned to that grouping under the sales method. Thus, X apportions $5,625 of research and development expense to the statutory grouping.

Example (4)—Research and Development—(i) *Facts.* Assume the same facts as in example (3) except that X also spends $30,000 in 1977 for research on bulldozers, all of which is performed in the United States, and X has bulldozer sales in the United States of $400,000. X's foreign subsidiary Y neither manufactures nor sells bulldozers. The bulldozer research is in addition to the $60,000 in research which X does on gasoline engines for lawn mowers. X thus has a deduction of $90,000 for its research activity. X's gross income is $200,000, of which $140,000 is from sales of gasoline engines, $50,000 is from sales of bulldozers, and $10,000 is a dividend from Y.

(ii) *Allocation.* X's research expenses generate income from sales of small gasoline engines and bulldozers. Both of these products are in the major broad product category, Machinery, except electrical (SIC Major Group 35). Therefore, the deduction is definitely related to this product category and allocable to all items of income attributable to it, gross income from the sale of small gasoline engines and bulldozers in the United States and dividends from foreign subsidiary Y, a foreign manufacturer and seller of small gasoline engines.

(iii) *Apportionment.* For purposes of applying the overall limitation, the statutory grouping is gross income from sources outside the United States and the residual grouping is gross income from sources within the United States. X's deduction of $90,000 must be apportioned between the statutory and residual groupings. Because more than 50 percent of X's research and development activity was performed in the United States, 50 percent of that deduction can be apportioned exclusively to the residual grouping, gross income from sources within the United States. The remaining 50 percent of the deduction can then be apportioned between the residual and statutory groupings on the basis of total sales by X and Y. Alternatively, X's deduction for research and development can be apportioned under the optional gross income method. The apportionment for 1977 is as follows:

Tentative apportionment on the basis of sales

Research and development expense to be apportioned between residual and statutory groupings of gross income $90,000
Less:
Exclusive apportionment of the research and development expense to the residual grouping of gross income:
$90,000×50 percent 45,000

Research and development expense to be apportioned between the residual and statutory groupings of gross income on the basis of sales 45,000
Apportionment of research and development expense to the residual grouping of gross income:

$$\$45{,}000\times\frac{(\$500{,}000+\$400{,}000)}{(\$500{,}000+\$400{,}000+\$300{,}000)}\cdots\ 33{,}750$$

Apportionment of research and development expense to the statutory grouping of gross income:

$$\$45{,}000\times\frac{\$300{,}000}{(\$500{,}000+\$400{,}000+\$300{,}000)}\cdots\ 11{,}250$$

Total: Apportioned deduction for research and development 90,000

Of which—
Apportioned to the residual grouping ($45,000+$33,750) 78,750
Apportioned to the statutory grouping 11,250

Tentative apportionment on the basis of gross income

Research and development expense apportioned to sources within the United States (residual grouping):

$$\$90{,}000\times\frac{\$190{,}000}{(\$140{,}000+\$50{,}000+10{,}000)}\cdots\ \$85{,}500$$

Research and development expense apportioned to sources within country Y (statutory grouping):

$$\$90{,}000\times\frac{\$10{,}000}{(\$140{,}000+\$50{,}000+\$10{,}000)}\cdots\ 4{,}500$$

of which—
Apportioned to the residual grouping 85,500
Apportioned to the statutory grouping 4,500

The total research and development expense apportioned to the statutory grouping ($4,500) under the gross income method is 40 percent of the amount apportioned to the statutory grouping under the sales method. Thus, X may use Option Two of the gross income method (paragraph (e)(3)(iii)(B) of this section) and apportion to the statutory grouping fifty percent (50%) of the $11,250 apportioned to that grouping under

the sales method. Thus, X apportions $5,625 of research and development expense to the statutory grouping.

Example (5)—Research and Development—(i) *Facts.* Assume the same facts as in example (3) except that in 1978 X continues its sales of the new engines, with sales of $600,000 in the United States and $400,000 by subsidiary Y. X also acquires a 60 percent ownership interest in foreign corporation Z and a 100 percent ownership interest in foreign corporation C. X transfers its engine technology to Z for a royalty equal to 5 percent of sales, and X enters into a cost-sharing arrangement with C to share the funding of all of X's research activity. In 1978, corporation Z has sales in country Z equal to $1,000,000. X incurs expense of $80,000 on research and development in 1978, and in addition, X performs $15,000 of research on gasoline engines which was funded by the cost-sharing arrangement with C. All of Z's sales are from the product category, Machinery, except electrical (SIC Major Group 35). X performs all of its research in the United States and $20,000 of its expenditure of $80,000 is made solely to meet noise pollution standards mandated by the United States Government. X establishes, to the satisfaction of the Commissioner, that the expenditure in response to noise pollution standards is not expected to generate gross income (beyond de minimis amounts) outside the United States.

(ii) *Allocation.* The $20,000 of research expense which X incurred in connection with U.S. noise pollution standards is definitely related and thus allocable to the residual grouping, gross income from sources within the United States. The remaining $60,000 in research and development expenditure incurred by X is definitely related to all gasoline engines and is therefore allocable to the class of gross income to which the engines give rise, gross income from sales in the United States, dividends from country Y, and royalties from country Z. No part of the $60,000 research expense is allocable to dividends from country C because corporation C has already paid, through its cost-sharing arrangement, for research activity performed by X which may benefit C.

(iii) *Apportionment.* For purposes of applying the overall limitation, the statutory grouping is gross income from sources within countries Y and Z, and the residual grouping is gross income from sources within the United States. X's deduction of $60,000 for its research and development expenditure must be apportioned between these groupings. Because more than 50 percent of the research and development was performed in the United States, 40 percent (in 1978) of the $60,000 deduction can be apportioned exclusively to the residual grouping. The remaining 60 percent of the deduction can then be apportioned between the residual and the statutory grouping on the basis of sales by X, Y, and Z. (Alternatively X's deduction for research and development can be apportioned under one of the optional gross income methods, which are not illustrated in this example (see instead examples (3) and (4)). Since X has only a 60 percent ownership interest in corporation Z, only 60 percent of Z's sales (60% of $1,000,000, or $600,000) are included for purposes of apportionment. The allocation and apportionment for 1978 is as follows:

X's total research expense	$80,000
Less:	
U.S. Government mandated research directly allocated to the residual grouping of gross income	20,000

Tentative apportionment on the basis of sales

Research and development expense to be apportioned between residual and statutory groupings of gross income	$60,000
Less:	
Exclusive apportionment of research and development expense to the residual grouping of gross income: $60,000×40 percent	24,000
Research and development expense to be apportioned between the residual and the statutory grouping on the basis of sales	$36,000
Apportionment of research and development expense to gross income from sources within the United States (residual grouping): $36,000×$\frac{\$600,000}{(\$600,000+\$400,000+\$600,000)}$	13,500
Apportionment of research and development expense to gross income from countries Y and Z (statutory grouping): $36,000×$\frac{(\$400,000+\$600,000)}{(\$600,000+\$400,000+\$600,000)}$	22,500
Total: Apportioned deduction for research and development ($24,000+$36,000)	$60,000
Of which—	
Apportioned to the residual grouping ($24,000+$13,500)	37,500
Apportioned to the statutory grouping of sources within countries Y and Z	22,500

Example (6)—Research and Development—(i) *Facts.* X, a domestic corporation, manufactures and sells forklift trucks and other types of materials handling equipment in the United States. The manufacture and sale of trucks and other handling equipment belongs to the product category, Transportation equipment (SIC Major Group 37). X also sells its forklift trucks to a wholesaling subsidiary located in foreign country Y (and title passes in country Y), and X manufactures forklift trucks in foreign country Z. The wholesaling of forklift trucks in country Y belongs to the product category, Wholesale trade (SIC Major Groups 50 and 51). X performs no research with respect to wholesale trade. In 1977, X sold $7,000,000 of trucks to purchasers in the United States, $3,000,000 of trucks to the wholesaling subsidiary in Y, and truck components with an FOB export value of $2,000,000 to its branch in Z. The branch's sales of finished trucks were $5,000,000. In response to emission control requirements of the United States Government, X's United States research department has been engaged in a research project to improve the performance and quality of engine exhaust systems used on its products in the United States. It incurs expenses of $100,000 for this purpose in 1977. In the past, X has customarily adapted the product improvements developed originally for the domestic market to its forklift trucks manufactured abroad. During the taxable year 1977, development of an improved engine exhaust system is completed and X begins installing the new system during the latter part of the taxable year in products manufactured and sold in the United States. X continues to manufacture and sell forklift trucks in foreign countries without the improved engine exhaust systems.

(ii) *Allocation.* X's deduction for its research expense is definitely related to the income to which it gives rise, namely income from the manufacture and sale of forklift trucks within the United States and in country Z. Although the research is undertaken in response to a United States Government mandate, it can reasonably be expected to generate gross income from the manufacture and sale of trucks by the branch in Z. Therefore, the deduction is not allocable solely to income from X's domestic sales of forklift trucks. It is allocable to income from such sales and income from the sales of X's branch in Z. However the deduction for reasearch expense is not allocable to the sales of the subsidiary in Y, because those sales are in a different product category.

(iii) *Apportionment.* For the method of apportionment on the basis of either sales or gross income see example (3). However, in determining the amount of research apportioned to income from foreign and domestic sources, the net sales of the branch in Z are $3,000,000 ($5,000,000 less $2,000,000) and the sales within the United States are $12,000,000 ($7,000,000 plus $3,000,000 plus $2,000,000).

Example (7)—Research and Development—(i) *Facts.* X, a domestic corporation, is a drug company which manufactures a wide variety of pharmaceutical products for sale in the United States. Pharmaceutical products belong to the product category, Chemicals and allied products (SIC Major Group 28). X exports its pharmaceutical products through a domestic international sales corporation (DISC). X's wholly owned foreign subsidiary Y also manufactures pharmaceutical products. In 1977, X has domestic sales of $10,000,000, the DISC has sales of $3,000,000, and Y has sales of $5,000,000. In that same year, 1977, X incurs expense of $200,000 on research to test a product in response to requirements imposed by the United States Food and Drug Administration (FDA). X is able to show that, even though country Y imposes certain testing requirements on pharmaceutical products, the research performed in the United States is not accepted by country Y for purposes of its own licensing requirements, and the research has minimal use abroad. X is further able to show that its DISC sells goods to countries which do not accept or do not require research performed in the United States for purposes of their own licensing standards.

(ii) *Allocation.* Since X's research expense of $200,000 is undertaken to meet the requirements of the United States Food and Drug Administration, and since it is reasonable to expect that the expenditure will not generate gross income (beyond de minimis amounts) outside the United States, the deduction is definitely related and thus allocable to the residual grouping.

(iii) *Apportionment.* No apportionment is necessary since the entire expense is allocated to the residual grouping, gross income from sales within the United States.

Example (8)—Research and Development—(i) *Facts.* X, a domestic corporation, is engaged in continuous research and development to improve the quality of the products that it manufactures and sells, which are floodlights, electric fans, television sets, and storage batteries. X incurs and deducts $100,000 of expenditure for research and development in 1977 which was performed exclusively in the United States. As a result of this research activity, X acquires patents which it uses in its own manufacturing activity. X licenses its floodlight patent to Y and Z, uncontrolled foreign corporations, for use in their own territories, countries Y and Z, respectively. Corporation Y pays X an arm's length royalty of $3,000 plus $0.20 for each floodlight sold. Sales of floodlights by Y for the taxable year are $135,000 (at $4.50 per unit) or 30,000 units, and the royalty is $9,000 ($3,000+$0.20×30,000). Y has sales of other products of $500,000. Z pays X an arm's length royalty of $3,000 plus $0.30 for each unit sold. Z manufactures 30,000 floodlights in the taxable year, and the royalty is $12,000 ($3,000+$0.30×30,000). The dollar value of Z's floodlight sales is not known and cannot

be reasonably estimated because, in this case, the floodlights are not sold separately by Z but are instead used as a component in Z's manufacture of lighting equipment for theatres. The sales of all Z's products, including the lighting equipment for theatres, are $1,000,000. Y and Z each sell the floodlights exclusively within their respective countries. X's sales of floodlights for the taxable year are $500,000 and its sales of its other products, fans, televisions, and batteries, are $400,000. X has gross income of $500,000, consisting of gross income from domestic sources of $479,000, and royalty income of $9,000 and $12,000 from foreign corporations Y and Z respectively.

(ii) *Allocation.* X's research and development expenses are definitely related to all of the products that it produces, which are flood lights, electric fans, television sets, and storage batteries. All of these products are in the same broadly defined product category, Electrical and electronic machinery, equipment, and supplies (SIC Major Group 36). Thus, X's research and development expenses are allocable to all items of income attributable to this product category, domestic sales income and royalty income from the foreign countries in which corporations Y and Z operate.

(iii) *Apportionment.* Since X uses the overall limitation for calculating the foreign tax credit, the statutory grouping of gross income is royalty income from countries Y and Z. The residual grouping is gross income from sources within the United States. X's deduction of $100,000 for its research expenditures must be apportioned between the groupings. For apportionment on the basis of sales in accordance with paragraph (e)(3)(ii) of this section, X is entitled (in 1977) to an exclusive apportionment of 50 percent of its research and development expense to the residual grouping, gross income from sources within the United States, since more than 50 percent of the research activity was performed in the United States. The remaining 50 percent of the deduction can then be apportioned between the residual and statutory groupings on the basis of sales. Since Y and Z are unrelated licensees of X, only their sales of the licensed product, floodlights, are included for purposes of apportionment. Floodlight sales of Z are unknown, but are estimated at ten times royalties from Z, or $120,000. All of X's sales from the entire product category are included for purposes of apportionment on the basis of sales. Alternatively, X may apportion its deduction on the basis of gross income, in accordance with paragraph (e)(3)(iii) of this section. The apportionment for 1977 is as follows:

Tentative apportionment on the basis of sales

Research and development expense to be apportioned between statutory and residual groupings of gross income	$100,000
Less:	
Exclusive apportionment of research and development expense to the residual grouping of gross income: $100,000×50 percent	50,000
Research and development expense to be apportioned between the statutory and residual groupings of gross income on the basis of sales	$50,000
Apportionment of research and development expense to the residual groupings of gross income: $50,000×$\frac{\$900,000}{(\$900,000+\$135,000+\$120,000)}$	38,961
Apportionment of research and development expense to the statutory grouping, royalty income from countries Y and Z: $50,000×$\frac{\$135,000+\$120,000}{(\$900,000+\$135,000+\$120,000)}$	11,039
Total: Apportioned deduction for research and development	$100,000
Of which—	
Apportioned to the residual grouping ($50,000+$38,961)	88,961
Apportioned to the statutory grouping of sources within countries Y and Z	11,039

Tentative apportionment on gross income basis

Apportionment of research and development expense to the residual grouping of gross income: $100,000×$\frac{\$479,000}{\$500,000}$	$95,800
Apportionment of research and development expense to the statutory grouping, royalty income from Y and Z: $100,000×$\frac{\$9,000+\$12,000)}{\$500,000}$	4,200
Of which—	
Apportioned to the residual grouping	95,800
Apportioned to the statutory grouping of sources within countries Y and Z	4,200

Since X's apportionment on the basis of gross income to the statutory grouping, $4,200, is less than 50 percent of its apportionment on the basis of sales to the statutory grouping, $11,039 it may use Option Two of paragraph (e)(3)(iii)(B) of this section and apportion $5,520 (50 percent of $11,039) to the statutory grouping.

Example (9)—Research and Development—(i) *Facts.* X, a domestic corporation, manufactures and sells commercial amounts of individual products A, B, and C, each of which is identified with a 7-digit code in the *Numerical List of Manufactured Products*, and all of which are contained in one broad product category, Transportation equipment (SIC Major Group 37). X's wholly owned foreign subsidiary, Y, manufactures and sells commercial amounts of transportation equipment products A, B, and D. X's wholly owned foreign subsidiary Z manufactures and sells commercial amounts of transportation equipment product C. In 1978, X incurs expense of $100,000 on research and development performed in the U.S. and has domestic sales of $5,000,000 of which product A accounts for $2,000,000, product B accounts for $2,500,000, and product C accounts for $500,000. Y has foreign sales of $1,000,000, and Z has foreign sales of $500,000. X challenges the allowable amount of 40 percent of its research and development expenditure that is apportioned exclusively to the residual grouping, gross income from domestic sales. For purposes of apportionment on the basis of sales, X contends that it is entitled to a larger exclusive apportionment because its research has very limited and long delayed application outside the United States. X establishes to the satisfaction of the Commissioner that, while it has regularly licensed Y, Z cannot reasonably be expected to benefit from X's research, either directly or indirectly through X or Y. X further establishes, to the satisfaction of the Commissioner, that the individual products manufactured and sold by Y, namely A and B, which are also manufactured and sold by X account for 90 percent of X's sales ((\$2,000,000+\$2,500,000)/(\$5,000,000)=90 percent); and that there is a delay of about 4.7 years between the time X applies research to its domestic sales and then makes it available to Y.

(ii) *Allocation.* X's research is definitely related to the Transportation equipment product category and thus allocable to all income from that category.

(iii) *Apportionment.* Since X computes the limit on its foreign tax credit under the overall method, there is one statutory grouping, gross income from sources outside the United States, and one residual grouping, gross income from sources within the United States. The research and development deduction is apportioned between these two groupings. In determining whether the 40 percent exclusive apportionment prescribed in paragraph (e)(3)(ii)(A) of this section must be applied to this particular taxpayer, the following analysis is made. In this analysis, Z's sales of product C are ignored.

Calculation of exclusive apportionment on basis of prescribed percentage

X's total deduction for research and development	$100,000
Tentative exclusive apportionment of research and development expense to the residual grouping of gross income: $100,000×40 pct	40,000

Calculation of exclusive apportionment on the basis of facts and circumstances

Factor 1:	
Only 10 percent of X's product category is manufactured and sold by foreign subsidiary Y; therefore 10 percent of X's research and development expense should be apportioned exclusively to the residual grouping of gross income: $100,000×10 pct	$10,000
Remaining research and development expense: $100,000−$10,000=$90,000	
Factor 2:	
There is a delay of 4.7 yr between the time X applies its successful research and development to the domestic market and it is applied by its foreign subsidiary Y; based on a calculation of present value at the safe haven discount rate of 10 pct per year of delay, the contribution of research and development to the delayed foreign sales is approximately 36 pct less than its contribution to domestic sales. Therefore, 36 pct of X's remaining research and development expense should be apportioned exclusively to the residual grouping of gross income: $90,000×36 pct	32,400
Total: Exclusive apportionment of research and development expense to the residual grouping based on an analysis of the 2 factors ($10,000+$32,400)	42,400

The exclusive apportionment to the residual grouping of gross income of $42,400 that is based on an analysis of X's facts and circumstances is not substantially different from the exclusive apportionment of $40,000 provided by the 40 percent exclusive apportionment available to all taxpayers. Since X has not demonstrated facts and circumstances that would justify a substantially different exclusive apportionment than the 40 percent figure, the 40 percent exclusive apportionment stands. The remaining 60 percent of X's research and development expense is apportioned on the basis of total sales of X and Y. (Alternatively, X's deduction for research and development can be apportioned under one of the optional gross income methods, which are not illustrated in this example; see instead examples (3) and (4).)

Example (10)—Research and Development—(i) *Facts.* The facts are the same as example (9), and there are no other material facts except that X establishes to the satisfaction of the Commissioner that foreign subsidiary Y sells 80 percent of the broad product category sold by X; and that there is a delay of about 5.7 years between the time X applies research in generating domestic sales and the time Y applies research in generating foreign sales.

(ii) *Allocation.* X's research is definitely related to the Transportation equipment product category and thus allocable to all income from that category.

(iii) *Apportionment.* Since X computes its foreign tax credit limit under the overall method, there is one statutory grouping, gross income from outside the United States, and one residual grouping, gross income from within the United States. The research and development deduction is apportioned between the two groupings. In determining whether the 40 percent exclusive apportionment must be applied to this particular taxpayer, the following analysis is made.

Calculation of exclusive apportionment on basis of prescribed percentage

X's total deduction for research and development	$100,000
Tentative exclusive apportionment of research and development expense to the residual grouping of gross income $100,000×40 pct	40,000

Calculation of exclusive apportionment on basis of facts and circumstances

Factor 1:	
Only 80 pct of X's product category is manufactured and sold by foreign subsidiary Y; therefore 20 pct of X's research and development expense should be apportioned exclusively to the residual grouping of gross income: $100,000×20 pct	$20,000
Remaining research and development expense: $100,000−$20,000=$80,000	
Factor 2:	
There is a delay of 5.7 yr between the time X applies its successful research and development to the domestic market and the time it is applied by its foreign subsidiary Y; based on a calculation of present value at the safe haven discount rate of 10 pct per yr of delay, the contribution of research and development to the delayed foreign sales is approximately 42 pct less than its contribution to domestic sales. Therefore 42 pct of X's remaining research and development expense should be apportioned exclusively to the residual grouping of gross income: $80,000×42 pct	33,600
Total: Exclusive apportionment of research and development expense to the residual grouping based on an analysis of the 2 factors) $20,000+$33,600)	$53,60

The exclusive apportionment to the residual grouping of gross income of $53,600 that is based on an analysis of X's facts and circumstances is substantially different from the exclusive apportionment of $40,000 provided by the 40 percent exclusive apportionment available to all taxpayers. Since X has demonstrated, to the satisfaction of the Commissioner, that its facts and circumstances justify a substantially higher exclusive apportionment, the Commissioner allows X to apportion exclusively $53,600 of its research expenses to the residual grouping, gross income from sources within the United States. The remaining $46,400 of X's research and development expense is apportioned on the basis of total sales, but X's domestic sales are adjusted to exclude sales of those products not sold abroad. Since only 80 percent of X's product category is sold abroad by Y, only 80 percent of X's domestic sales are included in the apportionment. (Alternatively, X's deduction for research and development can be apportioned under one of the optional gross income methods illustrated in examples (3) and (4).) The apportionment for 1978 is as follows:

Research and development expense to be apportioned between residual and statutory groupings of gross income	$100,000
Less:	
Exclusive apportionment of research and development expense to the residual grouping of gross income	53,600
Remaining research and development expense to be apportioned between residual and statutory groupings of gross income on basis of comparable sales	46,400
Apportionment of research and development expense to the residual grouping, gross income from within the United States: $46,400×\frac{($5,000,000×.80)}{($5,000,000×.80+$1,000,000)}$	37,120
Apportionment of research and development expense to the statutory grouping, gross income from outside the United States: $46,400×\frac{$1,000,000}{($5,000,000×.80+$1,000,000)}$	9,280
Total: Apportioned deduction for research and development	100,000
Of which—	
Apportioned to the residual grouping ($53,600+$37,120)	90,720
Apportioned to the statutory grouping	9,280

Example (11)—Research and Development—(i) *Facts.* X, a domestic corporation, and Y, its domestic subsidiary, manufacture and sell computers and other items of office equipment, all of which are contained in one broad product category, Electrical and electronic machinery, equipment and supplies (SIC Major Group 37). Many of the same products are manufactured by X's foreign subsidiary Z (in country Z), using the technology of X or Y, and certain patents are licensed to uncontrolled foreign corporations L and M (in countries L and M respectively). For purposes of justifying an exclusive apportionment in excess of 30 percent in 1979, X seeks to establish that its research has long delayed application outside the United States. Substantially all of X's successful research finds its application in new products. X establishes, to the satisfaction of the Commissioner, that the following table accurately portrays the history of commercial introduction of those particular products which, in the year 1979, were both manufactured in the United States by X or Y, and are either manufactured abroad by Z, or licensed abroad to L or M. In identifying particular products, X is not restricted to the 7-digit products listed in *Numerical List of Manufactured Products.*

	1979 U.S. sales of X and Y (millions)	Year first commercially manufactured in the United States by X or Y	Year first commercially manufactured abroad by Z, or licensed to L or M	Delay in applying research outside the United States (years)
Product a	$130	1972	1974	2
Product b	90	1974	1979	5
Product c	10	1969	1978	9
Product d	50	1970	1973	3
Sales of products manufactured domestically and abroad	280			
Sales of products not manufactured or licensed abroad	55			
Total sales of X and Y	335			

(ii) *Allocation.* X's research is definitely related to the Electrical and electronic machinery, equipment and supplies category, and thus allocable to all income from that category.

(iii) *Apportionment.* On the basis of the facts established by X, the average delay between X's application of research findings in the United States and abroad may be estimated as 3.4 years (weighted on the basis of sales):

$$\frac{[(2\text{ yr}\times\$130)+(5\text{ yr}\times\$90)+(9\text{ yr}\times\$10)+(3\text{ yr}\times\$50)]}{(\$130+\$90+\$10+\$50)}\text{ Years}\ 3.4$$

If the Commissioner is satisfied that the estimate of 3.4 years accurately reflects the delay between X's application of its research findings in the United States and abroad, such estimate may be accepted for purposes of justifying an exclusive apportionment in excess of 30 percent in 1979.

Example (12)—Research and Development—(i) *Facts.* The facts are the same as in example (11) and there are no other material facts except that, in addition to its research on new products, X also conducts research on improving the processes for manufacturing its standard computer components. X is able to establish that, in 1979, its research and development expenses of $7,000,000 may be reasonably divided into $5,000,000 for new product research and $2,000,000 for new process research. (If X is not able to establish clearly the portion of its research expenditures which is attributable to new process research, the determination of an average delay shall be made solely on the basis of the average delay for introducing new products abroad.) X further establishes, to the satisfaction of the Commissioner, that the following table accurately portrays the history of commercial application of previously developed processes which, in 1979, are both used in manufacturing products in the United States by X or Y, and are either used in manufacturing products abroad by Z, or licensed for manufacturing products abroad by L or M.

	1979 U.S. sales of X and Y of products manufactured using the process (millions)	Year process first commercially applied in the United States by X or Y	Year process first commercially applied abroad or licensed to L or M	Delay in applying research outside the United States (years)
Process a	$45	1970	1979	9
Process b	20	1975	1976	1
Process c	60	1975	1972	−3

(ii) *Allocation.* X's research on new processes as well as new products is definitely related to the Electrical and electronic machinery, equipment and supplies category, and thus allocable to all income from that category.

(iii) *Apportionment.* On the basis of the facts established by X, the average delay between X's application of research findings to the use of new manufacturing processes in the United States and abroad may be estimated as 2.0 years (weighted on the basis of sales):

$$\frac{[(9\text{ yr}\times\$45)+(1\text{ yr}\times\$20)+(-3\text{ yr}\times\$60)]}{(\$45+\$20+\$60)}\text{ Year}\ 2$$

On the basis of the estimated of an average 2.0 year delay in introducing new processes abroad, and a 3.4 year delay in introducing new products abroad (from Example (11)), and on the basis of the division of research expense between new processes technology ($2,000,000) and new product technology ($5,000,000), the overall delay between X's application of research findings in the United States and abroad may be estimated as 3.0 years:

$$\frac{[(2\text{ yr}\times\$2{,}000{,}000)+(3.4\text{ yr}\times\$5{,}000{,}000)]}{(\$2{,}000{,}000+\$5{,}000{,}000)}\text{ Year}\ldots\ldots 3$$

If the Commissioner is satisfied that the estimate of 3.0 years accurately reflects the delay between X's application of its research findings in the United States and abroad, such estimate may be accepted for purposes of justifying exclusive apportionment in excess of 30 percent in 1979.

Example (13)—Research and Development—(i) *Facts.* X, a domestic corporation, manufactures and sells electronic computer Model A in the United States. X performs research in the United States with particular emphasis on improving the characteristics of its Model A computer. Y, a foreign subsidiary of X, manufactures and sells electronic computer Model B in France. For purposes of justifying an exclusive apportionment in excess of 30 percent in 1979, X seeks to establish that its research has more limited application in France than in the United States. X establishes that the Model A computer works at substantially faster speeds, and otherwise has markedly superior characteristics, than the Model B computer.

(ii) *Allocation.* X's research is definitely related to the Electrical and electronic machinery, equipment and supplies category (SIC Major Group 35), and thus allocable to all income from that category.

(iii) *Apportionment.* Electronic computers are an individual product enumerated as product number 3573100 (electronic computers, except typewriters, peripheral equipment, and parts) in the *Numerical List of Manufactured Products.* The *Numerical List* groups Model A and Model B computers together under the same product heading. On the basis of these facts, X does not have a more limited application of its research in France than in the United States.

Example (14)—Research and Development—(i) *Facts.* X, a domestic corporation, produces a variety of chemical products used in the further manufacture of synthetic fibers, plastics, paints, fertilizers and explosives. Chemical products are in the category, Chemicals and allied products (SIC Major Group 28). X has total sales of its chemical products of $5,000,000 in 1978 and incurs expense of $200,000 on research and development performed in the United States which it deducts as a current expense. In 1978, X licenses unrelated foreign corporation Y to use one of X's chemical patents in the manufacture of chemical A. The research and development leading to this particular patent was performed by X between 1955 and 1960. Corporation Y manufactures and sells chemical A as well as other products in country Y. Y has sales of $500,000 of chemical A in 1978. It pays X a royalty of 2 percent of sales for use of the patent.

(ii) *Allocation.* X's expenditures for research and development are definitely related to the product category, Chemicals and allied products (SIC Major Group 28), and thus allocable to the income related to it, domestic sales income and foreign royalty income.

(iii) *Apportionment.* X computes its foreign tax credit limit under the overall method. The statutory grouping is gross income from sources outside the United States and the residual grouping is gross income from sources within the United States. Forty percent of X's deduction for research and development is apportioned exclusively (in 1978) to the residual grouping of gross income since the work was performed in the United States. The remaining 60 percent of the deduction is apportioned between the residual and statutory groupings on the basis of sales by X and Y. Since Y is an uncontrolled licensee of X, only its sales of chemical A are included for purposes of apportionment. (Alternatively, X could apportion its research and development deduction on the basis of one of the gross income optional methods illustrated in examples (3) and (4).) The apportionment, on a sales basis, for 1978 is as follows:

Tentative apportionment on the basis of sales

Research and development expense to be apportioned between residual and statutory groupings of gross income	$200,000
Less:	
Exclusive apportionment of research and development expense to the residual grouping of gross income: $200,000 × 40 pct	80,000
Research and development expense to be apportioned between residual and statutory groupings on the basis of sales	120,000
Apportionment of research and development expense to the residual grouping of gross income: $120,000 × $\frac{\$5,000,000}{(\$5,000,000+\$500,000)}$	109,091
Apportionment of research and development expense to the statutory grouping of gross income: $120,000 × $\frac{500,000}{(\$5,000,000+\$500,000)}$	10,909
Total: Apportioned deduction for research and development	200,000
Of which—	
Apportioned to the residual grouping ($80,000+$109,091)	189,091
Apportioned to the statutory grouping	10,909

Example (15)—Research and Development—(i) *Facts.* X, a domestic corporation, manufactures heating equipment. Heating equipment is within the product category, Fabricated metal products, except machinery and transportation equipment (SIC Major Group 34). X incurs expense of $200,000 in 1978 on a successful research project that results in the development of an energy saving furnace. X also incurs expense of $50,000 on basic research which cannot be reasonably related to any product category. All of the research is performed in the United States. X has domestic sales of heating equipment of $500,000 in 1978 on which it earns gross income of $200,000, but has no sales of the new furnace since its production is deferred until 1979. In 1978, X transfers its new furnace technology to uncontrolled foreign corporation Y, which manufactures and sells heating equipment in addition to other fabricated metal products in a foreign country. X receives a lump-sum payment of $25,000 for the sale of the technology. X has a 40 percent ownership interest in Y. The heating equipment sales of Y for 1978 are unknown and cannot be reasonably estimated, but it is known that Y has no sales of the new furnace. X also has a wholly owned foreign subsidiary, Z, which operates hotels in the same foreign country in which Y operates. Hotels are in the product category, other services (SIC Major Groups 70, 72, 73, 75, 76, 78, 79, 80, 81, 82, 83, 84, 86, 88, and 89). X receives $100,000 in dividends from Z in 1978, and Z has receipts of $1,000,000.

(ii) *Allocation.* X's research on heating equipment is definitely related to the product category, Fabricated metal products, except machinery and transportation equipment, and the deduction of $200,000 for research on heating equipment thus is allocable to all items of income related to that product category, domestic sales income and the lump sum technology transfer payment. X's basic research is related to all products and the deduction of $50,000 for basic research thus is allocable to all of X's income.

(iii) *Apportionment.* Since X uses the overall method to compute the limit on its foreign tax credit there is one statutory grouping, gross income from sources outside the United States, and one residual grouping, gross income from sources within the United States. Under the sales method, X can exclusively apportion 40 percent (in 1978) of its deduction for research and development to the residual grouping since more than 50 percent of its research activity was performed in the United States. The rest of the deduction may be apportioned on the basis of sales. Since foreign corporation Y's sales of heating equipment are unknown, they are estimated at 10 times the lump-sum payment of $25,000 made by Y to X for the purchase of the new heating equipment technology, or $250,000. (Alternatively, X may apportion its research expense under one of the optional gross income methods.) The apportionment for 1978 is as follows:

Tentative apportionment on the basis of sale

Research and development expense on furnace to be apportioned between residual and statutory groupings of gross income	$200,000
Less:	
Exclusive apportionment of research and development expense on furnace to the residual grouping of gross income: $200,000×40 pct	80,000
Research and development expense on furnace to be apportioned between residual and statutory groupings of gross income on the basis of sales	120,000
Apportionment of research and development expense on furnace to the residual grouping of gross income: $120,000× $\frac{\$500,000}{(\$500,000+\$250,000)}$	80,000
Apportionment of research and development expense on furnace to the statutory grouping of gross income: $120,000× $\frac{\$250,000}{(\$500,000+\$250,000)}$	40,000
Total: Apportioned deduction for research and development on furnace	200,000
Basic research expense to be apportioned between residual and statutory groupings of gross income	50,000
Less:	
Exclusive apportionment of basic research to the residual grouping of gross income: $50,000×40 pct	20,000
Basic research to be apportioned between residual and statutory groupings of gross income on the basis of sales	30,000
Apportionment of basic research expense to the residual grouping of gross income: $30,000 × $\frac{\$500,000}{(\$500,000+\$250,000+\$1,000,000)}$	8,571
Apportionment of basic research expense to the statutory grouping of gross income: $30,000 × $\frac{(\$250,000+\$1,000,000)}{(\$500,000+\$250,000+\$1,000,000)}$	21,429
Total: Apportioned deduction for basic research	30,000
Total: Apportioned deduction for research and development on furnace and basic research	250,000
Of which—	
Apportioned to the residual grouping ($80,000+$80,000+$20,000+$8,571)	188,571
Apportioned to the statutory grouping ($40,000+$21,429)	61,429

Tentative apportionment on the basis of gross income

Apportionment of research and developmental expense to the residual grouping of gross income: $250,000 × $\frac{\$200,000}{(\$200,000+\$25,000+\$100,000)}$	$153,846
Apportionment of research and development expense to the statutory grouping of gross income: $250,000 $\frac{(\$25,000+\$100,000)}{(\$200,000+\$25,000+\$100,000)}$	96,154

The apportionment to the statutory grouping under the gross income method ($96,154) is greater than 50 percent of the apportionment under the sales method ($30,714). Thus, X may apportion either the amount determined under the optional gross income method or the amount determined under the sales method to the statutory grouping.

In either case, X's apportionment to the statutory grouping exceeds its lump-sum receipt for the sale of technology and must be partly applied against its dividends from Z.

Example (16)—Research and Development—(i) *Facts.* X, a domestic corporation, is a manufacturer of roller bearings for use in bicycles. Roller bearings are within the product category, Machinery, except electrical (SIC Major Group 35). In 1977, X performs research and development in the United States in an attempt to develop an improved roller bearing suitable for use in racing bicycles. X incurs expense of $50,000 for this purpose and deducts this amount as a current expense. In 1977, X has domestic roller bearing sales of $500,000. X's wholly owned subsidiaries, Y and Z, also manufacture and sell roller bearings in foreign country Y and Puerto Rico, respectively, and can reasonably be expected to benefit from X's research connected with Machinery, except electrical. Corporation Y performs certain preliminary manufacturing activity for corporation Z which, in turn, finishes the manufacturing work on the roller bearings purchased from Y. In 1977, Y has total roller bearings sales of $500,000, $250,000 in country Y and $250,000 to corporation Z in Puerto Rico. Corporation Z has roller bearing sales of $400,000 in the same year.

(ii) *Allocation.* The research and development expenditures were incurred in connection with the manufacture of roller bearings. Thus, they are definitely related and allocable to the income to which they give rise, namely income from the manufacture and sale of roller bearings in the United States, country Y, and Puerto Rico.

(iii) *Apportionment.* For purposes of applying the per-country limitation, the statutory groupings are gross income from manufacturing in country Y and Puerto Rico, and the residual grouping is gross income from manufacturing within the United States. X's deduction must be apportioned between these three groupings. Because more than 50 percent of X's research and development activity was performed in the United States, for purposes of apportionment on the basis of sales, 50 percent of that deduction is apportioned exclusively (in 1977) to the residual grouping, gross income from within the United States. The remainder of the deduction can be apportioned on the basis of sales of X, Y, and Z. In calculating the apportionment, however, the purchases of Z from corporation Y are subtracted from Z's sales. For purposes of apportionment, Z's sales are $150,000 ($400,000 less $250,000). The apportionment for 1977 is as follows:

Tentative apportionment on the basis of sales

Research and development expense to be apportioned between residual and statutory groupings of gross income	$50,000
Less:	
Exclusive apportionment of research and development expense to the residual grouping of gross income: $50,000×50 pct	25,000
Research and development expense to be apportioned between residual and statutory groupings of gross income on the basis of sales	25,000
Apportionment of research and development expense to the residual grouping of gross income: $25,000×$\frac{\$500,000}{(\$500,000+\$500,000+\$150,000)}$	10,870
Apportionment of research and development expense to the statutory grouping, gross income from country Y: $25,000×$\frac{\$500,000}{(\$500,000+\$500,000+\$150,000)}$	10,870
Apportionment of research and development expense to the statutory grouping, gross income from Puerto Rico: $25,000×$\frac{(\$400,000-\$250,000)}{(\$500,000+\$500,000+\$150,000)}$	3,260
Total: Apportioned deduction for research and development	50,000
Of which—	
Apportioned to the residual grouping ($25,000+$10,870)	35,870
Apportioned to the statutory grouping to sources within country Y	10,870
Apportioned to the statutory grouping of sources within Puerto Rico	3,260

(Alternatively, X could apportion its research and development expense using one of the optional gross income methods in accordance with paragraph (e)(3)(iii) of this section.)

Example (17)—Stewardship Expenses (Consolidation)—(i) *Facts.* X, a domestic corporation, wholly owns M, N, and O, also domestic corporations. X, M, N, and O file a consolidated income tax return. All the income of X and O is from sources within the United States, all of M's income is from sources within South America, and all of N's income is from sources within Africa. X receives no dividends from M, N, or O. During the taxable year, the consolidated group of corporations earned consolidated gross income of $550,000 and incurred total deductions of $370,000 as follows:

	Gross income	Deductions
Corporations:		
X	$100,000	$50,000
M	250,000	100,000
N	150,000	200,000
O	50,000	20,000
Total	550,000	370,000

Of the $50,000 of deductions incurred by X, $15,000 relates to X's ownership of M; $10,000 relates to X's ownership of N; $5,000 relates to X's ownership of O; and the entire $30,000 constitute stewardship expenses. The remainder of X's deductions ($20,000) relates to production of income from its plant in the United States.

(ii) *Allocation.* In accordance with § 1.1502-4, each corporation must first compute its separate taxable income for purposes of computing the limitation on the foreign tax credit. X's deductions of $50,000 are definitely related and thus allocable to the types of gross income to which they give rise, namely $25,000 wholly to income from sources outside the United States ($15,000 for stewardship of M and $10,000 for stewardship of N) and the remainder ($25,000) wholly to gross income from sources within the United States. Expenses incurred by M and N are entirely related and thus wholly allocable to income earned from sources without the United States and expenses incurred by O are entirely related and thus wholly allocable to income earned within the United States. Hence, no apportionment of expenses of X, M, N, or O is necessary. For purposes of applying the overall limitation, the statutory grouping is gross income from sources without the United States and the residual grouping is gross income from sources within the United States. As a result of the allocation of deductions, X, M, and N have separate taxable income (losses) from sources without the United States in the amounts of ($25,000), $150,000, and ($50,000), respectively, computed as follows:

	X	M	N
Foreign gross income		$250,000	$150,000
Less: Deductions allocable to foreign gross income	$25,000	100,000	200,000
Total, taxable income (loss)	(25,000)	150,000	(50,000)

Thus, in the combined computation of the overall limitation, the numerator of the limiting fraction (taxable income from sources outside the United States) is $75,000 ($150,000 of separate taxable income of M less $50,000 of losses of N and less $25,000 of losses of X).

Example (18)—Stewardship and Supportive Expenses—(i) *Facts.* X, a domestic corporation, manufactures and sells pharmaceuticals in the United States. X's domestic subsidiary S, and X's foreign subsidiaries T, U, and V perform similar functions in the United States and foreign countries T, U, and V, respectively. Each corporation derives substantial net income during the taxable year. X's gross income for the taxable year consists of:

Domestic sales income	$32,000,000
Dividends from S (before dividends received deduction)	3,000,000
Dividends from T	2,000,000
Dividends from U	1,000,000
Dividends from V	0
Royalties from T and U	1,000,000
Fees from U for services performed in the United States	1,000,000
Total gross income	40,000,000
Among other deductions, X incurs the following:	
Expenses of supervision department	1,600,000
Charitable contributions	100,000

X's Supervision Department (the Department) is responsible for the supervision of its four subsidiaries and for rendering certain services to the subsidiaries, and this Department provides all the supportive functions necessary for X's foreign activities. The Department performs three principal types of activities. The first type consists of services for the direct benefit of U for which a fee is paid by U to X. The cost of the services for U is $1,000,000. The second type consists of stewardship activities which are in the nature of a management review and generally duplicate functions performed by the subsidiaries' own employees (and are, therefore, of a type described in § 1.482-2(b)(2)(ii) which would not be subject to an allocation under section 482). For example, a team of auditors from X's accounting department periodically audits the subsidiaries' books and prepares internal reports for use by X's management. Similarly, X's treasurer periodically reviews for the board of directors of X the subsidiaries' financial policies. The cost of the duplicative services and related supportive expenses is $540,000. The third type of activity consists of providing services which are ancillary to the license agreements which X maintains with subsidiaries T and U. The cost of the ancillary services is $60,000.

(ii) *Allocation.* The Department's outlay of $1,000,000 is the basis for the charge to U for services rendered, and therefore $1,000,000 is allocated to the fees paid by U. The remaining $600,000 in the Department's deductions are definitely related to the types of gross income to which they give rise, namely dividends from subsidiaries S, T, U and V and royalties from T and U. However, $60,000 of the $600,000 in deductions are found to be attributable to the ancillary services and are definitely related (and therefore allocable) solely to royalties received from T and U, while the remaining $540,000 in deductions are definitely related (and therefore allocable) to dividends received from all the subsidiaries.

(iii) *Apportionment.* For purposes of applying the overall limitation, the statutory grouping is gross income from sources outside the United States and the residual grouping is gross income from sources within the United States. X's deduction of $540,000 for the Supervision Department expenses and related supportive expenses which is allocable to dividends received from the subsidiaries must be apportioned between the statutory and residual groupings before the overall limitation may be applied. In determining an appropriate method for apportioning the $540,000, a basis other than X's gross income must be used since the dividend payment policies of the subsidiaries bear no relationship either to the activities of the Department or to the amount of income earned by each subsidiary. This is evidenced by the fact that V paid no dividends during the year, whereas S, T, and U paid dividends of $1 million or more each. In the absence of facts that would indicate a material distortion resulting from the use of such method, the stewardship expenses ($540,000) may be apportioned on the basis of the gross receipts of each subsidiary.

The gross receipts of the subsidiaries were as follows:

S	$4,000,000
T	3,000,000
U	500,000
V	1,500,000
Total	9,000,000

Thus, the expenses of the Department are apportioned for purposes of the overall limitation as follows:

Apportionment of stewardship expenses to the statutory grouping of gross income:

$$\$540,000 \times \frac{(\$3,000,000+\$500,000+\$1,500,000)}{\$9,000,000} \quad \$300,000$$

Apportionment of supervisory expenses to the residual grouping of gross income

$$\$540,000 \times \frac{\$4,000,000}{9,000,000} \quad 240,000$$

Total: Apportioned stewardship expense.. $540,000

(iv) *Allocation and apportionment of charitable contributions.* Pursuant to paragraph (e)(9) of this section, charitable contributions are generally treated as deductions which are not definitely related to any gross income and are, accordingly, apportioned ratably on the basis of gross income for purposes of the overall limitation as follows:

Apportionment of charitable contributions to the statutory grouping of gross income:

$$\$100,000 \times \frac{(\$2,000,000+\$1,000,000+\$1,000,000)}{\$40,000,000} \quad \$10,000$$

Apportionment of charitable contributions to the residual grouping of gross income:

$$\$100,000 \times \frac{(\$32,000,000+\$3,000,000+\$1,000,000)}{\$40,000,000} \quad 90,000$$

Total apportioned charitable contributions.. 100,000

Example (19)—Supportive Expense—(1) *Facts.* X, a domestic corporation, purchases and sells products both in the United States and in foreign countries. X has no foreign subsidiary and no international department. During the taxable year, X incurs the following expenses with respect to its worldwide activities:

Personnel department expenses	$50,000
Training department expenses	35,000
General and administrative expenses	55,000
President's salary	40,000
Sales manager's salary	20,000
Total	200,000

X has domestic gross receipts from sales of $750,000 and foreign gross receipts from sales of $500,000 and has gross income from such sales in the same ratio, namely $300,000 from domestic sources and $200,000 from foreign sources.

(ii) *Allocation.* The above expenses are definitely related and allocable to all of X's gross income derived from both domestic and foreign markets.

(iii) *Apportionment.* For purposes of applying the overall limitation, the statutory grouping is gross income from sources outside the United States and the residual grouping is gross income from sources within the United States. X's deductions for its worldwide sales activities must be apportioned between these groupings. Company X in this example (unlike Company X in example (18)) does not have a separate international division which performs essentially all of the functions required to manage and oversee its foreign activities. The president and sales manager do not maintain time records. The division of their time between domestic and foreign activities varies from day to day and cannot be estimated on an annual basis with any reasonable degree of accuracy. Similarly, there are no facts which would justify a method of apportionment of their salaries or of one of the other listed deductions based on more specific factors than gross receipts or gross income. An acceptable method of apportionment would be on the basis of gross receipts. The apportionment of the $200,000 deduction is as follows:

Apportionment of the $200,000 expense to the statutory grouping of gross income:

$$\$200,000 \times \frac{\$500,000}{(\$500,000+\$750,000)} \quad \$80,000$$

Apportionment of the $200,000 expense to the residual grouping of gross income:

$$\$200,000 \times \frac{\$750,000}{(\$500,000+\$750,000)} \quad 120,000$$

Total apportioned supportive expense..... 200,000

Example (20)—Supportive Expense—(1) *Facts.* Assume the same facts as above except that X's president devotes only 5 percent of his time to the foreign operations and 95 percent of his time to the domestic operations and that X's sales manager devotes approximately 10 percent of his time to foreign sales and 90 percent of his time to domestic sales.

(ii) *Allocation.* The expenses incurred by X with respect to its worldwide activities are definitely related, and therefore allocable to X's gross income from both its foreign and domestic markets.

(iii) *Apportionment.* On the basis of the additional facts it is not acceptable to apportion the salaries of the president and the sales manager on the basis of gross receipts. It is acceptable to apportion such salaries between the statutory grouping (gross income from sources without the United States) and residual grouping (gross income from sources within the United States) on the basis of time devoted to each sales activity. Remaining expenses may still be apportioned on the basis of gross receipts. The apportionment is as follows:

Apportionment of the $200,000 expense to the statutory grouping of gross income:

President's salary: $40,000×5 pct	$2,000
Sales manager's salary: $20,000×10 pct	2,000
Remaining expenses: $140,000×$\frac{\$500,000}{(\$500,000+\$750,000)}$	56,000
Subtotal: Apportionment of expense to statutory grouping	60,000

Apportionment of the $200,000 expense to the residual grouping of gross income:

President's salary: $40,000×95 pct	38,000
Sales manager's salary: $20,000×90 pct	18,000
Remaining expenses: $140,000×$\frac{\$750,000}{(\$500,000+\$750,000)}$	84,000
Subtotal: Apportionment of expense to residual grouping	140,000
Total: Apportioned general and administrative expense	200,000

Example (21)—Supportive Expense—(1) *Facts.* X, a foreign corporation doing business in the United States, is a manufacturer of metal stamping machines. X has no United States subsidiaries and no separate division to manage and oversee its business in the United States. X manufactures and sells these machines in the United States and in foreign countries A and B and has a separate manufacturing facility in each country. Sales of these machines are X's only source of income. In 1977, X incurs general and administrative expenses related to both its U.S. and foreign operations of $100,000. It has machine sales of $500,000, $1,000,000 and $1,000,000 on which it earns gross income of $200,000, $400,000 and $400,000 in the United States, country A, and country B, respectively. The income from the manufacture and sale of the machines in countries A and B is not effectively connected with X's business in the United States.

(ii) *Allocation.* The $100,000 of general and administrative expense is definitely related to the income to which it gives rise, namely a part of the gross income from sales of machines in the United States, in country A, and in country B. The expenses are allocable to this class of income, even though X's gross income from sources outside the United States is excluded income since it is not effectively connected with a U.S. trade or business.

(iii) *Apportionment.* Since X is a foreign corporation, the statutory grouping is gross income effectively connected with X's trade of business in the United States, namely gross income from sources within the United States, and the residual grouping is gross income not effectively connected with a trade or business in the United States, namely gross income from countries A and B. Since there are no facts which would require a method of apportionment other than on the basis of sales or gross income, the amount may be apportioned between the two groupings on the basis of amounts of gross income as follows:

Apportionment of general and administrative expense to the statutory grouping, gross income from sources within the United States:

$$\$100,000 \times \frac{\$200,000}{(\$200,000+\$400,000+\$400,000)} \quad \$20,000$$

Apportionment of general and administrative expense to the residual grouping, gross income from sources without the United States:

$$\$100,000 \times \frac{(\$400,000+\$400,000)}{(\$200,000+\$400,000+\$400,000)} \quad 80,000$$

Total apportioned general and administrative expense..... 100,000

Example (22)—Domestic International Sales Corporations—(i) *Facts.* X, a domestic corporation, manufactures a line of kitchenware and sells it to retailers in the United States, France, and the United Kingdom. After the Domestic International Sales Corporation (DISC) legislation was passed in 1971, X established, as of January 1, 1972, a DISC and thereafter did all of its foreign marketing through sales by the DISC. In 1977 the DISC has total sales of $7,700,000 for which X's cost of goods sold is $6,000,000. Thus, the gross income attributable to exports through the DISC is $1,700,000 ($7,700,000–$6,000,000). Moreover, X has U.S. domestic sales of kitchenware of $12,000,000 on which it earned gross income of $900,000, and X receives royalty income from the foreign license of its kitchenware technology in the amount of $800,000. The DISC's expenses attributable to the resale of export property are $400,000 of which $300,000 qualify as export promotion expenses. X also incurs $125,000 of general and administrative expenses in connection with its domestic and foreign sales activities, and its foreign licensing ac-

tivities. X and the DISC determine transfer prices charged on the basis of a single product grouping and the "50–50" combined taxable income method (without marginal costing) which permits the DISC to have a taxable income equal to 50 percent of the combined taxable income attributable to the production and sales of the export property, plus 10 percent of the DISC's export promotion expenses.

(ii) *Allocation.* For purposes of determining combined taxable income of X and the DISC from export sales, general and administrative expenses of $125,000 must be allocated to and apportioned between gross income resulting from the production and sale of kitchenware for export, and from the production and sale of kitchenware for the domestic market. The deduction of $400,000 for expenses attributable to the resale of export property is allocated solely to gross income from the production and sale of kitchenware in foreign markets.

(iii) *Apportionment.* Apportionment of expense takes place in two stages. In the first stage, for computing combined taxable income from the production and sale of export property, the general and administrative expense should be apportioned between the statutory grouping of gross income from the export of kitchenware and the residual grouping of gross income from domestic sales and foreign licenses. In the second stage, since the limitation on the foreign tax credit requires the use of a separate limitation with respect to dividends from a DISC (section 904(d)), the general and administrative expense should be apportioned between two statutory groupings, DISC dividends and foreign royalty income (for which the overall limitation is used), and the residual grouping of gross income from sales within the United States. In the first stage, in the absence of more specific or contrary information, the general and administrative expense may be apportioned on the basis of gross income in the respective groupings, as follows:

Apportionment of general and administrative expense to the statutory grouping, gross income from exports of kitchenware:

$$\$125{,}000 \times \frac{\$1{,}700{,}000}{(\$1{,}700{,}000+\$900{,}000+\$800{,}000)} \quad \$62{,}500$$

Apportionment of general and administrative expense to the residual grouping, gross income from domestic sales of kitchenware and foreign royalty income from licensing kitchenware technology:

$$\$125{,}000 \times \frac{(\$900{,}000+\$800{,}000)}{(\$1{,}700{,}000+\$900{,}000+\$800{,}000)} \quad 62{,}500$$

Total apportionment of general and administrative expense 125,000

On the basis of this apportionment, the combined taxable income, and the DISC portion of taxable income may be calculated as follows:

Gross income from exports		$1,700,000
Less:		
DISC expense for resale of export property	$400,000	
Apportioned general and administrative expense	62,500	
		462,500
Combined taxable income from production and export of kitchenware		1,237,500
DISC income:		
50 pct of combined taxable income		618,750
10 pct of export promotion expense of $300,000		30,000
Total DISC income		648,750
DISC income as a percentage of combined taxable income		52.4

In the second stage, in the absence of more specific or contrary information, the general and administrative expense may also be apportioned on the basis of gross income in the respective groupings. Since DISC taxable income is 52.4 percent of combined taxable income, DISC gross income is treated as 52.4 percent of the gross income from exports, $1,700,000. The apportionment follows:

Apportionment of general and administrative expense to the statutory grouping, DISC dividends:

$$\$125{,}000 \times \frac{(0.524 \times \$1{,}700{,}000)}{(\$1{,}700{,}000+\$900{,}000+\$800{,}000)} \quad \$32{,}750$$

Apportionment of general and administrative expense to the statutory grouping, foreign royalty income:

$$\$125{,}000 \times \frac{\$800{,}000}{(\$1{,}700{,}000+\$900{,}000+\$800{,}000)} \quad 29{,}412$$

Apportionment of general and administrative expense to the residual grouping, gross income from sources within the United States:

$$\$125{,}000 \times \frac{(\$900{,}000+(0.476 \times \$1{,}700{,}000))}{(\$1{,}700{,}000+\$900{,}000+\$800{,}000)} \quad 62{,}838$$

Total apportioned general and administrative expense 125,000

Example (23)—Domestic International Sales Corporations—(i) *Facts.* The facts are the same as in example (22), except that X also performs research, entirely within the United States, on the kitchenware it manufactures. In 1977, X incurs research expense of $100,000. Of this amount, $10,000 is incurred to meet product safety standards imposed by the U.S. Government. Similar safety standards are imposed by the countries to which X's DISC sells exports, and X's research is aceptable for purposes of meeting the standards of those countries. However, the safety research is not relevant for X's foreign licensees. X is able to establish, on the basis of its facts and circumstances (see example (10)) that an exclusive apportionment of $65,000 of its research and development expense to gross income from sources within the United States is appropriate. X does not know, and a reasonable estimate cannot be made, of the sales of licensed products by its foreign licensees. The sales of the foreign licensees are therefore estimated at ten times the amount of royalty income of $800,000, or $8,000,000.

(ii) *Allocation.* The kitchenware manufactured by X is in the broadly defined product category. Fabricated metal products, except machinery and transportation equipment (SIC Major Group 34). X's deduction for safety research is allocable solely to groupings of gross income within the United States, namely gross income from export sales (through the DISC) and gross income from domestic sales. The remainder of X's deductions for its research expense are definitely related and therefore allocable to all items of income attributable to this product category, domestic and foreign sales income, and foreign licensing income. For purposes of determining the combined taxable income of X and its DISC, X and the DISC are treated as a single taxpayer engaged in the production and sale of fabricated metal products. The DISC is not, for this purpose, treated as a separate taxpayer engaged in wholesale trade (SIC Major Groups 50 and 51).

(iii) *Apportionment.* X's deduction for safety research ($10,000) must be apportioned between the statutory grouping of gross income from exports and the residual grouping of gross income from sales within the United States. The deduction for safety research may be apportioned either on the basis of sales (paragraph (e)(3)(ii) of this section) or on the basis of one of the optional gross income methods (paragraph (e)(3)(iii) of this section). X apportions this deduction on the basis of sales. For this purpose an exclusive apportionment is not available, since gross income from exports through a DISC and gross income from sales within the United States are both within the same geographic source, United States income (see paragraph (e)(3)(ii)(A) of this section). The remainder of X's research expense ($90,000) must be apportioned in two stages. In the first stage, for combined taxable income purposes, this amount must be apportioned between the statutory grouping of gross income from exports and other gross income. In the second stage, the remainder of X's research expense must be apportioned, for foreign tax credit purposes, between two statutory groupings, DISC dividends and foreign royalty income, respectively, and the residual grouping of gross income from sales within the United States. On the basis of X's facts and circumstances, $65,000 is apportioned exclusively to sources within the United States, namely gross income from exports through a DISC and gross income from sales within the United States. The remaining $25,000 of research expense is apportioned between the groupings of gross income on the basis of sales. (Alternatively, if X had apportioned the $10,000 for safety research on the basis of gross income, its remaining deduction of $90,000 for research expense could be apportioned, both in the first and second stage, using one of the optional gross income methods, which are not illustrated in this example (see instead examples (3) and (4).)

Tentative apportionment on the basis of sales

Research and development expense to be allocated and apportioned between residual and statutory groupings of gross income $100,000

Research and development expense for safety purposes allocated solely to income from sources within the United States:

Apportionment of safety research to the residual grouping, gross income from domestic sales:

$$\$10{,}000 \times \frac{\$12{,}000{,}000}{(\$12{,}000{,}000+\$7{,}700{,}000)} \quad 6{,}091$$

Apportionment of safety research to the statutory grouping, gross income from exports:

$$\$10{,}000 \times \frac{\$7{,}700{,}000}{(\$12{,}000{,}000+\$7{,}700{,}000)} \quad 3{,}909$$

Total apportioned safety research 10,000

Remaining research and development expense to be apportioned between the residual and statutory groupings of gross income 90,000

Apportionment of remaining research to the residual grouping, gross income from domestic sales and foreign royalties:

$$\$90{,}000 \times \frac{(\$12{,}000{,}000+\$8{,}000{,}000)}{(\$12{,}000{,}000+\$8{,}000{,}000+\$7{,}700{,}000)} \quad 64{,}982$$

Apportionment of remaining research to the statutory grouping, gross income from exports:

$$\$90{,}000 \times \frac{\$7{,}700{,}000}{(\$12{,}000{,}000+\$8{,}000{,}000+\$7{,}700{,}000)} \quad 25{,}018$$

Total: Allocated and apportioned deduction for research and development for combined taxable income purposes 100,000

Of which—

Apportioned to the residual grouping, gross income from domestic sales and foreign royalties ($6,091+$64,982) 71,073

Apportioned to the statutory grouping, gross income from exports ($3,909+$25,018) 28,927

On the basis of this apportionment, the combined taxable income and the DISC portion of taxable income may be calculated as follows:

Gross income from exports		$1,700,000
Less:		
DISC expense for resale of export property	$400,000	
Apportioned general and administrative expense (from example (22))	62,500	
Apportioned safety research	3,909	
Apportioned remaining research	25,018	
		491,427
Combined taxable income from production and export of kitchenware		1,208,573
DISC income:		
50 pct of combined taxable income		604,287
10 pct of export promotion expense of $300,000		30,000
Total, DISC income		634,287

In the second stage, the remainder of X's research expense ($90,000) must be apportioned, for foreign tax credit purposes, between two statutory groupings, DISC dividends and foreign royalty income, respectively, and the residual grouping of gross income from sales within the United States.

Remaining research and development expense to be apportioned between the residual and statutory groupings of gross income	$90,000
Less:	
Exclusive apportionment of remaining research and development expense to residual grouping, gross income from domestic sales (based on X's facts and circumstances)	65,000
Remaining research and development expense to be apportioned between the residual and statutory groupings on the basis of sales	25,000
Apportionment of research and development expense to the residual grouping of gross income from domestic sales: $25,000×$\frac{\$12,000,000}{(\$12,000,000+\$7,700,000+\$8,000,000)}$	10,830
Apportionment of research and development expense to the statutory grouping of DISC dividends: $25,000×$\frac{\$7,700,000}{(\$12,000,000+\$7,700,000+\$8,000,000)}$	6,950
Apportionment of research and development expense to the statutory grouping of foreign royalty income: $25,000×$\frac{\$8,000,000}{(\$12,000,000+\$7,700,000+\$8,000,000)}$	7,220
Total: Allocated and apportioned deduction for research and development for foreign tax credit purposes	100,000
Of which—	
Apportioned to the residual grouping ($65,091+$65,000+$10,830)	81,921
Apportioned to the statutory grouping of gross income from exports ($3,909+$6,950)	10,859
Apportioned to the statutory grouping of foreign royalty income	7,220

Example (24)—Exempt, excluded, or eliminated income—(i) *Facts.* X, a domestic corporation, carries on a trade or business in the United States. In addition, X owns tax exempt municipal bonds, and all the shares of C, a Canadian corporation with which it files a consolidated return under the provisions of section 1504(d). X has gross income from domestic sources of $2,400,000 and tax exempt interest of $100,000. X receives dividends from C of $3,700,000 and interest from C of $50,000. X's dividends from C are eliminated income by virtue of the filing of the consolidated return. The deductible portion of X's interest expense is $500,000 (in addition X has interest expense relating to its tax exempt bonds which is not deductible under section 265) and X has stewardship expense relating to its ownership of C of $100,000. X and C use the overall limitation for purposes of computing the foreign tax credit.

(ii) *Allocation.* No portion of X's interest deduction is definitely related solely to specific property within the meaning of paragraph (e)(2)(iv) of this section. Thus, X's deduction for interest is related to all its income producing activities and properties. X's stewardship expense is related solely to its ownership of C and is therefore allocated to the statutory grouping of foreign source income, namely dividends and interest from C.

(iii) *Apportionment.* X apportions its interest expense using the optional gross income method prescribed in paragraph (e)(2)(vi)(A) of this section. For this purpose, tax exempt and eliminated income is included in gross income. X would therefore apportion its interest deduction between the statutory grouping of foreign source income and the residual grouping as follows:

To gross income from sources within the United States (residual grouping): $500,000×$\frac{(\$2,400,000+\$100,000)}{(\$2,400,000+\$100,000+\$3,700,000+\$50,000)}$	$200,000
To gross income from sources without the United States (statutory grouping): $500,000×$\frac{(\$3,700,000+\$50,000)}{(\$2,400,000+\$100,000+\$3,700,000+\$50,000)}$	300,000
Total apportioned interest expense	500,000

As a result of the allocation of stewardship expense and the apportionment of interest expense, X's taxable foreign source income is calculated as follows:

Gross income from foreign sources	3,750,000
Less: dividends received deduction	3,700,000
Less: allocation of stewardship expense	100,000
Less: apportionment of interest expense	300,000
Taxable foreign source income (loss)	(350,000)

The amount of interest expense apportioned to tax exempt income for purposes of deductibility is determined not under section 861 but under section 265.

Example (25)—Income Taxes—(i) *Facts.* X, a domestic corporation, is a manufacturer and distributor of electronic equipment with operations in individual states, A, B, and C. X also has a branch in country Y which manufactures and distributes the same type of electronic equipment. In 1977, X has taxable income, as determined under the Code, of $1,000,000 of which $200,000 is foreign source taxable income (computed without regard to the deduction for state taxes) and $800,000 is domestic source taxable income (computed assuming, for the moment, that the entire deduction for state taxes is attributable to domestic sources). States A, B, and C each determine X's taxable income for their respective state tax purposes by making adjustments to its taxable income as determined under the Code, and then apportioning the adjusted taxable income on the basis of relative amounts of payroll, property, and sales with respect to activities and properties within each state as compared to all activities and properties. On this basis, it is determined that X has taxable income of $500,000, $200,000, and $200,000 in states A, B, and C, respectively. The adjustments made by states A, B, and C all involve adding and subtracting enumerated items from taxable income, as determined under the Code. However, in making these adjustments to taxable income, none of the states specifically exempts foreign source income, as determined under the Code. Since the corporate tax rates in states A, B, and C are 10 percent, 5 percent, and 2 percent, respectively, X has total state income tax liabilities of $64,000 ($50,000 + $10,000+$4,000) which it deducts as an expense for Federal income tax purposes.

(ii) *Allocation.* X's deduction of $64,000 for state income taxes is definitely related and thus allocable to the gross income with respect to which the taxes are imposed. Presumptively, states A, B, and C only attempt to tax income from domestic sources. However, since the statutes of states A, B, and C do not specifically exempt foreign source income, as determined under the Code, from taxation and since, in the aggregate, states A, B, and C tax $900,000 of X's income while only $800,000 is domestic source income, it is presumed that state income taxes are imposed on at least $100,000 of foreign source income. The deduction for state income taxes is therefore related and allocable both to X's domestic and to its foreign income-producing activities and properties.

(iii) *Apportionment.* Since X computes its foreign tax credit limitation under the overall method there is one statutory grouping, gross income from sources outside the United States, and one residual grouping, gross income from sources within the United States. The state income tax deduction of $64,000 must be apportioned between these two groupings. Corporation X calculates the apportionment on the basis of relative amounts of taxable income reached by state taxation. In this case, state income taxes are imposed on $800,000 of domestic source income and $100,000 of foreign source income.

State income tax deduction apportioned to sources outside the United States (statutory grouping): $64,000×$\frac{\$100,000}{\$900,000}$	$7,111
State income tax deduction apportioned to sources within the United States (residual grouping): $64,000×$\frac{\$800,000}{\$900,000}$	56,889
Total apportioned State income tax deduction	64,000
Of which—	
Apportioned to statutory grouping	7,111
Apportioned to residual grouping	56,889

Example (26)—Income Tax—(i) *Facts.* Assume the same facts as in example (25) except that state A's statute exempts all foreign source income, as determined under the Code.

(ii) *Allocation.* X's deduction of $64,000 for state income taxes is definitely related and thus allocable to the gross income with respect to which the taxes are imposed. Since state A exempts all foreign source income by its statute, its taxes of $50,000 are allocable solely to domestic source income. Since the statutes of states B and C do not specifically exclude all foreign source income as determined under the Code, and since states B and C impose tax on $400,000 ($200,000+$200,000) of X's income, of which only $300,000 ($800,000−$500,000) is domestic source, the deduction for the state income taxes of B and C are related and allocable both to X's foreign and domestic taxable income.

(iii) *Apportionment.* Since X computes its foreign tax credit limitation under the overall method there is one statutory grouping, gross income from sources outside the United States, and one residual grouping, gross income from sources within the United States. The state income tax deduction of $14,000 attributable to states B ($10,000) and C ($4,000) must be apportioned between these two groupings. Corporation X calculates the apportionment on the basis of relative amounts of taxable income.

States B and C income tax deduction apportioned to sources outside the United States (statutory grouping): $14,000×$\frac{\$100,000}{\$400,000}$	$3,500
States B and C income tax deduction apportioned to sources within the United States (residual grouping): $14,000×$\frac{\$300,000}{\$400,000}$	10,500
Total apportioned State income tax deduction	14,000
Of which—	
Apportioned to statutory grouping	3,500
Apportioned to residual grouping	10,500

Paragraph 2. Section 1.863–3 is amended by revising example (2)(i) of paragraph (b)(2), example (2)(i) of paragraph (c)(3), and example (1)(i) of paragraph (c)(4) to read as follows:

§ 1.863–3 Income from the sale of personal property derived partly from within and partly from without the United States.

* * * * *

(b) *Income partly from sources within a foreign country.* * * *

(2) *Allocation or apportionment.* * * *

Example (2). (i) Where an independent factory or production price has not been established as provided under example (1), the taxable income shall first be computed by deducting from the gross income derived from the sale of personal property produced (in whole or in part) by the taxpayer within the United States and sold within a foreign country or produced (in whole or in part) by the taxpayer within a foreign country and sold within the United States, the expenses, losses, or other deductions properly allocated and apportioned thereto in accordance with the rules set forth in § 1.861–8.

* * * * *

(c) *Income partly from sources within a possession of the United States.* * * *

(3) *Personal property produced and sold.* * * *

Example (2). (i) Where an independent factory or production price has not been established as provided under example (1), the taxable income shall first be computed by deducting from the gross income derived from the sale of personal property produced (in whole or in part) by the taxpayer within the United States and sold within a possession of the United States, or produced (in whole or in part) by the taxpayer within a possession of the United States and sold within the United States, the expenses, losses, or other deductions properly allocated and apportioned thereto in accordance with the rules set forth in § 1.861–8.

* * * * *

(4) *Personal property purchased and sold.* * * *

Example (1). (i) The taxable income shall first be computed by deducting from such gross income the expenses, losses, or other deductions properly allocated or apportioned thereto in accordance with the rules set forth in § 1.861–8.

* * * * *

Paragraph 3. Section 1.905–2(a)(2) is amended by adding a sentence at the end thereof to read as follows:

§ 1.905–2 Conditions of allowance of credit.

(a) *Forms and information.* * * *

(2) * * * If the taxpayer upon request fails without justification to furnish any such additional information which is significant, including any significant information which he is requested to furnish pursuant to § 1.861–8(f)(5) as proposed in the FEDERAL REGISTER for November 8, 1976, the District Director may disallow the claim of the taxpayer to the benefits of the foreign tax credit.

* * * * *

[FR Doc.77–456 Filed 1–3–77;1:55 pm]

Title 30—Mineral Resources

CHAPTER I—MINING ENFORCEMENT AND SAFETY ADMINISTRATION, DEPARTMENT OF THE INTERIOR

SUBCHAPTER O—COAL MINE HEALTH AND SAFETY

PART 100—CIVIL PENALTIES FOR VIOLATION OF THE FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

Civil Penalty Assessment Procedures

On page 45574 of the FEDERAL REGISTER of October 15, 1976, there was published a proposal to amend § 100.7(c), Part 100, Title 30, Code of Federal Regulations.

Concurrent with this Notice there is published in this issue of the FEDERAL REGISTER (at page 1216) a notice of rulemaking for special procedural rules applicable to summary disposition of civil penalty cases during mine health and safety hearings (43 CFR Part 4). The purpose of this amendment to 30 CFR Part 100 is to conform those regulations to the final rules in 43 CFR Part 4, which authorize the assessment officer to enter the order of assessment as the final order of the Department of the Interior when the respondent coal mine operator has waived its right to a hearing.

It is the policy of the Department of the Interior wherever practicable, to afford the public an opportunity to participate in the rulemaking process. Therefore, interested persons were invited to submit written data, views, and comments by November 15, 1976.

No timely written objections have been received and the proposed regulations are hereby adopted without change and are set forth below.

Effective date: These regulations are effective on January 6, 1977.

Dated: December 28, 1976.

FRED G. KAREM,
Deputy Under Secretary of the Interior.

Accordingly, 30 CFR Part 100 is amended by revising § 100.7(c) to read as follows:

§ 100.7 Request for hearing.

* * * * *

(c) In accordance with 43 CFR 4.545, the Office of Hearings and Appeals shall thereafter issue an order, based on findings of fact and conclusions of law unless the petition is dismissed by consent of the parties, or summarily dismissed pursuant to 43 CFR 4.544.

(Sec. 508, Pub. L. 91–173, 83 Stat. 803; (30 U.S.C. 957).)

[FR Doc.77–415 Filed 1–5–77;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 668–1]

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCE

Delegation of Authority to State of Vermont

Pursuant to the delegation of authority for the Standards of Performance for New Stationary Sources (NSPS) to the State of Vermont on September 3, 1976, EPA is today amending 40 CFR 60.4, *Address*, to reflect this delegation. A notice announcing this delegation is published today in the FEDERAL REGISTER. (See FR Doc. 77–546 appearing in the Notices section of this issue). The amended § 60.4, which adds the address of the Vermont Agency of Environmental Protection to which all reports, requests, applications, submittals, and communications to the Administrator pursuant to this part must also be addressed, is set forth below.

The Administrator finds good cause for foregoing prior public notice and for making this rulemaking effective immediately in that it is an administrative change and not one of substantive content. No additional substantive burdens are imposed on the parties affected. The delegation which is reflected by this administrative amendment was effective on September 3, 1976, and it serves no purpose to delay the technical change of this addition to the State address to the Code of Federal Regulations.

This rulemaking is effective immediately, and is issued under the authority of Section 111 of the Clean Air Act, as amended. 42 U.S.C. 1857c–6.

Dated: December 17, 1976.

JOHN A. S. MCGLENNON,
Regional Administrator.

Part 60 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. In § 60.4 paragraph (b) is amended by revising subparagraph (UU) to read as follows:

§ 60.4 Address.

* * * * *

(b) * * *

(UU)—State of Vermont, Agency of Environmental Protection, Box 489, Montpelier, Vermont 05602.

* * * * *

[FR Doc.77–547 Filed 1–5–77;8:45 am]

[FRL 668-2]

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

Delegation of Authority to State of Vermont

Pursuant to the delegation of authority for National Emission Standards for Hazardous Air Pollutants (NESHAPS) to the State of Vermont on September 3, 1976, EPA is today amending 40 CFR 61.04, *Address*, to reflect this delegation. A Notice announcing this delegation is published today in the FEDERAL REGISTER (see FR Doc. 77-546 appearing in the notices section of this issue). The amended § 61.04, which adds the address of the Vermont Agency of Environmental Protection to which all reports, requests, applications, submittals, and communications to the Administrator pursuant to this part must also be addressed, is set forth below.

The Administrator finds good cause for foregoing prior public notice and for making this rulemaking effective immediately in that it is an administrative change and not one of substantive content. No additional substantive burdens are imposed on the parties affected. The delegation which is reflected by this administrative amendment was effective on September 3, 1976, and it serves no purpose to delay the technical change of this addition of the State address to the Code of Federal Regulations.

This rulemaking is effective immediately, and is issued under the authority of Section 112 of the Clean Air Act, as amended. 42 U.S.C. 1847c-7.

Dated: December 17, 1976.

JOHN A. S. MCGLENNON,
Regional Administrator.

Part 61 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

In § 61.04 paragraph (b) is amended by revising subparagraph (UU) to read as follows:

§ 61.04 Address.

* * * * *

(b) * * *

(UU)—State of Vermont, Agency of Environmental Protection, Box 489, Montpelier, Vermont 05602.

* * * * *

[FR Doc.77-548 Filed 1-5-77;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 14—DEPARTMENT OF THE INTERIOR

NOMENCLATURE AMENDMENTS

Pursuant to the authority of the Secretary of the Interior contained in 5 U.S.C. 301, Chapter 14 of Title 41 of the Code of Federal Regulations is hereby amended as follows:

1. Wherever the title "Assistant Secretary—Management" appears in this chapter, it is changed to read "Assistant Secretary—Administration and Management."

This amendment is made in accordance with a September 20, 1976, memorandum of the Secretary changing the secretarial assignment title.

2. (a) Wherever the name "Office of Management Services" appears in this chapter, it is changed to read "Office of Administrative and Management Policy."

(b) Wherever the name "Division of Procurement, Office of Management Services" appears in this chapter, it is changed to read "Division of Procurement and Grants, Office of Administrative and Management Policy."

(c) Wherever the name "Office of Management Operations" appears in this chapter, it is changed to read "Office of Administrative Services."

(d) Wherever the title "Director, Office of Management Services" or "Director of Management Services" appears in this chapter, it is changed to read "Director, Office of Administrative and Management Policy."

(e) Wherever the title "Assistant Director for Procurement, Office of Management Services" or "Assistant Director for Procurement" appears in this chapter, it is changed to read "Chief, Division of Procurement and Grants, Office of Administrative and Management Policy."

The amendments made above (2(a)–2(e)) are in accordance with Secretarial Order No. 2993 dated September 29, 1976, as implemented in Departmental Manual Release No. 1937 dated December 6, 1976.

It is the general policy of the Department of the Interior to allow time for interested parties to take part in the rulemaking process. However, the amendments contained herein are entirely administrative in nature. Therefore, the public rulemaking process is waived and this amendment will become effective immediately.

NOTE.—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 or OMB Circular A-107.

Dated: December 29, 1976.

RICHARD R. HITE,
Deputy Assistant Secretary of the Interior.

[FR Doc.77-412 Filed 1-5-77;8:45 am]

PART 14-1—GENERAL

PART 14-10—BONDS AND INSURANCE

Procurement Set-Aside For Small Business and Surety Bond Assistance; Revision of Regulations

On April 27, 1976, a document was published in the FEDERAL REGISTER (41 FR 17568-17569) proposing to amend Department of the Interior procurement regulations concerning small business set-asides for procurement of construction including alteration, maintenance, and repair. The proposed amendment would have increased the dollar ceiling of all construction procurements to be set aside for small business on a class basis from $500,000 to $1 million. In addition, the proposed amendment would have increased the dollar ceiling of all construction procurements to be set aside from $1 million to $2 million, unless the contracting officer determined that to do so would not be in the public interest. The proposed amendment would have also increased from $1 million to $2 million the dollar ceiling of all construction procurements to be set aside on a case-by-case basis. The changes were proposed in order to maintain consistency with current market conditions and the effects of inflation since the time the current set-aside policies were adopted. All comments received with respect to the proposed amendment have been given thorough consideration.

Numerous comments were received which opposed the proposed increases based on the supposition that such increases would restrict price competition and result in higher prices for construction. However, no substantive information was furnished to support such a position. Throughout the years that the small business set-aside program has been in effect, there has been no evidence that it increases costs if properly administered.

One commentator noted that the proposed increases would assist in restoring to small business concerns the portion of the Department's construction procurements which have been lost through the effects of inflation.

Although the Department strongly supports the national policy that a fair share of the Government's procurements be set aside for small business, its share of procurements awarded to small business firms under the set-aside program has been gradually declining. In addition, it has been determined that an adjustment is needed in the dollar ceilings of procurements to be set aside in order to keep pace with the impact of inflation on construction costs. For these reasons, coupled with the nonsubstantive nature of the comments received, the Department has decided to uniformally adjust the dollar ceiling of construction procurements to be set aside to correct obsolescence caused by the rapid acceleration of inflation while assuring that bids or proposals received under procurements set aside will be obtained from a sufficient number of responsible small business concerns to assure adequate competition.

In determining the amount of adjustment to be made, the Department has utilized the GNP Implicit Price Deflator promulgated by the Department of Commerce. The GNP Deflator was recently used by the Small Business Administration in adjusting upward its small business size standards for procurement in the area of general construction to account for the effects of inflation during the years the standard has been in effect. This method was utilized since the GNP Deflator is the broadest single measure of inflation available. Using the same methodology as the Small Business Administration, the Department determined the percent of increase in the GNP Deflator from the year its current set-aside policies were adopted (1968) to the latest GNP Deflector (1975).

Accordingly, § 14–1.706–1(a) is revised to raise the dollar ceiling from $500,000 to $750,000 and § 14–1.706–1(b) is revised to raise the dollar ceiling from $1 million to $1.5 million. Section 14–1.706–1(c) is revised to raise the amount after which set asides are to be considered on a case-by-case basis from $1 million to $1.5 million.

In addition to adjustments in dollar amounts of construction procurements to be set aside for small business, amendments have been made to the Department's regulations respecting surety bond guarantee asistance to reflect changes made in Surety Bond Guarantee Regulations by the Small Business Administration in 13 CFR Part 115 (FEDERAL REGISTER October 1, 1976; 41 FR 43409).

In consideration of the foregoing, 41 CFR Subpart 14–1.7 and Subpart 14–10.2 are amended as set forth below effective on January 6, 1977.

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

Dated: December 29, 1976.

RICHARD R. HITE,
Deputy Assistant Secretary of the Interior.

1. Subpart 14–1.7 of 41 CFR is amended by revising §§ 14–1.705–50 and 14–1.706–1 to read as follows:

Subpart 14–1.7—Small Business Concerns

§ 14–1.705 Cooperation with the Small Business Administration.

§ 14–1.705–50 Surety bond guarantee assistance.

(a) As provided in 13 CFR Part 115, the Small Business Administration may guarantee up to 90 percent of the loss on a surety bond required of a small business in order to obtain a Government contract of $250,000 or less and may guarantee up to 80 percent of the loss on surety bonds for contracts between $250,000 and $1,000,000 in amount. For purposes of applying this section, the definition of a small business is as set forth in § 14–1.701–50.

(b) Invitations for bids or requests for proposals where the cost of the procurement is not expected to exceed $1,000,000 shall include the following clause:

SURETY BOND GUARANTEE ASSISTANCE

As provided in 13 CFR Part 115, the Small Business Administration may, under certain circumstances, provide assistance to small businesses on surety bonds required hereunder. Further information may be obtained from the officer or the nearest office of the Small Business Administration.

§ 14–1.706 Procurement set-aside for small business.

§ 14–1.706–1 General.

(a) Pursuant to §§ 1–1.706–1, 1–3.201 (a) and (b) of this title, and § 14–3.201 (a) of this chapter, it shall be the policy of the Department of the Interior to set aside on a class basis for small business all procurements of construction (including alteration, maintenance, and repair) estimated to cost $750,000 or less, except individual procurements for which small purchase procedures (see Subpart 1–3.6 of this title) are to be used or when emergency repair work is required. Contracting officers may deviate from this class set-aside policy as provided in § 1–1.706–3 of this title.

(b) It shall be the policy of the Department of the Interior to set aside for small business all procurements of construction (including alteration, maintenance, and repair) estimated to cost between $750,000 and $1.5 million unless the contracting officer determines that to do so would not be in the public interest because of a lack of price competition, proficiency, or other circumstances.

(c) Construction procurements (including alteration, maintenance and repair) estimated to cost $1.5 million or more shall be considered for small business set aside on a case-by-case basis.

2. Subpart 14–10.2 of 41 CFR is amended by revising § 14–10.201 to read as follows:

Subpart 14–10.2—Sureties on Bonds

§ 14–10.201 General.

As provided in 13 CFR Part 115, the Small Business Administration may guarantee up to 90 percent of the loss on a surety bond required of a small business in order to obtain a Government contract of $250,000 or less and may guarantee up to 80 percent of the loss on surety bonds for contracts between $250,000 and $1,000,000 in amount (see § 14–1.705–50 of this chapter).

[FR Doc.77–413 Filed 1–5–77;8:45 am]

Title 43—Public Lands: Interior

SUBTITLE A—OFFICE OF THE SECRETARY OF THE INTERIOR

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

Special Rules Applicable to Mine Health and Safety Hearings and Appeals—Summary Disposition

On page 45574 of the FEDERAL REGISTER of October 15, 1976, there was published a proposal to amend § 4.544, Part 4, Subtitle A, Title 43, Code of Federal Regulations.

This amendment will relieve the Department from the unnecessary burden of preparing a formal decision based upon proposed findings of fact and conclusions of law for civil penalty cases where the respondent fails to file a timely answer to a petition for civil penalty, or fails to timely comply with a prehearing order. As an added protection, the respondent coal mine operators are given an opportunity to show cause and thereby avoid summary dismissal. This procedure is virtually identical to the prior regulations in effect during the period from June 28, 1972, until April 24, 1973.

The amendment does not affect the rights of respondent coal mine operators to a full and fair hearing in contested civil penalty proceedings where the respondent has complied with procedural regulations consistent with his prior request for a hearing. Under past practice, undue time and expense were spent preparing routine proposed findings of fact and conclusions of law prior to the imposition of default civil penalties by Administrative Law Judges. A conforming amendment to 30 CFR Part 100 has also been published in this issue of the FEDERAL REGISTER (at page 1214).

It is the policy of the Department of the Interior whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Therefore, interested persons were invited to submit written data, views and comments by November 15, 1976.

No timely written objections have been received, and the proposed regulations are hereby adopted without change, and are set forth below.

Effective date: These regulations are effective on January 6, 1977.

Dated: December 28, 1976.

FRED G. KAREM,
Deputy Under Secretary of the Interior.

Accordingly, 43 CFR Part 4 is amended by revising § 4.544 to read as follows:

§ 4.544 Summary disposition.

(a) Where the respondent fails to file a timely answer to the Mining Enforcement and Safety Administration's petition for assessment of civil penalty, or fails to timely comply with any prehearing order of an administrative law judge, the Office of Hearings and Appeals shall issue an order to show cause why (1) the respondent should not be deemed to have waived his right to a hearing and (2) the proceedings should not be summarily dismissed and referred to the assessment officer.

(b) If the order to show cause is not satisfied as provided in the order, the administrative law judge shall order the proceedings summarily dismissed and referred to the assessment officer, who shall enter the order of assessment as the final order of the Department and institute collection procedures pursuant to section 109(a)(4) of the Act.

(c) Where the respondent fails to appear at a hearing, the respondent will be deemed to have waived his right to a hearing and the administrative law judge may assume for purposes of the assessment: (1) That each violation listed in the petition occurred, and (2) the truth of any fact alleged in any order or notice concerning such violation. In order to issue an initial decision assessing an appropriate penalty for each violation cited in accordance with § 4.545(a), an administrative law judge shall either conduct such hearing or require the Mining Enforcement and Safety Administration to furnish proposed findings of fact and conclusions of law.

(d) Nothing in this section shall be construed to deprive the respondent of its opportunity to have the Mining En-

forcement and Safety Administration prove the violations charged in open hearing with confrontation and cross-examination of witnesses, except where said respondent fails to file timely answer to a petition for civil penalty, fails to timely comply with a prehearing order, or fails to appear at the scheduled hearing.

(Sec. 508, Pub. L. 91-173, 83 Stat. 803; (30 U.S.C. 957).)

[FR Doc.77-414 Filed 1-5-77;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION

[Docket No. 76-SO-106; Amdt. 39-2796]

PART 39—AIRWORTHINESS DIRECTIVES

Piper Models PA-28 and PA-32 Series Airplanes

There have been instances of erroneous fuel quantity indicators on PA-28 and PA-32 airplanes that could result in fuel mismanagement. Since this condition is likely to exist in other airplanes of the same type design, an airworthiness directive is being issued to require inspection of the fuel quantity gauges.

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

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

PIPER AIRCRAFT CORPORATION. Applies to Model PA-28-140 serial numbers 28-7225001 through 7725086; Model PA-28-150/160/180 serial numbers 28-7205001 through 7505259; Model PA-28-151 serial numbers 28-7415001 through 7715200; Model PA-28-181 serial numbers 28-7690001 through 7790192; Model PA-28-235 serial numbers 28-721001 through 7610181; Model PA-28R-200 serial numbers 28R-7235001 through 7635459; Model PA-32-260 serial numbers 32-7200001 through 7700005; and Model PA-32-300 serial numbers 32-7240001 through 7740012 certificated in all categories.

Compliance required as indicated.

To prevent possible fuel exhaustion due to an erroneous fuel quantity gauge indication, accomplish the following:

(a) Within the next 10 hours' time in service after the effective date of this AD, unless (b) and/or (c) have been accomplished, attach the following placard to the instrument panel near the fuel quantity gauges, in clear view of the pilot, using ⅛" minimum size type:

"Warning fuel gauges may indicate as much as 2½ gallons when tanks are empty."

The placard may be fabricated by the owner/operator or Piper Part Number 35669-14 may be used.

(b) Within the next 200 hours' time in service or 12 months, whichever occurs first, after the effective date of this AD, check each of the fuel quantity gauges for proper calibration in accordance with the following procedures. These checks may be performed by the pilot.

(1) Place the airplane on a known level area in an approximately static level condition.

(2) Insure that each fuel tank contains a minimum of five (5) gallons of fuel.

(3) Start the engine and run at 1000 rpm for approximately two (2) minutes. Alternator portion of split master switch must be on.

(4) Shut down the engine but leave the master switch on during steps (5), (6) and (7).

(5) Defuel each airplane fuel tank.

CAUTION: Insure that the aircraft and the defueling vehicle are properly grounded and insure that proper fire protection equipment is available.

(6) Repeat (3).

(7) With the engine running, determine the fuel quantity indication for each gauge.

(8) If the gauges indicate zero (0) or below, no further action is required. Return the airplane to service.

(9) If a gauge indicates above zero (0), accomplish (c), or replace the erroneous gauge with a serviceable gauge, which has the appropriate Piper Part Number and is identified with a white dot on the lower right hand corner of the face.

(c) The fuel quantity gauges that do not meet (b)(9) must be calibrated to a zero (0) indication in accordance with FAA approved Piper instructions by an FAA approved facility or by an FAA authorized Piper Aircraft Corporation employee.

(d) When (b) and/or (c) have been accomplished, the placard required by (a) may be removed.

(e) Alternate method of compliance must be approved by the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, Southern Region.

This amendment becomes effective January 7, 1977.

Piper Service Bulletin 533 also pertains to this same subject.

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

NOTE: 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 East Point, Georgia, on December 21, 1976.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.77-176 Filed 1-5-77;8:45 am]

[Airworthiness Docket No. 74-WE-7-AD, Amdt. 39-2797]

PART 39—AIRWORTHINESS DIRECTIVES

Hughes Model 269 Series Helicopters

Amendment 39-1820 (39 FR 13873), AD 74-09-01, as amended by Amendment 39-2348 (40 FR 36762) requires an initial inspection at 400 hours accumulated time in service on the main rotor ring gear drive shaft assembly, P/N 269A5179, for cracks, fretting, and other damage, and also requires periodic inspections at 1000-hour intervals thereafter on Hughes 269 series helicopters. After issuing Amendment 39-2348, the FAA determined from service experience that failure of the shaft assembly has occurred between the 1000-hour periodic inspection intervals. Therefore, the AD is being superseded by a new AD that reduces the periodic inspection intervals from 1000 hours to periodic inspections intervals of 300 hours' time in service on the shaft assembly. The area of inspection required by the AD is also being expanded to include the inspection for fine cracks over the entire accessible portions of the shaft assembly, in addition to the critical areas already specified as being adjacent to the locking collars and at the lower bearing bore seat.

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

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

HUGHES HELICOPTERS: Applies to Hughes Model 269 series helicopters certificated in all categories, incorporating main rotor ring gear drive shaft assembly, P/N 269A 5179.

Compliance required as indicated, unless already accomplished.

To detect conditions which might result in failure of the main rotor ring gear drive shaft assembly, accomplish the following:

(a) For main rotor ring gear drive shaft assemblies, P/N 269A5179, with less than 400 hours' total time in service on the effective date of this AD, before the accumulation of 425 hours' time in service, and thereafter at intervals not to exceed 300 hours' time in service since the last inspection, accomplish the inspections required by paragraph (f).

(b) For main rotor ring gear drive shaft assemblies, P/N 269A5179, with 400 or more hours' total time in service on the effective date of this AD, within the next 25 hours' time in service unless already accomplished within the last 275 hours' time in service and thereafter at intervals not to exceed 300 hours' time in service since the last inspection, accomplish the inspections required by paragraph (f).

(c) Before accumulating 3000 hours total time in service on the main rotor ring gear drive shaft assembly, P/N 269A5179, accomplish the inspection and modifications described in Hughes Service Information Notice No. N-114.2, dated June 23, 1975, or later FAA-approved revisions.

(d) Before accumulating 6000 hours total time in service on the main rotor ring gear drive shaft assembly, P/N 269A5179, remove and discard the shaft assembly from service.

(e) For main rotor ring gear drive shaft assemblies, P/N 269A5179, for which the prior service history cannot be documented, within the next 25 hours' time in service after the effective date of this AD, remove and discard the shaft assembly from service.

(f) The following inspections shall be performed at the periods specified in this AD.

(1) Using a magnifying glass having at least 10X power, conduct a close visual inspection of the main rotor ring gear drive shaft assembly, P/N 269A5179, at the area of the lower bearing bore and where the lower bearing cup, P/N 269A5051-9, seats against the P/N 269A5180 aluminum shaft, for fine cracks, wear, nicks, burrs, fretting, or other damage. In addition, for possible correction

of minor defects, refer to Hughes Service Information Notice No. N-114.2, dated June 23, 1975, or later FAA-approved revisions.

(2) Measure the shaft lower bearing bore inside diameter and the lower bearing cup outside diameter at four equally spaced locations around the mating area. Add and average the inside and outside diameters separately; subtract the average inside diameter from the average outside diameter to determine the interference fit. The acceptable interference fit is .007 inch minimum to .009 inch maximum. The acceptable dimensions for the diameters are as follows:

Shaft lower bearing bore I.D., 5.367-5.368 inches.

Lower bearing cup O.D., 5.375-5.376 inches.

(3) Using a magnifying glass having at least 10X power, conduct a visual inspection of the accessible areas of the entire shaft assembly, including the area adjacent to the six locking collars for fine cracks. Removal of the locking collars is not required for this inspection. Do not disturb the locking collars while performing this inspection.

(4) If cracks are not found as a result of the inspections of (1) and (3) above, conduct a fluorescent or dye penetrant inspection of the accessible areas of the entire shaft assembly.

(5) If any crack, wear, nicks, burrs, fretting, or other damage is evidenced, or if a dimension is found to be out of limits as a result of the above inspection, replace the defective drive shaft assembly with a replacement assembly prior to further flight. In addition, for possible correction of minor defects, refer to Hughes Service Information Notice No. N-114.2, dated June 23, 1975, or later FAA-approved revisions.

(6) If a sharp edge exists at the lower bearing cup seat at the shoulder I.D., remove the sharp edge with 100 grit or finer emery cloth. Remove approximately 0.005-0.010 inch material.

(g) Operators whose helicopters, as of the effective date of this AD, experience sudden stoppage of the drive system or main rotor blade strikes resulting in damage to the rotor blade at the root fitting or damper attachment area, shall refer to maintenance inspections pertaining to this subject in Appendix B, Revision No. 2, and Appendix C, Revision No. 3, or latest revisions to the Hughes 269 Series Handbook of Maintenance Instructions.

(h) Equivalent inspection and modification procedures of the main rotor ring gear drive shaft assembly may be used when approved by the Chief, Aircraft Engineering Division, FAA Western Region.

(i) Special flight permits may be issued in accordance with FAR's 21.197 and 21.199 to operate helicopters to a base for the accomplishment of this AD.

This supersedes Amendment 39-1820 (39 FR 13873), AD 74-09-01, as amended by Amendment 39-2348 (40 FR 36762).

This amendment becomes effective January 10, 1977.

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

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

Issued in Los Angeles, Calif., on December 27, 1976.

LYNN L. HINK,
Acting Director,
FAA Western Region.

[FR Doc.77-442 Filed 1-5-77;8:45 am]

[Airworthiness Docket No. 74-WE-12-AD; Amdt. 39-2798]

PART 39—AIRWORTHINESS DIRECTIVES

McDonnell Douglas DC-10 -10, -10F, -30, 30F, -40 Airplanes

Amendment 39-1812 (39 FR 12997), AD 74-08-07, as amended by Amendment 39-1928 (39 FR 30109), limits the use of the automatic landing system installed on McDonnell Douglas DC-10-10/-30/-40 series airplanes. Amendment 39-2115 (40 FR 8795) and 39-2230 (40 FR 23723) relieved some restrictions and added the "Do not use Automatic Landing System for Category III" restriction.

After issuing Amendment 39-2230, AD 74-08-07, other service difficulties involving the VOR/localizer antenna required the issuance of Amendment 39-2351 (40 FR 36762), AD-75-18-08 as amended by Amendment 39-2411 (40 FR 50519) which limited operation of the McDonnell Douglas DC-10 -10, -10F, -30, -30F and -40 airplanes to Category I meteorological conditions. This limitation was relieved by a modification acceptable to Category II meteorological conditions.

The Federal Aviation Administration has determined that the manufacturer has now developed design changes and a maintenance program which provides for safe operation of the autoland system as provided for in the FAA approved airplane flight manual. Therefore, AD 74-08-07 is being further amended to provide for operation to the full provisions described in the FAA approved airplane flight manual after incorporation of the following modifications, revisions and additions:

(1) McDonnell Douglas Service Bulletin 34-78 or production equivalent which provides a redundant localizer antenna. This modification provides the additional redundancy found necessary as a result of the service difficulty discussed in AD 75-18-08.

(2) McDonnell Douglas Service Bulletin 22-93 or production equivalent which provides additional electrical protection of relay terminals in yaw computer part numbers 3747082-7 and 3757091-9, as applicable. This yaw computer requirement surfaced as a result of further studies by McDonnell Douglas after AD 74-08-07 became effective.

(3) Removal of the AFM limitation "Do not use Automatic Landing System for Category III operation" required by AD 74-08-07 is provided for by paragraphs (1) and (2), as well as the incorporation of the maintenance plan in Note 8 of the Type Certificate Data Sheet dated June 30, 1976.

(4) Revisions to the FAA approved airplane flight manual are also incorporated in the amendment to provide for removal of the Category III limitation.

The AD 74-08-07 applicability statement has been rewritten to more accurately conform to the model listings on the Type Certificate Data Sheet No. A22WE. No substantive change is being effected as to aircraft subject to the rule.

Since this amendment is relieving in nature and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 FR 13697), § 39.13 of Part 39 of the Federal Aviation Regulations, Amendment 39-1812 (39 FR 12997), AD 74-08-07, amended by Amendments 39-1928 (39 FR 30109), 39-2115 (40 FR 8795) and 39-2230 (40 FR 23723) is further amended as follows:

(1) Amend the applicability statement in pertinent part, to read:

Applies to all Douglas Aircraft Company DC-10, -10, -10F, -30, -30F and -40 airplanes, certificated in all categories

(2) Amend paragraph (d), in pertinent part, to read:

(d) An operator may use the DC-10, -10, -10F, -30 or -30F automatic landing system * * *

(3) Add new paragraphs (h) and (i) as follows:

(h) An operator may use the DC-10, -10, -10F, -30, -30F or -40 Automatic Landing System for revenue service as provided in the applicable FAA approved Airplane Flight Manuals when all of the following are accomplished:

(1) Paragraph (d) or (f), as applicable, is accomplished.

(2) Installation of a redundant VOR/localizer antenna and modification of the existing VOR/localizer antenna on all airplanes in an operator's fleet to provide a redundant antenna. Modify per McDonnell Douglas Service Bulletin 34-78, dated December 6, 1976 or later FAA-approved revisions or production equivalent.

(3) Modification of all yaw computer Part Numbers 3757082-7 or 3757091-9, as applicable, in an operator's fleet to provide additional electrical protection of relay terminals, in accordance with McDonnell Douglas Service Bulletin 22-93, dated December 17, 1976 or later FAA-approved revisions or production equivalent.

(4) Incorporation of the applicable pages of the Flight Guidance Appendix to the Airplane Flight Manual, as listed below, approved on December 27, 1976, or later FAA-approved revisions to provide for removal of the Category III limitations.

Report No. MDC-J 1010 Revision No. 74.
Report No. MDC-J 1030 Revision No. 54.
Report No. MDC-J 5830 Revision No. 28.
Report No. MDC-J 1040 Revision No. 27.
Report No. MDC-J 2140 Revision No. 06.

(5) Approval to conduct automatic landings is obtained from the FAA Principal Operations Inspector assigned to the individual operator.

(i) Notwithstanding the requirements of paragraph (e) or (g), after accomplishment of paragraph (h), the Automatic Landing System may be operated in accordance with the limitations defined in the apropriate FAA approved airplane flight manual as provided in paragraph (h)(4).

This amendment becomes effective January 10, 1977.

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

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

Issued in Los Angeles, Calif. on December 27, 1976.

LYNN L. HINK,
Acting Director,
FAA Western Region.

[FR Doc.77-441 Filed 1-5-77;8:45 am]

[Docket No. 16387; Amdt. No. 1053]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Recent Changes and Additions

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

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

SIAPs are available for examination at the Rules Docket and at the National Flight Data Center, Federal Aviation Administration, 800 Independence Avenue, S.W., 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, S.W., 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 February 24, 1977.*

Augusta, ME—Augusta State Arpt., VOR Rwy 17, Amdt. 11, cancelled.
Augusta, ME—Augusta State Arpt., VOR Rwy 35, Original.
Augusta, ME—Augusta State Arpt., VOR/DME-A, Amdt. 7.
Augusta, ME—Augusta State Arpt., VOR/DME Rwy 8, Amdt. 7.
Augusta, ME—Augusta State Arpt., VOR/DME Rwy 17, Orig.
Manahawkin, NJ—Manahawkin Arpt., VOR-A, Original.
Hickory, NC—Hickory Municipal, VOR Rwy 24, Amdt. 18.
Siler City, NC—Siler City Municipal, VOR/A, Original.
Arlington, TX—Arlington Municipal, VOR/DME Rwy 34, Amdt. 1.
Dallas, TX—Addison Arpt., VOR Rwy 15, Amdt. 13.
Dallas, TX—Addison Arpt., VOR Rwy 33, Amdt. 14.
Dallas, TX—Dallas Love Field, VOR Rwy 18, Amdt. 18.
Dallas, TX—Dallas Love Field, VOR Rwy 36, Amdt. 10.
Dallas, TX—Dallas Love Field, VOR/DME Rwy 13R, Amdt. 3.
Dallas, TX—Redbird Arpt., VOR Rwy 13, Amdt. 3.
Dallas, TX—Redbird Arpt., VOR Rwy 17, Amdt. 1.
Dallas, TX—Redbird Arpt., VOR Rwy 31, Amdt. 6.
Morgantown, WV—Morgantown Muni-Walter L. Bill Hart Field, VORTAC Rwy 18, Amdt. 1.
Boscobel, WI—Boscobel Arpt., VOR/DME-A, Original.
Portage, WI—Portage Muni Arpt, VOR/DME-A, Original.
Richland Center, WI—Richland Arpt., VOR-A, Original.

* * * *effective January 10, 1977.*

Ft. Lauderdale, FL—Ft. Lauderdale-Hollywood Int'l Arpt., VOR Rwy 9L, Amdt. 14.
Ft. Lauderdale, FL—Ft. Lauderdale-Hollywood Int'l Arpt., VOR Rwy 13, Amdt. 12.
Ft. Lauderdale, FL—Ft. Lauderdale-Hollywood Int'l Arpt., VOR Rwy 27R, Amdt. 7.
Bad Axe, MI—Huron County Memorial, VOR Rwy 3, Amdt. 3.
Bad Axe, MI—Huron County Memorial, VOR Rwy 21, Amdt. 2.

* * * *effective January 13, 1977.*

Cheraw, SC—Cheraw Muni Arpt., VOR-A, Amdt. 4, cancelled.
Cheraw, SC—Cheraw Muni Arpt., VOR/DME Rwy 7, Orig.

* * * *effective December 21, 1976.*

Muskegon, MI—Muskegon County, VOR/DME Rwy 5, Amdt. 3.

2. Section 97.25 is amended by originating, amending, or canceling the following SDF-LOC-LDA SIAPs, *effective February 24, 1977.*

Auburn-Lewiston, ME — Auburn-Lewiston Muni Arpt., LOC Rwy 4, Amdt. 1.
Dallas, TX—Dallas Love Field, LOC (BC) Rwy 13R, Amdt. 10.
Dallas, TX—Dallas Love Field, LOC (BC) Rwy 31R, Amdt. 23.
Fort Worth, TX—Meacham Field, LOC (BC) Rwy 34R, Amdt. 5.

* * * *effective February 10, 1977*

Ft. Lauderdale, FL—Ft. Lauderdale-Hollywood Int'l Arpt., LOC (BC) Rwy 27R, Amdt. 4.

* * * *effective January 13, 1977*

Nashville, TN—Nashville Metropolitan, LOC Rwy 31, Amdt. 2, cancelled.

* * * *effective December 16, 1976*

Galesburg, IL — Galesburg Municipal Arpt., LOC Rwy 2, Amdt. 1.

3. Section 97.27 is amended by originating, amending, or canceling the following NDB/ADF SIAPs, *effective February 24, 1977.*

Auburn-Lewiston, ME — Auburn-Lewiston Muni Arpt., NDB Rwy 4, Amdt. 1.
Portland, ME—Portland Int'l Jetport, NDB Rwy 11, Amdt. 11.
Hatteras, NC—Billy Mitchell Arpt., NDB Rwy 6, Original.
Dallas, TX—Redbird Arpt., NDB Rwy 35, Amdt. 3.
Dallas-Ft. Worth, TX—Dallas-Ft. Worth Regional Arpt., NDB Rwy 17L, Amdt. 2.
Dallas-Ft. Worth, TX—Dallas-Ft. Worth Regional Arpt., NDB Rwy 35R, Amdt. 2.
Fort Worth, TX—Meacham Field, NDB Rwy 34R, Amdt. 4.
Morgantown, WV—Morgantown Muni-Walter L. Bill Hart Field, NDB Rwy 18, Amdt. 11.

* * * *effective February 10, 1977*

Ft. Lauderdale, FL—Ft. Lauderdale-Hollywood Int'l Arpt., NDB Rwy 13, Amdt. 11.
Tell City, IN—Perry County Municipal Arpt., NDB Rwy 31, Amdt. 1.
Artesia, NM—Artesia Municipal Arpt., NDB Rwy 12, Orig.
Artesia, NM—Artesia Municipal Arpt., NDB Rwy 30, Orig.
Harlingen, TX—Harlingen Industrial Airpark, NDB Rwy 17L, Original.

* * * *effective January 20, 1977.*

Lincoln, NE—Lincoln Municipal Arpt., NDB Rwy 35L, Amdt. 5.

4. Section 97.29 is amended by originating, amending, or canceling the following ILS SIAPs, *effective February 24, 1977.*

Portland, ME—Portland Int'l Jetport, ILS Rwy 11, Amdt. 14.
Dallas, TX—Addison Arpt., ILS Rwy 15, Amdt. 1.
Dallas, TX—Dallas Love Field, ILS Rwy 13L, Amdt. 24.
Dallas-Ft. Worth, TX—Dallas-Ft. Worth Regional, ILS Rwy 17L, Amdt. 5.
Dallas-Ft. Worth, TX—Dallas-Ft. Worth Regional, ILS Rwy 17R, Amdt. 5.
Dallas-Ft. Worth, TX—Dallas-Ft. Worth Regional, ILS Rwy 35L, Amdt. 5.
Dallas-Ft. Worth, TX—Dallas-Ft. Worth Regional, ILS Rwy 35R, Amdt. 5.
Morgantown, WV—Morgantown Muni-Walter L. Bill Hart Field, ILS Rwy 18, Amdt. 4.

* * * *effective February 10, 1977.*

Ft. Lauderdale, FL—Ft. Lauderdale-Hollywood Int'l Arpt., ILS Rwy 9L, Amdt. 7.
Asheville, NC—Asheville Muni Arpt., ILS Rwy 34, Amdt. 16.

* * * *effective January 20, 1977.*

Lincoln, NE—Lincoln Municipal Arpt., ILS Rwy 35L, Amdt. 5.

* * * *effective January 13, 1977.*

Sacramento, CA—Sacramento Metropolitan Arpt., ILS Rwy 34, Original.

Nashville, TN—Nashville Metropolitan Arpt., ILS Rwy 31, Original.

5. Section 97.31 is amended by originating, amending, or canceling the following RADAR SIAPs, *effective February 24, 1977.*

New Smyrna Beach, FL—New Smyrna Beach Muni Arpt., RADAR-1, Original.

* * * *effective January 13, 1977*

Daytona Beach, FL—Daytona Beach Regional, RADAR-1, Original.

DeLand, FL—DeLand Muni-Sidney H. Taylor Field, RADAR-1, Original.

6. Section 97.33 is amended by originating, amending, or canceling the following RNAV SIAPs, *effective February 24, 1977.*

Arlington, TX—Arlington Municipal Arpt., RNAV Rwy 34, Amdt. 1.

Correction

In Docket No. 16311, Amdt. No. 1051, to part 97 of the Federal Aviation Regulations, published in the FEDERAL REGISTER dated Monday, December 20, 1976, on page 55333, under Section 97.25 * * * change effective date of Tyler, TX—pounds field, loc(BC) Rwy 31, Amdt. 12 from January 27, 1977 to February 24, 1977.

In Docket No. 16282, Amdt. No. 1048, to part 97 of the Federal Aviation Regulations, published in the FEDERAL REGISTER dated Friday, November 26, 1976 on page 52049, under Section 97.23, effective January 6, 1977 * * * White Plains, NY—Westchester County, VORTAC Rwy 23, orig redesignated as VORTAC-A, ORIG.

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

Issued in Washington, D.C., on December 24, 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.77-177 Filed 1-5-77;8:45 am]

SUBCHAPTER A—ECONOMIC REGULATIONS

[Docket No. 27769; Reg. ER-979]

PART 221a—FARE SUMMARIES

Issuance of a New Part

Correction

In FR Doc. 76-37713 appearing at page 55865 in the issue of Thursday, December 23, 1976 the following corrections should be made:

1. On page 55868, in the third column, paragraph (g) of § 211a.3 should read as follows:

(g) Each fare summary shall provide an address from which any person can obtain by mail a copy of any other fare summary issued by that carrier, and shall contain a statement to that effect. In addition, each carrier shall provide, at each of its locations, forms by which a person may request copies of any summaries issued by the carrier by filling out the form and submitting it to the carrier's employee in attendance. Any such request shall be satisfied by the carrier by putting the requested summaries in the mail, addressed to the person making the request, not more than 7 days after receipt of the request.

2. Section 221a.4 should be added as follows:

§ 221a.4 Contents.

(a) A fare summary shall describe each type of passenger fare, except for group fares, offered to the public by a carrier from the point of origin (airport or metropolitan area) to which the summary applies, to selected destinations, as set forth in § 221a.6. For purposes of this requirement, "group fares" means fares applicable only to groups of more than nine persons that are not assembled by the carrier or by a travel agent.

(b) The fare description shall include both the actual amount of each fare in dollars and the general rules and conditions under which the fare is offered. The rules and conditions described shall include as a minimum the following:

(1) Restrictions as to dates of the year on which the fare applies, such as holidays and peak or off-peak seasons;

(2) Hour-of-the-day and day-of-the-week limitations;

(3) Minimum- and maximum-stay periods;

(4) Round-trip requirements;

(5) Advance reservation, deposit, and refund or forfeit provisions;

(6) Differential fares for children;

(7) Provisions regarding the identity or number of the passengers, such as occupation or minimum number in group; and

(8) Land-package or other additional-purchase requirements.

(c) Each fare summary shall bear the date as of which the information summarized is represented as being accurate, together with a statement to the following effect:

This is only a general summary of the rules and conditions that apply to the listed fares as of the date shown above. The official tariffs of current fares for air travel to or from a location where tickets are sold are available for examination at that location. A full statement of all current fares, with their associated rules and conditions, is contained in the official tariffs that are in effect and on file with the Civil Aeronautics Board, 1825 Connecticut Ave., N.W., Washington, D.C. 20428.

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER E—ORGANIZATION REGULATIONS

[Reg. OR-106, Amdt. 52]

PART 385—DELEGATION AND REVIEW OF ACTION UNDER DELEGATION: NONHEARING MATTERS

Delegation to Chief, Passenger and Cargo Rates Division, Bureau of Economics, To Approve Applications To Furnish Free or Reduced-Rate Transportation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., January 3, 1977.

Section 385.14(e) of the Board's Organizational Regulations presently delegates authority to the Chief, Passenger and Cargo Rates Division of the Bureau of Economics to approve or disapprove applications to furnish free or reduced-rate air transportation to tavel agents.

From time to time the Board has received, and generally approved, applications to furnish free or reduced-rate air transportation to: (1) Instructors and travel agent organization administrative personnel participating in travel agent training programs for which the attending travel agents receive free or reduced-rate transportation; and (2) military personnel traveling on official business of an air carrier to which they have been assigned for educational training purposes. Disposition of these applications involves no significant policy issues or other matters warranting the Board's consideration. Thus, the periodically recurring preparation and submission to the Board of drafts of orders approving or disapproving such applications, presently done by the Chief, Passenger and Cargo Rates Division, involves an unnecessary administrative workload. Accordingly, the Board is hereby delegating to the Chief, Passenger and Cargo Rates Division, the authority to dispose of such applications.

Since this amendment affects a rule of agency organization and procedure, the Board finds that notice and public procedure are unnecessary, and that the rule may become effective immediately.

Accordingly, the Board hereby amends Part 385 of its Organization Regulations (14 CFR Part 385) effective January 3, 1977, as follows:

Amend § 385.14 by adding new paragraphs (f) and (g) to read as follows:

§ 385.14 Delegation to the Chief, Passenger and Cargo Rates Division, Bureau of Economics.

* * * * *

(f) Approve or disapprove applications for permission to furnish free or reduced-rate air transportation to instructors and travel agent organization employees in connection with travel agent training programs to which travel agents are accorded free or reduced-rate air transportation.

(g) Approve or disapprove applications for permission to furnish free or reduced-rate air transportation to commissioned and enlisted military personnel when on official business of an air carrier to which they have been assigned for educational training purposes.

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; (49 U.S.C. 1324). Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989; (49 U.S.C. 1324 (note).))

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-487 Filed 1-5-77;8:45 am]

Title 49—Transportation

CHAPTER II—FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket RAR-2]

PART 225—RAILROAD ACCIDENTS/INCIDENTS: REPORTS, CLASSIFICATION AND INVESTIGATIONS

Conforming Amendment

The Federal Railroad Administration (FRA) is making a minor amendment to Appendix B of Part 225 to conform with the amendment to § 225.9 (49 CFR 225.9) published in the April 15, 1976 issue of the FEDERAL REGISTER (41 FR 15847). This conforming amendment merely substitutes the word "telephonic" for "telegraphic" in Appendix B—Schedule of Civil Penalties, published in the July 26, 1976 issue of the FEDERAL REGISTER (41 FR 30649).

Since this amendment is merely conforming in nature and does not impose any additional burden on any person, notice and public proceeding thereon are unnecessary. For the same reasons, FRA has determined that a regulatory impact evaluation pursuant to the policies of the Department of Transportation published in the April 16, 1976 issue of the FEDERAL REGISTER (41 FR 16200) is not warranted.

In consideration of the foregoing Appendix B of Part 225 is amended by substituting the word "telephonic" for "telegraphic," effective on January 6, 1977. As amended it reads as follows:

APPENDIX B.—*Schedule of civil penalties*

Section	Violation	Intentional violation [1]
225.9. Telephonic reports of certain accidents/incidents	$1,000	$2,000
225.11. Reports of accidents/incidents	1,000	2,000
225.21 Joint operations:		
(a)	1,000	2,000
(b) and (c)	500	750
225.25 Recordkeeping	500	750
225.27 Retention of records	500	750

[1] For the purposes of this schedule, an intentional violation is the knowing and willful failure of a carrier, its officers or agents to comply with the provisions of this part. The Administrator reserves the authority to assess the maximum penalty of $2,500 for a violation of any section or subsection contained in pt. 225.

(Section 209, 84 Stat. 975, 88 Stat. 2165 (45 U.S.C. 438); § 1.49(n), regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(n).)

Issued in Washington, D.C. on December 30, 1976.

ASAPH H. HALL,
Administrator.

[FR Doc.77-402 Filed 1-5-77;8:45 am]

[Docket RAR-2]

PART 225—RAILROAD ACCIDENTS/INCIDENTS: REPORTS, CLASSIFICATION AND INVESTIGATIONS

Amendments Concerning Reporting of Railroad Accidents

On November 22, 1976, the Federal Railroad Administration (FRA) published a notice of proposed rulemaking in the FEDERAL REGISTER (41 FR 51428) proposing to amend several provisions governing the reporting of railroad accidents/incidents. Interested persons were invited to submit written comments by December 21, 1976. No unfavorable comments were received and the proposed amendments are hereby adopted without change as set forth below.

The proposed revisions to forms FRA F6180.45 (Annual Summary of Railroad Injury and Illness) and F6180.55 (Railroad Injury and Illness Summary) have been approved by the Office of Management and Budget (OMB) in accordance with 44 U.S.C. 3509. The revised forms were approved by OMB on November 17, 1976 (OMB approval Nos. 004-R4037 and 004-R4009).

The FRA has evaluated the regulatory impact of these amendments in accordance with the policies of the Department of Transportation as stated in the April 16, 1976 issue of the FEDERAL REGISTER (41 FR 16200) and determined that their impact will be minimal. The basis for this determination is identical to that contained in the NPRM.

In consideration of the foregoing, Part 225 of Title 49 of the Code of Federal Regulations is amended as set forth below:

1. By amending § 225.11 to read as follows:

§ 225.11 Reporting of accidents/incidents.

(a) Each railroad subject to this part must submit to FRA a monthly report of all railroad accidents/incidents described in § 225.19. The report must be made on the forms prescribed in § 225.21 and must be submitted within 30 days after expiration of the month during which the accidents/incidents occurred. Reports must be completed as required by the current FRA Guide for Preparing Accident/Incident Reports. A copy of this guide may be obtained from the Office of Safety, Federal Railroad Administration, 2100 Second Street, SW., Washington, D.C. 20590.

(b) As part of each monthly report, each Class I railroad and switching and terminal company must include a copy of its "Monthly Report of Employees, Service and Compensation." (ICC Wage Statistics, Forms A and B) submitted to the Interstate Commerce Commission for the same month.

(c) As part of its monthly reports for March, June, September and December of each year, each Class I railroad and switching and terminal company must include copies of the current quarterly Form OS-A report required by the Interstate Commerce Commission. As part of its monthly reports for April, July, October, and January of each year, each Class I railroad and switching and terminal company must include copies of current quarterly Form OS-B report required by the Interstate Commerce Commission.

2. By amending paragraph (d) of § 225.19 to read as follows:

§ 225.19 Primary group of accidents/incidents.

* * * * *

(d) *Group III—Death, injury or occupational illness.* Each accident/incident, arising from the operation of a railroad, must be reported on Form FRA F 6180.55a if it results in:

(1) The death of any person from an injury within 365 days of the accident/incident;

(2) The death of a railroad employee from occupational illness within 365 days after the occupational illness was diagnosed by a physician;

(3) Injury to any person other than a railroad employee that required medical treatment;

(4) Injury to a railroad employee that requires medical treatment or results in restriction of work or motion for one or more work days, one or more lost work days, termination of employment, transfer to another job or loss of consciousness; or

(5) Any occupational illness of a railroad employee as diagnosed by a physician.

3. By amending paragraphs (b) and (c) of § 225.21 to read as follows:

§ 225.21 Forms.

* * * * *

(b) Form FRA F 6180.55—Railroad Injury and Illness Summary. Form FRA F 6180.55 must be filed each month, even though no reportable accident/incident occurred during the month covered. Each report must include an oath or verification, made by the proper officer of the reporting railroad, as provided for attestation on the form. If no reportable accident/incident occurred during the month, that fact must be stated on this form. Class I and II line-haul and terminal and switching railroads, must show on this form the total number of locomotive train miles, motor train miles, and yard switching miles run during the month, computed in accordance with Train-Mile, Locomotive-Mile, Car-Mile, and Yard Switching accounts in the Uniform System of Accounts for railroad companies prescribed by the Interstate Commerce Commission in 49 CFR Part 1200.

(c) Form FRA F 6180.55a—Railroad Injury and Illness Summary (Continuation Sheet). Form FRA F 6180.55a shall be used to report all reportable fatalities, injuries and occupational illnesses that occurred during the preceding month.

* * * * *

4. By amending paragraphs (a) and (b) of § 225.23 to read as follows:

§ 225.23 Joint operations.

(a) Any reportable death or injury to an employee arising from an accident/incident involving joint operations must be reported on Form FRA F 6180.55a by the employing railroad.

(b) In all cases involving joint operations, each railroad must report on Form FRA F 6180.55a the casualties to all per-

sons on its train or other on-track equipment. Casualties to railroad employees must be reported by the employing railroad regardless of whether the employees were on or off duty. Casualties to all other persons not on trains or on-track equipment must be reported on Form FRA F 6180.55a by the railroad whose train or equipment is involved. Any person found unconscious or dead, if such condition arose from the operation of a railroad, on or adjacent to the premises or right-of-way of the railroad having track maintenance responsibility must be reported by that railroad on Form FRA F 6180.55a.

* * * * *

(Secs. 12 and 20, 24 Stat. 383, 386, as amended (49 U.S.C. 12 and 20); sections 1–7, 36 Stat. 350, as amended (45 U.S.C. 38–43); sections 202, 208, and 209, 84 Stat. 971 and 975 (45 U.S.C. 431, 437, and 438); sections 6 (e) and (f), 80 Stat. 939 (49 U.S.C. 1655 (e) and (f); and sections 1.49 (c)(11), (h) and (n) of the regulations of the Office of Secretary of Transportation (49 CFR 1.49 (c)(11), (h) and (n))).

Effective date: February 1, 1977.

Issued in Washington, D.C., on December 30, 1976.

ASAPH H. HALL,
Administrator.

[FR Doc.77-403 Filed 1-5-77;8:45 am]

[Rulemaking Docket SA-3, Notice 4]

PART 231—RAILROAD SAFETY APPLIANCE STANDARDS

Box and Other House Cars

On November 22, 1976, the Federal Railroad Administration (FRA) published a Notice of Proposed Rulemaking (NPRM) in the FEDERAL REGISTER proposing a three year extension of the period allowed for the completion of the removal of roof running boards (41 FR 51429). Interested persons were invited to submit written comments by December 21, 1976. No unfavorable comments were received by that date and the proposed amendment is hereby adopted without change.

FRA has evaluated the regulatory impact of these amendments in accordance with the policies of the Department of Transportation as stated in the April 16, 1976 issue of the FEDERAL REGISTER (41 FR 16200) and determined that their impact will be minimal. The basis for this determination is the same as that described in the NPRM.

Since this amendment merely extends the mandatory completion date for removal of roof running boards from December 31, 1976 to December 31, 1979, it may be made effective in less than 30 days following publication in the FEDERAL REGISTER and shall become effective on January 1, 1977.

In consideration of the foregoing, § 231.1 of Title 49 of the Code of Federal Regulations is amended, by substituting "December 31, 1979" for "December 31, 1976" in the note, to read as follows:

§ 231.1 Box and other house cars.

NOTE.—After December 31, 1979, cars of this type built on or before April 1, 1966, or under construction prior to that date and placed in service before October 1, 1966, must be equipped as nearly as possible with the same complement of safety appliances, depending upon type, as specified in § 231.27 for box and other house cars without roof hatches, or in § 231.28 for box and other house cars with roof hatches. Cars built after April 1, 1966, or under construction prior thereto and placed in service after October 1, 1966, must be equipped, depending upon type, as specified in § 231.27 for box and other house cars without roof hatches, or in § 231.28 for box and other house cars with roof hatches.

* * * * *

(Safety Appliance Acts (45 U.S.C. 2, 4, 6, 8, 10, 11–16, as amended, 49 U.S.C. 1655(e); and Section 1.49(c) of the regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(c)).

Issued in Washington, D.C., on December 30, 1976.

ASAPH H. HALL,
Administrator.

[FR Doc.77-401 Filed 1-5-77;8:45 am]

Title 15—Commerce and Foreign Trade

CHAPTER III—DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 371—GENERAL LICENSES

PART 377—SHORT SUPPLY CONTROLS

Export Controls on Petroleum and Petroleum Products

The Department of Commerce has reviewed the current and projected domestic petroleum supply and demand situation and, after consultation with the Federal Energy Administration, has determined that the current controls over the export of petroleum and petroleum products are consistent with the national interest and the purposes of the Energy Policy and Conservation Act (Pub. L. 94–163) and must be continued for the first quarter of 1977. Quotas applicable to the export of petroleum products during the first quarter of 1977 are contained in Supplement No. 2 to Part 377 of the Export Administration Regulations as revised herein.[1] The Department has further determined that in order to maintain the export restrictions required by the Naval Petroleum Reserves Production Act of 1976 (Pub. L. 94–258), the interim regulations promulgated thereunder[2] will be continued pending the issuance of final regulations.

In addition, this Bulletin contains the following modifications of the petroleum export regulations.

(1) The provisions applicable to exchanges of crude oil are being modified to authorize certain transactions *only* with persons or the government of an "adjacent" foreign state.

(2) The regulations are modified to authorize licensing of exports, without quantitative restriction, of petroleum energy products produced from foreign-origin crude petroleum in refineries located in Guam and the State of Hawaii which products have been certified to be surplus to the needs of the local economy, including the ships' bunker and aviation fuel markets, and to local Department of Defense procurement needs. This change in the regulations is deemed appropriate in view of the unique geographic factors and marketing situation affecting refineries in Guam and Hawaii.

(3) The regulations are being modified to establish an interim procedure for the licensing of exports of naphtha and naphtha solvents during the first quarter 1977 until letters of quota participation have been issued to exporters. Exporters who submitted Past Participation Statements, as required by Export Administration Bulletin No. 160 in order to qualify for shares of the quotas established for the export of naphtha and naphtha solvents, were advised by memorandum of December 2 of substantial discrepancies between the aggregates of the Past Participation Statements received and Census export statistics for these commodities during the same time period. Accordingly, they were directed to submit for audit by the Office of Export Administration documentation substantiating their claimed base period exports of these commodities. The audit of this material, now underway, is expected to be completed in early February 1977, at which time letters of quota participation will be issued to such exporters based on the results of this audit.

Under the interim licensing procedure established herein, applications to export naphtha and naphtha solvents against contracts calling for delivery prior to March 31, 1977, if accompanied by the required documentation, will be considered for the destinations shown on the face of an exporter's Past Participation Statements up to his average quarterly exports of that commodity to that destination during the base period. All licenses issued to an exporter under this interim procedure will be charged against any quota allocations established for that exporter for the first quarter 1977 and, if amounts licensed cannot be fully recouped out of the first quarter quota allocation, quota allocations in subsequent quarters will be charged, as necessary. Applications to export naphtha and naphtha solvents to destinations or in cumulative quantities in excess of those shown on the applicant's Past Participation Statement will be considered only under the hardship and exceptions procedure described in

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[1] Country quotas for Commodity Groups K, L and M, which have a rotating base period, are set out in Supplement No. 2 for each of the four calendar quarters. The Country quotas for the other Commodity Groups subject to quantitative restrictions remain unchanged from quarter to quarter; therefore, the quotas set out for such commodities, unless hereafter revised, are applicable to each quarter.

[2] See Section III of Export Administration Bulletin No. 160 dated September 30, 1976 (41 FR 44155, October 7, 1976).

§ 377.3 of the Export Administration Regulations.

(4) The regulations are also amended to exclude from General License G-NNR (Shipments of Certain Non-Naval Reserve Petroleum Commodities) those commodities falling under Export Control Commodity Number 3(6)B, because these commodities are subject to validated licensing for reasons of national security.

The Department continues to review its export control policies with respect to petroleum and other energy-related commodities in the light of relevant statutory authorities, the current and projected supply/demand situation, and the Department's experience to date in the administration of the petroleum export control program. In connection with this review, the Department continues to consult with other Federal agencies and is reviewing comments received from interested persons in response to the invitation for comments contained in Export Administration Bulletin No. 160 dated September 30, 1976 (41 FR 44155, October 7, 1976).

Upon completion of this review, the Department anticipates that additional regulations relating to exports of petroleum and other energy related commodities will be promulgated, including final regulations implementing the Naval Petroleum Reserves Production Act of 1976.

The requirements for notice of proposed rulemaking and opportunity for comment have been waived by the Department: (a) because it has found under the Energy Policy and Conservation Act that compliance with such procedures would seriously impair the Department's ability to maintain effective and timely controls over exports of petroleum and petroleum products; (b) because it believes that notice and public comment procedure on quarterly extensions of petroleum controls, without substantial change, is both impracticable and unnecessary; (c) because the limited changes to the regulations announced herein either relieve a restriction imposed by the regulations or make technical corrections; and (d) as otherwise authorized in 5 U.S.C. 553.

Written comments regarding the regulations extended and adopted herein are solicited on a continuing basis. Interested parties and government agencies should submit such comments to the United States Department of Commerce, Office of Export Administration, P.O. Box 7138, Ben Franklin Station, Washington, D.C. 20044.

Accordingly, the Export Administration Regulations are revised as follows:

1. Section 371.16 is revised to read as follows:

§ 371.16 General License G-NNR; shipments of certain Non-Naval Reserve petroleum commodities.

A general license designated G-NNR is established, subject to the provisions of § 371.16, authorizing the export of any commodity listed in Petroleum Commodity Group Q (See Supplement No. 2 to Part 377) to any destination in Country Groups Q, T, V, W, and Y, and Canada *Provided*, That both of the following conditions are met: (a) The commodity is not included in (1) an entry on the Commodity Control List for which the Export Control Commodity number is followed by the code letter "A" or (2) Export Control Commodity number 3(6)(B); and (b) The exporter must, prior to the export of a commodity under this General License G-NNR, assembled documtnary evidence establishing that the commodity was not produced or derived from a Naval Petroleum Reserve. Such documentary evidence may take the form of the affidavit prescribed in § 377.6(e)(1)(iv), or it may consist of other documentation establishing the factual data to be covered in such affidavit. The exporter shall retain such documentary evidence in his files for the period prescribed in § 387.11(e) of this chapter, and is put on notice that the Office of Export Administration will, in appropriate cases, conduct audits of exporters' records to determine that such documentary evidence is available covering each export of a commodity listed in Supplement No. 3 to Part 377 of this chapter, that was made under a Shipper's Export Declaration showing General License G-NNR as the authority for the export. Any commodity listed in Petroleum Commodity Group Q which does not meet the conditions for export under General License G-NNR or GLV may be exported only under a validated license issued pursuant to § 377.6(d)(6) of this chapter.

2. In § 377.6 paragraphs (d)(1)(ii) and (d)(7) are revised and paragraphs (d)(9) and (e)(8) are added to read as follows:

§ 377.6 Petroleum and petroleum products.

* * * * *

(d) * * *

(1) * * *

(ii) The export will result directly in the importation into the United States of an equal or greater quantity of that same commodity, such transaction being carried out for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state; or

* * * * *

(7) *Group N.* An application for a validated license to export a commodity from Petroleum Commodity Group N as established in Supplement No. 2 will be considered if submitted with supporting documentation as required by paragraph (e)(2) of this section by the date specified in Supplement No. 2, but only to the extent of such exporter's quota shares for such commodities. Pending establishment of an exporter's quota shares in accordance with paragraph (a) of this section licenses may be issued for the unfilled balance of contracts calling for delivery prior to March 31, 1977, to destinations listed on the applicant's previously submitted Past Participation Statements for Group N commodities and for cumulative quantities not exceeding such exporter's average quarterly exports to the destinations listed of such commodities during the base period. However, all such licenses issued to an exporter under this interim licensing system prior to establishment of such exporter's quota allocations will be charged against any quota allocations established for that exporter for the first quarter 1977 and, if necessary, for subsequent quarters.

* * * * *

(9) Exemption from quantitative restriction of petroleum products produced from foreign-origin crude petroleum in refineries on Guam and in the State of Hawaii. An application for a validated license to export from Guam or from the State of Hawaii a commodity from Petroleum Commodity Group B, C, D, E, F, G, K, L, M, N or P, which was produced from foreign-origin petroleum in a refinery on Guam or in the State of Hawaii, will be considered without quantitative restriction if accompanied by supporting documentation as required by paragraph (e)(8) of this section.

(e) * * *

(8) Petroleum products derived from foreign-origin crude petroleum produced in and exported from Guam and the State of Hawaii. An application for a validated license to export from Guam or Hawaii without regard to quota restriction a specified quantity of a commodity from Petroleum Commodity Group B, C, D, E, F, G, K, L, M, N or P, which was produced from foreign-origin crude petroleum in a refinery on Guam or in the State of Hawaii must be submitted with the same documentation required by paragraph (e)(2) of this section and with all of the following:

(i) a sworn affidavit by the applicant stating that the petroleum commodities which he proposes to export (*a*) did not become available for export as a result of an exchange for products which would not qualify for exemption from quota restriction under this subsection and will not be replaced by products which do not so qualify, (*b*) was produced exclusively from foreign-origin crude petroleum, and (*c*) have been reported to the Federal Energy Administration as surplus if, at the time of application, the commodity sought to be exported is subject to Federal Energy Administration allocation regulations;

(ii) a signed statement from a duly authorized official of the Government of the Territory of Guam or of the State of Hawaii listing the particular petroleum commodities and the aggregate quantities thereof which the applicant proposes to export during the calendar quarter for which he is applying for an export license, and stating that such products and quantities are surplus to the projected needs during such calendar quarter of the Territory of Guam or the State of Hawaii, as the case may be, including the ships' bunker and aviation fuel markets in such Territory or State; and

(iii) a signed statement from a duly authorized official of the Department of Defense Fuels Supply Center of the Defense Supply Agency listing the particular petroleum commodities and aggregate quantities thereof which the applicant proposes to export during the calendar quarter for which he is applying for an export license and stating that such quantities and products are surplus to the projected procurement needs of the subject agency during the applicable calendar quarter.

The documents listed under paragraphs (e)(8) (ii) and (iii) of this section need be submitted only once during each calendar quarter, and the applicant need only refer to his earlier submission of the subject documents for a particular calendar quarter when applying for additional licenses and state that to the best of his knowledge and belief the statements required by paragraphs (e)(8) (ii) and (iii) of this section have not been withdrawn or modified.

6. Supplement No. 2 to Part 377 is revised to read as follows:

SUPPLEMENT NO. 2.—*Petroleum and petroleum products subject to short supply licensing controls*

Schedule B No.	Commodity description	Unit of quantity
	PETROLEUM LICENSED ONLY IN ACCORDANCE WITH SEC. 377.6(d)(1)	
	Group A:	
331.0100	Crude petroleum, including tar sands	Barrels.
331.0200	Petroleum partly refined for further refining	Do.
	PETROLEUM PRODUCTS SUBJECT TO VALIDATED LICENSING AND HISTORICAL QUOTAS	
	Group B:	
332.1015	Aviation gasoline	Barrels.
	Group C:	
332.1030	Gasoline, n.e.c	Do.
332.1050	Gasoline blending agents, hydrocarbon compounds only, n.e.c	Do.
	Group D:	
332.2010	Kerosene, except kerosene-type jet fuel	Do.
	Group E:	
332.2020	Jet fuel	Do.
	Group F:	
332.3000	Distillate fuel oils	Do.
	Group G:	
332.4000	Residual fuel oils	Do.
	Group K:	
341.1025	Butane	Do.
	Group L:	
341.1030	Propane	Do.
	Group M:	
341.1040	Natural gas liquids, including LPG n.e.c	Do.
	Group N:	
332.9110	Naphtha, mineral spirits, solvents and other finished light petroleum products, n.e.c.	Do.
521.4022	Naphtha solvent	Pounds.
	PETROLEUM PRODUCTS SUBJECT TO VALIDATED LICENSING BUT NOT QUOTAS	
	Group H:	
332.9160	Carbon black feedstock oil	Barrels.
	Group J:	
341.1010	Synthetic natural gas [1]	Thousand cubic feet.
341.2000	Gas, manufactured	Do.
	Group P:	
332.9410	Petroleum coke, calcined	Short tons.
332.9420	Petroleum coke, except calcined	Do.
	PETROLEUM PRODUCTS SUBJECT TO PROVISIONS OF EITHER SEC. 371.16 OR SEC. 377.6(d)(6)	
	Group Q:	
332.5005	Aviation engine lubricating oil, except jet engine lubricating oil	Barrels.
332.5010	Jet engine lubricating oil	Do.
332.5015	Automotive, diesel and marine engine lubricating oil	Do.
332.5020	Turbine lubricating oil including marine	Do.
332.5025	Automotive gear oils	Do.
332.5030	Red and pale oils	Do.
332.5035	Bright stock	Do.
332.5040	Black oils	Do.
332.5045	Steam cylinder oils	Do.
332.5050	Lubricating oils, n.e.c	Dollar value.
332.5055	Lubricating greases	Pounds.
332.6100	Petroleum jelly, petrolatum, all grades	Do.
332.6210	Microcrystalline wax	Do.
332.6220	Paraffin wax, crystalline, fully refined	Do.
332.6230	Paraffin wax, crystalline, except fully refined	Do.
333.9120	Insulating or transformer oils	Barrels.
332.9130	Quenching and cutting oils	Do.
332.9140	White mineral oils	Do.
332.9180	Nonlubricating and nonfuel petroleum oils, n.e.c	Do.
332.9210	Coal-tar asphaltum	Short tons.
332.9220	Pitch, from petroleum refining	Do.
332.9300	Pitch coke	Do.
332.9510	Petroleum asphalt	Do.
332.9520	Petroleum and shale oil residues, n.e.c	Do.

SUPPLEMENT No. 2.—*Petroleum and petroleum products subject to short supply licensing controls*—Continued

Schedule B No.	Commodity description	Unit of quantity
332.9610	Paving mixtures, bituminous, based on asphalt and petroleum	Dollar value.
332.9620	Asphalt and tar coatings, cements, and pitches	Do.
512.0901	Butylene	Pounds.
512.0902	Acetylene	Thousand cubic feet.
512.0903	Ethylene	Pounds.
512.0905	Propylene	Do.
512.0916	Methanol, including natural	Gallons.
512.0964	Isoprene	Pounds.
512.0991	Butadiene monomer	Do.
513.1305	Helium and mixtures containing helium	Cnt. cubic feet.
513.1350	Hydrogen and rare gases, n.e.c	Thousand cubic feet.
513.3830	Carbon monoxide and carbon dioxide	Dollar value.
515.2000	Deuterium	Do.
513.6110	Ammonia (anhydrous or in aqueous solution) fertilizer grade	Cnt. short tons.
513.6120	Ammonia (anhydrous or in aqueous solution) except fertilizer grade	Do.
521.1000	Mineral tar	Gallons.
	Group Q:	
521.4010	Benzene, crude	Gallons.
521.4020	Toluene, crude	Do.
521.4027	Xylenes, n.e.c	Pounds.
521.4040	Tar oils, chemicals, and crude products from coal, petroleum, and natural gas, n.e.c.	Do.

[1] Natural gas and liquefied natural gas (LNG), and synthetic natural gas commingled with natural gas (schedule B No. 341.1010) require export authorization from the U.S. Federal Power Commission. See sec. 370.10(g).

NOTES

Quantities: Report commodities in schedule B units as indicated above.
Base periods:
Commodity groups B, C, D, E, F, and G: Jan. 1, 1971, through June 30, 1973.
Commodity groups K, L, and M: The corresponding calendar quarter during the period Apr. 1, 1972, through Mar. 31, 1973.
Commodity group N: Jan. 1, 1974, through June 30, 1976.
Shipping tolerance: pet.
Submission dates:
Applications against historical quotas: Not prior to the beginning of the applicable quarter and received in the Office of Export Administration not later than the close of business on the 10th day prior to the end of the applicable quarter.
Applications for hardship and all commodities subject to validated licensing but not historical quotas: At any time.

QUARTERLY COUNTRY QUOTAS: 4TH QUARTER 1976

Country quotas for group B (schedule B No. 332.1015, aviation gasoline)

Country:	Quota (barrels)
Bahamas	1,676
Belgium	78
Bolivia	2,761
Cameroon	65
Canada	3,313
Dahomey	58
French Pacific Islands	3,853
Gabon	115
Honduras	307
India	12,743
Ivory Coast	98
Mexico	13,607
Netherlands	18,940
Singapore	14,783
All other countries	165

Country quotas for group C (schedule B No. 332.1030, gasoline; schedule B No. 332.1050, gasoline blending agents, hydrocarbon compounds only, n.e.c.)

Country:	Quota (barrels)
Australia	554
Austria	139
Bahamas	872
Belgium	3,929
Brazil	29,061
Canada	76,078
Denmark	76
Finland	162
France	635
French Pacific Islands	20,141
Germany, Federal Republic of	3,966
India	143
Iran	106
Italy	314
Japan	269
Leeward and Windward Islands	1,109
Mexico	149,791
Mozambique	66
Netherlands	48,039
Nigeria	143
Philippines	137
South Africa, Republic of	556
Sweden	56
United Kingdom	3,111
Venezuela	165
All other countries	513

Country quotas for group D (schedule B No. 332.2010, kerosene, except kerosene-type jet fuel)

Country:	Quota (barrels)
Australia	1,118
Brazil	150
Canada	1,667
Chile	122
Congo	56
Egypt	88
France	59
French Pacific Islands	3,348
Gabon	266
Germany, Federal Republic of	7,047
Israel	586
Italy	467
Japan	2,354
Mexico	72
Netherlands	349
Nigeria	740
Peru	71
Philippines	89
Singapore	442
South Africa, Republic of	371
United Kingdom	9,391
Venezuela	454
All other countries	252

Country quotas for group E (schedule B No. 332.2020, jet fuel)

Country:	Quota (barrels)
Bahamas	31
Canada	42,797
Mexico	58,193

Country quotas for group F (schedule B No. 332.3000, distillate fuel oils)

Country:	Quota (barrels)
Bahamas	3,125
Canada	113,393
Colombia	36,385
Denmark	22,413
French Pacific Islands	11,616
Japan	49,195
Mexico	260,283
Netherlands	58,895
Netherlands Antilles	34,072
Peru	13,577
Surinam	327
United Kingdom	49,195
All other countries	1,359

Country quotas for group G (schedule B No. 332.4000, residual fuel oils)

Country:	Quota barrels
Bahamas	110,780
Barbados	11,275
Belgium	12,865
Brazil	63,662
Canada	833,224
Canary Islands	14,182
Denmark	32,003
France	2,493
French Pacific Islands	16,967
Greece	19,798
Ireland	11,626
Italy	181,979
Jamaica	152,086
Japan	271,601
Leeward and Windward Islands	12,745
Mexico	643,500
Netherlands	50,108
Netherlands Antilles	99,078
Panama	74,793
Peru	30,821
Philippines	862
Poland	2,070
Portugal	19,240
Singapore	15,455
South Africa, Republic of	21,432
Spain	36,283
Sweden	75,413
United Kingdom	227,634
All other countries	814

Country quotas for group K (schedule B No. 341.1025, butane)

[In barrels]

Country	1st quarter	2d quarter	3d quarter	4th quarter
Brazil				18,055
Canada	1,769	1,504	1,176	1,346
Mexico	197,183	169,338	174,916	185,206
Netherlands			10,927	
All other countries	703	738	245	877

Country quotas for group L (schedule B No. 341.1030, propane)

[In barrels]

Country	1st quarter	2d quarter	3d quarter	4th quarter
Bahamas				10,046
Canada	4,931	2,081	1,521	2,108
Japan	380,809		221,346	622,447
Mexico	841,862	593,894	586,509	707,695
New Zealand			1,041	1,239
All other countries	3,514	2,088	1,203	619

Country quotas for group M (schedule B No. 341.1040, natural gas liquids, including liquified petroleum gas (LPG), n.e.c.)

[In barrels]

Country	1st quarter	2d quarter	3d quarter	4th quarter
Canada	22,414	17,878	15,954	41,596
Guatemala	2,355	737	2,335	1,901
Japan	150,514			
Mexico	1,687,569	1,783,400	2,059,081	1,855,328
All other countries	3,946	1,638	3,168	1,359

Country quotas for group N (schedule B No. 332.9110, naphtha; schedule B No. 521.4022, naphtha solvent)

Country	Quota (barrels) schedule B No. 332.9110	Quota (pounds) schedule B No. 521.4022
Argentina	2,238	8,193
Australia	11,992	1,276,068
Belgium	14,304	172,112
Brazil	27,468	
Canada	83,578	24,359
Chile	84	38,764
Colombia	60	160,646
Costa Rica	307	9,805
France	7,059	641
Germany, Federal Republic of	3,939	646,531
Guatemala	1,540	470
India	9	1,860
Iran	67	3,872
Italy	2,852	326,704
Japan	21,753	15,134
Malaysia	3,808	220,636
Mexico	24,601	832,833
Netherlands	49,476	1,608,504
New Zealand	2,329	
Nicaragua	5,818	
Pakistan	2,841	
Peru	397	1,744
Philippines	6,267	49,076
South Africa, Republic of	9,792	207,920
Trinidad	966	
United Kingdom	20,189	
Venezuela	6,188	444,742
All other countries	19,473	228,916

(Sec. 4, Pub. L. 91-184, 83 Stat. 842 (50 U.S.C. App. 2403); E. O. 11533, 13 CFR 538 (1971), 50 U.S.C. App. 2403 nt. (Supp. IV, 1974), as amended by EO 11907, 41 FR 9085 (1976); section 103, Pub. L. 94-163, 89 Stat. 871 (42 U.S.C. 6212); Sec. 2, EO 11912, 41 FR 15825 (1976); Sec. 201, Pub. L. 94-258, 90 Stat. 307 (10 U.S.C. 7420); Sec. 101, Pub. L. 93-153 (30 U.S.C. 158); Pub. L 94-362; Sec 2, EO 11940, 41 FR 43707 (1976); Department Organization Order 10-3, dated Nov. 17, 1975, 40 FR 58876 (1975), as amended; and Domestic and International Business Administration Organization and Function Order 46-1, dated November 17, 1975, 40 FR 59764 (1975), as amended.)

Effective date of action: January 1, 1977.

RAUER H. MEYER,
Director, Office of Export Administration.

[FR Doc.76-38488 Filed 12-30-76;9:32 am]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL POWER COMMISSION

[Docket No. RM 75-11]

PART 11—ANNUAL CHARGES UNDER PART 1 OF THE FEDERAL POWER ACT

Change in Annual Charges for Use of Most Government Lands

DECEMBER 29, 1976.

On October 30, 1974, the Commission issued a notice of proposed rulemaking

in this proceeding (39 FR 39055 (1974)), wherein it proposed to amend § 11.21 of the regulations (18 CFR 11.21 (1974)), in accordance with section 10(e) of the Federal Power Act (16 U.S.C. 803(e)), revising the annual charges paid by licensees to the United States for the use of its lands.

Section 11.21, in its present form, sets out a nonexclusive list of factors which the Commission may consider in fixing reasonable annual charges for the use of Government lands other than lands adjoining or pertaining to Government dams or other structures owned by the United States. In addition, it sets a minimum charge for the use of such lands and fixes a rate for use for transmission lines only.

Annual charges for the use of Government lands were originally based on project-by-project appraisals, a practice that was often uneconomic because of the excessive cost of appraisal in comparison to the value of the land involved. As a result, in part, of this problem, the Commission in 1942 began to utilize a national average value per acre for Government lands in calculating annual charges, and has continued to employ such a figure up to the present time. The current figure, used since 1962, is $60 per acre. Applying the interest rate of 4 percent used for annual charge purposes since 1942 to this average land value results in a uniform annual charge of $2.40 per acre.

Section 11.21 specifies a rate of $8 per mile per year for 100-foot widths of transmission line right-of-way (the actual charge per mile varies proportionately for lesser or greater widths). This rate is equivalent to a charge of approximately $0.66 per acre, or 27.5 percent of the $2.40 per acre fee derived for the use of Government land other than for transmission line right-of-way. The theory has been that use for rights-of-way for transmission lines would not preclude some other uses of the land involved.

The present § 11.21 sets a minimum annual charge for the use of Government lands under any license of $5 per year.

Five alternative versions of a proposed amendment to § 11.21 were presented in the notice of October 30, 1974. Comments and suggestions were solicited, and responses from 31 parties were received.[1]

A number of the responses expressed the opinion that any increase in the charge for the use of Government lands would be inflationary and in violation of that portion of section 10(e) of the Federal Power Act which provides:

"* * * in fixing such charges the Commission shall seek to avoid increasing the price to the consumers of power by such charges * * *"[2]

If it is assumed that utilities operating hydroelectric power generating facilities will eventually pass on their costs of operation to their customers who purchase power, it can be seen that the imposition of any annual charges will cause an equivalent increase, however small or large, in costs which will generally and eventually come to be reflected to some degree in the bills of consumers. If the clause of section 10(e) quoted above precluded absolutely the fixing of annual charges which increased consumers' expenses, it is difficult to see how annual charges in any amount could ever be imposed. The clause, however, directs the Commission to "seek to avoid" such increases while performing its statutorily imposed duty to fix reasonable annual charges which licensees are to pay for the purpose, *inter alia*, of recompensing the United States "for the use, occupancy, and enjoyment of its lands or other property * * *"[3] Thus, an adjustment in these charges such that reasonable compensation for the use of Government lands is provided is not a violation of the "consumer clause" of section 10(e).

The Commission, in Docket No. RM 75-11, has considered and sought to minimize any potential effects the proposed change in § 11.21 of the regulations might have on the price of power to consumers, while ensuring that the United States shall be adequately compensated, through the payment of annual charges, for the use of its land.[4] We believe that the charges resulting from this amendment, as ordered hereinafter, are reasonable and will not serve to significantly increase the economic burden of consumers of hydroelectric power. The increased cost that will be incurred by hydroelectric power producers as a result of this adjustment of annual charges is minimal in relation to the total system costs of most producers of electric energy for retail consumption, and should therefore have a similarly minimal economic impact on ultimate consumers.[5]

LAND VALUES

The five alternatives, (A) through (E), presented in the notice of this proposed rulemaking provide for differing methods of valuing Government lands for annual charge purposes. The first three alternatives propose the use of average values on an (A) national, (B) regional, or (C) state basis, while the last two use an average national value for projects licensed initially or constructed prior to January 1, 1975, and an individual assessment of lands of unconstructed projects licensed thereafter, determined either (D) as if the project were not to be constructed, or (E) taking into consideration the value of the land as a hydroelectric site.

Both support of and opposition to each of the five methods for valuing Government lands for annual charge purposes proposed in the notice can be found in the comments submitted. Some responses favored the use of average values on a national, regional, or state basis, while other comments were particularly critical of one or several of these bases. While several responses flatly oposed individual appraisals of Government lands used in hydroelectric projects,[6] as proposed by Alternatives D or E, a number of others indicated individual appraisal as the favored method of evaluation.[7]

Appraisal of individual tracts of Government-owned project lands to determine value for annual charge purposes appears an attractive method at first glance, because of the seemingly greater potential such a method would have over the use of an "average" land value in ac-

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[1] Responses were received from Alabama Power Company; American Public Power Association; Senators John Tower and Lloyd Bentsen of Texas, Senators Russell Long and J. Bennett Johnston of Louisiana, Congressman Charles Wilson of Texas, and Congressmen Gillis Long, John Rauck, David Treen, and Joe Waggonner of Louisiana (joint response); Chugach Electric Association, Inc.; Denver (Colorado) Water Department; Department of Water and Power, The City of Los Angeles; Department of Water Resources, State of California; Environmental Protection Agency; Forest Service, United States Department of Agriculture; Georgia Power Company; Idaho Power Company; Merced Irrigation District; Montana Power Company; Northwest Public Power Association; Pacific Gas and Electric Company; Pacific Power & Light Company; Public Service Electric and Gas Company; Public Utility District No. 1 of Chelan County; Public Utility District No. 1 of Snohomish County; Public Utility District of Grant County; Puget Sound Power & Light Company; Sabine River Authority of Texas; Salt River Project; City of Seattle—Department of Lighting; South Carolina Public Service Authority; Southern California Edison Company; Washington Water Power Company; United States Water Resources Council; Wisconsin Valley Improvement Company; Virginia Electric and Power Company; Division of Economic Studies of the Office of Economics of the Federal Power Commission.

[2] 16 U.S.C. 803(e).

[3] *Id.*

[4] Land use charges have not been adjusted since 1962, as stated above, through almost a decade and a half of generally increasing real estate values nationwide.

[5] In their response to the notice of this proposed rulemaking, Georgia Power Company stated that adoption of Alternative A, calling for a $150 per acre land valuation coupled with a 6 percent interest rate, "would not create an immediate need for increased prices to (the) Company's customers." The charge ordered herein is very close to that discussed by the Company in its comments.

[6] E. g., responses of Pacific Gas & Electric Co. and Public Service Electric and Gas Co.

[7] The comments of the Division of Economic Studies of the Office of Economics of the Federal Power Commission indicate approval of Alternative D's appraisal method for newly licensed or constructed projects. The United States Forest Service's response favored "market value appraisal" for lands contained in projects not completely constructed prior to January 1, 1975, and in constructed projects at any time after that date when an application for licensing such a project was being considered by the Commission. This would result in individual appraisals in relicensings, which would not be the case in Alternatives D or E, as proposed in the notice. The comments of the Sabine River Authority of Texas, Public Utility District of Grant County, and Wisconsin Valley Improvement Co. imply that there should be individual appraisals of all Government land subject to annual charges, even in the case of constructed projects.

curately reflecting actual land values, at least at the time of the appraisal. For a period of five years, beginning in 1937, the Commission did in fact base annual charges on individual land appraisals for each project. It was found, however, that the expense associated with making these appraisals was quite often excessive when compared with the value of the land involved, leading to the development in 1942 of an average value per acre for appropriate Government lands which has been utilized continuously since that time for annual charge purposes.

Other practical difficulties besides excessive costs remain as potential obstacles to a system of annual charges based on appraised land values. For projects already constructed, the values of inundated lands and shoreline property would generally come to be distorted because of conditions created by the existence of the project.[8] Although relatively undistorted land appraisals could probably be made in the case of an unconstructed project, such appraisals would only reflect the value of the subject land at the time the appraisal was conducted. Values could only be kept current by conducting subsequent re-appraisals on a periodic basis. Such a process would result in additional expense each time re-appraisals to determine current values became necessary. In addition, re-appraisals conducted after the completion of a project would probably face the problem of distorted land values described above. It must also be recognized that the art of land appraisal is by no means an exact science, and the utilization of appraised values for annual charges might well lead to costly and time-consuming litigation over values computed in individual cases.

The serious practical shortcomings of the individual land appraisal method indicate that an average value for Government land should continue to be used for annual charge purposes. For the reasons stated below, we have chosen to use a uniform national average value for appropriate Government lands, as opposed to regional or state values.

It has been the consistent practice of this Commission for over 30 years to employ a national average land value in computing annual charges. It has been demonstrated over that period that the use of a national average simplifies the administrative task of Commission staff and thus reduces the costs associated with yearly land use charge determinations.[9] Regional or state averages seem to have the advantage of greater "localization" versus a single national figure, which arguably could lead to land use charges which more closely reflect "local" (in a regional or state-wide sense) land values. However, it has not been demonstrated that greater accuracy in land valuation would in fact be generally obtained by the use of state or regional averages, or that any such speculative improvement in accuracy would be significant enough to outweigh the obvious administrative economies accruing when a single nation-wide figure is used as the basis for annual charges.[10]

Averages computed on a regional basis have the further disadvantage that the delineation of the geographic limits of any "region", denominated as such for annual charge purposes, would be a somewhat arbitrary process, leading to the possibility of numerous disputes over the inclusion or exclusion of states in or from certain regions.[11]

Interest Rate

In the notice of October 30, 1974, a 6 percent interest rate was utilized in the five alternative proposals, although two external guidelines were presented for consideration and comment by respondents. One of these external guidelines was the discount or interest rate used for water resources planning by the U.S. Water Resources Council (WRC) pursuant to Pub. L. 93-251, a figure based primarily on the average yield of long term (15 years or more to maturity) U.S. interest-bearing securities, which can be adjusted each year to reflect changes in yield and the associated changing Federal borrowing costs but, because of a statutory requirement, cannot change by more than one-quarter of a percent in any year.[12]

A number of responses suggested that the proposed 6 percent figure was selected arbitrarily and therefore lacked sufficient validity to be used as a basis in computing annual charges. Whether or not this is so, the Commission in any case believes that the WRC rate provides the best figure for computing such charges. The WRC rate has a number of attractive features which make it the preferred choice for this purpose. It, too, is "more than a nominal charge but * * * less than * * * a commercial rate."[13] However, it cannot be said that the WRC rate is determined "arbitrarily." On the contrary, the rate is determined by careful calculation to reasonably reflect current Federal long term borrowing costs. The interest rate charged licensees for the use of Federal assets (Government lands) would be equal to the expense the Federal government must bear for the use of private assets. The rate has a statutory base,[14] with certain constraints to insure the reasonableness of the rate in comparison to actual interest rates. The use each year of a current WRC rate in calculating annual charges for the use of Federal land[15] would ensure that this facet of the charge would automatically remain up-to-date and would not have to be modified frequently by subsequent Rulemaking procedures.

We believe that use of the WRC rate for this purpose is reasonalbe, has proper statutory constraints to ensure that it remains reasonable year-by-year, and will ensure that the interest rate used remains current. For these reasons and others noted above, we believe that the WRC rate, as adjusted each fiscal year, is the best alternative to employ in calculating annual land use charges. We hesitate, however, to base our regulation explicitly upon the actions of another Federal agency, over which we have no authority or control. Therefore, rather than ordering the adoption of the "WRC rate" by that term, we will herein de-

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[8] As examples of the ways in which the existence of a project alters the competitive market value of lands in its vicinity so as to intensify the difficulty of making an appraisal for annual charge purposes, it can be seen that inundated lands would be expected to have an artificially low competitive market value, while the value of shoreline property would generally be inflated upwards as a result of being situated advantageously along the project-created reservoir.

[9] It should be noted that, in accordance with Section 10(e) of the Act (16 U.S.C. 803 (e)), licensees are responsible for reimbursing the United States for the Commission's costs associated with the administration of Part 1 of the Act.

[10] To employ state average land values for the computation of annual charges, Commission Staff would have to perform such tasks as determining the values of Forest Service and Bureau of Land Management lands and the ratio between these lands used in licensed projects, not once on a national basis, but many times on a state-by-state basis. It should be noted that for the Notice of October 30, 1974, in Docket No. RM75-11, the ratio of Forest Service to BLM lands used in the computations was the national one. Therefore, while the national average value therein presented is valid and proper, the state averages are probably suspect, and would have to be recomputed in significantly more tedious fashion were state average values to be adopted for use in the calculation of annual charges.

[11] To illustrate, Northwest Public Power Association's response vigorously protested the grouping of Oregon and Washington with California in the "Pacific" region, as proposed by Alternative B of the notice of proposed rulemaking. It was contended instead that it would be more proper for these two states to be in the proposed "Mountain" region. It can easily be seen that the resolution of such conflicts regarding which states belong in which regions would require surmounting difficult obstacles in factual determination, and it is not clear whether these conflicts could be overcome in other than an arbitrary fashion.

[12] See 39 FR 29242 (1974). The description of the yearly adjustment has been altered slightly from that given in the notice of October 30, 1974, to conform with the phrasing suggested in the comments of the WRC in response to that notice.

[13] FPC notice of proposed rulemaking. Docket No. RM75-11 (October 30, 1974), slip opinion at 2.

[14] Pub. L. No. 93-251, 80 (March 7, 1974).

[15] The "current" rate for any year would be the rate prescribed for Federal agency use during the fiscal year ending on September 30th of the calendar year for which annual charges are being levied. Thus, for example, bills mailed in early 1978 for land use in calendar year 1977 would employ the WRC rate for fiscal year 1977.

scribe the derivation of this rate and adopt this language in providing for the interest rate to be used in calculating land use annual charges.

TRANSMISSION LINE RIGHT-OF-WAY FEES

The notice of October 30, 1974, proposed a reasonable annual charge per acre for Government lands used as transmission line right-of-way of one-half of the charge imposed for use for other purposes. Historically, the Commission has determined that a reasonable fee for right-of-way usage of Government lands would be less than for other project uses of such lands, because the physical nature of a transmission line and its appurtenant structures makes the lands utilized as right-of-way especially susceptible to multiple use.

In the responses to the notice, we received a number of suggestions regarding the right-of-way charge, with proposals ranging from 10 percent to 75 percent of the charge per acre for other uses of Federal lands. Those responses advocating lower percentages argued that there was not a 50 percent use of the right-of-way land by the transmission facilities, or that the facilities did not constitute a 50 percent reduction in the productive value of the land. In favor of higher fees for transmission line rights-of-way, it was pointed out that such easements have many detrimental effects, not only in precluding a full range of multiple uses, but in increasing the potential for damage to adjacent lands and interfering with the management of resources in the vicinity.[16]

We feel there is a certain amount of merit in both positions, and have chosen to retain the 50 percent figure utilized in the notice because we believe it is a fair and reasonable reflection of the limited nature of transmission line right-of-way usage, on one hand, and the undesirable effects of such usage on resources and resource management, on the other.

Several responses to the notice in this matter urged that all Government land use charges be subject to "offsetting" by the value of certain alleged "benefits" to the public provided by projects.[17] The public benefits which are suggested as offsets to land use charges are generally in the nature of purported recreational, fish and wildlife, and flood control benefits. Section 10(a) of the Federal Power Act requires, however:

(a) That the project * * * shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign comerce, for the improvement and utilization of waterpower development, *and for other beneficial public uses, including recreational purposes* * * * 16 U.S.C. 803(a) (emphasis supplied).

Thus a condition precedent to the issuance of a license for hydroelectric development is the determination by the Commission that the operation of the project will be consistent with and best promote beneficial public uses. In order, therefore, to enjoy the privilege of using a public asset, i.e. the nation's waterways, for power development, a licensee must have satisfied the Commission that the public benefits from the project are of sufficient magnitude to ensure that the project is the one "best adapted to a comprehensive plan" for the development of such beneficial uses. License articles are often drafted which specifically direct licensees to perform acts providing or increasing such benefits, if the Commission believes such articles are necessary to guarantee that section 10 (a) is satisfied. The argument that a licensee may reduce its statutory obligation to pay charges for the use of lands of the United States by offsetting the value of certain benefits provided, when the licensee's right to construct, maintain, and operate its project depends in part on its provision of such benefits, is untenable. The "remuneration" to the licensee, if any is due, for providing these benefits is the Commission's permission to operate the project; no further compensation, in the form of a credit in annual charge levies, is due or owing. The promotion of beneficial public uses is a statutory requirement for those holding hydroelectric licenses from the Commission.

OTHER PROVISIONS

While we believe that $150 per acre is a reasonable and proper national average value of government lands to be used in assessing licensees' annual charges, we are prepared to further lessen the impact that this increase in value would have on annual charges paid by the licensees. Accordingly, rather than immediately implementing the full amount of this reasonable land value in calculating annual charges, we are setting out a schedule, as shown below, providing for a gradual increase in the value of government lands for annual charge purposes over the next three years until the full value of $150 is reached. The schedule is as follows:

Calendar year for which annual charges are billed:	*Value per acre to be used in calculating annual charges*
1977	$90
1978	120
1979 and subsequent, until further Commission action	150

This action should further serve to reduce the impact on licensees of this amendment of § 11.21 of the regulations.

In order that the administrative costs associated with the collection of annual land use charges with respect to each project might be recovered, the minimum annual charge for the use of Government lands under any license will generally be $25. However, we believe it desirable at this time to avoid a substantial increase in the minimum charge as it may affect very small projects. For this reason, the minimum land use annual charge for projects of 500 kilowatts or less installed capacity will be $10.

In the October 30, 1974, notice, an effective date of January 1, 1975, was proposed for the changes in annual changes; the result of such changes would have thus appeared in billings to licensees after January 1, 1976. Because we are now well past the proposed effective date, and because we still believe that the changes should operate prospectively, the amendment to § 11.21 of the Commission's Regulations ordered herein will take effect on January 1, 1977, and thus will first appear in billings to licensees after January 1, 1978. We have selected the first day of the calendar year for these charges to take effect so that one charge for the entire year can be computed by Commission Staff.

The Commission finds: (1) The revision made herein to the amendment proposed in the notice of proposed rulemaking does not impose a further burden on persons subject to these rules and regulations and does not amount to a substantial departure from the original proposal; therefore no further notice or hearing prior to adoption is necessary.

(2) The adoption of the amendment to the general rules and regulations under the Federal Power Act, hereinafter set forth, is necessary and appropriate for carrying out the provisions of the Federal Power Act.

The Commission, acting pursuant to the provisions of the Federal Power Act, as amended, particularly sections 308 and 309 (49 Stat. 858, 859; 16 U.S.C. 825(h)), orders:

(A) Section 11.21 of Part 11, Chapter I of Title 18 of the Code of Federal Regulations, is amended to read as follows:

§ 11.21 Use of Government lands.

(a) Reasonable annual charges for recompensing the United States for the use, occupancy, and enjoyment of its lands (other than lands adjoining or pertaining to Government dams or other structures owned by the United States

[16] "For example: A transmission line across rangeland hinders the aerial application of sprays on adjoining rangelands; access roads and spurs required by utility companies for inspection and maintenance provide access to and attract other usage which is often damaging to the watershed and increases fire potential; transmission lines across canyons inhibit early attacks on fires by low-flying aircraft used to bomb fire starts and 'hotspots'; transmission lines affect esthetics of land to an extent that usually lowers market value; and, the existence of transmission lines increases the fire hazard to land traversed by them." Response of U.S. Forest Service, Enclosure at 3.

[17] The response of Puget Sound Power & Light Co. went so far as to assert that by providing for lesser charges for transmission line right-of-way, "The Commission admits that beneficial uses of United States land should be recognized in adjusting annual charges." This is erroneous. It is the particular physical nature of transmission line right-of-way, and the historical view of the use of land for such easements, which makes lesser annual charges appropriate for such limited use, not any offsetting of purported benefits.

Government) or its other property, will be fixed by the Commission. In fixing such charges the Commission may take into consideration such factors as commercial value, the most profitable use for which the lands or other property may be suited, the beneficial purpose for which said lands or other property have been or may be used, and such other factors as the Commission may deem pertinent.

(b) Pending further order of the Commission and subject to adjustment as conditions may warrant, annual charges for the use of Government lands shall be set on the basis of the following:

(1) Such lands shall be valued at a national average of $90 per acre for the year 1977, $120 per acre for the year 1978, and $150 per acre thereafter, and an interest rate, as determined under subparagraph (2) of this paragraph, shall be multiplied times that value to determine the annual charge per acre.

(2) The interest rate to be utilized in determining the annual charge per acre for a calendar year shall be the discount or interest rate which equals the average yield during the fiscal year ending September 30th of the previous calendar year on interest bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity, subject to the limitation that the interest rate to be utilized for charges for 1977 is 6¾ percent, and that the rate shall not be raised or lowered more than one-quarter of one percent for any year.

(c) Pending further order of the Commission and subject to adjustment as conditions may warrant, annual charges for the use of Government lands for transmission line right-of-way only shall be based on a per acre charge which is one-half of the charge determined under paragraph (b) of this section.

(d) The minimum annual charge for use of Government lands under any license shall be $25 for projects having an installed capacity of more than 500 kilowatts and $10 for projects with an installed capacity of 500 kilowatts or less.

(e) No licensee under a license issued prior to August 26, 1935, shall be required to pay annual charges in an amount greater than that prescribed in such license, except as may be otherwise provided in the license.

(B) The amendment adopted herein shall be effective as of January 1, 1977.

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

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-496 Filed 1-5-77;8:45 am]

Title 7—Agriculture

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

[Navel Orange Reg. 395]

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

Limitation of Handling

This regulation fixes the quantity of California-Arizona Navel oranges that may be shipped to fresh market during the weekly regulation period January 7–13, 1977. It is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 907. The quantity of Navel oranges so fixed was arrived at after consideration of the total available supply of Navel oranges, the quantity currently available for market, the fresh market demand for Navel oranges, Navel orange prices, and the relationship of season average returns to the parity price for Navel oranges.

§ 907.695 Navel Orange Regulation 395.

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

(2) The need for this section to limit the respective quantities of Navel oranges that may be marketed from District 1, District 2, and District 3 during the ensuing week stems from the production and marketing situation confronting the Navel orange industry.

(i) The committee has submitted its recommendation with respect to the quantities of Navel oranges that should be marketed during the next succeeding week. Such recommendation, designed to provide equity of marketing opportunity to handlers in all districts, resulted from consideration of the factors enumerated in the order. The committee further reports that the fresh market demand for Navel oranges is weaker than it was last week. Prices f.o.b. averaged $3.68 a carton on a reported sales volume of 651 carlots last week, compared with $4.07 per carton on sales of 1,350 carlots a week earlier. Track and rolling supplies were 284 carlots on December 31, 1976.

(ii) Having considered the recommendation and information submitted by the committee, and other available information, the Secretary finds that the respective quantities of Navel oranges which may be handled should be fixed as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on January 4, 1977.

(b) *Order.* (1) The respective quantities of Navel oranges grown in Arizona and designated part of California which may be handled during the period January 7, 1977, through January 13, 1977, are hereby fixed as follows:

(i) District 1: 769,000 cartons;

(ii) District 2: 133,000 cartons;

(iii) District 3: 48,000 cartons.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in said amended marketing agreement and order.

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

Dated: January 5, 1976.

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

[FR Doc.77-744 Filed 1-5-77;11:42 am]

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER D—GUARANTEED LOANS

[FmHA Instructions 449.1 and 449.3]

PART 1843—FARMER PROGRAMS

Loan Subsidy Rates, Claims, and Payments

AMENDMENTS

Section 1843.3, Part 1843, Title 7, Code of Federal Regulations (38 FR 29051, 30102, 30533; 39 FR 15868) is amended by revising paragraph (h).

This amendment applies to loans on which a "conditional commitment for Guarantee" is issued after close of business, January 1, 1977. This amendment is being published without notice of proposed rule making inasmuch as the interest rate to be charged is set by § 1843.3 of this part. The proposed rule making procedure is therefore unnecessary.

As revised, § 1843.3(h) reads as follows:

§ 1843.3 Loan subsidy rates, claims and payments.

* * * * *

(h) *Current borrower, FmHA, and subsidy rates.*

[In percent]

Loan type	Interest rate to borrower	Maximum FmHA rate	Maximum subsidy rate
OL	8	8	0
EM—Loss loan	5	8	3
EM—Annual operating	8	8	0
EM—Major adjustment real estate and chattels	8	8	0
FO, SW, RL	5	8	3

(7 U.S.C. 1989; delegation of authority by the Secretary of Agriculture (7 CFR 2.23); delegation of authority by the Assistant Secretary for Rural Development (7 CFR 2.70).)

Effective date: This amendment shall become effective on January 1, 1977.

Dated: December 30, 1976.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.77-404 Filed 1-5-77;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20862; FCC 76-1137]

PART 13—COMMERCIAL RADIO OPERATORS

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Reduction of Requirements for Radio Direct-Printing Telegraphy Equipment on Public and Limited Ship Stations

Adopted: December 14, 1976.

Released: December 29, 1976.

Report and order—(Proceeding terminated.) In the matter of amendment of §§ 13.61 and 83.159 of the Commission's rules governing Stations in the Maritime Services to reduce operator requirements for radio direct-printing telegraphy equipment on public and limited ship stations, Docket No. 20862, RM-2079.

1. On July 9, 1976, we released a notice of proposed rule making in this Docket. The notice was published in the FEDERAL REGISTER on July 13, 1976 (41 FR 28800). The dates for filing comments and replies thereto have passed.

2. The purpose of the rulemaking is to reduce the operator requirements for radio direct-printing telegraphy equipment on public and limited ship stations by permitting holders of third-class radiotelephone operator permits to operate radiotelegraph equipment aboard ship stations when such equipment is used for radioteleprinter transmissions. Previously, only holders of at least a third-class radiotelegraph operator permit were allowed to operate a ship telegraph station, and the Commission's rules did not distinguish between a telegraph station which transmits "CW" where highly skilled and trained radiotelegraph operators capable of using Morse code are necessary, and stations transmitting radio direct-printing equipment where such skills are not required.

3. Comments were filed by the following organizations:

a. Collins Division of Rockwell International Corporation.
b. Brown and Root, Inc.
c. American Petroleum Institute.
d. Communication Associates Incorporated.
e. American Institute of Merchant Shipping.
f. Offshore Marine Service Association.

All of the above organizations fully supported the Commission's proposal and urged its adoption.

4. Upon careful consideration of all comments filed in this proceeding, the Commission finds that it is unnecessary and burdensome to require that radio direct-printing telegraph equipment be operated by highly skilled and trained radiotelegraph operators capable of using Morse code, and the public interest will be served by reducing the operator requirements as contained below.

5. *Accordingly, it is ordered,* That pursuant to the authority contained in sections 4(i) 303 (b), (f), (l), and (r) of the Communications Act of 1934, as amended, Parts 13 and 83 of the rules are amended effective February 8, 1977, as set forth below.

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

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

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,[1]
Secretary.

Parts 13 and 83 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

A. In Part 13—Commercial Radio Operators:

1. Section 13.61(g)(6) is amended to read as follows:

§ 13.61 Operating authority.

* * * * *

(g) * * *

(6) Ship stations or aircraft stations at which the installation is not used solely for telephony, direct-printing or at which the power is more than 250 watts carrier power or 1,000 watts peak envelope power:

Provided, * * *

* * * * *

B. In Part 83—Stations on Shipboard in the Maritime Services:

1. Section 83.159 is amended to read as follows:

§ 83.159 Operator requirements for noncompulsory stations.

Description of station:	*Minimum operator authorization*
Public ship telegraph, except direct-printing, all categories	T-2
Limited ship telegraph, except direct-printing	T-3
Public or limited ship direct-printing telegraph	P-3
Public or limited ship telephone, more than 250 watts carrier power or 1,000 watts peak envelope power	P-2

* * * * *

[FR Doc.77-459 Filed 1-5-77;8:45 am]

[Docket No. 20839, FCC 76-1146]

PART 15—RADIO FREQUENCY DEVICES

Television Broadcast Receiver Antennas

Adopted: December 15, 1976.

Released: December 30, 1976.

Report and Order. In the matter of amendment of Part 15 of the Commission's rules relating to television broadcast receiver antennas, Docket No. 20839, RM-2576.

1. A notice of proposed rulemaking in this proceeding was adopted by the Commission on June 9, 1976 (41 FR 23032), and released on June 16, 1976.[1] The notice specified that comments be submitted on or before August 23, 1976, and reply comments on or before September 13, 1976. Each of the comments has been carefully considered.[2]

2. The Notice was issued in response to the Council for UHF Broadcasting (CUB) petition to amend Part 15 of the Commission's rules to require manufacturers who ship television broadcast receivers with affixed VHF antennas to also affix an effective UHF antenna. Also, if the VHF antenna be connected to the VHF antenna terminals, then the UHF antenna must be similarly connected to the UHF antenna terminals. As an amendment to § 15.65 of the Commission's rules the NPRM proposed the following:

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[1] Commissioners Lee and Hooks absent.

[1] Published in the FEDERAL REGISTER June 22, 1976 (41 FR 25032).

[2] Appendix B contains a listing of all the parties who submitted comments.

Television receivers marketed with an antenna affixed to the VHF antenna terminals must also have an antenna which is capable of receiving all UHF television channels affixed to the UHF antenna terminals. If a VHF antenna is provided with the receiver but not affixed, a UHF antenna must also be provided.

All but one of the comments supported in principle the proposed rule in the Commission's notice as a vital and necessary step toward achieving the goal of full comparability of UHF and VHF broadcasting. However, some of those commenting felt that the proposed rule did not go far enough.

3. The Notice made it clear that the rule we proposed did not encompass the physical configuration, composition or technical efficiency of the antennas provided by the manufacturer; only that the antenna be "* * * capable of receiving all UHF television channels * * *." However, a number of those commenting urged that we require the UHF antennas to be "effective" or "capable of adequately receiving all UHF television channels" or be "mechanically and technically comparable." It was suggested that in the absence of such language a manufacturer could satisfy the proposed rule by simply connecting the built-in VHF antenna to the UHF antenna terminals since any antenna will receive some UHF signal on all channels, although such an antenna would be of little practical benefit for UHF reception. While we do not believe that any reputable manufacturer would attempt this type of circumvention, it should be made clear that such a procedure would not be considered acceptable. Thus, the language in the proposed rule will be changed to read "* * * designed for and capable of receiving all UHF television channels * * *." The requested use of such words as "effective" or "adequate" would require that we establish technical criteria to define the terms. To do so would take us considerably beyond the scope of the notice.

4. Some disagreement involved the use of the word "affixed." CUB would like the rules to require the UHF and VHF antennas be "comparably" affixed. They argue that a disparity now exists in many instances where the VHF rabbit ears or monopoles are permanently affixed in the body of the receiver, while the UHF loops and bowties are connected, if at all, to screw terminals on the outside of the receiver where they can be jostled loose while being set up or moved. As pointed out in the comments of the Consumer Electronics Group of the Electronic Industries Association (EIA/CEG), a requirement to permanently affix a UHF antenna to the receiver would cause severe practical difficulties in the case of bowtie antennas. These antennas must be set off from the receiver when in use in order to function properly. Thus, it would be impractical to require affixing a UHF bowtie antenna to the receiver as opposed to the antenna terminals where it can be moved and oriented to function most favorably. EIA/CEG does not believe that requiring comparable or permanent affixation would be in the consumer's best interest. It should also be noted that several of the comments advocated the superiority of the UHF bowtie antenna over the simple UHF loop antenna. To require permanent affixation would make it considerably more difficult for those users who might wish to change the type of antenna supplied by the manufacturer. We agree that the manufacturer should have sufficient leeway in the method of affixing the VHF and UHF antennas to permit the most practical use of each. However, if the VHF antenna is permanently affixed, then the UHF antenna should be affixed in a manner that would reasonably insure that it will not become loose or detached in the normal course of being moved or adjusted.

5. It is recommended by both EIA/CEG and GTE Sylvania Incorporated (GTE) that the effective date of the antenna rules be 18 months after release of the Report and Order to allow television receiver manufacturers time to make the required tooling and shipping changes in an orderly manner. GTE states that lead time for minor tooling changes is between 14 and 18 months. CUB initially suggested a shorter time but does not object to any realistic time limit for compliance. Thus, to give manufacturers sufficient time to make the required changes, the effective date of § 15.65(b) will be 18 months after the release of this Report and Order. Any television receivers manufactured or marketed by the manufacturer after that date must comply. Accordingly, the Commission strongly recommends that all new receiver models designed after the release date of this Report and Order meet the requirements of § 15.65(b).

6. In consideration of the foregoing, the Commission finds that amendment of the rules as contained below is in the public interest. Authority for these rule amendments is contained in sections 4(i), 303(r) and (s) and 330 of the Communications Act of 1934, as amended.

7. *Accordingly, it is ordered,* That, effective February 9, 1977, Part 15 of the Commission's rules is amended as set forth below. *It is further ordered,* That this proceeding is terminated.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; sec. 330, 76 Stat. 151 (47 U.S.C. 154, 303, 330).)

FEDERAL COMMUNICATIONS COMMISSION,*
VINCENT J. MULLINS,
Secretary.

Section 15.65 is amended by revising the headnote and by designating the current text as paragraph (a) and by adding the following as a new paragraph (b):

§ 15.65 All-channel television broadcast reception: general requirement; and antennas.

(a) * * *

(b) Effective July 15, 1978, television receivers marketed by the manufacturer with an antenna affixed to the VHF antenna terminals must also have an antenna which is designed for and capable of receiving all UHF television channels affixed to the UHF antenna terminals. If a VHF antenna is provided with the receiver but not affixed, a UHF antenna must also be provided.

APPENDIX B

1. Comments in this proceeding were filed by:

Mohawk-Hudson Council on Educational Television, Inc. (WMHT-TV).
Electronic Industries Association (Consumer Electronics Group).
Kaiser Broadcasting Company.
Sony Corporation of America.
National Association of Broadcasters.
Joint Comments by Licensees of UHF Television Stations: Bahia De San Francisco Television Co., Birmingham Television Corporations, Connecticut Television Inc., Forward Communications Corporation, Retlaw Enterprises Inc., Roy H. Park Broadcasting of Utica-Rome Inc., Spanish International Communications Corporation.
American Broadcasting Companies Inc.
Gilmore Broadcasting Corporation.
Storer Broadcasting Company.
Council for UHF Broadcasting: Corporation for Public Broadcasting, Public Broadcasting Service, National Association of Broadcasters, Association of Maximum Service Telecasters Inc., Association of Independent Television Stations Inc., Joint Council on Educational Telecommunications.
GTE Sylvania Incorporated.
Community Television of Southern California (et al.).
University of Vermont.
Shenandoah Valley Educational Television Corporation.
Metropolitan Pittsburgh Public Broadcasting Inc.
Continental Urban Television Corporation.
Consolidated Broadcasting Company.
National Association of Educational Broadcasters.

2. Reply comments were filed by:

GTE Sylvania Incorporated.
Council for UHF Broadcasting (et al.).
Association of Maximum Service Telecasters Inc.
Electronic Industries Association (Consumer Electronics Group).

[FR Doc.77-460 Filed 1-5-77;8:45 am]

PART 21—DOMESTIC PUBLIC RADIO SERVICES (OTHER THAN MARITIME MOBILE)

Adoption of FCC Form 409; Correction

Released: December 28, 1976.

ERRATA, see 41 FR 55352.

In FR Doc. 76-37246, appearing at page 55352 in the issue for Monday, December 20, 1976, make the following change:

* Joint Separate Statement of Chairman Wiley and Commissioner Fogarty and Separate Statement of Commissioner Quello filed as part of the original document.

In the order adopted on September 28, 1976 and released on December 17, 1976 in the above-captioned proceeding (FCC 76-905), correct § 21.15(i)(3), line 4 by inserting the word "which" after "with" and before "the".

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.77-461 Filed 1-5-77;8:45 am]

[Docket No. 20403; FCC 76-1174]

PART 73—RADIO BROADCAST SERVICES

Automatic Transmission Systems at AM, FM and Television Broadcast Stations [1]

Adopted: December 21, 1976.

Released: January 5, 1977.

First Reprint and Order.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making* in the above-captioned proceeding, and the comments and reply comments filed in response thereto. Twenty-six parties filed formal comments and four reply comments were filed. In addition, there were 143 letters and informal comments received for association with this proceeding. A list of all respondents submitting formal comments and reply comments is included in attachment A.

2. The *Notice of Proposed Rule Making* adopted in this proceeding and released on April 8, 1976 (FCC 76-280, Mimeo 39854) stated that the electronics technology has now advanced to the stage where automatic controls can perform numerous routine broadcast transmitter operating tasks now performed by licensed operators on continuous duty. With the use of modern electronic control devices, coupled with an effective maintenance program, broadcast stations can provide a technically high quality and reliable service to the public while at the same time eliminating many of the operational requirements presently existing. Many of these operating requirements were originally established when broadcast transmitting apparatus required continuous observation and adjustments by skilled technicians. Further, use of automatic transmission systems could permit modification of the reponsibilities for technical observations by the station operating staff, and thus would justify a simplification of the operator requirements.

3. In developing the technical standards and operating procedures set forth in the *Notice* we were primarily concerned with five issues: (1) Procedures to insure that the technical quality and reliability of broadcasting to the public would be maintained or improved; (2) utilization of ATS by stations without extensive replacement of existing transmitting equipment and monitoring apparatus; (3) reduction of the licensed duty operator requirements consistent with the existing provisions of section 318 of the Communications Act; (4) provisions for optional use of ATS; and (5) establishment of a simple administrative procedure for authorizing the use of ATS.

SCOPE OF ATS

4. An automatic transmission system for broadcast stations was envisioned as a technique whereby the transmitter facilities could operate without the need to have an operator make routine equipment observations, adjustments, and switching functions throughout the broadcast day. The system could incorporate devices that would automatically adjust or maintain critical operating parameters within the transmitting equipment and terminate the station emissions in the event of a serious malfunction that would interfere with the service of other stations. In addition, ATS could have devices to call attention to malfunctions resulting in subnormal service to the public and which would normally require the licensee to immediately initiate corrective action.

5. In reviewing the comments and suggestions received, it was apparent that some licensees were essentially looking forward to operation of a fully automatic unattended broadcast station. In paragraph 8 of the *Notice* we mentioned the possible relationship between automatic transmission systems and fully unattended station operation and invited comments on this issue in connection with requests for legislative amendments of the broadcast operator provisions of the Communications Act. Several parties, including the National Association of Broadcasters (hereafter identified as NAB) urged us *not* to consider unattended broadcasting in connection with ATS rules by writing:

> NAB must once again emphasize that the proceeding under consideration is one of developing technical Rules and Regulations which would permit the use of unattended Automatic Transmission Systems. The issue should not be confused by questioning the feasibility of permitting unattended automatic broadcast stations.

Other respondents also questioned the desirability of unattended broadcast systems. Westinghouse Broadcasting (hereafter Westinghouse) comments:

> A suitable quality off-the-air monitoring system should be provided at the studio location along with control and alarm center. In this respect, we do not believe it is in the public interest to carry ATS to the point of complete elimination of human participation.

The questions of the desirability of fully unattended broadcast station operation cannot be resolved at this time and will not be considered further in this proceeding. We are making no judgments at this time as to whether future unattended broadcast station operation would or would not be in the public interest. The many considerations of unattended operation should be addressed in a proceeding addressed specifically to that issue.

6. In the *Notice of Proposed Rule Making* we envisioned that all AM, FM and TV stations, regardless of complexity could use automatic transmission systems. Comments received raised a number of technical questions that require further study in order for equipment manufacturers to develop and market the necessary monitoring and control devices. In fact, we were urged by several parties to issue a Further Notice of Proposed Rule Making with more explicit technical details upon which ATS monitoring and control equipment could be designed. We wanted to avoid a further notice if possible and have concluded that we can move forward with rules of sufficient details permitting FM and non-directional AM stations to immediately utilize ATS. Meanwhile additional work can proceed to resolve the remaining technical considerations applicable to ATS operation of TV stations and AM stations using directional antennas. We see no reason why these remaining technical considerations cannot be resolved within the next twelve months. Accordingly, the rules being adopted in this *First Report and Order* will permit the design, testing, and use of ATS facilities by FM stations and AM stations using non-directional antennas.

7. We were also asked by many respondents to modify the existing technical standards for the broadcasting services. Pacific Northwest wrote:

> Pacific Northwest favors the substantial relaxation of existing transmission rules proposed by the Commission. Most particularly, Pacific Northwest favors provision for *lower* legal limits on power and modulation.

The respondents frequently told us that although responsible licensees would never choose to operate at lower than licensed power with reduced modulation levels, certain problems do arise that require operation at less than maximum permitted levels. We were told that relaxing the existing rules would be of great assistance to licensees, and that many notices or special temporary requests to the Commission for reduced power operation could be eliminated. Equipment manufacturers also told us that modification of existing technical standards, particularly for AM power levels, may simplify the power determining devices.

8. Although we recognize that some adjustments in the technical standards for broadcast stations may be desirable and can be justified, it was not our purpose in this proceeding to revise standards specifically to accommodate ATS operations. We believe that changes in the technical standards for broadcast stations, particularly the tolerance on power of AM directional antenna systems may impact allocation procedures and standards, our International agreements and involve other factors that are clearly beyond the scope of ATS. Further, such changes, if made, should be applicable to all stations and therefore

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[1] See 41 FR 21793.

should be modified through proceedings addressed to those specific issues.

9. We were told that certain limits and alarm signal conditions that were proposed on various transmission operating parameters were unnecesary and should be eliminated or modified. We gave careful consideration to the many thoughtful comments concerning these proposals. The changes being made will be discussed in the following paragraphs in connection with the particular operating parameter or ATS function involved.

10. We had also suggested that licensees could use partial ATS facilities to obtain relief from certain operating rule requirements. Only one respondent fully supported this concept. We were, on the other hand, urged by many respondents to consider ATS only as a complete new system of transmitter operation. In order to provide for the most expeditious implemenation of ATS rules, and because of the limited support for "partial" ATS use, we are not adopting rules at this time to provide for such partial use. Licensees can, however, install partial ATS if they so desire although all existing operating requirements will apply. We may further review the possible relaxation of operating rules for stations that install portions of an ATS system in later proceedings in this docket. Stations that wish to use full ATS during a portion of the broadcast day and manual transmitter operation for the remainder of the day may do so.

11. We received some objections to the implementation of ATS rules, primarily from organizations representing licensed radio operators, and a few individual operators and station licensees. There was concern, particularly on the part of licensed operators that ATS rules would primarily benefit station owners, that employment of experienced operators would be terminated in many instances, and that the public would suffer a loss of broadcast services. It was averred that if stations were no longer required to have a full-time operator performing regular maintenance or if transmitter inspections were required less frequently, station technical quality would deteriorate. Operators were also concerned that if ATS rules were adopted reduced employment opportunities would eventually reduce the availability of qualified transmitter maintenance technicians. ATS technology would be more complex than that found in many existing stations and we are told that many licensees would eventually have to depend on factory service for maintenance in event of breakdown. This would result in extensive interruptions in service to the public, particularly in the more isolated areas having only one or two local broadcast services. Under existing rules, all FM stations and the majority of AM stations are not required to employ a radiotelephone first-class operator on a full-time basis, but can employ such an operator for transmitting system inspections and maintenance on a part-time or contract basis. The use of part-time maintenance operators in lieu of fulltime employment of one such operator by each station has been permitted since 1964. Since that time there has been no significant deterioration in service by those stations using part-time operators for maintenance work. Since nearly all of the stations that become eligible to use ATS under the rules being adopted are currently eligible to employ a radiotelephone first-class operator on a part-time basis, it is anticipated that there would be very little impact on either the employment opportunities for such operators, or on the availability of maintenance personnel.

EQUIPMENT REQUIREMENTS AND AUTHORIZATION FOR ATS OPERATION

12. It is our desire to establish a simple administrative procedure for use in implementing ATS. We indicated in the *Notice of Proposed Rule Making* that we would not require type acceptance of equipment used for implementation of ATS operation. We anticipated adoption of rules that would neither involve a detailed formal application nor a detailed technical showing. In lieu of proposing standards for type acceptance of ATS transmitting equipment we had proposed numerous system fail-safe and alarm circuits. We were told that we were not moving forward boldly but were reluctant to "let go" by essentially providing an automated remote control system. Based on the thoughtful analysis and informative comments submitted in this proceeding, we have concluded that many of the technical specifications and limitations initially proposed could be omitted or substantially modified. In doing so we are affirming that the licensee has responsibility for the selection, installation, and continued operation of equipment that will meet the objectives of providing a reliable and effective broadcast signal.

13. We are adopting a simple administrative procedure for use in obtaining authorization to use ATS. Stations may install ATS equipment without prior notification or authorization. Upon completion of the installation and testing of all necessary ATS equipment, the licensee shall submit to the Commission a request to use ATS signed by the licensee. The request shall include a statement certified by the station's chief operator, technical director, or consulting engineer that the ATS equipment has been installed, tested, and fully meets the prescribed technical standards for ATS operation, and that the station complies with all other applicable technical standards. Full ATS operation may commence immediately upon receipt of ATS authorization from the Commission.

OPERATOR REQUIREMENTS

14. In the *Notice of Proposed Rule Making* we indicated that until Section 318 of the Communications Act is amended, the operation of broadcast stations must be attended by a person holding a radio operator license or permit issued by the Commission. We pointed out that the lowest grade of operator authorization currently issued by the Commission is the restricted radiotelephone operator permit. No written examination is required to obtain such a restricted permit and it is not valid for the manual operation of broadcast stations. We were urged to introduce legislation that would amend the Communications Act to eliminate any statutory operator requirements for broadcast stations. Until such time as the Communications Act is amended, stations will be required to have an employee holding at least a restricted radiotelephone operator permit in attendance during all periods of operation using ATS.

15. We also indicated that under ATS operation a radiotelephone first-class operator (second-class for noncommercial educational FM stations with transmitter output power of 1000 watts or less) would continue to be responsible for making required inspections and adjustments in accordance with current practices. This practice would also apply to repairs and adjustments of the ATS control equipment.

16. A number of comments concerned the qualifications of the first class operators and their availability for employment for maintenance of broadcast station transmitting equipment. On June 7, 1976, a Notice of Inquiry (Docket 20817, FCC 76-476) was released addressing a wide range of questions concerning the Commission's operator rules and operator licensing program. Several operator licensing concepts were discussed in that document together with an inquiry pertaining to operator duties and responsibilities. It would be premature for us in this instant proceeding to make significant changes in the requirements for operators performing broadcast transmitting system repairs and adjustments. The rule modifications which may result from the inquiry in Docket 20817 should be applicable to all broadcast stations—those using ATS and those electing to continue with manual transmitter control.

17. We point out again, however, that although the Commission has established an operator licensing program, it is the station licensees who must determine whether prospective employees meet the desired skill requirements. We often hear comments such as "The operator holds a first class ticket but doesn't know how to use a soldering iron." On the other hand, many licensees complain that the amount of technical work that must be performed at the station does not justify the employment of a skilled maintenance operator on a regular basis. Many stations make a compromise in selecting operating personnel between technical ability and announcing skills, and the stations do not or are unable to provide the additional technical training needed for broadcast system maintenance.

18. Since stations using ATS will have control devices to automatically adjust critical operating parameters and alert

station personnel with an alarm of any serious system malfunction, we believe that the schedule of required transmitting equipment inspections can be modified. Under existing rules all AM and FM stations are required to have an inspection of the transmitting facilities made at least once each week. We are including in the rules being adopted a provision that stations using ATS may reduce the schedule of required inspections to one inspection per month. Although the frequency of required inspections is being reduced, no changes are being made in the maintenance log rules for documenting the results of the inspections. Similarly, we are retaining the requirement for an opreating log for stations using ATS for recording the signatures of the employees on duty at the monitoring and alarm point and station operating hours, but transmitter meter readings or other technical log entries will no longer be required.

19. We are adopting rules that provide for the attendance of broadcast stations during all operating hours when using ATS by a station employee holding at least a restricted radiotelephone operator permit. That employee will be responsible only for turning the transmitting apparatus on and off, monitoring the station emissions and ATS alarms for malfunctions, keeping a simplified record of operating hours or system interruptions, and notifying qualified maintenance personnel when a problem occurs.

20. No changes are being made at this time in the operator requirements for persons who perform transmitter inspections, adjustments, and maintenance duties. Stations that elect to use ATS and employ persons holding restricted radiotelephone operator permits to be on duty at the ATS monitor and alarm point are required to meet the existing duty operator requirements whenever reverting to manual operation of the transmitter.

DETERMINATION AND MAINTENANCE OF OPERATING POWER

21. In the *Notice* we proposed that stations either provide alarm or terminate within three hours if the transmissions fell below 90% or exceeded 105% of the authorized power and immediately terminate the transmissions if the power exceeded the range of 80 to 110% of the authorized power. Some respondents told us that we should not be concerned with overpower operations since transmitters in use would be incapable of operating at excessive power. Although this may be true for many stations when the operating power is that of the maximum transmitter power rating, it is not true for stations having a transmitter with a power rating considerably greater than the authorized power being used. Since it is possible for the mode switching or power adjustments to malfunction, the ATS system should provide for termination of the station transmissions if uncorrected excessive output power exists. We are retaining the maximum output power tolerance of the existing rules of 105% of authorized power. This is consistent with the channel allocation rules and our International agreements.

22. There seems to be universal objection to the requirement that stations be required to terminate operation if the operating power drops below the lower tolerance limits. We were frequently told that it would be better to permit stations using ATS to provide some service whenever the output power of the station dropped below the tolerance limits. Further, the existing rules do permit continued operation at reduced power until repairs are made. Perhaps our concern for low power was misunderstood in the *Notice*. We agree that stations should continue to have the option to continue service in the event of some unforeseen malfunction that would cause the transmitter output power to drop below the normally acceptable tolerance.

23. As previously discussed above, many suggestions were received that we modify the existing technical standards, particularly with respect to operating power and modulation tolerances. It is reiterated that current standards are not to be modified in this proceeding; however, we agree with the view of many respondents that the initially proposed automatic control and alarm requirements are overly restrictive and in some instances unnecessary. We also believe that it is in the public interest to retain some requirements for monitoring, alarms, and controls, i.e., termination of transmissions in the event of uncorrected excessive power or modulation, an alarm to alert the licensee of a condition causing substandard service, and monitoring of the quality of the transmitted program signal. Required automatic controls, alarm systems and monitoring will be subsequently discussed.

24. We also proposed that AM stations would be required to use a device in the ATS that would detect and alarm changes in the antenna or common point resistance exceeding 5 percent of the licensed resistance value. Although the technology is available to determine this change and compensate for it, such functions are not an essential part of the ATS concept, and therefore will not be required. It would be more realistic for licensees of AM stations to continue including steps in routine inspection and maintenance programs to detect and evaluate possible changes in antenna system characteristics that may require attention. Whenever the indirect method of power determination is used under the conditions specified in § 73.51(d), the station must be operated by manual control (either directly or by authorized remote control) unless the ATS equipment incorporates circuits to determine and control the operating power by the indirect method.

25. The proposed rules provided that the ATS power controlling circuits for FM and TV transmitters be responsible to the actual power delivered to the antenna, and that the power sampling device detect the net difference between the forward and reflected power in the transmission line at the transmitter output terminals. It was pointed out to us that one possible difficulty with such a device would be that if the reflected power in the transmission line increased, the forward power of the transmitter would be automatically increased to the limits of the transmitter in order to maintain a constant net difference between forward and reflected power. Many FM and TV stations have devices that will cause the transmitter to turn off if the reflected power in the transmission line exceeds a critical value. A device for determining forward power will provide a satisfactory indication of operating power provided that reflected power is within reasonable limits.

26. Although we had proposed that all FM and TV stations using ATS determine their operating power by the direct method, NAB and others advised us that the indirect method of power determination is used by the majority of FM stations. This optional method is used because of the costs involved in obtaining the RF wattmeters necessary for calibrating the transmission line meters used in determining power by the direct method. In keeping with our desire to maintain consistent standards for stations using ATS and those not using ATS, we agree that all FM stations should be permitted to use either method for maintaining operating power. Similar to the provisions of the rules for AM stations, whenever FM stations normally using the direct method of power determination are unable to do so, manual operation of the transmitters must be resumed unless the ATS equipment has circuits to monitor and control the operating power by the indirect method.

27. At this point in the discussion, we would like to review in some detail several of the specific requirements for fail-safe turn off standards and malfunction alarms that were included in the *Notice of Proposed Rule Making*. If we were to accept the concept of a fully unattended go-no-go ATS operation as advocated by some respondents, there would be no need to have any alarms, station monitoring, periodic inspections, or operating records. All control and adjustment functions would be automatic, including station sign-on, except when certain specified tolerances were exceeded. In this connection, we were told that we should be concerned with tolerance limits on only those parameters that may cause interference to other broadcast stations and that we should not be concerned with stations operating at low power or modulation levels. Perhaps we were overly conservative in our initial proposals in setting automatic transmitter control requirements for certain types of malfunctions. Many of the respondents brought a number of practical problems to our attention that would be encountered if we adopted the proposed rules.

28. We must clearly state that we retain the concept that licensees using ATS must serve the public interest by providing a broadcast service at least of equal quality and reliability to that provided

under the present operating procedures. We realize that even today unforeseen problems can and do occur which may cause a disruption in the service a licensee normally expects to provide. We therefore believe that a licensee using ATS has an obligation to avoid an increased incidence of interruptions to service and should continue to have an adequate preventive and remedial maintenance program.

MODULATION CONTROL FOR ATS

29. We proposed that the ATS incorporate a device to observe and adjust modulation levels based on transmitter output monitoring rather than through the conventional audio peak limiter amplifier. We pointed out that existing limiters do not necessarily prevent excessive modulation due to circuit variations that occurred in the transmitter following the audio peak limiter. Several respondents commented that our concern was unnecessary, however comments were also received indicating that our approach to implementing some form of modulation compensation based on evaluation of the transmitter output was a correct and reasonable approach for ATS operation. This is necessary because we are eliminating all requirements for an operator to observe and adjust modulation levels for stations using ATS.

30. There is, however, a more fundamental question: "What constitutes peaks of frequent recurrence and how are they to be counted or evaluated for ATS control purposes?" Both Delta and Westinghouse presented suggestions as to possible approaches. Of particular concern is whether peak modulation of each audio cycle is considered as a separate "peak" for counting purposes. Unless we were to set an absolute limit prohibiting any modulation peaks exceeding the 100% level, as suggested by some respondents, we must define "peaks of frequent recurrence" for ATS equipment design. For this purpose "peaks of frequent recurrence" is defined as modulation of more than 10 bursts exceeding the specified modulation level within any one minute period. A sequence of repetitive instances of modulation exceeding that specified modulation level occurring within a single 5 millisecond interval will be considered to be one burst.

31. The proposed rules in the *Notice* would have required the ATS equipment to incorporate circuits to detect abnormally low levels of modulation and either originate an alarm signal or terminate the station operations for sustained low modulation levels. In connection with these proposals we were also told that the existing modulation standards should be revised, our concern with low modulation levels for ATS was unnecessary, and that most licensees normally attempt to maintain the highest modulation levels practical, consistent with the program material being transmitted. Conditions of undesired low modulation usually occur due to a malfunction in audio circuits to the transmitter or in the transmitter itself. We do conclude that no useful purpose would be served by requiring special alarms or termination of station operation for low modulation levels per se. However, consistent with the licensee's responsibilities to promptly correct system malfunctions that impair service to the public, the rules adopted require that an alarm be provided to signal when an uncorrected loss of the station's transmissions exceeds three minutes in duration. We are not specifically including in the ATS rules being adopted equipment for maintaining minimum levels of modulation. The general requirements of the rules on modulation levels will apply.

32. Although we had proposed that FM stations transmitting stereophonic programs or a subcarrier for SCA purposes would be required to have alarms for detecting excessive variations in the modulation levels by the pilot or subcarrier signals, licensees pointed out that operating records show very minor variations in these parameters over the period of several weeks. Serious abnormalities in the modulation level would be apparent through monitoring of the program signal or in the SCA service. We therefore conclude that the special alarms for SCA and stereophonic subcarrier or pilot carrier frequency modulation will not be required. Since excessive modulation of the SCA subcarrier by the SCA program can result in deterioration of the FM program service, we are retaining the rule as proposed that FM stations using ATS and transmitting a SCA service install a modulation limiting device to limit the SCA subcarrier, if such a device is not already incorporated into the transmitting equipment.

PARAMETER SAMPLING INTERVALS AND TEST CIRCUITS FOR ATS

33. In the *Notice* for ATS rules, we proposed that certain transmission system operating parameters be sampled on a "continuous" basis. This resulted in several questions as to whether a sequential sampling system was acceptable, and if so what the permitted interval between sampling could be. This question was particularly important for those parameters affected by modulation level, or that may require complex switching for sampling. We received suggestions for sequential sampling periods ranging from one per second to one for each three hour period, the latter based on the present meter reading interval requirement. There seems to be a general indication that one observation observed every 15 minutes would be adequate for many parameters. This may be true for power, directional antenna parameters, and carrier frequency, but not for rapidly fluctuating functions such as modulation levels or video waveforms. It was further pointed out that automatic control equipment and any required alarm equipment would be much simpler in design if sequential sampling and evaluation circuits could be used.

34. We agree that for most parameters, it would be unreasonable to require that all transmission system parameters be separately and individually monitored on a continuous basis and that sequential observations are entirely practical. However, one of the advantages of ATS would be the effective signaling that can be easily accomplished in event of a malfunction, certainly more effective than that normally experienced with the present remote control systems in use where only one operating parameter is in view of the duty operator. We believe that for output power, one observation during each one minute period is not unreasonable, and that modulation level sampling should be observed on a continuous basis as discussed in paragraphs 30 to 33. ATS system observations of directional antenna parameters and video waveforms will be discussed in a subsequent order in this proceeding.

35. Rules are also adopted in accordance with our initial proposal which specifies that ATS equipment shall have features that permit automatic control and alarm circuits to be tested. The testing may be accomplished without turning the transmitter off or causing program interruptions, but test circuits must be designed which cannot inadvertently or purposefully be used to override the automatic operation of the transmission system.

CARRIER FREQUENCY MONITORING AND CONTROL IN ATS

36. Although we had no proposed carrier frequency monitoring and control or alarms to be part of ATS, several respondents suggested or requested that such features be specified or required. Time Frequency Technology, Inc. commented that although the carrier frequency of most AM stations was very stable because direct crystal oscillator control is utilized, FM and TV aural transmitters using an indirect method of control occasionally experience radical shifts in carrier frequency. It is suggested that FM and TV aural transmitters using indirect carrier frequency control circuits have frequency monitoring circuits as part of the ATS. Recent experience of the Commission has not shown that there is a significant frequency stability problem with FM and TV stations that would cause disruptions to the services of other licensees under the existing requirements that the station carrier frequency be measured on a monthly basis. Therefore we will not require that a carrier frequency monitoring function be included in the ATS equipment. The schedule of monthly frequency measurements will be applicable to all stations. Similarly we are not requiring any specific ATS equipment provisions for monitoring the stereophonic pilot carrier or SCA subcarrier frequencies for FM stations.

CONTROL OF OPERATING HOURS BY TIME CLOCK

37. The proposed rules would have required a time clock to control switching functions for those AM stations that have restricted operating hours, or authorized to operate at more than one power level or antenna radiation pat-

tern. We also proposed that the clock be capable of automatically adjusting for required changes in operating hours or mode switching times at the beginning of each month or when otherwise necessary. It was also envisioned that the clock would have a reserve power supply so that the clock would continue running whenever there was an interruption in the regular power source.

38. Most respondents indicated that the mode switching time clock would be a desirable feature of ATS, however, in reconsideration of the original proposals, we believe that the clock specifications would be simplified while at the same time accomplishing the necessary objectives for its use. We are therefore adopting rules that will require a time clock for certain AM stations. If there is an interruption in the operation of the clock for a period of longer than one minute, which would result in a delay in the initiation of the required switching functions, the transmissions of the station would terminate. Equipment designers can then devise either a clock system with an emergency power supply or other means for self correction and licensees may select the clock system best suited to their operating requirements. The clock will not be required to have provisions to adjust for monthly changes in the station operating schedule. The licensee can install a clock with such features, or arrange to have the clock manually adjusted prior to sign-on time on the first day of each month.

39. Some licensees stated that they saw no need to prohibit the automatic activation of the station transmitter by the time clock. The proposed rules would have required manual activation of the transmission system each day. This requirement was included in the proposed rules to prevent the possible activation of the station transmissions at a time when the required employee was not in attendance at a monitoring and alarm point at sign-on time. Even though there was some objection to the restriction that the time clock could not be used to activate the station operation at sign-on, we were not presented with any persuasive reasons why our initial proposals in this matter should be modified. We believe that it is consistent with the adopted modification in the station operator requirements to retain in the adopted rules the requirement that the transmissions of stations using ATS be manually activated at the beginning of each operating period.

ATS MONITORING AND ALARM POINT FACILITIES

40. In keeping with the existing statutory requirements that broadcast stations be operated by persons holding a radio operator license or permit issued by the Commission, we are establishing in these rules the general guidance for the location where the operator is to be on duty. This location will be described as the ATS monitoring and alarm point. We are also specifying in the rules adopted the facilities that must be available at the monitoring and alarm point, although the requirements are considerably less extensive than those originally proposed.

41. The ATS monitoring and alarm point may be at the station's transmitter site, studio, or authorized remote control location. Also, authorization may be obtained by filing an informal application for any other location that would be under the control of and readily available to the licensee at all times. This does not preclude establishing the point at the location of another business activity or private establishment, provided the licensee takes precautions to insure that the transmitter cannot be activated by unauthorized persons.

42. The facilities installed at each ATS monitoring and alarm location are to include a switch to activate and terminate the station transmissions, facilities for monitoring the transmitted program signal and an SCA program if transmitted, and an aural alarm signal to notify the station employee on duty of a malfunction of the transmitting equipment resulting in a loss or deterioration of program service. The aural alarm signal may be turned off provided a visual alarm remains activated until the alarm condition is corrected or manual operation of the station is resumed.

43. The alarm signal shall indicate whenever there is a loss in the station signal (either carrier or modulation) for a period exceeding three minutes, and an uncorrected low power condition exceeding three minutes. The licensee may install alarms to indicate other conditions at the transmitter site if there is a means to distinguish between the required alarms and those not required for ATS operation.

44. We proposed that those stations having requirements for tower obstruction lighting would be required to install automatic alarms to indicate a failure of the tower lighting equipment. This is not being included in the ATS rules. Licensees have the option of continuing to make daily visual observations of the condition of the tower lighting or of installing an automatic alarm system.

45. If the only person on duty during station operating hours is the employee at the ATS monitoring and alarm point, then it is necessary that the point have the necessary equipment to comply with the EBS monitoring and other requirements specified in Subpart G.

46. Those stations licensed to operate only during daytime hours or operate with more than one mode of power or antenna radiation pattern, may also install at the ATS monitoring and control point a switch or circuit to override the automatic time clock control system to operate during an emergency under the provisions of § 73.98 of the Rules. No special technical requirements are specified for such a switching circuit, however, we expect licensees to insure that it is used only for programming during emergency periods and not used to circumvent the ATS automatic controls.

USE OF ALTERNATE MAIN AND AUXILIARY TRANSMITTERS IN AN ATS

47. Stations having alternate main or auxiliary transmitters may incorporate them into their ATS and provide for the automatic transfer of operation between transmitters. Each transmitter operated in the ATS must have the control circuits to adjust the maximum operating power and modulation levels. Auxiliary transmitters operating below the station authorized power would not need a power adjustment control but the low power condition should activate the alarm at the point where the operator is on duty to indicate the subnormal transmission condition.

48. An effort was made in the preparation of the rules being adopted to provide the overall operating standards for ATS operation and to exclude numerous technical equipment details. Licensees and equipment manufacturers may find that in this approach we may have overlooked some particular aspect of ATS operation that we did not anticipate, or that may appear to be in conflict with other existing rules. Interested parties are urged to bring these matters to our attention for consideration in the Second Report and Order to be adopted in this proceeding.

49. Authority for adoption of the amendments contained in attachment B hereto is set forth in sections 4(i), and 303 (j) and (r) of the Communications Act of 1934, as amended.

50. *Accordingly, it is ordered,* That effective February 14, 1977, Part 73 of the Commission's Rules and Regulations is amended as set forth below.

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

FEDERAL COMMUNICATIONS COMMISSION,[3]
VINCENT J. MULLINS,
Secretary.

ATTACHMENT A

PARTIES FILING FORMAL COMMENTS

Midcontinent Broadcasting Co.
Gateway Communications Incorporated
R. Douglass Rackley
Time Frequency Technology, Incorporated
Roland A. Desjardins
WTVY, Incorporated
Bibb Television Incorporated
Golden West Broadcasters
Radio Station KANG
Radio Stations KGBX and KHMO
Radio Station WARF
Family Stations, Inc. (WYFR)
Johnny Appleseed Broadcasting Company
KOOL Radio-Television, Inc.
Western Telestations, Inc.
McClatchy Newspapers
The Society of Broadcast Engineers (SBE)
RCA Corporation
Lee Sutherland Parr
The Electronic Industries Association, Communications Division, Broadcast Equipment Section
National Broadcasting Company, Inc.
National Association of Broadcasters

[3] Statement by Chairman Wiley filed as part of the original document. Commissioner Lee absent.

Pacific Northwest Broadcasting Corporation
Cox Broadcasting Corporation
Westinghouse Broadcasting Company, Inc.
Radio Stations WBAU-AM-FM

PARTIES FILING FORMAL REPLY COMMENTS

American Broadcasting Companies, Inc.
Harris Broadcast Product Division
National Association of Broadcasters
CBS, Inc.

ATTACHMENT B

1. New §§ 73.140, 73.142, 73.144, and 73.146 are added to Part 73, Subpart A of this chapter to read as follows:

§ 73.140 Use of automatic transmission systems (ATS).

(a) The licensee of an AM broadcast station may, when operating with a nondirectional antenna system, utilize an automatic transmission system in accordance with this section and §§ 73.142, 73.144 and 73.146 in lieu of either direct or remote control of the station transmitting system.

(b) Authorization to use an automatic transmission system may be obtained by submitting an informal request to the Commission in Washington, D.C. Such request shall be signed by the licensee and contain a statement certified by the station's chief operator, technical director, or consulting engineer showing that the station has installed and fully tested all the necessary apparatus for ATS operation and that the station is in full compliance with the prescribed technical standards for ATS operation and all other technical standards in this subpart applicable to the particular class of station.

(c) Upon receipt of notification from the Commission, the station can commence full ATS operation under the following special conditions:

(1) The operating log entries specified in § 73.113(a)(1)(iv) need not be made.

(2) In lieu of the requirements specified in § 73.93 (a), (c) and (d), the licensee may employ persons holding a restricted radiotelephone operator permit to be on duty at an ATS monitoring and alarm point as described in § 73.146.

(3) The station may employ at least one radiotelephone first-class operator in accordance with the provisions of § 73.93 (c) in lieu of the requirements of § 73.93 (d) and (h).

(4) In lieu of the schedule of transmitting system equipment inspections specified in § 73.93(j), the inspections shall be made once each calendar month with the intervals between successive required inspections not to be less than 20 days.

(d) A station utilizing ATS must comply with the provisions of Subpart G of this part at all times.

(e) The transmitting apparatus must be manually activated at the beginning of each broadcast day.

§ 73.142 Automatic transmission system facilities.

(a) The licensee of an AM broadcast station may design, construct, install, and test the necessary equipment for ATS operation or obtain, install and test such equipment if it is compatible with the transmitting equipment with which it is to be used. The licensee may, without further authority, make the necessary modifications in the station transmitting equipment to accommodate ATS monitoring and control devices provided that the transmitting system will comply with all applicable technical specifications included in the regulations of this subpart.

(b) The transmitting apparatus of an AM station utilizing an automatic transmission system shall be equipped according to the following:

(1) The control system must have devices to monitor and control the antenna input power by sampling and evaluating the antennna current without the effects of modulation. The antenna current is to be sampled at the same point in the antenna circuit as the antenna ammeter but below (transmitter side) the ammeter.

(2) The control system must have devices to automatically adjust to antenna input power to the authorized power for each mode of operation within the range specified in § 73.52(a). If the automatic control device is unable to adjust the antenna input power to a level below 105% of the authorized power after 3 minutes or upon a total of 3 samplings, the emissions of the station will terminate.

(3) The transmitting system must have a device that will detect and adjust the peak level of modulation. If the modulation exceeds more than 10 bursts of 100% negative modulation within a one minute period or any bursts exceeding 125% positive modulation, as measured at the output terminals of the transmitter, the program audio input signal to the transmitter modulators shall be automatically adjusted downward until these limits are not exceeded. For the purposes of this requirement, a sequence of repetitive instances of modulation exceeding the prescribed limits occurring within a single 5 millisecond interval will be considered to be one burst. The station shall comply with the provisions of Section 73.55 with respect to minimum modulation levels.

(c) [Reserved].

(d) If the station is authorized or required to operate at more than one antenna input power or is restricted in its hours of operation, the ATS control equipment must include a time clock to automatically prevent the station from being signed on prior to the authorized time, perform all required mode switching operations, and terminate the transmitter radiations at the required time. The required mode switching time clock must meet the following specifications:

(1) Any failure or interruption in the operation of the clock or clock controlled switching circuits will cause the transmitter radiations to terminate under the ATS mode of operation until the clock is repaired or reset.

(2) The clock will perform all required switching functions at the times prescribed on the station authorization.

(3) Unless the clock is provided with a means to automatically compensate for changes in the operating hours or mode switching times specified on the station authorization for each calendar month, the licensee shall insure that the clock is adjusted as necessary prior to sign-on on the first day of each month or at other times as necessary.

(4) The clock must prohibit the transmitter from operating under the ATS mode during hours or with antenna radiation patterns other than those authorized except for operation during an emergency as provided for in § 73.98.

(5) The accuracy of the clock shall be maintained within an accuracy of plus or minus one minute at all times. The clock accuracy shall be checked as often as necessary, but at least once each calendar month as part of the required transmitting inspections. An entry noting the date and time of the calibration checks and any necessary adjustments shall be made in the station maintenance log. The primary standard of time will be the signals of stations WWV or WWVH of the National Bureau of Standards.

(e) The ATS control equipment shall be designed to terminate the station transmissions in accordance with § 73.144.

(f) The ATS control equipment shall be designed to provide an alarm signal at an authorized monitoring and alarm point in accordance with § 73.146.

(g) If the station is authorized to use an alternate main or auxiliary transmitter, the ATS control equipment may incorporate circuits to automatically activate such transmitters if they are fully equipped for ATS operation, although such transmitter switching features are not required.

(h) The sampling of modulation levels must be on a continuous basis. All other required sampling of transmitting system functions shall be made at intervals not exceeding one minute.

(i) The ATS equipment shall have facilities to permit testing of the automatic control and alarm devices. The testing may be accomplished without interrupting the station transmission, provided that the test facilities are designed so that they cannot inadvertently or purposefully be used to override the automatic operation of the transmission system.

§ 73.144 Fail-safe transmitter control for automatic transmission systems.

(a) The ATS control system for an AM broadcast station must incorporate circuits that will terminate the radiations of the station in event of any of the following conditions within the time interval specified:

(1) Failure of the automatic power adjustment circuits if the automatic power adjustment controls do not correct an over power condition (antenna input power exceeding 105% of the authorized power) for a three minute period.

(2) Failure of the automatic modulation adjustment circuits to prevent excessive modulation levels from continu-

ing uncorrected for a period exceeding three consecutive minutes.

(3) Any failure of the mode switching time clock, if required, for a period exceeding 3 minutes.

(4) Failure of the circuit to the ATS monitoring and alarm point for a period exceeding 3 minutes which prevents the transmitter from being turned off from that point.

(5) Failure in any of the required alarm system functions as required by § 73.146 exceeding 3 consecutive minutes.

(6) Any loss of the required ATS sampling functions for a period exceeding 3 minutes.

(b) If the transmission of the station terminates due to any of the conditions listed in paragraph (a) of this section, operation of the station may resume under manual control of the transmitter, either with an operator holding the proper class of license or permit on duty at the transmitter site or at an authorized remote control point, provided that any out of tolerance condition which may have caused the termination of transmissions is corrected upon resumption of manual operations. A station normally using ATS and temporarily operating under manual control for a period not exceeding 30 continuous days under the provisions of this paragraph, will be exempt from employing a full time radiotelephone first-class operator as required by § 73.93(d).

(c) If termination of the station transmission was caused by any failure of the ATS control or alarm functions, ATS operation of the station shall not be resumed until all necessary repairs or adjustments have been completed and a notation made in the station's maintenance log showing the nature or cause of the ATS malfunction and a certification entered in the log by the station's radiotelephone first-class operator that all required ATS functions are fully restored.

§ 73.146 Automatic transmission system monitoring and alarm points.

(a) Each AM broadcast station operating an automatic transmission system shall be provided with one or more ATS monitoring and alarm points. A station employee holding at least a restricted radiotelephone operator permit shall be on duty at one such point at all times when the station is in operation. The ATS monitoring and alarm point location may be at the transmitter site, the main studio, an authorized remote control point, or at another authorized location. If the licensee wishes to establish an ATS monformal request is to be submitted to the station transmitter, main studio, or an authorized remote control point, an informal request is to be submited to the Commission in Washington, D.C. with a description of the location of the point and stating the basis for its selection. All ATS monitoring and alarm points shall be under the control of, or available to, the licensee at all times. Provisions shall be made so that unauthorized persons can not activate the transmitting system from such points.

(b) The following ATS controls or alarms functions shall be installed at each ATS monitoring and control point to be utilized.

(1) A means to turn the transmitting apparatus on and off at all times.

(2) An off air monitoring receiver for observing the station's transmitted program signal.

(3) An aural alarm signal as specified in paragraph (c) of this section.

(c) An aural alarm at the ATS control and monitoring point shall activate in event of any of the following conditions:

(1) The transmissions of the station are interrupted for a period exceeding three minutes.

(2) The transmitter output power falls below 90% of the authorized value to be used if not automatically corrected within 3 minutes.

(3) An alarm that would indicate any failure of the tower lighting equipment unless arrangements are made for visual observations of the condition of the tower lighting as required in § 17.47(a) of this chapter.

(d) In addition to the aural alarms specified in paragraph (c) of this section, the licensee may install visual alarms or signals, and alarm circuits, indicating other conditions at the transmitter site provided that there can be recognition between the required alarm signals and those not required.

(e) Whenever a required alarm condition occurs, the alarm signal shall remain continuously activated until the condition causing the alarm is corrected or manual control of the transmitting system is assumed, provided that if a visual alarm is also provided, the aural alarm may be turned off if the visual alarm remains activated. A notation shall be made in the station's operating log of the time and duration of any ATS alarm conditions.

(f) The station employee on duty at the ATS monitoring and alarm point is not restricted to a specific duty position provided that such person can monitor the off-air program signal and alarm signal at all times. If that employee is the only person in attendance at the station, that person must also be able to observe and respond to an EBS alert as required by Subpart G of this part.

(g) The station employees on duty at ATS monitoring and alarm points shall be fully instructed in procedures to take in the event of a malfunction of the transmission system and receipt of an EBS alert.

(h) Station and operator licenses shall be posted at each ATS monitoring and alarm point according to the provisions of § 73.92.

2. New §§ 73.340, 73.342, 73.344, and 73.346 are added to Part 73, Subpart B of this chapter to read as follows:

§ 73.340 Use of automatic transmission systems (ATS).

(a) The licensee of an FM broadcast station may utilize an automatic transmission system (ATS) in accordance with this section and §§ 73.342, 73.344, and 73.346 in lieu of either direct or remote control of the station transmitting system.

(b) Authorization to use an automatic transmission system may be obtained by submitting an informal request to the Commission in Washington, D.C. Such request shall be signed by the licensee and contain a statement certified by the station's chief operator, technical director, or consulting engineer showing that the station has installed and fully tested all the necessary apparatus for ATS operation and that the station is in full compliance with the prescribed technical standards for ATS operation and all other technical standards in this subpart applicable to the particular class of station.

(c) Upon receipt of notification from the Commission, the station can commence full ATS operation under the following special conditions:

(1) The operating log entries specified in § 73.283(a)(3) need not be made.

(2) In lieu of the requirements specified in § 73.265 (a), (c) and (d), the licensee may employ persons holding a restricted radiotelephone operator permit to be on duty at an ATS monitoring and alarm point as described in § 73.346.

(3) The station may employ at least one radiotelephone first-class operator in accordance with the provisions of § 73.265(c) in lieu of the requirements of § 73.265(d).

(4) In lieu of the schedule of transmitting system equipment inspections specified in § 73.265(h), the inspections shall be made once each calendar month with intervals between successive required inspections not to be less than 20 days.

(d) A station utilizing ATS must comply with the provisions of Subpart G of this part at all times.

(e) The transmitting apparatus must be manually activated at the beginning of each broadcast day.

§ 73.342 Automatic transmission system facilities.

(a) The licensee of an FM broadcast station may design, construct, install, and test the necessary equipment for ATS operation or obtain, install and test such equipment if it is compatible with the transmitting equipment with which it is to be used. The licensee may, without further authority, make the necessary modifications in the station transmitting equipment to accommodate ATS monitoring and control devices provided that the transmitting system will comply with all applicable technical specifications included in the regulations of this subpart.

(b) The transmitting apparatus of an FM station utilizing an automatic transmission system shall be equipped according to the following:

(1) The control system must have devices to monitor and control the output power of the transmitter either by the direct or indirect method as described in § 73.267 (a) and (b)(2).

(2) The control system must have devices to automatically adjust to transmitter output power to the authorized power for each mode of operation within the range specified in § 73.267(b)(1). If the automatic control device is unable to adjust the output power to a level below 105% of the authorized power after 3 minutes or upon a total of 3 samplings, the emissions of the station will terminate.

(3) The transmitting system must have a device that will detect and adjust the peak level of modulation. If the modulation exceeds more than 10 bursts of 100% modulation within a one minute period as measured at the output terminals of the transmitter, the program audio input signal to the transmitter modulators shall be automatically adjusted downward until these limits are not exceeded. For the purposes of this requirement, a sequence of repetitive instances of modulation exceeding the prescribed limits occurring within a single 5 millisecond interval will be considered to be one burst. The station shall comply with the provisions of § 73.268 with respect to the minimum modulation levels.

(c) If the station engages in SCA operations, the transmission system shall be equipped with an automatic limiting device to prevent excessive modulation deviation of the SCA subcarrier.

(d) [Reserved].

(e) The ATS control equipment shall be designed to terminate the station transmissions in accordance with § 73.344.

(f) The ATS control equipment shall be designed to provide an alarm signal at an authorized monitoring and alarm point in accordance with § 73.346.

(g) If the station is authorized to use an alternate main or auxiliary transmitter, the ATS control equipment may incorporate circuits to automatically activate such transmitters if they are fully equipped for ATS operation, although such transmitter switching features are not required.

(h) The sampling of modulation levels must be on a continuous basis. All other required sampling of transmitting system functions shall be made at intervals not exceeding one minute.

(i) The ATS equipment shall have facilities to permit testing of the automatic control and alarm devices. The testing may be accomplished without interrupting the station transmission, provided that the test facilities are designed so that they cannot inadvertently or purposefully be used to override the automatic operation of the transmission system.

§ 73.144 Fail-safe transmitter control for automatic transmission systems.

(a) The ATS control system for an FM broadcast station must incorporate circuits that will terminate the radiations of station in the event of any of the following conditions within the time interval specified:

(1) Failure of the automatic power adjustment circuits if the automatic power adjustment controls do not correct an over power condition (antenna input power exceeding 105% of the authorized power) for a three minute period.

(2) Failure of the automatic modulation adjustment circuits to prevent excessive modulation levels from continuing uncorrected for a period exceeding three consecutive minutes.

(3) [Reserved].

(4) Failure of the circuit to the ATS monitoring and alarm point for a period exceeding 3 minutes which prevents the transmitter from being turned off from that point.

(5) Failure in any of the required alarm system functions as required by § 73.346 exceeding 3 consecutive minutes.

(6) Any loss of the required ATS sampling functions for a period exceeding 3 minutes.

(b) If the transmissions of the station terminates due to any of the conditions listed in paragraph (a) of this section, operation of the station may resume under manual control of the transmitter, either with an operator holding the proper class of license or permit on duty at the transmitter site or at an authorized remote control point, provided that any out of tolerance condition which may have caused the termination of transmission is corrected upon resumption of manual control of the transmitter.

(c) If termination of the station transmission was caused by any failure of the ATS control or alarm function, ATS operation of the station shall not be resumed until all necessary repairs or adjustments have been completed and a notation made in the station's maintenance log showing the nature or cause of the ATS malfunction and a certification entered into the log by the station's radiotelephone first-class operator that all required ATS functions are fully restored.

§ 73.346 Automatic transmission system monitoring and alarm points.

(a) Each FM broadcast station operating an automatic transmission system shall be provided with one or more ATS monitoring and alarm points. A station employee holding at least a restricted radiotelephone operator permit shall be on duty at one such point at all times when the station is in operation. The ATS monitoring and alarm point location may be at the transmitter site, the main studio, an authorized remote control point, or at another authorized location. If the licensee wishes to establish an ATS monitoring and alarm point other than at the station transmitter, main studio, or an authorized remote control point, an informal request is to be submitted to the Commission in Washington, D.C. with a description of the location of the point and stating the basis for its selection. All ATS monitoring and alarm points shall be under the control of, or available to, the licensee at all times. Provisions shall be made so that unauthorized persons can not activate the transmitting system from such points.

(b) The following ATS controls or alarm functions shall be installed at each ATS monitoring and control point to be utilized:

(1) A means to turn the transmitting apparatus on and off at all times.

(2) An off air monitoring receiver for observing the station's transmitted program signal and SCA program signal if SCA is utilized.

(3) An aural alarm signal as specified in paragraph (c) of this section.

(c) An aural alarm at the ATS control and monitoring point shall activate in event of any of the following conditions:

(1) The transmissions of the station are interrupted for a period exceeding three minutes.

(2) The transmitter output power falls below 90% of the authorized value to be used if not automatically corrected within 3 minutes.

(3) An alarm that would indicate any failure of the tower lighting equipment unless arrangements are made for visual observations of the condition of the tower lighting as required in § 17.47(a) of this chapter.

(d) In addition to the aural alarms specified in paragraph (c) of this section, the licensee may install visual alarms or signals, and alarm circuits indicating other conditions at the transmitter site provided that there can be recognition between the required alarm signals and those not required.

(e) Whenever a required alarm condition occurs, the alarm signal shall remain continuously activated until the condition causing the alarm is corrected or manual control of the transmitting system is assumed, provided that if a visual alarm is also provided, the aural alarm may be turned off if the visual alarm remains activated. A notation shall be made in the station's operating log of the time and duration of any ATS alarm conditions.

(f) The station employee on duty at the ATS monitoring and alarm point is not restricted to a specific duty position provided that such person can monitor the off-air signal and alarm signal at all times. If that employee is the only person in attendance at the station, that person must also be able to observe and respond to an EBS alert as required by Subpart G of this part.

(g) The station employees on duty at ATS monitoring and alarm points shall be fully instructed in procedures to take in the event of a mulfunction of the transmission system and receipt of an EBS alert.

(h) Station and operator licenses shall be posted at each ATS monitoring and alarm point according to the provisions of § 73.264.

3. New §§ 73.540, 73.542, 73.544 and 73.546 are added to Part 73, Subpart C of this chapter to read as follows:

§ 73.540 Use of automatic transmission systems (ATS).

(a) The licensee of a noncommercial educational FM broadcast station may utilize an automatic transmission system (ATS) in accordance with this sec-

tion and §§ 73.542, 73.544 and 73.546 in lieu of either direct or remote control of the station transmitting system.

(b) Authorization to use an automatic transmission system may be obtained by submitting an informal request to the Commission in Washington, D.C. Such request shall be signed by the licensee and contain a statement certified by the station's chief operator, technical director, or consulting engineer showing that the station has installed and fully tested all the necessary apparatus for ATS operation and that the station is in full compliance with the prescribed technical standards for ATS operation and all other technical standards in this subpart applicable to the particular class of station.

(c) Upon receipt of notification from the Commission, the station can commence full ATS operation under the following special conditions:

(1) The operating log entries specified in § 73.583(a)(3) need not be made.

(2) In lieu of the requirements specified in § 73.565(a), (c) and (d), the licensee may employ persons holding a restricted radiotelephone operator permit to be on duty at an ATS monitoring and alarm point as described in § 73.546.

(3) The station may employ at least one radiotelephone first-class operator in accordance with the provisions of § 73.565(c) in lieu of the requirements of § 73.565(d).

(4) In lieu of the schedule of transmitting system equipment inspections specified in § 73.565(h), the inspections shall be made once each calendar month with intervals between successive required inspections not to be less than 20 days.

(d) A station utilizing ATS must comply with the provisions of Subpart G of this part at all times.

(e) The transmitting apparatus must be manually activated at the beginning of each broadcast day.

§ 73.542 Automatic transmission system facilities.

(a) The licensee of a noncommercial educational FM broadcast station may design, construct, install, and test the necessary equipment for ATS operation or obtain, install and test such equipment if it is compatible with the transmitting equipment with which it is to be used. The licensee may, without further authority, make the necessary modifications in the station transmitting equipment to accommodate ATS monitoring and control devices provided that the transmitting system will comply with all applicable technical specifications included in the regulations of this subpart.

(b) The transmitting apparatus of a noncommercial educational FM station utilizing an automatic transmission system shall be equipped according to the following:

(1) The control system must have devices to monitor and control the output power of the transmitter either by the direct or indirect method as described in § 73.567(a) and (b)(1)(i).

(2) The control system must have devices to automatically adjust transmitter output to the authorized power for each mode of operation within the range specified in § 73.567(b). If the automatic control device is unable to adjust the output power to a level below 105% of the authorized power after 3 minutes or upon a total of 3 samplings, the emissions of the station will terminate.

(3) The transmitting system must have a device that will detect and adjust the peak level of modulation. If the modulation exceeds more than 10 bursts of 100% modulation within a one minute period as measured at the output terminals of the transmitter, the program audio input signal to the transmitter modulators shall be automatically adjusted downward until these limits are not exceeded. For the purposes of this requirement, a sequence of repetitive instances of modulation exceeding the prescribed limits occurring within a single 5 millisecond interval will be considered to be one burst. The station shall comply with the provisions of § 73.568 with respect to the minimum modulation levels.

(c) If the station engages in SCA operations, the transmission system shall be equipped with an automatic limiting device to prevent excessive modulation deviation of the SCA subcarrier.

(d) [Reserved].

(e) The ATS control equipment shall be designed to terminate the station transmissions in accordance with § 73.544.

(f) The ATS control equipment shall be designed to provide an alarm signal at an authorized monitoring and alarm point in accordance with § 73.546.

(g) If the station is authorized to use an alternate main or auxiliary transmitter, the ATS control equipment may incorporate circuits to automatically activate such transmitters if they are fully equipped for ATS operation, although such transmitter switching features are not required.

(h) The sampling of modulation levels must be on a continuous basis. All other required sampling of transmitting system functions shall be made at intervals not exceeding one minute.

(i) The ATS equipment shall have facilities to permit testing of the automatic control and alarm devices. The testing may be accomplished without interrupting the station transmission, provided that the test facilities are designed so that they cannot inadvertently or purposefully be used to override the automatic operation of the transmission system.

§ 73.544 Fail-safe transmitter control for automatic transmission systems.

(a) The ATS control system for a noncommercial educational FM broadcast station must incorporate circuits that will terminate the radiations of the station in the event of any of the following conditions within the time interval specified:

(1) Failure of the automatic power adjustment circuits if the automatic power adjustment controls do not correct an over power condition (antenna input power exceeding 105% of the authorized power) for a three minute period.

(2) Failure of the automatic modulation adjustment circuits to prevent excessive levels from continuing uncorrected for a period exceeding three consecutive minutes.

(3) [Reserved].

(4) Failure of the circuit to the ATS monitoring and alarm point for a period exceeding 3 minutes which prevents the transmitter from being turned off from that point.

(5) Failure in any of the required alarm system functions as required by § 73.546 exceeding 3 consecutive minutes.

(6) Any loss of the required ATS sampling functions for a period exceeding 3 minutes.

(b) If the transmissions of the station terminates due to any of the conditions listed in paragraph (a) of this section, operation of the station may resume under manual control of the transmitter, either with an operator holding the proper class of license or permit on duty at the transmitter site or at an authorized remote control point, provided that any out of tolerance condition which may have caused the termination of transmission is corrected upon resumption of manual control of the transmitter.

(c) If termination of the station transmission was caused by any failure of the ATS control or alarm functions, ATS operation of the station shall not be resumed until all necessary repairs or adjustments have been completed and a notation made in the station's maintenance log showing the nature or cause of the ATS malfunction and a certification entered into the log by the station's radiotelephone first or second-class operator that all required ATS functions are fully restored.

§ 73.546 Automatic transmission system monitoring and alarm points.

(a) Each noncommercial educational FM broadcast station operating an automatic transmission system shall be provided with one or more ATS monitoring and alarm points. A station employee holding at least a restricted radiotelephone operator permit shall be on duty at one such point at all times when the station is in operation. The ATS monitoring and alarm point location may be at the transmitter site, the main studio, an authorized remote control point, or at another authorized location. If the licensee wishes to establish an ATS monitoring and alarm point other than at the station transmitter, main studio, or an authorized remote control point, an informal request is to be submitted to the Commission in

Washington, D.C. with a description of the location of the point and stating the basis for its selection. All ATS monitoring and alarm points shall be under the control of, or available to, the licensee at all times. Provisions shall be made so that unauthorized persons can not activate the transmitting system from such points.

(b) The following ATS controls or alarm functions shall be installed at each ATS monitoring and control point to be utilized.

(1) A means to turn the transmitting apparatus on and off at all times.

(2) An off air monitoring receiver for observing the station's transmitted program signal and SCA program signal if SCA is utilized.

(3) An aural alarm signal as specified in paragraph (c) of this section.

(c) An aural alarm at the ATC control and monitoring point shall activate in event of any of the following conditions:

(1) The transmissions of the station are interrupted for a period exceeding three minutes.

(2) The transmitter output power falls below 90% of the authorized value to be used if not automatically corrected within 3 minutes.

(3) An alarm that would indicate any failure of the tower lighting equipment unless arrangements are made for visual observations of the condition of the tower lighting as required in § 17.47(a).

(d) In addition to the aural alarms specified in paragraph (c), the licensee may install visual alarms or signals, and alarm circuits indicating other conditions at the transmitter site provided that there can be recognition between the required alarm signals and those not required.

(e) Whenever a required alarm condition occurs, the alarm signal shall remain continuously activated until the condition causing the alarm is corrected or manual control of the transmitting system is assumed, provided that if a visual alarm is also provided, the aural alarm may be turned off if the visual alarm remains activated. A notation shall be made in the station's operating log of the time and duration of any ATS alarm conditions.

(f) The station employee on duty at the ATS monitoring and alarm point is not restricted to a specific duty position provided that such person can monitor the off-air program signal and alarm signal employee is the only person in attendance at the station, that person must also be able to observe and respond to an EBS alert as required by Subpart G of this part.

(g) The station employees on duty at ATS monitoring and alarm points shall be fully instructed in procedures to take in event of a malfunction of the transmission system and receipt of an EBS alert.

(h) Station and operator licenses shall be posted at each ATS monitoring and alarm point according to the provisions of § 73.564.

[FR Doc.77-531 Filed 1-5-77;8:45 am]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

[Reg. B; Docket No. R-0031]

PART 202—EQUAL CREDIT OPPORTUNITY

Amendments to Regulation B To Implement the 1976 Amendments to the Equal Credit Opportunity Act

The original Equal Credit Opportunity Act (Pub. L. 93-495, the "Act"), which went into effect on October 28, 1975, prohibits discrimination in any aspect of a credit transaction on the basis of sex or marital status. The 1976 Amendments to the Act (Pub. L. 94-239) were signed into law on March 23, 1976, and will go into effect on March 23, 1977. They extend the Act's prohibition of discrimination in credit transactions to include discrimination based on race, color, religion, national origin, age (provided the applicant has the capacity to contract), receipt of income from a public assistance program, and the good faith exercise of rights under the Consumer Credit Protection Act.

Since the Amendments substantially changed the Act, numerous changes were necessary in existing Regulation B, which implements the Act. The Board of Governors proposed for comment a revised version of Regulation B on July 20, 1976 (41 FR 29870), and held hearings on August 12 and 13, 1976. On the basis of comments received and testimony presented, the Board published a second proposal for comment on November 8, 1976 (41 FR 49123).

After consideration of the additional comments received, the Board has revised the second proposal (the "November proposal"). The changes are discussed in detail below. The revised Regulation B, published herein, will become effective on March 23, 1977. Creditors are required to comply with the provisions of the existing Regulation B until that time.

SECTION 202.1—AUTHORITY, SCOPE, ENFORCEMENT, PENALTIES AND LIABILITIES, INTERPRETATIONS

Sections 202.1(a) and (b) are identical to the November proposal. In section 202.1(c)(1), the words "actual and punitive" have been inserted before "damages" to clarify that under the Act a creditor's civil liability extends to both actual and punitive damages, and that the dollar limitations in section 706(b) of the Act apply only to the liability for punitive damages. The final clause of section 202.1(c)(2) has been modified to conform more closely to the statutory language; "or approval" has been added after "such rule, regulation, [or] interpretation," and "rescinded" has been added after "is amended." The rest of this section is identical to the November proposal.

SECTION 202.2—DEFINITIONS AND RULES OF CONSTRUCTION

Section 202.2(a)—Definition of "Account". The definition is identical to the November proposal and substantially similar to the definition in existing Regulation B.

Section 202.2(b)—Definition of "Act". The definition is identical to the November proposal.

Section 202.2(c)—Definition of "Adverse action". The definition is drawn from section 701(d)(6) of the amended Act and is similar to the November proposal. Section 202.2(c)(1) describes the actions by a creditor that will trigger the requirements imposed by the Act and the regulation relating to notification of action taken, statement of reasons for adverse action, and record retention. Paragraph (i) is based on the statutory language of section 701(d)(6); it provides that adverse action occurs where an applicant requests credit and the creditor refuses the request. In addition, paragraph (i) encompasses the situation in which a creditor rejects an applicant's initial request, but makes a counter-offer. This approach combines provisions of paragraphs (i) and (ii) of the November proposal. If the applicant uses or accepts the counter-offer, no adverse action occurs. However, if the applicant does not use or expressly accept the credit, adverse action does occur.

Paragraphs (ii) and (iii) describe other actions on the part of the creditor that constitute adverse action.

Section 202.2(c)(2) lists the actions that do not constitute adverse action. Paragraph (i) provides that a change in the terms of an account "expressly agreed to by an applicant" is not adverse action. Paragraph (ii) provides that adverse action does not occur if a creditor takes action or forbears from taking action regarding inactivity, default, or delinquency on an account. Paragraph (iii) provides that a refusal to authorize a point of sale or loan transaction that would exceed an applicant's existing credit limit is not adverse action. This paragraph differs from the November proposal in not requiring that the applicant be advised of the credit limit in advance. However, a point of sale refusal of credit is adverse action if the refusal occurs for a reason other than exceeding the pre-established credit limit.

Paragraphs (iv) and (v) provide that a refusal to extend credit because applicable law prohibits the creditor from extending such credit, or because the creditor does not offer the type of credit requested, does not constitute adverse action. The latter provision is intended to apply, for example, where an applicant requests a credit card from a creditor that does not issue credit cards. However, if an applicant requests a loan at an interest rate of 2 percent and this request is refused because the creditor's policy is to make loans only at 18 percent, this refusal is adverse action. Paragraph (v) is not intended to exempt this type of refusal.

Section 202.2(d)—Definition of "Age". The definition is identical to the November proposal. It indicates that the amended Act's protection against discrimination based on age extends only to

natural persons and not to business entities.

Section 202.2(e)—Definition of "Applicant". The definition is identical to the November proposal. It is similar to the definition in the existing regulation.

Section 202.2(f)—Definition of "Application". The definition of "application" is identical to the November proposal and is substantially similar to existing Regulation B.

Although the definition of a "completed application for credit" has been modified, it remains substantially the same as in the November proposal. The words "such information" in the final clause of the first sentence replace "the approvals or reports" to make clear that the requirement of reasonable diligence is not limited to governmental approvals or reports. The final sentence requires that, where an application is incomplete as to matters susceptible to completion by the applicant, the creditor shall make a reasonable effort to notify the applicant and allow a reasonable opportunity for completion of the application.

Section 202.2(g)—Definition of "Board". The definition is identical to the November proposal.

Section 202.2(h)—Definition of "Consumer credit". The definition is identical to the November proposal

Section 202.2(i)—Definition of "Contractually liable". The definition is identical to the November proposal.

Section 220.2(j)—Definition of "Credit". The definition is identical to the November proposal.

Section 202.2(k)—Definition of "Credit card". The definition is identical to the November proposal.

Section 202.2(l)—Definition of "Creditor". The definition is substantially identical to the November proposal. The provisions on potential liability of assignees for violations committed by other creditors is now limited to situations in which the assignee had reasonable notice of the illegal acts. In this respect, this definition is identical to the July proposal.

Section 202.2(m)—Definition of "Credit transaction". The definition is identical to the November proposal. It modifies existing Regulation B by deleting the phrase "solicitation of prospective applicants by advertising or other means." Discriminatory advertising practices remain subject to § 202.5(a), which prohibits discouraging applications.

Section 202.2(n)—Definition of "Discriminate against an applicant". The definition is identical to the November proposal and is substantially similar to the definition in existing Regulation B.

Section 202.2(o)—Definition of "Elderly". This is a new definition which sets the exact age at which an applicant is deemed elderly. Age 62 was chosen since that is the earliest age at which retirement benefits are paid by the Social Security Administration.

The addition of this definition necessitates the relettering of subsequent definitions.

Section 202.2(p)—Definition of "Empirically derived credit system". The definition is similar to the November proposal. It implements section 701(b)(3) of the amended Act. Section 202.2(p)(1) describes an "empirically derived credit system." Such a system is defined as a credit scoring system that evaluates, on the basis of a numerical score, the likelihood of an applicant's repaying the credit requested. The score is based on key attributes of the applicant and the credit which have been selected and weighted in accordance with the creditor's experience with past applicants. The system must be based on experience which is not outdated. The system may include a subjective evaluation of other information as long as the determination of creditworthiness is primarily controlled by the empirically derived aspects of the system.

Section 202.2(p)(2) of the definition prescribes the Board's standards for a "demonstrably and statistically sound" system as required by the amended Act. First, if the entire applicant population of the creditor is not used in developing the system, the sample groups of applicants which are used must be obtained in accordance with appropriate sampling principles so as to fairly represent the characteristics of the underlying population. If proper methods are used in the system's development, consideration of the characteristics of the applicant population need not include actual sampling or scoring of rejected applicants.

Second, the Board's standards permit a creditor, as a matter of business judgment, to set the acceptance score high or low depending upon its business objectives.

Third, the system's predictive ability must be validated during the development process. One method of validation is to apply the model to accumulated credit experience and then to use statistical tests to compare predictive ability with actual results. In addition, there are other methods available to ascertain whether the model will perform at a statistically significant rate. No particular confidence level is specified in the regulation; however, system developers may note that courts in employment cases have shown a preference for a 95 percent level.

Fourth, the system's predictive ability must be regularly revalidated as it is used. The techniques used for revalidation, the frequency with which it occurs, and the population of applicants used to test continuing predictive ability will vary depending upon the creditor and credit system involved. Usually revalidation will use the same statistical tests as the initial validation, except that more recent credit experience is used.

Section 202.2(p)(3) provides that a creditor may borrow either a fully developed credit system or credit experience from which an empirical system can be developed. A borrowed system or a system based on borrowed information must meet the standards prescribed in subsections (1) and (2) above. In addition, a creditor adopting a borrowed system or using borrowed data must validate the system against its own credit experience, as soon as such information is available. Thus, if the borrowing creditor has accumulated credit experience using a judgmental system or a different scoring system, the borrowed system can be validated using this information even before the borrowing creditor commences use of the new empirical system. However, if the creditor has no credit experience of its own, then validation may be deferred until such experience is accumulated. If a borrowed system fails to pass a test of its validity then it is no longer a demonstrably and statistically sound, empirically derived credit system. The borrowing creditor must then either discontinue use of the system or use it accepting the risks and requirements inherent in a judgmental system.

Section 202.2(q)—Definition of "Extend credit" and "Extension of credit". The definitions are identical to the November proposal.

Section 202.2(r)—Definition of "Good faith." The definition is identical to the November proposal.

Section 202.2(s)—Definition of "Inadvertent error". The definition was drawn from § 202.11(a) of existing Regulation B, relating to mechanical errors, and is identical to the November proposal.

Section 202.2(t)—Definition of "Judgmental system of evaluating applicants". The definition is identical to the November proposal. The term is intended to encompass all systems for evaluating creditworthiness other than "demonstrably and statistically sound, empirically derived credit systems."

Section 202.2(u)—Definition of "Marital status". The definition is identical to the November proposal.

Section 202.2(v)—Definition of "Negative factor or value". Section 701(b)(3) of the Act forbids the assigning of a negative factor or value to the age of an elderly person in the operation of a demonstrably and statistically sound, empirically derived credit system. The definition of "negative factor or value" is similar to the November proposal. However, because of the addition of a definition of the word "elderly," the effect of this definition upon a credit scoring system is now very different.

Since the November proposal did not define "elderly," under that proposal each applicant would have been "elderly" with respect to all younger applicants. Accordingly, an applicant could not have been given a score lower than that of any younger applicant, regardless of the creditor's experience. Comments indicated that, as a general rule, older persons are the most creditworthy group on the basis of age, but that certain groups of middle-aged applicants are less creditworthy than younger applicants. The November proposal would have caused undue distortion in the points assigned to age and might have led system users to cease using age as a variable. If elderly applicants are empirically the most creditworthy, then dropping age as an indicator could have had the effect of reducing the amount of credit extended to older persons.

Because "elderly" is now defined as age 62 and above, the regulation has a different impact upon scoring systems. Generally a demonstrably and statistically sound, empirically derived credit system which uses age as a scoring factor should assign to an elderly applicant the number of points indicated by experience. However, in no event may an elderly applicant receive fewer points for age than are assigned to the class of applicants that are not elderly and are most favored on the basis of their age. The highest score on the basis of age given to applicants who are less than 62 creates a floor; persons 62 or older may not be given a score beneath that floor. Except for this limitation, applicants may be given the number of points on the basis of age which experience indicates.

Section 202.2(w)—Definition of "Open-end credit". The definition is identical to the November proposal.

Section 202.2(x)—Definition of "Person". The definition is identical to the November proposal.

Section 202.2(y)—Definition of "Pertinent element of creditworthiness". The definition is similar to the November proposal. Section 701(b)(2) of the amended Act permits a creditor to inquire about an applicant's age or whether an applicant's income derives from a public assistance program, if such inquiry is for the purpose of determining pertinent elements of creditworthiness. The Board has defined pertinent element of creditworthiness as information having a demonstrable relationship to a determination of creditworthiness. The definition varies from the November proposal by expressly stating that this definition relates only to judgmental systems. In addition, use of the term "manifest" in connection with the information's relation to creditworthiness has been deleted. Creditors should be on notice, however, that court decisions pertaining to the so-called "effects test" do require that the relationship between the defendant's practices and the defendant's actual needs be "manifest." This definition does not preclude a court applying the effects test to credit practices from reading a requirement of manifestness into the relationship between credit practices and creditworthiness.

Section 202.2(z)—Definition of "Prohibited basis". The definition is substantially similar to the November proopsal. The phrase is defined in terms of those characteristics that, under the amended Act, may not be considered in any aspect of a credit decision or may be considered only in a limited fashion. A footnote interprets the statutory language of section 701(a)(1) as referring not only to an applicant's race, color, religion, national origin, sex, marital status, or age, but also to such characteristics of other persons who may be indirectly involved in the transaction. This definition differs from the November proposal by expressly stating that an exercise of rights under a State law substituted for the Consumer Credit Protection Act is equally protected by the Act and this regulation.

Section 202.2(aa)—Definition of "Public assistance program". Section 701(a)(2) of the amended Act prohibits discrimination against an applicant "because all or part of the applicant's income derives from any public assistance program." The definition provides some examples of such programs, but the term is not limited to the types of income cited. This definition differs from the November proposal by no longer requiring that the periodic income supplement be directed. A program's assistance may be indirect while still falling within the ambit of this definition.

Section 202.2(bb)—Definition of "State". The definition is identical to the November proposal.

Section 202.2(cc)—Captions and catchlines. The section is intended to indicate the non-substantive nature of captions and catchlines. It is derived from § 226.2(ll) of Regulation Z.

Section 202.2(dd)—Footnotes. The section gives footnotes to the regulation the same legal effect as the text.

SECTION 202.3—SPECIAL TREATMENT FOR CERTAIN CLASSES OF TRANSACTIONS

Four classes of transactions are given special treatment in the existing Regulation B: incidental, business, securities, and public utilities credit. Section 202.3 provides specialized treatment for these classes and for one additional class, credit extended to governmental units. The Board has determined to adopt this section as proposed with the changes discussed below.

Public comments suggested that no reason relating to creditworthiness justifies an inquiry concerning the sex of an applicant for utilities, business, or incidental credit. In response to these comments, the Board has modified this section to provide that § 202.5(d)(3), which prohibits inquiries about an applicant's sex, applies to public utilities and business credit transactions. This prohibition is also applicable to incidental credit transactions unless information relating to the sex of an applicant is required for medical records or similar purposes. This exception is intended to allow persons providing health services to rely upon medical records as a source of information when extending credit, even though the records may contain information relating to the sex of an applicant.

A number of commentators urged the Board to prohibit inquiries as to marital status in business credit transactions. The Board has not followed this suggestion because to do so would require the revision of forms and, in view of the variety and volume of business transactions, the revision would be costly and disruptive. Furthermore, it is doubtful that this burden would be justified since the traditionally close personal contact between business creditor and applicant makes it likely that marital status will be known by the creditor regardless of the informational bar.

The Board believes that, as a general rule, applicants for business credit are more sophisticated than applicants for consumer credit and, thus, there is no need to explain reasons for adverse action to all business credit applicants. Applicants for business credit who wish to know the reason for adverse action may, of course, request an explanation from the creditor as provided in § 202.3(e)(2). Similarly, § 202.3(e)(4) grants business credit applicants the right to request retention of records by the creditor within 90 days of adverse action. Under § 202.3(e)(2), the period during which the request must be made commences only when the applicant is notified orally or in writing of the adverse action by the creditor.

The Board has determined that special treatment for business transactions is also warranted for record retention provisions of the regulation. The requirements to retain records involve significant costs for creditors. The recordkeeping requirement would be particularly burdensome since applications for commercial credit typically involve a much greater volume of documents than applications for consumer credit.

SECTION 202.4—GENERAL RULE CONCERNING DISCRIMINATION

The section is identical to the November proposal.

SECTION 202.5—RULES CONCERNING APPLICATIONS

Section 202.5(a)—Discouraging applications. The section is identical to the November proposal.

Section 202.5(b)—General rules concerning requests for information. Section 202.5(b)(1) is unchanged from the November proposal. It corresponds to § 202.5(a) of existing Regulation B, except that the phrase "continued ability to repay" was deleted to underscore the fact that a creditor's access to information is not limited to determining the probable continuity of an applicant's income. Thus, the only barriers to a creditor's obtaining, as opposed to considering, information are those contained in § 202.5. Footnote 4 makes clear that § 202.5(b)(1) neither limits nor abrogates laws regarding privacy, privileged information, or similar matters.

Section 202.5(b)(2) deals with information collection relating to the monitoring or enforcement of compliance with the amended Act, Regulation B, or other Federal or State laws. The first sentence refers explicitly to the information collection requirements of § 202.13. It has been revised from the November proposal by the addition of an introductory phrase, "notwithstanding any other provision of this section," to clarify that this provision supersedes information barriers contained in subsections (c) and (d) of § 202.5. Any State law that precludes a creditor from requesting an applicant's race/national origin, sex, and marital status, and thus conflicts with § 202.13, is preempted by § 202.11(b)(1)(iii).

The second sentence of § 202.5(b)(2) permits creditors to comply with regulations, orders, or agreements (issued by or entered into with a Federal or State

court or enforcement agency) that require the collection of information to monitor or enforce compliance with the amended Act or other State or Federal law, such as the Federal Fair Housing Act, administered by the U.S. Department of Housing and Urban Development. The Board has substituted the words "may obtain" for "shall obtain" to clarify that the provisions of the second sentence of (b)(2) are permissive and not mandatory. In addition, the scope of the provision has been expanded by the inclusion of the word "regulation" in the first clause and by the insertion of the words "or enforce" within the phrase "to monitor compliance."

Finally, § 202.5(b)(3) clarifies the point that some information barriers of § 202.5 are not applicable to special purpose credit programs as defined in § 202.8, or with regard to § 202.7(e) relating to insurance.

Section 202.5(c)—Information about a spouse or former spouse. Sections 202.5 (c) and (d) are specific exceptions to the general rule of § 202.5(b)(1). Sections 202.5(c) (1) and (2) are identical to the November proposal and are derived from § 202.5(b) of the existing regulation. Paragraph (iv), relating to reliance on community property, differs from the corresponding provision of existing Regulation B, which permits a creditor to request and consider information about an applicant's spouse if the applicant "is relying on community property * * * as a basis for repayment of the credit requested." The revised provision permits such inquiries whenever the applicant "resides" in a community property State or when the applicant, in applying for credit, is relying on property that is relying on property that is located in a community property State.

Section 202.5(c)(3) has been expanded. As in the November proposal, it permits a creditor to ask an applicant to list any account upon which the applicant is liable and to disclose the name and address in which such an account is carried. A second sentence has been added that permits a creditor to ask about other names in which the applicant has previously received credit.

Section 202.5(d)—Information a creditor may not request. Except for editorial changes, this section is the same as the November proposal. Section 202.5(d)(1) restates the provisions of §§ 202.4(c) (1) and (2) of existing Regulation B, except that the language, "or as required to comply with State law governing permissible finance charges or loan ceilings," was deleted as unnecessary, since § 202.11 (b)(1)(ii) preempts any provision of State law regarding married persons.

The structure of § 202.5(d)(1) has been changed from the existing regulation to state the rule relating to marital status inquiries more clearly. If an applicant applies for an individual, unsecured account, a creditor may not inquire about the applicant's marital status unless the community property exception, which conforms to § 202.5(c)(2)(iv), applies. Creditors should note that this informational bar applies notwithstanding the existence of a State necessaries law or family expense statute.

In the second sentence of § 202.5(d)(1), the phrase that appeared in the November proposal, "in all other instances," has been replaced by the phrase "Where an application is for other than individual, unsecured credit * * *" In addition, the limitation regarding terms that may be used in marital status inquiries is stated in a separate sentence, to clarify that the limitation applies in all instances where such inquiries are permissible, including in community property States. Section 202.5(d)(1) also makes clear that a creditor may explain that the category "unmarried" includes single, divorced, and widowed persons.

Section 202.5(d)(2) replaces §§ 202.4 (c)(3) and 202.5(d)(1) of existing Regulation B relating to alimony, child support, and separate maintenance. The first sentence of this provision states the general requirement that a creditor must first disclose to an applicant that income from alimony, child support, or separate maintenance need not be revealed by the applicant unless the applicant is relying on such income to establish creditworthiness. The second sentence is intended to alert creditors that a general inquiry regarding source of income, without further specification, may lead an applicant to list alimony, child support, or separate maintenance income. Therefore, unless an inquiry is phrased in terms of salary, wages, or similarly specified income as opposed to general inquiries about income, disclosure by the creditor concerning the optional nature of such a listing is required.

Because the disclosure regarding alimony, child support, or separate maintenance income is required both in oral and on written applications, the word "appropriately" has been substituted for "first conspicuously."

A number of commentators urged the Board to delete the word "separate" from "separate maintenance" in the 202.5 (d)(2) disclosure provision, on the ground that many application forms that comply with the existing version of Regulation B do not draw such a distinction and, thus, could be considered inadequate under the new regulation. The Board has adopted the provision as proposed. However, since these comments express a valid concern, the Board has added a footnote to 202.5(e) of the regulation that permits a creditor to continue "to use any application form that complies with the requirements of the October 28, 1975, version of Regulation B iuntil its present stock of those forms is exhausted or until March 23, 1978, whichever occurs first."

Section 202.5(d)(3) expressly prohibits a creditor from asking about an applicant's sex, and incorporates the courtesy titles provision of § 202.4(c)(4) of existing Regulation B. As in § 202.5(d)(2), the word "appropriately" has replaced the words "first conspicuously" for the reasons mentioned above.

Section 202.5(d)(4) incorporates the limitation regarding child bearing inquiries contained in the first sentence of § 202.5(h) of the existing regulation; the second sentence of § 202.5(h) is found in § 202.6(b)(3) of this regulation. The provision makes clear that the prohibition as to child bearing inquiries does not preclude a creditor from asking about the number and ages of an applicant's dependents or about dependent-related financial obligations or expenditures. For purposes of clarification, the Board has added a final clause to emphasize that a creditor may ask questions relating to dependents only if it asks all applicants such questions.

Section 202.5(d)(5) prohibits inquiries about the race, color, religion, or national origin not only of applicants but also of any other person in connection with a credit transaction, except as provided by § 202.5(b)(3) relating to special purpose credit programs or as required by § 202.5(b)(2) for compliance-monitoring purposes. The final sentence explicitly permits a creditor to inquire about an applicant's permanent residence and immigration status.

Section 202.5(e)—*Application forms.* The content of § 202.5(e) remains essentially unchanged from the November proposal. However, a number of comments noted that certain provisions of this regulation might necessitate changes in creditors' forms less than a year after creditors modified their forms to comply with the October 28, 1975 version of the regulation. In order to minimize the financial burden of any further changes that may be required, a footnote has been added, permitting creditors to continue to use application forms that comply with the requirements of the 1975 version of Regulation B until present stocks of those forms are exhausted or until March 23, 1978, whichever occurs first.

In response to numerous comments, § 202.5(e) has also been redrafted to underscore the point that Regulation B does not require the use of written applications or, if written forms are used, does not require the use of any of the sample applications approved by the Board. If a creditor chooses to use written applications, it has four options. First, a creditor may design its own forms. Second, a creditor may use forms prepared by another person, for example, another creditor or a trade association. Third, a creditor may use any appropriate model form included in Appendix B of Regulation B. (The Appendix B forms will be published separately in the near future.) Finally, a creditor may use a modified version of any appropriate Appendix B form.

The phrase "appropriate model form" has been used to emphasize that the five forms contained in Appendix B are each designed for use in a different situation. For example, one form is intended for use only in open end, unsecured credit transactions; another is intended for use in community property States. Therefore, the protection accorded creditors

using the model forms applies only if the form "appropriate" to a particular situation is used or modified as provided in § 202.5(e).

Section 202.5(e) enumerates the three ways in which a creditor may modify an appropriate Appendix B form to satisfy its needs. First, a creditor may ask for additional information if such a request is not prohibited by § 202.5. Second, a creditor may delete any information request. Third, a creditor may rearrange the order of the questions. In each instance, however, a creditor must include the appropriate notices in the appropriate places if information regarding courtesy titles, alimony, child support, or separate maintenance payments, or marital status is solicited.

The modification of an appropriate Appendix B form by deleting or rearranging informational items will not affect a creditor's protection under section 706(e) of the amended Act from civil liability arising from the use of the form. If a creditor adds an informational item not expressly permitted by the regulation, the creditor may not rely upon the protection of § 706(e) with respect to that additional item.

Finally, the language of the November proposal expressly permitting creditors to add the ECOA notice to their forms has been deleted for two reasons. First, footnote 6 addresses the problem of using forms that contain the ECOA notice prescribed by the October 28, 1975 version of Regulation B. Second, supplying an ECOA notice at the time that an applicant applies for credit will not satisfy the requirement of § 202.9(a) that such a notice be provided when adverse action is taken.

SECTION 202.6—RULES CONCERNING EVALUATION OF APPLICATIONS

Section 202.6 deals with the use of information in the evaluation of credit applications, and elaborates on the substantive provisions of section 701 (a) and (b) of the amended Act.

Section 202.6(a)—General rule concerning the use of information. Section 202.6(a) is substantially similar to the November proposal. Subject to two qualifications, the basic provision of this section is that a creditor may consider, in evaluating an application, any information that it obtains. The first qualification is that no information may be used to discriminate against an applicant on a prohibited basis, except as provided in § 202.8 regarding special purpose credit programs. Second, a creditor's use of information is limited by the specific prohibitions contained in §§ 202.5 and 202.6 of the revised regulation. The rule adopted in § 202.6(a) subsumes the first sentence of § 202.5(k) of existing Regulation B.

The use of the words "to discriminate" is intended to underscore the fact that the general rule regarding use of information is not limited to intentional acts of discrimination. The amended Act proscribes intentional discrimination and also may be interpreted as prohibiting actions that have the effect of discriminating against applicants on any prohibited basis.

The footnote has been shortened in the final version. It refers to the legislative history of the amended Act, which shows that Congress intended certain judicial decisions enunciating the "effects test" in the employment area to be applied in the credit area, especially with respect to the allocation of burdens of proof.

As a judicial doctrine, the effects test is not well suited to regulatory implementation. In addition, it is, of course, subject to change as it is examined and applied by the courts.

Section 202.6(b)—Specific rules concerning use of information. Section 202.6(b) is substantially similar to the November proposal and contains specific limitations on the use of information. Section 202.6(b)(1), which bars (with certain exceptions) a creditor from taking any prohibited basis into account in evaluating creditworthiness, is identical to the November version.

Footnote 8 does not broaden the authority granted by § 202.5 to ask about marital status; rather, where the creditor can ask marital status under § 202.5, the footnote permits a creditor to consider it in connection with rights and remedies.

Section 202.6(b)(2) has been adopted without change from the November proposal. Paragraph (i) expressly prohibits a creditor from taking into account an applicant's age (provided the applicant is old enough to enter into a binding contract) or whether an applicant receives income from any public assistance program, except as otherwise provided in the section. The wording of paragraphs (ii) and (iii) emphasizes the distinction between the consideration of age in empirically derived credit systems and judgmental systems. In a judgmental system, a creditor is permitted to consider an applicant's age and whether an applicant's income derives from any public assistance program, but only for the purpose of determining a pertinent element of creditworthiness. A creditor may use age itself as a predictive variable in a credit scoring system, but only if such system is a demonstrably and statistically sound, empirically derived system. Paragraph (iv) is based on section 701 (b)(4) of the amended Act and provides that, in any system of evaluating creditworthiness, a creditor may consider the age of an elderly applicant when age is used to favor the applicant.

With respect to § 202.6(b)(3), the Board has inserted language, which appears in existing Regulation B, to make clear that creditors are barred from considering statistics relating to childbearing only in connection with evaluating creditworthiness. Thus, for example, a creditor may consider such statistics in connection with marketing research.

Section 202.6(b)(4) is identical to the corresponding provision in the November proposal.

Section 202.6(b)(5) has been adopted as it appeared in the November proposal, except for the addition of annuity, pension, and other retirement income as income that creditors may not discount or exclude from consideration. This subsection corresponds to §§ 202.5(d)(2) and 202.5(e) of existing Regulation B.

Section 202.6(b)(6) corresponds to § 202.5(j) of the existing regulation, and is unchanged from the November proposal, except for the reinstatement of the inadvertent error defense and the phrase "contractually liable," which appear in the existing regulation. The words "when available" in paragraphs (i) and (iii) refer to the fact that such credit history may not always be available to a creditor. A creditor is required to consider such credit history only "to the extent that a creditor considers credit history in evaluating creditworthiness of similarly qualified applicants for a similar type and amount of credit."

Section 202.6(b)(7) has been adopted without change from the November proposal. It provides that a creditor may consider an applicant's immigration status, whether the applicant is a permanent resident of the United States, and whatever additional information is necessary to ascertain rights and remedies regarding repayment.

Section 202.6(c)—State property laws. This section incorporates the provisions of § 705(b) of the Act and is substantially identical to § 202.5(1) of the existing regulation. The Board has adopted it without change from the November proposal.

SECTION 202.7—RULES CONCERNING EXTENSIONS OF CREDIT

Section 202.7(a)—Individual accounts. This section is identical to the November proposal. It corresponds to § 202.4(b) of the existing regulation.

Section 202.7(b)—Designation of name. Section 202.7(b) has been adopted without change from the November proposal and is substantially the same as § 202.4(e) of existing Regulation B. The section prohibits a creditor from requiring an applicant to open and maintain an account in a spouse's name, although an applicant may use such a name if desired. The provision permits an applicant to use a birth-given first name with a birth-given surname, spouse's surname, or a combined or hyphenated surname.

This provision should not be interpreted as requiring creditors to redesign systems in order to handle occasional requests for combined names or other names that contain more than the usual number of characters.

Section 202.7(c)—Action concerning existing open end accounts. Section 202.7(c)(1) is identical to the November proposal and is derived from § 202.5(i)(1) of existing Regulation B. It prohibits creditors from taking certain actions on the basis of an applicant's retirement, attainment of a certain age, change of name, or change of marital status.

Section 202.7(c)(2) is substantially similar to the November proposal and is derived from § 202.5(i)(2) of existing Regulation B. It permits a creditor to require a reapplication on the basis of a change in marital status in certain instances where open end credit was granted to an applicant based on income earned by the applicant's spouse. The November proposal, unlike existing Regulation B, would have permitted creditors to require reapplication in those instances on the basis of a change in name as well as on the basis of a change in marital status. Comments pointed out that a change in name does not always indicate a change in marital status, and that only the latter is a cause for possible concern about changed financial circumstances. In addition, women are more likely to change their names upon change in marital status than are men, so that the November version of this provision might disfavor women. Therefore, the Board has decided to delete the words "name or" before "marital status" in § 202.7(c)(2).

Section 202.7(d)—Signature of spouse or other person. Section 202.7(d) corresponds to § 202.7 of existing Regulation B, governing requests for the signature of a spouse or other person. The section has been revised for clarity.

Section 202.7(d)(1) states the general rule contained in § 202.7(a) of the existing regulation, and in the first sentence of § 202.7(d)(1) of the November proposal. It prohibits a creditor from requiring the signature of a spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the credit requested.

The words "or other person, other than a joint applicant" have been added to the November version to accomplish two objectives. The addition of the first part of the phrase makes clear that creditors may not discriminate in imposing signature requirements upon applicants, whether or not the additional signature required is that of the applicant's spouse. In this respect, the addition merely continues the rule of existing § 202.7(a). The second part of the phrase has been added to underscore the fact that where two persons voluntarily apply jointly for credit, a creditor may obtain the signature of the joint applicant.

The remainder of § 202.7(d) comprises exceptions to, and elaborations on, the general rule. Section 202.7(d)(2) relates to unsecured credit where property is relied upon. This subsection includes the second sentence of § 202.7(d)(1) of the November proposal, concerning the factors that creditors may consider in evaluating the property relied upon, with new material that explains that the creditor may require, if evaluation indicates that it is necessary, a signature on any instrument needed to gain access to the property in the event of default. For example, such an instrument might be a waiver of dower rights.

Section 202.7(d)(3) relates to unsecured credit in community property States, and is substantially the same as § 202.7(d)(4) of the November proposal and § 202.7(b) of the existing regulation. The provision adopted by the Board differs from the November proposal in that the criterion defining instruments on which creditors may require signatures is changed from "necessary" to "necessary, or reasonably believed by the creditor to be necessary, under applicable State law." This change is in response to comments indicating the difficulty in some States of determining what instruments are legally required in some instances. It conforms the standard for this subsection to that established for secured credit in existing Regulation B, and for all categories (unsecured relying on property, unsecured in community property State, and secured) in the final regulation.

Section 202.7(d)(4) relates to secured credit, and corresponds to § 202.7(d)(2) of the November proposal and § 202.7(c) of the existing regulation. The phrase "and the applicant's spouse has or will have an interest in the property being offered as security," which appeared in the November proposal, has been deleted because some commentators cited State laws under which, even though a person's spouse has no interest in property owned by the person, the spouse's signature is required to pass clear title. The words "or other person" have been added after "spouse" to take account of the situation where a person other than the applicant's spouse holds an interest in the property being offered as security. Finally, "necessary" has been changed to "necessary, or reasonably believed * * *," as explained above with reference to § 202.7(d)(3).

Section 202.7(d)(5) relates to credit in connection with which the personal liability of a person other than the applicant (and other than a joint applicant or applicants, if any) has been found necessary. An example, given in footnote 10, is the situation where an applicant requests individual credit and relies on income of another person. This subsection corresponds to § 202.7(d)(3) of the November proposal. Aside from the addition of footnote 10, it differs from the November proposal in two respects. First, "an additional party" replaces "a party other than the applicant" to indicate that, where persons apply voluntarily for joint credit, the restrictions stated in this paragraph do not apply. For example, if a person and his or her spouse apply for joint credit, the creditor does not violate Regulation B by obtaining the signature of the spouse. Second, a new sentence has been added, providing that guarantors, cosigners, and the like have the same protection under § 202.7(d) as do applicants. For example, a creditor cannot require the spouse of a guarantor to cosign the guarantee, unless it could require such signature if the guarantor were an applicant for the credit being extended.

Section 202.7(e)—Insurance. The provision is similar to the November proposal. It states that differences in rates and terms of credit-related insurance provided to different applicants, and providing insurance to some applicants but not to others, do not constitute violations of Regulation B. In response to public comment, the Board has added a proviso prohibiting creditors from denying or terminating credit because credit life, health, accident, or disability insurance is unavailable due to the applicant's age. This proviso does not prevent creditors from varying the terms and conditions of credit because of the unavailability, rates, and terms of insurance.

The last sentence of the section, which is also an addition to the November proposal, states that creditors do not violate Regulation B by asking applicants about age, sex, or marital status in connection with insurance applications.

SECTION 202.8—SPECIAL PURPOSE CREDIT PROGRAMS

In response to comments, the Board has made several substantive and technical changes.

Section 202.8(a)—Standards for programs. Section 202.8(a) has been made subject to the two general rules contained in new § 202.8(b) discussed below. Reversing the position taken in the November proposal, the denial of credit to an applicant under a special purpose credit program constitutes adverse action, triggering the notice provisions of § 202.9. The Board has changed this section for two reasons. First, the revised provision more closely follows the language of 701(c) of the Act. Second, while § 202.8 programs are accorded special treatment by the Act and the regulation, the Board believes that the intended beneficiaries of those programs should have the same right as other applicants to receive a notice of action taken and a statement of reasons for denial.

Section 202.8(a)(1) deals with credit programs expressly authorized by Federal or State law. Despite numerous requests, the Board has not listed any programs that qualify under this provision. A great number of programs may satisfy the requirements of § 202.8(a)(1), but any attempt to list the programs that do qualify would involve a detailed review of the facts in each case and would require an analysis of numerous Federal and State statutes, regulations, and judicial and administrative decisions and interpretations. Therefore, creditors will have to determine, in conjunction with any government agency involved in the program, whether a particular program meets the statutory requirements enunciated in Section 701(c) of the Act.

Section 202.8(a)(2) concerns programs where the credit is offered by not-for-profit organizations. The only change made in this section is the substitution of the phrase "offered by" for the terms "administered by." This substitution was made in response to comments to avoid any misunderstanding

that a program offered by a not-for-profit entity (e.g., a trust) may be administered by a for-profit organization (e.g., a commercial bank).

Section 202.8(a)(3) covers programs involving for-profit organizations. It has been changed in two respects. First, language regarding such an organization's participation in a program has been added to clarify the point that a for-profit organization may satisfy the requirements of this section by extending credit pursuant to a program sponsored by a not-for-profit organization or by another for-profit organization. For example, a student loan program sponsored by a foundation where the loans are made by commercial banks or a program established by a for-profit corporation where economically disadvantaged employees are assisted in obtaining credit from local creditors would qualify.

The second change involved incorporating subsection (a)(3)(iii) into new § 202.8(b)(2).

Section 202.8(b)—*Applicability of other rules.* This section is new. The first paragraph has been added to make explicit what was implied in the previous proposals, namely, that all of the other provisions of the regulation apply to special purpose credit programs to the extent that those provisions are not inconsistent with the specific terms of § 202.8.

The second paragraph incorporates the provisions of § 202.8(a)(3)(iii) of the November proposal and applies them not only to programs involving for-profit organizations (as was the case in the November proposal), but also to programs offered by not-for-profit organizations.

Section 202.8(b)(2) provides that a creditor may determine eligibility for a special purpose credit program using one or more of the prohibited bases; but, once the characteristics of the class of beneficiaries are established, a creditor may not discriminate among potential beneficiaries on a prohibited basis. For example, a creditor might establish a credit program for impoverished American Indians. If the program met the requirements of § 202.8(a), the creditor could refuse credit to non-Indians but could not discriminate among Indian applicants on the basis of sex or marital status.

Sections 202.8 (c) and (d)—*Special rule concerning requests and use of information and Special rule in the case of financial need.* Except for re-lettering, the only modification in these sections is that the phrase "or will be" has been added to the first sentence of each to underscore the point that new special purpose credit programs may be established after the effective date of the regulation. Both sections permit creditors to seek information otherwise barred by the regulation in order to determine eligibility for special purpose credit programs.

SECTION 202.9—NOTIFICATIONS

This section encompasses all of the requirements for the notices that creditors must provide to applicants, except for the credit history notice required by § 202.10(b). These requirements appear in §§ 202.4(d) and 202.5(m) of existing Regulation B.

Section 202.9(a)—*Notification of action taken, ECOA notice, and statement of specific reasons.* This section sets forth the requirements for the content and timing of notices and explains to whom and by whom notices are to be given. Section 202.9(a)(1) requires that the notice of action taken be given within 30 days after a creditor receives a completed application, or within a similar period after taking adverse action. In response to public comment, the Board has added subsection (iv) to § 202.9(a)(1). It provides that a creditor shall notify an applicant of action taken within 90 days after an applicant has been notified by the creditor of an offer to grant credit other than in substantially the amount or in substantially the terms requested by an applicant and the applicant has not expressly accepted or used the credit offered.

Section 202.9(a)(2) specifies the content of the notification when adverse action is taken. The notification must contain the statement of action taken required by existng § 202.5(m)(1), the ECOA notice required by existing § 202.4 (d), and the statement of specific reasons for adverse action (or disclosure of the right to such a statement) similar to the statement required by present § 202.5 (m)(2). The revised regulation requires the notices to be given together because the Board believes that public understanding of the notices will be thereby enhanced. Under the revised regulation, the ECOA notice need be given only when adverse action is taken. A creditor may continue to provide the ECOA notice at the application stage, as long as the notice is also given when adverse action is taken.

Section 202.9(a)(3) provides that, if more than one applicant is involved in a credit transaction, the notification shall be provided to the primary applicant where one is readily apparent.

Section 202.9(a)(4) provides that, if a transaction involves more than one creditor and the applicant is offered and accepts credit from any one of them, no creditor need furnish a notification of adverse action, the ECOA notice, reasons for denial, or disclosure of the right to such reasons. The creditor extending the credit will, of course, give notification of approval by implication, since the applicant will have received the money, property, or services requested. If no credit is granted, or if credit is offered that is not acceptable to the applicant, then each creditor must give the required notification. For example, if an auto dealer "shops" an appliaction to several banks and one bank extends credit, the provision requires only that bank to provide the notice of action taken. However, if none of the banks offers credit or if the credit offered is not acceptable to the applicant, then all the banks must give the required notices, as must the dealer if it is a "creditor" in the transaction.

Where all creditors in a multiple creditor situation are required to furnish the notices, they may arrange for a joint notification to be provided through one party, provided that such a joint notification identifies each creditor that considered the application. Disclosure of each creditor's identity, however, is required only when the notification is provided by a third party. A creditor that directly furnishes the required notification to a rejected applicant need not identify other creditors to whom the application was "shopped."

The last sentence of § 202.9(a)(4) insulates a creditor from liability for acts or omissions of a third party in those cases where the third party agrees to supply the notice, provided that the creditor follows reasonable procedures to insure compliance.

Section 202.9(b)—Form of ECOA notice and statement of specific reasons. This section is identical to the November proposal. It is drawn from existing §§ 202.4(d) and 202.5(m)(2) and (3).

Unlike existing § 202.4(d), which requires creditors to use the sample ECOA notice verbatim, § 202.9(b)(1) provides that substantial adherence to the sample form constitutes compliance. In addition, this section permits inclusion in the notice of a reference to a similar State statute or regulation and State enforcement agency.

The text of the notice is identical to that contained in existing § 202.4(d), except that the additional bases of prohibited discrimination have been added and, in the last sentence, the word "creditor" is used, rather than a blank requiring a description of the particular type of creditor. The latter change will facilitate the giving of notices by third parties on behalf of several different types of creditors.

Numerous public comments strongly urged the Board to amend § 202.9(b)(2) to allow creditors to state as the reason for adverse action the fact that an applicant has "failed to achieve the qualifying score on the creditor's credit scoring system." The commentators argued that such a statement is the only truthful, accurate statement of the reasons for adverse action under a statistically sound credit scoring system.

Section 701(d)(3) of the amended Act provides that "a statement of reasons meets the requirements of this section only if it contains the 'specific' reasons for the adverse action taken." (Emphasis added) The Board is of the opinion that a statement that an applicant has failed to achieve the qualifying score on the creditor's credit scoring system would not satisfy the language or intent of the statute. A statement that the applicant failed to achieve a qualifying score is perhaps the ultimate reason for decline, but is itself a conclusion. Such a statement does not reveal the more funda-

mental reasons why the applicant was declined.

The Board believes that the intent of the Congress was to require creditors to provide applicants with a more meaningful explanation of denial than a statement that denial was caused by a failure to achieve a qualifying score. The Senate Report on the 1976 Amendments states "* * * knowing the reasons for adverse action will, over time, have a very beneficial educational effect on the credit-consuming public and a very beneficial competitive effect on the credit marketplace." (S. Rep. No. 589, 94th Cong., 2d Sess. (1976), p. 7.)

The knowledge that one failed to achieve a minimum score can have little educational value. Providing more fundamental reasons for adverse action, as contemplated by Regulation B, will enhance consumers' awareness of the factors that are considered important by credit-granters and often will enable an applicant to correct erroneous information or supplement information in the application.

Section 202.9(b)(2) provides a suggested form for the statement of specific reasons for adverse action. The form includes a section regarding disclosure of the use of information that was obtained from an outside source, so that a creditor could also satisfy the requirements of the Fair Credit Reporting Act through proper use of this form. The form also contains a section for the ECOA notice.

Section 202.9(c)—Oral notifications. This section is drawn from section 701 (d)(5) of the amended Act and is identical to the November proposal.

Section 202.9(d)—Withdrawn applications. This section is substantially similar to the November proposal.

Section 202.9(e)—Failure of compliance. This section is identical to the November proposal.

Section 202.9(f)—Notification. This section defines what constitutes notification. It provides that a creditor notifies an applicant when a writing addressed to the applicant is delivered or mailed to the applicant's last known address or, in the case of an oral notification, when the creditor communicates with the applicant.

SECTION 202.10—FURNISHING OF CREDIT INFORMATION

Although numerous changes have been made in this section, the substantive requirements remain substantially the same as the November proposal and existing Regulation B, as amended on September 2, 1976 (41 FR 38759).

Section 202.10(a) requires the designation and furnishing of information on accounts established on or after June 1, 1977 to reflect the participation of each spouse. The words "that furnishes credit information" were added after "creditor" at the beginning of this subsection and § 202.10(b) to make clear that Regulation B does not require creditors to provide credit information to others. Furthermore, if a creditor does not furnish credit information to others, it need not comply with the designation requirements of § 202.10. A creditor that chooses to furnish credit information, however, must do so as prescribed by this section.

Several comments requested clarification of the term "primarily liable," which appears throughout this section but nowhere else in the regulation. "Primarily liable" was substituted for "contractually liable" in the November proposal in order to exclude guarantors or sureties from the coverage of the section. The return to "contractually liable," a defined term, and the addition of the words "other than as guarantors, sureties, endorsers, or similar parties" is intended to clarify the coverage of the section.

Footnote 12 was added at the end of § 202.10(a)(3) to clarify creditors' responsibilities when new parties assume responsibility for payment of a debt. If a creditor that is furnishing credit information on an account learns that a new party or parties have assumed responsibility for payment of the debt, the creditor has the responsibility to determine whether the assumptors are married to each other and, therefore, entitled to have information furnished on the account as required by § 202.10(a) (2) and (3). If the new parties are so entitled, credit information should be reported in the names of the new parties. The regulation does not require the creditor to continue furnishing information in the names of the former parties.

Section 202.10(a)(2) of the November proposal would have required creditors to furnish information in the name of each spouse about whom information was requested, except when furnishing information to consumer reporting agencies. When furnishing information to consumer reporting agencies, creditors would have been required to do so in a manner that would enable the agency to provide access to the information about the account in the name of each spouse.

The approach of the November proposal was based upon the assumption that information is supplied by creditors to consumer reporting agencies without a request for information about a specific account. Comments revealed that, while this is generally true, some creditors furnish information to consumer reporting agencies only in response to a request about a specific account. Therefore, creditors responding to a request from a consumer reporting agency for information about one participant on a joint account, by furnishing information about both spouses, might be in violation of the Fair Credit Reporting Act.

Accordingly, § 202.10(a)(2) of the November proposal was redrafted. Under new subsections (a)(2) and (a)(3), the manner in which information about an account designated under this section must be furnished depends upon whether it is furnished on a routine basis to consumer reporting agencies or pursuant to a request for information on a specific account. In the former situation, it must be provided in a manner that will enable an agency to provide access to the information about the account in the name of each spouse, and in the latter situation in the name of the spouse about whom the information is requested.

Several commentators requested clarification of the requirement in § 202.10 (a)(2) of the November proposal that creditors "report the designation" of accounts. Because of the confusion caused by this term and its doubtful value in furthering the purpose of the section, it has been deleted from the regulation.

Section 202.10(b)—Accounts established prior to June 1, 1977. There are two principal ways of complying with the designation and reporting requirements with respect to accounts established prior to June 1, 1977. First, a creditor may review its records and designate the files of married account holders. This is the procedure envisioned by § 202.10(b)(1). In the alternative, a creditor that lacks information regarding use or liability for accounts or does not wish to undertake the search of its records necessary to comply with subsection (1) may mail to all married account holders or to all account holders the notice entitled "Credit History for Married Persons."

In some cases, a creditor may possess the information about use and liability for accounts necessary for designation and reporting about some accounts but not for others. The creditor may use both methods described above, that is, mail the notice to those accounts for which it lacks the necessary information and designate automatically those for which it possesses the information.

The words "one copy of" were added before "notice" in subsection (2) to make it clear that only one notice need be sent to each account for which any billing statement will be sent between June 1 and October 1, 1977.

Footnote 14 allows creditors to delete any reference to "use" of an account when notices are sent to closed end account holders. This change was intended to avoid the confusion that might be caused when consumers holding accounts on which there can be no users received the notice.

The words "at any time prior to October 2, 1977" were added in subsection (b)(2) to allow creditors sending billing statements monthly, regardless of activity on accounts, to begin sending the notices before June 1.

A sentence added at the end of subsection (b)(2) allows creditors to combine the alternate methods of compliance provided in subsection (b) by designating those accounts on which the creditor has the information needed to do so and sending the notice where it does not.

The notice entitled "Credit History For Married Persons" was the subject of several comments requesting clarification of the language of the text. As a result, the word "hold" before "the account" was deleted, and the phrase "are responsible for" was added. As used in the notice, responsibility for an account is the equivalent of contractual liability. No additional reporting requirements are imposed by this change.

With respect to the notice itself, comments reflected a general lack of understanding of the phrase "paid for." Since the phrase merely restated the idea that,

if both spouses share contractual liability on an account, they are entitled to share the credit history of that account, the Board has decided to delete the phrase.

The word "complete" was substituted for "fill out" in the notice to make it clear to consumers that all information requested in the notice (typed or printed name, signature and account number) must be supplied before any change in credit information reporting will be made.

The notice in the November proposal ended with the applicant's request to furnish information in the names of both spouses "as follows." The words "as follows" were deleted to make clear that consumers may not request a change in the name in which the account is currently carried. A consumer may only add a name to the account.

In response to comments expressing concern that one spouse might deny the other spouse a credit history, one signature line has been deleted at the end of the notice. The words "of either spouse" have been added after "signature" under the remaining line to indicate that either spouse may authorize the change in the manner in which information is furnished on the account.

Although several comments expressed concern that, without the signature of both spouses, a spouse could request a change even when not entitled to share the credit history, the Board believes that this potential problem is outweighed by the necessity to ensure that all married account holders have access to the credit histories that they have established.

Section 202.10(c) describes how creditors must respond to requests to change the manner in which information is reported on an account. The words "properly completed request" were substituted for "written request" to indicate that creditors need respond only to requests that contain all information necessary to make the change on an account. Language was also added to make clear that a creditor need not change the name in which an account is carried pursuant to a request under this section.

Because the Board has determined that one signature is sufficient to authorize a change in the manner in which information on an account is furnished, and that requiring two signatures might frustrate the intent of the section, the provision allowing creditors to verify a request to provide separate credit histories by signature or otherwise has been deleted.

SECTION 202.11—RELATION TO STATE LAW

Section 202.11(a)—*Inconsistent State laws.* Section 202.11(a) states the general standard for preemption of State law and is identical to the November proposal. It is derived from section 705 (f) of the amended Act.

Section 202.11(b)—*Preempted provisions of State law.* Subsection (b)(1) describes provisions of State law that are preempted by the Act and Regulation B.

The November proposal would have preempted provisions of State law requiring an applicant's spouse to assume liability for debts incurred by an applicant who has established independent creditworthiness. This guideline, which was intended to preempt State necessaries laws and family expense statutes in limited situations, has been deleted; however, creditors in States where such laws exist must continue to observe the informational bar relating to marital status in § 202.5.

Paragraph (ii) continues the preemption of those provisions of State small loan laws that forbid the separate extension of credit to both parties to a marriage. No change from the treatment of these laws in existing Regulation B is intended.

Paragraph (v) of § 202.11(b)(1) is identical to § 202.11(b)(6) of the November proposal except that the words "or administer" have been added to preempt State laws that forbid either the establishment or implementation of special purpose credit programs as defined by § 202.8.

The Board has deleted subsection (b)(7) of the November proposal, which would have preempted State laws that prohibit inquiries used in a model application form set forth in Appendix B of the regulation, because these laws may be more protective of an applicant. Creditors using the model forms must conform them to informational prohibitions of applicable State laws.

Subsection (b)(2) is new. It requires creditors to request a formal Board interpretation when seeking a determination as to whether a State law is inconsistent with the Act and regulation. The subsection incorporates § 202.1(d) as that section relates to formal Board interpretations. The factors upon which such a determination will be based are set forth in subsection (c) of Supplement I. Notice of a determination will be provided as specified in subsection (e)(1) of Supplement I relating to revocation, as modifications are also incorporated by reference.

The remainder of § 202.11(b) is identical to the November proposal, except that the conjunction "and" that appeared in subsection (b) has been changed to "or" in subsection (b)(1)(iv) to correct an inadvertent drafting error.

Section 202.11(c)—*Finance charges and loan ceilings.* Section 202.11(c) restates § 202.8(b) of existing Regulation B without substantive change. Footnote 10 in § 202.11(c) of the November proposal provided an example of how the regulation affected loan ceilings and finance charges. Because commentators found it confusing, the footnote has been deleted.

Section 202.11(d)—*State and Federal laws not affected.* Subsection (d) saves certain types of laws from preemption even though they may fall within one of the categories of State laws preempted by subsection (b)(1). The coverage of the section has been broadened by adding the word "Federal" before "banking regulations" and by deleting the word "community" before "property." Accordingly, Federal and State banking regulations directed only towards insuring the solvency of financial institutions and State property laws are unaffected by the Act and Regulation B.

Section 202.11(e) — *Exemption for State regulated transactions.* The standards for exemption of State regulated transactions in § 202.11(e) are identical to those in the November proposal, except that under this provision a violation of an exempted State law is a violation of the Federal law only to the extent that it imposes requirements also imposed by the Act or Regulation B. In response to comments, the Board has decided to reinstate the provisions of § 202.11(d)(3)(ii) of the July proposal as the more appropriate way to handle enforcement of exempted State equal credit laws.

SECTION 202.12—RECORD RETENTION

Section 202.12(a)—*Retention of prohibited information.* This section is identical to the November proposal.

Section 202.12(b)—*Preservation of records.* This section is substantially similar to the November proposal.

Section 202.12(c)—*Failure of compliance.* In response to public comment, the Board has added an "inadvertent error" provision to § 202.12. This section provides that a failure to comply with § 202.12 shall not constitute a violation when caused by an "inadvertent error." The term "inadvertent error" is defined in § 202.2(s).

SECTION 202.13—INFORMATION FOR MONITORING PURPOSES

The Board has determined to adopt a simple notation requirement applicable to all creditors that extend credit for the purpose of purchasing residential real property. The resulting data are intended to assist the agencies responsible for enforcing the amended Act, and to assist the Department of Housing and Urban Development in exercising its responsibilities under Title VIII of the Civil Rights Act of 1968.

This section is limited to applications for loans for the purpose of purchasing residential real property. The Board believes this limitation is appropriate for several reasons. First, a home is in most cases the single most important purchase a consumer makes, and access to mortgage credit has a profound impact on the quality of life. Second, there have been frequent and serious allegations of discrimination in this area of credit. Third, the per unit cost of notation will be small in relation to the dollar amount of applications for mortgage credit.

A number of commentators urged the Board to require notation of race/national origin, etc., in connection with secured and unsecured home improvement loans on the ground that home improvement loans are covered by the Home Mortgage Disclosure and Fair Housing Acts. The Board has determined not to broaden the category of applications subject to a notation requirement for several reasons. There is no universally accepted understanding of what constitutes a home improvement loan. In addition, the Board is of the opinion that the effectiveness of racial notation as an enforcement tool should be evaluated before this requirement is applied to other types of applications.

This section requires creditors to ask that applicants respond to questions about age, sex, marital status, and race/national origin. The term "race/national origin" is used instead of "race" because certain of the categories required to be used describe national origin rather than race.

The racial categories to be used are categories that are already widely in use in the employment field, plus one additional category, "Other (Specify)," to permit an applicant to supply a different description of his or her race/national origin.

The regulation gives creditors the option of placing questions regarding personal characteristics on the creditor's application form or on a separate form. On the Board's Appendix B model form for residential loan applications, to be published in the near future, the questions will appear on the form itself.

Creditors are not required to supply information about personal characteristics if an applicant declines to do so. The provision requires creditors to inform applicants that answering the questions is voluntary, and that the information is sought by the Federal government for the purpose of monitoring compliance with Federal anti-discrimination laws.

In response to comments from agencies charged with responsibility for administrative enforcement of the Act, the Board has added a new subsection (d), which explains that any monitoring program required by such an agency may be substituted for the requirements imposed by Regulation B. This provision should prevent duplication as well as facilitate experimentation.

It was also suggested that the Board add to Regulation B a requirement that creditors tabulate the responses to the questions about race/national origin, etc. Since creditors affected by § 202.13 are supervised by different enforcement agencies, the Board has determined that to impose a uniform tabulation requirement is not appropriate. The Board expects that the enforcement agencies will devise their own procedures for collection and use of the data, acting under the authority granted by section 704(d) of the Act.

SUPPLEMENT I

Supplement I, which follows Appendix A, sets forth the procedure under which a State may apply for an exemption for any class of transactions from the provisions of sections 701 and 702 of the Act. Applications must be signed by the Governor, Attorney General, or other official of the State having primary enforcement or interpretive responsibilities under the State law in question, and must include a copy of the full text of the State law, a comparison of sections 701 and 702 of the Act with corresponding provisions of the State law, verification of the existence of adequate enforcement mechanisms, and a statement explaining how any differences between the State and Federal law do not result in a diminution of protection to applicants.

Footnote 1 is new. It provides that any reference to State law in Supplement I includes a reference to State regulations implementing the State law and formal interpretations of the law or regulation by a court or authorized agency of that State.

Footnote 3 is also new and provides that any reference to sections 701 and 702 of the Act includes a reference to the corresponding and implementing provisions of the regulation, as well as any formal Board or official staff interpretations of these sections. Also included in any reference to sections 701 and 702 are §§ 705 (a), (b), (c), and (d) of the Act and the corresponding provisions of Regulation B.

Part 202 is being revised as follows:

Sec.
202.1 Authority, scope, enforcement, penalties and liabilities, interpretations.
202.2 Definitions and rules of construction.
202.3 Special treatment for certain classes of transactions.
202.4 General rules prohibiting discrimination.
202.5 Rules concerning applications.
202.6 Rules concerning evaluation of applications.
202.7 Rules concerning extensions of credit.
202.8 Special purpose credit programs.
202.9 Notifications.
202.10 Furnishing of credit information.
202.11 Relation to State law.
202.12 Record retention.
202.13 Information for monitoring purposes.
Appendix A—Federal Enforcement Agencies.
Appendix B—Model Application Forms[1] [Reserved].
Supplement I—Procedures for State Exemption.

AUTHORITY: Sec. 703 of Equal Credit Opportunity Act, 15 U.S.C. 1691 et seq.

§ 202.1 Authority, Scope, Enforcement, Penalties and Liabilities, Interpretations.

(a) *Authority and scope.* This Part[14] comprises the regulations issued by the Board of Governors of the Federal Reserve System pursuant to Title VII (Equal Credit Opportunity Act) of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 et seq.). Except as otherwise provided herein, this Part applies to all persons who are creditors, as defined in § 202.2(1).

(b) *Administrative enforcement.* (1) As set forth more fully in section 704 of the Act, administrative enforcement of the Act and this Part regarding certain creditors is assigned to the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Board of Directors of the Federal Deposit Insurance Corporation, Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), Administrator of the National Credit Union Administration, Interstate Commerce Commission, Civil Aeronautics Board, Secretary of Agriculture, Farm Credit Administration, Securities and Exchange Commission, and Small Business Administration.

(2) Except to the extent that administrative enforcement is specifically committed to other authorities, compliance with the requirements imposed under the Act and this Part will be enforced by the Federal Trade Commission.

(c) *Penalties and liabilities.* (1) Sections 706(a) and (b) of the Act provide that any creditor who fails to comply with any requirement imposed under the Act or, pursuant to section 702(g), this Part is subject to civil liability for actual and punitive damages in individual or class actions. Pursuant to section 704 of the Act, violations of the Act or, pursuant to section 702(g), this Part constitute violations of other Federal laws that may provide further penalties. Liability for punitive damages is restricted by section 706(b) to non-governmental entities and is limited to $10,000 in individual actions and the lesser of $500,000 or one percent of the creditor's net worth in class actions. Section 706(c) provides for equitable and declaratory relief. Section 706(d) authorizes the awarding of costs and reasonable attorney's fees to an aggrieved applicant in a successful action.

(2) Section 706(e) relieves a creditor from civil liability resulting from any act done or omitted in good faith in conformity with any rule, regulation, or interpretation by the Board of Governors of the Federal Reserve System, or with any interpretations or approvals issued by a duly authorized official or employee of the Federal Reserve System, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or otherwise determined to be invalid for any reason.

(3) As provided in section 706(f), a civil action under the Act or this Part may be brought in the appropriate United States district court without regard to the amount in controversy or in any other court of competent jurisdiction within two years after the date of the occurrence of the violation or within one year after the commencement of an administrative enforcement proceeding or a civil action brought by the Attorney General within two years after the alleged violation.

(4) Section 706 (g) and (h) provide that, if the agencies responsible for administrative enforcement are unable to obtain compliance with the Act or, pursuant to section 702(g), this Part, they may refer the matter to the Attorney General. On such referral, or whenever the Attorney General has reason to believe that one or more creditors are engaged in a pattern or practice in violation of the Act or this Part, the Attorney General may bring a civil action.

[1] The Appendix B forms will be approved by the Board and published in the FEDERAL REGISTER in the near future.

[14] As used herein, the words "this Part" mean Regulation B, 12 CFR Part 202.

(d) *Interpretations.* (1) A request for a formal Board interpretation or an official staff interpretation of this Part must be addressed to the Director of the Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Each request for an interpretation must contain a complete statement, signed by the person making the request or a duly authorized agent, of all relevant facts of the transaction or credit arrangement relating to the request. True copies of all pertinent documents must be submitted with the request. The relevance of such documents must, however, be set forth in the request, and the documents must not merely be incorporated by reference. The request must contain an analysis of the bearing of the facts on the issues and must specify the pertinent provisions of the statute and regulation. Within 15 business days of receipt of the request, a substantive response will be sent to the person making the request, or an acknowledgment will be sent that sets a reasonable time within which a substantive response will be given.

(2) Any request for reconsideration of an official staff interpretation of this Part must be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, within 30 days of the publication of such interpretation in the FEDERAL REGISTER. Each request for reconsideration must contain a statement setting forth in full the reasons why the person making the request believes reconsideration would be appropriate, and must specify and discuss the applicability of the relevant facts, statute, and regulations. Within 15 business days of receipt of such request for reconsideration, a response granting or denying the request will be sent to the person making the request, or an acknowledgment will be sent that sets a reasonable time within which such response will be given.

(3) Pursuant to section 706(e) of the Act, the Board has designated the Director and other officials of the Division of Consumer Affairs as officials "duly authorized" to issue, at their discretion, official staff interpretations of this Part. This designation shall not be interpreted to include authority to approve particular creditors' forms in any manner.

(4) The type of interpretation issued will be determined by the Board and the designated officials by the following criteria:

(i) Official Board interpretations will be issued upon those requests that involve potentially controversial issues of general applicability dealing with substantial ambiguities in this Part and that raise significant policy questions.

(ii) Official staff interpretations will be issued upon those requests that, in the opinion of the designated officials, require clarification of technical ambiguities in this Part or that have no significant policy implications.

(iii) Unofficial staff interpretations will be issued where the protection of § 706(e) of the Act is neither requested nor required, or where time strictures require a rapid response.

§ 202.2 Definitions and Rules of Construction.

For the purposes of this Part, unless the context indicates otherwise, the following definitions and rules of construction shall apply: [1]

(a) *Account* means an extension of credit. When employed in relation to an account, the word *use* refers only to open end credit.

(b) *Act* means the Equal Credit Opportunity Act (Title VII of the Consumer Credit Protection Act).

(c) *Adverse action.* (1) For the purposes of notification of action taken, statement of reasons for denial, and record retention, the term means:

(i) A refusal to grant credit in substantially the amount or on substantially the terms requested by an applicant unless the creditor offers to grant credit other than in substantially the amount or on substantially the terms requested by the applicant and the applicant uses or expressly accepts the credit offered; or

(ii) A termination of an account or an unfavorable change in the terms of an account that does not affect all or a substantial portion of a classification of a creditor's accounts; or

(iii) A refusal to increase the amount of credit available to an applicant when the applicant requests an increase in accordance with procedures established by the creditor for the type of credit involved.

(2) The term does not include:

(i) A change in the terms of an account expressly agreed to by an applicant; or

(ii) Any action or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that account; or

(iii) A refusal to extend credit at a point of sale or loan in connection with the use of an account because the credit requested would exceed a previously established credit limit on the account; or

(iv) A refusal to extend credit because applicable law prohibits the creditor from extending the credit requested; or

(v) A refusal to extend credit because the creditor does not offer the type of credit or credit plan requested.

(d) *Age* refers only to natural persons and means the number of fully-elapsed years from the date of an applicant's birth.

(e) *Applicant* means any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may be contractually liable regarding an extension of credit other than a guarantor, surety, endorser, or similar party.

(f) *Application* means an oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested. The term does not include the use of an account or line of credit to obtain an amount of credit that does not exceed a previously established credit limit. A *completed application for credit* means an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral); provided, however, that the creditor has exercised reasonable diligence in obtaining such information. Where an application is incomplete respecting matters that the applicant can complete, a creditor shall make a reasonable effort to notify the applicant of the incompleteness and shall allow the applicant a reasonable opportunity to complete the application.

(g) *Board* means the Board of Governors of the Federal Reserve System.

(h) *Consumer credit* means credit extended to a natural person in which the money, property, or service that is the subject of the transaction is primarily for personal, family, or household purposes.

(i) *Contractually liable* means expressly obligated to repay all debts arising on an account by reason of an agreement to that effect.

(j) *Credit* means the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.

(k) *Credit card* means any card, plate, coupon book, or other single credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, or services on credit.

(l) *Creditor* means a person who, in the ordinary course of business, regularly participates in the decision of whether or not to extend credit. The term includes an assignee, transferee, or subrogee of an original creditor who so participates; but an assignee, transferee, subrogee, or other creditor is not a creditor regarding any violation of the Act or this Part committed by the original or another creditor unless the assignee, transferee, subrogee, or other creditor knew or had reasonable notice of the act, policy, or practice that constituted the violation before its involvement with the credit transaction. The term does not include a person whose only participation in a credit transaction involves honoring a credit card.

(m) *Credit transaction* means every aspect of an applicant's dealings with a creditor regarding an application for or an existing extension of credit, including, but not limited to, information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information;

[1] Note that some of the definitions in this Part are not identical to those in 12 CFR 226 (Regulation Z).

revocation, alteration, or termination of credit; and collection procedures.

(n) *Discriminate against an applicant* means to treat an applicant less favorably than other applicants.

(o) *Elderly* means an age of 62 or older.

(p) *Empirically derived credit system.* (1) The term means a credit scoring system that evaluates an applicant's creditworthiness primarily by allocating points (or by using a comparable basis for assigning weights) to key attributes describing the applicant and other aspects of the transaction. In such a system, the points (or weights) assigned to each attribute, and hence the entire score:

(i) Is derived from an empirical comparison of sample groups or the population of creditworthy and non-creditworthy applicants of a creditor who applied for credit within a reasonable preceding period of time; and

(ii) Determines, alone or in conjunction with an evaluation of additional information about the applicant, whether an applicant is deemed creditworthy.

(2) *A demonstrably and statistically sound, empirically derived credit system* is a system:

(i) In which the data used to develop the system, if not the complete population consisting of all applicants, are obtained from the applicant file by using appropriate sampling principles;

(ii) Which is developed for the purpose of predicting the creditworthiness of applicants with respect to the legitimate business interests of the creditor utilizing the system, including, but not limited to, minimizing bad debt losses and operating expenses in accordance with the creditor's business judgment;

(iii) Which, upon validation using appropriate statistical principles, separates creditworthy and non-creditworthy applicants at a statistically significant rate; and

(iv) Which is periodically revalidated as to its predictive ability by the use of approprate statistical principles and is adjusted as necessary to maintain its predictive ability.

(3) A creditor may use a demonstrably and statistically sound, empirically derived credit system obtained from another person or may obtain credit experience from which such a system may be developed. Any such system must satisfy the tests set forth in subsections (1) and (2); provided that, if a creditor is unable during the development process to validate the system based on its own credit experience in accordance with subparagraph (2)(iii) of this paragraph then the system must be validated when sufficient credit experience becomes available. A system that fails this validity test shall henceforth be deemed not to be a demonstrably and statistically sound, empirically derived credit system for that creditor.

(q) *Extend credit* and *extension of credit* mean the granting of credit in any form and include, but are not limited to, credit granted in addition to any existing credit or credit limit; credit granted pursuant to an open end credit plan; the refinancing or other renewal of credit, including the issuance of a new credit card in place of an expiring credit card or in substitution for an existing credit card; the consolidation of two or more obligations; or the continuance of existing credit without any special effort to collect at or after maturity.

(r) *Good faith* means honesty in fact in the conduct or transaction.

(s) *Inadvertent error* means a mechanical, electronic, or clerical error that a creditor demonstrates was not intentional and occurred notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(t) *Judgmental system of evaluating applicants* means any system for evaluating the creditworthiness of an applicant other than a demonstrably and statistically sound, empirically derived credit system.

(u) *Marital status* means the state of being unmarried, married, or separated, as defined by applicable State law. For the purposes of this Part, the term "unmarried" includes persons who are single, divorced, or widowed.

(v) *Negative factor or value*, in relation to the age of elderly applicants, means utilizing a factor, value, or weight that is less favorable regarding elderly applicants than the creditor's experience warrants or is less favorable than the factor, value, or weight assigned to the class of applicants that are not classified as elderly applicants and are most favored by a creditor on the basis of age.

(w) *Open end credit* means credit extended pursuant to a plan under which a creditor may permit an applicant to make purchases or obtain loans from time to time directly from the creditor or indirectly by use of a credit card, check, or other device as the plan may provide. The term does not include negotiated advances under an open end real estate mortgage or a letter of credit.

(x) *Person* means a natural person, corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(y) *Pertinent element of creditworthiness*, in relation to a judgmental system of evaluating applicants, means any information about applicants that a creditor obtains and considers and that has a demonstrable relationship to a determination of creditworthiness.

(z) *Prohibited basis* means race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); the fact that all or part of the applicant's income derives from any public assistance program, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act[*] or any State law upon which an exemption has been granted by the Board.

(aa) *Public assistance program* means any Federal, State, or local governmental assistance program that provides a continuing, periodic income supplement, whether premised on entitlement or need. The term includes, but is not limited to, Aid to Families with Dependent Children, food stamps, rent and mortgage supplement or assistance programs, Social Security and Supplemental Security Income, and unemployment compensation.

(bb) *State* means any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(cc) Captions and catchlines are intended solely as aids to convenient reference, and no inference as to the substance of any provision of this Part may be drawn from them.

(dd) Footnotes shall have the same legal effect as the text of the regulation, whether they are explanatory or illustrative in nature.

§ 202.3 Special Treatment for Certain Classes of transactions.

(a) *Classes of transactions afforded special treatment.* Pursuant to section 703(a) of the Act, the following classes of transactions are afforded specialized treatment:

(1) Extensions of credit relating to transactions under public utility tariffs involving services provided through pipe, wire, or other connected facilities if the charges for such public utility services, the charges for delayed payment, and any discount allowed for early payment are filed with, or reviewed or regulated by, an agency of the Federal Govern-

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[*] The first clause of the definition is not limited to characteristics of the applicant. Therefore, "prohibited basis" as used in this Part refers not only to the race, color, religion, national origin, sex, marital status, or age of an applicant (or of partners or officers of an applicant), but refers also to the characteristics of individuals with whom an applicant deals. This means, for example, that, under the general rule stated in § 202.4, a creditor may not discriminate against a non-Jewish applicant because of that person's business dealings with Jews, or discriminate against an applicant because of the characteristics of persons to whom the extension of credit relates (e.g., the prospective tenants in an apartment complex to be constructed with the proceeds of the credit requested), or because of the characteristics of other individuals residing in the neighborhood where the property offered as collateral is located. A creditor may take into account, however, any applicable law, regulation, or executive order restricting dealings with citizens or governments of other countries or imposing limitations regarding credit extended for their use.

The second clause is limited to an applicant's receipt of public assistance income and to an applicant's good faith exercise of rights under the Consumer Credit Protection Act or applicable State law.

ment, a State, or a political subdivision thereof;

(2) Extensions of credit subject to regulation under section 7 of the Securities Exchange Act of 1934 or extensions of credit by a broker or dealer subject to regulation as a broker or dealer under the Securities Exchange Act of 1934;

(3) Extensions of incidental consumer credit, other than of the types described in paragraph (a) (1) and (2) of this section:

(i) That are not made pursuant to the terms of a credit card account;

(ii) On which no finance charge as defined in § 226.4 of this Title (Regulation Z, 12 CFR 226.4) is or may be imposed; and

(iii) That are not payable by agreement in more than four installments;

(4) Extensions of credit primarily for business or commercial purposes, including extensions of credit primarily for agricultural purposes, but excluding extensions of credit of the types described in paragraphs (a) (1) and (2) of this section; and

(5) Extensions of credit made to governments or governmental subdivisions, agencies, or instrumentalities.

(b) *Public utilities credit.* The following provisions of this Part shall not apply to extensions of credit of the type described in paragraph (a)(1) of this section:

(1) Section 202.5(d)(1) concerning information about marital status;

(2) Section 202.10 relating to furnishing of credit information; and

(3) Section 202.12(b) relating to record retention.

(c) *Securities credit.* The following provisions of this Part shall not apply to extensions of credit of the type described in paragraph (a)(2) of this section:

(1) Section 202.5(c) concerning information about a spouse or former spouse;

(2) Section 202.5(d)(1) concerning information about marital status;

(3) Section 202.5(d)(3) concerning information about the sex of an applicant;

(4) Section 202.7(b) relating to designation of name, but only to the extent necessary to prevent violation of rules regarding an account in which a broker or dealer has an interest, or rules necessitating the aggregation of accounts of spouses for the purpose of determining controlling interests, beneficial interests, beneficial ownership, or purchase limitations and restrictions;

(5) Section 202.7(c) relating to action concerning open end accounts, but only to the extent the action taken is on the basis of a change of name or marital status;

(6) Section 202.7(d) relating to signatures of a spouse or other person;

(7) Section 202.10 relating to furnishing of credit information; and

(8) Section 202.12(b) relating to record retention.

(d) *Incidental credit.* The following provisions of this Part shall not apply to extensions of credit of the type described in paragraph (a)(3) of this section:

(1) Section 202.5(c) concerning information about a spouse or former spouse;

(2) Section 202.5(d)(1) concerning information about marital status;

(3) Section 202.5(d)(2) concerning information about income derived from alimony, child support, or separate maintenance payments;

(4) Section 202.5(d)(3) concerning information about the sex of an applicant to the extent necessary for medical records or similar purposes;

(5) Section 202.7(d) relating to signatures of a spouse or other person;

(6) Section 202.9 relating to notifications;

(7) Section 202.10 relating to furnishing of credit information; and

(8) Section 202.12(b) relating to record retention.

(e) *Business credit.* The following provisions of this Part shall not apply to extensions of credit of the type described in paragraph (a)(4) of this section:

(1) Section 202.5(d)(1) concerning information about marital status;

(2) Section 202.9 relating to notifications, unless an applicant, within 30 days after oral or written notification that adverse action has been taken, requests in writing the reasons for such action;

(3) Section 202.10 relating to furnishing of credit information; and

(4) Section 202.12(b) relating to record retention, unless an applicant, within 90 days after adverse action has been taken, requests in writing that the records relating to the application be retained.

(f) *Governmental credit.* Except for § 202.1 relating to authority, scope, enforcement, penalties and liabilities, and interpretation, § 202.2 relating to definitions and rules of construction, this section, § 202.4 relating to the general rule prohibiting discrimination, § 202.6(a) relating to the use of information, § 202.11 relating to State laws, and § 202.12(a) relating to the retention of prohibited information, the provisions of this Part shall not apply to extension of credit of the type described in paragraph (a)(5) of this section.

§ 202.4 General Rule Prohibiting Discrimination.

A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.

§ 202.5 Rules Concerning Applications.

(a) *Discouraging applications.* A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.

(b) *General rules concerning requests for information.* (1) Except as otherwise provided in this section, a creditor may request any information in connection with an application.[4]

(2) Notwithstanding any other provision of this section, a creditor shall request an applicant's race/national origin, sex, and marital status as required in § 202.13 (information for monitoring purposes). In addition, a creditor may obtain such information as may be required by a regulation, order, or agreement issued by or entered into with a court or an enforcement agency (including the Attorney General or a similar State official) to monitor or enforce compliance with the Act, this Part, or other Federal or State statute or regulation.

(3) The provisions of this section limiting permissible information requests are subject to the provisions of § 202.7(e) regarding insurance and § 202.8 (c) and (d) regarding special purpose credit programs.

(c) *Information about a spouse or former spouse.* (1) Except as permitted in this subsection, a creditor may not request any information concerning the spouse or former spouse of an applicant.

(2) A creditor may request any information concerning an applicant's spouse (or former spouse under paragraph (c)(2)(v) of this section) that may be requested about the applicant if:

(i) The spouse will be permitted to use the account; or

(ii) The spouse will be contractually liable upon the account; or

(iii) The applicant is relying on the spouse's income as a basis for repayment of the credit requested; or

(iv) The applicant resides in a community property State or property upon which the applicant is relying as a basis for repayment of the credit requested are located in such a State; or

(v) The applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested.

(3) A creditor may request an applicant to list any account upon which the applicant is liable and to provide the name and address in which such account is carried. A creditor may also ask the names in which an applicant has previously received credit.

(d) *Information a creditor may not request.* (1) If an applicant applies for an individual, unsecured account, a creditor shall not request the applicant's marital status, unless the applicant resides in a community property State or property upon which the applicant is relying as a basis for repayment of the credit requested are located in such a State.[5] Where an application is for other than individual, unsecured credit, a creditor may request an applicant's marital status. Only the terms "married," "unmarried," and "separated" shall be used, and a creditor may explain that the cate-

[4] This subsection is not intended to limit or abrogate any Federal or State law regarding privacy, privileged information, credit reporting limitations, or similar restrictions on obtainable information. Furthermore, permission to request information should not be confused with how it may be utilized, which is governed by § 202.6 (rules concerning evaluations of applications).

gory "unmarried" includes single, divorced, and widowed persons.

(2) A creditor shall not inquire whether any income stated in an application is derived from alimony, child support, or separate maintenance payments, unless the creditor appropriately discloses to the applicant that such income need not be revealed if the applicant does not desire the creditor to consider such income in determining the applicant's creditworthiness. Since a general inquiry about income, without further specification, may lead an applicant to list alimony, child support, or separate maintenance payments, a creditor shall provide an appropriate notice to an applicant before inquiring about the source of an applicant's income, unless the terms of the inquiry (such as an inquiry about salary, wages, investment income, or similarly specified income) tend to preclude the unintentional disclosure of alimony, child support, or separate maintenance payments.

(3) A creditor shall not request the sex of an applicant. An applicant may be requested to designate a title on an application form (such as Ms., Miss, Mr., or Mrs.) if the form appropriately discloses that the designation of such a title is optional. An application form shall otherwise use only terms that are neutral as to sex.

(4) A creditor shall not request information about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children. This does not preclude a creditor from inquiring about the number and ages of an applicant's dependents or about dependent-related financial obligations or expenditures, provided such information is requested without regard to sex, marital status, or any other prohibited basis.

(5) A creditor shall not request the race, color, religion, or national origin of an applicant or any other person in connection with a credit transaction. A creditor may inquire, however, as to an applicant's permanent residence and immigration status.

(e) *Application forms.* A creditor need not use written applications. If a creditor chooses to use written forms, it may design its own,[6] use forms prepared by another person, or use the appropriate model application forms contained in Appendix B. If a creditor chooses to use an Appendix B form, it may change the form:

(1) By asking for additional information not prohibited by this section;

(2) By deleting any information request; or

(3) By rearranging the format without modifying the substance of the inquiries; provided that in each of these three instances the appropriate notices regarding the optional nature of courtesy titles, the option to disclose alimony, child support, or separate maintenance, and the limitation concerning marital status inquiries are included in the appropriate places if the items to which they relate appear on the creditor's form. If a creditor uses an appropriate Appendix B model form or to the extent that it modifies such a form in accordance with the provisions of clauses (2) or (3) of the preceding sentence or the instructions to Appendix B, that creditor shall be deemed to be acting in compliance with the provisions of paragraphs (c) and (d) of this section.

§ 202.6 Rules Concerning Evaluation of Applications.

(a) *General rule concerning use of information.* Except as otherwise provided in the Act and this Part, a creditor may consider in evaluating an application any information that the creditor obtains, so long as the information is not used to discriminate against an applicant on a prohibited basis.[7]

(b) *Specific rules concerning use of information.* (1) Except as provided in the Act and this Part, a creditor shall not take a prohibited basis into account in any system of evaluating the creditworthiness of applicants.[8]

(2) (i) Except as permitted in this section, a creditor shall not take into account an applicant's age (*Provided*, That the applicant has the capacity to enter into a binding contract) or whether an applicant's income derives from any public assistance program.

(ii) In a demonstrably and statistically sound, empirically derived credit system, a creditor may use an applicant's age as a predictive variable, provided that the age of an elderly applicant is not assigned a negative factor or value.

(iii) In a judgmental system of evaluating creditworthiness, a creditor may consider an applicant's age or whether an applicant's income derives from any public assistance program only for the purpose of determining a pertinent element of creditworthiness.[9]

(iv) In any system of evaluating creditworthiness, a creditor may consider the age of an elderly applicant when such age is to be used to favor the elderly applicant in extending credit.

(3) A creditor shall not use, in evaluating the creditworthiness of an applicant, assumptions or aggregate statistics relating to the likelihood that any group of persons will bear or rear children or, for that reason, will receive diminished or interrupted income in the future.

(4) A creditor shall not take into account the existence of a telephone listing in the name of an applicant for consumer credit. A creditor may take into account the existence of a telephone in the residence of such an applicant.

(5) A creditor shall not discount or exclude from consideration the income of an applicant or the spouse of the applicant because of a prohibited basis or because the income is derived from part-time employment[10], or from an annuity, pension, or other retirement benefit; but

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[6] This provision does not preclude requesting relevant information that may indirectly disclose marital status, such as asking about liability to pay alimony, child support, or separate maintenance; the source of income to be used as a basis for the repayment of the credit requested, which may disclose that it is a spouse's income; whether any obligation disclosed by the applicant has a co-obligor, which may disclose that the co-obligor is a spouse or former spouse; or the ownership of assets, which may disclose the interest of a spouse, when such assets are relied upon in extending the credit. Such inquiries are allowed by the general rule of subparagraph (b) (1) of this section.

[7] A creditor also may continue to use any application form that complies with the requirements of the October 28, 1975 version of Regulation B until its present stock of those forms is exhausted or until March 23, 1978, whichever occurs first. The provisions of this Part shall not determine and are not evidence of the meaning of the requirements of the previous version of Regulation B.

[8] The legislative history of the Act indicates that the Congress intended an "effects test" concept, as outlined in the employment field by the Supreme Court in the cases of *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), and *Albemarle Paper Co. v. Moody*, 422 U.S. 405 (1975), to be applicable to a creditor's determination of creditworthiness. See Senate Report to accompany H.R. 6516, No. 94-589, pp. 4-5; House Report to accompany H.R. 6516, No. 94-210, p. 5.

[9] This provision does not prevent a creditor from considering the marital status of an applicant or the source of an applicant's income for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit and not to discriminate in a determination of creditworthiness. Furthermore, a prohibited basis may be considered in accordance with § 202.8 (special purpose credit programs).

[10] Concerning income derived from a public assistance program, a creditor may consider, for example, the length of time an applicant has been receiving such income; whether an applicant intends to continue to reside in the jurisdiction in relation to residency requirements for benefits; and the status of an applicant's dependents to ascertain whether benefits that the applicant is presently receiving will continue.

Concerning age, a creditor may consider, for example, the occupation and length of time to retirement of an applicant to ascertain whether the applicant's income (including retirement income, as applicable) will support the extension of credit until its maturity; or the adequacy of any security offered if the duration of the credit extension will exceed the life expectancy of the applicant. An elderly applicant might not qualify for a five-percent down, 30-year mortgage loan because the duration of the loan exceeds the applicant's life expectancy and the cost of realizing on the collateral might exceed the applicant's equity. The same applicant might qualify with a larger downpayment and a shorter loan maturity. A creditor could also consider an applicant's age, for example, to assess the significance of the applicant's length of employment or residence (a young applicant may have just entered the job market; an elderly applicant may recently have retired and moved from a long-time residence).

a creditor may consider the amount and probable continuance of any income in evaluating an applicant's creditworthiness. Where an applicant relies on alimony, child support, or separate maintenance payments in applying for credit, a creditor shall consider such payments as income to the extent that they are likely to be consistently made. Factors that a creditor may consider in determining the likelihood of consistent payments include, but are not limited to, whether the payments are received pursuant to a written agreement or court decree; the length of time that the payments have been received; the regularity of receipt; the availability of procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor where available to the creditor under the Fair Credit Reporting Act or other applicable laws.

(6) To the extent that a creditor considers credit history in evaluating the creditworthiness of similarly qualified applicants for a similar type and amount of credit, in evaluating an applicant's creditworthiness, a creditor shall consider (unless the failure to consider results from an inadvertent error):

(i) The credit history, when available, of accounts designated as accounts that the applicant and a spouse are permitted to use or for which both are contractually liable;

(ii) On the applicant's request, any information that the applicant may present tending to indicate that the credit history being considered by the creditor does not accurately reflect the applicant's creditworthiness; and

(iii) On the applicant's request, the credit history, when available, of any account reported in the name of the applicant's spouse or former spouse that the applicant can demonstrate accurately reflects the applicant's creditworthiness.

(7) A creditor may consider whether an applicant is a permanent resident of the United States, the applicant's immigration status, and such additional information as may be necessary to ascertain its rights and remedies regarding repayment.

(c) *State property laws.* A creditor's consideration or application of State property laws directly or indirectly affecting creditworthiness shall not constitute unlawful discrimination for the purposes of the Act or this Part.

§ 202.7 Rules Concerning Extensions of Credit.

(a) *Individual accounts.* A creditor shall not refuse to grant an individual account to a creditworthy applicant on the basis of sex, marital status, or any other prohibited basis.

(b) *Designation of name.* A creditor shall not prohibit an applicant from opening or maintaining an account in a birth-given first name and a surname that is the applicant's birth-given surname, the spouse's surname, or a combined surname.

(c) *Action concerning existing open end accounts.* (1) In the absence of evidence of inability or unwillingness to repay, a creditor shall not take any of the following actions regarding an applicant who is contractually liable on an existing open end account on the basis of the applicant's reaching a certain age or retiring, or on the basis of a change in the applicant's name or marital status:

(i) Require a reapplication; or

(ii) Change the terms of the account; or

(iii) Terminate the account.

(2) A creditor may require a reapplication regarding an open end account on the basis of a change in an applicant's marital status where the credit granted was based on income earned by the applicant's spouse if the applicant's income alone at the time of the original application would not support the amount of credit currently extended.

(d) *Signature of spouse or other person.* (1) Except as provided in this subsection, a creditor shall not require the signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested.

(2) If an applicant requests unsecured credit and relies in part upon property to establish creditworthiness, a creditor may consider State law; the form of ownership of the property; its susceptibility to attachment, execution, severance, and partition; and other factors that may affect the value to the creditor of the applicant's interest in the property. If necessary to satisfy the creditor's standards of creditworthiness, the creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable State law to make the property relied upon available to satisfy the debt in the event of default.

(3) If a married applicant requests unsecured credit and resides in a community property State or if the property upon which the applicant is relying is located in such a State, a creditor may require the signature of the spouse on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable State law to make the community property available to satisfy the debt in the event of default if:

(i) applicable State law denied the applicant power to manage or control sufficient community property to qualify for the amount of credit requested under the creditor's standards of creditworthiness; and

(ii) the applicant does not have sufficient separate property to qualify for the amount of credit requested without regard to community property.

(4) If an applicant requests secured credit, a creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable State law to make the property being offered as security available to satisfy the debt in the event of default, for example, any instrument to create a valid lien, pass clear title, waive inchoate rights, or assign earnings.

(5) If, under a creditor's standards of creditworthiness, the personal liability of an additional party is necessary to support the extension of the credit requested,[*] a creditor may request that the applicant obtain a co-signer, guarantor, or the like. The applicant's spouse may serve as an additional party, but a creditor shall not require that the spouse be the additional party. For the purposes of paragraph (d) of this section, a creditor shall not impose requirements upon an additional party that the creditor may not impose upon an applicant.

(e) *Insurance.* Differentiation in the availability, rates, and terms on which credit-related casualty insurance or credit life, health, accident, or disability insurance is offered or provided to an applicant shall not constitute a violation of the Act or this Part; but a creditor shall not refuse to extend credit and shall not terminate an account because credit life, health accident, or disability insurance is not available on the basis of the applicant's age. Notwithstanding any other provision of this Part, information about the age, sex, or marital status of an applicant may be requested in an application for insurance.

§ 202.8 Special Purpose Credit Programs.

(a) *Standards for programs.* Subject to the provisions of paragraph (b) of this section, the Act and this Part are not violated if a creditor refuses to extend credit to an applicant solely because the applicant does not qualify under the special requirements that define eligibility for the following types of special purpose credit programs:

(1) Any credit assistance program expressly authorized by Federal or State law for the benefit of an economically disadvantaged class of persons; or

(2) Any credit assistance program offered by a not-for-profit organization, as defined under section 501(c) of the Internal Revenue Code of 1954, as amended, for the benefit of its members or for the benefit of an economically disadvantaged class of persons; or

(3) Any special purpose credit program offered by a for-profit organization or in which such an organization participates to meet special social needs, provided that:

(i) The program is established and administered pursuant to a written plan that (A) identifies the class or classes of persons that the program is designed to benefit and (B) sets forth the procedures and standards for extending credit pursuant to the program; and

(ii) The program is established and administered to extend credit to a class of persons who, pursuant to the custom-

[*] If an applicant requests individual credit relying on the separate income of another person, a creditor may require the signature of the other person to make the income available to pay the debt.

ary standards of creditworthiness used by the organization extending the credit, either probably would not receive such credit or probably would receive it on less favorable terms than are ordinarily available to other applicants applying to the organization for a similar type and amount of credit.

(b) *Applicability of other rules.* (1) All of the provisions of this Part shall apply to each of the special purpose credit programs described in paragraph (a) of this section to the extent that those provisions are not inconsistent with the provisions of this section.

(2) A program described in subparagraphs (a)(2) or (a)(3) of this section shall qualify as a special purpose credit program under paragraph (a) of this section only if it was established and is administered so as not to discriminate against an applicant on the basis of race, color, religion, national origin, sex, marital status, age (*Provided*, That the applicant has the capacity to enter into a binding contract), income derived from a public assistance program, or good faith exercise of any right under the Consumer Credit Protection Act or any State law upon which an exemption has been granted therefrom by the Board; except that all program participants may be required to share one or more of those characteristics so long as the program was not established and is not administered with the purpose of evading the requirements of the Act or this Part.

(c) *Special rule concerning requests and use of information.* If all participants in a special purpose credit program described in paragraph (a) of this section are or will be required to possess one or more common characteristics relating to race, color, religion, national origin, sex, marital status, age, or receipt of income from a public assistance program and if the special purpose credit program otherwise satisfies the requirements of paragraph (a) of this section, then, notwithstanding the prohibitions of §§ 202.5 and 202.6, the creditor may request of an applicant and may consider, in determining eligibility for such program, information regarding the common characteristics required for eligibility.

In such circumstances, the solicitation and consideration of that information shall not constitute unlawful discrimination for the purposes of the Act or this Part.

(d) *Special rule in the case of financial need.* If financial need is or will be one of the criteria for the extension of credit under a special purpose credit program described in paragraph (a) of this section, then, notwithstanding the prohibitions of §§ 202.5 and 202.6, the creditor may request and consider, in determining eligibility for such program, information regarding an applicant's marital status, income from alimony, child support, or separate maintenance, and the spouse's financial resources. In addition, notwithstanding the prohibitions of § 202.7(d), a creditor may obtain the signature of an applicant's spouse or other person on an application or credit instrument relating to a special purpose program if required by Federal or State law. In such circumstances, the solicitation and consideration of that information and the obtaining of a required signature shall not constitute unlawful discrimination for the purposes of the Act or this Part.

§ 202.9 Notifications.

(a) *Notification of action taken, ECOA notice, and statement of specific reasons*—(1) *Notification of action taken.* A creditor shall notify an applicant of action taken within:

(i) 30 days after receiving a completed application concerning the creditor's approval of, or adverse action regarding, the application (notification of approval may be expressed or by implication, where, for example, the applicant receives a credit card, money, property, or services in accordance with the application);

(ii) 30 days after taking adverse action on an uncompleted application;

(iii) 30 days after taking adverse action regarding an existing account; and

(iv) 90 days after the creditor has notified the applicant of an offer to grant credit other than in substantially the amount or on substantially the terms requested by the applicant if the applicant during those 90 days has not expressly accepted or used the credit offered.

(2) *Content of notification.* Any notification given to an applicant against whom adverse action is taken shall be in writing and shall contain: a statement of the action taken; a statement of the provisions of section 701(a) of the Act; the name and address of the Federal agency that administers compliance concerning the creditor giving the notification; and

(i) A statement of specific reasons for the action taken; or

(ii) A disclosure of the applicant's right to a statement of reasons within 30 days after receipt by the creditor of a request made within 60 days of such notification, the disclosure to include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the statement of reasons orally, the notification shall also include a disclosure of the applicant's right to have any oral statement of reasons confirmed in writing within 30 days after a written request for confirmation is received by the creditor.

(3) *Multiple applicants.* If there is more than one applicant, the notification need only be given to one of them, but must be given to the primary applicant where one is readily apparent.

(4) *Mutiple creditors.* If a transaction involves more than one creditor and the applicant expressly accepts or uses the credit offered, this section does not require notification of adverse action by any creditor. If a transaction involves more than one creditor and either no credit is offered or the applicant does not expressly accept or use any credit offered, then each creditor taking adverse action must comply with this section. The required notification may be provided indirectly through a third party, which may be one of the creditors, provided that the identity of each creditor taking adverse action is disclosed. Whenever the notification is to be provided through a third party, a creditor shall not be liable for any act or omission of the third party that constitutes a violation of this section if the creditor accurately and in a timely manner provided the third party with the information necessary for the notification and was maintaining procedures reasonably adapted to avoid any such violation.

(b) *Form of ECOA notice and statement of specific reasons*—(1) *ECOA notice.* A creditor satisfies the requirements of paragraph (a)(2) of this section regarding a statement of the provisions of section 701(a) of the Act and the name and address of the appropriate Federal enforcement agency if it provides the following notice, or one that is substantially similar:

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in Appendix A).

The sample notice printed above may be modified immediately following the required references to the Federal Act and enforcement agency to include references to any similar State statute or regulation and to a State enforcement agency.

(2) *Statement of specific reasons.* A statement of reasons for adverse action shall be sufficient if it is specific and indicates the principal reason(s) for the adverse action. A creditor may formulate its own statement of reasons in checklist or letter form or may use all or a portion of the sample form printed below, which, if properly completed, satisfies the requirements of subparagraph (a)(2)(i) of this section. Statements that the adverse action was based on the creditor's internal standards or policies or that the applicant failed to achieve the qualifying score on the creditor's credit scoring system are insufficient.

STATEMENT OF CREDIT DENIAL, TERMINATION, OR CHANGE

DATE _____

Applicant's Name: _____

Applicant's Address: _____

_____

Description of Account, Transaction, or Requested Credit:

_____

_____

Description of Adverse Action Taken:

_____

_____

PRINCIPAL REASONS(S) FOR ADVERSE ACTION CONCERNING CREDIT

/__/ Credit application incomplete

/__/ Insufficient credit references

/__/ Unable to verify credit references

/__/ Temporary or irregular employment

/__/ Unable to verify employment

/__/ Length of employment

/__/ Insufficient income

/__/ Excessive obligations

/__/ Unable to verify income

/__/ Inadequate collateral

/__/ We do not grant credit to any applicant on the terms and conditions you request.

/__/ Other, specify: _____

_____

/__/ Too short a period of residence

/__/ Temporary residence

/__/ Unable to verify residence

/__/ No credit file

/__/ Insufficient credit file

/__/ Delinquent credit obligations

/__/ Garnishment, attachment, foreclosure, repossession, or suit

/__/ Bankruptcy

DISCLOSURE OF USE OF INFORMATION OBTAINED FROM AN OUTSIDE SOURCE

/__/ Disclosure inapplicable

/__/ Information obtained in a report from a consumer reporting agency

Name: _____

_____

Street Address: _____

_____

Phone: _____

/__/ Information obtained from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, within 60 days of receipt of this notice, for disclosure of the nature of the adverse information.

Creditor's name: _____

Creditor's address: _____

_____

Creditor's telephone number: _____

[Add ECOA Notice]

(3) *Other information.* The notification required by subparagraph (a)(1) of this section may include other information so long as it does not detract from the required content. This notification also may be combined with any disclosures required under other titles of the Consumer Credit Protection Act or any other law, provided that all requirements for clarity and placement are satisfied; and it may appear on either or both sides of the paper if there is a clear reference on the front to any information on the back.

(c) *Oral notifications.* The applicable requirements of this section are satisfied by oral notifications (including statements of specific reasons) in the case of any creditor that did not receive more than 150 applications during the calendar year immediately preceding the calendar year in which the notification of adverse action is to be given to a particular applicant.

(d) *Withdrawn applications.* Where an applicant submits an application and the parties contemplate that the applicant will inquire about its status, if the creditor approves the application and the applicant has not inquired within 30 days after applying, then the creditor may treat the application as withdrawn and need not comply with subparagraph (a)(1) of this section.

(e) *Failure of compliance.* A failure to comply with this section shall not constitute a violation when caused by an inadvertent error; provided that, on discovering the error, the creditor corrects it as soon as possible and commences compliance with the requirements of this section.

(f) *Notification.* A creditor notifies an applicant when a writing addressed to the applicant is delivered or mailed to the applicant's last known address or, in the case of an oral notification, when the creditor communicates with the applicant.

§ 202.10 Furnishing of Credit Information.

(a) *Accounts established on or after June 1, 1977.* (1) For every account established on or after June 1, 1977, a creditor that furnishes credit information shall:

(i) Determine whether an account offered by the creditor is one that an applicant's spouse is permitted to use or upon which the spouses are contractually liable other than as guarantors, sureties, endorsers, or similar parties; and

(ii) Designate any such account to reflect the fact of participation of both spouses.[11]

(2) Except as provided in paragraph (a)(3) of this section, if a creditor furnishes credit information concerning an account designated under this section (or designated prior to the effective date of this Part) to a consumer reporting agency, it shall furnish the information in a manner that will enable the agency to provide access to the information in the name of each spouse.

(3) If a creditor furnishes credit information concerning an account designated under this section (or designated prior to the effective date of this Part) in response to an inquiry regarding a particular applicant, it shall furnish the information in the name of the spouse about whom such information is requested.[12]

(b) *Accounts established prior to June 1, 1977.* For every account established prior to and in existence on June 1, 1977, a creditor that furnishes credit information shall either:

(1) Not later than June 1, 1977

(i) Determine whether the account is one that an applicant's spouse, if any, is permitted to use or upon which the spouses are contractually liable other than as guarantors, sureties, endorsers, or similar parties;

(ii) Designate any such account to reflect the fact of participation of both spouses; [13] and

(iii) Comply with the reporting requirements of paragraphs (a)(2) and (a)(3) of this section; or

(2) Mail or deliver to all applicants, or all married applicants, in whose name an account is carried on the creditor's records one copy of the notice set forth below.[14] The notice may be mailed with a billing statement or other mailing. All such notices shall be mailed or delivered by October 1, 1977. As to open end accounts, this requirement may be satisfied by mailing one notice at any time prior to October 2, 1977 regarding each account for which a billing statement is sent between June 1 and October 1, 1977. The notice may be supplemented as necessary to permit identification of the account by the creditor or by a consumer reporting agency. A creditor need only send notices relating to those accounts on which it lacks the information necessary to make the proper designation regarding participation or contractual liability.

NOTICE

CREDIT HISTORY FOR MARRIED PERSONS

The Federal Equal Credit Opportunity Act prohibits credit discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided that a person has the capacity to enter into a binding contract); because all or part of a person's income derives from any public assistance program; or because a person in good faith has exercised any right under the Federal Consumer Credit Protection Act. Regulations under the Act give married persons the right to have credit information included in credit reports in the name of both the wife and the husband if both use or are responsible for the account. This right was created, in part, to insure that credit histories will be available to women who become divorced or widowed.

If your account with us is one that both husband and wife signed for or is an account that is being used by one of you who did not sign, then you are entitled to have us report credit information relating to the account in both your names. If you choose to have credit information concerning your account with us reported in both your names, please complete and sign the statement below and return it to us.

Federal regulations provide that signing your name below will not change your or your spouse's legal liability on the account. Your signature will only request that credit information be reported in both your names.

If you do not complete and return the form below, we will continue to report your credit history in the same way that we do now.

When you furnish credit information on this account, please report all information concerning the account in both our names.

Account number	Print or type name
	Print or type name
	Signature of either spouse

(c) *Requests to change manner in which information is reported.* Within 90 days after receipt of a properly completed request to change the manner in which information is reported to consumer reporting agencies and others regarding an account described in paragraph (b) of this section a creditor shall designate the account to reflect the fact of participation of both spouses.[15] When furnishing information concerning any such account, the creditor shall comply with the reporting requirements of subparagraphs (a)(2) and (a)(3) of this section. The signature of an applicant or the applicant's spouse on a request to change the manner in which information concerning an account is furnished shall not alter the legal liability of either spouse upon the account or require the creditor to change the name in which the account is carried.

(d) *Inadvertent errors.* A failure to comply with this section shall not constitute a violation when caused by an inadvertent error, provided that, on discovering the error, the creditor corrects it as soon as possible and commences compliance with the requirements of this section.

§ 202.11 Relation to State law.

(a) *Inconsistent State laws.* Except as otherwise provided in this section, this Part alters, affects, or preempts only those State laws that are inconsistent with this Part and then only to the extent of the inconsistency. A State law is not inconsistent with this Part if it is more protective of an applicant.

(b) *Preempted provisions of State law.* (1) State law is deemed to be inconsistent with the requirements of the Act and this Part and less protective of an applicant within the meaning of section 705 (f) of the Act to the extent that such law:

(i) Requires or permits a practice or act prohibited by the Act or this Part;

(ii) Prohibits the individual extension of consumer credit to both parties to a marriage if each spouse individually and voluntarily applies for such credit;

(iii) Prohibits inquiries or collection of data required to comply with the Act or this Part;

(iv) Prohibits asking age or considering age in a demonstrably and statistically sound, empirically derived credit system, to determine a pertinent element of creditworthiness, or to favor an elderly applicant; or

(v) Prohibits inquiries necessary to establish or administer a special purpose credit program as defined by § 202.8.

(2) A determination as to whether a State law is inconsistent with the requirements of the Act and this Part will be made only in response to a request for a formal Board interpretation. All requests for such interpretations, in addition to meeting the requirements of § 202.1(d), shall comply with the applicable provisions of subsections (b)(1) and (2) of Supplement I to this Part. A determination shall be based on the factors enumerated in this subsection and, as applicable, subsection (c) of Supplement I. Notice of the interpretation shall be provided as specified in subsection (e)(1) of Supplement I, but the interpretation shall be effective in accordance with § 202.1. The interpretation shall be subject to revocation or modification at any time, as provided in subsection (g)(4) of Supplement I.

(c) *Finance charges and loan ceilings.* If married applicants voluntarily apply for and obtain individual accounts with the same creditor, the accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges or permissible loan ceil-

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[11] A creditor need not distinguish between participation as a user or as a contractually liable party.

[12] If a creditor learns that new parties have undertaken payment on an account, then the subsequent history of the account shall be furnished in the names of the new parties and need not continue to be furnished in the names of the former parties.

[13] See footnote 11.

[14] A creditor may delete the references to the "use" of an account when providing notices regarding closed end accounts.

[15] See footnote 11.

ings under any Federal or State law. Permissible loan ceiling laws shall be construed to permit each spouse to become individually liable up to the amount of the loan ceilings, less the amount for which the applicant is jointly liable.[16]

(d) *State and Federal laws not affected.* This section does not alter or annul any provision of State property laws, laws relating to the disposition of decedents' estates, or Federal or State banking regulations directed only towards insuring the solvency of financial institutions.

(e) *Exemption for State regulated transactions.* (1) In accordance with the provisions of Supplement I to this Part, any State may apply to the Board for an exemption from the requirements of sections 701 and 702 of the Act and the corresponding provisions of this Part for any class of credit transactions within the State. The Board will grant such an exemption if:

(i) The Board determines that, under the law of that State, that class of credit transactions is subject to requirements substantially similar to those imposed under sections 701 and 702 of the Act and the corresponding provisions of this Part, or that applicants are afforded greater protection than is afforded under sections 701 and 702 of the Act and the corresponding provisions of this Part; and

(ii) There is adequate provision for State enforcement.

(2) In order to assure that the concurrent jurisdiction of Federal and State courts created in section 706(f) of the Act will continue to have substantive provisions to which such jurisdiction shall apply; to allow Federal enforcement agencies to retain their authority regarding any class of credit transactions exempted pursuant to paragraph (e)(1) of this section and Supplement I; and, generally, to aid in implementing the Act:

(i) no such exemption shall be deemed to extend to the civil liability provisions of section 706 or the administrative enforcement provisions of section 704 of the Act; and

(ii) after an exemption has been granted, the requirements of the applicable State law shall constitute the requirements of the Act and this Part, except to the extent such State law imposes requirements not imposed by the Act or this Part.

(3) Exemptions granted by the Board to particular classes of credit transactions within specified States will be set forth in Supplement II to this Part.

§ 202.12 Record Retention.

(a) *Retention of prohibited information.* Retention in a creditor's files of any information, the use of which in evaluating applications is prohibited by the Act or this Part, shall not constitute a violation of the Act or this Part where such information was obtained:

(1) From any source prior to March 23, 1977;[17] or

(2) At any time from consumer reporting agencies; or

(3) At any time from any applicant or others without the specific request of the creditor; or

(4) At any time as required to monitor compliance with the Act and this Part or other Federal or State statutes or regulations.

(b) *Preservation of records.* (1) For 25 months after the date that a creditor notifies an applicant of action taken on an application, the creditor shall retain as to that application in original form or a copy thereof:[18]

(i) Any application form that it receives, any information required to be obtained concerning characteristics of an applicant to monitor compliance with the Act and this Part or other similar law, and any other written or recorded information used in evaluating the application and not return to the applicant at the applicant's request;

(ii) A copy of the following documents if furnished to the applicant in written form (or, if furnished orally, any notation or memorandum with respect thereto made by the creditor):

(A) The notification of action taken; and

(B) The statement of specific reasons for adverse action; and

(iii) Any written statement submitted by the applicant alleging a violation of the Act or this Part.

(2) For 25 months after the date that a creditor notifies an applicant of adverse action regarding an account, other than in connection with an application, the creditor shall retain as to that account, in original form or a copy thereof:[18]

(i) Any written or recorded information concerning such adverse action; and

(ii) Any written statement submitted by the applicant alleging a violation of the Act or this Part.

(3) In addition to the requirements of paragraphs (b)(1) and (2), of this section, any creditor that has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the Act or this Part by an enforcement agency charged with monitoring that creditor's compliance with the Act and this Part, or that has been served with notice of an action filed pursuant to section 706 of the Act and § 202.1(b) or (c) of this Part, shall retain the information required in paragraphs (b)(1) and (2) of this section until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

(4) In any transaction involving more than one creditor, any creditor not required to comply with § 202.9 (notifications) shall retain for the time period specified in paragraph (b) of this section all written or recorded information in its possession concerning the applicant, including a notation of action taken in connection with any adverse action.

(c) *Failure of compliance.* A failure to comply with this section shall not constitute a violation when caused by an inadvertent error.

§ 202.13 Information for Monitoring Purposes.

(a) *Scope and information requested.* (1) For the purpose of monitoring compliance with the provisions of the Act and this Part, any creditor that receives an application for consumer credit relating to the purchase of residential real property, where the extension of credit is to be secured by a lien on such property, shall request as part of any written application for such credit the following information regarding the applicant and joint applicant (if any):

(i) Race/national origin, using the categories American Indian or Alaskan Native; Asian or Pacific Islander; Black; White; Hispanic; Other (Specify);

(ii) Sex;

(iii) Marital status, using the categories married, unmarried, and separated; and

(iv) Age.

(2) "Residential real property" means improved real property used or intended to be used for residential purposes, including single family homes, dwellings for from two to four families, and individual units of condominiums and cooperatives.

(b) *Method of obtaining information.* Questions regarding race/national origin, sex, marital status, and age may be listed at the creditor's option, either on the application form or on a separate form that refers to the application.

(c) *Disclosure to applicant and joint applicant.* The applicant and joint applicant (if any) shall be informed that the information regarding race/national origin, sex, marital status, and age is being requested by the Federal Government for the purpose of monitoring compliance with Federal anti-discrimination statutes and that those statutes prohibit creditors from discriminating against applicants on those bases. The applicant and joint applicant shall be asked, but not required, to supply the requested information. If the applicant or joint applicant chooses not to provide the information or any part of it, that fact shall be noted on the form on which the information is obtained.

(d) *Substitute monitoring program.* Any monitoring program required by an agency charged with administrative enforcement under section 704 of the Act may be substituted for the requirements contained in paragraphs (a), (b), and (c) of this section.

[16] For example, in a State with a permissible loan ceiling of $1,000, if a married couple were jointly liable for unpaid debt in the amount of $250, each spouse could subsequently become individually liable for $750.

[17] Pursuant to the October 28, 1975 version of Regulation B, the applicable date for sex and marital status information is June 30, 1976.

[18] "A copy thereof" includes carbon copies, photocopies, microfilm or microfiche copies, or copies produced by any accurate information retrieval system. A creditor who uses a computerized or mechanized system need not keep a written copy of a document if it can regenerate the precise text of the document upon request.

[19] See footnote 18.

APPENDIX A.—FEDERAL ENFORCEMENT AGENCIES

The following list indicates which Federal agency enforces Regulation B for particular classes of creditors. Any questions concerning a particular creditor should be directed to its enforcement agency.

National Banks: Comptroller of the Currency, Consumer Affairs Division, Washington, D.C. 20219.

State Member Banks: Federal Reserve Bank serving the district in which the State member bank is located.

Nonmember Insured Banks: Federal Deposit Insurance Corporation Regional Director for the region in which the nonmember insured bank is located.

Savings Institutions Insured by the FSLIC and Members of the FHLB System (except for Savings Banks insured by FDIC): The Federal Home Loan Bank Board Supervisory Agent in the district in which the institution is located.

Federal Credit Unions: Regional office of the National Credit Union Administration serving the area in which the Federal credit union is located.

Creditors Subject to Civil Aeronautics Board: Director, Bureau of Enforcement, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

Creditors Subject to Interstate Commerce Commission: Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20523.

Creditors Subject to Packers and Stockyards Act: Nearest Packers and Stockyards Administration area supervisor.

Small Business Investment Companies: U.S. Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

Brokers and Dealers: Securities and Exchange Commission, Washington, D.C. 20549.

Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks and Production Credit Associations: Farm Credit Administration, 490 L'Enfant Plaza, S.W., Washington, D.C. 20578.

Retail, Department Stores, Consumer Finance Companies, All other Creditors, and All Nonbank Credit Card Issuers: (Lenders operating on a local or regional basis should use the address of the F.T.C. Regional Office in which they operate), Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

APPENDIX B—MODEL APPLICATION FORMS [RESERVED]

* * * * *

SUPPLEMENT I—PROCEDURES FOR STATE EXEMPTION

Procedures and criteria under which a State may apply for an exemption pursuant to section 705(g) of the Act and section 202.11(e) of this Part.

(a) *Application.* Any State may apply to the Board pursuant to the provisions of this Supplement and the Board's Rules of Procedure (12 CFR 262) for a determination that, under the laws of that State,[1] a class of credit transactions[2] within the State is subject to requirements that are substantially similar to, or provide greater protection for applicants than those imposed under sections 701 and 702 of the Act,[3] and that there is adequate provision for State enforcement of such requirements. The application shall be in writing, addressed to the Board, signed by the Governor, Attorney General, or State official having primary enforcement or interpretive responsibilities under the State law that is applicable to the class of credit transactions, and shall be supported by the documents specified in subsection (b).

(b) *Supporting documents.* The application shall be accompanied by:

(1) A copy of the full text of the State law that is claimed to contain requirements substantially similar to those imposed under sections 701 and 702 of the Act, or to provide greater protection to applicants than sections 701 and 702 of the Act, regarding the class of credit transactions within that State.

(2) A comparison of each provision of sections 701 and 702 of the Act with the corresponding provision of the State law, together with reasons supporting the claim that the corresponding provisions of the State law are substantially similar to, or provide greater protection to applicants than, provisions of sections 701 and 702 of the Act regarding the class of credit transactions and explaining why any differences are not inconsistent with the provisions of sections 701 and 702 of the Act and do not result in a diminution in the protection otherwise afforded applicants; and a statement that no other State laws (including administrative or judicial interpretations) are related to, or would have an effect upon, the State law that is being considered by the Board in making its determination.

(3) A copy of the full text of the State law that provides for enforcement of the State law referred to in subparagraph (b)(1) of this supplement.

(4) A comparison of the provisions of the State law that provides for enforcement with the provisions of sections 704 and 706 of the Act, together with reasons supporting the claim that such State law provides for:

(i) Administrative enforcement of the State law referred to in subparagraph (b)(1) of this supplement that is substantially similar to, or more extensive than, the enforcement provided under section 704 of the Act;

(ii) Civil liability for a failure to comply with the requirements of the State law that is substantially similar to, or more extensive than that provided under section 706 of the Act, including class action liability and the ability of the State Attorney General or other appropriate State official to commence a civil action under circumstances substantially similar to those prescribed in section 706 of the Act, except that such State law may provide a greater damage remedy or other, more extensive remedies;

(iii) A statute of limitations that prescribes a period for civil actions of substantially similar duration to that provided under section 706(f) of the Act, or a longer period; and

(iv) A scope of discovery relating to a creditor's credit granting standards under appropriate discovery-procedures in a court action or agency proceeding that is substantially similar to, or more extensive than, that provided under section 706(j) of the Act.

(5) A statement identifying the office designated or to be designated to administer the State law referred to in subparagraph (b)(1) of this supplement, together with complete information regarding the fiscal arrangements for administrative enforcement (including the amount of funds available or to be provided), the number and qualifications of personnel engaged or to be engaged in enforcement, and a description of the procedures under which such State law is to be administratively enforced, including, if relevant, administrative enforcement regarding Federally-chartered creditors.[4]

The statement should also include reasons to support the claim that there is adequate provision for enforcement of such State law.

(c) *Criteria for determination.* The Board will consider the criteria set forth below, and any other relevant information, in determining whether the law of a State is substantially similar to, or provides greater protection to applicants than, the provisions of sections 701 and 702 of the Act regarding the class of action transactions within that State, and whether there is adequate provision for State enforcement of such law. In making that determination, the Board primarily will consider each provision of the State law in comparison with each corresponding provision in sections 701 and 702 of the Act, and not the State law as a whole in comparison with the Act as a whole.

(1) In order for provisions of State law to be substantially similar to, or provide greater protection to applicants than the provisions of sections 701 and 702 of the Act, the provisions of State law[5] at least shall provide that:

(i) Definitions and rules of construction, as applicable, import the same meaning and have the same application as those prescribed by sections 701 and 702 of the Act.

(ii) Creditors provide all of the applicable notifications required by the provisions of sections 701 and 702 of the Act, with the content and in the terminology, form, and time periods prescribed by this Part pursuant to sections 701 and 702; however, required references to State law may be substituted for the references to Federal law required in this Part. Notification requirements under State law in additional circumstances or with additional detail that does not frustrate any of the purposes of the Act may be determined by the Board to be consistent with sections 701 and 702 of the Act.

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[1] Any reference to State law in this Supplement includes a reference to any regulations that implement State law and formal interpretations thereof by a court of competent jurisdiction or duly authorized agency of that State.

[2] As applicable, references to "class of credit transactions" in this Supplement include one or more of such classes of credit transactions.

[3] Any reference in this Supplement to sections 701 and 702 of the Act includes a reference to the corresponding and implementing provisions of this Part, the Board's formal interpretations thereof, and official interpretations or approvals issued by an authorized official or employee of the Federal Reserve System. Additionally, any reference to sections 701 and 702 of the Act includes a reference to sections 705 (a), (b), (c), and (d) of the Act and the corresponding provisions of this Part, which, though technically not a part of sections 701 and 702, implement and relate to substantive requirements of sections 701 and 702.

[4] Transactions within a State in which a Federally-chartered institution is a creditor shall not be considered subject to exemption, and such Federally-chartered creditors shall remain subject to the requirements of the Act and administrative enforcement by the appropriate Federal authority under section 704 of the Act, unless a State establishes to the satisfaction of the Board that appropriate arrangements have been made with such Federal authorities to assure effective enforcement of the requirements of State laws regarding such creditors.

[5] This subsection is not to be construed as indicating that the Board would consider adversely any additional requirements of State law that are not inconsistent with the purpose of the Act or the requirements imposed under sections 701 and 702 of the Act.

(iii) Creditors take all affirmative actions and abide by obligations substantially similar to or more extensive than, those prescribed by sections 701 and 702 of the Act under substantially similar or more stringent conditions and within the same or more stringent time periods as are prescribed in sections 701 and 702 of the Act.

(iv) Creditors abide by the same or more stringent prohibitions as are prescribed by sections 701 and 702 of the Act.

(v) Obligations or responsibilities imposed on applicants are no more costly, lengthy, or burdensome relative to applicants' exercising any of the rights or gaining the benefits of the protections provided in the State law than corresponding obligations or responsibilities imposed on applicants in sections 701 and 702 of the Act.

(vi) Applicants' rights and protections are substantially similar to, or more favorable than, those provided by sections 701 and 702 of the Act under conditions or within time periods that are substantially similar to, or more favorable to applicants than, those prescribed by sections 701 and 702 of the Act.

(2) In determining whether provisions for enforcement of the State law referred to in subsection (b)(1) of this supplement are adequate, consideration will be given to the extent to which, under State law, provision is made for:

(i) Administrative enforcement, including necessary facilities, personnel, and funding;

(ii) Civil liability for a failure to comply with the requirements of such a State law that is substantially similar to, or more extensive than, that provided under section 706 of the Act;

(iii) A statute of limitations for civil liability of substantially similar or longer duration as that provided under section 706 of the Act; and

(iv) A scope of discovery relating to a creditor's credit granting standards that is substantially similar to, or more extensive than, that provided under section 706(j) of the Act.

(d) *Public notice of filing and proposed rule making.* In connection with any application that has been filed in accordance with the requirements of subsections (a) and (b) of this Supplement and following initial review of the application, a notice of such filing and proposed rule making shall be published by the Board in the FEDERAL REGISTER, and a copy of such application shall be made available for examination by interested persons during business hours at the Board and at the Federal Reserve Bank for each Federal Reserve District in which the State making the application is situated. A period of time shall be allowed from the date of such publication for interested parties to submit written comments to the Board regarding that application.

(e) *Exemption from requirements.* If the Board determines on the basis of the information before it that, under the law of a State, a class of credit transactions is subject to requirements substantially similar to, or that provide greater protection to applicants than, those imposed under sections 701 and 702 of the Act and that there is adequate provision for State enforcement, the Board will exempt the class of credit transactions in that State from the requirements of sections 701 and 702 of the Act in the following manner and subject to the following conditions:

(1) Notice of the exemption shall be published in the FEDERAL REGISTER, and the Board shall furnish a copy of such notice to the State official who made application for such exemption, to each Federal authority responsible for administrative enforcement of the requirements of sections 701 and 702 of the Act, and to the Attorney General of the United States. Additionally, the Board shall include any exemption granted in an appropriate listing in Supplement II to this Part. Any exemption granted shall be effective 90 days after the date of publication of such notice in the FEDERAL REGISTER.

(2) The appropriate official of any State that receives an exemption shall inform the Board in writing within 30 days of any change in the State laws referred to in subsections (b)(1) and (b)(3) of this supplement. The report of any such change shall contain copies of the full text of that change, together with statements setting forth the information and opinions regarding that change that are specified in subsections (b)(2) and (b)(4) of this supplement. The appropriate official of any State that has received such an exemption also shall file with the Board from time to time such reports as the Board may require.

(3) The Board shall inform the appropriate official of any State that receives such an exemption of any subsequent amendments of the Act (including the implementing provisions of this Part, the Board's formal interpretations, and interpretations or approvals issued by an authorized official or employee of the Federal Reserve System) that might necessitate the amendment of State law for the exemption to continue.

(4) No exemption shall extend to the administrative enforcement or civil liability provisions of sections 704 and 706 of the Act. After an exemption is granted, the requirements of the applicable State law shall constitute the requirements of sections 701 and 702 of the Act, except to the extent such State law imposes requirements not imposed by the Act or this Part.

(f) *Adverse determination.* (1) If, after publication of a notice in the FEDERAL REGISTER as provided under section (d) of this supplement, the Board finds on the basis of the information before it that it cannot make a favorable determination in connection with the application, the Board shall notify the appropriate State official of the facts upon which such findings are based and shall afford that State authority a reasonable opportunity to demonstrate or achieve compliance.

(2) If, after having afforded the State authority such opportunity to demonstrate or achieve compliance, the Board finds on the basis of the information before it that it still cannot make a favorable determination in connection with the application, the Board shall publish in the FEDERAL REGISTER a notice of its determination regarding the application and shall furnish a copy of such notice to the State official who made application for such exemption.

(g) *Revocation of exemption.* (1) The Board reserves the right to revoke any exemption granted under the provisions of this Supplement if at any time it determines that the State law does not, in fact, impose requirements that are substantially similar to, or that provide greater protection to applicants than, those imposed under sections 701 and 702 of the Act or that there is not, in fact, adequate provision for State enforcement.

(2) Before revoking any such exemption, the Board shall notify the appropriate State official of the facts or conduct that, in the Board's opinion, warrants such revocation, and shall afford that State such opportunity as the Board deems appropriate in the circumstances to demonstrate or achieve compliance.

(3) If, after having been afforded the opportunity to demonstrate or achieve compliance, the Board determines that the State has not done so, notice of the Board's intention to revoke such exemption shall be published as a notice of proposed rule making in the FEDERAL REGISTER. A period of time shall be allowed from the date of such publication for the Board to receive written comments from interested persons to submit written comments to the Board regarding the proposed rule making.

(4) If such exemption is revoked, notice of such revocation shall be published by the Board in the FEDERAL REGISTER, and a copy of such notice shall be furnished to the appropriate State official, to the Federal authorities responsible for enforcement of the requirements of the Act, and to the Attorney General of the United States. The revocation shall become effective, and the class of transactions affected within that State shall become subject to the requirements of sections 701 and 702 of the Act, 90 days after the date of publication of the notice in the FEDERAL REGISTER.

By order of the Board of Governors, December 22, 1976.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.77-454 Filed 1-5-77;8:45 am]

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. Y]

PART 225—BANK HOLDING COMPANIES

Acquisition of Shares

The Board of Governors has issued an interpretation of Regulation Y in connection with a proposal under which a number of bank holding companies would each purchase a stock interest representing less than 5 percent of the outstanding voting shares of an insurance company that would engage in underwriting or reinsuring credit life and credit accident and health insurance sold in connection with extensions of credit by each stockholder. The Board has determined that a bank holding company wishing to become a stockholder in the company would be required to obtain the Board's approval to do so.

Effective December 22, 1976, Part 225 is amended by adding the section set forth below.

§ 225.136 Acquisitions of shares pursuant to section 4(c)(6) of the Bank Holding Company Act.

(a) The Board has received a request for an interpretation of section 4(c)(6) of the Bank Holding Company Act ("Act")[1] in connection with a proposal under which a number of bank holding companies would purchase interests in an insurance company to be formed for the purpose of underwriting or reinsuring credit life and credit accident and health insurance sold in connection with extensions of credit by the stockholder bank holding companies and their affiliates.

(b) Each participating holding company would own no more than 5 percent

[1] Section 4(c)(6) of the Act provides an exemption from the Act's prohibitions on ownership of shares in nonbanking companies for "shares of any company which do not include more than 5 per centum of the outstanding voting shares of such company."

of the outstanding voting shares of the company. However, the investment of each holding company would be represented by a separate class of voting security, so that each stockholder would own 100 percent of its respective class. The participating companies would execute a formal "Agreement Among Stockholders" under which each would agree to use its best efforts at all times to direct or recommend to customers and clients the placement of their life, accident and health insurance directly or indirectly with the company. Such credit-related insurance placed with the company would be identified in the records of the company as having been originated by the respective stockholder. A separate capital account would be maintained for each stockholder consisting of the original capital contribution increased or decreased from time to time by the net profit or loss resulting from the insurance business attributable to each stockholder. Thus, each stockholder would receive a return on its investment based upon the claims experience and profitability of the insurance business that it had itself generated. Dividends declared by the board of directors of the company would be payable to each stockholder only out of the earned surplus reflected in the respective stockholder's capital account.

(c) It has been requested that the Board issue an interpretation that section 4(c)(6) of the Act provides an exemption under which participating bank holding companies may acquire such interests in the company without prior approval of the Board.

(d) On the basis of a careful review of the documents submitted, in light of the purposes and provisions of the Act, the Board has concluded that section 4(c)(6) of the Act is inapplicable to this proposal and that a bank holding company must obtain the approval of the Board before participating in such a proposal in the manner described. The Board's conclusion is based upon the following considerations:

(1) Section 2(a)(2)(A) of the Act provides that a company is deemed to have control over a second company if it owns or controls "25 per centum or more of any class of voting securities" of the second company. In the case presented, the stock interest of each participant would be evidenced by a different class of stock and each would, accordingly, own 100 percent of a class of voting securities of the company. Thus, each of the stockholders would be deemed to "control" the company and prior Board approval would be required for each stockholder's acquisition of stock in the company.

The Board believes that this application of section 2(a)(2)(A) of the Act is particularly appropriate on the facts presented here. The company is, in practical effect, a conglomeration of separate business ventures each owned 100 percent by a stockholder the value of whose economic interest in the company is determined by reference to the profits and losses attributable to its respective class of stock. Furthermore, it is the Board's opinion that this application of section 2(a)(2)(A) is not inconsistent with section 4(c)(6). Even assuming that section 4(c)(6) is intended to refer to all outstanding voting shares, and not merely the outstanding shares of a particular class of securities, section 4(c)(6) must be viewed as permitting ownership of 5 percent of a company's voting stock only when that ownership does not constitute "control" as otherwise defined in the Act. For example, it is entirely possible that a company could exercise a controlling influence over the management and policies of a second company, and thus "control" that company under the Act's definitions, even though it held less than 5 percent of the voting stock of the second company. To view section 4(c)(6) as an unqualified exemption for holdings of less than 5 percent would thus create a serious gap in the coverage of the Act.

(2) The Board believes that section 4(c)(6) should properly be interpreted as creating an exemption from the general prohibitions in section 4 on ownership of stock in nonbank companies only for passive investments amounting to not more than 5 percent of a company's outstanding stock, and that the exemption was not intended to allow a group of holding companies, through concerted action, to engage in an activity as entrepreneurs. Section 4 of the Act, of course, prohibits not only owning stock in nonbank companies, but engaging in activities other than banking or those activities permitted by the Board under section 4(c)(8) as being closely related to banking. Thus, if a holding company may be deemed to be engaging in an activity through the medium of a company in which it owns less than 5 percent of the voting stock it may nevertheless require Board approval, despite the section 4(c)(6) exemption.

(e) To accept the argument that section 4(c)(6) is an unqualified grant of permission to a bank holding company to own 5 percent of the shares of any nonbanking company, irrespective of the nature or extent of the holding company's participation in the affairs of the nonbanking company would, in the Board's view, create the potential for serious and widespread evasion of the Act's controls over nonbanking activities. Such a construction would allow a group of 20 bank holding companies—or even a single bank holding company and one or more nonbank companies—to engage in entrepreneurial joint ventures in businesses prohibited to bank holding companies, a result the Board believes to be contrary to the intent of Congress.

(f) In this proposal, each of the participating stockholders must be viewed as engaging in the business of insurance underwriting. Each stockholder would agree to channel to the company the insurance business it generates, and the value of the interest of each stockholder would be determined by reference to the profitability of the business generated by that stockholder itself. There is no sharing or pooling among stockholders of underwriting risks assumed by the company, and profit or loss from investments is allocated on the basis of each bank holding company's allocable underwriting profit or loss. The interest of each stockholder is thus clearly that of an entrepreneur rather than that of an investor.

(g) Accordingly, on the basis of the factual situation before the Board, and for the reasons summarized above, the Board has concluded that section 4(c)(6) of the Act cannot be interpreted to exempt the ownership of 5 percent of the voting stock of a company under the circumstances described, and that a bank holding company wishing to become a stockholder in a company under this proposal would be required to obtain the Board's approval to do so.

Board of Governors of the Federal Reserve System, December 23, 1976.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.77-453 Filed 1-5-77;8:45 am]

[Reg. Z; FC-0033, FC-0034, FC-0035]

PART 226—TRUTH IN LENDING

Official Staff Interpretations

In accordance with 12 CFR 226.1(d), the Board is publishing the following official staff interpretations of Regulation Z, issued by a duly authorized official of the Division of Consumer Affairs.

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

Official staff interpretations may be reconsidered by the Board upon request of interested parties and in accordance with 12 CFR 226.1(d)(2). Every request for reconsideration should clearly identify the number of the official staff interpretation in question, and should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

This interpretation shall be effective as of January 3, 1977.

[FC-0033]

§ 226.4(a) ..... Commitment fee paid by developer/seller of home to lender committing itself to finance the purchase of homes need not be treated as prepaid finance charge. (Completely supersedes PI 196 and partially supersedes PI 167 & 523.)

DECEMBER 22, 1976.

This is in reply to your letter of * * * requesting an official staff interpretation of the proper treatment of "standby fees" or "commitment fees" under § 226.4 of Regulation Z. Frequently, the builder or developer of homes and condominium units pays a fee to a lender in return for which the lender commits itself to finance the purchase of those homes or condominium units. Staff has previously taken the position (see, for example, Public Information Letters 167, 196,

and 523) that a standby fee paid by the seller to the lender extending consumer credit in the transaction must be shown on the disclosure statement as a prepaid finance charge. You disagree with this position and have requested staff to reconsider its previously expressed view.

Upon reconsideration, staff believes that such standby or commitment fees should not be considered prepaid finance charges unless they are in fact imposed by the seller/developer only on the credit customer. If the seller/developer simply recovers its costs by increasing the cash price to all customers (cash customers and credit customers), it is staff's view that such a commitment fee need not be designated as a prepaid finance charge for those purchasers who obtain credit from the committed lender. To hold otherwise would make comparison shopping of different lenders difficult because it would create a distortion in the annual percentage rate disclosed by the committed lender. To illustrate, assume that a purchaser wishes to compare the identical credit terms available from a committed lender and a noncommitted lender. If the former treats the standby fee as a prepaid finance charge, that reduces the "amount financed," increases the "finance charge," and results in a higher annual percentage rate. The noncommitted lender, of course, would not have to disclose the commitment fee because it is not incident to its extension of credit, and the annual percentage rate would therefore be lower. Since, from the purchaser's point of view, the credit terms are identical, it would be quite misleading to have different annual percentage rates quoted.

Insofar as Public Information Letters 167, 196, and 523 stated otherwise, they are hereby superseded.

This is an official staff interpretation of Regulation Z, issued in accordance with § 226.1(d)(3) of the Regulation. I trust that it is responsive to your inquiry.

Sincerely,

JERAULD C. KLUCKMAN,
Assistant Director.

[FC-0034]

§ 226.8(b) ..... A credit to be applied against purchase price of home if purchaser remains for 5 years, pursuant to instalment land contract, should not be deducted from cash price or treated as subsequent occurrence; rather, it reduces the finance charge, increases the amount financed and must be disclosed as § 226.8(b)(4) default charge (since credit forfeited if purchaser fails to stay 5 years)

§ 226.8(c) ..... A credit to be applied against purchase price of home if purchaser remains for 5 years, pursuant to instalment land contract, should not be deducted from cash price or treated as subsequent occurrence; rather, it reduces the finance charge, increases the amount financed and must be disclosed as § 226.8(b)(4) default charge (since credit forfeited if purchaser fails to stay 5 years)

§ 226.810 ..... A credit to be applied against purchase price of home if purchaser remains for 5 years, pursuant to instalment land contract, should not be deducted from cash price or treated as subsequent occurrence; rather, it reduces the finance charge, increases the amount financed and must be disclosed as § 226.8(b)(4) default charge (since credit forfeited if purchaser fails to stay 5 years)

DECEMBER 27, 1976.

This is in response to your letters of * * * and * * *, concerning the requirements of the Truth in Lending Act and Regulation Z with regard to a proposed instalment land contract to be used by a quasi-public, nonprofit corporation in the sale of housing units to low- and middle-income families.

The housing development corporation which you represent wishes to make housing units available under favorable terms of purchase. Consequently, the proposed contract differs from a typical instalment land contract in two respects:

1. The purchaser agrees to reside in the unit as his/her principal place of residence for at least five consecutive years. At the end of those five years, the purchaser is entitled to a credit against the unpaid balance of the purchase price in a specific dollar amount, which amount is set out in the contract. The purpose of this provision is to foster stability in the area by providing an incentive for the contract buyer to obtain full ownership.

2. Simultaneously with receipt of the credit, the rate of interest payable on the unpaid balance of the purchase price may be adjusted upward to a rate of 3 percent above the prime interest rate at a certain local financial institution. This is a one-time adjustment, and in no event will the interest rate be greater than the maximum allowed by State law or less than the original rate of interest prevailing during the first five years of the contract. The purpose of this provision is to induce the contract buyer to seek more favorable terms through refinancing of the obligation with a local lending institution.

Your first question is whether your client may make disclosures of the annual percentage rate by complying with Board Interpretation § 226.810 (Disclosures—Variable Interest Rates). It is staff's opinion that Interpretation § 226.810 applies to the fact situation outlined above. Section 226.810 pertains to those transactions in which, at the time of consummation, it is not known whether a change in the annual percentage rate will occur or the date of the change or the amount of the change. Under the facts described above, the date of a possible change is known, but it is not known whether there will be a change (since it is possible that 3 percentage points above prime on the sixty-first month may in fact be the same as the interest rate applicable for the first sixty months), nor is the amount of such possible change known (since it is impossible to know what the prime rate will be after five years). Therefore, it is staff's opinion that if your client makes proper disclosure of the fact that the annual percentage rate is prospectively subject to change, the conditions under which such rate may be changed, and the maximum and minimum limits of such rate, then any subsequent change in the annual percentage rate in accordance with those disclosures would be a subsequent occurrence under § 226.6(g) and not a new transaction.

Although this is an official staff interpretation of Regulation Z, you should note that the Board has recently proposed an amendment to the Regulation concerning variable interest rate loans. This amendment, if adopted, would change the disclosure requirements for these loans and Interpretation § 226.810 would be rescinded. If this should occur, you should be aware that you would then be required to comply with the new standards of Regulation Z and could not rely on the interpretation contained in this letter. I am enclosing a copy of the press release issued by the Board concerning the proposed amendment.

Your second question concerns how the credit to be allowed against the purchase price should be treated on the disclosure statement. You ask whether the credit must be deducted from the purchase price in order to determine the cash price or whether, since it is contingent upon continuous occupancy of the unit for five years, it should be considered a subsequent occurrence under the provisions of § 226.6(g). It is staff's opinion that the credit should not be deducted in order to determine the cash price. Cash price is defined in § 226.2(n) to mean "the price at which the creditor offers, in the ordinary course of business, to sell for cash the property or services which are the subject of a consumer credit transaction." Since the credit here is not available to cash purchasers, it should not be deducted in determining the cash price.

It is staff's opinion, contrary to your suggestion, that the prospective credit should not be treated as a "subsequent occurrence" under § 226.6(g). Truth in Lending disclosures must be based on the facts of the credit transaction as contemplated by the parties at consummation and are based on the presumption that the parties will fulfill all obligations under the contract. Since the purchaser has expressly covenanted to remain on the property for five consecutive years, the disclosures must be based on the assumption that the purchaser will fulfill that covenant. The fact that receipt of the credit is contingent upon occurrence of a future event which may not occur does not make this a subsequent occurrence. In fact, as indicated in footnote 6 to § 226.6(g), it would be the purchaser's failure to perform his obligations under the contract rather than his performance of those obligations which would constitute a subsequent occurrence.

Accordingly, assuming that the purchaser will remain for five years and receive the credit and that the amount of the credit is known when the sales contract is signed, it is staff's opinion that the actual monetary result of the credit is that it reduces the amount of finance charges that must be paid. To illustrate, let us assume the cash price for a unit is $10,000, the finance charge for a credit customer would normally be $2,000, and a credit of $500 will be received at the end of five years. Viewing the transaction objectively, the result is that the customer has received goods worth $10,000, will receive a credit of $500, and will pay $1,500. By disclosing $10,500 as the amount financed ($10,000 representing the goods received plus $500 representing the credit) and using $1,500 as the finance charge in computing the annual percentage rate, the rate will reflect the actual cost to the consumer of entering this contractual arrangement. Since the $500 credit will be forfeited if the

customer should default on his/her obligation to remain for five years, this amount should be disclosed as a default charge pursuant to § 226.8(b)(4).

This is an official staff interpretation of Regulation Z issued in accordance with § 226.1(d)(3) of the Regulation. I trust that it is responsive to your inquiry.

Sincerely,

JERAULD C. KLUCKMAN,
Assistant Director.

[FC-0035]

§ 226.2(h) ..... Lessee of a department in a department store is not an arranger of credit where the lessee receives no fee or other consideration and participates to a limited extent (by preparation of sales receipts) in the extension of credit.

DECEMBER 27, 1976.

This is in response to your letters of * * * and * * *, which requested an official staff interpretation of Regulation Z concerning the definition of arranger of credit under § 226.2(h) of the Regulation.

You inquire whether a commercial lessee of a department in a large department store is an arranger of credit under Regulation Z where the lessee participates to a limited extent (by preparation of the sales receipts) in extensions of credit pursuant to a special open end credit account which is established and maintained solely through the lessor department store.

In your letter you set forth the following description of the relevant facts. Your client is a large department store which has recently leased a floor of its store to an unrelated corporation for the purpose of establishing a "home decorator department." Personnel employed in the home decorating department will be employees of the lessee, and lease payments will to a certain extent be based upon the sales volume (both credit and cash sales) of the lessee. A decision has been made to offer a special open end charge account for this department entitled the "Home Decorator Account." This account will be separate from the store's regular open end charge account. Pursuant to this charge account, which will not use a credit card as access, customers will be able to purchase items from time to time in the lessee's home decorating department.

Customers desiring these special home decorator accounts will have to submit credit applications to your client's credit office. Applications will not be accepted in the home decorating department itself. The entire credit application process will be handled by your client's credit personnel with absolutely no participation by the lessee. The only participation by the lessee in the home decorator account program will consist of completion of the sales drafts at the time of purchase and, in most cases, the obtaining of telephone authorization from your client's credit department at the time of each transaction.

You inquire whether, under the circumstances described above, your client's lessee is acting as an arranger of credit pursuant to § 226.2(h) of Regulation Z. "Arrange for the extension of credit" is defined in § 225.2(h) to mean "to provide consumer credit which is or will be extended by another person under a business or other relationship pursuant to which the person arranging such credit (1) receives or will receive a fee, compensation, or other consideration for such service, or (2) has knowledge of the credit terms and participates in the preparation of the contract documents received in connection with the extension of credit."

In order for a person to be an arranger of credit under Regulation Z one of the two conditions described above must obtain. Under the circumstances which you have described, your client's lessee will receive no fee or other compensation for the arrangement of credit. You state in your letter that while the lease payments will be based in some part on the volume of sales generated by the lessee, no fee or other consideration will be given to the lessee for an extension of credit.

Secondly, it is clear that the lessee will not have knowledge of the credit terms and will not participate in the preparation of the contract documents required in connection with the extension of credit, except to the extent that the lessee will prepare sales slips in connection with purchases on the home decorator accounts. As the definition of "arrange for the extension of credit" states, honoring a credit card or similar device when no finance charge is imposed at the time of that transaction does not constitute knowledge of terms and participation in the preparation of credit documents. It appears that the preparation of credit sales slips, even absent a credit card, is the type of transaction envisioned by that exception. For the reasons stated above, your client's lessee is not an arranger of credit under Regulation Z and is not subject to the disclosure requirements of the Regulation.

This is an official staff interpretation of Regulation Z, issued in conjunction with § 226.1(d)(3) of the Regulation and is limited to the facts stated herein. I trust this is responsive to your inquiry.

Sincerely,

JERAULD C. KLUCKMAN,
Assistant Director.

Board of Governors of the Federal Reserve System, December 30, 1976.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.77-452 Filed 1-5-77;8:45 am]

proposed rules

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

NATIONAL COMMISSION ON ELECTRONIC FUND TRANSFERS

[1 CFR Part 442]

PRIVACY ACT OF 1974

Proposed Regulations for Implementation

The following proposed regulations, drafted in accordance with section (f) of 5 U.S.C. 552a, the Privacy Act of 1974, are hereby offered for public comment. Interested parties should submit comments on or before January 29, 1976. Comments should be addressed to the Chairman, National Commission on Electronic Fund Transfers, 1000 Connecticut Avenue, NW., Washington, D.C. 20036.

Signed this 29th day of December 1976.

WILLIAM B. WIDNALL,
Chairman.

It is proposed to add the following Part 442 to Title 1 of the CFR:

PART 442—NATIONAL COMMISSION ON ELECTRONIC FUND TRANSFERS (PRIVACY ACT IMPLEMENTATION)

Sec.
442.1 Purpose and scope.
442.2 Definitions.
442.3 Procedures for requests for access to individual records in a record system.
442.4 Times, places and requirements for the identification of the individual making a request.
442.5 Access to requested information to the individual.
442.6 Request for correction or amendment to the record.
442.7 Agency review of request for correction or amendment of the record.
442.8 Appeal of an initial adverse agency determination on correction or amendment of the record.
442.9 Disclosure of record to a person other than the individual to whom the record pertains.
442.10 Fees.

AUTHORITY: 5 U.S.C. 552a; Pub. L. 93-495, Title II.

§ 442.1 Purpose and scope.

The purposes of these regulations are to:

(a) Establish a procedure by which an individual can determine if the National Commission on Electronic Fund Transfers (hereafter known as the Commission) maintains a system of records which includes a record pertaining to the individual; and

(b) Establish a procedure by which an individual can gain access to a record pertaining to him or her for the purpose of review, amendment and/or correction.

§ 442.2 Definitions.

For the purpose of these regulations—

(a) The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) The term "maintain" includes maintain, collect, use or disseminate;

(c) The term "record" means any item, collection or grouping of information about an individual that is maintained by the Commission, including, but not limited to, his or her employment history, payroll information, and financial transactions and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as social security number;

(d) The term "system of records" means a group of any records under the control of the Commission from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual; and

(e) The term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

§ 442.3 Procedures for requests for access to individual records in a record system.

An individual shall submit a request to the Public Affairs Officer of the Commission to determine if a system of records named by the individual contains a record pertaining to the individual. The individual shall submit a request to the Public Affairs Officer of the Commission which states the individual's desire to review his or her record.

§ 442.4 Times, places, and requirements for the identification of the individual making a request.

(a) An individual making a request to the Public Affairs Officer of the Commission pursuant to Section 442.3 may make the request either by mail or in person. In either case the request must be in writing, and must contain the full name of the individual, his home address and telephone number, and his business address and telephone number.

(b) A request by mail shall be sent to the Public Affairs Officer, National Commission on Electronic Fund Transfers, 1000 Connecticut Avenue, NW., Suite 900, Washington, D.C. 20036, and except as provided in paragraph (d) of this section, must contain a notarized statement attesting to the requesting individual's identity.

(c) A request in person shall be made at the Commission's offices, at the address set out in paragraph (b) of this section, on any business day between the hours of 9:00 a.m. and 5:00 p.m. The individual making the request must, except as provided in paragraph (d) of this section, present two forms of reasonable identification, such as a driver's license, credit card, birth certificate, or employment identification sufficient to establish his identity.

(d) The requirements of paragraphs (b) and (c) of this section for proof of identity do not apply where the information requested is otherwise available under the Freedom of Information Act, 5 U.S.C. 552.

§ 442.5 Access to requested information to the individual.

Upon verification of identity the Commission shall disclose to the individual the information contained in the record which pertains to that individual.

§ 442.6 Request for correction or amendment of the record.

The individual should submit a request to the Public Affairs Officer of the Commission which states the individual's desire to correct or to amend his or her record. This request is to be made in accord with the provisions of § 442.4.

§ 442.7 Agency review of request for correction or amendment of the record.

Within ten working days of the receipt of the request to correct or to amend the record, the Public Affairs Officer of the Commission will acknowledge in writing such receipt and promptly either—

(a) Make any correction or amendment of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(b) Inform the individual of his or her refusal to correct or to amend the record in accordance with the request, the reason for the refusal, and the procedures established by the Commission for the individual to request a review of that refusal.

§ 442.8 Appeal of an initial adverse agency determination on correction or amendment of the record.

An individual who disagrees with the refusal of the Public Affairs Officer of the Commission to correct or to amend his or her record may submit a request for a review of such refusal to the Chairman, National Commission on Electronic Fund Transfers, 1000 Connecticut Avenue, NW., Washington, D.C. 20036. The Chairman will, not later than thirty

working days from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the Chairman extends such thirty day period. If, after his or her review, the Chairman also refuses to correct or to amend the record in accordance with the request, the individual may file with the Commission a concise statement setting forth the reasons for his or her disagreement with the refusal of the Commission and may seek judicial review of the Chairman's determination under 5 U.S.C. 552a(g(1)(A).

§ 442.9 Disclosure of record to a person other than the individual to whom the record pertains.

The Commission will not disclose a record to any individual other than to the individual to whom the record pertains without receiving the prior written consent of the individual to whom the record pertains, unless the disclosure has been listed as a "routine use" in the Commission's notice of its systems of records.

§ 442.10 Fees.

If an individual requests copies of his or her record, he or she shall be charged ten cents per page, excluding the cost of any search for review of the record, in advance of receipt of the pages.

[FR Doc.77-417 Filed 1-5-77;8:45 am]

FEDERAL RESERVE SYSTEM

[12 CFR Part 226]

[Reg. Z; Docket No. R-0053]

TRUTH IN LENDING

Proposed Amendment on Disclosure of Dealer Participation

The Board of Governors of the Federal Reserve System has published for comment a proposed interpretation of Regulation Z relating to the separate disclosure of the portion of the finance charge which is allocated to sellers of consumer goods by a second creditor of a consumer credit transaction. Comments on that proposal have led the Board to believe that separate itemization of the portion of the finance charge payable to the dealer is probably not a necessary disclosure for consumers. However, disclosure of the fact that the seller will receive a portion of the finance charge may be meaningful to consumers wishing to shop for credit or bargain for a better price and possibly should be made a requirement under Regulation Z. To solicit comments on this issue, the Board hereby publishes a proposed amendment to Regulation Z to require disclosure of the fact that a seller may share in the finance charge imposed on consumer credit transactions.

On August 23, 1976, proposed Interpretation § 226.821 was published for comment in the FEDERAL REGISTER (41 FR 35536). The interpretation relates to the requirements of § 226.8(c)(8)(i) of Regulation Z with respect to identification of allocations by creditors to sellers of a portion of the finance charge on credit used to finance the purchase of consumer goods. The amount of seller participation typically represents a portion of the interest component of a finance charge which is paid by a creditor to the seller for arranging or referring a direct loan from the second creditor. For convenient reference, the proposed interpretation is republished below:

§ 226.821 Disclosure of dealer participation.

(a) Section 226.8(c)(8)(i) requires the itemization of each component of a finance charge consisting of more than one type of charge. Section 226.4(a)(3) lists among the types of charges to be included in the finance charge a "finder's fee or similar charge." In certain credit transactions, such as the sale of automobiles and other consumer goods, where the finance charge is determined by application of a percentage rate or rates to the amount financed, a portion of that charge may be allocated to the dealer by the financial institution as a dealer participation. The question arises whether such allocations must be itemized as a separate component of the total finance charge in the nature of a finder's fee.

(b) The requirement for itemization of a finance charge which includes a finder's fee or other elements in addition to an interest component is intended to assure that the total finance charge disclosed to the customer properly reflects all components which must be included in that amount. Any component of the finance charge which is computed by the application of a percentage rate or rates to the amount financed constitutes a single charge of the type described in § 226.4(a)(1). As such, it must be included in the finance charge calculation and disclosure. A portion of such single component of the finance charge which is distributed to a dealer is not considered a "finder's fee or similar charge" and need not be separately identified or disclosed. The concept of a "finder's fee," as that term is used in § 226.4(a)(3), is intended to cover certain charges in the nature of brokerage fees which are imposed in addition to that portion of the finance charge attributable to the application of a percentage rate or rates to the amount financed. Any such separate fee must, of course, be separately itemized.

(Interprets and applies 12 CFR Part 226.8)

The Board has received more than 250 comments on this proposal. Comments from several Federal agencies and consumer representatives have indicated to the Board that certain consumer benefits might be derived from disclosure of the existence of a seller participation. These comments contend that consumer awareness of this element might encourage further comparison of credit terms and greater competition among credit sources. Because these comments suggest that the primary goals of the Truth in Lending Act might be better served by disclosure of this factor, the Board has determined that an amendment to Regulation Z, requiring such disclosure in the future, should be considered.

The amendment which the Board now proposes does not require separate itemization of the amount of a dealer participation. The Board believes that such an additional requirement would be unduly burdensome and would not significantly enhance consumers' awareness of the credit terms. Instead, the amendment would require that the disclosure statement simply notify the consumer that the seller or some other party to the transaction may receive a portion of the finance charge from the transaction. In the Board's view, disclosure of the fact of a seller participation could alert consumers to the possible benefits of further comparison shopping without unduly complicating the mathematical disclosures now required, and may be of assistance to consumers in evaluating the price offered by the seller.

For the reasons stated above, the Board proposes to amend Regulation Z to require disclosure of the fact that a seller arranging consumer credit may receive a portion of the finance charge imposed on the transaction from a creditor of that transaction. The Board invites written comments on the proposal, to be received not later than February 4, 1977. Comments should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, and should include a reference to Docket No. R-0053.

The Board will take final action on the proposed Interpretation § 226.8211 in connection with its final determination on this proposed amendment.

Pursuant to the authority granted in 15 U.S.C. 1604 (1970), the Board proposes to amend Regulation Z, 12 CFR Part 226 by adding a new § 226.8(c)(9) to read as follows:

§ 226.8 Credit Other Than Open End—Specific Disclosures.

* * * * *

(c) *Credit sales.* * * *

(9) A statement that the seller or other party to the transaction arranging credit may receive from another creditor in the transaction a portion of the finance charge imposed on that transaction.

* * * * *

By order of the Board of Governors, December 30, 1976.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.77-451 Filed 1-5-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 39]

[Docket No. 16390]

BRITISH AIRCRAFT CORPORATION VISCOUNT MODEL 744, 745D, AND 810 AIRPLANES

Proposed Airworthiness Directives

The Federal Aviation Administration is considering amending Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to

British Aircraft Corporation Viscount Model 744, 745D, and 810 airplanes. There have been reports of corrosion in the bore of the aileron control rod tubes and corrosion between the aileron control rod tubes and their steel guide sleeves and stop sleeves on British Aircraft Corporation Viscount Model 744, 745D, and 810 airplanes that could result in cracks in the aileron control rod tube sleeve and possible aileron failure. Since this condition is likely to exist or develop in other airplanes of the same type design, the proposed airworthiness directive would require inspection, reworking, and replacement, as necessary, of the aileron control rods on British Aircraft Corporation Viscount Model 744, 745D, and 810 airplanes.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue, S.W., Washington, D.C. 20591. All communications received on or before February 17, 1977, will be considered by the Administrator before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons.

This amendment is proposed under the authority of sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

In consideration of the foregoing, it is proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations by adding the following new airworthiness directive:

BRITISH AIRCRAFT CORPORATION. Applies to Viscount Model 744, 745D, and 810 airplanes with aileron control rods, P/N 60903, sheets 185 and 187 and P/N 70103, sheets 329, 445, 447, 449, 451, 453, 455, 457, and 459, certificated in all categories.

Compliance is required as indicated, unless already accomplished.

To detect corrosion of the aileron control rods and prevent possible aileron failure, accomplish the following:

(a) Within the next 30 days after the effective date of this AD or 18 months from the date of the last overhaul of the specified aileron control rods, whichever occurs later, and thereafter at intervals not to exceed 6 months from the last inspection, inspect the aileron control rods for corrosion in accordance with paragraph 2.2 "Accomplishment Instructions" section of issue 2, dated June 2, 1976, British Aircraft Corporation Alert Preliminary Technical Leaflets No. 305 for 700 series airplanes and No. 174 for 810 series airplanes, or an FAA-approved equivalent.

(b) If, during an inspection required by paragraph (a) of this AD, corrosion is found, before further flight, replace the corroded parts with new parts of the same part number.

(c) If, during an inspection required by paragraph (a) of this AD, no corrosion is found, rework the aileron control rods in accordance with paragraph 2.2.1 "Accomplishment Instructions" section of issue 2, dated June 2, 1976, British Aircraft Corporation Alert Preliminary Technical Leaflets No. 305 for 700 series airplanes and No. 174 for 810 series airplanes, or an FAA-approved equivalent.

(d) The repetitive inspections required by paragraph (a) of this AD may be discontinued upon compliance with paragraph (e) of this AD.

(e) Within the next 2 years after the effective date of this AD or at the next aileron control rod overhaul, whichever occurs sooner, remove the affected aileron control rods, disassemble the external sleeves where fitted, and conduct a radiographic inspection of the aileron control rod tubes and a visual inspection of the external sleeves in accordance with paragraph 2.4 "Accomplishment Instructions" and paragraph entitled "Radiographic Technique" of issue 2, dated June 2, 1976, British Aircraft Corporation Alert Preliminary Technical Leaflets No. 305 for 700 series airplanes and No. 174 for 810 series airplanes, or an FAA-approved equivalent.

(f) If, during the inspection required by paragraph (e) of this AD, corrosion is found, before further flight, replace the corroded parts with new parts of the same part number.

(g) If, during the inspection required by paragraph (e) of this AD, no corrosion is found, rework the aileron control rods in accordance with paragraph 2.4 "Accomplishment Instructions" section of issue 2, dated June 2, 1976, British Aircraft Corporation Alert Preliminary Technical Leaflets No. 305 for 700 series airplanes and No. 174 for 810 series airplanes, or an FAA-approved equivalent.

NOTE.—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 December 27, 1976.

W. J. SULLIVAN,
Acting Director,
Flight Standards Service.

[FR Doc.77-172 Filed 1-5-77;8:45 am]

[14 CFR Part 39]

[Docket No. 16391]

HAWKER SIDDELEY AVIATION, LTD. DH/BH-125 AIRPLANES

Proposed Airworthiness Directives

The Federal Aviation Administration is considering amending Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to Hawker Siddeley Aviation, Ltd., Model DH/BH-125 airplanes.

There has been a report of the possible installation of aileron inner hinge bracket assemblies with excessive boss thickness that could result in insufficient engagement of the thread insert locking device provided for the mounting of the upper and lower aileron cable guards. This could cause a loss of control of the aircraft due to a loosening and possible loss of the cable guard.

Since this condition is likely to exist or develop in other products of the same type design, the proposed airworthiness directive would require inspection of the flange thickness and attendant security of the cable guard and replacement of the cable guard, if necessary, on Hawker Siddeley Aviation, Ltd., Model DH/BH-125 airplanes.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue, SW., Washington, D.C. 20591. All communications received on or before February 17, 1977, will be considered by the Administrator before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons.

This amendment is proposed under the authority of sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

In consideration of the foregoing, it is proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations by adding the following new airworthiness directive:

HAWKER SIDDELEY AVIATION, LTD. Applies to Hawker Siddeley Aviation, Ltd., Model DH/BH-125 airplanes, all series, with manufacturer's serial numbers 256056 and below and serial number 256061, certificated in all categories.

Compliance is required as indicated, unless already accomplished.

To detect excessive boss thickness that may exist on certain aileron inner hinge brackets (R/H and L/H)) which can result in insufficient engagement and prevent self locking of the cable guard in the thread insert, accomplish the following:

(a) Within 100 hours time in service after the effective date of this AD, measure the thickness of the boss of the upper and lower flange of the aileron inner hinge bracket at the point where the cable guard, P/N 25CW593- 1 or 3, is mounted, in accordance with paragraphs (A) (1) and (2) of the Section entitled "Accomplishment Instructions" of Hawker Siddeley Aviation Ltd. Service Bulletin SB 57-51, dated April 20, 1976, or an FAA-approved equivalent.

(b) If the boss thickness at the cable guard mounting, measured in accordance with paragraph (a) of this AD, is found to be more than .35 inches at the top flange or more than .31 inches at the bottom flange, inspect the cable guards before further flight for proper security and accomplish the following:

(1) Replace cable guards found improperly secured, loose, or missing, before further flight, with new cable guards fabricated and installed in accordance with paragraph (A)(3)(b) of the Section entitled "Accomplishment Instructions" of Hawker Siddeley Aviation Ltd. Service Bulletin SB 57-51, dated April 20, 1976, or an FAA-approved equivalent. New cable guards fabricated and installed in accordance with this paragraph must have an exposed thread length toler-

ance in the range of .31 to .32 inches to provide sufficient engagement of the thread insert locking device mounted in the boss.

(2) Cable guards found to be secure must be replaced with the new cable guards in accordance with paragraph (b)(1) of this paragraph within 300 hours time in service after the inspection required by this paragraph.

(c) Prior to the installation of an aileron inner bracket assembly, or a cable guard that is part of an assembly held as a spare, measure the boss thickness in accordance with paragraph (a) of this AD and if the dimensions exceed the limits specified in the lead-in sentence of paragraph (b) of this AD, replace the cable guards with new cable guards in accordance with paragraph (b)(1) of this AD.

NOTE.—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 December 23, 1976.

BERNARD A. GEIER,
Acting Director,
Flight Standards Service.

[FR Doc.77-173 Filed 1-5-77;8:45 am]

[14 CFR Part 39]

[Airworthiness Docket No. 74-WE-25-AD]

SARGENT INDUSTRIES, PICO OPERATION, REGULATOR P/N 30001

Withdrawal of Proposed Airworthiness Directive

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring additional inspections and modification of the regulator valve installed in passenger evacuation slides and slide/rafts on various aircraft; and, to incorporate new compression springs, finger levers, and fill valve housings on Sargent Industries, PICO Operation regulator P/N 30001 to supersede Amendment 39-1913 was published in 41 FR 19127.

Upon further consideration, and in the light of comments received in response to the Notice of Proposed Rulemaking, the Agency has determined that the malfunction rate has been reduced by incorporation of an improved O-ring, back up rings and lubricant required by AD 74-17-01; consequently, an unsafe condition does not presently exist as originally believed. Therefore, the proposed AD is not required at this time.

Withdrawal of this NPRM 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 FR 13697, the proposed Airworthiness Directive published in the FEDERAL REGISTER on May 10, 1976 (41 FR 19127) is hereby withdrawn.

Issued in Los Angeles, California, on December 20, 1976.

LYNN L. HINK,
Acting Director,
FAA Western Region.

[FR Doc.77-174 Filed 1-5-77;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 76-RM-22]

VOR FEDERAL AIRWAY

Withdrawal of Proposed Alteration

On September 30, 1976, a Notice of Proposed rulemaking (NPRM) was published in the FEDERAL REGISTER (41 FR 43182) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 71 of the Federal Aviation Regulations that would establish the upper vertical extent of a segment of V-430 airway near Devils Lake, N. Dak.

Subsequent to publication of the NPRM, it was determined by the Department of Air Force that the alteration of the airway would not be required.

In consideration of the foregoing, notice is hereby given that the proposal contained in Airspace Docket No. 76-RM-22 (41 FR 43182) is withdrawn.

This withdrawal of the Notice of Proposed Rulemaking is made under the authority of Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on December 27, 1976.

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

[FR Doc.77-175 Filed 1-5-77;8:45 am]

[Airspace Docket No. 76-EA-87]

Proposed Alteration

CONTROL ZONE AND TRANSITION AREA

[14 CFR Part 71]

The Federal Aviation Administration is considering amending §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the Richmond, Va., control zone (41 FR 421) and transition area (41 FR 581).

A new VOR Runway 2 instrument approach procedure developed for Richard Evelyn Byrd International Airport, Richmond, Va., requires alteration of the control zone and 700 foot floor transition area to provide additional controlled airspace protection for aircraft executing the instrument approach procedure.

Interested parties may submit such written data or views as they may desire. Communications should be submitted in triplicate to the Director, Eastern Region, Attn: Chief, Air Traffic Division, Department of Transportation, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. All communications received on or before February 7, 1977 will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements may be made for informal conferences with Federal Aviation Administration officials by contacting the Chief, Airspace and Procedures Branch, Eastern Region.

Any data or views presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested parties at the Office of Regional Counsel, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York.

The Federal Aviation Administration, having completed a review of the airspace requirements for the terminal area of Richmond, Va., proposes the airspace action hereinafter set forth:

1. Amend § 71.171 of Part 71, Federal Aviation Regulations by adding the following to the description of the Richmond, Va., control zone:

within 3 miles each side of the Richmond VORTAC 212° radial, extending from the 5.5-mile radius zone to 8.5 miles southwest of the VORTAC.

2. Amend § 71.181 of Part 71, Federal Aviation Regulations by adding the following to the description of the Richmond, Va. 700 foot floor transition area:

within 3 miles each side of the Richmond VORTAC 212° radial, extending from the VORTAC to 8.5 miles southwest of the VORTAC.

NOTE: The Federal Aviation Agency 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.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Jamaica, N.Y., on December 22, 1976.

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

[FR Doc.77-438 Filed 1-5-77;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 76-EA-88]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending § 71.181 of Part 71 of the Federal Aviation Regulations

so as to alter the Chesterfield, Va., transition area (41 FR 468).

A revision of the VOR Runway 15 instrument approach procedure for Chesterfield County Airport, Chesterfield, Va., requires alteration of the 700 foot floor transition area to provide additional controlled airspace protection for aircraft executing the procedure.

Interested parties may submit such written data or views as they may desire. Communications should be submitted in triplicate to the Director, Eastern Region, Attn: Chief, Air Traffic Division, Department of Transportation, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. All communications received on or before February 7, 1977 will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements may be made for informal conferences with Federal Aviation Administration officials by contacting the Chief, Airspace and Procedures Branch, Eastern Region.

Any data or views presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested parties at the Office of Regional Counsel, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York.

The Federal Aviation Administration, having completed a review of the airspace requirements for the terminal area of Chesterfield, Va., proposes the airspace action hereinafter set forth:

1. Amend § 71.181 of Part 71, Federal Aviation Regulations by deleting the description of the Chesterfield, Va. Transition Area and by inserting the following in lieu thereof:

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of the center, 37°24'25" N., 77°31'18" W., of Chesterfield County Airport, Chesterfield, Va.; within 5 miles each side of the Flat Rock, Va. VORTAC 116° radial, extending from the Flat Rock, Va. VORTAC to 18.5 miles southeast of the VORTAC; within 1.5 miles each side of a 322° bearing from the Happy Hill, Va. RBN (37°20'00" N., 77°27'15" W.) extending from the 5.5-mile radius area to 0.5 miles northwest of the RBN.

NOTE: The Federal Aviation Agency 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.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Jamaica, N.Y., on December 22, 1976.

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

[FR Doc.77-439 Filed 1-5-77;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 76-EA-94]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering amending § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate an Englishtown, N.J., transition area.

A VOR RWY 24 instrument approach procedure developed for Old Bridge Airport, Englishtown, N.J., require designation of a transition area to provide controlled airspace protection for IFR arrivals and departures at that airport.

Interested parties may submit such written data or views as they may desire. Communications should be submitted in triplicate to the Director, Eastern Region, Attn: Chief, Air Traffic Division, Department of Transportation, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. All communications received on or before February 7, 1977 will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements may be made for informal conferences with Federal Aviation Administration officials by contacting the Chief, Airspace and Procedures Branch, Eastern Region.

Any data or views presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested parties at the Office of Regional Counsel, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, New York.

The Federal Aviation Administration, having completed a review of the airspace requirements for the terminal area of Englishtown, N.J., proposes the airspace action hereinafter set forth:

1. Amend § 71.181 of Part 71 of the Federal Aviation Regulations by designating an Englishtown, N.J. 700 foot floor transition area as follows:

ENGLISHTOWN, N.J.

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of the center, 40°19'47" N., 74°20'47" W. of Old Bridge Airport, Englishtown, N.J.; within 4.5 miles northwest and 6.5 miles southeast of the Robbinsville, N.J. VORTAC 042° radial, extending from 12.5 miles northeast of the VORTAC to 30 miles northeast of the VORTAC.

NOTE: The Federal Aviation Agency 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.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Jamaica, N.Y., on December 22, 1976.

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

[FR Doc.77-440 Filed 1-5-77;8:45 am]

CIVIL AERONAUTICS BOARD

[14 CFR Part 288]

[EDR-316, Docket No. 30109; Dated: January 3, 1977]

EXEMPTION OF AIR CARRIERS FOR MILITARY TRANSPORTATION

Logair and Quicktrans Minimum Rates

Notice is hereby given that the Civil Aeronautics Board has under consideration an amendment to Part 288 of its Economic Regulations (14 CFR Part 288) concerned with the fuel surcharge adjustment to the minimum rates for Logair and Quicktrans domestic cargo charters performed by air carriers for the Department of Defense (DOD) and contracted for by the Military Airlift Command (MAC). The purpose of the proposed amendment is set forth in the Explanatory Statement, and the amendment is proposed under authority of the sections 204, 403, and 416 of the Federal Aviation Act of 1958, as amended; (72 Stats. 743, 758 and 771, as amended; 49 U.S.C. 1324, 1373, and 1386).

Interested persons may participate in the proposed rulemaking through submission of twenty (20) copies of written data, views, or arguments pertaining thereto, addressed to the Dockets Section, Civil Aeronautics Board, Washington, D.C. 20428. All relevant comments received on or before January 21, 1977, and reply comments received on or before January 31, 1977, will be considered by the Board before taking final action on the proposed rules. The periods being allowed for comments and replies are considered adequate for the purposes of this rulemaking proposal and are intended to expedite final rule action as requested by the petitioners. Copies of such communication will be available for examination by interested persons in the Docket Section of the Board, Room 714, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C. upon receipt thereof.

A list of all persons filing comments will be prepared by the Docket Section and sent to the persons named thereon. Those persons filing reply comments should serve any person whose comment is dealt with in their responsive comment. Persons filing responsive comments are to include at the time of filing appropriate proof of service (Rule 8(e), 14 CFR 302.8(e)).

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

EXPLANATORY STATEMENT

On November 23, 1976, Saturn Airways, Inc. (Saturn) [1] and Hawaiian Airlines, Inc. (HAL) jointly filed a petition requesting the Board to amend Part 288 rescinding the amendments for the Logair and Quicktrans rates adopted in ER-971, October 1, 1976, to permit the carriers and MAC to handle internally, by contract provision, the fuel surcharge adjustments for military fuel price fluctuations. DOD filed an answer supporting the joint petition.

As set out in the petition, the carriers and MAC have agreed to fix the base prices for fuels supplied to the carriers by DOD within the provisions of the FY 1977 contracts for Logair and Quicktrans services,[2] regardless of any price changes posted by the Defense Supply Agency (DSA).[3] Thus, the petitioners assert that any differences between the base rate prices and the prices quoted by DSA would be adjusted internally within DOD, thereby, obviating the need for any surcharge rate amendments. The carriers contend that this would accomplish the Board's surcharge rate objectives and protect the parties from any potential financial burden for possible delay in the Board's handling of fuel surcharge amendment rulemakings.

With almost all of the fuels consumed in the domestic MAC services being supplied by DOD, the need for fuel surcharge rate adjustments is virtually limited to changes in military fuel prices. Under these circumstances, the Board is not averse to an automatic rate adjustment procedure applicable to the established Logair/Quicktrans minimum rates. However, since the exemption authority to perform the military contract services granted under the provisions of Part 288 are keyed to the minimum rates limitations set forth therein, we feel that the rate specifications must include the fuel surcharge rate adjustment reflecting price changes listed by DSA. Therefore, we propose to amend Part 288 to provide in the domestic MAC rates for automatic fuel surcharge rate adjustment relating to military fuel price changes [4] which would reflect completely the intended minimum rates within the regulation. On the other hand, with minor reporting qualifications, the Board does not object to any agreed arrangement by the carriers and MAC, such as the current contract fixed military fuel price provision, to facilitate internal and/or interparty implementation of the established minimum rates.

In the past, when automatic fuel surcharge rates were applicable to military fuels consumed in MAC contract charter services performed pursuant to exemption authority under Part 288, the carriers and DOD informally entered into a fuel price agreement for Logair operations similar to that now reflected in the domestic MAC contracts. As a result, for the Logair services performed, the carriers reported net revenues and expenses excluding the surcharge rate provision and reflecting only the price paid to DOD.[5] Thus, the reported revenues were not fully consonant with the minimum rates that the Board intended and fixed in Part 288.[6] Accordingly, so that the reported results to the Board are completely informative, we propose to require that the carriers footnote the reported Logair and Quicktrans revenues on Schedule D-2, C.A.B. Form 243, and that the footnote provide the revenues reflecting inclusion of the fuel surcharge.[7] Similarly, for these same purposes, the related fuel expense shall be reflected in a footnote to the military fuel data report for Logair and Quicktrans services on Schedule P-12(a), C.A.B. Form 41, setting forth the gallons of fuel consumed and the cost reflecting inclusion of the fuel surcharge.[7] We believe this minimum reporting will satisfy our requirements and supply the users with all of the necessary information concerning MAC revenues, fuel consumption and cost. In this connection, DOD is charged with the responsibility of keeping the carriers performing Logair and Quicktrans services informed as to DSA fuel prices, providing advance advice for DSA fuel price changes and the effective date of such changes.

PROPOSED RULE AMENDMENT

It is proposed to amend Part 288 of the Economic Regulations (14 CFR Part 288) as follows:

Amend § 288.7(b) to amend the second proviso to read as follows:

§ 288.7 Reasonable level of compensation.

* * * * *

(b) * * *

(2) * * *

Provided, however, That, effective _____, 1977, if the price of any fuel product purchased from DOD for such services (reflecting military fuel prices established by the Defense Supply Agency (DSA)) varies from the base levels specified below, the total minimum compensation, as set forth above in subparagraphs (1) and (2), for the transportation provided shall be adjusted (either upward or downward, as the case may be) by the difference in the price per gallon for such product fixed by the DSA and the price specified for such product below, times the number of U.S. gallons of such product purchased by the carrier from DOD for the transportation provided. The base levels are as follows:

Jet Fuel:	*Standard price per U.S. gallon*
JP-4	$.368
JP-5	.355

* * * * *

[FR Doc.77-485 Filed 1-5-77;8:45 am]

[1] With the competition of the acquisition of Saturn by Trans International Airlines, Inc. (TIA), Saturn's certificates were canceled and its exemption authority transferred to TIA effective November 30, 1976, by Order 76-11-151.

[2] At the price levels reflected in the base minimum rates established by ER-959, July 15, 1976.

[3] The DSA price listings serve as the basis for the Board's military fuel surcharge rate amendments.

[4] Similar to the provision in the interim final rates during the full scale review and prior to the fixing of final rates in ER-959. See ER-853, May 17, 1974; ER-888, November 14, 1974; ER-906, April 25, 1975; and, ER-919, June 30, 1975. This rate proviso would further assure the validity of the domestic MAC rates regardless of agreed contracted fuel prices and could be amended to treat with changes in fuel prices reflected in the base domestic MAC rates.

[5] Since the exclusion of revenues and expenses were equal, the reported net profit or loss for Logair services was unaffected.

[6] The fuel surcharge is fixed by the Board regardless of whether it is specifically stated or provided for through an automatic adjustment clause.

[7] The difference between the fixed price by agreement with DOD and the price quoted by DSA times the gallons purchased from DOD for Logair and/or Quicktrans operations.

FEDERAL POWER COMMISSION

[18 CFR Part 154]

[Docket No. R-406]

PROVISION IN NATURAL GAS PIPELINE COMPANIES' FPC GAS TARIFF

Purchased Gas Adjustment; Conference

JANUARY 4, 1977.

On May 10, 1976, the Commission issued in the above-captioned proceeding a notice of proposed rulemaking.[1] The rulemaking concerns proposed amendments to the Commission's regulations and procedures governing purchased gas cost adjustments. Comments on the proposal have been submitted by a number of parties. Based upon a review of the comments it appears that a principal issue is the respective semi-annual PGA rate adjustment dates to be assigned to each pipeline. Many pipelines commented that the adjustment dates proposed in the notice of rulemaking are administratively inconvenient. A number of parties requested that a conference be held. In view of these comments, a conference will be convened to discuss further the problem of the semi-annual dates to be assigned each pipeline. Parties attending this conference will be expected to specify semi-annual dates which will be convenient for their purchased gas adjustment filings. When determining adjustment dates, parties should consider the need for staggered dates among all pipelines in order to allow proper administration of each filing.

Good cause having been shown, an on-the-record conference shall be held in this proceeding commencing at 10:00 a.m. on Tuesday, January 11, 1977, in Hearing Room A, Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. All interested persons are invited to attend.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-622 Filed 1-4-77;3:57 pm]

[1] See 41 FR 20177, May 17, 1976.

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 666-7]

APPROVAL AND PROMULGATION OF INDEPENDENT PLANS

Reproposal of Amendments to Stage II Vapor Recovery Regulations and Test Procedures and Notice of Public Hearings; Extension of Comment Period

The comment period for the reproposal of Stage II Vapor Recovery Regulations and Test Procedures that appeared in the November 1, 1976, FEDERAL REGISTER, beginning at page 48044, is extended as follows:

Comments on this proposed amendment postmarked no later than on or before January 31, 1977, will be considered. In addition, specific comments relating only to the Short Test Procedure, (including vehicle sampling procedures), Appendix F, Section I, will be considered if postmarked no later than on or before March 2, 1977.

Dated: December 29, 1976.

ROGER STRELOW,
Assistant Administrator for Air and Waste Management.

[FR Doc.77-397 Filed 1-5-77;8:45 am]

[40 CFR Part 52]

[FRL 667-5]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revisions to the Southern California Air Pollution Control District Rules and Regulations in the State of California

On April 21, August 2 and November 19, 1976 the State of California submitted to the Regional Administrator, Region IX, revisions to the Southern California Air Pollution Control District Regulation II—Permits, as part of the California State Implementation Plan (SIP). As revised Southern California Air Pollution Control District Regulation II, Rules 201, 202, 203, 204, 205, 206, 207, 209, 210, 211, 212, 213, 213.1, 213.2, 214, 215, 216, 217 and 219, will provide a procedure by which persons who wish to construct, modify or operate any article, machine, equipment, or other contrivance that may cause the issuance of air contaminants may be granted a permit to do so. A permit shall not be granted, however, if it is determined that such construction, modification, or operation would interfere with the attainment or maintenance of a National Ambient Air Quality Standard.

The State of California has certified, by letters of August 2 and December 22, 1976, that these revisions to its SIP were adopted after public hearings were held on January 9, February 6 and May 7, 1976 in Pomona, California, October 4 and 5, 1976, in Fresno, California, and October 8, 1976, in Los Angeles, California, after notice conforming to 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans was given.

The decision of the Administrator to approve or disapprove the proposed revisions to the SIP will be based on whether or not they meet the requirements of Clean Air Act section 110(a)(2)(A)-(H), the requirements of 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans, and particularly 40 CFR 51.18.

This notice is to advise the public of receipt of this proposal and to request public comments. Copies of the proposed revisions are available for public inspection during regular business hours at:

Environmental Protection Agency, Region IX, Enforcement Division, 100 California Street, San Francisco, CA 94111.
State of California, Air Resources Board, 1709 11th Street, Sacramento, CA 95814.
Southern California Air, Pollution Control District, 9420 Telstar, El Monte, CA 91731.
Public Information Reference Unit, Room 2922, U.S. Environmental Protection Agency, 401 "M" Street, S.W., Washington, DC 20460.

Interested persons may participate in the rulemaking process by submitting written comments to Regional Administrator, Attention: Enforcement Division, EPA, Region IX, 100 California Street, San Francisco, California 94111. Relevant comments received on or before February 7, 1977 will be considered. Comments received will be available for inspection during normal working hours at the Region IX office and at the EPA Public Information Reference Unit.

This notice is issued under the authority of Section 110 of the Clean Air Act, as amended (42 U.S.C. 1857c-5).

Dated: December 29, 1976.

R. L. O'CONNELL,
Acting Regional Administrator.

[FR Doc.77-545 Filed 1-5-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

[41 CFR Part 3-1]

SMALL BUSINESS CONCERNS AND MINORITY BUSINESS ENTERPRISE

Proposed Rule Making

Notice is hereby given that the Office of the Secretary is considering an amendment to 41 CFR, Chapter 3, by revising § 3-1.713, Contracts with the Small Business Administration, and is considering adding to 41 CFR Chapter 3, a new Subpart 3-1.13, Minority Business Enterprise.

The purpose of the proposed revision to § 3-1.713 is to: (a) Draw attention to Executive Order 11625, dated October 13, 1971, superseding Executive Order 11458 dated March 5, 1969, which established the Office of Minority Business Enterprise in the Department of Commerce. Executive Order 11625 clarifies the authority of the Department of Commerce to, among other responsibilities, coordinate the participation of all Federal agencies in an increased minority business enterprise effort.

(b) Establish the Division of Minority Business Assistance within the Office of Grants and Procurement Management as the Departmental manager of the HEW Minority Business Enterprise Program.

(c) Require each designated procuring activity to appoint a qualified Minority Business Coordinator.

(d) Set forth the duties of Minority Business Coordinators in carrying out the Department's 8(a) Program.

The proposed § 3-1.713-50, Procurement of technical requirements, provides procedures for limited technical competitions among 8(a) firms being considered for the award of an 8(a) contract for these kinds of services. The procedures establish suggested dollar categories within which from three to five firms may be nominated for the purpose of holding technical discussions in order to select the firm with the capabilities that promise the greatest value to the Government in terms of possible performance. These discussions will be held after the firms have had a reasonable opportunity to review the proposed scope of work, including proposal evaluation criteria. At the request of the program director, the procuring activity may request that written technical proposals be submitted. The highest rated firm shall be selected for further preparation of a cost proposal negotiation. A written technical evaluation is to be submitted to the contracting officer by the program office, showing the ratings of the firms in descending order of preference.

Subsection 3-1.713-3 also establishes within the Department the requirement for contracting activities processing 8(a) requirements to SBA, to furnish the applicable SBA office an Offering Letter, offering the procurement to SBA. The Offering Letter transmits the complete procurement package, and will include at least the following:

(a) Description of the work to be performed.

(b) Name(s) of the firm(s) nominated for technical competition of award.

(c) Period of performance.

(d) A statement to the effect that public solicitation for the procurement has not been issued.

(e) A written justification for the nomination of a single contractor for an 8(a) award.

(f) Any special requirements, restrictions, or geographical limitations.

Subsection 3-1.713-51, Monthly Status Report of Requirements Offered and Contracts Awarded—8(a) Program, contains a requirement for HEW major contracting activities to submit a monthly report to the Division of Minority Business Assistance on the current status of 8(a) offers and 8(a) contracts awarded, so that appropriate data may be available for management purposes and also to inform the Assistant Secretary for Administration and Management of the status of this priority program.

The proposed new Subpart 3-1.13, Minority Business Enterprise, sets forth policy and procedures for contracting with minority business enterprises other than under section 8(a) of the Small Business Act.

Subsection 3-1.1302, Agency programs, states that it is HEW policy to foster and assist in the establishment and growth of minority business concerns to the maximum practicable extent, and cites various responsibilities of the Division of Minority Business Assistance, within the Office of Grants and Procurement Management, Office of the Secretary, HEW.

Subsection 3-1.1302-1, Procedure, sets forth duties and responsibilities of Minority Business Coordinators within HEW, in relation to Departmental contracts awarded through procedures other than 8(a).

Subsection 3-1.1350-1, Monthly Report on minority business contracts—other than 8(a), contains detailed instructions for the preparation by HEW procuring activities of a monthly report on contracts awarded to minority-owned firms other than through the SBA 8(a) Program—e.g.—through regular procurements awarded by the Department. The report is required by the Division of Minority Business Assistance, and is used among other purposes, to respond to reporting requirements of the Office of Minority Business Enterprise, Department of Commerce, which is authorized by Executive Order 11624 to collect such data from all participating Federal agencies.

Any person who wishes to submit data, views, or objections pertaining to the proposed amendment may do so by filing them in duplicate with the Deputy Assistant Secretary for Grants and Procurement Management, OASAM, Room 513D2, South Portal Building, 200 Independence Avenue, SW., Washington, D.C. 20201, on or before February 7, 1977. All comments submitted pursuant to this notice will be available for public inspection during business hours in the Office of Grants and Procurement Management.

The Department of Health, Education, and Welfare 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: December 27, 1976.

JOHN OTTINA,
Assistant Secretary for Administration and Management.

As proposed, revised § 3-1.713 will read as follows:

PART 3-1—GENERAL

Subpart 3-1.7—Small Business Concerns

§ 3-1.713 Contracts with the Small Business Administration.

§ 3-1.713-1 Authority.

(a) This section sets forth provisions for contracting with socially and economically disadvantaged enterprises, under Section 8(a) of the Small Business Act. The "8(a)" contract program is a socio-economic, Presidentially-sponsored program aimed at opening the doors of government contracting opportunities to disadvantaged businesses unable or unlikely to compete successfully for a contract.

(b) This section also draws attention to Executive Order 11625, dated October 13, 1971, superseding Executive Order 11458, dated March 5, 1969, which established the Office of Minority Business Enterprise in the Department of Commerce. Executive Order 11625 clarifies the authority of the Secretary of Commerce to: (1) Implement Federal policy in support of the minority business enterprise program; (2) provide additional technical and management assistance to disadvantaged businesses; and (3) coordinate the participation of all Federal departments and agencies in an increased minority business enterprise effort.

(c) The Office of Grants and Procurement Management, OASAM-OS, is responsible for the general supervision of the Department of Health, Education, and Welfare Minority Business Enterprise Program. Within the Office of Grants and Procurement Management (OGPM), the Division of Minority Business Assistance (DMBA) is responsible for: (1) Developing and managing the HEW Minority Business Enterprise Program; (2) providing staff guidance to activities of the Department; (3) establishing effective working relations with the minority business community, nationwide; (4) representing HEW before other government agencies on matters primarily affecting minority business affairs; and (5) providing data and information relating to the minority business program to the Secretary and all sources internal and external to HEW. As part of these repsonsibilities, DMBA servies as the Department monitor and coordination point for all matters concerning the Department's Minority Business Enterprise program.

(d) (1) The head of each procuring activity listed below, or his designee, shall appoint an individual to serve as Minority Business Coordinator (MBC). At a minimum, the individual appointed to serve as MBC shall be sufficiently qualified to perform the functions directed by this Subpart 3-1.7 and Subpart 3-1.13 of this part and any specific duties assigned by the head of the procuring activity or his designee.

Office of Human Development (OHD)
Office of Education (OE)
Social and Rehabilitation Service (SRS)
Social Security Administration (SSA)
National Institute of Education (NIE)
Public Health Service (PHS)
- Food and Drug Administration (FDA)
- Health Resources Administration (HRA)
- Health Services Administrtaion (HSA)
- National Institutes of Health (NIH)

Office of Facilities Engineering and Property Management (OFEPM)[1]
Each Regional Office
- Alcohol, Drug Abuse, and Mental Health Administration (ADMHA)
- Center for Disease Control (CDC)
- Administrative Services Center (OAM/PHS)

Office of the Secretary (OS)

(2) The head of the procuring activity, or his designee, shall determine the organization level at which the MBC is assigned. Whenever the MBC is assigned at a subordinate organization level, every effort shall be made to assure that the MBC does not function as or work under the direct supervision of an operational contracting officer. However, where staffing or geographic considerations necessitate assigning the MBC function to an operational contracting office, the contracting officer is required to obtain a decision from the next higher level of supervision in cases where there is disagreement between the contracting officer and MBC. A copy of each MBC appointment and termination thereof shall be forwarded to the Director, DMBA. Also, the principal MBC at the procuring activity, through the appointing authority, shall be responsible to the Director, DMBA, for policy, technical guidance and assistance, and for resolving complex matters which involve either higher levels of HEW organization or other government agencies.

(e) Procuring activities may establish operating procedures to accomplish the requirements of this Subpart 3-1.7. However, a copy of such procedures shall be submitted to DMBA for review.

§ 3-1.713-2 Policy.

(a) Like small businesses in general, 8(a) contractors have varying degrees of experience in the business world, and some may not have knowledge of the complexity of government procurement procedures and the obligations such procedures impose on the contractor. Prior to initiating formal negotiations with an 8(a) contractor, contracting personnel and MBC's should make a special effort to ascertain whether the prospective contractor needs assistance in understanding Government procurement practices. Whenever possible, such assistance should be provided promptly and the contractor should be advised that additional management and technical assistance is available from the Small Business Administration.

(b) It is HEW policy to foster and assist in the establishment and growth of 8(a) firms to the maximum extent practicable so that they may become self-sustaining, viable, competitive business enterprises.

(c) To promote this policy, HEW procurement offices shall enter into contracts with the Small Business Administration (SBA), and SBA may subcontract with 8(a) firms. However, the authority to negotiate subcontracts may be delegated to HEW by SBA.

(d) The basis for HEW's entering into an 8(a) contract will be SBA's certification to this Department that SBA is competent to perform a specific HEW re-

[1] Insofar as the procurement of architect-engineer and construction services is delegated to the Regional Office of Facilities Engineering and Construction (ROFEC), the duties of minority business coordinator shall be assigned to the appropriate ROFEC.

quirement. The SBA will make the following distribution of such certification letters: (1) Copy to the cognizant HEW procurement office; (2) copy to the principal operating component's headquarters procurement office; and (3) copy to the Division of Minority Business Assistance (DMBA), Office of Grants and Procurement Management.

(e) Brochures of 8(a) firms which have been interviewed by DMBA shall be forwarded by DMBA to all MBC's. These brochures shall be reviewed by the procuring activity (see § 1-1.205) to associate requirements with the capabilities of these firms. The MBC's will assist program personnel in such reviews, and will obtain other information, as needed, by contacting DMBA, or by direct contact with the Project Development Division, Office of Business Development, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416. MBC's in HEW Regional Officers will obtain needed information from DMBA or from the applicable SBA Regional or District Office in their area.

(f) The Minority Business Coordinator shall perform the duties listed below:

(1) Counsel and advise minority businessmen, and serve as the coordination point for those matters relating to the placement of contracts with the Small Business Administration, under section 8(a) of the Small Business Act. As part of this effort, disadvantaged businessmen interested in doing business with the Department shall be referred to the DMBA for a complete briefing covering the Departmental Minority Business Enterprise Program.

(2) Develop minority business source lists, including the firm's name, location, and capabilities, and provide such information to procurement and program personnel as required.

(3) Participate in procurement planning, at the earliest possible stage in program planning in order to break out requirements for award to minority business enterprises under section 8(a) of the Small Business Act (See 3-1.452-2).

(4) Review requests for contracts prior to publicizing the procurement and prior to issuance of solicitations, in order to identify requirements which may be awarded to the SBA under section 8(a) of the Small Business Act. Such review shall be made in conjunction with the program director and the contracting officer.

(5) When an 8(a) firm has been selected for further proposal preparation and negotiation, ensure that the contracting officer explains to the 8(a) contractor his and the Government's rights and obligations as specified in the contract instrument, e.g., type of contract, performance or delivery requirements, methods of payment, required clauses, etc.

(6) Keep key program and procurement officials apprised of the 8(a) program through office visits, seminars, and presentations.

(7) Perform functions directed by this Subpart 3-1.7 and Subpart 3-1.13 of this part and any specific duties assigned by the head of the procuring activity or his designee.

§ 3-1.713-50 Procurement of technical requirements.

(a) *Source selection.* (1) Except in the case where SBA selects a firm for an 8(a) award, limited technical competition is required for requirements for consulting services, computer science and related services, research, development, test, evaluation, demonstration, and technical and professional services, where price is generally not controlling but rather the requirement requires discussions between the prospective contractor(s) and the program specialist as to the technical aspects of the requirement and the contractor's method of approach. However, there may be circumstances where one 8(a) firm has exclusive or predominant capability by reason of experience, specialized facilities, or technical competence to perform the work within the time required. In such circumstances, the initiating program office may recommend, for approval by the contracting officer, that only that 8(a) firm be considered for nomination to SBA. This recommendation shall be in writing, setting forth full and complete justification for the nomination. The Justification shall be submitted to the appropriate contracting officer, through the minority business coordinator for concurrence. In addition, the Justification shall be included in the offering letter to SBA (3-1.713-50(b)(1)(ii)). This would exclude requirements for supplies, production items and construction. The order of source nomination for limited technical competition shall be:

(i) Source recommendation by program personnel during the procurement planning stage.

(ii) Source recommendations by the Minority Business Coordinator.

(iii) Source recommendations by the Small Business Administration.

(iv) Each 8(a) firm or group of firms nominated for a specific 8(a) requirement shall be identified to SBA for ratification prior to any discussions with the firm(s) about the requirement.

(v) Notwithstanding the policy expressed in § 1-3.101(d), the SBA has ultimate responsibility for final selection of an 8(a) subcontractor and may deviate from usual source selection procedures.

(2) Number of Sources to be solicited. Although it is intended that limited technical competition will assist 8(a) firms in competing effectively, procuring activities should recognize that the policy expressed in § 1-3.101 does not apply to the process of identifying potential contractors to be nominated to SBA under the 8(a) program, and that to require proposals from a large number of 8(a) firms would be harmful. Therefore, the peferred number of firms to be involved in a limited technical competition for any one procurement, based on the projected dollar value of the requirement, is as follows:

(i) *$10,000—$50,000.* Within this dollar range, the MBC, in consultation with the program director, shall nominate three firms when practicable, and submit the names of these firms to the contracting officer for review and concurrence. The names of the firms nominated shall be submitted by the contracting officer to SBA for the selection of one firm. However, the procuring activity, at the request of the program director, may require that the firms undergo limited technical competition. In that event, the provisions of paragraphs (a)(2)(ii) or (a)(2)(iii) of this section, as requested, will apply.

(ii) *$50,000—$100,000.* Within this dollar range, the MBC, in consultation with the program director, and with the concurrence of the Contracting Officer, shall nominate three firms, when practicable, for the purpose of holding technical discussions in order to determine the firm with the capability that promises the greatest value to the Government in terms of possible performance. These discussions should be held after the firms have had a reasonable opportunity to review the proposed scope of work, including applicable proposal evaluation criteria. A written technical evaluation should be submitted to the contracting officer by the program office, showing the ratings of the firms in descending order of preference. At the request of the program director, the procuring activity may require that written technical proposals be submitted. In that event, the provisions of paragraph (a)(2)(iii) of this section will apply. The highest rated firm shall be selected for preparation of a cost proposal and further negotiation. In the event that there is a tie, SBA shall make the selection.

(iii) *$100,000—$200,000.* Within this dollar range, the MBC, in consultation with the program director and with the concurrence of the Contracting Officer, shall nominate three firms, when practicable, for the purpose of holding technical discussions. These discussions should be held after the firms have had a reasonable opportunity to review the proposed scope of work, including applicable proposal evaluation criteria. If the results of the technical discussions are satisfactory, the firms should be requested to submit written technical proposals, in order to determine the firm with the capability that promises the greatest value to the Government in terms of possible performance. A written technical evaluation should be submitted to the Contracting Officer by the program office, showing the ratings of the firms in descending order of preference. The highest rated firm shall be selected for further preparation of a cost proposal and negotiation. In the event there is a tie, SBA shall make the selection.

(iv) *$200,000 and above.* Within this dollar range, the MBC, in consultation with the program director, and with the concurrence of the Contracting officer, shall nominate five firms, when practicable, for the purpose of holding tech-

nical discussions. These discussions should be held after the firms have had a reasonable opportunity to review the proposed scope of work, including applicable proposal evaluation criteria. If the results of the technical discussions are satisfactory, the firms should be requested to submit written technical proposals in order to determine the firm with the capability that promises the greatest value to the Government in terms of possible performance. A written technical evaluation should be submitted to the Contracting Officer by the program office, showing the ratings of the firms in descending order of preference. The highest rated firm shall be selected for further preparation of a cost proposal and negotiation. In the event there is a tie, SBA shall make the selection.

(3) MBC's shall be responsible for immediately notifying DMBA by phone whenever requirements amounting to $500,000 or more are being considered for award under the 8(a) program.

(b) *Offering letter.* (1) When a decision has been made by the MBC, program director, and cognizant procuring activity, to process a procurement through the Small Business Administration, under provisions of Section 8(a) of the Small Business Act, the cognizant procuring activity shall promptly furnish the applicable SBA office a letter offering the procurement to the SBA, with an information copy to DMBA and to the MBC. The offering letter should transmit the complete procurement package. Additionally, the offering letter should include, but not necessarily be limited to, the following:

(i) A description of work to be performed or items to be delivered;

(ii) The name of the firm(s) nominated for technical competition or award (If only one firm is nominated, a written justification must be included to substantiate limiting the nomination to one source);

(iii) Procuring agency dollar estimate of the requirement;

(iv) Procurement history (e.g., first time offered, item or services not presently being provided by a small business firm, etc.);

(v) Period of performance;

(vi) Any special requirement, restrictions, or geographical limitations (e.g., turn-around time demands a firm within two hours travel time, etc.);

(vii) A statement to the effect that public solicitation for the procurement has not been issued;

(viii) A statement to the effect that the procurement cannot reasonably be expected to be won by an eligible 8(a) concern under normal competitive means.

(2) Within ten (10) working days after receipt of the offering letter, SBA will acknowledge the HEW offering letter and either accept the nominated 8(a) firm(s), request additional firms be nominated, or supply HEW with additional firm(s) for consideration. If SBA has not acknowledged the offering letter within this period, the procuring activity shall notify SBA of intent to proceed with the procurement without further regard to the 8(a) procedures, after giving due regard to the urgency of the procurement.

(3) When SBA notifies HEW that the firms nominated for technical competition are approved, the Contracting Officer shall hold a technical competition among those firms. Cost factors shall not be included in the technical proposals nor considered in discussions of such proposals. The procurement activity shall notify SBA as to the results of the competition. When requested by SBA, the procuring activity shall render all possible assistance to SBA with respect to SBA's negotiation of 8(a) subcontracts. However, SBA may delegate negotiation responsibility to HEW. Upon receipt of such delegation, HEW will promptly negotiate a contract with the selected 8(a) firm and forward applicable documentation to SBA for signature. (See 1-1.713-3.) When HEW forwards an offering letter to SBA, requiring SBA to select one of three nominated firms (See § 3-1.713-50(a)(2)(i) above), HEW will accept for negotiation the firm selected by SBA. If HEW forwards to SBA an offering letter which does not nominate a firm, HEW will accept for negotiation the firm nominated by SBA. When SBA approves an HEW nomination of only one 8(a) firm the contracting officer, in coordination with the program official, shall promptly request the firm to prepare a cost proposal for negotiation.

(c) *Debriefing.* A debriefing, when requested in writing, shall be provided by the cognizant contracting officer to an offeror that has unsuccessfully competed for an 8(a) procurement, as prescribed in § 3-3.103.

(d) *Unacceptable offerors.* If it is determined during negotiations that an offeror is technically unacceptable the procuring activity shall notify promptly the SBA. If it appears that an offeror would be unable to earn a profit if awarded the contract, both SBA and DMBA shall be notified. If the offeror selected for negotiation is later determined unacceptable because of technical considerations, a new offeror shall be identified after SBA has been notified. The second rated offeror in the case of § 3-1.713-50(a)(2)(i), (ii), (iii), or (iv), shall be selected for consideration as the new offeror.

(e) *Liaison with the Small Business Administration.* (1) Procuring activities will maintain a continuous liaison with the Office of Business Development, SBA, to ensure that the overall goals of each agency are achieved. In the event there is a dispute between a procuring activity and an SBA representative regarding any aspects of 8(a) contracting, the procuring activity shall promptly notify DMBA.

(2) Each 8(a) firm or group of firms nominated for a specific 8(a) requirement shall be identified to SBA for ratification prior to any discussions with the firm(s) about the requirement.

(3) The business development responsibility of SBA requires them to assist in and monitor the growth and development of each 8(a) firm. It is, therefore, essential that SBA be assisted in this effort, and that the options available to HEW through the nomination and selection process be utilized in a manner that would impact on the largest possible number of 8(a) firms.

(f) *Arriving at contract amount.* Contracts will be awarded at prices which are fair and reasonable.

(g) *Contract award.* When negotiations have been concluded, the procuring activity shall prepare the contractual documents for the prime contract and the subcontract. Instructions for the preparation and special clauses to be inserted in these documents are found in § 1-1.713.3.

(h) *Contract modifications, inspections, etc.* The responsibility for subcontract administration and field inspection will, in most cases, be delegated by SBA to the applicable procuring activity. The procuring activity shall keep SBA apprised of all contract modifications, progress payments, and other pertinent data requested.

(i) *Subcontract administration.* Some firms may need additional management expertise for optimal performance and completion of a particular contract. Therefore, when subcontract administration is delegated to HEW by SBA, the procuring activity shall promptly apprise the SBA and DMBA whenever the contractor is experiencing problems. SBA should provide necessary technical assistance so that contractor can successfully complete the contract.

(j) *Contract termination.* No final action to terminate an 8(a) contract shall be initiated without giving advance notice to DMBA and SBA. (See paragraph (c) of special 8(a) contract conditions prescribed by § 1-1.713-3(d).)

§ 3-1.713-51 Reporting requirements.

MONTHLY STATUS REPORT OF REQUIREMENTS OFFERED AND CONTRACTS AWARDED—8 (a) PROGRAM

(a) This report is designed to collect data on the current status of 8(a) offers and 8(a) contracts awarded, on a monthly basis. Reports should include new contracts, renewals, and modifications, and should be forwarded in sufficient time to reach the Division of Minority Business Assistance no later than 15 calendar days following the end of the reporting month.

(1) Agency program; (2) offer number (e.g., 75-0001); (3) date offered to SBA; (4) requirement; (5) estimated amount; (6) status (pending or awarded, or suspended, or withdrawn); (7) contract awarded by SBA to (name of 8(a) contractor, city, state); (8) contractor ethnic classification; (9) date of award; (10) HEW contract number; (11) amount awarded.

(i) Item (1)—Agency Program: Enter name of Bureau, Institute, Offices, etc.

(ii) Item (2)—Self-explanatory.

(iii) Item (3)—Date Offered: Enter the date shown on the offering letter.

(iv) Item (4)—Requirement: Enter a brief description of each procurement requirement offered under section 8(a) of the Small Business Act.

(v) Item (5)—Estimated Amount: Enter the estimated dollar amount of each 8(a) offer.

(vi) Item (6)—Status: One of the following codes should be used to indicate the current status of each 8(a) offer identified in (4):

(a) Pending—P—Enter Code P for pending 8(a) offers identified in (4). Whenever Code P applies, items (1) through (6) should be completed each month for each 8(a) offer until the status is changed from "pending" to some other status code.

(b) Awarded—A—Enter Code A for each 8(a) contract awarded during the month. Once a contract has been awarded and reported as such, the data for that contract should not be included in succeeding monthly reports.

(c) Suspended—S—Whenever an 8(a) offer is suspended, enter Code S, including the reason for suspending the offer. Items (1) through (6) should be completed each month for each suspended 8(a) offer until the suspension is lifted or the offer is withdrawn.

(d) Withdrawn W—Whenever an 8(a) offer is withdrawn, enter Code W, including the reason for withdrawing the offer, i.e., 8(a) approved contractor not available. Once an 8(a) offer has been withdrawn and reported as such, the data for that offer should not be included in succeeding reports, unless the offer is reinstated at a later date.

7. Item (7)—Contract Awarded by SBA to—Enter the name of the contractor, and the name of the city and state in which the contractor is located.

8. Item (8)—Contractor Ethnic Classification—For each contract awarded, enter one of the following codes, as applicable, as an indicator of the ethnic characteristics of the entrepreneur to whom the contract was awarded:

a. AI—American Indian.
b. BA—Black American.
c. MA—Mexican American.
d. OA—Oriental American.
e. PR—Puerto Rican.
f. OM—Other Minorities.
g. NM—Non-Minority.

9. Item (9)—Date of Award: Self-explanatory.

10. Item (10)—HEW Contract Number:

a. To the right of the contract number indicate whether the contract is a modification.

b. Show contract modification number.

c. Indicate contract renewal by placing after modification number the letter R and renewal number in parenthesis, i.e., 282-76-0499/mod-6/(R-2) to indicate modification number 6, renewal number 2.

11. Item (11)—Amount Awarded: Self-explanatory.

On the last page of each monthly report, enter a summary of monthly cumulative accomplishments, in the following format:

$_____ Cumulative awards, beginning of month.
(Plus)
$_____ Awards for current month.
$_____ Cumulative awards, end of month.
$_____ Total offers pending, beginning of month.
(Plus)
$_____ Offers for current month.
(Less)
$_____ Withdrawals, suspensions, and contracts awarded during the month.[1]
$_____ Total offers pending, end of month.

[1] For contracts awarded, deduct the value of the original offer.

NOTE.—As an additional item on the last page of each monthly report, cite any action taken to advance the 8(a) program; i.e., presentations made at staff meetings on behalf of the 8(a) program, 8(a) seminars conducted, etc.

It is proposed to add Subpart 3-1.13 to Title 41, Part 3-1 as follows:

Subpart 3-1.13—Minority Business Enterprise

Sec.	
3-1.1300	Scope of subpart.
3-1.1302	Agency programs.
3-1.1302-1	Procedure.
3-1.1310	Subcontracting with minority business enterprise.
3-1.1310-2	Minority business enterprise subcontracting program clause.
3-1.1350	Reporting requirements for minority non-8(a) contracts.
3-1.1350-1	Monthly report on minority business contracts—other than 8(a).

Subpart 3-1.13—Minority Business Enterprise

§ 3-1.1300 Scope of subpart.

This subpart sets forth policy and procedures for contracting with minority business enterprises other than under Section 8(a) of the Small Business Act.

§ 3-1.1302 Agency programs.

(a) In accordance with the provisions of Executive Order 11625, it is the policy of HEW to foster and assist in the establishment and growth of minority-owned and controlled business concerns to the maximum practicable extent in order that such firms may become self-sustaining, viable, competitive enterprises.

(b) The Office of Grants and Procurement Management, OASAM-OS, is responsible for the general supervision of the Department of Health, Education, and Welfare Minority Business Enterprise Program. Within the Office of Grants and Procurement Management, (OGPM), the Division of Minority Business Assistance (DMBA) is responsible for: (1) Developing and managing the HEW Minority Business Enterprise Program; (2) providing staff guidance to activities of the Department; (3) establishing effective working relations with the minority business community nationwide; (4) representing HEW before other government agencies on matters primarily affecting minority business affairs; and (5) providing data and information relating to the minority business program to the Secretary and all sources internal and external to HEW. As part of these responsibilities, DMBA serves as the Department monitor and coordination point for all matters concerning the Department's Minority Business Enterprise program.

§ 3-1.1302-1 Procedure.

(a) In carrying out the Department's minority non-8(a) procurement policy, procuring activities shall be responsible for accomplishing the requirements of § 1-1.1302, and submitting copies of semiannual reports to DMBA. Reports should be forwarded in sufficient time to reach DMBA no later than 45 days following the close of the reporting period.

(b) Procuring activities may establish operating procedures to accomplish the requirements of § 1-1.1302. However, a copy of such procedures shall be submitted to DMBA for review, prior to issuance.

§ 3-1.1310 Subcontracting with Minority Business Enterprise.

§ 3-1.1310-2 Minority Business Enterprise Subcontracting Program Clause.

Except for 8(a) contracts:

(a) Prime contracts which include the clause prescribed in § 1-1.1310-2(a) shall incorporate the clause prescribed in § 1-1.1310-2(b) whenever it is anticipated that subcontracting will exceed $100,000.

(b) Prime contractors shall be required to report minority subcontract awards on Optional Form 61. (See 1-16.804-5.) Negative reports are required.

(c) Upon receipt of completed Optional Form 61, the procuring activity shall be responsible for submitting a duplicate copy of each form to DMBA no later than 45 calendar days following the close of the semiannual reporting period.

§ 3-1.1350 Reporting requirements for minority non-8(a) contracts.

§ 3-1.1350-1 Monthly report on minority business contracts—other than 8(a).

MONTHLY REPORT OF MINORITY BUISNESS CONTRACTS—OTHER THAN 8(a)

(a) This report is designed to collect information on a monthly basis relating to known procurement transactions between HEW and minority enterprises, and minority nonprofit organizations, other than those contracts awarded under the provisions of Section 8(a) of the Small Business Act. Reports should be forwarded in sufficient time to reach the Division of Minority Business Assistance no later than 15 calendar days following the end of the reporting month.

(b) Reports on non-8(a) minority procurements shall include:

(1) Contractor name and address (city and state);
(2) Contractor's ethnic classification;
(3) Profit or Non-Profit Organization;
(4) Contract Number;
(5) Requirement;
(6) Date of Award. Negative reports, if any, are required.
(7) Amount Awarded.

(c) Explanation of items:

Item (1)—Self-explanatory.

Item (2)—Contractor ethnic classification: For each contract awarded, enter one of the following codes that best describes the ethnic classification of the minority contractor to whom the contract was awarded:

a. AI—American Indian.
b. BA—Black American.
c. MA—Mexican American.
d. OA—Oriental American.
e. PR—Puerto Rican.
f. OM—Other Minorities.

Item (3) Profit/non-profit organization: Enter code "P" for profitmaking organizations and code "NP" for nonprofit organizations.

Item (4)—Self-explanatory.

Item (5)—Requirements: Enter a brief, explicit description of each requirement.

Items (6) and (7)—Self-explanatory.

[FR Doc.77-534 Filed 1-5-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[46 CFR Part 12]

[CGD 74-45]

ENGINE DEPARTMENT RATINGS

Notice of Proposed Rule Making

The Coast Guard is considering amending the regulations concerned with the Qualified Member of the Engine Department ratings. This proposed change would reduce the number of ratings through consolidation in an effort to eliminate certain outdated ratings.

Interested persons are invited to participate in this rulemaking by submitting written comments, data, views, or arguments to the Commandant (G-CMC/81), U.S. Coast Guard, Washington, D.C. 20590. Each person or organization submitting a comment should include his name and address, identify this notice (CGD 74-45), and give reasons for any recommendations made.

Comments received before February 20, 1977 will be considered before final action is taken on this proposal. Copies of comments received will be available for examination in Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. This proposal may be changed in the light or comments received.

No hearing is contemplated, but one may be held at a time and place set in a later notice in the FEDERAL REGISTER, if requested by a person or organization desiring to comment orally at a public hearing and raising a genuine issue.

The present regulations provide for twelve ratings under the heading of Qualified Member of the Engine Department.

It is proposed that the "fireman" and "watertender" ratings be consolidated to form a new "fireman/watertender" rating.

The "fireman" and "watertender" ratings were previously associated with separate functions in the firing and tending of boiler plants. The duty of the fireman was to control the fuel to the boilers while the watertender was responsible for the water level in the boilers. These two functions were often carried out in two separate locations due to the design of the boilers. With modern, locally controlled automatic and semi-automatic boiler plants, the need for both a fireman and a watertender has been eliminated. Both functions can easily be accomplished by one man. On the few vessels that are still equipped with separately located fire rooms and boiler rooms, it is felt that since the fireman and watertender must work together, each should be encouraged to understand the duties of the other. The consolidation of the ratings is appropriate in all cases.

The "boilermaker" rating is also associated with the older type coal or oil fired boilers. Underway repairs to boilers were a constant task for the boilermaker. The design of modern boilers is such that constant repairs are not anticipated as a daily occurrence. Eliminating the "boilermaker" rating would be consistent since this rating is no longer in demand. Also, there would no longer be the need for requiring a candidate to take an unnecessary examination for boilermaker in order to qualify for a "QMED-any" rating.

In consideration of the foregoing, it is proposed that Part 12 of Title 46 of the Code of Federal Regulations be amended as follows:

§ 12.15-9 [Amended]

1. By revoking the column entitled "Fireman" in the list in § 12.15-9(b).

2. By striking the heading of the column entitled "Watertender" and inserting the heading "Fireman/Watertender" in place thereof in the list in § 12.15-9(b).

3. By striking the words "boilermaker and"; and by striking the words "those ratings", and inserting the words "that rating" in place thereof in § 12.15-9(c).

4. By amending § 12.15-11 to read as follows:

§ 12.15-11 General provisions respecting merchant mariner's documents endorsed as qualified member of the engine department.

* * * * *

(a) Refrigerating engineer.
(b) Oiler.
(c) Deck engineer.
(d) Fireman/Watertender.
(e) Junior engineer.
(f) Electrician.
(g) Machinist.
(h) Pumpman.
(i) Deck engine mechanic.
(j) Engineman.

(80 Stat. 973; 46 U.S.C. 367, 375, 391a, 416, 672, 133; 49 U.S.C. 1655(b)(1); 49 CFR 1.46 (b))

NOTE: The Coast Guard has determined that this document does not contain a major proposal requiring preparation of Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: December 29, 1976.

W. M. BENKERT,
Rear Admiral, U.S. Coast Guard Chief, Office of Merchant Marine Safety.

[FR Doc.77-537 Filed 1-5-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 64]

[Docket No. 20828; FCC 76-1181]

COMPUTER INQUIRY

Order Extending Time for Filing Comments

Adopted: December 21, 1976.

Released: December 29, 1976.

In the matter of amendment of § 64.702 of the Commission's rules and regulations, Docket No. 20828.

1. The Commission on November 24, 1976 determined to reverse the Chief, Common Carrier Bureau's rejection of AT&T's Dataspeed 40/4 tariff revision (AT&T Transmittal No. 12449). In so doing we stated our intention to enlarge the scope of the recently initiated Computer Inquiry[1] to include issues raised by devices such as the Dataspeed 40/4.

2. The Commission is currently in the process of preparing a supplement to the new Computer Inquiry. This will, of course, become an integral part of any comments the parties will be filing. We do not believe that under the present schedule sufficient time will be available to permit the parties a reasonable opportunity to adequately address the issues raised therein. Accordingly, in order to allow the parties a reasonable opportunity in which to comment on the issues raised by our forthcoming enlargement, the Commission, sua sponte, is extending the time period for the filing of all comments and reply comments in this proceeding.

3. *Accordingly, It is hereby ordered*, That the time for filing comments and reply comments in Docket No. 20828 is extended for the reasons indicated herein.

4. *It is further ordered*, That interested parties shall file comments in Docket No. 20828 on or before April 11, 1977 and reply comments on or before May 25, 1977.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.77-462 Filed 1-5-77;8:45 am]

[47 CFR Part 73]

[Docket No. 19667]

BROADCAST LICENSEES

Maintenance of Certain Program Records; Order Extending Time for Filing Reply Comments

Adopted: December 23, 1976.

Released: December 29, 1976.

In the matter of petition for rulemaking to require broadcast licensees to maintain certain program records, Docket No. 19667, RM-1475.

1. On August 24, 1976, the Commission adopted a Memorandum Opinion and Order and Third Further Notice of Proposed Rule Making in the above-entitled proceeding, 41 FR 37344. The date for filing comments has expired and the date for filing reply comments is presently December 27, 1976.

2. On December 17, 1976, counsel for nine broadcast licensees[2] requested that the time for filing reply comments be extended to and including January 27,

[1] Notice of Inquiry and Proposed Rulemaking, released August 9, 1976 FCC 76-745 (Docket No. 20828) (41 FR 56226).

[2] Cornhusker Television Corporation, Cox Broadcasting Corporation, Fetzer Broadcasting Company, Newhouse Broadcasting Corporation, Palladium Publishing Company, Radiohio, Incorporated, Scranton Broadcasters, Inc., WBNS, TV, Inc., and WJAC, Inc.

1977. Counsel states that a review of comments filed by other parties had indicated that the careful preparation of reply comments requires additional time, a problem that is increased due to interruptions from the holiday season and prior commitments.

3. As a result of the several extensions given for the filing of comments in this proceeding, those comments are unusually voluminous requiring more than the usual time for preparation of replies. Under the circumstances we believe it would be appropriate to give additional time in which to respond. *Accordingly, it is ordered*, That the time for filing reply comments in Docket 19667 is extended to and including January 27, 1977.

4. This action is taken pursuant to authority found in sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules.

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

[FR Doc.77-463 Filed 1-5-77;8:45 am]

[47 CFR Part 73]

[Docket No. 21023]

FM BROADCAST STATIONS IN PLYMOUTH, OHIO

Proposed Table of Assignments

Adopted: December 17, 1976.

Released: December 27, 1976.

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Plymouth, Ohio), Docket No. 21023, RM-2778.

1. The Commission has before it a "Petition for Rule Making,"[1] filed on behalf of WOBL Radio, Inc. ("petitioner"), licensee of Station WOBL, Oberlin, Ohio, proposing the assignment of Channel 261A at Plymouth, Ohio, approximately 50 kilometers (30 miles) southwest of Oberlin. The assignment could be made to Plymouth without affecting any other existing FM assignments in the Table. Although it would provide for additional aural broadcast service, it would not provide for a first or second such service. However, there is no local broadcast service in Plymouth. The preclusion occurs only on Channel 261A in a limited area surrounding Plymouth, Ohio.

2. Plymouth (pop. 1,993)[2] is located on the border between Richland and Huron Counties (pop. 129,997 and 49,587, respectively) some 80 kilometers (50 miles) south of the U.S.-Canadian border and 97 kilometers (60 miles) west of Akron, Ohio.

3. In support of its request, petitioner states that Plymouth's population continues to increase and, according to population figures prepared in 1972, by the Huron County Regional Planning Commission, Plymouth's population will increase to 2,300 in 1980. It adds that the community is the home of an industrial plant, and its growing population also is said to serve as a source of manpower for industry in neighboring communities. Petitioner asserts that, although Plymouth would be the principal area served by the proposed channel, it would also provide service to seven other nearby communities. Since Plymouth is located within 250 miles of the Canadian-U.S. border, the petitioner's proposal is subject to Canadian approval.

4. In light of the above information and the fact that there is no local broadcast transmission service in Plymouth, we believe consideration of the proposal for the assignment of Channel 261A to Plymouth, Ohio, is warranted.

5. Accordingly, the Commission proposes to amend the FM Table of Assignments, § 73.202(b), with regard to the community of Plymouth, Ohio, as follows:

City	Channel No.	
	Present	Proposed
Plymouth, Ohio		261A

6. The Commission's authority to institute rule making proceedings; showings required, cut-off procedures; and filing requirements are contained below and are incorporated by reference herein.

7. Interested parties may file comments on or before January 31, 1977, and reply comments on or before February 22, 1977.

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

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in this notice of proposed rulemaking.

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

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

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

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

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

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

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

[FR Doc.77-464 Filed 1-5-77;8:45 am]

[47 CFR Part 73]

[Docket No. 21035]

FM BROADCAST STATIONS IN LANCASTER-FENNIMORE, WISCONSIN

Proposed Table of Assignments

Adopted: December 22, 1976.

Released: December 28, 1976.

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Lancaster-Fennimore, Wisconsin), Docket No. 21035, RM-2786.

1. The Commission has before it a petition[1] filed by Joy Broadcasters (petitioner) proposing the assignment of Channel 249A to Lancaster-Fennimore, Wisconsin. Lancaster (pop. 3,756)[2], seat of Grant County (pop. 48,398), is located approximately 113 kilometers (70 miles)

[1] Public Notice of the filing of the petition was issued on November 3, 1976 (Report No. 1014).

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

[1] Public Notice of the filing of the petition was issued on November 12, 1976 (Report No. 1016).

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

west of Madison, Wisconsin. Fennimore, located approximately 16 kilometers (10 miles) north of Lancaster, has a population of 1,861. Neither Lancaster nor Fennimore has local broadcast service.

2. In support of its request, petitioner states that the Lancaster-Fennimore area is rapidly growing and submits information with respect to the various facilities and organizations in the area. It also notes that an industrial area is located north of the city limits of Lancaster where trailer homes are manufactured. Petitioner asserts that there is a need for additional FM broadcast service to the area. Petitioner states that it will apply for a construction permit promptly and expeditiously institute a first local FM programming service if the channel is assigned.

3. Although petitioner requests the designation of the channel assignment to specify Lancaster-Fennimore, if there is a problem in that regard, petitioner requests that the assignment be proposed for Lancaster, the largest community. Since there is an inadequate showing to support a hyphenated assignment we are proposing to assign the channel to Lancaster. Since the communities are located within 10 miles of each other, the channel will be available for use there or at Fennimore, under the provisions of § 73.203(b) of the rules. In view of the foregoing information and the fact that there is no local broadcast service in Lancaster or Fennimore, we believe the proposal merits exploration in a rule making proceeding.

4. In light of the above, the Commission proposes to amend the FM Table of Assignments, § 73.202(b), as follows with regard to the community of Lancaster, Wisconsin.

City	Channel No.	
	Present	Proposed
Lancaster, Wis.		249A

5. The Commission's authority to institute rulemaking proceedings; showings required; cut-off procedures; and filing requirements are contained below and are incorporated herein.

6. Interested parties may file comments on or before February 7, 1977, and reply comments on or before February 28, 1977.

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

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend, the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in this notice of proposed rulemaking.

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

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

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

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

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

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

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

[FR Doc.77-465 Filed 1-5-77;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.

CIVIL AERONAUTICS BOARD

[Docket No. 30228; Order 76-12-162]

BRITISH AIRWAYS

Order of Suspension and Investigation Regarding Contract Cargo Rates

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 17th day of December 1976.

On December 2, 1976, British Airways filed with the Board a tariff, effective January 1, 1977, proposing general "Contract Cargo Rates" (CCR) and rules, for United Kingdom-originating cargo traffic in its Glasgow/London/Manchester to Boston / Chicago / Detroit / Miami / New York / Philadelphia / Washington, D.C., routes on a point-to-point basis.[1] Under the basic scheme, a CCR shipper would do all of the following: (a) Enter into a one-year contract with British Airways to ship a minimum annual aggregate volume of cargo (500,000, 1,000,000, or 1,500,000 kilos);[2] (b) tender the annual amount in minimum volume consignments;[3] and (c) accept low priority, "space available" service for 48 hours after tender, and normal priority thereafter. British Airways would then charge the CCR shipper, for each qualifying shipment,[4] a variable rate per kilo based upon that shipper's minimum annual volume commitment.[5]

In support of its proposal, British Airways asserts that CCR produces discounts of 15 to 26 percent below current unit load device rates; that the magnitude of these discounts is justified first and foremost by the 48-hour "space available" rule, which greatly decreases the value of CCR service to the shipper;[6] that the annual volume commitment undertaken by the shipper justifies a further discount because it represents both a transfer and a transformation of the carrier's "basic load-factor risk" into the shipper's risk of not meeting his volume commitment or of having to meet his commitment and forego the use of cheaper means of transportation, and that this assumption of the carrier's risk by the shipper should be reflected in the CCR rate; that its proposal is not unjustly discriminatory because the low priority service and annual volume commitment of CCR are "fundamental distinguishing factor(s)" from normal cargo service and thus justify a different rate; that the proposal is reasonable in that it will allow CCR traffic to be moved by belly capacity of wide-bodied combination aircraft that would otherwise fly empty, thus meeting the "profit-impact" test;[7] that CCR would not divert cargo currently moving at normal rates, which is for the most part too time-sensitive to travel on a low priority, "space available" basis, but rather would generate 10,000 metric tons of air cargo traffic each year, a 20 percent increase; and, finally, that the U.K. Civil Aviation Authority has "enthusiastically welcomed" the proposal on a one-year experimental basis, giving rise to "[c]onsiderations of comity" in favor of the Board's giving its approval as well.

Complaints requesting rejection or suspension pending investigation of British Airways' proposal have been filed by Pan American World Airways, Inc., Seaboard World Airlines, Inc., and Trans World Airlines, Inc.[8] An answer in support of Seaboard's complaint has been filed by The Flying Tiger Line Inc. These parties assert that British Airways' proposal is a discriminatory aggregate weight rule "at odds with a long line of Board decisions";[9] that there is no difference between CCR service and general or specific commodity rate service that could justify the lower proposed rate; that British Airways has failed to substantiate its alleged cost savings from CCR service that would justify its discount, that the proposed rate is so uneconomical that it could not recover the full cost of service even with operations at a 100 percent load factor; that the proposed rate does not provide meaningful or effective deterrents to diversion of normal cargo traffic; and that the proposed rate will dilute cargo revenues in the markets in question rather than generate now traffic.

Upon consideration of the tariff filing, the complaints and all other relevant matters, the Board has concluded that the proposed rates may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and should be investigated. The Board further concludes that the rates should be suspended pending investigation.

Unjust discrimination prohibited by section 404(b) of the Federal Aviation Act of 1958[10] involves in essence the charging of different rates or fares for services that are essentially the same.[11] Unjust discrimination may take many forms, and we need not affix an "aggregate weight rule" or other label to CCR in order to see its pervasive discrimination against small-volume shippers. A CCR shipment may move between the same points, on the same aircraft and with essentially the same ground services as an identical regular shipment. The CCR shipper, however, gains the advantage of a lower rate because he can tender "other unrelated traffic in other markets"[12] and at other times. A small-volume shipper who tenders a consignment of acceptable size and who is willing to consent to 48-hour "space available" service still does not qualify for the CCR discount because he has no minimal annual volume commitment. Finally, there is patent discrimination in CCR rates even among CCR shippers, based solely upon the level of their minimum annual volume commitments.[13]

The minimum annual volume commitment of the CCR shipper, with its alleged assumption of the carrier's load-factor risk, is by itself a factor unrelated to the actual physical or administrative handling of CCR cargo, and thus does not

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[1] International Cargo Rates Tariff No. 3, C.A.B. No. 25, John M. Sampson, Agent.

[2] No more than 15 percent of the annual volume commitment can be shipped in any one calendar month. If the CCR shipper falls short of the annual volume commitment, he nonetheless must pay for the unshipped balance.

[3] I.e., unit load devices of 800 kilos (type 8), 1735 kilos (type 5) or 2100 kilos (type 3), or, subject to a premium, loose consignments of at least 500 kilos.

[4] If a shipment is not of an approved configuration, or if the 48-hour "space available" service is refused, then the shipment is carried at normal tariff rates and is not credited toward the shipper's annual volume commitment.

[5] For example, the Glasgow-New York CCR rate per kilo is 34 pence with a 500,000 kilo annual volume commitment, 32 pence with a 1,000,000 kilo commitment, and 30 pence with a 1,500,000 kilo commitment.

[6] Citing Deferred Airfreight Case, 23 C.A.B. 651 (1956).

[7] Citing Pittsburgh—Philadelphia No-Reservation Fare Investigation, 34 C.A.B. 508 (1961).

[8] Dockets 30172, 30166, and 30169, respectively.

[9] Citing, e.g., Revised Aggregate Rates Proposed by WTC Air Freight, Order 73-2-61; Aggregate Weight Rule Proposed by Shulman, Inc., 49 C.A.B. 323 (1968); Multicharter Cargo Rates Investigation, 47 C.A.B. 626 (1967).

[10] "No carrier or foreign air carrier shall make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, locality, or description of traffic in air transportation in any respect whatsoever or subject any particular person, port, locality, or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

[11] Multicharter Cargo Rates Investigation, 47 C.A.B. at 627-28. See also Transcontinental Bus System, Inc. v. C.A.B., 383 F. 2d 466, 481 (5th Cir. 1967), *cert. denied*, 390 U.S. 920 (1968).

[12] Revised Aggregate Rates Proposed by WTC Air Freight, Order 73-2-61, at 2-3.

[13] See text at note 5 *supra*.

establish a different type of cargo "service." The 48-hour "space available" rule, upon which British Airways relies so heavily in its justification, likewise does not create a different type of service. Due to the great preponderance of eastbound over westbound air cargo traffic over the North Atlantic, reflected in IATA and U.S. carrier statistics, there is reason to believe that there is an abundance of unused westbound capacity in which to carry CCR traffic, and this traffic thus will not be delayed or otherwise disadvantaged by its "low priority". However, as complainant Pan American so aptly points out, even if the 48-hour "space available" rule were a real difference in service that could justify a discount, the fact remains that only large-volume shippers can obtain this service and attendant discount in the first place. Discrimination of this nature infects the entire CCR scheme. Even the minimum consignment rules are of little import, since they compare favorably with the average transatlantic shipment size.[14] In sum, there is no feature of CCR which makes it a different, less valuable service to a shipper than regular cargo service. Such alleged differences in service must be evaluated in a factual context; they cannot create a discreet type of service if they are of no practical significance to a shipper or if they exist merely on paper.[15] Finally, even if these alleged differences in service were substantial, the rates are still inherently discriminatory because they are available only to a select group of shippers.

British Airways has asserted that CCR's 48-hour "space available" rule and binding annual volume commitment produce cost savings sufficient to justify the proposal. The carrier, however, has done no more than boldly assert that these savings exist; it has failed to even roughly quantify these cost savings or relate them to the amount of the CCR discount. British Airways states that the 48-hour "space available" rule will permit use of the "unused belly capacity of its wide-bodied combination aircraft," yet there is no effort made to substantiate this alleged cost savings. This matter is of some concern in light of complainant Seaboard's observation that British Airways' wide-bodied combination aircraft cannot carry a type 3 ULD, a configuration specifically included in CCR. On the other hand, to the extent that delay in shipment exists (which, as we point out above is doubtful) the 48-hour "space available" rule may engender higher costs in warehousing and administration. British Airways maintains that an annual volume commitment represents a shifting of risk from carrier to shipper which can be translated into a specific cost savings. This claim was never developed beyond the theoretical stage. For example, there is no basis shown for linking 500,000 kilo increments of load-factor risk assuagement with the 2 pence per kilo incremental CCR discount. British Airways' allusion to charter operators and APEX passengers as load-factor risk reducers who are rewarded with lower fares does not establish the validity of this concept for CCR since, as complainant Trans World Airlines observes, charterers and APEX passengers affect the load factor of a specific flight, while the CCR shipper does not.

Data submitted by complainant Seaboard, and adjusted for the most current rate of exchange, indicate that CCR yields would range from 13.25¢ to 17.56¢ per RTM, while its own North Atlantic cargo costs, projected for the year ending October 31, 1977, are 23.3¢ per RTM, and those of Pan American and Trans World Airlines are higher. All complainants submitted similar analyses as to the uneconomical nature of CCR. British Airways in its justification merely states that CCR "satisfi[es] the profit-impact test . . . based on the costs of any transatlantic cargo carrier." Nowhere does British Airways set forth these costs or CCR yields; absent such an elementary showing, there is no basis for accepting this contention. Further, the 20 percent cargo traffic generation estimate for CCR again is unsubstantiated. Clearly, a generation estimate of such magnitude cannot be accepted without a firm showing in this regard. There is nothing to indicate that implementation of CCR would not dilute U.K.-U.S. cargo traffic revenues to an unacceptable degree.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly sections 204(a), 403, 404(b), 801, and 1002(j) thereof:

It is ordered, That: 1. An investigation be instituted to determine whether the rates, charges and provisions on Original Title Page, and Original Pages 1 through 8; and 1st Revised Pages 1, 2, 3, 4, 5, and 6 of Tariff C.A.B. No. 25, issued by John M. Sampson, Agent, and rules, regulations and practices affecting such rates, are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and, if found to be unlawful, to take appropriate action to prevent the use of such rates and rules, regulations, or practices;

2. Pending hearing and decision by the Board, the tariff provisions specified in paragraph 1 above are suspended and their use deferred from December 31, 1976, to and including December 31, 1977, unless otherwise ordered by the Board, and that no changes may be made therein during the period of suspension except by order or special permission of the Board;

3. This order shall be submitted to the President [16] and shall become effective on December 31, 1976;

4. The investigation ordered herein be assigned for hearing before an administrative law judge of the Board at a time and place hereafter to be designated;

5. Copies of this order be filed in the aforesaid tariff and be served upon British Airways, Pan American World Airways, Inc., Seaboard World Airlines, Inc., Trans World Airlines, Inc., and The Flying Tiger Line Inc., which are hereby made parties to the investigation; and

6. Except to the extent granted, the complaints in Dockets 30166, 30169, and 30172 are hereby dismissed.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

JAMES R. DERSTINE,
Acting Secretary.

[FR Doc.77-393 Filed 1-5-77;8:45 am]

[Docket No. 27573; Order 76-12-130]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Specific Commodity Rates

Issued under delegated authority December 23, 1976.

An agreement has 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), and adopted pursuant to the provisions of Resolution 590 dealing with specific commodity rates.

As set forth in the attachment, the agreement extends certain specific commodity rates under existing specific commodity descriptions, all reflecting reductions from general cargo rates. The agreement was adopted pursuant to unprotested notices to the carriers and promulgated in an IATA letter dated December 9, 1976.

Pursuant to authority duly delegated by the Board in the Board's Regulations, 14 CFR 385.14, it is not found that the subject agreement is adverse to the public interest or in violation of the Act; *Provided*, That approval is subject to the conditions hereinafter ordered.

Accordingly, it is ordered, That: Agreement 26302, R-1 through R-4, is approved, provided that (a) approval shall not constitute approval of the specific commodity descriptions contained therein for purposes of tariff publications; (b) tariff filings shall be marked to become effective on not less than 30 days' notice from the date of filing; and (c) where a specific commodity rate is published for a specified minimum weight at a level lower than the general commodity rate applicable for such weight,

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[14] *Cf.* Order 73-2-61 at 6. In reversing the Initial Decision in this case, the Board indicated that "[t]he test for unjust discrimination does not require that the services rendered be identical, only that they be 'like'." Facial differences between two services may make them "unidentical" but do not render them "unlike".

[15] The qualifying minimum consignments are 1,100 lbs. loose (with a small premium) and 1,760 lbs. in unit load devices (type 8). The average transatlantic shipment size for complainant Seaboard, for example, is 3,000 lbs.

[16] This order was submitted to the President on December 20, 1976.

and where a general commodity rate is published for a greater minimum weight at a level lower than such specific commodity rate, the specific commodity rate shall be extended to all such greater minimum weights at the applicable general commodity rate level.

Persons entitled to petition the Board for review of this order, pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board unless within such period a petition for review is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

ATTACHMENT.—*Agreement CAB 26302*

Agreement C.A.B.	IATA commodity item No.[1]	Specific commodity rate: Cents per kilograms	Specific commodity rate: Minimum weight in kilograms	Market
RATES EXTENDED UNDER EXISTING COMMODITY DESCRIPTION				
26302:				
R-1	9215	115	500	Copenhagen to New York.
R-2	9993	305	100	Abu Dhabi/Dubai to New York.
		250	500	
		270	100	Baghdad to New York.
		300	100	Bahrain/Dhahran/Doha to New York.
		245	500	
		285	100	Jeddah to New York.
		240	500	
		295	100	Kuwait to New York.
		310	100	Muscat to New York.
		255	500	
R-3	[2] 1024	320	100	Lusaka to New York.
R-4	2102	135	1,000	Beirut to New York.

[1] See applicable tariffs for complete commodity descriptions.
[2] Expires Dec. 31, 1977.

[FR Doc.77-392 Filed 1-5-77;8:45 am]

[Docket No. 29123; Order 76-12-156]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Passenger Fares

Issued under delegated authority December 29, 1976.

An agreement has 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 Joint Traffic Conferences of the International Air Transport Association (IATA). The agreement was adopted at the Composite Passenger Traffic Conferences held in Miami, Florida during October 1976.

Agreement C.A.B. 26258, proposed for effect April 1, 1977, which only affects air transportation indirectly, would revalidate the present South Atlantic fare structure due to expire March 31, 1977, through March 31, 1978.[1] In general, specified fares would be increased by four percent across the board and applicable currency adjustment resolutions would be amended to reflect the current monetary relationships within the South Atlantic market area. We will approve those portions of the agreement governing fares which are combinable with fares to/from United States points and thus have indirect application in air transportation as defined by the Act, with the exception of Resolution 0221 insofar as that resolution would establish a three percent currency-related surcharge from Guam to foreign points in the Western Hemisphere via Africa/Asia and the South Atlantic. The surcharge from Guam parallels a similar surcharge from Guam to Asian points which was disapproved in Order 74-11-153, November 29, 1974, and consequently will be disapproved herein.

Jurisdiction will be disclaimed on the balance of the resolutions which govern noncombinable fares and thus have no application in air transportation.

Pursuant to authority duly delegated by the Board in the Board's Regulations 14 CFR 385.14:

1. It is not found that the following resolutions, incorporated in the agreement indicated, and which have indirect application in air transportation as defined by the Act, are adverse to the public interest or in violation of the Act:

[1] Certain special fare categories normally applicable through April will expire a month later on April 30, 1978.

Agreement CAB	IATA No.	Title	Application
26258:			
R-1	001b	South Atlantic Special Effectiveness Resolution (Tie-In)	1/2; 1/2/3 (via Atlantic except TC2 and TC3 via TC1).
R-2	001dd	South Atlantic Escape for Normal and Special Fares	1/2; 1/2/3.
R-3	001r	Special Escape for JT12/123 (South Atlantic) Agreement (New)	1/2; 1/2/3.
R-4	001u	Special Escape for South Atlantic Agreement	1/2; 1/2/3.
R-5	002	Standard Revalidation Resolution (South Atlantic)	1/2; 1/2/3.
R-6	002	Special Revalidation Resolution (South Atlantic)	1/2; 1/2/3.
R-7	014n	JT123 Construction Rule for Fares Between The South Atlantic Area and TC3 (Revalidating and Amending).	1/2/3.
R-8	022i	JT12/JT123 (South Atlantic) Adjustment Factors for Sales of Passenger Air Transportation (New)—except from Guam.	1/2; 1/2/3.
R-9	054c	South Atlantic Normal First-Class Fares	1/2.
R-10	064c	South Atlantic Economy—Class Fares	1/2.

2. It is not found that the following resolutions, incorporated in the agreement indicated, affect air transportation within the meaning of the Act:

Agreement CAB	IATA No.	Title	Application
26258:			
R-11	070y	South Atlantic 60-day Economy-Class Excursion Fares (Revalidating and Amending).	1/2.
R-12	071y	South Atlantic 45-Day Economy-Class Excursion Fares (Revalidating and Amending).	1/2.
R-13	081k	South Atlantic 28-Day Group Inclusive Tour Fares (Revalidating and Amending).	1/2; 1/2/3.
R-14	094c	Emigrant Fares—Portugal To Brazil (Revalidating and Amending)	1/2.

3. It is found that the following resolution, incorporated in the agreement indicated, is adverse to the public interest and in violation of the Act:

Agreement CAB	IATA No.	Title	Application
26258:			
R-8	022i	JT12/JT123 (South Atlantic) Adjustment Factors for Sales of Passenger Air Transportation (New)—From Guam.	1/2; 1/2/3.

Accordingly, it is ordered, That: 1. Those portions of Agreement C.A.B. 26258, described in finding paragraph 1 above, which have indirect application in air transportation as defined by the Act, be and hereby are approved;

2. Jurisdiction be and hereby is disclaimed with respect to those portions of Agreement C.A.B. 26258 described in finding paragraph 2 above; and

3. That portion of Agreement C.A.B. 26258, R-8, described in finding paragraph 3 above be and hereby is disapproved.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-391 Filed 1-5-77;8:45 am]

[Docket No. 28655]

SEATTLE/PORTLAND-JAPAN SERVICE INVESTIGATION

Reassignment of Proceeding

The United States Civil Service Commission has refused to take favorable action on the Board's request to extend the period of employment of the undersigned Chief Administrative Law Judge, whose reemployment status is scheduled to end on December 31, 1976. Since the undersigned will become unavailable to the Board as an Administrative Law Judge after that date, it is necessary to reassign this proceeding. Accordingly, this case is reassigned from the undersigned Chief Administrative Law Judge to Administrative Law Judge William J. Madden.

Dated at Washington, D.C., December 29, 1976.

ROSS I. NEWMANN,
Chief Administrative Law Judge.

[FR Doc.77-390 Filed 1-5-77;8:45 am]

[Docket No. 29428; Order 77-1-4]

DRUMHELLER AIR SERVICES LTD.

Statement of Tentative Findings and Conclusions and Order To Show Cause Regarding Foreign Air Carrier Permit

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 3rd day of January 1977.

By application filed June 21, 1976,[1] Drumheller Air Services Ltd. (Drumheller) requests a foreign air carrier permit to engage in charter foreign air transportation with respect to persons and their accompanying baggage, and planeload charter foreign air transportation with respect to property, between any point or points in Canada and any point or points in the United States, utilizing "small aircraft"[2] pursuant to the Nonscheduled Air Service Agreement executed on May 8, 1974, by the Governments of the United States and Canada.

FITNESS OF APPLICANT FOR A FOREIGN AIR CARRIER PERMIT

Drumheller was incorporated under the Companies Act of Alberta in April 1972. The Air Transport Committee of the Canadian Transport Commission has issued license No. A.T.C. 547/76 (CF), a Class 9-4 license which authorizes the holder to operate international charter commercial air services within the continent of North America from a base at Drumheller, Alberta, and license No. A.T.C. 2216/73 (C), a Class 4 license which authorizes the holder to operate charter commercial air services within Canada. The Canadian Department of Transport, Civil Aviation Branch, has issued Drumheller Operating Certificate Number 3281 which certifies that Drumheller is adequately equipped and able to conduct a safe operation.

The applicant's balance sheet as of January 31, 1976, showed total assets of $71,328. Total, as well as current, liabilities were $74,054 and current assets were $59,701. For the period June 1, 1975, to January 31, 1976, the carrier earned revenues of $65,932, of which $29,341 was derived from training and instruction. It has operating expenses during this period of $67,514 resulting in an operating loss of $1,582. While the carrier shows a small negative net worth and a small operating loss for the most recent period, the company appears to have the financial backing of its principal shareholder. Furthermore, the company's statement of earnings shows that for the 12-month period ending May 31, 1975, the company had net earnings of $2,572 and would also have had positive earnings for the June 1, 1975–January 31, 1976, period were it not for an extraordinary loss of $9,506 attributed to expenses incurred as a result of a fire. In addition, the carrier states that since its inception it has always met its financial obligations and has never defaulted on any commitment to provide transportation. We further note that on April 5, 1976, the Canadian Transport Commission examined the fitness of the applicant, and concluded that the carrier should be granted an international charter license.

In its application, the carrier states that it proposes to make two aircraft available for charters to the United States: (1) A Cessna 177-B, seating capacity of 4, and a maximum authorized takeoff weight of 2,500 pounds, and (2) a PA 23/150 Apache, seating capacity of

[1] A copy of the application has been transmitted to the President of the United States in accordance with the requirements of section 801 of the Act.

[2] "Small aircraft" are defined by the Nonscheduled Air Service Agreement as aircraft which are not "large aircraft." "Large aircraft" are defined as aircraft having both (a) a maximum passenger capacity of more than 30 seats or a maximum payload capacity of more than 7,500 pounds, and (b) a maximum authorized takeoff weight on wheels greater than 35,000 pounds.

4. and a maximum authorized takeoff weight of 3,500 pounds. The applicant has had no safety or tariff violations and no acidents during the last five years.

"PUBLIC INTEREST" IN AWARD OF THE AUTHORITY SOUGHT

The applicant relies on the Nonscheduled Air Service Agreement signed by the Government of Canada and the United States on May 8, 1974, as the basis for the grant of the requested authority. The Government of Canada has designated the applicant under the Agreement to perform charter services with small aircraft.

OWNERSHIP AND CONTROL OF THE APPLICANT

The officers of the corporation are Mr. Ronald J. Klys, President and Manager, and Mr. Robert D. Ross, Secretary and Lawyer. Both officers are Canadian citizens. The company has issued 20,000 common shares all of which are owned by either Mr. Klys (19,999 shares) or Mr. Ross (1 share).

The applicant states that no officer, director, or stockholder of Drumheller owns any shares of stock or other interest in any U.S. air carrier, or in any other Canadian or other foreign air carrier, or is in any way financially interested in any other business related to the common carriage of goods or persons in either Canada or the United States. The applicant is not related by blood or marriage with anyone engaged in any phase of aeronautics, either in Canada or the United States.

In view of the foregoing and all the facts of record, the Board tentatively finds and concludes:

1. That Drumheller Air Services Ltd. is substantially owned and effectively controlled by nationals of Canada;

2. That it is in the public interest to issue a foreign air carrier permit for small aircraft operations to Drumheller Air Services Ltd. authorizing it to engage in charter foreign air transportation with small aircraft with respect to persons and their accompanied baggage and planeload charters of property between any point or points in Canada and any point or points in the United States.

3. That the public interest requires that the exercise of the privileges granted by said permit shall be subject to the terms, conditions, and limitations contained in the specimen form of permit attached to this order, and to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board;

4. That Drumheller Air Services Ltd. is fit, willing, and able properly to perform the above-described foreign air transportation and to conform to the provisions of the Act and the rules, regulations, and requirements of the Board thereunder;

5. That except to the extent granted herein, the application of Drumheller Air Services Ltd. in Docket 29428 should be denied; and

6. That an evidentiary hearing is not required in the public interest.[3]

Accordingly, it is ordered, That:

1. All interested persons be and they hereby are directed to show cause why the Board should not make final the tentative findings and conclusions stated herein, and why a foreign air carrier permit in the form of the specimen permit attached to this order should not, subject to the approval of the President pursuant to section 801 of the Act, be issued to Drumheller Air Services Ltd.;

2. Any interested person having objection to the issuance, without hearing, of an order making final the tentative findings and conclusions stated herein shall file a statement of objections supported by evidence within 21 days after the service of this order. If an evidentiary hearing is requested, the objection should state in detail why such hearing is considered necessary and what relevant and material facts would be expected to be established through such hearing which cannot be established in written pleadings;

3. If timely and properly supported objections are filed, further consideration will be accorded the matters and issues raised by the objections before further action is taken by the Board;[4]

4. In the event no objections are filed, all further procedural steps will be deemed to have been waived, and the Board may proceed to enter an order in accordance with the tentative findings and conclusions set forth herein; and

5. Copies of this order shall be served upon Drumheller Air Services Ltd. and the Ambassador of Canada in Washington, D.C.

This order will be published in the FEDERAL REGISTER and will be transmitted to the President.

By the Civil Aeronautics Board.

PHYLLIS T. TAYLOR,
Secretary.

SPECIMEN PERMIT

CIVIL AERONAUTICS BOARD

PERMIT TO FOREIGN AIR CARRIER FOR SMALL AIRCRAFT OPERATIONS

DRUMHELLER AIR SERVICES LTD.

Is hereby authorized, subject to the provisions hereinafter set forth, the provisions of the Federal Aviation Act of 1958 and the orders, rules, and regulations issued thereunder, to engage in charter foreign air transportation as follows:

Charter flights with respect to persons and their accompanied baggage, and planeload charter flights with respect to property, between any point or points in Canada and any point or points in the United States.

The holder shall be authorized to perform those types of charters originating in Canada as are now, or may hereafter be, prescribed for carriage by small aircraft in Annex B(III)(B) of the Nonscheduled Air Service Agreement between the United States and Canada, signed May 8, 1974, including any amendments, supplements, reservations, or supersessions to that Agreement: *Provided*, That any such charters may be performed only to the extent authorized by the Air Carrier Regulations of the Canadian Transport Commission applicable to operations by small aircraft, and the authority of the holder to perform such charters shall be subject to those Regulations.[1] The authority of the holder to perform United States-originating charters shall, in accordance with Annex B(III)(A) of such Nonscheduled Air Service Agreement, be limited to commercial air transportation of passengers and their accompanied baggage, and property, on a time, mileage or trip basis, where the entire planeload capacity of one or more aircraft has been engaged by a person for his own use or by a person for the transportation of a group of persons and/or their property, as agent or representative of such groups, or such small aircraft operations as may be authorized pursuant to any amendment, supplement, reservation or supersession to that Agreement.

This permit shall be subject to the following terms, conditions, and limitations:

(1) In the performance of the charter operations authorized by this permit, the holder shall not use "large aircraft" as defined in Annex A(I)(A) of the Nonscheduled Air Service Agreement between the United States and Canada, signed May 8, 1974, including amendments, supplements, reservations, or supersessions to that Agreement.

(2) The holder shall not engage in foreign air transportation between the United States and any point or points, other than a point or points in Canada, or transport any property or persons whose journey, includes a prior, subsequent, or intervening movement by air (except for the movement of passengers independently of any group) to or from a point not in the United States or Canada: *Provided*, That the Board may, upon application by the holder, or by regulation, authorize the performance of charters where such movements are involved.

(3) The holder shall not perform United States-originating charter flights which at the end of any calendar quarter would result in the aggregate number of all United States-originating charter flights performed by the holder on or after May 8, 1974 exceeding by more than one-third the aggregate number of all Canadian-originating charter flights performed by the holder on or after May 8, 1974: *Provided*, That the Board may authorize the performance of charters not meeting the requirements set forth. For the purpose of making such computation the following shall apply:

(a) A charter shall be considered to originate in the United States (or Canada) if the passengers or property are first taken on

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[3] While the Board has not normally used show-cause procedures for processing applications for initial licenses, the issues involved in the certification of a Canadian air taxi appear uniquely suited to the show cause procedures. The applications are generally not contested, are based on a bilateral agreement, and involve services with small aircraft only. Accordingly, we find that show cause procedures are appropriate for processing these kinds of applications.

[4] Since provision is made for the filing of objections to this order, petitions for reconsideration will not be entertained.

[1] Annex B(III)(B) presently authorizes Canadian-originating small aircraft charters of the types prescribed in section (II)(B); but only to the extent applicable to small aircraft pursuant to Canadian Transport Commission Regulations. The applicable types of charters presently authorized are: Single Entity Passenger, Single Entity Property, Pro Rata Common Purpose, and Inclusive Tour. (In some instances split passenger charters are authorized.)

board in that country, and shall be considered as one flight whether the charter be one-way, round-trip, circle tour, or open jaw, even if a separate contract is entered into for a return portion of the charter trip from Canada (or the United States).

(b) The computation shall be made separately for (i) "small aircraft" flights of persons; and (ii) "small aircraft" flights of property.

(c) In the case of a lease of aircraft with crew for the performance of a charter flight on behalf and under the authority of another carrier, the flight shall be included in the computation if the holder is the lessee, and shall not be included if the holder is the lessor.

(d) There shall be excluded from the computation:

(i) Flights utilizing aircraft having a maximum authorized takeoff weight on wheels (as determined by Canadian Transport Commission Regulations) not greater than 18,000 pounds; and

(ii) Flights originating at a United States terminal point of a route authorized pursuant to the Air Transport Services Agreement between the United States and Canada, signed January 17, 1966, as amended, or any agreement which may supersede it, or any supplementary agreement thereto which establishes obligations or privileges thereunder (if, pursuant to any such agreement, the holder also holds a foreign air carrier permit authorizing individually ticketed or individually waybilled service over such route, and provides some scheduled service on any route pursuant to any such agreement), when such flights serve either (a) a Canadian terminal point on such route, or (b) any Canadian intermediate point authorized for service on such route by such foreign air carrier permit.

(4) The holder may grant stopover privileges at any point or points in the United States only to passengers and their accompanied baggage moving on a Canadian-originating flight operating under a contract for round-trip charter transportation to be provided solely by the holder and as to which the same aircraft stays with the passengers throughout the journey: *Provided*, That the Board may authorize the performance of charters not meeting the requirements set forth.

(5) The Board, by order or regulation and without hearing, may require advance approval of individual charter trips conducted by the holder pursuant to the authority granted by this permit, if it finds such action to be required in the public interest.

(6) The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of Canada for Canadian international air service.

(7) This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and Canada shall be parties.

(8) This permit shall be subject to the condition that the holder shall keep on deposit with the Board a signed counterpart of CAB Agreement 18900, an agreement relating to liability limitations of the Warsaw Convention and the Hague Protocol approved by Board Order E-23680, May 13, 1966, and a signed counterpart of any amendment or amendments to such agreement which may be aproved by the Board and to which the holder becomes a party.

(9) The holder (i) shall not provide foreign air transportation under this permit unless there is in effect third-party liability insurance in the amount of $1,000,000 or more to meet potential liability claims which may arise in connection with its operations under this permit, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the third-party liability insurance provided, and (2) shall not provide foreign air transportation with respect to persons unless there is in effect liability insurance sufficient to cover the obligations assumed in CAB Agreement 18900, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the passenger liability insurance provided. Upon requests, the Board may authorize the holder to supply the name and address of an insurance syndicate in lieu of the names and addresses of the member insurers.

(10) By accepting this permit, the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

The exercise of the privileges granted by this permit shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This permit shall become effective on ---------- Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention, or agreement, this permit shall terminate (1) upon the effective date of any treaty, convention, or agreement, or amendment thereto, which shall have the effect of eliminating the charter foreign air transportation hereby authorized from the transportation which may be operated by carriers designated by the Government of Canada (or in the event of the elimination of part of the charter foreign air transportation hereby authorized, the authority granted herein shall be terminated to the extent of such elimination), or (2) upon the effective date of any permit granted by the Board to any other carrier designated by the Government of Canada in lieu of the holder hereof, or (3) upon the termination or expiration of the Nonscheduled Air Service Agreement between the United States and Canada, signed May 8, 1974: *Provided, however*, That clause (3) of this paragraph shall not apply if, prior to the occurrence of the event specified in clause (3), the operation of the foreign air transportation herein authorized becomes the subject of any treaty, convention, or agreement to which the United States and Canada are or shall become parties.

In Witness whereof, the Civil Aeronautics Board has caused this permit to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the ----------

Secretary.

[FR Doc.77-486 Filed 1-5-77;8:45 am]

DEPARTMENT OF COMMERCE

National Bureau of Standards

FEDERAL INFORMATION PROCESSING STANDARDS COORDINATING AND ADVISORY COMMITTEE

Termination

Pursuant to section 14 of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V, 1975), notice is hereby given that the Federal Information Processing Standards Coordinating and Advisory Committee (FIPSCAC) was terminated on December 31, 1976.

This committee was originally chartered in January 1973 for the purpose of advising the Secretary of Commerce on matters relating to the nation's needs with respect to Federal Information Processing (automated data processing (ADP)) standards, and to assist the Secretary in carrying out his responsibilities under section 111(f) of the Federal Property and Administrative Services Act of 1949, as amended (79 Stat. 1127; 40 U.S.C. 759(f)).

The activities of FIPSCAC have come to deal almost exclusively with ADP standards problems of the Federal agencies. For this reason, it was no longer considered necessary to continue FIPSCAC as an advisory committee under the Federal Advisory Committee Act.

Dated: December 23, 1976.

ERNEST AMBLER,
Acting Director.

[FR Doc.77-457 Filed 1-5-77;8:45 am]

National Fire Prevention and Control Administration

ADVISORY COMMITTEE ON FIRE TRAINING AND EDUCATION FOR THE NATIONAL ACADEMY FOR FIRE PREVENTION AND CONTROL

Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Advisory Committee on Fire Training and Education for the National Academy for Fire Prevention and Control (Committee).

Date: January 31, and February 1, 1977.

Place: Press Room, Washington Hotel, 15th Street at Pennsylvania Avenue, N.W., Washington, D.C.

Time: 8:30 a.m.—5:00 p.m.

PROPOSED AGENDA

Overview of National Fire Prevention and Control Administration (NFPCA) activities and programs.

Overview of the National Academy for Fire Prevention and Control (Academy) activities and programs.

Organizational session to determine Committee goals and milestones, task assignments, and scheduling of future meetings.

The Committee was authorized to be established by section 7(k) of the Federal Fire Prevention and Control Act of 1974 (Pub. L. 93-498, 88 Stat. 1535, 15 U.S.C. 2201 *et seq.*, 278 f, g, 42 U.S.C. 290(a)) to inquire into and make recommendations regarding the desirability of establishing a mechanism for accreditation of fire training and education programs and courses, and the role which the Academy should play if such a mechanism is recommended. The Committee, by law, consists of the Superintendent as Chairman and 18 members selected from among individuals and organizations possessing special knowledge and

experience in the field of fire training and education or related fields to insure a balanced representation of interests.

The meeting will be open to the public with approximately 20 seats available on a first-come, first-served basis. If time permits, a period will be set aside for oral comments or questions by the public. Oral comments or questions shall be limited to 10 minutes per comment or question. More extensive questions or comments should be submitted in writing before February 28, 1977 and addressed to: Committee Control Officer, Jane Sornberger, Advisory Committee on Fire Training and Education, National Academy for Fire Prevention and Control, P.O. Box 19518, Washington, D.C. 20036.

Minutes of the meeting will be prepared by the Committee and will be available for public viewing in Room 214, National Fire Prevention and Control Administration, 2400 M Street, N.W., Washington, D.C. Copies of the minutes will be available upon request 30 days after the meeting.

The public may file written statements with the Committee concerning any matter pertaining to the Committee's responsibilities at any time before or after the meeting.

Dated: January 3, 1977.

HOWARD D. TIPTON,
Administrator, National Fire Prevention and Control Administration.

[FR Doc.77-530 Filed 1-5-77;8:45 am]

National Oceanic and Atmospheric Administration

NORTH PACIFIC FISHERY MANAGEMENT COUNCIL SCIENTIFIC AND STATISTICAL COMMITTEE ADVISORY PANEL

Public Meetings and Hearing

Notice is hereby given of a meeting of the North Pacific Fishery Management Council established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265).

The North Pacific Council will have authority, effective March 1, 1977, over fisheries within the Fishery Conservation Zone adjacent to the State of Alaska. The Council will, among other things, prepare and submit to the Secretary of Commerce fishery management plans with respect to the fisheries within its area of authority, prepare comments on applications for foreign fishing and conduct public hearings.

The meeting will be held Wednesday through Friday, January 26, 27, and 28, 1977, in Room 808/809 of the Hill Building, 6th and G Streets, Anchorage, Alaska. The meetings will convene at 8:30 a.m. and adjourn for the day at approximately 4:30 p.m. each day. This is the third meeting of the Council and will deal with organizational issues, consideration of fishery management plans being prepared under the direction of the Council and review of applications by foreign nations to fish within the Fishery Conservation Zone adjacent to the State of Alaska, if any.

Proposed Agenda: 1. Selection of Executive Director.

2. Organization and policy matters.

3. Discussion of management plans under preparation by the Council.

4. Public hearing on management plans and other Council matters.

5. Action, if appropriate, on management plans.

6. Review of foreign fishing applications, if any.

A public hearing will be held on Thursday, January 27, beginning at 1:30 p.m. at the same location to hear testimony on fishery management plans under development by the Council and other related Council functions.

Meetings of two Council Advisory bodies will be held concurrently with the Council meeting. In addition, one of these Advisory bodies, the Scientific and Statistical Committee, will meet separately beginning at 1:30 p.m. Monday, January 24, through Tuesday, January 25, in Suite 32 in the Post Office Mall Building, 333 West 4th Avenue, Anchorage, Alaska. They will then meet concurrently with the Council from Wednesday through Friday, January 26, 27, and 28, 1977, in Room 808/809 of the Hill Building. The Scientific and Statistical Committee will review fishery management plans being prepared under the direction of the Council.

The Advisory Panel will meet concurrently with the Council Wednesday, Thursday, and Friday, January 26, 27 and 28, 1977, in the Hill Building. The Council meeting and the meetings of both Advisory bodies are open to the public and there will be seating for approximately 80 public members available on a first-come, first-served basis at meetings in the Hill Building. There will be seating for approximately 20 public members available on a first-come, first-served basis at the meeting of the Scientific and Statistical Committee in the Post Office Mall Building. Members of the public having an interest in specific items for discussion are also advised that agenda changes are at times made prior to the meeting. To receive information on changes, if any, made to the agenda, interested members of the public should contact:

Mr. Jim H. Branson, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

until January 17, 1977. Thereafter, they should contact Mr. Branson at the:

North Pacific Regional Fishery Management Council, P.O. Box 313DT, Anchorage, Alaska 99510.

At the discretion of the Council, interested members of the public may be permitted to speak at times which will allow the orderly conduct of Council business.

Beginning at 1:30 p.m., Thursday, January 27, interested members of the public may testify at the public hearing conducted by the Council on matters relating to fishery management plans and other Council business. Interested members of the public who wish to submit written comments should do so by addressing Mr. Jim H. Branson at the above addresses. To receive due consideration and facilitate inclusion in the record of the meeting, typewritten statements which relate to the agenda should be received within ten days after the close of the Council meeting. Other written statements may be submitted at any time before or after the meeting.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

JANUARY 3, 1977.

[FR Doc.77-468 Filed 1-5-77;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Army

ARMY SCIENTIFIC ADVISORY PANEL

Closed Meeting

Name of committee: Army Scientific Advisory Panel.

Date: 7-8 February 1977.

Place: Lawrence Livermore Laboratory, Livermore, CA 94550.

Agenda: Monday, 7 February 1977 (0745-1810 hours) and Tuesday, 8 February 1977 (0745-0915 hours) Presentations and discussion on "The Army Tactical Nuclear Program." Tuesday, 8 February 1977 (0930-1145 hours).

Business Meeting: Feedback Reports with Panel discussion on the ASAP Summer Study 1976, the Science and Technology Objectives Guide, and the FIREFINDER Program.

The presentations and discussions scheduled for 0745-1810 hours, February 7 will cover Army nuclear policy, doctrine, survivability, and nuclear weapons effects, options and programs which are classified in the interest of national defense. From 0745-0915 hours, February 8, the presentations and discussions will cover nuclear stockpile, security and control issues which are classified in the interest of national defense. The 0930-1145 business meeting is for receiving and discussing reports which are classified in the interest of national defense. Therefore, under the provisions of exemptions contained in section 552(b)(1), Title 5 U.S.C., this meeting is closed to the public.

Any additional information concerning the meeting may be obtained from Dr. Marvin E. Lasser, Chief Scientist, Department of the Army, Executive Director, Army Scientific Advisory Panel, Washington, D.C. 20310, (202) 695-1447.

Dated: December 30, 1976.

JOHN E. WAGNER,
Colonel, GS,
Acting Director of Army Research.

[FR Doc.77-410 Filed 1-5-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 666-6]

ALPHA-EMITTING HOT PARTICLES

Response to Petition

On February 14, 1974, the Natural Resources Defense Council, Inc. (NRDC), petitioned the Environmental Protection Agency and the Atomic Energy Commission to amend their radiation protection standards as they apply to so-called "hot particles," i.e., insoluble particles of plutonium and other alpha-emitting substances. Support for the NRDC petition was provided in an accompanying technical report "Radiation Standards for Hot Particles," by A. R. Tamplin and T. B. Cochran, in which the recommendation was made (and the petition requested) that "* * * when hot particles are involved the existing radiation standards governing plutonium exposure should be reduced by a factor of 115,000." The action requested by NRDC was "* * * intended to be applicable to all radionuclides or mixtures thereof capable of forming hot particles." Of specific interest to NRDC was a reduction in maximum permissible concentrations of plutonium-239 in air to "protect exposed persons from the risk of lung cancer attendant upon exposure to hot particles."

EPA acknowledged the petition by letter on March 18, 1974, and subsequent correspondence between the Agency and NRDC led to the latter's participation at the Agency's public hearings on Standards for Plutonium in the Environment, held in February 1975. NRDC submitted supplemental material, dated February 24, 1975, for the record which elaborated further on the scientific rationale for the petition before the Agency.

In May 1974, EPA requested the National Academy of Sciences (NAS) to review the scientific basis for the NRDC petition. An ad hoc committee was formed by the Academy and provided with both the original support document and later, a copy of the NRDC testimony given at the Agency's public hearings. In addition, Drs. Tamplin and Cochran met with the NAS Committee on July 8, 1975, to discuss scientific aspects of this problem. Besides the NAS Study, the NRDC petition and hypothesis concerning the radiocarcinogenicity of "hot particles" engendered widespread scientific interest. Both the British Medical Radiation Council and the U.S. National Council on Radiation Protection and Measurements, as well as the Energy Research and Development Administration and the Nuclear Regulatory Commission, have published analyses of the NRDC position. While this Agency has found such reports of interest, it has awaited the results of the NAS study before deciding what actions it should take regarding the NRDC petition. The National Academy of Sciences completed their study in October 1976, and EPA published the full text of their report on December 15, 1976. Copies of the NAS Report are available from the address listed below.

The Academy's Committee has concluded that the results of a variety of animal studies indicate that the radiocarcinogenic potential of insoluble alpha-emitting particulates in lung tissue is not markedly greater and may be less than that due to the same alpha particle activity distributed more uniformly in the lung. The Committee's analysis of epidemiological data indicates that in man, tracheo-bronchial cancers usually result from irradiation of the lung and that the incidence of radiation induced tracheobronchial cancer provides a suitably conservative basis for estimating the risk of cancers in the deep lung where particles are retained. Based on its analysis, the Committee concluded, "that the evidence does not support the NRDC petition for a special, lower radiation protection standard for inhaled alpha-emitting particles" and "that if there is a 'hot particle' risk, it is small by comparison with the lung cancer risk attributable to the generalized alpha radiation." The Agency agrees with these conclusions.

Based on the scientific evidence as evaluated by several national organizations having competence in the physical and biological aspects of plutonium toxicity, and particularly that of the Academy, this Agency believes provision of an additional radiation protection standard for inhaled alpha-emitting particulates is not warranted. Therefore, the Environmental Protection Agency has, by letter of December 10, 1976, communicated its decision to the Natural Resources Defense Council that it has denied its petition.

Single copies of the report by the National Academy of Sciences entitled "Health Effects of Alpha-Emitting Particles in the Respiratory Tract," can be obtained from the Director, Criteria and Standards Division (AW-460), Office of Radiation Programs, U.S. Environmental Protection Agency, Washington, D.C. 20460.

Dated: December 28, 1976.

ROGER STRELOW,
Assistant Administrator for Air and Waste Management.

[FR Doc.77-396 Filed 1-5-77;8:45 am]

[FRL 666-8]

AMBIENT AIR MONITORING REFERENCE AND EQUIVALENT METHODS

Cancellation of Equivalent Method Designation; Preliminary Finding

Notice is hereby given that EPA has made a preliminary finding that an analyzer previously designated as an equivalent method for ambient air monitoring does not fully satisfy the requirements of 40 CFR Part 53 (40 FR 7044, February 18, 1975). Accordingly, EPA is initiating proceedings to cancel the designation, as provided in § 53.11 of 40 CFR Part 53. The method is EQSA-0276-009, "Thermo Electron Model 43 Pulsed Fluorescent SO_2 Analyzer." Notice of its designation as an equivalent method was published on February 27, 1976 (41 FR 8531-2).

EPA's preliminary finding is based on test data and other information showing that, under some conditions, a discrepancy is observed between measurements made by the Thermo Electron Model 43 SO_2 analyzer and measurements made by various other equivalent method SO_2 analyzers located at the same monitoring site. Tests by EPA, an independent EPA contractor, and by the Thermo Electron Corporation definitely confirm the existence of such discrepancies. Moreover, simultaneous SO_2 measurements made with the SO_2 reference method confirm that the discrepancies are due to error in the Model 43 measurements.

The occurrence of erroneous readings on the Model 43 is strongly related to the proximity of automotive vehicular traffic. Thus, the errors have been observed only at monitoring sites located near roadways or heavy traffic areas. The errors appear to be substantially increased by factors favoring build up of automotive pollutant concentrations—e.g., thermal inversion, low wind speed, restricted ventilation, increased traffic during "rush hours," and traffic signals or stop-and-go conditions. The errors always cause overestimation of the SO_2 levels, and, under severe conditions, the readings have been as much as 260 $\mu g/m^3$ (0.1 ppm) over the true SO_2 concentration. There is no indication of errors in Model 43 measurements at sites away from automotive traffic.

The cause of the observed errors in Model 43 measurements appears to be a positive interference from some agent or agents generated by automotive traffic. Laboratory tests so far seem to rule out significant interference from CO, NO, fine particulates, and many simple hydrocarbons. Recent investigation by the Thermo Electron Corporation indicates that the Model 43 analyzer responds to naphthalene or naphthalene-related compounds, if contained in some brands of gasoline, are the cause of the interference near automotive traffic. However, as of this writing, the exact identity of the interfering substance is still in doubt.

EPA has reviewed the original application, test procedures, and test results submitted by the Thermo Electron Corporation and used as a basis for the equivalent method designation, and finds no irregularities. Since neither the existence nor the identity of the interferent was known at the time of the tests, no specific interference equivalent test for that interferent was conducted (or requested by EPA) under § 53.23(d). Also, an otherwise valid consistent relationship test was carried out by the applicant in accordance with 40 CFR Part 53, Subpart C, at a site approved by EPA. No failures occurred during that test. The test site, which was thought to meet the general requirements for Subpart C test sites as specified in § 53.30(b), was not located near heavy automotive traf-

fic. Thus, any errors in the Model 43 test measurements were either too small to cause test failures or too small to be observed. However, based on the test data and other information which has recently become available, EPA now concludes that if consistent relationship tests were conducted in accordance with Subpart C at a site having substantial concentrations of automotive emissions, the method as it is now constituted would fail. Accordingly, EPA is initiating proceedings to cancel the designation of the Thermo Electron Model 43 SO_2 Analyzer pursuant to 40 CFR 53.11.

In accordance with § 53.11, the applicant, Thermo Electron Corporation, has been notified of EPA's preliminary finding and will be afforded a reasonable period of time (not less than 60 days) to avoid such a cancellation by demonstrating or achieving compliance with the requirements of Part 53. Because of the nature of the interference problem, a demonstration of compliance with Part 53 in this case must specifically include a consistent relationship test carried out at a site which clearly shows substantial concentrations of automotive-generated pollutants. Any person having any data, information or comments pertinent to such a test or to EPA's preliminary finding is invited to submit them in writing to: Director, Environmental Monitoring and Support Laboratory, Department E, MD-76, Research Triangle Park, North Carolina 27711. Also, on or before March 7, 1977, the applicant or any interested person may request a hearing on the grounds for cancellation of the Model 43 designation as provided in 40 CFR 53.12.

After the applicant has been afforded an opportunity to avoid cancellation of the Model 43 designation as described above, EPA will publish a notice of its final determination in the FEDERAL REGISTER as provided in 40 CFR 53.11. Should cancellation of the designation prove necessary, EPA will also specify a reasonable period of time during which the method (if purchased prior to publication of the notice of cancellation) may be used for purposes of 40 CFR 51.17(a) as provided in 40 CFR 51.17a(a)(4).

It is EPA's understanding that the applicant has developed a device which, when installed on a Model 43 analyzer, may enable the analyzer to comply with the requirements of Part 53. EPA further understands that the applicant intends to test a representative analyzer with the device installed, and to apply for a new equivalent method designation for the method as so changed. Thus, should it prove necessary to cancel the designation presently applicable to the Model 43 analyzer, it is possible that EPA would be able to designate a new (i.e., changed) method at the same time it cancels the existing designation.

Until a final determination on cancellation of the existing designation has been made, the question of interim use of the method arises. Although there is no legal obstacle to use of the method for purposes of 40 CFR 51.17(a) unless and until the designation is cancelled (see also 40 CFR 51.17a(a)(4)), it is obvious that data obtained with the method may be invalid to some degree depending on the location of the monitoring sites involved. Thus, reliance on such data may be unwise. From the information currently available, it is difficult to assess the impact of the problem at individual sites without making appropriate measurements at each site. The following interim guidance is offered:

1. At monitoring sites located away from areas of significant automotive traffic, there is currently no reason to question the validity of measurements due to the problem described.

2. Since monitoring for SO_2 generally need not be carried out near heavy automotive traffic, it may be possible to locate or relocate existing Model 43 analyzers away from such areas.

3. Where Model 43 analyzers are or have been located in heavy traffic areas, it may be possible to estimate the magnitude of possible errors by making simultaneous SO_2 measurements with the reference method or with another equivalent method over a variety of weather and traffic conditions. It is possible that measurement errors are significant only during certain periods of the day (e.g., commuting periods) or only during certain weather conditions. Hence, only measurements obtained during those periods may have to be questioned. Also, the effect on 24-hour (or longer) averages may be minimal. Use of any remaining data that might be questionable for purposes of 40 CFR 51.17(a) is not recommended.

WILSON K. TALLEY,
Assistant Administrator for Research and Development.

DECEMBER 30, 1976.

[FR Doc.77-395 Filed 1-5-77;8:45 am]

[FRL 667-8]

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES AND NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

Delegation of Authority to State of Vermont

On December 23, 1971 (36 FR 24876), March 8, 1974 (39 FR 9308), August 6, 1975 (40 FR 33152), September 23, 1975 (40 FR 43850), January 15, 1976 (41 FR 2232 and 2332), January 26, 1976 (41 FR 3826), and May 4, 1976 (41 FR 18498), pursuant to Section 111 of the Clean Air Act, as amended, the Administrator of the Environmental Protection Agency (EPA) promulgated regulations establishing Standards of Performance for New Stationary Sources. On April 6, 1973 (38 FR 8820), pursuant to Section 112 of the Clean Air Act, as amended, the Administrator promulgated National Emission Standards for Hazardous Air Pollutants (NESHAPS) for three pollutants. Sections 111(c) and 112(d) direct the Administrator to delegate his authority to implement and enforce NSPS and NESHAPS to any State which has submitted adequate procedures. Nevertheless, the Administrator retains concurrent authority to implement and enforce the standards following delegation of authority to the State.

In September, 1973, the Regional Administrator, Region I, EPA, forwarded to the State of Vermont information setting forth the requirements for an adequate procedure for implementing and enforcing the standards for NSPS and NES HAPS. On May 5, 1975, representatives from EPA and the Vermont Agency of Environmental Conservation (the Agency) met to discuss these requirements. On July 10, 1975, the Agency submitted a formal request for delegation. However, upon review of the request, EPA determined that the State's provisions for public disclosure of information did not meet the criteria necessary for delegation approval. On February 18, 1976, representatives from EPA and the Agency again met to discuss alternate procedures for assuring adequate provisions for public disclosure of information. After legal interpretations were completed by both the State and EPA, a meeting was held on May 19, 1976 in order to agree on the wording and content of a final delegation request letter. At this meeting, Counsel to the Agency reiterated his opinion that the Agency did not have the legal authority to require sources to meet Federal regulations; however, he believed the Agency could assume delegation responsibilities for those source categories for which the State emission limitation was at least as stringent as the Federal standard. In response to the recommendations of their counsel, the Agency held a public hearing on June 17, 1976 to discuss, among other things, proposed regulatory changes which would bring certain State regulations into conformance with Federal NSPS. These regulatory changes were then promulgated.

On July 8, 1976, Dr. Martin L. Johnson, Secretary of the Vermont Agency of Environmental Conservation, submitted a request for delegation of authority to the EPA Region I Administrator. The request letter cited the appropriate Vermont Statutes and Agency regulations which demonstrated the adequacy of the State's procedures. Also included in the State's request was a statement that the Counsel to the Agency of Environmental Conservation, who also cosigned the request letter, had reviewed the Agency's legal authority and agreed that the Agency had the authority necessary to carry out any obligations created by the requested delegations. After a thorough review of Vermont's request, the Regional Administrator has determined that for the source categories set forth in paragraphs (A) and (B) of the following official letter to Dr. Martin L. Johnson, delegation is appropriate subject to the conditions set forth in items (1) through (10) of that letter:

DR. MARTIN L. JOHNSON, *Secretary, Agency of Environmental Conservation, Montpelier, Vermont.*

DEAR DR. JOHNSON: This is in response to your July 8, 1976, letter requesting delega-

tion of authority for implementation and enforcement of New Source Performance Standards (NSPS) and implementation of National Emission Standards for Hazardous Air Pollutants (NESHAPS) to the Vermont Agency of Environmental Conservation (the Agency).

The Environmental Protection Agency, Region I, (EPA) has reviewed the pertinent laws of the State of Vermont and the rules and regulations of the Agency, and has determined that they provide an adequate and effective procedure for implementation and enforcement of the requested NSPS and implementation of the requested NESHAPS by the State of Vermont. Therefore, we hereby grant delegation of the NSPS and NESHAPS to the Vermont Agency of Environmental Conservation as follows:

(A) Authority for all sources located in the State of Vermont subject to the following Standards of Performance for New Stationary Sources as promulgated in 40 CFR Part 60 as of July 8, 1976: fossil fuel-fired steam generators; incinerators; and asphalt concrete plants.

(B) Authority for all field surveillance activities for the Vermont Asbestos Group, Inc., and Rutland Fire Clay Co. as specified in 40 CFR 61.22(a) and 61.22(c) respectively. This delegation of authority specifically excludes the enforcement of any provision under 40 CFR Part 61 by the Agency.

This delegation is based upon the following conditions:

1. The Agency will continue to submit semi-annual reports as required to EPA.

2. Enforcement of NSPS in the State of Vermont will be the primary responsibility of the Agency. If the Agency determines that such enforcement is not feasible and so notifies EPA, or where the Agency acts in a manner inconsistent with the terms of this delegation, EPA will exercise its concurrent enforcement authority pursuant to Section 113 of the Clean Air Act, as amended, with respect to sources within the State of Vermont subject to NSPS.

3. Acceptance of this delegation of enumerated presently promulgated NSPS and NESHAPS does not commit the Vermont Agency of Environmental Conservation to request or accept delegation of future standards and requirements. A new request for delegation will be required for any standards not included in the State's request of July 8, 1976, and for any delegated NSPS and NESHAPS which are revised subsequent to July 8, 1976. In addition, a new request will be required should the Agency desire delegation of the enforcement of any NESHAPS provision.

4. The Agency will at no time grant a variance or waiver from compliance with applicable NSPS and NESHAPS (40 CFR Parts 60 and 61). Should the Agency grant such a variance or waiver, EPA will consider the source receiving such relief to be in violation of the applicable Federal regulation and may initiate enforcement action against the source pursuant to Section 113 of the Clean Air Act. The granting of such relief by the EPA.

5. The delegation of the State of Vermont does not include the authority to implement and enforce NSPS and NESHAPS for sources owned or operated by the United States which are located in the State. This condition in no way relieves any Federal facility from meeting the requirements of 40 CFR Parts 60 and 61.

6. The Agency and EPA will develop a system of communication sufficient to guarantee that each office is fully informed regarding the current compliance status of subject sources in the State of Vermont and regarding interpretation of applicable regulations. EPA will make determinations regarding unique questions of applicability of delegated standards when requested by the Agency or at other times as determined by EPA. EPA will provide technical assistance as necessary to the Agency. The Agency will provide the following information, as a minimum, to EPA: the name and address of each facility subject to NSPS or NESHAPS; the operational status of each facility; the compliance status of each facility with accompanying explanations of noncompliance where applicable; notice of enforcement actions brought against facilities subject to delegated NSPS; surveillance actions undertaken for each facility; and the results of all reports relating to emission data.

7. If at any time there is a conflict between a State regulation and a Federal regulation (40 CFR Parts 60 or 61), the Federal regulation must be applied if it is more stringent than that of the State. If the State does not have the authority to enforce the more stringent Federal regulation, this portion of the delegation may be revoked.

8. The Agency will utilize the methods specified in 40 CFR Part 60 in performing source tests pursuant to the NSPS regulations.

9. The Agency shall apply the criteria of no visible asbestos emissions as specified in 40 CFR 61.22 (a) and (c) in performing field surveillance activities pursuant to the NESHAPS regulations as they apply to Vermont Asbestos Group, Inc., and Rutland Fire Clay Co.

10. If the Regional Administrator determines that a State procedure for enforcing or implementing the NSPS or NESHAPS is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the Agency.

A Notice announcing this delegation will be published in the FEDERAL REGISTER in the near future. The Notice will state, among other things, that, effective immediately, all reports required pursuant to the Federal NSPS and NESHAPS from sources located in the State of Vermont should be submitted to the Vermont Agency of Environmental Conservation.

Since this delegation is effective immediately, there is no requirement that the State notify EPA of its acceptance. Unless EPA receives from the State written notice of objections within 10 days of the receipt of this letter, the State will be deemed to have accepted all of the terms of the delegation.

Sincerely yours,

JOHN A. S. MCGLENNON,
Regional Administrator.

Therefore, pursuant to the authority delegated to him by the Administrator, the Regional Administrator notified Dr. Johnson on September 3, 1976, that authority to implement and enforce specified Standards of Performance for New Stationary Sources and implement specified National Emission Standards for Hazardous Air Pollutants was delegated to the State of Vermont Agency of Environmental Conservation.

Copies of the request for delegation of authority are available for public inspection at the U.S. Environmental Protection Agency, Region I Office, John F. Kennedy Federal Building, Boston, Massachusetts 02203.

Effective immediately, all reports required pursuant to the National Emission Standards for Hazardous Air Pollutants and the Standards of Performance for New Stationary Sources listed in the above letter should be submitted to the EPA, Region I Office and should also be submitted to the State Agency at the following address: Vermont Agency of Environmental Conservation, Box 489, Montpelier, Vermont 05602.

This notice is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended, 42 U.S.C. 1857c-6 and 7.

Dated: December 6, 1976.

JOHN A. S. MCGLENNON,
Regional Administrator.

[FR. Doc.77-546 Filed 1-5-77;8:45 am]

[OPP-42004B; FRL 667-3]

STATE OF SOUTH CAROLINA

Extension of Contingency Approval of State Plan for Certification of Pesticide Applicators

In accordance with the provisions of Section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (86 Stat. 973; 7 U.S.C. 136) and 40 CFR Part 171 (39 FR 36445 (October 9, 1974) and 40 FR 11698 (March 12, 1975)) the Honorable James B. Edwards, Governor of the State of South Carolina, submitted a State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides to the Environmental Protection Agency (EPA) for approval on a contingency basis, pending promulgation of implementing regulations. On December 12, 1975, the Regional Administrator, EPA Region IV, approved the Plan on a contingency basis for a twelve-month period. Notice of the approval was published in the FEDERAL REGISTER on January 6, 1976 (41 FR 1125).

The South Carolina Pesticide Control Act was passed by the South Carolina Legislature on June 4, 1975. Proposed regulations for the enforcement of the Act have been drafted, public hearings have been held and final regulations are expected to be published by March 1, 1977. As a result, on December 2, 1976, the state of South Carolina requested an extension of the South Carolina contingency approval pending final promulgation of regulations. The Agency finds that there is good cause for approving the request and as such has granted an extension until October 20, 1977.

Dated: December 14, 1976.

JACK E. RAVAN,
Regional Administrator,
Region IV.

[FR Doc.77-476 Filed 1-5-77;8:45 am]

FEDERAL COMMUNICATION COMMISSION

STANDARD BROADCAST APPLICATION READY AND AVAILABLE FOR PROCESSING

Adopted: December 23, 1976.

Released: December 29, 1976.

The following application specifies the facilities of station WKYZ, Madisonville, Tennessee, which must cease operation after the expiration of its operating authority on January 10, 1977. The Commission will accept other applications for consolidation with this application which propose essentially the same facilities.

BP-20686, NEW, Madisonville, Tennessee, Man Corporation, Req: 1250 kHz, 500 W, Day.

Pursuant to the provisions of §§ 1.227 (b)(1) and 1.591(b) of the Commission's Rules, an application, in order to be considered with this application must be tendered no later than February 15, 1977.

The attention of any party in interest desiring to file pleadings concerning this application, pursuant to section 309(d)(1) of the Communications Act of 1934, as amended, is directed to § 1.580(i) of the Commission's Rules for the provisions governing the time of filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.77-532 Filed 1-6-77;8:45 am]

FEDERAL MARITIME COMMISSION

[Independent Ocean Freight Forwarder License No. 389]

ALI-SON INTERNATIONAL CO.

Erratum to Order of Revocation

On December 9, 1976, Mr. Joseph L. Alicea, President, Ali-Son International Co., 80-82 Wall Street, New York, N.Y. 10005, voluntarily surrendered his Independent Ocean Freight Forwarder License No. 389 for revocation.

By Order served December 20, 1976, revoking the subject license, the effective date of revocation was erroneously stated to be December 13, 1976. Therefore, the Order of December 20, 1976 is hereby amended to show the correct effective date of revocation to be December 31, 1976.

It is ordered, That a copy of this Order be published in the FEDERAL REGISTER and served upon Ali-Son International Co.

LEROY F. FULLER,
Director, Bureau of Certification and Licensing.

[FR Doc.77-470 Filed 1-5-77;8:45 am]

AMERICAN EXPORT LINES, INC. AND UNITED STATES LINES, INC.

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before January 26, 1977. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

James N. Jacobi, Esq., Kurrus and Ash, 1055 Thomas Jefferson Street, N.W., Washington, D.C. 20007.

Agreement 10276 would permit American Export Lines, Inc. and United States Lines, Inc., to interchange " * * * cargo containers, chassis, trailers and/or related equipment * * *" as circumstances may require in accordance with the terms of the agreement.

By Order of the Federal Maritime Commission.

Dated: December 32, 1976.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-474 Filed 1-5-77;8:45 am]

INTERNATIONAL MOVERS RATE AGREEMENT

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before January 26, 1977. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Carroll F. Genovese, Executive Director, Movers' & Warehousemen's Association of America, Inc., Suite 522 Munsey Building, Washington, D.C. 20004.

Agreement No. 8530-3 would extend the scope of the International Movers' Rate Agreement to cover through intermodal movements between U.S. and foreign inland points as more specifically set forth in the agreement. Presently, the agreement covers only port-to-port movements.

By Order of the Federal Maritime Commission.

Dated: December 30, 1976.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-475 Filed 1-5-77;8:45 am]

LYKES BROS. STEAMSHIP CO., INC., ET AL.

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126; or may inspect the agreement at the Field Office located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before January 26, 1977. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances

said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

R. J. Finnan, Pricing Analyst, Lykes Bros. Steamship Co., Inc., Lykes Center, 300 Poydras Street, New Orleans, Louisiana 70130.

Agreement No. 10273 is (1) a discussion and rate agreement among Lykes Bros. Steamship Co., Inc., Delta Steamship Lines, Inc., and Gulf Caribbean Marine Line, Inc. in the trade from U.S. Gulf ports to ports in the Dominican Republic and Haiti, and (2) a discussion agreement among the above-named carriers and the United States Atlantic & Gulf/Haiti Conference in the Gulf/Haiti trade with agreement by the conference to give the other parties 48 hours' advance notice of rate and tariff changes.

By Order of the Federal Maritime Commission

Dated: December 30, 1976.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-473 Filed 1-5-77;8:45 am]

MOVER'S RATE AGREEMENT

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before January 26, 1977. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Carroll F. Genovese, Executive Director, Movers' & Warehousemen's Association of America, Inc., Suite 522 Munsey Building, Washington, D.C. 20004.

Agreement No. 8540-D would extend the scope of the Movers' Rate Agreement to cover through intermodal movements between U.S. inland points in the contiguous 48 states, on the one hand, and inland points in Alaska, Guam, Hawaii, Puerto Rico and the Virgin Islands, on the other. Presently, the agreement covers only port-to-port movements.

By Order of the Federal Maritime Commission.

Dated: December 30, 1976.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-472 Filed 1-5-77;8:45 am]

SEATRAIN INTERNATIONAL, S.A. AND MARITIME y TRANSPORTES HONDURAS, S. de R.L.

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before January 26, 1977. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Neal M. Mayer, Esquire, Coles & Goertner, 1000 Connecticut Avenue, N.W., Washington, D.C. 20036.

Agreement No. 10275 between the above-named carriers is an equipment interchange agreement whereby the parties agree to interchange cargo containers and/or related equipment applicable to Seatrain's services between the United States and Europe and Far East on the one hand; and Honduran Line's services between the United States and the Caribbean, Central and South America on the other hand.

By Order of the Federal Maritime Commission.

Dated: December 30, 1976.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-471 Filed 1-5-77;8:45 am]

FEDERAL POWER COMMISSION

[Docket Nos. RP76-15 and RP75-98]

ALGONQUIN GAS TRANSMISSION CO.

Certification of Settlement Agreement

DECEMBER 28, 1976.

Take notice that on December 6, 1976, Presiding Administrative Law Judge Israel Convisser certified to the Commission a proposed settlement agreement in the captioned proceeding. The settlement agreement was submitted to the Presiding Administrative Law Judge by Algonquin Gas Transmission Company and the Algonquin Customer Group. The evidentiary record in this proceeding was certified to the Commission as well as the proposed agreement.

Copies of the proposed settlement agreement are on file with the Commission and are available for public inspection. Any person desiring to comment on matters contained therein should file comments with the Federal Power Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426, on or before January 28, 1977. Any reply comments should be filed on or before February 11, 1977.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-497 Filed 1-5-77;8:45 am]

[Docket Nos. RP76-15, et al]

ALGONQUIN GAS TRANSMISSION CO.

Notice of Filing

DECEMBER 28, 1976.

Take notice that on December 6, 1976, Algonquin Gas Transmission Company ("Algonquin Gas") tendered for filing Second Substitute First Revised Sheet No. 10-A to its FPC Gas Tariff, First Revised Volume No. 1. Algonquin Gas states that said tariff sheet is being filed to comply with the Commission's order issued October 15, 1976 in the above-captioned proceedings rejecting a portion of Substitute First Revised Sheet No. 10-A to its tariff, First Revised Volume No. 1, which sheet had been filed September 30, 1976.

Algonquin Gas states that Second Substitute First Revised Sheet No. 10-A contains the amortizing unit adjustment applicable to the Purchased Feedstock Adjustment Clause ("PFAC") based upon

the amount of overcollections under such PFAC during the 1975–76 SNG season, together with interest thereon calculated in accordance with the method prescribed in the October 15, 1976 order. Algonquin Gas states that the instant filing is being made without prejudice to its pending application for rehearing of said October 15, 1976 order.

Any person desiring to be heard or to make any protest with reference to said filing should on or before January 17, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing with respect to the instant filing must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-522 Filed 1-5-77;8:45 am]

[Docket No. E-7775, et al.]

APPALACHIAN POWER CO.

Filing of Compliance Report

DECEMBER 28, 1976.

Take notice that on December 14, 1976, Appalachian Power Company (APCO) tendered for filing a refund compliance report pursuant to the Federal Power Commission's Order of November 2, 1976, approving a settlement agreement in the above-captioned docket and its related dockets.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedures (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 11, 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 proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-501 Filed 1-5-77;8:45 am]

[Docket No. RP76-10 (PGA 77-3)]

ARKANSAS LOUISIANA GAS CO.

Filing of Revised Tariff Sheets

DECEMBER 29, 1976.

Take notice that on December 13, 1976, Arkansas Louisiana Gas Company (Arkla) tendered for filing in the above docket:

Ninth Revised Sheet No. 185 for its Rate Schedule X-26 in its FPC Gas Tariff Original Volume No. 3.

The proposed tariff sheet is being filed to track increases in Arkla's cost of gas due to pipeline supplier rate changes. The change in Arkla's rates proposed by this filing reflects rate increases filed by four of Arkla's pipeline suppliers, Tennessee Gas Pipeline Company, Texas Eastern Transmission Corporation, Texas Gas Transmission Corporation and United Gas Pipe Line Company.

The proposed effective date of the above described tariff sheet is January 15, 1977.

The company states that copies of the revised tariff sheet and supporting data are being mailed to the customers affected by the tariff change.

Any person desiring to be heard or to protest said filing should file a Petition to Intervene or Protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 12, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Petition to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-516 Filed 1-5-77;8:45 am]

[Docket No. RP74-61 (PGA77-3)]

ARKANSAS LOUISIANA GAS CO.

Filing of Revised Tariff Sheets

DECEMBER 29, 1976.

Take notice that on December 13, 1976, Arkansas Louisiana Gas Company (Arkla) tendered for filing in the above docket:

12th Revised Sheet No. 44 for its Rate Schedule G-2 in its FPC Gas Tariff First Revised Volume No. 1.

The proposed tariff sheet is being filed to track increases in Arkla's cost of gas due to pipeline supplier rate changes. The change in Arkla's rates proposed by this filing reflects rate increases filed by four of Arkla's pipeline suppliers, Tennessee Gas Pipeline Company, Texas Eastern Transmission Corporation, Texas Gas Transmission Corporation and United Gas Pipe Line Company.

The proposed effective date of the above described tariff sheet is January 15, 1977.

The company states that copies of the revised tariff sheet and supporting data are being mailed to the customers affected by the tariff change.

Any person desiring to be heard or to protest said filing should file a Petition to Intervene or Protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 12, 1977. 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 his filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-513 Filed 1-5-77;8:45 am]

[Docket No. E-8071, E-8142, E-8250, ER76-110]

ARKANSAS POWER & LIGHT CO.

Filing of Corrections to Compliance Report

DECEMBER 28, 1976.

Take notice that on December 15, 1976, Arkansas Power and Light (AP&L) tendered for filing corrections to a refund compliance report filed on December 10, 1976, pursuant to the Order issued November 15, 1976, approving a Settlement Agreement reached in the above-numbered dockets.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 11, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-504 Filed 1-5-77;8:45 am]

[Docket No. ER76-45]

CONSUMERS POWER CO.

Certification of Settlement Agreement

DECEMBER 29, 1976.

Take notice that on December 16, 1976, Presiding Administrative Law Judge Grossman certified to the Commission a proposed settlement agreement in the above-captioned proceeding which, if approved, would resolve all the issues in the proceeding.

Any person desiring to be heard or to protest said agreement should file comments with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before January 12, 1977. 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.77-511 Filed 1-5-77;8:45 am]

[Docket No. ER77-118]

DUKE POWER CO.

Supplement to Electric Power Contract

DECEMBER 29, 1976.

Take notice that Duke Power Company tendered on December 16, 1976, a supplement to Duke Power Company Rate Schedule FPC No. 146. The customer affected by the supplement is York Electric Cooperative, Inc. (customer). The dates on which these supplement changes are to become effective are December 20, 1976 for Delivery Points No. 5 and 12, and January 19, 1977 for Delivery Points No. 6, 7, 9 and 11. Duke Power's contract supplement, agreed to by the customer, provides for increases in demands as follows:

	Designated kilowatts	
	From	To
Delivery points:		
5		
6	5,700	6,500
7	2,000	2,400
9	1,000	1,500
11	4,200	6,000
12	1,300	1,500

Delivery Point No. 5 provides only for the SEPA (Southeastern Power Administration) reallocation of preference customer capacity and energy.

These figures are based on estimates of sales and revenues for the 12 months immediately preceding and for the 12 months immediately succeeding the effective date.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 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 January 10, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-528 Filed 1-5-77;8:45 am]

[Docket No. ER77-118]

DUKE POWER CO.

Supplement to Electric Power Contract

DECEMBER 29, 1976.

Take notice that Duke Power Company tendered on December 16, 1976, a supplement to Duke Power Company Rate Schedule FPC No. 146. The customer affected by the supplement is York Electric Cooperative, Inc. (customer). The dates on which these supplement changes are to become effective are December 20, 1976 for Delivery Points No. 5 and 12, and January 19, 1977 for Delivery Points No. 6, 7, 9 and 11. Duke Power's contract supplement, agreed to by the customer, provides for increases in demands as follows:

	Designated kilowatts	
	From	To
Delivery points:		
5		
6	5,700	6,500
7	2,000	2,400
9	1,000	1,500
11	4,200	6,000
12	1,300	1,500

Delivery Point No. 5 provides only for the SEPA (Southeastern Power Administration) reallocation of preference customer capacity and energy.

These figures are based on estimates of sales and revenues for the 12 months immediately preceding and for the 12 months immediately succeeding the effective date.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 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 January 10, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-483 Filed 1-5-77;8:45 am]

[Docket No. RP77-17]

EASTERN SHORE NATURAL GAS CO.

Order Accepting for Filing and Suspending Proposed Rate Increase, Granting Waiver, and Establishing Procedures

DECEMBER 29, 1976

On November 24, 1976, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing certain revised tariff sheets[1] to its FPC Gas Tariff, Original Volume No. 1, requested to become effective on January 1, 1977. For the reasons set forth below, the Commission shall accept for filing and suspend the subject tariff sheets until June 1, 1977, and establish procedures to determine the justness and reasonableness of the changes proposed therein.

According to Eastern Shore, the proposed traiff changes would increase its revenues from jurisdictional sales and services in the amount of $138,048 annually, based upon costs and sales volumes for the 12-month period ended June 30, 1976, as adjusted. Eastern Shore states that such increased revenues are necessary to compensate it for increased operating expenses, and to permit it to earn an overall return of 9.5 percent, including an 11.5 percent return on common equity. In addition, the Company states that the proposed rate increase reflects reduced sales due to projected curtailment by its sole supplier, Transcontinental Gas Pipe Line Corporation.

Eastern Shore has requested that the Commission waive that portion of § 154.63(e)(2)(i) of its Regulations which requires that the end of the 12 months of actual experience (the "base period") be not more than four months prior to the filing date of the proposed rate increase. In support of this request, the Company states that the instant filing was unavoidably delayed pending completion of an audit of its books for the 12 months ended June 30, 1976. Good cause having been shown, the subject request shall be granted, as hereinafter ordered.

Eastern Shore has also requested waiver of § 154.63(a)(3) of the Commission's Regulations to permit acceptance of its filing, as tendered, in the format prescribed for a "Minor rate increase." In support of this request, the Company argues that the proposed increase only slightly exceeds the $100,000 limit established for a "minor" increase. The Company states further that the additional material required for a "major" rate increase filing[2] would have substantially increased the cost to prepare the instant filing without materially aiding in the analysis and review thereof. The Commission's review indicates that good cause exists to grant this request for waiver, as hereinafter ordered.

Review of the instant filing indicates that costs have been classified and allocated according to the unmodified *Sea-*

[1] Thirty-Seventh Revised Sheet No. 3A and Thirty-Seventh Revised PGA-1 Sheet Nos. 1, 2 and 3.

board methodology.[3] The propriety of use of such methodology in the instant case must be questioned, given the substantial curtailment of gas supply projected for the test period.[4] Accordingly, the Commission hereby places Eastern Shore on notice of its potential liability for under-collections if commodity rate levels lower than those produced by the 25/75 *United* methodology[5] are placed into effect by the Company, subject to refund, and subsequently found by the Commission in this proceeding to be inappropriate.

Public notice of Eastern Shore's filing was issued on December 7, 1976, providing that any comments, protests or petitions to intervene should be filed on or before December 27, 1976.

The Commission's review of the instant filing indicates that the proposed rate increase has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential or otherwise unlawful. Accordingly, the Commission shall accept the revised tariff sheets for filing and suspend their use for five months until June 1, 1977, when they may become effective, subject to refund, by motion filed in the manner provided by the Natural Gas Act. The Commission shall also establish procedures to determine the lawfulness of the proposed rate increase.

The Commission finds: (1) Eastern Shore's proposed revised tariff sheets should be accepted for filing and suspended for five months until June 1, 1977, when they may become effective, subject to refund, by motion filed in the manner provided by the Natural Gas Act.

(2) Good cause exists to grant Eastern Shore's request for waiver of § 154.63(e)(2)(i) and § 154.63(a)(3) of the Commission's Regulations.

The Commission orders: (A) Eastern Shore's proposed revised tariff sheets are hereby accepted for filing and suspended until June 1, 1977, or until such other time as they are made effective, subject to refund, by motion filed in the manner provided by the Natural Gas Act.

(B) Pursuant to the authority of the Natural Gas Act, particularly Sections 4 and 5 thereof, a public hearing shall be held concerning the lawfulness of the rates and charges contained in the revised tariff sheets filed herein.

(C) The Staff shall prepare and serve top sheets on all parties for settlement purposes on or before April 1, 1977. (See Administrative Order No. 157).

(D) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose (See Delegation of Authority, 18 CFR 3.5(d)), shall convene a settlement conference in this proceeding on a date certain within 10 days after the service of top sheets by the Staff, in a hearing or conference room of the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Said Presiding Administrative Law Judge is hereby authorized to establish all procedural dates and to rule upon all motions (with the exceptions of petitions to intervene, motions to consolidate and sever, and motions to dismiss), as provided for in the Rules of Practice and Procedure.

(E) Waiver of § 154.63(e)(2)(i) and § 154.63(a)(3) of the Commission's Regulations is hereby granted.

(F) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-519 Filed 1-5-77;8:45 am]

[3] 18 CFR 154.63(b)(3).

[4] *Atlantic Seaboard Corporation, et al.* (Opinion No. 225), 11 FPC 43 (1952).

[5] *See*, in this regard, the Commission's recent opinion in *Natural Gas Pipeline Company of America* (Opinion No. 782), —— FPC —— (Docket No. RP73-110, issued November 9, 1976).

[6] *United Gas Pipe Line Company* (Opinion No. 671), 50 FPC 1348 (1973), *reh. denied* 51 FPC 1014 (1974), *aff'd sub nom. Consolidated Gas Supply Corp. v. F.P.C.*, 520 F. 2d 1176 (D.C. Cir. 1975).

[Docket No. RP72-134 (PGA 77-3)]

EASTERN SHORE NATURAL GAS CO.

Purchased Gas Cost Adjustment to Rates and Charges

DECEMBER 29, 1976.

Take notice that Eastern Shore Natural Gas Company (Eastern Shore) on December 13, 1976, tendered for filing Thirty-Eighth Revised Sheet No. 3A Superseding Thirty-Seventh Revised Sheet No. 3A and Thirty-Eighth Revised PGA-1 to its FPC Gas Tariff, Original Volume No. 1. These revised tariff sheets, to be effective January 1, 1977, will increase the commodity or delivery charges of Eastern Shore's Rate Schedules CD-1, CD-E, E-1, I-1 and PS-1 by $.017 per Mcf. These increases reflect corresponding increases by Transcontinental Gas Pipe Line Corporation (Transco), Eastern Shore's sole supplier, in its filing of November 30, 1976, in Docket No. RP72-99.

Pursuant to Section 154.51 of the Regulations under the Natural Gas Act, Eastern Shore respectfully requests waiver of the notice requirements of Section 154.22 of those Regulations and of Section 20.2 of the General Terms and Conditions of its Tariff, to the extent necessary, to permit the tariff sheets submitted to become effective as of November 1, 1977, to coincide with the effective date of Transco's rate changes. In support thereof, Eastern Shore states that Transco's November 30, 1976, filing of its revised tariff sheets prohibited it from preparing its computations and revised tariff sheets in time to comply with the applicable notice requirements.

Copies of the filing have been mailed to each of the Company's jurisdictional customers and to interested State Commissions.

Any persons desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (10 CFR. 1.8, 1.10). All such petitions or protests should be filed on or before January 12, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-517 Filed 1-5-77;8:45 am]

[Docket No. RP77-18]

EL PASO NATURAL GAS CO.

Order Accepting for Filing and Suspending Proposed Rate Increase and Establishing Procedures

DECEMBER 29, 1976.

On November 30, 1976, El Paso Natural Gas Company (El Paso) tendered for filing proposed changes to its FPC Gas Tariff[1] which would increase its revenues for jurisdictional natural gas sales and services by approximately $145 million annually over its currently effective rates, based on costs and sales volumes for the 12 months ended August 31, 1976, as adjusted for known and measurable changes through May 31, 1977. For the reasons stated below, the Commission shall accept the proposed rate increase for filing, with conditions, suspend its operation for five months, and set the matter for hearing.

Public notice of El Paso's filing was issued on December 8, 1976, with comments, protests or petitions to intervene due to be filed on or before December 21, 1976.

El Paso claims the principal reasons for the proposed rate increase are declining gas supply and increases in virtually all items of cost, including labor, capital, materials and supplies, special overriding royalties, regular royalties and taxes. El Paso requests waiver of § 154.63(e)(2)(ii) of the Commission's Regulations to permit the inclusion of construction work in progress in its rate base. El Paso also requests waiver of § 154.63(e)(2)(i) of the Regulations to permit increases in the amounts payable to certain special overriding royalty interests which will become effective on June 1, 1977.

The Commission finds that waiver of § 154.63(e)(2)(ii) of the Regulations

[1] The tariff sheets which were submitted are: (a) Original Volume No. 1: Twentieth Revised Sheet No. 3-B and Fifth Revised Sheet No. 63-C.5; (b) Third Revised Volume No. 2: Tenth Revised Sheet No. 1-D and Fifth Revised Sheet No. 1-M.5; (c) Original Volume No. 2A; Twelfth Revised Sheet No. 1-C and Fifth Revised Sheet 7-MM.5.

should be granted, subject to condition. This waiver will permit the inclusion in rate base of $2,461,484 associated with facilities not yet placed in service upon condition that El Paso shall file revised rates to go into effect June 1, 1977, which reflect the elimination of all plant which is not certificated and placed in service as of June 1, 1977, and the elimination of any construction work in progress from rate base.

The Commission shall grant waiver of § 154.63(e)(2)(i) of the Regulations to allow El Paso to include in its proposed rates increases in special royalty and tax expense associated with company-owned production. The increases in the special overriding royalty and tax expenses will go into effect on June 1, 1977, under the existing agreements. This is only one day after the end of the test period. In addition, these expenses are known and measurable as a result of Opinion Nos. 770 and 770-A issued July 27, 1976, and November 5, 1976. The fact that the known and measurable change will occur only one day after the end of the test period constitutes good cause for waiving § 154.63(e)(2)(i) in this case.

The Commission notes that El Paso included in its proposed rates "the effect of an increase in the amount payable as regular royalty and production tax expense which is expected to result given a change which has been proposed by the United States Geological Service in the method of valuing, for royalty purposes, natural gas produced from or for the benefit of onshore Federal and Indian oil and gas leases." El Paso requests that § 154.63(e)(2)(i) of the regulations be waived in order to allow inclusion of these expected changes in the proposed rates. The Commission shall permit these expected changes to be included provisionally, subject to the condition that El Paso file revised tariff sheets to go into effect on June 1, 1977, reflecting the elimination of any and all amounts related to this expected change, if the expected change is not effective by June 1, 1977.

El Paso uses the Seaboard method of cost classification, allocation, and rate design in its filing. The Commission has indicated that use of the Seaboard method of cost classification and rate design may be inadequate and contrary to the public interest in the present situation. See, e.g., Natural Gas Pipeline Company of America, Opinion No. 782, issued November 9, 1976. Notice is hereby given to El Paso of the potential liability for undercollections in the event methods of cost classification, allocation, and rate design are adopted which assign more fixed costs to the commodity component than are assigned under the Seaboard method.

El Paso states that the depreciation rate and the rate treatment for its production from wells commenced on or after January 1, 1973, on leases acquired prior to October 6, 1969, are the subject of proposed settlement agreements in Docket Nos. RP73-104, RP74-57 and RP75-39 and Docket No. RP76-69. These agreements are presently pending before the Commission. Should Commission action on these agreements result in a different depreciation rate or a different treatment for El Paso's production noted above from those which are included in the instant filing, El Paso shall file revised tariff sheets reflecting the necessary changes resulting from the Commission's order.

The Commission's review of the increased rates proposed herein by El Paso indicates that such rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, the Commission shall accept the proposed rate increase for filing and suspend its operation for five months, or until June 1, 1977, at which time it shall be permitted to become effective, subject to refund, in the manner prescribed by the Natural Gas Act, and in accordance with the terms of this order.

The Commission finds. (1) It is necessary and proper in the public interest in carrying out the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the increased rates and charges proposed by El Paso in the instant docket, and that the tariff sheets reflecting such increased rates be accepted for filing and the use thereof suspended for five months, as hereinafter ordered and conditioned.

(2) Good cause exists to grant waiver of § 154.63(e)(2)(i) and (ii) as hereinafter ordered and conditioned.

The Commission orders. (A) Pursuant to the authority of the Natural Gas Act, particularly Sections 4 and 5 thereof, and the Commission's Rules and Regulations, a public hearing shall be held concerning the lawfulness and reasonableness of the increased rates as proposed herein.

(B) Pending hearing and decision as to the justness and reasonableness of the increased rates proposed by El Paso, the revised tariff sheets filed herein are accepted for filing and suspended for five months, that is, until June 1, 1977, at which time they will be permitted to become effective subject to refund, in the manner provided by the Natural Gas Act; provided, however, that El Paso shall file revised tariff sheets and filing statements showing the elimination of costs included in the proposed rates associated with facilities which have not been certificated and placed in service by June 1, 1977, and the elimination of construction work in progress from rate base; and, provided further, El Paso shall file revised tariff sheets and filing statements showing the elimination of any and all amounts related to the expected change in valuation for royalty purposes of natural gas from onshore Federal and Indian oil and gas leases, if such change by the U.S.G.S. is not effective on June 1, 1977.

(C) The Commission Staff shall prepare and serve top sheets on all parties on or before April 1, 1977. (See Administrative Order No. 157.)

(D) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose (See Delegation of Authority, 18 CFR 3.5(d)), shall convene a settlement conference in this proceeding on a date certain within 10 days after the service of top sheets by the Staff, in a hearing or conference room of the Federal Power Commission, 825 No. Capitol Street, N.E., Washington, D.C. 20426. Said Presiding Administrative Law Judge is hereby authorized to establish such procedural dates as may be necessary and to rule upon all motions (with the exceptions of petitons to intervene, motions to consolidate and sever, and motions to dismiss), as provided for in the Rules of Practice and Procedure.

(E) Waiver of § 154.63(e)(2)(ii) and § 154.63(e)(2)(i) of the Commission's Regulations is hereby granted, subject to the limitations and conditons prescribed by this order.

(F) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary

[FR Doc.77-518 Filed 1-5-77;8:45 am]

[Docket No. ER77-116]

HARTFORD ELECTRIC LIGHT CO.

Amendment to Purchase Agreement With Respect to Middletown Station

DECEMBER 29, 1976.

Take notice that on December 15, 1976, The Hartford Electric Light Company (HELCO) tendered for filing a proposed Amendment to Purchase Agreement with respect to Middletown Station (Amendment) dated November 1, 1976 between (1) HELCO and (2) Westfield Gas and Electric Department (Westfield). HELCO states that a change has been made to the text of the Purchase Agreement with respect to Middletown Station from 5000 kilowatts to 6248 kilowatts for the period from November 1, 1976 to October 31, 1979.

HELCO states that they were not notified of Westfield's intent to increase their entitlement percentage of Middletown Station until a date which prevented the filing of the Amendment thirty days prior to the expected effective date of the Amendment. Therefore, HELCO requests that the Commission waive the thirty day notice period and permit the Amendment to become effective as of November 1, 1976.

HELCO states that copies of this Amendment have been mailed or delivered to HELCO, Hartford, Connecticut and Westfield, Westfield, Massachusetts.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedures (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 11, 1977. 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 proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-529 Filed 1-5-77;8:45 am]

[Docket Nos. ER76-322 and ER76-199]

ILLINOIS POWER CO.

Request for Waiver

DECEMBER 28, 1976.

Take notice that on December 13, 1976, the Illinois Power Company tendered for filing on behalf of itself and nine electric cooperative customers a request for further waiver of § 35.14(a)(8) of the Commission's Regulations to permit a June 1, 1977 date for the Company's compliance filing of its fuel adjustment clause.

A letter stating the concurrence of the nine electric cooperatives accompanied the filing.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 12, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-502 Filed 1-5-77;8:45 am]

[Docket No. ER77-47]

INDIANA & MICHIGAN ELECTRIC CO.

Changes in Rates and Charges

DECEMBER 28, 1976.

Take notice that American Electric Power Service Corporation (AEP) on December 14, 1976, tendered for filing on behalf of its affiliate, Indiana & Michigan Electric Company (I&M), a letter of agreement dated October 4, 1976 to the Interconnection Agreement dated June 1, 1968, between I&M and Central Illinois Public Service Company, designated Indiana Rate Schedule FPC No. 67.

AEP states that the letter of agreement provides for an increase in the minimum energy charge for Emergency Service from 17.5 mills to three ($0.03) cents per kilowatt hour, proposed to become effective December 15, 1976. A similar letter agreement between Illinois Power Company and I&M was recently submitted to the Commission as a proposed settlement of FPC Docket No. ER 76-21 and on September 8, 1976 the Commission issued an order approving this settlement making it effective as of March 2, 1976. AEP also states that since the use of Emergency Service under the proposed minimum charge cannot be accurately determined or estimated, it is impossible to determine or estimate the increase in revenues resulting from the letter of agreement.

Copies of the filing were served upon Central Illinois Public Service Company, the Public Service Commission of Indiana, and the Michigan Public Service 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 Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 14, 1977. 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. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-503 Filed 1-5-77;8:45 am]

[Docket Nos. RP76-100, RP73-14 (PGA Nos. 76-4, 76-4a, and 77-1a)]

MICHIGAN WISCONSIN PIPE LINE CO.

Order Accepting for Filing and Suspending Proposed Purchased Gas Cost Adjustment, Subject to Conditions and Deferring Hearing Procedures

DECEMBER 29, 1976.

On December 1, 1976, Michigan Wisconsin Pipe Line Company (Mich-Wisc) filed revised tariff sheets [1] replacing certain tariff sheets which Mich-Wisc had filed on October 27, 1976, to reflect the elimination from rate base of certain non-certificated facilities pursuant to Ordering Paragraph (A) of the Commission order issued November 24, 1976, in Docket Nos. RP76-100 and RP73-4 (PGA 76-4 and PGA76-4a).

For the reasons hereinafter stated, the Commission will accept one tariff sheet and permit it to become effective on November 1, 1976. The Commission will accept the other tariff sheet and suspend it for one day, until November 2, 1976, when it will become effective, subject to refund.

By order issued May 28, 1976, in Docket No. RP76-100, the Commission suspended Mich-Wisc's proposed increased rates for five months, granting waiver of the Regulations subject to the condition that Mich-Wisc file revised tariff sheets to become effective November 1, 1976, reflecting the exclusion of non-certificated facilities from its rate base. On October 27, 1976, Mich-Wisc filed revised tariff sheets and a motion to make its suspended rates effective subject to refund. In that these tariff sheets did not reflect the exclusion of noncertificated facilities from rate base, the Commission rejected them by order issued on November 24, 1976.

In response to that order, Mich-Wisc filed the instant tariff sheets, reducing the base tariff rates by 0.09 cent per Mcf to reflect exclusion of the non-certificated facilities from rate base. The tariff sheets also include a 15.26 cents per Mcf PGA rate increase reflecting (1) a 9.22 cents per Mcf, or $71,791,748 per year increase in the current cost of gas to reflect increased gas costs resulting from Opinion No. 749 and the increase in the cost of Canadian gas effective September 10, 1976, (2) a 6.04-cent surcharge to recover $28,952,364 in deferred purchased gas costs. Anticipating a one day suspension due to the inclusion therein of emergency purchases in excess of Opinion No. 770-A rate levels, Mich-Wisc also filed an alternate PGA increase of 14.54 cents per Mcf to be effective November 1, 1976, excluding such costs. The subject PGA filing replaces a prior filing made on September 27, 1976, which had included the impact of Opinion No. 770 increases.

The instant filing complies with the November 24, 1976, order. On December 1, 1976, Mich-Wisc also filed a revised tariff sheet [3] to reflect the elimination of the 0.09 cent per Mcf from its special Opinion No. 770-A PGA rate increase filing which became effective December 1, 1976, subject to the elimination of the costs associated with noncertificated facilities in Docket No. RP 76-100.[4]

Our review of Mich-Wisc's filing indicates that the rates included in Third Substitute Fourteenth Revised Sheet No. 27F are based in part on emergency purchases made in excess of Opinion No. 770-A rate levels. Therefore, the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or otherwise unlawful.

Accordingly, we shall accept that sheet for filing and suspended its effectiveness for one day until November 2, 1976, when it shall become effective subject to refund, as hereinafter ordered and conditioned.

Our review of Mich-Wisc's claimed increased purchased gas costs indicates that they comply with the standards set forth in Docket No. R-406 with the ex-

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[1] Third Substitute Fourteenth Revised Sheet No. 27F and Alternate Third Substitute Fourteenth Revised Sheet No. 27F to FPC Gas Tariff, Second Revised Volume No. 1.

[3] Substitute Fifteenth Revised Sheet No. 27F to FPC Gas Tariff, Second Revised Volume No. 1.

[4] Commission Order issued November 30, 1976, in Docket Nos. RP73-77 (PGA77-2), et al.

ception of those claimed increased costs associated with that portion of emergency purchases in excess of Opinion No. 770-A rate levels. In addition Mich-Wisc revised filings comply with the referenced order and its PGA. Accordingly, we shall accept Mich-Wisc's Alternate Third Substitute Fourteenth Revised Sheet No. 27F and permit it to be effective on November 1, 1976, inasmuch as it does not include emergency purchases above Opinion No. 770-A rate levels.

The Commission shall grant waiver of Section 154.22 of the Regulations to permit these traiff sheets to become effective November 1 and 2, 1976.

The Commission finds: (1) It is necessary and appropriate to aid in the enforcement of the Natural Gas Act that hearing procedures on the issue of emergency purchases in excess of Opinion No. 770-A rate levels be deferred pending further Commission order and that Mich-Wisc's Third Substitute Fourteenth Revised Sheet No. 27F in substitution for said sheet originally suspended in Docket No. RP76-100 be accepted for filing and suspended for one day, to become effective November 2, 1976, subject to refund.

(2) It is necessary and appropriate to aid in the enforcement of the Natural Gas Act that Mich-Wisc's Alternate Third Substitute Fourteenth Revised Sheet No. 27F, reflecting the elimination of emergency purchases in excess of Opinion No. 770-A rate levels, be accepted for filing, to become effective November 1, 1976, for one day only.

(3) It is necessary and appropriate to aid in the enforcement of the Natural Gas Act that, Mich-Wisc's Substitute Fifteenth Revised Sheet No. 27F in substitution for the traiff sheet which became effective on December 1, 1976, be accepted for filing in order to track the special rate increases permitted by Opinion No. 770-A.

(4) Good cause exists to grant waiver of Section 154.22 of the Commission's Regulations.

The Commission orders: (A) Mich-Wisc's proposed Third Substitute Fourteenth Revised Sheet No. 27F to its FPC Gas Tariff Second Revised Volume No. 1 is hereby accepted for filing and suspended for one day, until November 2, 1976, when it shall become effective subject to refund.

(B) Mich-Wisc's proposed Alternate Third Substitute Fourteenth Revised Sheet No. 27F to its FPC Gas Tariff Second Revised Volume No. 1 is accepted for filing to be effective for one day only on November 1, 1976, subject to refund.

(C) Mich-Wisc proposed Substitute Fifteenth Revised Sheet No. 27F to its FPC Gas Tariff Second Revised Volume No. 1 is accepted for filing to be effective, subject to refund, on December 1, 1976.

(D) The hearing procedures on the issue of emergency purchases of gas made in excess of Opinion No. 770-A rate levels are hereby deferred until further Commission order.

(E) To assist in Commission review of the emergency purchases and in determining whether a public hearing is necessary thereon, Mich-Wisc shall file and serve on all its customers and interested state commissions within thirty days of the issuance hereof the following information: (1) the pipeline's need for the gas, (2) the availability of other gas supplies, (3) the amount of gas obtained under the emergency purchases, (4) a comparison of the emergency purchase price with appropriate market prices in the same or nearby areas, and (5) the relationship between the purchaser and the seller. Upon receipt of this information, it will be duly noticed for receipt of comments with respect thereto. Should our review indicate that the information filed and the comments related thereto meet the criteria, we shall terminate the proceedings and relieve Mich-Wisc of its refund obligation. Should our review of the information and any comments related thereto indicate that further proceedings are required as to any or all of the emergency purchases, they would be established by subsequent order.

(F) Waiver of the notice requirements of § 154.22 is hereby granted.

(G) The Secretary shall cause prompt publication of this order to be issued in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-507 Filed 1-5-77;8:45 am]

[Docket No. ER76-585]

MISSOURI PUBLIC SERVICE CO.

Compliance Filing

DECEMBER 29, 1976.

Take notice that on November 1, 1976, Missouri Public Service Company (MPSC) filed revised rate schedule sheets for the Cities of Eldorado Springs, Liberal, Pleasant Hill, and Rich Hill, Missouri. MPSC's filing complies with ordering paragraph (C) of the Commission's Order Accepting In Part And Rejecting In Part Proposed Rate Changes, issued on September 30, 1976, in this docket. The revised sheets omit restrictive resale provisions previously contained in the respective cities' contracts with MPSC.[1] Copies of the compliance letter and the revised rate schedule sheets have been sent to the respective cities as notification of the changes in compliance with the Commission's September 30, 1976 order.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 10, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-510 Filed 1-5-77;8:45 am]

[1] The last paragraph of Article 1, Page 2 of the contracts has been deleted. Designations: Eldorado Springs—FPC Electric Rate Schedule No. 35; Liberal—FPC Electric Rate Schedule No. 30; Pleasant Hill—FPC Electric Rate Schedule No. 34; Rich Hill—FPC Electric Rate Schedule No. 32.

[Docket No. CP77-87]

MOUNTAIN FUEL SUPPLY CO.

Application

DECEMBER 30, 1976.

Take notice that on December 13, 1976, Mountain Fuel Supply Company (Applicant), 180 East First South Street, Salt Lake City, Utah 84139, filed in Docket No. CP77-87 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of natural gas with Northwest Pipeline Corporation (Northwest) on a deferred basis, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to exchange natural gas with Northwest under the terms of a deferred gas exchange agreement (Agreement) entered into between the parties and dated December 10, 1976. The Agreement, it is stated, calls for the delivery of natural gas by Applicant to Northwest during the period commencing with the granting and acceptance of regulatory approval and continuing through April 30, 1977, and the redelivery of equivalent volumes of gas to Applicant by Northwest beginning June 1, 1982. The Agreement provides further, it is stated, that initial exchange volumes shall not exceed an average of 20,000,000,000 Btu's per day for any seven-day period beginning on any Monday and shall be limited to a total of 2,000,000,000,000 Btu's for the entire delivery period. It is stated that Northwest will redeliver a volume of gas equivalent to volumes taken from Applicant plus an additional 3.0 percent to compensate Applicant for line loss and compressor fuel. Such redeliveries, it is stated, would begin on June 1, 1982, and Northwest, it is stated, would be required to use its best efforts to redeliver no less than twenty percent and not more than thirty-five percent of the volumes due Applicant during each summer season beginning on June 1, 1982. It is stated that any balance due Applicant as of September 30, 1986, will be redelivered to Applicant during the period June 1, 1987, through September 30, 1987, or, at Applicant's option, shall be immediately paid for by Northwest.

It is stated that delivery would be made at an existing point of interconnection between Applicant's and Northwest's facilities in Sweetwater County, Wyoming. It is further stated that Northwest would pay Applicant 40.88 cents per 1,000,000 Btu's of natural gas, the current average price of gas stored in Applicant's Leroy Storage Reservoir, plus an additional two cents per 1,000,000 Btu's for all exchange volumes delivered to compensate Applicant for alcohol treatment and storage withdrawal. It is stated that Applicant will pay Northwest 40.88 cents per 1,000,000 Btu's upon the redelivery of exchange volumes.

It is indicated that the exchange volumes which Applicant proposes to deliver to Northwest under the proposed exchange agreement would enable Northwest partially to offset the 1976–77 heating season shortfall of 240,000 Mcf per day anticipated from Northwest's Canadian imports. Applicant estimates that it would not require the full withdrawal capacity of its underground storage facilities during the 1976–77 winter heating season and can, therefore, make such unused withdrawal capability available to Northwest under the proposed exchange. It is indicated that Applicant can, in its sole opinion, discontinue exchange deliveries when its system requires partial or complete restoration of service and, furthermore, that Applicant would make deliveries to Northwest only on those days when one or more of Northwest's firm customers are requesting service under Northwest's Rate Schedule SGS–1, the Jackson Prairie Storage Service.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 20, 1977 file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-527 Filed 1-5-77;8:45 am]

[Docket No. RP76-106]

NATURAL GAS PIPELINE CO. OF AMERICA

Filing in Compliance With Commission Order

DECEMBER 30, 1976.

Take notice that on December 6, 1976, Natural Gas Pipeline Company of America (Natural) submitted for filing as part of its FPC Gas Tariff, Third Revised Volume No. 1, the below listed tariff sheets, to be effective December 1, 1976.

Third Substitute Thirtieth Revised Sheet No. 5
Third Substitute Fifth Revised Sheet No. 5A

Natural states that this filing was made in compliance with Ordering Paragraph (C) of the Commission's order accepting filing with condition issued June 30, 1976, at Docket No. RP76-106 to reduce the Base Rates to reflect the elimination of the costs associated with the project proposed at Docket No. CP76-370 for which temporary certificate was issued by Commission's letter order dated November 1, 1976. While the project had been authorized, Natural was unable to complete construction in time to put the facilities in service by November 30, 1976; and therefore, the costs associated with this project were removed from the RP76-106 Base Rates to be effective subject to refund.

Natural also states that the PGA unit adjustment to be effective December 1, 1976 is at the levels approved to be effective by Commission "Order Accepting for Filing and Permitting to Become Effective Pipeline PGA Rate Increases Pursuant to Opinion No. 770-A," issued November 30, 1976.

Copies of Natural's Filing and tariff sheets, together with supporting data, are on file with the Commission and are available for public inspection.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 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 January 17, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-523 Filed 1-5-77;8:45 am]

[Docket No. RP76-106]

NATURAL GAS PIPELINE CO. OF AMERICA

Revision to Tariff Sheets Filed Under Motion

DECEMBER 30, 1976.

Take notice that on November 24, 1976, Natural Gas Pipeline Company of America (Natural) requested that the below listed tariff sheets be inserted in lieu of the corresponding tariff sheets filed on October 26, 1976 with its Motion to Make Suspended Tariff Sheets Effective:

Second Substitute Thirtieth Revised Sheet No. 5
Second Substitute Fifth Revised Sheet No. 5A.

Natural states that it is concurrently filing a PGA unit adjustment in Docket No. RP71-125 (PGA 76-9a). The PGA adjustment is being filed in accordance with Commission Opinion No. 770-A issued November 5, 1976. The effect of that adjustment is to refile for a PGA adjustment previously filed September 27, 1976 to be effective October 27, 1976. As more fully explained in the concurrently filed PGA transmittal letter, the effectiveness of the PGA adjustment was deferred to December 1, 1976. The refiled adjustment has an effect on the Sheet Nos. 5 and 5a and Appendix C included with Natural's motion filed October 26, 1976.

Natural requested that the above listed tariff sheets and revised copies of Appendix C be inserted in its motion in lieu of corresponding tariff sheets and Appendix C sheets filed on October 26, 1976.

The Base Rates on the above tariff sheets are the same as those previously filed under motion, the current and cumulative PGA adjustment amounts reflect the changes concurrently filed in Docket No. RP71-125 (PGA 76-9a).

Natural states that it does not believe any waivers of the Commission's regulations are necessary to permit the requested substitution. Natural, however, requested the Commission to grant such waivers as it may deem necessary.

Copies of this filing were mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 1.8 and § 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 17, 1977. 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.77-525 Filed 1-5-77;8:45 am]

[Docket No. CP77-84]

NORTHERN NATURAL GAS CO. OPERATING AS PEOPLES NATURAL GAS DIVISION

Application

DECEMBER 30, 1976.

Take notice that on December 9, 1976, Northern Natural Gas Company, operating as and through its Peoples Natural Gas Division (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP-7784 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the delivery of natural gas to Panhandle Eastern Pipeline Company (Panhandle), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Applicant and Panhandle were jointly authorized by the Commission's order issued October 19, 1971, in Docket Nos. CP71-270 and CP71-152 to construct and operate delivery facilities. Panhandle, it is stated, was authorized in the said docket to transport up to 20,000 Mcf per day of natural gas for Applicant from the Hugoton Field in Stevens and Grant Counties, Kansas, to Applicant's intrastate pipeline system located in central Kansas. Applicant further states that it no longer has gas volumes available from the Hugoton Field and that it consequently advised Panhandle that it would exercise its election to terminate the transportation agreement.

Applicant states that it proposes to leave the two measuring stations, installed to accommodate gas delivery to Panhandle, in place as emergency interconnections with Panhandle.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 21, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-526 Filed 1-5-77;8:45 am]

[Docket No. CP77-78]

NORTHERN NATURAL GAS CO.

Application

DECEMBER 30, 1976.

Take notice that on December 3, 1976, Northern Natural Gas Company (Applicant), 2223 Dodge Street, Omaha, Nebraska filed an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the reclassification and reassignment of presently authorized contract demand service to Interstate Power Company (Interstate) all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that its customer, Interstate, requested it to seek realignment of its Group C Zone 3 contract demand service. Applicant indicates that one of Interstate's customers, Armour and Company (Armour), is incorrectly classified in Priority 2C. Armour, it is indicated, receives a maximum of 200 Mcf of natural gas per day at its plant in Mason City, Iowa. It is stated that said gas is used for house heat, smoke houses and food processing exclusively. Applicant seeks reclassification for this 200 Mcf of gas by reassigning it to the entitlement of Mason City, Iowa. The effect would be to transfer 200 Mcf of contract demand service from Priority 2C to Priority 1 with no effect on total entitlement, it is indicated.

Applicant states that at the appropriate time it will submit to the Commission a revised service agreement with Interstate reflecting the proposed changes. Applicant claims this proposal will more efficiently utilize available sources of supply.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-524 Filed 1-5-77;8:45 am]

[Docket No. RP73-8 (PGA 77-4)]

NORTH PENN GAS CO.

Proposed Changes in FPC Gas Tariff

DECEMBER 29, 1976.

Take notice that North Penn Gas Company (North Penn) on December 13, 1976, tendered for filing proposed changes in its FPC Gas Tariff, First Revised Volume No. 1, pursuant to its PGA Clause for rates to be effective January 1, 1977.

North Penn states that the proposed increase in rates reflects an increase in rates filed by Consolidated Gas Supply Corporation on December 9, 1976, and an increase in rates from Tennessee Gas Pipeline Company filed December 1, 1976 both for effectiveness January 1, 1977 and will increase North Penn's jurisdictional revenues by approximately $341.9 thousand annually.

North Penn is requesting a waiver of any of the Commission's Rules and Regulations in order to permit the proposed rates to go into effect on January 1, 1977.

Copies of this filing were served upon North Penn's jurisdictional customers, as well as interested state commissions.

Any persons desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 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 January 12, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this

filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-508 Filed 1-5-77;8:45 am]

[Docket No. E-9560]

OHIO ELECTRIC CO.

Order Granting Motion To Withdraw Complaint and Terminating Docket

DECEMBER 28, 1976.

On May 5, 1976, Ormet Corporation (Ormet) filed a complaint regarding the rate charged Ohio Power Company (Ohio Power) by Ohio Electric Company (Ohio Electric) and requested an investigation and hearing with respect to such rate. On June 18, 1976, Ohio Electric filed an answer to the complaint. On July 6, 1976, Ormet moved to strike the third affirmative defense by Ohio Electric, and Ohio Electric responded on July 16, 1976. On October 7, Ormet filed a motion to withdraw its complaint.

Ormet supports its present motion by stating that due to a favorable decision by the Public Utilities Commission of Ohio concerning service to Ormet by Ohio Power retaining Ormet's individual power agreement rather than the status of tariff customer, the matters complained of in this proceeding will have less impact upon it. Further, Ormet believes that its continued participation in the present proceeding will strain its business relationship with Ohio Power and will generate unjustified legal and other expenses.

As complainant in the present docket moves to voluntarily withdraw its complaint against Ohio Electric, the Commission grants the motion to withdraw, and terminates the docket.

The Commission finds. Good cause exists to grant Ormet Corporation's Motion to Withdraw its Complaint against Ohio Electric Company.

The Commission orders. (A) The Motion to Withdraw the Complaint filed by Ormet Corporation against Ohio Electric Company on May 5, 1976, is hereby granted.

(B) This docket is hereby terminated.

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

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-500 Filed 1-5-77;8:45 am]

[Docket No. ER77-107]

PACIFIC POWER & LIGHT CO.

Initial Rate Filing

DECEMBER 28, 1976.

Take notice that Pacific Power & Light Company (Pacific Power) on December 13, 1976, tendered for filing, in accordance with Section 35.12 of the Commission's Regulations, a rate schedule for service to Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company (the Companies).

The proposed rate schedule provides for provisional delivery of nonfirm hydro energy to the Companies. Provisional energy not returned to Pacific upon request prior to April 30, 1977, will be paid for at a rate of 12 mills per kilowatt-hour under the terms and conditions of Pacific Power & Light Company FPC Electric Tariff, Original Volume No. 2.

Pacific Power requests waiver of the Commission's notice requirements to permit this rate schedule to become effective on November 21, 1976 for service to Southern California Edison Company and on November 24, 1976, for service to Pacific Gas and Electric Company and San Diego Gas & Electric Company, which it claims are the dates of commencement of service.

Copies of the filing were supplied to the Companies.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 7, 1977. Protests will be considered by the Commisison 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.77-499 Filed 1-5-77;8:45 am]

[Docket No. RP73-36 (PGA 77-2) (DCA 72-1)]

PANHANDLE EASTERN PIPE LINE CO.

Change In Tariff

DECEMBER 29, 1976.

Take notice that on December 16, 1976, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing Nineteenth Revised Sheet No. 3-A to its F.P.C. Gas Tariff, Original Volume No. 1. Panhandle submits that this revised tariff sheet reflects rate adjustments as follows:

(1) A DCA Commodity Surcharge Adjustment pursuant to Section 16.6(e) of the General Terms and Conditions of its FPC Gas Tariff, Original Volume No. 1; and

(2) A Rate Adjustment pursuant to Section 18.4 of the General Terms and Conditions of its FPC Gas Tariff, Original Volume No. 1; such adjustment reflecting a proposed Pipeline Supplier rate adjustment to be effective concurrently herewith; and

(3) A PGA Rate Adjustment pursuant to Section 18.2 of the General Terms and Conditions of its FPC Gas Tariff, Original Volume No. 1.

An effective date of February 1, 1977 is proposed.

Panhandle states that copies of its filing have been served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 1.8 and § 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before Jan. 12, 1977. 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.77-509 Filed 1-5-77;8:45 am]

[Docket No. RP73-89 (PGA77-1)]

SEA ROBIN PIPELINE CO.

Order Accepting for Filing and Permitting Tariff Sheet To Become Effective

DECEMBER 29, 1976.

On November 22, 1976, Sea Robin Pipeline Company tendered for filing a revised tariff sheet[1] seeking an increase in its rates of 22.06¢ per Mcf under its PGA clause. The rate increase is intended to recover increased costs resulting from producer rate increases pursuant to Opinion No. 770-A and includes a surcharge to recover amounts in its deferred gas cost account. The revised tariff sheet would increase Sea Robin's revenues by $34.9 million. Sea Robin seeks to place the revised sheet into effect on January 1, 1977.

Sea Robin's filing is based in part on purchases from Mesa Offshore Company (Mesa) as if Mesa qualified as a small producer. By order issued December 31, 1975, in Sea Robin's Docket No. RP73-89 (PGA76-1), Mesa was required, *inter alia*, to show cause why it should not reduce its rates and make refunds. This matter is still pending. We shall permit Sea Robin's revised tariff sheet to become effective on January 1, 1977, subject to the outcome of the Mesa show cause proceeding.

The Commission orders. (A) Sea Robin's revised tariff sheet filed herein is accepted for filing and permitted to become effective on January 1, 1977, subject to the outcome of the proceedings in Docket No. RP73-89 (PGA76-1).

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[1] Twelfth Revised Sheet No. 4 to its FPC Gas Tariff, Original Volume No. 1.

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

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-515 Filed 1-5-77;8:45 am]

[Docket No. G-4715]

SOUTHERN NATURAL GAS CO. AND TENNESSEE GAS PIPELINE CO., A DIVISION OF TENNECO INC.

Petition To Amend

DECEMBER 29, 1976.

Take notice that on December 7, 1976, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, and Tennessee Gas Pipeline Company, a Division of Tenneco, Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. G-4715 a petition to amend the Commission's order issued pursuant to Section 7(c) of the Natural Gas Act of February 25, 1955 (14 FPC 577), as amended by orders issued June 5, 1962 (27 FPC 1113), July 31, 1963 (30 FPC 419), February 1, 1968 (39 FPC 124), March 24, 1969 (41 FPC 407) and May 6, 1976 (55 FPC ——), in the instant docket so as to authorize the establishment of three additional delivery points from Southern to Tennessee and one additional delivery point from Tennessee to Southern, the deletion of two existing delivery points from Tennessee to Southern, the exchange of gas at the election of either party at two delivery points; and to authorize as points of exchange eight existing points of interconnection between the facilities of either Southern or Tennessee and a third party, at which interconnections either Southern or Tennessee is currently authorized to exchange gas with such third party, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that Southern and Tennessee have entered into an Exchange Agreement dated November 5, 1976, which updates, revises and supersedes their original exchange agreement dated October 1, 1954. The Superseding Exchange Agreement, it is stated, proposed to add South Pass Block 6, Bastian Bay, Plaquemines Parish, Louisiana, and Past Tembalier Island, Lafourche Parish, Louisiana, as delivery points from South ern to Tennessee and South Pass Block 62 as a delivery point from Tennessee to Southern, to delete Eloi Bay and Bastian Bay both located in Plaquemines Parish, Louisiana, as delivery points from Tennessee to Southern and to exchange gas at the election of either party at the Enterprise delivery point in Clark County, Mississippi and at Pugh delivery point in Lowndes County, Mississippi. The Superseding Agreement further proposes points of exchange at the following existing points of interconnection with either Southern or Tennessee: Shadyside (St. Mary Parish, Louisiana), Perryville No. 1 (Ouachita Parish, Louisiana), Epps (West Carroll Parish, Louisiana), Perryville No. 2 (Morehouse Parish, Louisiana), Kosciusko No. 1 (Attala County, Mississippi), Kosciusko No. 2 (Attala County, Mississippi), Venice (Plaquemines Parish, Louisiana), and Erath (Vermilion Parish, Louisiana).

Petitioners state that no new or additional facilities are required for the points proposed, nor would the proposal have any adverse effect upon their ability to serve their respective existing customers.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 13, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-512 Filed 1-5-77;8:45 am]

[Docket No. RP77-19]

TRANSWESTERN PIPELINE CO.

Order Accepting for Filing and Suspending Proposed Rate Increase and Establishing Procedures

DECEMBER 29, 1976.

On December 1, 1976, Transwestern Pipeline Company (Transwestern) tendered for filing in the above docket certain revised tariff sheets to its FPC Gas Tariff, Second Revised Volume No. 1.[1] Transwestern is proposing to increase its rates by approximately $39 million annually for jurisdictional natural gas sales and services, based on actual costs for the 12 months ended August 31, 1976, as adjusted for known and measurable changes through May 31, 1977. Transwestern seeks to make its proposed rate increase effective on January 1, 1977, 30 days after filing. For the reasons hereinafter stated, the Commission shall accept Transwestern's proposed rate increase for filing, suspend it for five months, or until June 1, 1977, when it shall be permitted to become effective, subject to refund.

Public notice of Transwestern's filing was issued on December 9, 1976, providing for protests or petitions to intervene to be filed on or before December 27, 1976.

[1] First Revised Sheet Nos. 1, 23, 24, 50, 63, 74, 76, and 78 and Sixth Revised Sheet Nos. 5 and 6.

Transwestern states the principal reasons for its proposed rate increase are (1) increases in the cost of labor and other expenses, (2) a higher claimed rate of return, (3) a higher claimed depreciation rate, (4) increased Federal and state income taxes, and (5) lower sales volumes.

In addition to the proposed increase in rates, Transwestern also proposes to amend its tariff to establish a $10 per Mcf unauthorized overrun penalty and to increase interest on unpaid bills from 6 to 9 percent annually. Transwestern also proposes to incorporate in its tariff a 30 day notice requirement applicable to tracking provisions in accordance with the Commission's Regulations.

Based on a review of Transwestern's filing herein, the Commission finds that the proposed higher rates and tariff amendments have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept Transwestern's proposed rate increase for filing and suspend its use for five months, or until June 1, 1977, when it shall be permitted to become effective, subject to refund, in the manner prescribed by the Natural Gas Act, and shall set the matter for hearing.

The Commission finds. It is necessary and proper in the public interest and in carrying out the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the increased rates and charges and tariff revisions proposed by Transwestern, and that the same be accepted for filing and suspended in the manner prescribed by the Natural Gas Act.

The Commission orders. (A) Pursuant to the authority of the Natural Gas Act, particularly Sections 4 and 5 thereof, and the Commission's rules and regulations, a public hearing shall be held concerning the lawfulness of the increased rates and tariff modifications proposed herein by Transwestern.

(B) Pending hearing and decision thereon, Transwestern's proposed rate increase and tariff modifications are accepted for filing and suspended for five months, or until June 1, 1977, when they shall be permitted to become effective, subject to refund, in the manner prescribed by the Natural Gas Act.

(C) The Commission staff shall prepare and serve top sheets on all parties on or before April 1, 1977.

(D) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose (See Delegation of Authority, 18 CFR 3.5(d)), shall convene a settlement conference in this proceeding on a date certain within 10 days after the service of top sheets by the Staff, in a hearing or conference room of the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Said Presiding Administrative Law Judge is hereby authorized to establish such further procedural dates as may be necessary and to rule upon all motions (with the

exceptions of petitions to intervene, motions to consolidate and sever, and motions to dismiss), as provided for in the Rules of Practice and Procedure.

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

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-520 Filed 1-5-77;8:45 am]

[Docket No. RP73-35 and RP74-89 (PGA 77-2 (AP 77-1)]

TRUNKLINE GAS CO.

Change in Tariff

DECEMBER 29, 1976.

Take notice that on December 16, 1976, Trunkline Gas Company (Trunkline) tendered for filing Eighteenth Revised Sheet No. 3-A to its FPC Gas Tariff, Original Volume No. 1. Trunkline submits that this revised tariff sheet reflects rate adjustments as follows:

(1) An Advance Payment tracking adjustment pursuant to Article V of the Agreement as to Rates and Related Matters in Docket No. RP74-89, approved by the Commission's Order dated July 9, 1975; and

(2) A Purchased Gas Transmission and Compression tracking adjustment pursuant to Article VI of the Agreement as to Rates and Related Matters in Docket No. RP74-89, approved by the Commission's Order dated July 9, 1975; and

(3) A PGA Rate Adjustment pursuant to Section 18 of the General Terms and Conditions of its FPC Gas Tariff, Original Volume No. 1.

An effective date of February 1, 1977 is proposed.

Trunkline states that copies of its filing have been served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with § 1.8 and § 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before Jan. 12, 1977. 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.77-514 Filed 1-5-77;8:45 am]

[Docket No. CP77-92]

TRUNKLINE GAS CO. AND PANHANDLE EASTERN PIPE LINE CO.

Application

DECEMBER 28, 1976.

Take notice that on December 15, 1976, Trunkline Gas Company and Panhandle Eastern Pipe Line Company (Applicants), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP77-92 a joint application pursuant to Section 7 of the Natural Gas Act and the regulations thereunder for a certificate of public convenience and necessity and for a temporary certificate authorizing the transportation of natural gas on behalf of Northern Natural Gas Company (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants propose to transport 13,000 Mcf of gas on a firm basis and 6,500 Mcf of gas on a best-efforts basis for the account of Northern utilizing the capacity of their respective systems and the capacity obtained by Trunkline from Stingray Pipeline Company (Stingray) and Natural Gas Pipeline Company of America (Natural).

Northern has made arrangements with Natural whereby Natural will transport the gas purchased by Northern from West Cameron Block 543 to Stingray's existing pipeline in West Cameron Area, South Addition, Block 565. Trunkline has made arrangements with Natural whereby Natural will transport the gas from the terminus of Stingray's offshore facilities to Trunkline's onshore facilities. The gas will be transported by Applicants to Longville, Louisiana, under a transportation agreement between Applicants and Northern dated October 27, 1976. The gas will then be further transported throughout Applicants' facilities to the ultimate point of redelivery to Northern in Kiowa County, Kansas, near Mullinville. This latter transportation service is pursuant to a transportation agreement dated September 24, 1976, which is the subject of Applicants' application at Docket No. CP77-17. For the transportation service from offshore Louisiana to Longville, Northern will pay a monthly charge of Forty Thousand One Hundred Seven Dollars ($40,107).

As partial consideration for this transportation service, Northern has agreed to sell Panhandle up to twenty percent (20%) of the volumes delivered at the point of receipt.

Applicants also seek authorization to effectuate a transportation agreement between Applicants which provides for the transportation by Trunkline of the gas purchased by Panhandle from Northern. In consideration for said transportation Panhandle will pay Trunkline a monthly charge of Twenty-four Thousand Nine Hundred Fifty-one Dollars ($24,951).

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 January 3, 1977, 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 the 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 an abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-505 Filed 1-5-77;8:45 am]

[Docket No. ER77-114]

UTAH POWER & LIGHT CO.

Interconnection Agreement

DECEMBER 29, 1976.

Take notice that on December 15, 1976, Utah Power & Light Company Utah states that this Service Schedule Service Schedule IV providing for the interchange of energy between Utah and The Washington Water Power Company. Utah states that this Service Schedule is agreed to under and as part of the Interconnection Agreement dated April 21, 1965, between The Washington Water Power Company, Idaho Power Company, The Montana Power Company, Pacific Power & Light Company, and Utah, which is on file with the Federal Power Commission as Utah Power & Light Company Rate Schedule FPC No. 103. Utah requests that the filing be accepted retroactively as of August 1, 1976.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 1.8 and § 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before January 10, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-521 Filed 1-5-77;8:45 am]

[Docket No. ER77-92]

VIRGINIA ELECTRIC AND POWER CO.

Contract Supplement

DECEMBER 28, 1976.

Take notice that on December 3, 1976, Virginia Electric and Power Company (Virginia) tendered for filing a Contract Supplement dated August 26, 1976, to the Agreement designated as Virginia's Rate Schedule FPC No. 85-50 between Virginia and Southside Electric Cooperative.

Said supplement requests Commission authorization for the relocation of metering facilities from 12.5 kV to 34.5 kV at Cherry Hill Delivery Point, located on the south side of Route 659 approximately 0.5 mile east of Route 619 near Dinwiddie, Dinwiddie County, Virginia.

Virginia requests an effective date as that of the date connection of facilities which is August 27, 1976.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 10, 1977, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or 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. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-498 Filed 1-5-77;8:45 am]

FEDERAL RESERVE SYSTEM

BANKS OF IOWA, INC.

Acquisition of Bank

Banks of Iowa, Inc., Cedar Rapids, Iowa, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of First Trust & Savings Bank, Davenport, Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than January 27, 1977.

Board of Governors of the Federal Reserve System, December 30, 1976.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.77-448 Filed 1-5-77;8:45 am]

FIRST INTERNATIONAL BANCSHARES, INC.

Acquisition of Bank

First International Bancshares, Inc., Dallas, Texas, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent (less directors' qualifying shares) of the voting shares of Beaumont State Bank, Beaumont, Texas. The factors that are considered in acting on the application are set forth in 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than January 27, 1977.

Board of Governors of the Federal Reserve System, December 30, 1976.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.77-449 Filed 1-5-77;8:45 am]

KRUSE INSURANCE AGENCY, INC.

Formation of Bank Holding Company

Kruse Insurance Agency, Inc., Mineola, Iowa, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 80 percent or more of the voting shares of Mineola State Bank, Mineola, Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Kruse Insurance Agency, Inc., Mineola, Iowa has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Mineola State Bank, Mineola, Iowa. Notice of the application was published on November 24, 1976 in Glenwood Opinion-Tribune, a newspaper circulated in Mills County, Iowa.

Applicant states that the proposed subsidiary would engage in the activities of insurance sales related to extensions of credit by Mineola State Bank, including credit life, accident or health. Such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than January 27, 1977.

Board of Governors of the Federal Reserve System, December 30, 1976.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.77-450 Filed 1-5-77;8:45 am]

FEDERAL TRADE COMMISSION

[File No. 762 3107]

CEZAR, LTD., ET AL.

Consent Agreement With Analysis To Aid Public Comment

Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34, 40 FR 15236, April 4, 1975), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and provisionally accepted by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited on or before March 6, 1977. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14), 40 FR 15236, April 4, 1975). Comments should be directed to:

Office of the Secretary, Federal Trade Commission, 6th Street & Pennsylvania Avenue, NW., Washington, D.C. 20580.

CEZAR, LTD., ET AL.

FILE NO. 762 3107

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Cezar, Ltd., and William Arnold.

The proposed order has been placed on the public record for sixty (60) days for reception of comments by the public. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Cezar Ltd., is a New York corporation and is a manufacturer and distributor of men's and boys' shirts. William Arnold is the secretary of the corporation. He controls and is responsible for the firm's acts and practices during the period when the violations are alleged to have occurred.

The complaint alleges that respondents falsely represented the constituent fibers on labels attached to their shirts, and failed to disclose the percentages of such fibers. It further alleges that they sold the shirts with labels which failed to disclose the true generic names of the fibers present. Finally, the complaint alleges that the respondents failed to maintain proper records showing the fiber content of the shirts.

The consent order prohibits Cezar, Ltd., and William Arnold from falsely and deceptively labeling or otherwise misrepresenting the textile fiber content of textile products. In addition, the order requires respondents to disclose the generic name of a fiber in conjunction with the use of a fiber trademark. It further requires respondents to maintain records of the textile fiber content of textile products in accordance with the provisions of the Textile Act.

The order is generally designed to prevent deception as to the fiber content of clothing and to protect competitors from unfair competition.

The purpose of this analysis is to facilitate public comment on the proposed order and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION

[File No. 762 3107]

AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

In the matter of Cezar Ltd., a corporation, and William Arnold, individually and as an officer of said corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Cezar Ltd., a corporation, and William Arnold, individually and as an officer of said corporation, hereinafter sometimes referred to as proposed respondents, and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated;

It is hereby agreed by and between Cezar Ltd., by its duly authorized officer, and William Arnold, individually and as an officer of said corporation, and counsel for the Federal Trade Commission that:

1. Proposed respondent, Cezar Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 232 Madison Avenue, New York, New York 10016.

Proposed respondent William Arnold is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of the complaint here attached.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released; and such acceptance may be withdrawn by the Commission if comments or views submitted to the Commission disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto.

When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Mailing of the complaint and decision containing the agree-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby, and they understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order, and that they may be liable for a civil penalty in the amount provided by law for each violation of the order after it becomes final.

ORDER

It is ordered, That respondents Cezar Ltd., a corporation, its successors and assigns and its officers, and William Arnold, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with the introduction, sale, advertising or offering for sale in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, after shipment in commerce of any textile fiber product, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

1. Misbranding textile fiber products by:

a. Falsely or deceptively stamping, tagging, labeling, invoicing or otherwise identifying such products as to the name or amount of the constituent fibers contained therein;

b. Failing to affix a stamp, tag, label or other means of identification to each such product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by section 4(b) of the Textile Fiber Products Identification Act;

c. Using a fiber trademark on labels affixed to textile fiber products without the generic name of the fiber appearing in immediate conjunction therewith in type or lettering of equal size and conspicuousness.

2. Failing to maintain and preserve proper records of fiber content of textile fiber products manufactured by respondents, as required by section 6(a) of the

Textile Fiber Products Identification Act and Rule 39 of the rules and regulations promulgated thereunder.

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

It is further ordered, That the individual respondent named herein promptly notify the Commission of each change in business or employment status, which includes discontinuance of his present business or employment and each affiliation with a new business or employment, for ten (10) years following the effective date of this order. Such notice shall include respondent's current business address and a description of the business or employment in which he is engaged as well as a description of his duties and responsibilities. The expiration of the notice provision of this paragraph shall not affect any other obligations arising under this order.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

JAMES A. TOBIN,
Acting Secretary.

[FR Doc.77-418 Filed 1-5-77;8:45 am]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on December 29, 1976. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed FEA requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before January 24, 1977, and should be addressed to Mr. John M. Lovelady, Acting Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5216, 425 I Street, NW., Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-376-5425.

FEDERAL ENERGY ADMINISTRATION

FEA requests an extension no change clearance of the Form FEA-100A entitled "Producers and Wholesale Purchaser-Resellers Monthly Report." This form is designed to provide summary data regarding product availability in inventory, product supply (production, imports, purchases and exchanges) and the demand on inventory and supply for the current month, the preceding month and the following month. This information is mandatory under 10 CFR 211, Subparts D & E, issued pursuant to the Federal Energy Administration Act of 1973 (Pub. L. 93-275) as amended by the Energy Policy and Conservation Act (Pub. L. 94-163). FEA estimates the number of respondents to be approximately 1,000 and the reporting burden to be 2 hours per response. Potential respondents are refiners, importers, suppliers and certain resellers of propane and butane.

FEA requests an extension no change clearance of the Form FEO-17, "Request For Assignment Of A Supplier Or Adjustment Of Base Period Supply Volume." The FEO-17 is not a mandatory form but is required to obtain benefit, such as, assignment of a supplier. The Mandatory Petroleum Allocation Program established 1972 as the base period for current petroleum allocation. However, FEA realizes that economic growth and changing use patterns necessitate adjustments to initial allocations. The FEO-17 provides a tool for wholesale purchasers to apply for the base period supply volume. FEA estimates potential respondents to number approximately 20,000, each filing one response per year. FEA estimates burden to average one hour to complete the form.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc.77-550 Filed 1-5-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

ABBOTT LABORATORIES

Withdrawal of Food Additive Petition and Filing of Petition for Affirmation of GRAS Status

Correction

In FR Doc. 76-36751, appearing on page 55240 in the issue for Friday, December 17, 1976, the following changes should be made:

1. The last word in the seventh line of the fourth full paragrph in column three should read, "benzoic".

2. The third line of the fifth full paragraph in column three should read, "121.40) is filed by FDA. There is no pre-".

[Docket No. 76N-0479; DESI 5963]

CERTAIN SULFONAMIDE OPHTHALMIC OINTMENTS AND SOLUTION

Drug for Human Use; Drug Efficacy Study Implementation; Followup Notice and Opportunity for Hearing

Correction

In FR Doc. 76-36750, appearing at page 55241 in the issue for Friday, December 17, 1976, make the following changes:

1. In the first column, page 55241, in the third line of the third full paragraph beginning with "NDA 7-757", the second word should read "Roche".

2. In the second column, in paragraph numbered 3, in the fifth line, "February 15, 1977", should have been inserted.

Office of Education

TEACHER CORPS

Closing Date for Receipt of Applications

Notice is hereby given that pursuant to the authority contained in Part B-1 of the Education Professions Development Act of 1965, as amended (79 Stat. 1255-1258 as amended) (20 U.S.C. 1101-1107 a), applications are being accepted from institutions of higher education and local educational agencies for non-competing continuation grants for the second year of "Eleventh Cycle" Teacher Corps projects which began in fiscal year 1976. Although the appropriation for fiscal year 1977 has not yet been made, the appropriation is anticipated to allow the funding of 122 grants within 66 project sites. The average amount to be awarded to each project site (2 grants) will be $235,000,000.

In order to be assured of consideration for funding, applications should be received by the U.S. Office of Education, Application Control Center on or before June 1, 1977.

A. *Applications sent by mail.* An application sent by mail should be addressed as follows: U.S. Office of Education, Application Control Center, 400 Maryland Avenue, S.W., Washington, D.C. 20202, Attention: 13.469. An application sent by mail will be considered to be received on time by the Application Control Center if:

(1) The application was sent by registered or certified mail not later than May 27, 1977 as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service; or

(2) The application is received on or before the closing date by either the Department of Health, Education, and Welfare, or the U.S. Office of Education mail rooms in Washington, D.C. In establishing the date of receipt, the Commissioner will rely on the time-date stamp of such mail rooms or other documentary evidence of receipt maintained by the Department of Health, Education, and Welfare, or the U.S. Office of Education.

B. *Hand delivered applications.* An application to be hand delivered must be delivered to the U.S. Office of Education.

Grant and Procurement Management Division, Application Control Center, Room 5673, Regional Office Building Three, 7th and D Streets, SW., Washington, D.C. Hand-delivered applications will be accepted daily between the hours of 8:00 a.m. and 4:00 p.m., except Saturdays, Sundays, or Federal holidays.

C. *Program information and forms.* Information and application forms may be obtained from the Teacher Corps, Office of the Commissioner, Office of Education, Washington, D.C. 20202.

D. *Applicable regulations.* The regulations applicable to this program are the Office of Education General Provisions Regulations (45 CFR Part 100a).

(20 U.S.C. 1101-1107a.)

Dated: December 29, 1976.

(Catalog of Federal Domestic Assistance Number 13.489—Teacher Corps—Operations and Training.)

JOHN W. EVANS,
Acting United States Commissioner of Education.

[FR Doc.77-419;Filed 1-5-77;8:45 am]

Office of the Secretary

REVIEW PANEL ON NEW DRUG REGULATION

Meeting

Notice is hereby given, pursuant to Public Law 92-463, that the Review Panel on New Drug Regulation, established pursuant to 42 U.S.C. 217a. by the Secretary of Health, Education, and Welfare, on February 21, 1975, will meet on Monday, January 24, 1977, at 4:15 p.m. and Tuesday, January 25, 1977 at 8:30 a.m. in Room 5051 of the Department of Health, Education, and Welfare's North Building, 330 Independence Avenue, S.W., Washington, D.C. The Review Panel will consider matters pertaining to its study of existing policies and procedures for the regulation of new drugs by the Food and Drug Administration. The meeting is open to the public.

Further information on the Review Panel may be obtained from John D. Rust, Executive Secretary, Review Panel on New Drug Regulation, Room 1187 Donahue Building, 330 Independence Avenue, S.W., Washington, D.C. 20201, telephone (202) 472-3000.

Dated: December 30, 1976.

JOHN D. RUST,
Executive Secretary, Review Panel on New Drug Regulation.

DECEMBER 29, 1976.

[FR Doc.77-405 Filed 1-5-77;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration

[FDAA-3015-EM Docket No. NFD-380]

SOUTH DAKOTA

Amendment to Notice of Emergency Declaration

Notice of emergency for the State of South Dakota dated June 17, 1976, and amended on July 8, 1976, October 18, 1976, and December 16, 1976, is hereby further amended to include the following counties among those counties determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of June 17, 1976:

The Counties of:

Corson	Shannon
Dewey	Washabaugh
Ziebach	

The purpose of this designation is to provide emergency livestock feed assistance only in the aforementioned affected areas.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance)

Dated: December 27, 1976.

WILLIAM E. CROCKETT,
Acting Administrator, Federal Disaster Assistance Administration.

[FR Doc.77-479 Filed 1-5-77;8:45 am]

[FDAA-3016-EM; Docket No. NFD-381]

NORTH DAKOTA

Amendment to Notice of Emergency Declaration

Notice of emergency for the State of North Dakota dated July 21, 1976, and amended on December 16, 1976, is hereby further amended to include the following counties among those counties determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of July 21, 1976:

The Counties of:

Ransom	Sargent
Richland	

The Purpose of this designation is to provide emergency livestock feed assistance only in the aforementioned affected areas.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance)

Dated: December 27, 1976.

WILLIAM E. CROCKETT,
Acting Administrator, Federal Disaster Assistance Administration.

[FR Doc.77-480 Filed 1-5-77;8:45 am]

[FDAA-3013-EM Docket No. NFD-382]

MINNESOTA

Amendment to Notice of Emergency Declaration

Notice of Emergency for the State of Minnesota, dated June 17, 1976, and amended on June 28, 1976, and August 27, 1976, November 9, 1976, and on December 16, 1976, is hereby further amended to include the following county among those counties determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of June 17, 1976:

The County of:

Todd

The purpose of this designation is to provide emergency livestock feed assistance only in the aforementioned affected area.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

Dated: December 27, 1976.

WILLIAM E. CROCKETT,
Acting Administrator, Federal Disaster Assistance Administration.

[FR Doc.77-481 Filed 1-5-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM 29465]

NEW MEXICO

Notice of Application

DECEMBER 29, 1976.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Gas Company of New Mexico has applied for one 4-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN,
NEW MEXICO

T. 21 S., R. 32 E.,
Sec. 3, lots 7, 8, 10, 11, 14 and 15.
This pipeline will convey natural gas across .746 miles of national resource land in Lea County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

RAUL E. MARTINEZ,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-488 Filed 1-5-77;8:45 am]

[NM 29457; 29458]

NEW MEXICO

Notice of Applications

DECEMBER 29, 1976.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Southern Union Gathering Company has applied for two 4-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN,
NEW MEXICO

T. 30 N., R. 8 W.,
Sec. 23, E½SE¼;
Sec. 26, E½NE¼, SW¼NE¼ and N½SE¼.
T. 31 N., R. 11 W.,
Sec. 1, lot 1;
Sec. 12, N½NW¼.
These pipelines will convey natural gas across 1.431 miles of national resource lands in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

RAUL E. MARTINEZ,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-489 Filed 1-5-77;8:45 am]

[NM 29464]

NEW MEXICO

Notice of Application

DECEMBER 29, 1976.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Northwest Pipeline Corporation has applied for one 4½-inch natural gas pipeline right-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 25 N., R. 10 W.,
Sec. 19, lots 1 and 2.
T. 25 N., R. 11 W.,
Sec. 24, SE¼SE¼.

This pipeline will convey natural gas across .343 of a mile of national resource lands in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

RAUL E. MARTINEZ,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-490 Filed 1-5-77;8:45 am]

[NM 29450, 29466, 29468, 29469, and 29470]

NEW MEXICO

Notice of Applications

DECEMBER 29, 1976.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for two 6⅝-inch and three 4½-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 24 S., R. 34 E.,
Sec. 4, N½SE¼, E½SW¼ and SW¼SW¼;
Sec. 5, SE¼SE¼;
Sec. 9, SW¼NE¼.
T. 19 S., R. 28 E.,
Sec. 33, NW¼SE¼.
T. 20 S., R. 37 E.,
Sec. 8 NE¼NW¼.
T. 26 S., R. 37 E.,
Sec. 13, S½SE¼;
Sec. 24, NW¼NE¼.

These pipelines will convey natural gas across 1.766 miles of national resource lands in Eddy and Lea Counties, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

RAUL E. MARTINEZ,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-491 Filed 1-5-77;8:45 am]

[NM 29452, 29453 and 29454]

NEW MEXICO

Notice of Applications

DECEMBER, 29, 1976.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), TUCO, Inc., has applied for three pumping plant site rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 15 S., R. 29 E.,
Sec. 12, SE¼SW¼.
T. 17 S., R. 31 E.,
Sec. 4, lot 3.
T. 18 S., R. 32 E.,
Sec. 3, lots 3 and 4.

The plant sites will be used in connection with natural gas operations and will occupy .171 acres of national resource lands in Chaves, Eddy and Lea Counties, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

RAUL E. MARTINEZ,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-492 Filed 1-5-77;8:45 am]

[Wyoming 57850]

WYOMING

Application

DECEMBER 28, 1976.

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Western Oil Transportation Co., Inc. of Casper, Wyoming filed an application for a right-of-way to construct an 8 inch pipeline for the purpose of transporting crude oil across the following described National Resource Lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 53 N., R. 72 W.,
Sec. 9, E½NE¼
Sec. 10, SW¼NE¼

The pipeline will transport crude oil from a point in the SW¼NE¼ of sec. 10, T. 53 N., R. 72 W. to a point in the NE¼NE¼ sec. 9, T. 53 N., R. 72 W. in Campbell County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 100 East "B" Street, P.O. Box 2834, Casper, Wyoming 82601.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 77-411 Filed 1-5-77; 8:45 am]

National Park Service

GATEWAY NATIONAL RECREATION AREA ADVISORY COMMISSION

Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Gateway National Recreation Area Advisory Commission will be held commencing at 10:00 a.m., Tuesday, February 1, 1977, at 26 Federal Plaza, Room 305, New York, New York. The Commission was established by Pub. L. 92-592 to meet and consult with the Secretary of the Interior on general policies and specific matters relating to the development of Gateway National Recreation Area.

The members of the Commission are:

Marian Heiskell, Chairman, New York, New York
Archibald S. Alexander, Bernardsville, New Jersey
John F. Haggerty, Forest Hills, New York
Orin Lehman, New York, New York
Gordon N. Litwin, Little Silver, New Jersey
Terrence D. Moore, Newark, New Jersey
Sheldon Pollack, New York, New York
Barbara Reach, New York, New York
Richard J. Sullivan, Hoboken, New Jersey
Nathaniel Washington, Newark, New Jersey
Joseph B. Williams, Brooklyn, New York

The matters to be be discussed at this meeting include:

1. Planning status report.
2. Operations status report.
3. Sub-committee report presentations.

The meeting will be open to the public. However, facilities and space to accommodate members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any members of the public may file with the

Commission a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Joe Antosca, Superintendent, Gateway National Recreation Area, Headquarters Building 69, Floyd Bennett Field, Brooklyn, New York 11234, Area Code 212-252-9150.

Minutes of the meeting will be available for inspection 4 weeks after the meeting at the Gateway National Recreation Area Headquarters Building.

Dated: December 17, 1976.

JOE ANTOSCA,
Superintendent.

[FR Doc.77-458 Filed 1-5-77;8:45 am]

DEPARTMENT OF JUSTICE

Antitrust Division

UNITED STATES v. ATLANTA NEWS AGENCY, INC.; AND FAMILY READING SERVICE, INC.

Proposed Consent Judgment as to Defendant Family Reading Service, Inc. and Competitive Impact Statement Thereon

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b) through (h), that with respect to defendant Family Reading Service, Inc., a proposed consent judgment and competitive impact statement as set out below have been filed with the United States District Court for the Northern District of Georgia (Atlanta Division) in *United States of America* v. *Atlanta News Agency, Inc.; and Family Reading Service, Inc.*, Civil Action No. C76-435A.

Defendants Family Reading Service, Inc. ("FRS") and Atlanta News Agency Inc. ("ANA") are independent wholesale distributors of periodicals and paperback books in the areas surrounding and including Albany and Atlanta, Georgia, respectively. The complaint in this case alleges that beginning sometime after May 1, 1972, and continuing thereafter at least until December 1973, FRS, ANA, and other co-conspirators combined and conspired, in violation of section 1 of the Sherman Act, to induce and coerce Town & Country News Co., Inc. ("Town & Country") and its owner to refrain from soliciting or doing business in the territories of the defendant companies. The complaint also alleges that in furtherance of said combination and conspiracy, the defendants each entered into a contract with Town & Country wherein one of the parties to each contract sold to the other party all of its business and potential business in specified areas and agreed not to compete with or interfere with the business or potential business of the other party in specified areas.

The proposed consent judgment enjoins defendant FRS from entering into or continuing any agreement to induce or coerce any third person from doing business with anyone or in any territory. The judgment also prohibits defendant FRS from unilaterally engaging in coercive conduct for such a purpose. Additionally, the judgment prohibits defendant FRS from entering into or enforcing any agreements to limit territories or customers, specifically including the contract with Town & Country. However, a contract for the sale of an entire business, containing an ancillary covenant not to compete, is permitted provided that such covenant is confirmed geographically and limited in time to two years.

Entry by the Court of the proposed consent judgment will terminate the action as to defendant FRS only. The action against defendant ANA will continue.

Public comment is invited on or before March 4, 1977. Such comments and responses thereto will be published in the FEDERAL REGISTER and filed with the Court. Comments should be addressed to Donald A. Kinkaid, Chief, Atlanta Field Office, Antitrust Division, United States Department of Justice, Suite 420, 1776 Peachtree Street, N.W., Atlanta, Georgia 30309.

Dated: December 17, 1976.

CHARLES F. B. MCALEER,
Assistant Chief, Judgments and Judgment Enforcement Section.

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF GEORGIA (ATLANTA DIVISION)

United States of America, Plaintiff, v. Atlanta News Agency, Inc.; and Family Reading Service, Inc., Defendants.

Civil No. C76-435A.

Filed: December 17, 1976.

STIPULATION

It is stipulated by and between the undersigned parties that:

1. A Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of either party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to either party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant Family Reading Service, Inc. and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to plaintiff and defendant Family Reading Service, Inc. in this and any other proceeding.

Dated: December 15, 1976.

For the Plaintiff: Donald I. Baker, *Assistant Attorney General*: William E. Swope, Charles F. B. McAleer, Donald *A. Kinkaid, Attorneys, United States Department of Justice;* John R. Fitzpatrick, Carl W. Mullis III, *Attorneys, United States Department of Justice,* Antitrust Division.

For Defendant Family Reading Service, Inc.: By: Lowell D. Greer, *President.*

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF GEORGIA (ATLANTA DIVISION)

United States of America, Plaintiff, v. Atlanta News Agency, Inc.; and Family Reading Service, Inc., Defendants.

Civil No. C76-435A.

Filed: December 17, 1976.

FINAL JUDGMENT AS TO DEFENDANT FAMILY READING SERVICES, INC.

Plaintiff, United States of America, having filed its complaint herein on March 8, 1976, and defendant, Family Reading Service, Inc. ("FRS"), having appeared by its attorneys, and the plaintiff by its attorneys and the defendant by its president, having consented to the entry of this Final Judgment, without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting evidence or admission by either party in respect to any issue of fact or law herein;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby,

Ordered, adjudged and decreed, as follows:

I

This Court has jurisdiction over the subject matter herein and of the parties hereto. The complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 1), commonly known as the Sherman Act.

II

As used in this Final Judgment:

(A) "Paperback books" mean mass media market paperback books;

(B) "Periodicals" mean mass media market paper cover magazines; it excludes daily newspapers but includes tabloids and comic books;

(C) "Person" means any natural person, association, cooperative, partnership, corporation, or other form of legal entity; and

(D) "ID wholesaler" means any person engaged in the business of purchasing periodicals and paperback books from the principal national distributors for resale at wholesale rates to retailers, and who itself delivers said merchandise, stocks its customers' display fixtures, bills its customers, credits and removes out-of-date merchandise and accounts for all sales and returns to its national distributor clients.

III

The provisions of this Final Judgment applicable to defendant FRS shall also apply to each of its officers, directors, agents, employees, subsidiaries, affiliates, successors, and assigns, and in addition, to all other persons in active concert or participation with any of them who shall receive actual notice of this Final Judgment by personal service or otherwise.

IV

Defendant FRS is enjoined and restrained from:

(A) Entering into, continuing, maintaining or renewing any contract, combination, conspiracy, agreement, understanding or concert of action with any ID wholesaler or other person to induce or coerce, or attempt to induce or coerce, any other ID wholesaler or any other third person to refrain from soliciting or doing business with any person or in any territory.

(B) Adopting, continuing, maintaining or renewing any practice, plan, program, or device to coerce, or attempt to coerce, any ID

wholesaler or any other person from soliciting or doing business with any person or in any territory.

(C) Entering into, continuing, maintaining or renewing any combination, conspiracy, agreement, understanding, concert of action, or contract, including the contract defendant FRS entered into with Town and Country News Co., Inc., dated October 19, 1973, to limit or restrict the territory within which or the customers to which any ID wholesaler, or any other person including defendant FRS, may do business. Subject to the provisions of Sections IV (A) and (B), nothing in this Section shall be deemed to prohibit defendant FRS from entering into a contract for the bona fide purchase or sale of an entire business, which contract contains an ancillary covenant not to compete on the part of the seller; provided, however, that said covenant not to compete must be confined geographically to an area no larger than that in which the business sold was then doing business and be not longer than two years in duration.

V

Within sixty (60) days after date of entry of the Final Judgment, defendant FRS is ordered and directed to furnish a copy thereof to each of its officers, directors, and employees, and to file with this Court and to serve upon the plaintiff an affidavit as to the fact and manner of its compliance with this Section V.

VI

(A) For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, any duly authorized representative of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant FRS made to the principal office, be permitted, subject to any legally recognized privilege:

(1) Access during the office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, directors, agents, partners or employees of such defendant, who may have counsel present, regarding any such matters.

(B) Defendant FRS, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

No information obtained by the means provided in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions thereof and for the enforcement of compliance therewith and the punishment of violations thereof.

VIII

Entry of this Final Judgment is in the public interest.

Dated:

JAMES C. HILL,
United States Circuit Judge
Sitting by Designation.

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF GEORGIA (ATLANTA DIVISION)

United States of America, Plaintiff, v. *Atlanta News Agency, Inc.; and Family Reading Service, Inc.*, Defendants.

Civil No. C76-435A.

Filed: December 17, 1976.

PROPOSED CONSENT JUDGMENT AS TO DEFENDANT FAMILY READING SERVICE, INC.; COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. §§ 16 (b)-(h)), the United States of America hereby files this Competitive Impact Statement relating to the proposed consent judgment as to defendant Family Reading Service, Inc. submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THIS PROCEEDING

On March 8, 1976, the Department of Justice filed a civil action under Section 4 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 4), commonly known as the Sherman Act, against defendants Family Reading Service, Inc. ("FRS") and Atlanta News Agency, Inc. ("ANA"). The complaint alleges that beginning sometime after May 1, 1972, and continuing thereafter at least until December 1973, the defendants and other co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

Entry by the Court of the proposed consent judgment will terminate the action as to defendant FRS only. In connection with the proposed judgment, the Court will retain jurisdiction over the matter for possible further proceedings which may be required to interpret, modify or enforce the judgment, or to punish alleged violations of any of the provisions of the judgment. The suit against defendant ANA will continue.

II. DESCRIPTION OF THE PRACTICES INVOLVED IN THE ALLEGED VIOLATION

Defendant FRS is a Georgia corporation, having its principal offices in Albany, Georgia. FRS is engaged in the independent ("ID") wholesale distribution of periodicals and paperback books primarily in the area surrounding and including Albany, Georgia. It purchases periodicals and paperback books for resale at wholesale rates to customers such as newsstands, variety stores, supermarkets, and convenience stores. FRS had total sales of periodicals and paperback books of approximately $800,000 for its fiscal year ending on September 30, 1973, and approximately $800,000 for the nine-month period from October 1973 through June 1974.

Defendant ANA is a Georgia corporation having its principal offices in Atlanta, Georgia. ANA is engaged in the ID wholesale distribtuion of periodicals and paperback books primarily in the area surrounding and including Atlanta, Georgia. ANA had total sales of periodicals and paperback books of approximately $9.2 million for a 53-week period ending on February 3, 1974.

The complaint alleges that the defendants and other co-conspirators engaged in a combination and conspiracy, the substantial term of which was to induce and coerce a competitor, Town & Country News Co., Inc. ("Town & Country"), and its owner, Kendell Morris, of Alley, Georgia, to refrain from soliciting or doing business in the territories of the defendant companies.

In furtherance of this combination and conspiracy, the complaint alleges that the defendants ANA and FRS each entered into contracts with Town & Country wherein the parties to each contract sold to the other party all their business and potential business in specified areas and agreed not to compete with or interfere with the business or potential business of the other party in specified areas.

The complaint alleges that the effects of this combination and conspiracy have been, among other things, to: (a) allocate territories between FRS and Town & Country and between ANA and Town & Country; (b) to restrain and eliminate actual and potential competition between FRS and Town & Country and between ANA and Town & Country in the ID wholesale distribution of periodicals and paperback books in the areas surrounding and including Atlanta, Albany, and Alley, Georgia; and (c) to deprive readers, retailers, national distributors and publishers of the benefits of actual and potential competition in the ID wholesale distribution of periodicals and paperback books in the areas surrounding and including Atlanta, Albany, and Alley, Georgia.

The complaint requests the Court to find that the defendants and co-conspirators have entered into a combination and conspiracy in unreasonable restraint of interstate trade and commerce in the ID wholesale distribution of periodicals and paperback books in violation of Section 1 of the Sherman Act (15 U.S.C. § 1). The complaint also requests the Court to enjoin and restrain the defendants from engaging in this combination and conspiracy and to grant additional relief to prevent its recurrence. Lastly, the complaint requests the Court to enjoin and restrain the defendants from entering into, continuing, maintaining, or renewing any contract, combination, conspiracy, agreement, understanding or concert of action (including the contracts with Town & Country) to limit or restrict the territory within which, or the customers to which, any ID wholesaler, including defendants, may sell periodicals or paperback books.

III. EXPLANATION OF THE PROPOSAL FOR A CONSENT JUDGMENT AND ITS ANTICIPATED EFFECTS ON COMPETITION

The United States and the defendant FRS have stipulated that the proposed consent judgment, in the form negotiated by and between the parties, may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The stipulation between the parties provides that there has been no admission by any party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, entry of the proposed judgment is conditioned upon a determination by the Court that the proposed judgment is in the public interest.

The proposed consent judgment provides for all of the relief with respect to defendant FRS which would have been demanded by the plaintiff if this case had been tried. Section IV (A) enjoins defendant FRS from entering into or maintaining with any other person an agreement to induce or coerce any third person to refrain from soliciting or doing business with any person or in any territory. Section IV (B) prohibits defendant FRS from unilaterally engaging in coercive conduct for such a purpose. Section IV (C) prohibits defendant FRS from entering into or enforcing any agreement which limits or restricts territories in which or customers with which a person may do business, includ-

ing specifically the contract between FRS and Town & Country. However, Section IV(C) does allow defendant FRS to enter into contracts for the *bona fide* purchase or sale of an entire business, with an ancillary covenant not to compete, provided that such covenant is confined geographically to an area no larger than that in which the business sold was then doing business and further provided that it does not run longer than two years. Such a contract, however, cannot be the result of coercive action by defendant FRS, as enjoined in Section IV (A) and (B).

In order to insure continued compliance with the terms of the judgment, upon written request of the plaintiff, defendant FRS is required to allow attorneys for the plaintiff to inspect its business records and to interview its officers or employees. Upon written request, defendant FRS is also required to submit written reports with respect to any matter contained in this judgment.

IV. ALTERNATIVE REMEDIES CONSIDERED BY THE GOVERNMENT

The United States did not actually consider any alternatives to the proposal now being filed, since the defendant agreed to provide all of the relief sought by the United States.

V. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages such person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed consent judgment in this proceeding will neither impair nor assist the bringing of any such private antitrust actions. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), this consent judgment has no *prima facie* effect in any subsequent lawsuits which may be brought against these defendants.

VI. PROCEDURES AVAILABLE FOR THE MODIFICATION OF THIS PROPOSAL

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed consent judgment should be modified may, for a sixty-day period, submit written comments to Donald A. Kinkaid, Chief, Atlanta Field Office, United States Department of Justice, Antitrust Division, 1776 Peachtree Street, N.W., Suite 420, Atlanta, Georgia 30309, who will file with the Court and publish in the FEDERAL REGISTER such comments and the responses of the United States thereto. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed judgment at any time prior to its entry if it should determine that some modification of it is necessary. The proposed judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for such order as may be necessary or appropriate for its modification, interpretation or enforcement.

VII. ALTERNATIVES TO THE PROPOSED CONSENT JUDGMENT

The alternative to the proposed judgment considered by the Antitrust Division was a full trial of the issues on the merits and on relief. The Division considered the substantive language of the judgment to be of sufficient scope and effectiveness to make litigation on the issues unnecessary, as the judgment provides appropriate relief against the violations charged in the complaint.

VIII. MATERIALS OR DOCUMENTS WHICH WERE DETERMINATIVE IN FORMULATING THE PROPOSAL FOR A CONSENT JUDGMENT

Since there are no materials or documents which were determinative in formulating the proposal for a consent judgment, none are being filed by the plaintiff pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)).

Dated: December 17, 1976.

JOHN R. FITZPATRICK
CARL W. MULLIS, III,
Attorneys, U.S. Department of Justice, Antitrust Division

[FR Doc.77-416 Filed 1-5-77;8:45 am]

Office of the Attorney General

[Order No. 677-76]

PRIVACY ACT OF 1974

Systems of Records and Proposed Routine Uses

DECEMBER 27, 1976.

Enclosed are notices of proposed systems of records maintained by the Department of Justice and required to be published in the FEDERAL REGISTER pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a.

JUSTICE/LEAA-012 is a new system of records for which no public notice is currently published in the FEDERAL REGISTER. This system will come into existence thirty (30) days after publication of this notice.

JUSTICE/ATR-009 is currently an ongoing system of records that was inadvertently omitted from past publication because of oversight.

JUSTICE/FBI-002, FBI Central Records System and OPA-001, Executive Clemency Files and JUSTICE/USA-007, Criminal Case Files are reprinted in their entirety with a summary of changes to reflect a proposed routine use for each system of records.

A summary of minor changes in existing systems notices: JUSTICE/OPA-001, JUSTICE/LDN-001 and 002 and JUSTICE/ATR-002, 003, 004, 006, 007 and 008 and JUSTICE/USA-001 are published to correct spelling or grammatical errors or similar mistakes or more specific restatements in the existing systems notices.

Finally, JUSTICE/CRM-999 is published in its entirety to reflect the deletion of four locations for the maintenance of Criminal Division records in New Orleans, Louisiana, Pittsburgh, Pennsylvania, St. Louis, Missouri and New York, New York and the transfer of these records to the U.S. Attorneys' Offices within these districts.

Interested persons are invited to submit written comments on those portions of the notices which describe the new routine uses of the systems of records listed. Reports for JUSTICE/LEAA-012 and JUSTICE/ATR-004 in conformity with OMB Circular A-108, Transmittal Memoranda No. 1 and 3 have been supplied to Congress, the Privacy Protection Study Commission, and the Office of Management and Budget contemporaneously with the publication of this notice. No reports have been filed for a proposed additional routine use in JUSTICE/FBI-002 and JUSTICE/USA-007 because these uses have been determined to be compatible with the purposes for which the systems are maintained. Comments should be mailed to the System Manager at the address listed in the relevant System Notice. All comments must be received by February 7, 1977. No oral hearings are contemplated. Comments received will be available for inspection in Room 1266, Main Department of Justice Building, 10th and Constitution Avenue, N.W.

Dated: DECEMBER 27, 1976.

EDWARD H. LEVI,
Attorney General.

JUSTICE/LEAA-012

System name:

Public Safety Officers' Benefits System.

System location:

Law Enforcement Assistance Administration, 633 Indiana Avenue, N.W., Washington, D.C. 20531.

Categories of individuals covered by the system:

Public Safety Officers who died while in the line of duty and their surviving beneficiaries.

Categories of records in the system:

This system contains an index by claimant and deceased Public Safety Officers; case files of eligibility documentation; and benefit payment records.

Authority for maintenance of the system:

Authority for maintaining this system exists under 42 U.S.C. 3701, et seq., Pub. L. No. 94-430 (Sept. 29, 1976) and 44 U.S.C. 3101.

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

(1) State and local agencies to verify and certify eligibility for benefits; (2) educational institutions where beneficiary is full-time student to verify eligibility status; (3) appropriate Federal agencies to coordinate benefits paid under similar programs; and (4) members of Congress or staff acting upon the member's behalf when the member or staff requests the information on behalf of and at the request of the individual who is a party in interest.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Information in this system is maintained on a master index, in folders and on computer magnetic tape.

Retrievability:

Information is retrievable by name of claimant, name of deceased Public Safety Officer, and case file number.

Safeguards:

Computerized information is safeguarded and protected by computer password key and limited access. Non-computerized data is safeguarded in locked cabinets. All files are maintained in a guarded building.

Retention and disposal:

Files are retained, retired to Federal records centers and disposed of in accordance with General Services Administration disposal schedules.

System manager(s) and address:

PSOB Program Officer, 633 Indiana Avenue, N.W., Washington, D.C. 20531.

Notification procedure:

Same as above.

Record access procedure:

Request for access to a record from this system should be made in writing with the envelope and the letter clearly marked "Privacy Access Request." Access requests will be directed to the System Manager listed above.

Contesting record procedures:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above and state clearly and concisely what information is being contested, the reason for contesting it and the proposed amendment to the information sought.

Record source categories:

Public agencies including employing agency, beneficiaries, educational institutions, physicians, hospitals, official State and Federal documents.

Systems exempted from certain provisions of the act:

None.

System name:

Consumer Inquiry Index.

System location:

U.S. Department of Justice, 10th and Constitution Avenue, N.W., Washington, D.C. 20530.

Categories of individuals covered by the system:

Individuals making inquiries relating to consumer matters.

Categories of records in the system:

System contains an index record to inquiries made directly to the Consumer Affairs Section, Antitrust Division and those referred to the Section both from within the Department and from outside sources.

Authority for maintenance of the system:

44 U.S.C. 3101; 5 U.S.C. 301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The system is maintained as a record of inquiries and referrals to the Consumer Affairs Section relating to consumer matters. Information provided by consumers and the identity of individuals making the inquiry are occasionally disclosed to outside parties and other governmental agencies in an effort to resolve a matter brought to the attention of the Section through the incoming correspondence.

Policies and practices for storing, retrieving, accessing retaining, and disposing of records in the system:

Storage:

Information in this system is maintained on index cards, which identify incoming letters of inquiry and outgoing letters of response. To a limited extent information may be retrieved by using the name of the inquiring party.

Safeguards:

Information contained in the system is unclassified. During working hours access to the system is controlled and monitored by Antitrust Division personnel in the area where the system is maintained. Access to the building during non-working hours is limited to Department of Justice personnel.

Retention and disposal:

Indefinite.

System manager(s) and address:

Chief, Consumer Affairs Section, Antitrust Division, U.S. Department of Justice, 10th and Constitution Avenue, N.W., Washington, D.C. 20530.

Notification procedure:

Address inquiries to the Assistant Attorney General, Antitrust Division, Department of Justice, 10th and Constitution Avenue, N.W., Washington, D.C. 20530.

Record access procedures:

Request for access for a record from this system shall be written and clearly identified as a "Privacy Access Request." The request should include the name of the party making the consumer inquiry and the date of the inquiry. Requester should indicate a return address.

Contesting record procedures:

Individuals desiring to contest or amend information maintained in the system should state clearly and concisely what information is being contested, the reasons for contesting it and the proposed amendment to the information sought.

Record source categories:

Source of information maintained in the system are those records (e.g., consumers' correspondence) reflecting direct inquiries or referrals by other offices or organizations.

Systems exempted from certain provisions of the act:

None.

SUMMARY OF CHANGES FOLLOWED BY THE ENTIRE SYSTEMS NOTICE

JUSTICE/FBI-002

System name:

The 'FBI Central Records System' containing investigative, personnel, administrative, applicant and general files.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Upon specific approval of the Director, information may be disseminated from this system to individuals in the private sector in extenuating circumstances in order to protect life or property. Information which relates to foreign counter-intelligence matters may be disseminated to individuals in the private sector with the specific authority of the Attorney General where he deems it necessary in order for the Federal Bureau of Investigation (FBI) to fulfill its statutory responsibilities to investigate espionage in the United States. The FBI has received inquiries from private citizens and Congressional offices in behalf of constituents seeking assistance in locating such individuals as missing children or heirs to estates. Where the need is acute and where it appears FBI files may be the only lead in locating the individual, consideration will be given to furnishing relevant information to the inquiring individual. Information will be provided only in those instances where it can be determined from the information at hand that the individual being sought would want the information to be furnished, e.g. an heir to a large estate. Information with regard to missing children will not be provided where they have reached their majority. The decision to make any dissemination under these circumstances can be made only by the Director, and this authority cannot be delegated.

JUSTICE/OPA-001

System name:

Executive Clemency Files.

Routine uses of records maintained in the system, including categories of users and purposes of such uses:

(f) Upon specific request, to make closed files available for historical research purposes when in the public interest and in conformity with Department of Justice policy.

JUSTICE/USA-007

System name:

Criminal Case Files.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

(n) A record relating to an actual or potential civil or criminal violation of title 17, United States Code, may be disseminated to a person injured by such violation to assist him in the institution or maintenance of a suit brought under such title.

JUSTICE/FBI-002

System name:

The 'FBI Central Records System' containing investigative, personnel, administrative, applicant, and general files.

System location:

a. Federal Bureau of Investigation, J. Edgar Hoover FBI Building, 10th and Pennsylvania Avenue, NW., Washington, D.C. 20535; b. 59 field divisions (see Appendix); c. 14 Legal Attaches (see Appendix).

Categories of individuals covered by the system:

a. Individuals who relate in any manner to official FBI investigations including, but not limited to suspects, victims, witnesses, and close relatives and associates that are relevant to an investigation.

b. Applicants for and current and former personnel of the FBI and persons related thereto that are considered relevant to an applicant investigation, personnel inquiry, or persons related to personnel matters.

c. Applicants for and appointees to sensitive positions in the United States Government and persons related thereto that are considered relevant to the investigation.

d. Individuals who are the subject of unsolicited information, who offer unsolicited information, request assistance and make inquiries concerning record material, including general correspondence, contacts with other agencies, businesses, institutions, clubs, the public and the news media.

e. Individuals, associated with administrative operations or services including pertinent functions, contractors and pertinent persons related thereto.

Categories of records in the system:

The FBI Central Records System—The FBI utilizes a 'central records system' of maintaining its investigative, personnel, applicant, administrative, and general files. This system consists of one numerical sequence of subject matter files, an alphabetical index to the files, and a supporting abstract system to facilitate processing and accountability of all important mail placed in file. Files kept in FBI field offices are also structured in the same manner, except they do not utilize an abstract system.

Files kept in FBI Field Offices—Field offices maintain certain records that are not contained at FBIHQ that include files, index cards, and related material pertaining to cases in which there was no prosecutive action undertaken; perpetrators of violations not developed during investigation; or investigation revealed allegations were unsubstantiated or not within the investigative jurisdiction of the Bureau. These investigations closed in field offices and correspondence not forwarded to FBI Headquarters. Duplicate records and records which extract information reported in the main files are also kept in the various divisions of the FBI to assist them in their day-to-day operation. Some of the information contained in the main files has also been extracted and placed on computer to enable various divisions to retrieve information more rapidly by avoiding the need for a manual search for information maintained in the main files. Also, personnel type information dealing with such matters as attendance and production and accuracy requirements is maintained by some divisions.

Authority for maintenance of the system:

Federal Records Act of 1950, The Constitution of the United States, various provisions of U.S. Code, Executive Orders and Presidential directives.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The records contained in this system are utilized by the FBI in support of its mission to conduct investigations within its jurisdiction and for various administrative purposes. Information from these files is disseminated to appropriate Federal, State, local, and foreign agencies where the right and need to have access to this information exists—For example, to assist in the general crime prevention and detection efforts of the recipient agency. Information is also disseminated to these agencies and to individuals and organizations, where such dissemination is necessary to elicit information from such agencies and individuals. Information from this system is also disseminated during appropriate legal proceedings. For example, witness interviews are made available to defendants pursuant to the Jencks Act during Federal criminal trials. In the event that a system of records maintained by this agency to carry out its functions indicated a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto. A record from this system of records may be disclosed as a 'routine use' to a Federal, State, or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, this issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit. A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. For example, in discharging its obligations under Executive Order 10450, this agency would disseminate record information as a direct result of a name check request submitted by another government agency. A record relating to an actual or potential civil or criminal violation of title 17, United States Code, may be disseminated to a person injured by such violation to assist him/her in the institution or maintenance of a suit brought under such title. Background and descriptive information on Federal fugitives is disseminated to the general public and the news media in an effort to bring about the apprehension of these wanted individuals. News releases are also disseminated to the public and the news media concerning apprehensions of FBI fugitives and other notable accomplishments. Additionally, public source information is distributed on a continuing basis, upon request, to the general public and representatives of the media. Upon specific approval of the Director, information may be disseminated from this system to individuals in the private sector in extenuating circumstances in order to protect life of property. Information which relates to foreign counter-intelligence matters may be disseminated to individuals in the private sector with the specific authority of the Attorney General where he deems it necessary in order for the Federal Bureau of Investigation (FBI) to fulfill its statutory responsibilities to investigate espionage in the United States. The FBI has received inquiries from private citizens and Congressional offices in behalf of constituents seeking assistance in locating such individuals as missing children or heirs to estates. Where the need is acute and where it appears FBI files may be the only lead in locating the individual, consideration will be given to furnishing relevant information to the inquiring individual. Information will be provided only in those instances where it can be determined from the information at hand that the individual being sought would want the information to be furnished, e.g. an heir to a large estate. Information with regard to missing children will not be provided where they have reached their majority. The decision to make any dissemination under these circumstances can be made only by the Director, and this authority cannot be delegated.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress: Information contained in sys-

tems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Policies and practices for storing: retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Files are maintained in hardcopy form, computer tape, and microfilm.

Retrievability:

The FBI General Index must be searched to determine what information, if any, the FBI may have in its files. The index cards are on all manner of subject matters, but primarily a name index of individuals. It should be noted the FBI does not index all individuals that furnish information or names developed in an investigation. Only that information that is considered pertinent and relevant and essential for future retrieval, is indexed. In certain major cases most persons contacted are indexed in order to facilitate the proper administrative handling of a large volume of material. The FBI is in the process of automating its 'Central Records System' and, therefore, the retrieval of certain data will be accomplished by utilizing certain computer peripheral equipment such as CRT (Cathode Ray Tube) video screens, and printers. This will basically involve certain personnel information, general index information, and the abstracting system. Automation in no way changes the 'Central Records System'; it only facilitates access more effectively and efficiently.

Safeguards:

Records are maintained in a restricted area and are accessed only by FBI employees. All FBI employees receive a complete background investigation prior to being hired. All employees are cautioned about divulging confidential information or any information contained in FBI files. Failure to abide by this provision violates Department of Justice regulations and may violate certain statutes providing maximum severe penalties of a 10,000 dollar fine or 10 years' imprisonment or both. Employees that resign or retire are also cautioned about divulging information acquired in the job.

Retention and disposal:

The Bureau, by its investigative mandate, collects and maintains information from a wide variety of sources. The records support the Bureau's investigative and administrative needs and its obligations to act as a clearinghouse under Executive Order 10450 regarding the security of Government employees. An active destruction program includes microfilming of certain files over 10 years old and researching files to determine whether they contain sufficient historical, research, investigative, or intelligence value to wararnt their retention. The Code of Federal Regulations, Title 41, and Title 44 of the U.S. Code set forth Records Management procedures to be followed by Government agencies in relation to their records. All agencies are required to retain any material made or received during the course of public business which has been preserved or is appropriate for preservation. Accordingly, disposition of record material must be in accordance with established regulations. Subsequent destruction is accomplished through authority granted by National Archieves and Records Service, GSA, utilizing either the General Records Schedules or a specific request for record destruction which is approved by the Archivist. Records are also destroyed or returned to source as a result of Court Order. Subsequent to January 27, 1975, a Congressional moratorium on all destruction, and a later decision rendered on further retention of security and intelligence material, has substantially reduced the tangible effects of the destruction program.

System manager(s) and address:

Director; Federal Bureau of Investigation; Washington, D.C. 20535.

Notification procedure:

Same as above.

Record access procedures:

A request for access to a record from the system shall be made in writing with the envelope and the letter clearly marked "Privacy Access Request". Include in the request your full name, complete address, date of birth, place of birth, notarized signature, and other identifying data you may wish to furnish to assist in making a proper search of our records. Also include the general subject matter of the document or its file number. The requester will also provide a return address for transmitting the information. Access requests will be directed to the Director, Federal Bureau of Investigation, Washington, D.C. 20535.

Contesting record procedures:

Individuals desiring to contest or amend information maintained in the system should also direct their request to the Director, Federal Bureau of Investigation, Washington, D.C. 20535, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the informaion sought.

Record source categories:

The FBI, by the very nature and requirement to investigate violations of law within its investigative jurisdiction and its responsibility for the internal security of the United States, collects information from a wide variety of sources. Basically it is the result of investigative efforts and information furnished by other Government agencies, law enforcement agencies, and the general public, informants, witnesses, and public source material.

Systems exempted from certain provisions of the act:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e) (4) (G) and (H), (e) (5) and (8), (f), (g) and (m) of the Privacy Act pursuant to 5 U.S.C. 552a (j) and (k). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the FEDERAL REGISTER.

JUSTICE/OPA-001

The following Notice is published for the benefit of the public. Executive Clemency Files, while maintained in the Office of the Pardon Attorney, U.S. Department of Justice, are files of the President of the United States compiled and maintained to provide for the exercise of his constitutional responsibilities pursuant to Article II, section 2, and are not subject to the provisions of the Privacy Act of 1974, Pub. L. No. 93-579.

System name:

Executive Clemency Files

System location:

Office of the Pardon Attorney; U.S. Department of Justice; HOLC Building; 320 First Street, N.W.; Washington, D.C. 20534.

Categories of individuals covered by the system:

Applicants for Executive clemency.

Categories of records in the system:

The system contains the individual petitions for Executive clemency (OPA-6 or 6-15) submitted by the applicants and accompanying oath and character affidavits (DOJ-1973-06), investigatory material, evaluative reports, interagency and intra-agency correspondence and memoranda relating to individual petitions for clemency. The system includes Presidential Clemency Board files transferred to the Office of the Pardon Attorney upon termination of the Board's existence on Sept. 15, 1975.

Authority for maintenance of the system:

The system is established and maintained in accordance with the United States Constitution, Article II, Section 2, Executive Order of the President dated June 16, 1893, Order No. 288-62, 27 FR 11002, November 10, 1962, as codified in 28 CFR 1.1 through 1.9 and E.O. 11878 dated Sept. 10, 1975.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The Executive clemency files are used to (a) enable the Attorney General to investigate each petition for Executive clemency to review each petition and information developed by his investigation thereof and to advise the President whether, in his judgment, the request for clemency is of sufficient merit to warrant favorable action by the President; (b) prepare notices to the public of the

name of each grantee of clemency, date of Presidential action, nature of clemency granted, nature of grantee's offense, date and place of sentencing, description of sentence imposed, and names of character affiants and interested members of Congress; (c) prepare bound and indexed volumes containing photocopies of the official warrant of clemency granted each recipient of clemency as a public and official record of Presidential action; (d) upon request of the President and members of his staff, to make available to them individual clemency files; (e) upon specific request by an individual, to advise the requester whether a named person has applied for, been granted or denied clemency, the date thereof and the nature of the clemency granted or denied; and (f) upon specific request, to make closed files available for historical research purposes when in the public interest and in conformity with Department of Justice policy.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Information maintained in the system is stored in the Office of the Pardon Attorney and in Archives.

Retrievability:

Information is retrieved by reference to the file number assigned to the name of each applicant for clemency.

Safeguards:

Information contained in the system is safeguarded and protected in accordance with Department of Justice rules governing petitions for Executive clemency, specifically, 28 CFR 1.6. Executive clemency files are maintained in the Office of the Pardon Attorney and are not commingled with Department of Justice records.

Retention and disposal:

Records are stored in the Office of the Pardon Attorney as long as space requirements permit and are then transferred to Archives. These records are not destroyed.

System manager(s) and address:

Pardon Attorney; Office of the Pardon Attorney; Department of Justice; 654 HOLC Building; 320 First Street NW., Washington, D.C. 20530.

Notification procedure:

Address inquiries to the Pardon Attorney; Department of Justice; Washington, D.C. 20530.

Record access procedures:

While the Attorney General has exempted Executive Clemency files from the access provisions of the Privacy Act, requests for discretionary releases of records contained in the system shall be made in writing with the envelope and the letter clearly marked "Privacy Access Request." Include in the request the general subject matter of the document and the name of the clemency applicant in whose file it is contained. The requester will also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

Contesting record procedures:

While the Attorney General has exempted Executive Clemency files from the correction (contest and amendment) provisions of the Privacy Act, requests for the discretionary correction (contest or amendment) of records contained in this system should be directed to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

Record source categories:

Sources of information contained in this system are the individual applicants for clemency, Federal Bureau of Investigation or other official investigatory reports, Bureau of Prison records, Selective Service System and Armed Forces Reports, probation or parole reports and reports from individuals or non-Federal organizations, both solicited and unsolicited.

Systems exempted from certain provisions of the act:

The Attorney General has exempted this system from subsection (d) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the FEDERAL REGISTER.

JUSTICE/USA-007

System name:

Criminal Case Files.

System location:

Ninety-four United States Attorneys' Offices (See attached Appendix).

Categories of individuals covered by the system:

(a) Individuals charged with violations; (b) Individuals being investigated for violations; (c) Defense Counsel(s); (d) Information Sources; (e) Individuals relevant to development of Criminal Cases; (f) Individuals investigated, but prosecution declined; (g) Individuals referred to in potential or actual cases and matters of concern to a U.S. Attorney's Office.

Categories of records in the system:

(a) All case files (USA-33); (b) Docket Cards (USA-115); (c) Criminal Debtor Cards (USA-117a); (d) Criminal Case Activity Card (USA-163); (e) Criminal Debtor Activity Card (USA-164); (f) 3'×5' Index Cards; (g) Caseload Printouts; (h) Attorney Assignment Sheets; (i) General Correspondence re: Criminal Cases; (j) Reading Files re: Criminal Cases; (k) Grand Jury Proceedings; (l) Miscellaneous Investigative Reports; (m) Information Source Files; (n) Parole Recommendations; (o) Immunity Requests; (p) Witness Protection Files; (q) Wiretap Authorizations; (r) Search Warrants; (s) telephone records; (t) Criminal Complaints; (u) Sealed Indictment Records; (v) Files unique to a District; (w) Criminal Miscellaneous Correspondence File; (x) Prosecution Declined Reports.

Authority for maintenance of the system:

These systems are established and maintained pursuant to 5 U.S.C. 301 and 44 U.S.C. 3101.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

A record maintianed in this system of records may be disseminated as a routine use of such record as follows:

(a) In any case in which there is an indication of a violation or potential violation of law, criminal, or regulatory in nature, the record in question may be disseminated to the appropriate Federal, State, local, or foreign agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law;

(b) In the course of investigating the potential or actual violation of any law, criminal, or regulatory in nature, or during the course of a trial or hearing or the preparation for a trial or hearing for such violation, a record may be disseminated to a Federal, State, local, or foreign agency, or to an individual or organization, if there is reason to believe that such agency, individual, or organization possesses information relating to the investigation, trial, or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant;

(c) A record relating to a case or matter may be disseminated in an appropriate Federal, State, local, or foreign court or grand jury proceeding in accordance with established constitutional, substantive, or procedural law or practice;

(d) A record relating to a case or matter may be disseminated to a Federal, State, or local administrative or regula-

tory proceeding or hearing in accordance with the procedures governing such proceeding or hearing;

(e) A record relating to a case or matter may be disseminated to an actual or potential party or his attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings;

(f) A record relating to a case or matter that has been referred by an agency for investigation, prosecution, or enforcement, or that involves a case or matter within the jurisdiction of an agency, may be disseminated to such agency to notify the agency of the status of the case or matter or of any decision or determination that has been made, or to make such other inquiries and reports as are necessary during the processing of the case or matter;

(g) A record relating to a person held in custody pending or during arraignment, trial, sentence, or extradition proceedings, or after conviction or after extradition proceedings, may be disseminated to a Federal, State, local, or foreign prison, probation, parole, or pardon authority, or to any other agency or individual concerned with the maintenance, transportation, or release of such a person;

(h) A record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States or to an executive agreement.

(i) A record may be disseminated to a Federal, State, local, foreign, or international law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency;

(j) A record may be disseminated to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter;

(k) A record may be disseminated to the public, news media, trade associations, or organized groups, when the purpose of the dissemination is educational or informational, such as descriptions of crime trends or distinctive or unique modus operandi, provided that the record does not contain any information identifiable to a specific individual other than such modus operandi;

(l) A record may be disseminated to a foreign country, through the United States Department of State or directly to the representative of such country, to the extent necessary to assist such country in apprehending and/or returning a fugitive to a jurisdiction which seeks his return;

(m) A record that contains classified national security information and material may be disseminated to persons who are engaged in historical research projects, or who have previously occupied policy making provisions to which they were appointed by the President, in accordance with the provisions codified in 28 CFR 17.60;

(n) A record relating to an actual or potential civil or criminal violation of title 17, United States Code, may be disseminated to a person injured by such violation to assist him in the institution or maintenance of a suit brought under such title.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage

All information, except that specified in this paragraph, is recorded on basic paper/cardboard material, and stored within manila file folders, within metal file cabinets, electric file/card retrievers or safes. Some material is recorded and stored on magnetic tape, card or other data processing type storage matter for reproduction later into conventional formats.

Retrievability

Information is retrieved primarily by name of person, case number, complaint number or court docket number. Information within this system of records may be accessed by various U.S. Attorneys' offices by means of catho-ray tube terminals (CRT's).

Safeguards

Information in the system is both confidential and non-confidential and located in file cabinets in the United States Attorney offices. Some materials are located in locked file drawers and safes, and others in unlocked file drawers. Offices are locked during non-working hours and are secured by either Federal Protective Service, United States Postal Service, or private building guards. Information that is retrievable by CRT's within various U.S. Attorneys' offices requires user identification numbers which are issued to authorized employees of the Department of Justice.

Retention and disposal

Records are maintained and disposed of in accordance with Department of Justice retention plans.

System manager(s) and address

System manager for the system in each office is the Administrative Officer/Assistant, for the U.S. Attorney for each district (See system designated Justice/CRM-999).

Notification procedures

Address inquiries to the System Manager for the judicial district in which the case or matter is pending (See system designated JUSTICE/CRM-999).

Record access procedures

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a (j)(2), (k)(1) and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to access. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." Include in the request the name of the individual involved, his birth date and place, or any other identifying number or information which may be of assistance in locating the record and the name of the case or matter involved, if known. The requester will also provide a return address for transmitting the information. Access requests will be directed to the System Manager (see system designated JUSTICE/CRM-999).

Contesting record procedures

The major part of the information maintained in this system is exempt from this requirement under 5 U.S.C. 552a (j)(2), (k)(1) and/or (k)(2). To the extent that this system is not subject to exemption, it is subject to contest. A determination as to exemption shall be made at the time a request for contest is received. Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager (See system designated JUSTICE/CRM-999) stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

Record source categories

Sources of information contained in this system include, but are not limited to investigative reports of Federal, State and local law enforcement agencies; client agencies of the Department of Justice; other non-Department of Justice investigative agencies; forensic reports; statements of witnesses and parties; verbatim transcripts of Grand Jury and court proceedings; data, memoranda and reports from the Court and agencies thereof; and the work product of Assistant United States Attorneys, Department

of Justice attorneys and staff, and legal assistants working on particular cases.

Systems exempted from certain provisions of the act

The Attorney General has exempted this system from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8) (f), (g) and (h) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(1) and (2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the FEDERAL REGISTER.

SUMMARY OF MINOR CHANGES

JUSTICE/OPA-001, Executive Clemency Files—the word "upon" was misspelled in paragraph 3, line 5 of the routine use section. In line 4 of the record source categories section, the word "reports" should not have been capitalized.

JUSTICE/LDN-001, Appraisers File—in the record access section, the words "Privacy Act Request" should be surrounded by quotes. In the record source categories section the word "principally" was misspelled.

JUSTICE/LDN-002, Congressional Correspondence File—the word "of" was omitted in the fifth line of the routine use section. A comma should be deleted after the word "role" in the safeguards section.

JUSTICE/ATR-002, Congressional Correspondence Log File—the word "are" was omitted in the second line of the record source categories section.

JUSTICE/ATR-003—Index of Defendants in Pending and Terminated Antitrust Cases—the word "contest" was misspelled in the first line of the contesting record procedures section.

JUSTICE/ATR-004, Statements by Antitrust Division Officials—the word "records" was misspelled in the second line of record source categories section.

JUSTICE/ATR-006, Antitrust Caseload Evaluation System—Monthly Report—the word "Director" was misspelled in the first line of the system manager section.

JUSTICE/ATR-007, Antitrust Division Case Cards—the words "clearly and" were omitted from the third line of the contesting records procedures section.

JUSTICE/ATR-008, Freedom of Information/Privacy Requester/Subject Index File—the word "name" was omitted in the second line of the record access section.

JUSTICE/USA-001, Administrative Files—delete proposed routine use "(n)" which is in this notice as an additional routine use for JUSTICE/USA-007.

JUSTICE/CRM—999

System name:

Appendix to Criminal Division System of Records Field Offices of the Organized Crime and Racketeering Section are located as follows:

Organized Crime and Racketeering Section, U.S. Department of Justice, P.O. Box 834, Atlanta, Georgia 30301.

Organized Crime and Racketeering Section, U.S. Department of Justice, U.S. Attorney's Office, P.O. Box 375, 600 East Monroe Street, Springfield, Illinois 62705.

Organized Crime and Racketeering Section, U.S. Department of Justice, Room 1703, U.S. Post Office and Courthouse, Boston, Massachusetts 02109.

Organized Crime and Racketeering Section, U.S. Department of Justice, Room 327-A, Federal Building, Brooklyn, New York 11201.

Organized Crime and Racketeering Section, U.S. Department of Justice, Suite 921, Genesee Building, 1 West Genesse Street, Buffalo, New York 14202.

Organized Crime and Racketeering Section, U.S. Department of Justice, Room 1552, 219 South Dearborn Street, Chicago, Illinois 60604.

Organized Crime and Racketeering Section, U.S. Department of Justice, Room 526, Northern Ohio Bank Building, Cleveland, Ohio 44113.

Organized Crime and Racketeering Section, U.S. Department of Justice, Room 940, Federal Building, Detroit, Michigan 48226.

Organized Crime and Racketeering Section, U.S. Department of Justice, Federal Building, Hartford, Connecticut 06103.

Organized Crime and Racketeering Section, U.S. Department of Justice, Suite 717, 906 Grand Avenue, Kansas City, Missouri 64106.

Organized Crime and Racketeering Section, U.S. Department of Justice, Room 2307, Federal Building, 300 North Los Angeles Street, Los Angeles, California 90012.

Organized Crime and Racketeering Section, U.S. Department of Justice, 111 Northwest 5th Street, Miami, Florida 33128.

Organized Crime and Racketeering Section, U.S. Department of Justice, P.O. Box 89, Newark, New Jersey 07101.

Organized Crime and Racketeering Section, U.S. Department of Justice, Suite 900, PNB Plaza Bldg., Fifth and Market Streets, Philadelphia, Pennsylvania 19106.

Organized Crime and Racketeering Section, U.S. Department of Justice, P.O. Box 996 Postal Annex Building, Providence, Rhode Island 02901.

Organized Crime and Racketeering Section, U.S. Department of Justice, Room 318, New Federal Building, 100 State Street, Rochester, New York 14614.

Organized Crime and Racketeering Section, U.S. Department of Justice, Box 36132, 450 Golden Gate Avenue, San Francisco, California 94102.

Organized Crime and Racketeering Section, U.S. Department of Justice, Box 571, Ben Franklin Station, Washington, D.C. 20044.

Organized Crime and Racketeering Section, U.S. Department of Justice, P.O. Box 2799, Tampa, Florida 33601.

[FR Doc.77-384 Filed 1-5-77;8:45 am]

NATIONAL COMMISSION ON ELECTRONIC FUND TRANSFERS

PRIVACY ACT OF 1974

Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, Pub. L. 93-579, 5 U.S.C. 552a, the National Commission on Electronic Fund Transfers hereafter known as the Commission, hereby publishes for comment those systems of records subject to the Privacy Act of 1974 which are maintained by the Commission. Any person interested in commenting on the routine use portions of the system notices may do so by submitting comments in writing to the Chairman, National Commission on Electronic Fund Transfers, 1000 Connecticut Avenue, NW., Washington, D.C. 20036. Comments should be submitted on or before February 7, 1977. The Commission's proposed procedures for access to records in the systems are published in the Proposed Rule section of this issue of the FEDERAL REGISTER. In the event that no comments are received which would warrant amendment of these systems of records, these systems of records will become final on January 29, 1977.

Dated at Washington, D.C., on December 29, 1976.

WILLIAM B. WIDNALL,
Chairman.

[NCEFT-1]

System name:

Payroll Records—National Commission on Electronic Fund Transfers.

System location:

General Services Administration, Region 3 Office; copies held by the Commission. GSA holds records for the National Commission on Electronic Fund Transfers under contract.

Categories of records maintained in the system:

Varied payroll records, including, among other documents, time and attendance cards; payment vouchers; comprehensive listing of employees; health benefits records; requests for deductions; tax forms, W-2 forms, overtime requests; leave data; retirement records. Records are used by Commission and GSA employees to maintain adequate payroll information for Commission employees, and otherwise by Commission and GSA employees who have a need for the record in the performance of their duties.

Authority for the system:

31 U.S.C., generally, also, P.L. 93-495 Title II.

Routine use of records:

See Appendix. Records also are disclosed to GAO for audits; to the Internal Revenue Service for investigation; and to prviate attorneys, pursuant to a power of attorney.

A copy of an employee's Department of the Treasury Form W-2, Wage and Tax Statement, also is disclosed to the State, city, or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the State, city, or other local jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517, or 5520, or, in the absence thereof, in response to a written request from an appropriate official of the taxing jurisdiction to the Chairman, National Commission on Electronic Fund Transfers, 1000 Connecticut Avenue, NW., Washington, D.C. 20036. The re-

quest must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax the employee is based on place of residence, place of employment, or both.

Pursuant to a withholding agreement between a city and the Department of the Treasury (5 U.S.C. 5520), copies of executed city tax withholding certificates shall be furnished the city in response to written request from an appropriate city official to the Chairman of the Commission.

In the absence of a withholding agreement, the Social Security Number will be furnished only to a taxing jurisdiction which has furnished this agency with evidence of its independent authority to compel disclosure of the Social Security Number, in accordance with section 7 of the Privacy Act, Pub. L. 93-579.

Policies and practices for storing and retrieving, accessing, retaining and disposing of records in the system:

Storage:

Paper and microfilm.

Retrievability and accessing:

Social Security Number.

Safeguards:

Stored in guarded building; released only to authorized personnel.

Retention and disposal:

Disposition of records shall be in accordance with the HB GSA Records Maintenance and Disposition System (OAD P 1820.2).

System manager:

Administrative Assistant, GSA Liaison, National Commission on Electronic Fund Transfers, 1000 Connecticut Avenue, NW., Washington, D.C. 20036.

Notification procedures:

Refer to Commission access regulations codified at 1 CFR Part 442.[1]

Record access procedures:

Refer to Commission access regulations codified at 1 CFR Part 442.[1]

Contesting records procedures:

Refer to Commission access regulations codified at 1 CFR Part 442.[1]

Categories of sources of records in the system:

The subject individual; the Commission.

[NCEFT-2]

System name:

General Financial Records — National Commission on Electronic Fund Transfers.

System location:

General Services Administration, Central Office; copies held by the Commission. GSA holds records for the National Commission on Electronic Fund Transfers under contract.

Categories of individuals covered by the system:

Employees of the Commission and members of the Commission.

Categories of records maintained in the system:

SF-1038, Application and account for advance of funds; vendor register and vendor payment tape. Information is used by accounting technicians to maintain adequate financial information and by other officers and employees of GSA and the Commission who have a need for the record in the performance of their duties.

Authority for the system:

31 U.S.C., generally; also Pub. L. 93-495, Title II.

Routine use of records:

See appendix. Records are also released to GAO for audits; to the IRS for investigation; and to private attorneys, pursuant to power of attorney.

Policies and practices for storing and retrieving, accessing, retaining and disposing of records in the system:

Storage:

Paper and tape.

Retrievability and accessing:

Manual and automated by name.

Safeguards:

Stored in guarded building; released only to authorized personnel.

Retention and disposal:

Disposition of records shall be in accordance with the HB GSA Records Maintenance and Disposition.

System manager:

Administrative Assistant, GSA Liaison, National Commission on Electronic Fund Transfers, 1000 Connecticut Avenue, NW., Washington, D.C. 20036.

Notification procedures:

Refer to Commission access regulations codified at 1 CFR Part 442.[1]

Record access procedures:

Refer to Commission access regulations codified at 1 CFR Part 442.[1]

Contesting records procedures:

Refer to Commission access regulations codified at 1 CFR Part 442.[1]

Categories of sources of records in the system:

The subject individual; the Commission.

[NCEFT-3]

System name:

General Informal Personnel Files — National Commission on Electronic Fund Transfers.

System location:

National Commission on Electronic Fund Transfers.

Categories of individuals covered by the system:

Members of the Commission, employees of the Commission, and consultants to the Commission.

Categories of records maintained in the system:

Personnel qualifications statements, personnel action requests and notifications, oaths of office, consultant and/or expert certifications, delegations of authority, background information for security clearances, statements of employment and financial interests, correspondence with members of the Commission.

Authority for the system:

5 U.S.C., generally, also Pub. L. 93-495, Title II.

Routine use of records:

See Appendix.

Policies and practices for storing and retrieving, accessing, retaining and disposing of records in the system:

Storage:

Paper.

Retrievability and accessing:

Manual.

Safeguards:

Stored in lockable file cabinets, released only to authorized personnel.

Retention and disposal:

Disposition of records shall be in accordance with the GSA records maintenance and disposition system.

System manager:

Administrative Assistant, GSA Liaison, National Commission on Electronic Fund Transfers, 1000 Connecticut Avenue, NW., Washington, D.C. 20036.

Notification procedures:

Refer to Commission access regulations codified at 1 CFR Part 442.[1]

Record access procedures:

Refer to Commission access regulations codified at 1 CFR Part 442.[1]

Contesting records procedures:

Refer to Commission access regulations codified at 1 CFR Part 442.[1]

Categories of sources of records in the system:

The subject individual; the Commission.

[1] Codified regulations for 1 CFR Part 442 published in the proposed rules section of this issue of the FEDERAL REGISTER. Final regulations have not been issued.

APPENDIX—NATIONAL COMMISSION ON ELECTRONIC FUND TRANSFERS

In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

A record from this system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to any agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant or other benefit.

A record from this system of records may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

A record from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement or a grievance, complaint, or appeal filed by an employee. A record from this system of records may be disclosed to the United States Civil Service Commission in accordance with the agency's responsibility for evaluation and oversight of federal personnel management.

A record from this system of records may be disclosed to officers and employees of a federal agency for purposes of audit.

The information contained in this system of records will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

A record from this system of records may be disclosed as a routine use to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the request of the individual about whom the record is maintained.

A record from this system of records may be disclosed to officers and employees of the General Services Administration in connection with administrative services provided to this agency under agreement with GGSA.

[FR Doc.77-360 Filed 12-30-76;2:19 pm]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 77-1]

NASA SPACE PROGRAM ADVISORY COUNCIL (SPAC)

Meeting

The NASA SPAC Applications Committee will meet on January 26, 1977, at NASA Headquarters, Federal Office Building 10B, Room 226A, 600 Independence Avenue, S.W., Washington, D.C. Members of the public will be admitted to the meeting beginning at 9 a.m. on a first come first served basis to within the 35 seating capacity of the room. Visitors will be requested to sign a visitor's register.

The NASA SPAC Applications Committee serves in an advisory capacity only. It is concerned with the total range of applications of space-derived, space-related technology including communications, meteorology, earth resources survey (includes agriculture/forestry, cartography, geography, geology/hydrology, oceanography), earth and ocean physics, solar energy conversion, space processing, and other technology applications. Currently the Committee comprises 6 members including the Chairman, Mr. Thomas Rogers.

For further information regarding the meeting, please contact Mr. Louis B.C. Fong, (202) 755-8617. The approved agenda for the meeting on January 26, 1977 is as follows:

Time	*Topic*
9 a.m.	Opening Remarks by Chairman.
9:30 a.m.	Seasat-A Program. Current status of Seasat Program will be reviewed for the members' recommendations and comments.
10:30 a.m.	Satellite Telecommunications Program. The report of the National Research Council-Space Applications Board Committee on Satellite Communications (CSC) will be presented for the members' advice on how NASA might proceed to implement the CSC's findings and recommendations.
2:30 p.m.	Adjourn.

JOHN M. COULTER,
Acting Assistant Administrator for DOD and Interagency Affairs.

DECEMBER 29, 1976.

[FR Doc.77-407 Filed 1-5-77;8:45 am]

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-313]

ARKANSAS POWER & LIGHT CO.

Issuance of Amendment to Facility Operating License and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 17 to Facility Operating License No. DPR-51, issued to Arkansas Power & Light Company (the licensee), which revised the license and its appended Technical Specifications for operation of Arkansas Nuclear One—Unit No. 1 (the facility) located in Pope County, Arkansas. The amendment is effective as of its date of issuance.

Safety Analysis Report. The changes in the design of the ANO-1 spent fuel storage pool from that reviewed and approved in the operating license review and as described in the ANO-1 Final Safety Analysis Report. The changes will increase spent fuel storage capacity from 253 to 590 assemblies.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Notice of Consideration of Proposed Modification to Facility Spent Fuel Storage Pool in connection with this action was published in the FEDERAL REGISTER on October 28, 1976 (41 FR 47294). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

vironmental impact appraisal for the revised Technical Specifications and has concluded that an environmental impact statement for this particular action is not warranted because there will be no significant environmental impact attributable to the action.

For further details with respect to this action, see (1) the application for amendment dated October 7, as supplemented by letters dated October 18, October 25, November 11, November 16, and November 19, 1976, (2) Amendment No. 17 to Facility Operating License No. DPR-51 and (3) the Commission's related Safety Evaluation and Environmental Impact Appraisal. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Arkansas Polytechnic College, Russellville, Arkansas 72801. A single copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 17th day of December 1976.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc.77-435 Filed 1-5-77;8:45 am]

[Dockets Nos. 50-3, 50-247, 50-286]

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., POWER AUTHORITY OF THE STATE OF NEW YORK

Issuance of Amendments to Operating Licenses and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued to Consolidated Edison Company of New York, Inc. (Con Ed) Amendment No. 13 to Provisional Operating License No. DPR-5 for Indian Point Nuclear Generating Unit No. 1, and Amendment No. 24 to Facility Operating License No. DPR-26 for Indian Point Nuclear Generating Unit No. 2, and has issued to Con Ed and the Power Authority of the State of New York Amendment No. 3 to Facility Operating License No. DPR-64 for Indian Point Nuclear Generating Unit No. 3. These amendments revised Technical Specifications for operation of the Indian Point Nuclear Generating Units located in Westchester County, New York. The amendments are effective as of the date of issuance.

The amendments permit tests on various fish impingement mitigating measures at Indian Point Nuclear Generating Unit No. 1 intakes during the period when Unit No. 1 is shut down.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has prepared an environmental impact appraisal for the revised Technical Specifications and has concluded that an environmental impact statement for this particular action is not warranted because there will be no significant environmental impact attributable to the action.

For further details with respect to this action, see (1) the application for amendments dated February 24, 1976, (2) Amendment No. 13 to License No. DPR-5, (3) Amendment No. 24 to License No. DPR-26, (4) Amendment No. 3 to License No. DPR-64 and (5) the Commission's related Environmental Impact Appraisal. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW. Washington, D.C. and at the Hendrick Hudson Free Library, 31 Albany Post Road, Montrose, New York 10548.

A copy of items (2) through (5) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 20th day of December 1976.

For the Nuclear Regulatory Commission.

VERNON L. ROONEY,
Acting Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc.77-433 Filed 1-5-77;8:45 am]

[Docket Nos. 50-329, 50-330]

CONSUMERS POWER CO., (MIDLAND PLANT, UNITS 1 AND 2)

Order and Notice of Evidentiary Hearing

It is ordered: (1) That the evidentiary hearing concerning the suspension proceeding in this matter will continue beginning at 9:30 a.m. on January 18, 1977, at the U.S. Court of Claims, Courtroom 1614, 219 South Dearborn Street, Chicago, Illinois 60604;

(2) That the parties will notify the Board no later than January 5, 1977, whether they have been able to agree on a schedule for the presentation of evidence beginning on that date and continuing during the balance of that week.

(3) That if no agreement has been reached by the parties by said date, each will then submit to the Board a list of its witnesses so that the Board may fix such a schedule.

Dated at Bethesda, Md., this 23rd day of December 1976.

ATOMIC SAFETY AND LICENSING BOARD,
FREDERIC J. COUFAL,
Chairman.

[FR Doc.77-426 Filed 1-5-77;8:45 am]

[Docket No. 50-389]

FLORIDA POWER AND LIGHT CO., (ST. LUCIE NUCLEAR POWER PROJECT, UNIT NO. 2)

Order for Evidentiary Hearing

The evidentiary hearing in this matter will resume on Tuesday, January 11, 1977 at 9:00 a.m., in Banquet Room D, at the Holiday Inn-North, 4900 Powerline Road, Ft. Lauderdale, Florida. The hearing wil continue through Thursday, January 13, 1977.

It is so ordered.

Dated at Bethesda, Md., this 28th day of December 1976.

ATOMIC SAFETY AND LICENSING BOARD,
EDWARD LUTON,
Chairman.

[FR Doc.77-430 Filed 1-5-77;8:45 am]

[Docket No. 50-219]

JERSEY CENTRAL POWER AND LIGHT CO., (OYSTER CREEK NUCLEAR GENERATING STATION)

Special Prehearing Conference on Late Petition for Leave To Intervene

DECEMBER 27, 1976.

On February 13, 1976, a Petition for Leave to Intervene in the captioned proceeding was filed by Sands Point Harbor, Inc., Philip Maimone, Wilson T. Crisman and Ruth L. Crisman (hereinafter collectively referred to as "Petitioners"). Applicant Jersey Central Power & Light Company and the Staff of the U.S. Nuclear Regulatory Commission, both have opposed the Petition on the grounds that it is admitted untimely and that a substantial showing of good cause for failure to file on time has not been made.

As discussed with counsel for Petitioners, the State of New Jersey, the Applicant and the NRC Staff, during a telephone conference call on December 16, 1976, the Atomic Safety and Licensing Board has determined to hear evidence on the question of good cause for granting the Petition for Leave to Intervene filed by Petitioners.

Wherefore, it is ordered, In accordance with the Atomic Energy Act, as amended, and the rules of practice of the Commission, particularly § 2.751(a) (10 CFR), a special two-day prehearing conference for the purpose of hearing evidence on the question of good cause for granting the Petition for Leave to Intervene filed by Sands Point Harbor, Inc., et al. shall convene at 10:00 am, local time, on Wednesday, January 26, 1977, in Courtroom 438 in the State House Annex, Trenton, New Jersey.

Issued at Bethesda, Md., this 27th day of December 1976.

For the Atomic Safety and Licensing Board.

ROBERT M. LAZO,
Chairman.

[FR Doc.77-427 Filed 1-5-77;8:45 am]

[Docket No. 50-298]

NEBRASKA PUBLIC POWER DISTRICT

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 33 to Facility Operating License No. DPR-46, issued to the Nebraska Public Power District (the licensee), which revised Technical Specifications for operation of the Cooper Nuclear Station (the facility) located in Nemaha County, Nebraska. The amendment is effective as of its date of issuance.

The amendment extended the surveillance interval for certain hydraulic shock suppressors to 6 months ± 25%, or until the first plant shutdown during which access to the inaccessible snubbers is afforded, and makes several minor

corrections to Table 3.6.1 "Safety Related Shock Suppressors (Snubbers)" of the facility's Technical Specifications.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated November 24, 1976, (2) Amendment No. 33 to License No. DPR-46, and (3) the Commission's concurrently issued Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Auburn Public Library, 118-15th Street, Auburn, Nebraska 68305. A single copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 20th day of December, 1976.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc.77-434 Filed 1-5-77;8:45 am]

[Docket No. 50-367]

NORTHERN INDIANA PUBLIC SERVICE COMMISSION BAILLY GENERATING STATION, NUCLEAR-1

Issuance of Amendment to Construction Permit and Notice of Availability of Initial Decision and Supplemental Initial Decision

Notice is hereby given that pursuant to an Initial Decision dated November 22, 1974 and a Supplemental Initial Decision issued February 21, 1975, by the Atomic Safety and Licensing Board (ASLB), the Nuclear Regulatory Commission has issued Amendment No. 1 to Construction Permit No. CPPR-104 issued to the Northern Indiana Public Service Company for construction of the Bailly Generating Station, Nuclear-1, located in Porter County, Indiana. The Board's Initial Decision and Supplemental Initial Decision authorize the construction of a slurry wall subject to certain conditions to the construction permit for the protection of the environment. The Initial Decision and Supplemental Initial Decision were reviewed by the Atomic Safety and Licensing Appeal Board prior to their becoming final.

A copy of the Atomic Safety and Licensing Board Initial Decision dated November 22, 1974 and Supplemental Initial Decision dated February 21, 1975; the Atomic Safety and Licensing Appeal Board Supplemental Decision dated December 17, 1975; Amendment No. 1 to Construction Permit No. CPPR-104, and the Commission Staff's Final Environmental Statement are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and in the Westchester Township Public Library, 125 South Second Street, Chesterton, Indiana 64304.

The Nuclear Regulatory Commission has found that the provisions of this amendment comply with the requirements of the Atomic Energy Act of 1954, as amended, and the Commission's regulations published in 10 CFR Chapter I and has concluded that the issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public.

The ASLB Initial Decision and Supplemental Initial Decision; the ASLAB Supplemental Decision; and Amendment No. 1 to CPPR-104 are also being made available at the Indiana Budget Agency, 212 State House, Indianapolis, Indiana 46204 and at the Lake-Porter County Regional Transportation and Planning Commission, 8149 Kennedy Avenue, Highland, Indiana 46322.

Based upon the record developed in the public hearing in the above captioned matter, the November 22, 1974 Initial Decision and February 21, 1975 Supplemental Initial Decision modified in certain respects the Final Environmental Statement relating to the construction of the Bailley Generating Station, Nuclear-1, prepared by the Commission. Pursuant to 10 CFR 51.52(b)3, the Final Environmental Statement is deemed modified to the extent that the findings and conclusions relating to the environmental matters contained in the Initial Decision and Supplemental Initial Decision are different from those contained in the Final Environmental Statement issued February 1973. The conditions are in addition to those recommended in the Final Environmental Statement and those given in the ASLB Initial Decision of April 5, 1974 for the Bailly Station. Copies of the Initial Decision and Supplemental Initial Decision have been transmitted to the Council on Environmental Quality and are being made available to the public as noted herein.

Single copies of the ASLB Initial Decision and Supplemental Initial Decision; the ASLAB Supplemental Decision; and Amendment No. 1 to CPPR-104 may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Site Safety and Environmental Analysis.

Dated at Rockville, Md., this 22d day of December 1976.

For the Nuclear Energy Commission.

S. A. VARGA,
Chief, Light Water Reactors Branch No. 4, Division of Project Management.

[FR Doc.77-436 Filed 1-5-77;8:45 am]

[Docket No. 50-549]

POWER AUTHORITY OF THE STATE OF NEW YORK (GREENE COUNTY NUCLEAR POWER PLANT)

Order and Notice for Prehearing Conference

An Atomic Safety and Licensing Board of the U.S. Nuclear Regulatory Commission and a Presiding Examiner and Associate Examiner of the Board on Electric Generation Siting and the Environment of the State of New York will conduct a joint prehearing conference to consider further scheduling, the Protocol adopted by the Nuclear Regulatory Commission and the New York State Public Service Commission and such other matters as may be appropriate.

The conference will be held in the Office of the New York State Public Service Commission, Agency Building 3, Empire State Plaza, Albany, New York, beginning at 1 p.m. on January 10, 1977.

It is so ordered.

Dated at Bethesda, Md., this 23rd day of December 1976.

ATOMIC SAFETY AND LICENSING BOARD,
FREDERIC J. COUFAL,
Chairman.

[FR Doc.77-428 Filed 1-5-77;8:45 am]

[Docket Nos. 50-354, 50-355]

PUBLIC SERVICE ELECTRIC AND GAS CO. AND ATLANTIC CITY ELECTRIC CO., (HOPE CREEK GENERATING STATION, UNITS 1 AND 2)

Order for Evidentiary Hearing

The evidentiary hearing on the matters remanded to the Licensing Board by ALAB-251 (December 31, 1974), and any other matters remaining outstanding in the captioned proceeding, will commence on Tuesday, January 18, 1977 at 9:00 a.m. in Courtroom No. 1 at the Salem County Courthouse, 92 Market Street, Salem, New Jersey. If necessary the hearing will continue through Friday, January 21, 1977.

It is so ordered.

Dated at Bethesda, Md., this 28th day of December 1976.

ATOMIC SAFETY AND LICENSING BOARD,
EDWARD LUTON,
Chairman.

[FR Doc. 77-429 Filed 1-5-77;8:45 am]

[Docket No. 50-312]

SACRAMENTO MUNICIPAL UTILITY DISTRICT

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 8 to Facility Operating License No. DPR-54, issued to Sacramento Municipal Utility District (the licensee), which revised Technical Specifications for operation of the Rancho Seco Nuclear Generating Station (the facility) located in Sacramento County, California. The amendment is effective as of its date of issuance.

This amendment changes the power distribution Technical Specifications limiting control rod insertion and power imbalance.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated October 4, 1976, (2) Amendment No. 8 to License No. DPR-54, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Business and Municipal Department, Sacramento City-County Library, 828 I Street, Sacramento, California.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 23rd day of December 1976.

For the Nuclear Regulatory Commission.

VERNON L. ROONEY,
Acting Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc.77-437 Filed 1-5-77;8:45 am]

[Docket Nos. STN 50-518, STN 50-519, STN 50-520, STN 50-521]

TENNESSEE VALLEY AUTHORITY HARTSVILLE NUCLEAR PLANTS, PLANT A, UNIT NOS. 1 AND 2 AND PLANT B, UNIT NOS. 1 AND 2

Issuance of Limited Work Authorization

Pursuant to the provisions of 10 CFR 50.10(e) of the Nuclear Regulatory Commission's (Commission) regulations, the Commission has authorized the Tennessee Valley Authority to conduct certain site activities in connection with the Hartsville Nuclear Plants, Plant A, Unit Nos. 1 and 2 and Plant B, Unit Nos. 1 and 2, in addition to those activities previously authorized in the Commission's letters dated April 22, July 23 and September 9, 1976. The effective date of this further authorization is December 27, 1976.

The additional activities authorized are within the scope of those activities authorized by 10 CFR 50.10(e)(3) and are also within the scope of the activities included in the assessment of environmental impacts considered by the Atomic Safety and Licensing Board in its Partial Initial Decisions referenced below. The additional activities authorized includes drilling, grouting and placing dental and fill concrete and work on the auxiliary building, the fuel building and the reactor building (installation of reinforcing, installation of embedded items, setting and removal of form work, placing engineered backfill and placement of concrete).

Any activities undertaken pursuant to this authorization are entirely at the risk of the Tennessee Valley Authority and the grant of the authorization has no bearing on the issuance of construction permits with respect to the requirements of the Atomic Energy Act of 1954, as amended, and rules, regulations, or orders promulgated pursuant thereto.

A Partial Initial Decision on matters relating to the National Environmental Policy Act and site suitability was issued by the Atomic Safety and Licensing Board in the above captioned proceeding on April 20, 1976. On September 30, 1976, the Board issued its First Supplemental Partial Initial Decision Limited Work Authorization II—Part I, and on December 10, 1976, the Board issued its Second Supplemental Partial Initial Decision Limited Work Authorization II—Part II. A copy of (1) the Partial Initial Decisions, (2) the applicant's Preliminary Safety Analysis Report and amendments thereto; (3) The applicant's Environmental Report and amendments thereto; (4) the Staff's Final Environmental Statement dated June 1975, (5) the Commission's letters of authorization dated April 22, July 23, and September 9, 1976 and (6) the Commission's further letter of authorization, dated December 27, 1976, are available for public inspection at the Commission's Public Document Room at 1717 H Street, NW., Washnigton, D.C. and the Fred A. Vought Library, 311 White Oak Street, Hartsville, Tennessee 37074.

Dated at Rockville, Md., this 27th day of December 1976.

For the Nuclear Regulatory Commission.

WM. H. REGAN, Jr.,
Chief, Environmental Projects Branch 3, Division of Site Safety and Environmental Analysis.

[FR Doc.77-431 Filed 1-5-77;8:45 am]

[Docket Nos. STN 50-566, STN 50-567]

TENNESSEE VALLEY AUTHORITY YELLOW CREEK NUCLEAR PLANT, UNIT NOS. 1 AND 2

Availability of Applicant's Environmental Report

Pursuant to the National Environmental Policy Act of 1969 and the regulations of the Commission in 10 CFR Part 51, the Tennessee Valley Authority has filed an environmental report, dated December 17, 1976, in support of their application to construct and operate the Yellow Creek Nuclear Plant, Unit Nos. 1 and 2, to be located in Tishomingo County, Mississippi. The report, which discusses environmental considerations related to the construction and operation of the proposed facility is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Corinth Public Library, 1023 Fillmore Street, Corinth, Mississippi. Copies of the report are also being made available at the Office of the Governor, Coordinator, Federal-State Programs, 400 Watkins Building, 510 George Street, Jackson, Mississippi, and at the Northeast Mississippi Planning and Development District, P.O. Drawer 6-D, Booneville, Mississippi.

After the environmental report has been analyzed by the Office of Nuclear Reactor Regulation staff, a draft environmental statement will be prepared. Upon preparation of the draft environmental statement, the Commission will, among other things, cause to be published in the FEDERAL REGISTER a summary notice of availability of the draft statement, with request for comments from interested persons on the draft statement. The summary notice will also contain a statement to the effect that comments of Federal agencies and State and local officials will be made available when received. Upon consideration of comments submitted with respect to the draft environmental statement, the staff will issue a final environmental statement, the availability of which will be published in the FEDERAL REGISTER.

Dated at Rockville, Md., this 28th day of December 1976.

For the Nuclear Regulatory Commission.

WM. H. REGAN, Jr.,
Chief, Environmental Projects Branch 3, Division of Site Safety and Environmental Analysis.

[FR Doc. 77-432 Filed 1-5-77;8:45 am]

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 77-1]

MARINE CASUALTY REPORT; SAFETY RECOMMENDATIONS AND RESPONSES

Availability and Receipt

The National Transportation Safety Board has released, jointly with the U.S. Coast Guard, the report on investigation of the stranding on September 26, 1974, of the *SS Transhuron* at Kiltan Island, near the southwest coast of India. The report, No. USCG/NTSB-MAR-76-2, was released December 30, 1976.

The Safety Board determined that the probable cause of the accident was the ship's loss of power, resulting in the grounding on Kiltan Island reef after the vessel was adrift for 2 days. Contributing to the accident were the rendering inoperative of the vessel's propulsion switchboard by a fire, caused by the failure of the iron pipe nipple in the bronze condenser head, the reluctance of the Master of the *Transhuron* to accept offers of aid from other vessels, and his failure to use available information in order to anchor prior to the grounding.

As a result of its analysis of this casualty, the Safety Board on December 30 submitted the following recommendations:

To the U.S. Coast Guard—

Insure that required specifications and plan-approved documents for ship modification are transmitted to the inspectors before equipment is installed or construction and modification is begun. (M-76-20)

Expedite the issuance of regulations to require spray shield protection when saltwater piping must be in the vicinity of switchboards or other open electrical equipment. (M-76-21)

Expand either the Merchant Marine Safety Manual or other suitable instructions to include aids for inspection and repair of firefighting equipment, particularly CO_2 semi-portable equipment. (M-76-22)

Continue to disseminate to Coast Guard inspectors and licensed Merchant Marine officers the information that all concerned are responsible for the compliance of any vessel with the regulations and that this responsibility is found in and protected by law and regulations. (M-76-23)

Include in the engineers' license examination, questions on all phases of damage control and engineering casualty control for various powerplants in addition to the existing firefighting and emergency equipment questions. (M-76-24)

To the Office of Maritime Affairs, Department of State—

Introduce before IMCO a suitable resolution to reaffirm that masters are responsible to call for assistance based upon the immediate casualty situation and are not to depend solely on company arrangements or assume responsibility for potential salvage claims. (M-76-25)

To the Maritime Administration, Department of Commerce—

Urge shipowners to install communications equipment to use MARISAT communications satellites. (M-76-26)

Issue an advisory to restate the master's responsibility to call for assistance based upon the immediate casualty situation and to urge owners and operators to develop procedures and informational guides to assist masters and inform management personnel of potential communications and logistics problems. (M-76-27)

(With the exception of M-76-24, all of these recommendations are designated "Class II—Priority Followup"; M-76-24 is a Class III recommendation, for longer-term followup.)

RESPONSES TO SAFETY RECOMMENDATIONS

The U.S. Coast Guard on December 13 provided the Safety Board with an update on recommendation M-76-3, issued as a result of investigation into the June 2, 1973, collision in New York Harbor between the *SS C. V. Sea Witch* and the *SS Esso Brussels*. (See 41 FR 19481, March 11, 1976.) The recommendation asked the Coast Guard to require the reporting to Coast Guard of all steering failures aboard U.S. oceangoing vessels, and to require the reporting of steering failures aboard foreign vessels if the failure occurs in U.S. waters. Coast Guard responded last June 2 (41 FR 24260, June 17, 1976) by indicating that 46 CFR 4.05 was being revised to specify reportable casualties and to require that steering failures be reported. Coast Guard's December 13 letter notes that these requirements have been drafted and it is anticipated that an advance notice will be published prior to July 1, 1977.

The Federal Railroad Administration has provided two letters during the past week in response to Safety Board recommendations issued during 1976.

Under date of December 20, FRA comments on recommendations R-76-13 and R-76-14, issued after investigation into the June 5, 1975, collision of a Reading Company commuter train and a tractor-semitrailer near Yardley, Pennsylvania. (See 41 FR 17974, April 29, 1976.) Concerning recommendation R-76-13, which would require flashing lights and gates as minimum protection at all grade crossings used by commuter trains, FRA states that by the direction of Congress the selection and prioritization of grade crossing improvement projects are State responsibilities, and that section 203(a) of the Highway Safety Act of 1973, as amended, applies. FRA notes that the Federal Highway Administration (FHWA) currently lists three factors in making selection and prioritization decisions—a ranking of locations according to a hazard index, an onsite inspection of each rail-highway crossing, and the accident history of the crossing. FRA also notes that, as a result of Safety Board recommendation H-76-22, FHWA will add a fourth consideration—the number of people exposed to the crossing. (See 41 FR 26078, June 24, 1976, and 41 FR 46526, October 21, 1976.)

Further speaking to recommendation R-76-13, FRA's December 20 letter indicates that to develop more accurate hazard rating formulas FRA is sponsoring research to analyze grade crossing inventory data in conjunction with grade crossing accident data. The formulas, which will be available to the States in late 1977, will include such considerations as accident histories, traffic volumes, physical characteristics of the site, currently available warning devices and locale. FRA also states that rail passenger data are being collected for inclusion in the grade crossing inventory, which also will identify all Amtrak and Auto Train routes (crossings).

In answer to recommendation R-76-14 which called for the development of a program directed at the improvement of all grade crossings used by commuter trains, contemplating the separation of grades of all these crossings in the forseeable future, FRA states, "Although grade separation is certainly an alternative to be considered in addressing the safety enhancement of a grade crossing, it is an inordinately expensive solution, so much so that it probably cannot be justified solely on the basis of safety." FRA contends that approximately 10 at-grade crossings can be provided with warning devices at a cost equivalent to that of one low-cost grade separation, which, according to FRA, "seems too high a price to pay for the marginal gain in effectiveness, particularly when proper warning devices may have to be foregone at alternative crossings." FRA concludes, "If there are other non-safety related concerns, e.g., traffic flow or emergency vehicles, they, combined with the safety considerations, may justify a grade separation. However, neither is a meet subject for FRA regulatory action." FRA states that its current aim is to make available "the necessary algorithms for rating and ranking individual grade crossings on a nationally comparable basis."

FRA's comments on recommendations R-76-20 through R-76-22 are provided in a letter dated November 30, 1976. These recommendations resulted from investigation of the October 1, 1975, derailment of an Amtrak Train on the tracks of the Louisville and Nashville Railroad Company near Pulaski, Tennessee. (See 41 FR 29222, July 15, 1976.) Review of the Federal Track Safety Standards to determine whether current requirements are adequate for safe accommodation of six-wheel truck locomotives was asked by recommendation R-76-20. In answer, FRA states that it has established as one of its priority ob-

jectives the review not only of the geometry requirements but also of all of the Federal Track Safety Standards; this review is being conducted in conjunction with FRA's Accident Reduction Research Program. FRA anticipates receiving the results during the latter part of 1977.

In response to R-76-21, which would require that rail passenger equipment be fitted with roof hatches so that passengers can escape through the ceiling of a car which is lying on its side, the November 30 letter indicates that FRA and Amtrak have agreed to investigate jointly the merits of the Safety Board recommendations concerning improvement of the level of safety provided occupants of passenger-carrying rail vehicles in accident situations. To this end, Amtrak has agreed to make available two retired passenger coaches for testing at the Transportation Test Center in Pueblo, Colorado. FRA notes that one aspect of passenger safety to be investigated is fitting rail passenger cars with roof hatches to facilitate passenger escape through the overhead of a car lying on its side. FRA will notify the Board of test results and will advise concerning any regulatory action deemed appropriate.

Re recommendation R-76-22, which asked FRA to require that Amtrak or the railroad operating an Amtrak train disseminate information to emergency units along the route on emergency entry techniques and on where emergency equipment within the car is located, FRA states that last September 17 comments concerning this recommendation were requested by FRA from the National Railroad Passenger Corporation. The Corporation advised on October 15 that Amtrak had written to its member roads for any applicable input, and further, that Amtrak intends to "act upon this recommendation."

SAFETY BOARD REPLIES TO RECOMMENDATION RESPONSES

Board letter of December 23 to the Washington State Highway Commission reaffirms the Board's position concerning friction tests used in reaching conclusions Nos. 2 and 9 in accident report NTSB-HAR-76-7. The report followed Board investigation of the crash of a gasoline truck and trailer which occurred December 4, 1975, during a heavy rainstorm in Seattle, Washington. Recommendations H-76-29 and H-76-30 were predicated on conclusions 2 and 9 of the report and have been the subject of recent correspondence between the Board and the Commission. (See 41 FR 55954, December 23, 1976.) The Board's December 23 letter states that regardless of skid test numbers obtained prior to or subsequent to the occurrence of the accident, "the highway-to-vehicle tire coefficient of friction was inadequate to sustain the position of the articulated vehicle." Board calculations indicate that this stability failure would occur at 0.23 at the time of and under the environmental circumstances of the accident. As previously indicated by the Board, test skid numbers and accident circumstances, especially considering the difference between ASME test tires and real-world truck tires, are not the same. The Board remains convinced that conclusions 2 and 9 are valid as they factually relate to the circumstances of the accident and are not dependent upon test skid numbers.

Board letter of December 29 to the Federal Aviation Administration concerns recommendations A-76-59 through A-76-64 and is in reply to FAA letter of September 22 (41 FR 44235, October 1, 1976) commenting on the use of advisory circulars and citing rationale for not implementing all of the features of AC 33-1A during tests of General Electric CF6 engines. The Board acknowledges FAA's explanation that the GE dynamic structural tests as supplemented during the past year are more stringent than any likely in-service strike incident. Accordingly, the Board will continue to hold these recommendations in "open" status until completion of the engine modification program for U.S. and foreign carriers as recommended.

The marine casualty report and the safety recommendation letters are available to the general public; single copies may be obtained without charge. Copies of the letters in response to recommendations and copies of Safety Board replies may be obtained at a cost of $4.00 for service and 10¢ per page for reproduction. All requests must be in writing, identified by recommendation number and date of publication of this FEDERAL REGISTER notice. Address inquiries to: Publications Unit, National Transportation Safety Board, Washington, D.C. 20594.

Multiple copies of the marine casualty report may be purchased by mail from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151.

(Secs. 304(a)(2) and 307 of the Independent Safety Board Act of 1974 (Pub. L. 93-633, 88 Stat. 2169, 2172 (49 U.S.C. 1903, 1906)).)

MARGARET L. FISHER,
Federal Register Liaison Officer.

JANUARY 3, 1977.

[FR Doc.77-535 Filed 1-5-77;8:45 am]

OFFICE OF TELECOMMUNICATIONS POLICY

INMARSAT PREPARATORY COMMITTEE WORKING GROUP

Meeting

Notice is hereby given that the U.S. INMARSAT Preparatory Committee Working Group will meet at 9:30 a.m., in Room 712, Office of Telecommunciations Policy, 1800 G Street, NW., Washington, D.C. on Monday, January 24, 1977.

The principal agenda items will be: (1) A report on the first session of the INMARSAT Preparatory Committee held in London from January 10-14, 1976; (2) Development of a Working Group work program to prepare for the second session of the INMARSAT Preparatory Committee and (3) other business which might be raised at the meeting.

The meeting will be open to the public; any member of the public will be permitted to file a written statement with the Working Group before or after the meeting.

The names of the members of the Working Group, a copy of the agenda, a summary of the meeting and other information pertaining to the meeting may be obtained from Mr. William T. Adams, Office of Telecommunications Policy, Washington, D.C. 20504 (Tel: 202: 395-3782).

L. DANIEL O'NEILL,
Advisory Committee Management Officer.

[FR Doc.77-420 Filed 1-5-77;8:45 am]

PRIVACY PROTECTION STUDY COMMISSION

PRIVATE INVESTIGATION FIRMS

Hearing or Certain Practices

The Privacy Protection Study Commission will hold a public hearing on certain practices of private investigations firms between 9:30 a.m. and 5:30 p.m. on January 26, 1977 in Room 1318, Dirksen Senate Office Building, Washington, D.C. This hearing is part of the Commission's study of the desirability and feasibility of extending the principles and requirements of the Privacy Act of 1974 to the private sector, and State and local governments.

To assist in the development of this inquiry, the Commission wishes to learn about the experiences and views of all interested persons prior to the hearing. Written statements should be submitted to the Executive Director, Privacy Protection Study Commission, Suite 424, 2120 L Street, N.W., Washington, D.C., 20506, and received in the Commission's office no later than January 15, 1977. Additional statements will be accepted for inclusion in the record until February 25, 1977.

The Commission's inquiry into private investigations firms is part of its broader examination of the employment and personnel record-keeping practices of private industry, State and local governments, private nonprofit organizations, employment agencies, consumer investigative companies, private investigating agencies and labor unions.

The Commission's intention is to focus on the services provided by private investigations firms where (a) the subject of an investigation is an employee or prospective employee of the client and (b) such employment status is a fundamental criterion underlying the request for investigative services. Specifically, the Commission wishes to learn about: (1) the scope and nature of services requested by employers and provided to them for such purposes as pre-employment and pre-promotion investigations, as well as the scope and nature of investigative services provided in response to client concerns over, or suspicions of, employee dishonesty, disloyalty, or immorality; (2) the impact upon subject individuals resulting from the provision of such services, both in respect to rela-

tions with the employer who initiated the request for services and in respect to the consequences for the individual of the further dissemination of information acquired in the course of providing such services; and (3) the accountability mechanisms which operate to insure the fair treatment of individual subjects of investigation, before, during, and after the provision of services to the employer or prospective employer. The elements of service of interest to the Commission include the investigative methods and techniques employed, the record-keeping practices of private investigations firms, and the content, format and manner of delivery of formal and informal reports to clients.

The Commission also seeks information concerning the exchange of information about prospective, current, or former employees among private investigations firms and between private investigations firms and clients other than the client for whom information was originally collected. Additionally, the Commission is seeking information concerning the exchange of information between law enforcement agenices and private investigations firms in relation to the practices described above.

The Commission would like to receive information describing the extent to which the data collection and record-keeping practices described above conform to the following five information practice principles:

There must be no personal data record-keeping system whose very existence is secret;

There must be a way for an individual to find out what information about him is in a record and how it is used;

There must be a way for an individual to prevent information about him that was obtained for one purpose from being used or made available for other purposes without his consent;

There must be a way for an individual to correct or amend a record or identifiable information about him; and

Any organization creating, maintaining, using, or disseminating records of identifiable personal data must assure the reliability (i.e., accuracy, relevance, timeliness, and completeness) of the data for their intended use and must take precautions to prevent misuse of the data.

DAVID F. LINOWES,
Chairman.
CAROLE W. PARSONS,
Executive Director.

[FR Doc.77-406 Filed 1-5-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 76-233]

PEORIA AND PEKIN UNION RAILWAY COMPANY BRIDGE; PEORIA, ILLINOIS

Public Hearing on Proposed Bridge Alteration

A public hearing on proposed alteration of the Peoria and Pekin Union Railway Company bridge across the Illinois River, mile 160.7, at Peoria, Illinois, will be held on Thursday afternoon, February 10, 1977, at 1:30 p.m., in the County Board Room, Peoria County Court House, Main and Jefferson Streets, Peoria, Illinois. This hearing is being held under the authority of section 3 of the Act of June 21, 1940 (Truman-Hobbs Act) (33 U.S.C. 513).

The existing bridge, which has a bascule span, provides approximately 140 feet of horizontal clearance in the draw when measured normal to the channel axis. A number of complaints have been received alleging that the bridge is unreasonably obstructive to navigation. The purpose of the hearing is to determine whether alteration is needed and, if so, what alteration is necessary, with due regard for the necessity of free, easy, and unobstructed navigation upon the waterway and the needs of rail traffic.

Public comments, views, and data are necessary for determining whether the bridge unreasonably obstructs navigation, whether vessels have unreasonable difficulty and delay in passing through the bridge, the costs associated with collisions, swampings, and delays to navigation, the character and amount of commerce affected, whether the commerce affected is sufficient to justify alteration of the bridge, the changes necessary to make navigation through or under the bridge reasonably free and unobstructed, and the impact of the alteration, if made, upon the quality of the human environment.

Any person may appear and be heard at this public hearing. Persons planning to appear and be heard are requested to notify the Commander, Second Coast Guard District, Federal Building, 1520 Market Street, St. Louis, Missouri 63103 any time before the hearing stating the amount of time required. Depending upon the number of scheduled statements, it may be necessary to limit the amount of time allocated to each person. Any limitations of time allocated will be announced at the beginning of the hearing. Written statements and exhibits may be submitted in place of or in addition to oral statements and will be made a part of the record of the hearing. These written statements and exhibits may be delivered at the hearing or mailed in advance to the Commander, Second Coast Guard District.

(54 Stat. 498, 33 U.S.C. 513; Section 4(f), 80 Stat. 934, as amended, 49 U.S.C. 1653(f); Section 6(g)(3), 80 Stat. 937, 49 U.S.C. 1655 (g)(3); 33 CFR 116.20 and 49 CFR 1.46 (c)(6).)

Dated: December 28, 1976.

A. F. FUGARO,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.77-538 Filed 1-5-77;8:45 am]

[CGD 76-231]

CHEMICAL TRANSPORTATION INDUSTRY ADVISORY COMMITTEE

Notic of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Chemical Transportation Industry Advisory Committee's Subcommittee on Chemical Vessels to be held January 12, 1977, 9 a.m., Room 8334, NASSIF Building, 400 7th Street, SW, Washington, D.C. 20590. The agenda for this meeting is as follows: (1) To begin revision of the rules for bulk hazardous chemicals shipped in barges, 46 CFR Part 151. (2) To draft recommendations for the Coast Guard in developing a position paper on bulk hazardous chemical charges for presentation to the Inter-Governmental Maritime Consultative Organization's Subcommittee on Bulk Chemicals.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the hearing. Persons wishing to attend and persons wishing to present oral statements should notify, not later than the day before the meeting, and information may be obtained from, Capt. C. E. Mathieu, Commandant (G-MHM), U.S. Coast Guard, Washington, D.C. 20590, 202-426-2296. Any member of the public may present a written statement to the Committee at any time. Special notice: The lateness of this notice is due to administrative oversight.

Issued in Washington, D.C. on December 16, 1976.

W. M. BENKERT,
Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc.77-584 Filed 1-4-77;11:51 am]

NOTE: This document is reprinted without change from the issue of Wednesday, January 5, 1977.

Materials Transportation Bureau

HAZARDOUS MATERIALS REGULATIONS EXEMPTIONS

Grants and Denials of Applications for Exemptions

In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted October 1976. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

Application numbers prefixed by the letters EE represent application for Emergency Exemptions.

Renewals

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
2582-P	DOT-E 2582	Air Products & Chemicals, Inc., Allentown, Pa.	49 CFR 173.304(a)(2)	To become a party to E 2582. (See application No. 76.392.) (Modes 1 and 2.)
2981-X	DOT-E 2981	Hercules, Inc., Wilmington, Del.	49 CFR 173.64(a), 173.93(a).	To ship certain class A or class B explosives in a 8-mil thickness polyethylene bag contained within 8-ply (minimum) fiberboard tubes. (Modes 1 and 2.)
4247-X	DOT-E 4247	High Point Chemical Corp., High Point N.C.	49 CFR 173.223(a)	To ship peracetic acid solution in a DOT specification 21F fiber drum overpack with inside DOT specification 28L polyethylene container. (Mode 1.)
5064-X	DOT-E 5064	FMC Corp., Philadelphia, Pa.	49 CFR 173.377(g)(1).	To ship organic phosphate compound mixtures, dry, n.o.s. in DOT specification 44B multiwall paper bags having up to 5 DOT specification 2D inner bags. (Modes 1, 2, and 3.)
6197-X	DOT-E 6197	Providence Gas Co., Providence, R.I.	49 CFR 173.315(a)(1), 172.101.	To ship liquefied natural gas, liquefied methane in a vacuum perlite insulated 11,000 gal nominal water capacity cargo tank. (Mode 1.)
6205-X	DOT-E 6205	Northern Petrochemical Co., Des Plaines, Ill.	49 CFR 173.315(a)(1), 172.101.	To ship certain flammable cryogenic gases in a 11,725 gal nominal water capicity aluminum vessel. (Mode 1.)
6309-X	DOT-E 6309	Olin Corp., Stamford, Conn.	49 CFR 173.315(a)(1)	To ship compressed gas, n.o.s. in a non-DOT specification steel portable tank. (Mode 1.)
6325-X	DOT-E 6325	Hercules, Inc., Wilmington, Del.; Atlas Powder Co., Dallas, Tex.	49 CFR 173.154(a)	To ship certain oxidizing materials in non-DOT specification cargo tanks complying with DOT specification MC-306, MC-307, or MC-312 cargo tanks. (Mode 1.)
6580-X	DOT-E 6580	Lear Siegler, Inc., Anaheim, Calif.; Robertshaw Controls Co., Anaheim, Calif.	49 CFR 173.302(a)(1), 175.3.	To ship compressed air in a pressure vessel assembly consisting of 5/16 in. diameter stainless steel tubing in a double coil configuration. (Modes 1, 2, and 4.)
6671-X	DOT-E 6671	Dow Chemical Co., Midland, Mich.; Hercules, Inc., Wilmington, Del.	49 CFR 173.1; pt. 173, subpt. C, E, G; 177.854.	To ship certain flammable liquids, corrosive liquids, and class B poisonous liquids contained in damaged DOT specification drums overpacked in outside metal drums. (Modes 1 and 2.)
6775-X	DOT-E 6775	Riverside Chemical Co., Memphis, Tenn.; United States Steel Corp.; Atlanta, Ga.	49 CFR 173.358, 173.359.	To ship certain class B poisonous liquids in DOT specification MC-330 or MC-331 tank motor vehicles. (Mode 1.)
6801-X	DOT-E 6801	Phillips Petroleum Co.,	49 CFR 173.119(a)(7), 173.119(e)(1).	To ship certain flammable liquids in a 1-gal glass bottle overpacked in a DOT specification 12B-65 double walled corrugated fiberboard box. (Modes 1 and 2.)
6998-X	DOT-E 6998	Greer Hydraulics, Inc., Los Angeles, Calif.	49 CFR 173.34(d), 173.302(a)(1).	To ship nitrogen in a non-DOT specification steel pressure vessel made to comply with sec. VIII of the ASME code. (Mode 1.)
7024-X	DOT-E 7024	Burlington Industries, Inc., Burlington, N.C.	49 CFR 173.249(a)	To ship indigo dye paste in collapsible rubber container called Sealdtank. (Mode 1.)
7045-P	DOT-E 7045	Eastman Kodak Co., Rochester, N.Y.	49 CFR 173.242(c), 173.245(a)(18).	To become a party to E 7045. (See application No. 75-187). (Modes 1, 2, and 3.)
7048-X	DOT-E 7048	Martin Marietta Corp., Charlotte, N.C.	49 CFR 173.365(a)(14).	To ship class B poisonous solid in a DOT specification 21C400 fiber drum. (Mode 1.)
7072-X	DOT-E 7072	Container Corp. of America, Wilmington, Del.	49 CFR pt. 173, 178.19.	To ship certain corrosive liquids and oxidizers in a non-DOT specification molded polyethylene container. (Mode 1, 2, and 3.)
7438-X	DOT-E 7438	Ethyl Corp., Baton Rouge, La.	49 CFR 173.354(a)	To ship motor fuel antiknock compound in 4 cargo tanks designed and built to ASME specification U-68. (Mode 1.)

NEW EXEMPTIONS

7404-N	DOT-E 7404	Seaboard World Airlines, Jamaica, N.Y.	49 CFR 175.85(b)	To transport poison B poisons and irritating materials stowed in a location inaccessible to crew members. (Mode 4.)
7405-N	DOT-E 7405	Sigma Chemical Co., St. Louis, Mo.	49 CFR 173.242, 175.3.	To ship hydrochloric acid packages commingled with other chemicals in an outside DOT-12B box. (Modes 1, 4, and 5.)
7407-N	DOT-E 7407	U.S. Department of Agriculture, Washington, D.C.	49 CFR pt. 172, 173.88, 173.91, 175.3, 175.75(a)(2).	To ship incendiary grenades under certain conditions via cargo-only aircraft. (Mode 4.)
7409-N	DOT-E 7409	Sea-Land Service, Inc., Elizabeth, N.J.	46 CFR 90.05-35, 98.35-3.	To transport combustible liquids, n.o.s. in a portable tank manufactured in accordance with a DOT specification MC-303 cargo tank with certain exceptions. (Mode 3.)
7410-N	DOT-E 7410	Dow Corning Corp., Midland, Mich.	49 CFR 173.135(a)	To ship trimethylchlorosilane in a DOT-51 portable tank. (Modes 1 and 3.)
7413-N	DOT-E 7413	Chilton Metal Products Division, Western Industries, Inc., Chilton, Wis.	49 CFR 173.304(a)	To ship carbon dioxide, liquefied in a non-DOT specification brazed steel cyclinder complying with DOT specification 3E with certain exceptions. (Modes 1, 2, and 4.)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7423-N	DOT-E 7423	Dow Chemical Co., Freeport, Tex.	49 CFR 173.220	To ship magnesium powder in a DOT specification 56 portable tank. (Modes 1, 2, and 3.)
7431-N	DOT-E 7431	Martin Marietta Corp., Charlotte, N.C.	49 CFR 173.365	To ship poisonous solid, n.o.s. in DOT specification 56 portable tanks. (Mode 1.)
7434-N	DOT-E 7434	Natico, Inc., Chicago, Ill.	49 CFR 173.1; pt. 173, subpts. C, E, and G; 177.854.	To manufacture a recovery drum for shipment of certain flammable liquids, corrosive liquids, and class B poisonous liquids. (Modes 1 and 2.)
7440-N	DOT-E 7440	Roux Laboratories, Inc., Jacksonville, Fla.	49 CFR 173.306, 173.1200.	To ship compressed gas, n.o.s. in non-DOT specification 1-piece impact-extruded, cylindrical, aluminum container complying with DOT-2Q specification with certain exceptions. (Modes 1, 2, and 3.)
7466-N	DOT-E 7466	Firmenich, Inc., Princeton, N.J.	49 CFR 173.119(a)(7)	To ship flammable liquids, n.o.s. in a spun 99-pct pure aluminum can overpacked in a non-DOT specification fiberboard box. (Modes 1, 2, 3, and 4.)
75-161	DOT-E 7505	Platte Chemical Co., Greeley, Colo.	49 CFR 173.28, 173.-346, 173.358, 173.359.	To ship class B poisons in reconditioned 55-gal DOT specification 17C drums. (Mode 1.)
76-290	DOT-E 7516	Eurotainer Co., Paris, France.	49 CFR 173.125	To ship ethanol in a non-DOT specification portable tank. (Mode 3.)
EMERGENCY EXEMPTIONS—APPLICATION RECEIVED AND GRANTED				
EE7518-N	DOT-E 7518	Wein Air Alaska, Anchorage, Alaska.	49 CFR 172.101, 175.85.	To transport an intensive care unit containing an oxygen cylinder in the cabin of a passenger-carrying aircraft. (Mode 5.)
EE7515-N	DOT-E 7515	Velsicol Chemical Corp., Chicago, Ill.	49 CFR 172.101(6)(b), 175.3.	To ship class B poisonous solid in DOT specification 37A400 drums. (Mode 4.)
EE7513-N	DOT-E 7513	Burdett Oxygen Co., Norristown, Pa.	49 CFR 172.101, 173.315.	To ship liquid oxygen in accordance with the terms of U.S. Coast Guard special permit No. 40-72. (Mode 3.)

DENIALS

75-109 — Petition by Pennwalt Corporation, Philadelphia, Pa.—For reconsideration of denial of application for relief fro mthe specification packaging requirements for chlorine, denied October 8, 1976.

76-81 — Petition by William E. Wickens, Washington, D.C. on behalf of others for reconsideration of denial of application to remove styrene unsaturated polyester resins from the flammable liquid class and from regulation as a hazardous materials for a period of two years, denied October 8, 1976.

76-377 — Petition by Amtrol, Inc., West Warwick, Rhode Island—For reconsideration of denial of application to allow the shipment of chloropicrin water mixtures in DOT Specification 39 cylinders, denied October 1, 1976.

6792-X — Request by Great Lakes Chemical Corp., El Dorado, Ark.—To renew SP 6792 authorizing the packaging prescribed in 173.353(a) for pressurized methyl bromide—chloropicrin (2 percent) mixture, denied October 12, 1976 (Docket HM-112 obviates the need).

DENIALS—Continued

7250-X — Request by Atlantic Container Line, Ltd., New York, New York—To renew E 7250 which authorizes stowage of certain hazardous materials in accordance with the International Maritime Dangerous Goods Code denied October 12, 1976 (Docket HM-112 obviates the need).

7263-X — Request by Atomized Metal Products, Incorporated, Flemington, N.J.—To renew E 7263 allowing the transportation of aluminum powder in steel drums not exceeding 650 pounds gross weight, denied October 4, 1976 (Docket HM-112 obviates the need).

7401-N — Request by Ventron Corporation, Beverly, Massachusetts—For an exemption from the Department of Transportation's packaging requirements in 49 CFR 173.154 for the transportation of sodium borohydride, dry, denied October 15, 1976.

7427-N — Request by Container Corporation of America, Wilmington, Del.—For an exemption from 46 CFR 146.23-100 to ship electrolyte battery fluid in 15-gallon capacity DOT Specification 37P containers by water, denied October 8, 1976 (Docket HM-112 obviates the need).

DENIALS—Continued

7433-N — Request by Ciba-Geigy Corporation, Ardsley, N.Y.—For an exemption to ship approximately 65,000 pounds of sodium methylate in drums equivalent to DOT Specification 37A drums, denied October 14, 1976 (Docket HM-112 obviates the need).

7441-N — Request by Lawrence W. Bierlein, Washington, D.C.—Requesting authorization to ship two products in 32 fluid ounce plastic bottles under the partial exceptions prescribed in 49 CFR 173.244(a) and 173.-1200(a)(2), denied October 4, 1976.

7467-N — Request by Flying Dutchman, Inc., Austin, Minn.—Request for waiver of oxygen equipment ownership requirements in 14 CFR 135.114 and compressed gas requirements in 14 CFR Part 103, denied October 13, 1976.

DR. C. H. THOMPSON, P.E.,
Acting Director, Office of Hazardous Materials Operations.

[FR Doc.77-539 Filed 1-5-77;8:45 am]

National Highway Traffic Safety Administration

MONITOR TRAVEL TRAILER SUSPENSION SYSTEM OVERLOAD

Rescheduling of Public Proceeding

On December 9, 1976 (41 FR 53881), the NHTSA published notice of a public proceeding in the above-captioned matter, to be held on January 6, 1977. In response to a request from the manufacturer for additional time, the NHTSA has rescheduled the proceeding for 10 a.m., January 27, 1977, in Room 5332, Department of Transportation Headquarters, 400 Seventh Street SW., Washington, D.C. 20590.

(Sec. 113, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1402); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.)

Issued on January 3, 1977.

ROBERT L. CARTER,
Associate Administrator Motor Vehicle Programs.

[FR Doc.77-705 Filed 1-5-77;8:45 am]

DEPARTMENT OF THE TREASURY

Office of the Secretary

FULLY AUTOMATIC DIGITAL SCALES FROM JAPAN

Antidumping Determination of Sales At Not Less Than Fair Value

Information was received on March 8, 1976, from counsel acting on behalf of Reliance Electric Company, of Cleveland,

Ohio, alleging that fully automatic digital scales from Japan were being sold in the United States at less than fair value thereby causing injury to, or the likelihood of injury to, or the prevention of 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 March 31, 1976 (41 FR 13638). A "Notice of Tentative Negative Determination" was published in the FEDERAL REGISTER on October 4, 1976 (41 FR 43746-47). A statement of reasons was published in the above-mentioned notice and interested persons were afforded an opportunity to make written submissions and present oral views.

For purposes of this notice, the term "fully automatic digital scales" means fully automatic digital scales that display weight, unit price and total price and have a weight measuring capacity of 25 pounds or less.

DETERMINATION OF SALES AT NOT LESS THAN FAIR VALUE

On the basis of the information developed in Customs investigation and for reasons noted below, pursuant to section 201(b) of the Act (19 U.S.C. 160(b)), I hereby determine that the purchase price of fully automatic digital scales from Japan is not less, nor likely to be less, than the fair value and thereby the foreign market value, of such or similar merchandise.

STATEMENT OF REASONS ON WHICH THIS DETERMINATION IS BASED

The reasons and bases for the above determination are as follows:

a. *Scope of the Investigation.* It appears that all, or virtually all, imports of the subject merchandise from Japan were manufactured by Kubota, Ltd., and Teraoka Seikosho Co., Ltd., both of Tokyo, Japan, or Yamato Scale Co., Ltd., of Osaka, Japan. Therefore, the investigation was limited to these manufacturers.

b. *Basis of Comparison.* For the purposes of considering whether 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 the purchase price and the home market price of such or similar merchandise. Purchase price, as defined in section 203 of the Act (19 U.S.C. 162), was used since all export sales were made to unrelated purchasers in the United States or to an unrelated trading company in the home market which then sells the merchandise to a related firm in the United States. Home market price, as defined in section 153.2, Customs Regulations (19 CFR 153.2) was used since such or similar merchandise was sold in the home market in sufficient quantities to provide a basis of comparison for fair value purposes.

In accordance with § 153.31(b), Customs Regulations (19 CFR 153.31(b)), pricing information was obtained concerning imports and home market sales of fully automatic digital scales from Japan during the period May 1, 1975, through February 29, 1976.

c. *Purchase Price.* For the purposes of this determination of sales at not less than fair value, since all merchandise was purchased prior to the time of exportation by the persons by whom or for whose account it was imported, within the meaning of section 203 of the Act, purchase price has been calculated on the basis of the f.o.b. port, packed price to the United States, or to an unrelated trading company, with deductions for inland freight, insurance, and shipping, as appropriate.

d. *Home Market Price.* For the purposes of this determination of sales at not less than fair value, the home market price was calculated on the basis of the f.o.b. delivered price to distributors. Adjustments were made for dealer incentive rebates, inland freight, insurance, warranty costs, a government calibration fee, interest costs, a trade-in allowance, an operation manual, a warranty card, differences in merchandise, and differences in packing, as appropriate.

Adjustments for differences in circumstances of sale in accordance with § 153.10, Customs Regulations (19 CFR 153.10), for rebates, warranty costs, government calibration fee, trade-in allowance, operation manual, and warranty card, were based on actual costs incurred in the home market and were directly related to the sales under consideration.

Adjustments for interest expenses and packing expenses relate to the difference in those costs between home market sales and sales for export to the United States.

Adjustments were made in the case of Kubota and Yamato Scale for differences in merchandise. The adjustment relates to the differences in cost of materials and direct labor in the production of the home market scales and those exported to the United States.

Adjustments were claimed by all three manufacturers for differences in circumstances of sale in accordance with § 153.10, Customs Regulations (19 CFR 153.10), for advertising costs. Adjustments for these claims have been disallowed as not having been shown to be directly related to the sales under consideration.

A claim has been made by the petitioner that there is no foreign market value since the Japanese manufacturers do not sell in the home market at a single price in accordance with section 205 of the Antidumping Act, 1921, as amended (19 U.S.C. 164 *et seq.*). The fair value, and thereby the foreign market value, in this case was based upon the weighted average price as defined in § 153.16 of the Customs Regultaions (19 CFR 153.16), which further defines section 205 of the Act. The use of weighted average price is established practice in the determination of fair value in cases of sales at varying prices when there is no preponderant price.

Additionally, notwithstanding the prior paragraph, the petitioner has claimed in accordance with section 202 of the Act that an upward adjustment should be made in the fair value, and thereby the foreign market value, for differences in the quantity of the subject articles sold in the home market and to the United States. However, although the aggregate quantity of the subject merchandise sold in the home market by each of the manufacturers investigated exceeded that sold to the United States, the quantities of individual sales to the United States were greater in every case than the quantities of individual sales in the home market. Consequently, in accordance with section 202 of the Act and § 153.9 of the Customs Regulations (19 CFR 153.9), no upward adjustment in the foreign market value is warranted.

e. *Results of Fair Value Comparisons.* Using the above criteria, purchase price was found to be not less than the home market price of such or similar merchandise. Comparisons were made on approximately 95 percent of all fully automatic digital scales from Japan sold to the United States during the period of investigation.

This determination and statement of reasons therefor are published pursuant to § 153.34(c) of the Customs Regulations (19 CFR 153.34(c)).

PETER O. SUCHMAN,
Acting Assistant Secretary of the Treasury.

DECEMBER 30, 1976.

[FR Doc.77-469 Filed 1-5-77;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 228]

ASSIGNMENT OF HEARINGS

JANUARY 3, 1977.

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.

No. 36307 Sub 4, Radioactive Materials, Illinois Terminal Railroad Company now assigned January 11, 1977 at the Offices of the Interstate Commerce Commission in Washington, D.C. is now being cancelled.

MC 3005, Chicago Kansas City Freight Line, Inc., now being assigned February 2, 1977 (1 day), at Kansas City, Missouri; in Room 609 Federal Office Building, 911 Walnut Street.

MC 134068 Sub 28, Kodiak Refrigerated Lines, Inc. now assigned January 13, 1977 at San Francisco, California is now cancelled, application dismissed.

MC 78228 Sub 56, J. Miller Express, Inc. now assigned January 13, 1977 at the Interstate Commerce Commission in Washington, D.C. is cancelled and being transferred to Modified Procedure.

MC 140829 (Sub-14), Cargo Contract Carrier Corp., now assigned March 3, 1977 at Omaha, Nebraska, has been postponed indefinitely.

MC 138328 Sub 30, Clarence L. Werner, dba Werner Enterprises now being assigned March 3, 1977 (2 days), at Omaha, Nebraska in a hearing room to be later designated.

MC 140513 Sub 1, L.S.T. Co., Inc. now assigned January 25, 1977 at the Interstate Commerce Commission in Washington, D.C. is now cancelled application dismissed.

MC 119988 Sub 94, Great Western Trucking Co., Inc. now being assigned March 14, 1977 (1 day), at Denver, Colorado in a hearing room to be later designated.

MC 138253 Sub 2, Monfort Transportation Company now assigned March 14, 1977 at Denver, Colorado is now cancelled, application dismissed.

MC-F 12844, Aurora Fast Freight, Inc.—Purchase (Portion)—Kessman Tank Service, Inc. and MC 120523 Sub No. 2, Aurora Fast Freight, Inc. now being assigned April 12, 1977 (9 days), at Chicago, Illinois in a hearing room to be later designated.

MC 141730, Andrews & Sons Trucking Inc. now assigned March 2, 1977 at Los Angeles, California is cancelled, application dismissed.

MC 107515 (Sub-1019), Refrigerated Transport Co., Inc., now being assigned March 7, 1977 (1 week), at Atlanta, Georiga, in a hearing room to be later designated.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-542 Filed 1-5-77;8:45 am]

FOURTH SECTION APPLICATION FOR RELIEF

JANUARY 3, 1977.

An application, as summarized below, has been filed requesting relief from the requirements of section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1100.40) and filed on or before January 21, 1977.

FSA No. 43293—*Iron and Steel Pipe to the Southwest.* Filed by Southwestern Freight Bureau, Agent (No. B-647), for interested rail carriers. Rates on iron or steel pipe or tubing, in carloads, as described in the application, from points in official (including Illinois) and western trunk-line territories, to Stephenville, Texas.

Grounds for relief—Rate relationship.

Tariff—Supplement 114 to Southwestern Freight Bureau, Agent, tariff 259-F, I.C.C. No. 5080. Rates are published to become effective on February 4, 1977.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-543 Filed 1-5-77;8:45 am]

[Notice No. 100]

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 February 7, 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-76798 filed December 9, 1976. TRANSFEREE: A. D. Ray Trucking, Inc., 1948 Edgar, Rock Springs, Wyoming, 82901. TRANSFEROR: A. D. Ray Trucking Company, A Partnership, P.O. Box 1363, Rock Springs, Wyoming, 82901. APPLICANTS' REPRESENTATIVE: Stockton and Lewis, The 1650 Grant St. Bldg., Denver, Colorado, 80203. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificates No. MC-106887 and MC-106887 (Sub-No. 5) issued June 30, 1948, and January 12, 1951 respectively, as follows: *Machinery, equipment, materials, and supplies* (except gilsonite), used in or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, and *machinery, materials, equipment, and supplies* (except gilsonite), used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipe lines, including the stringing and picking up thereof (but not including the stringing or picking up of pipe in connection with main pipe lines), between points and places in Lincoln, Sweetwater, Unita, Sublette, and Teton Counties, Wyo., Uintah, Daggett, Duchesne, Carbon, and Emery Counties, Utah, and in that portion of Colorado on and west of U.S. Highway 85 and on and north of U.S. Highway 50. *Unrefined petroleum*, in bulk, in tank trucks between points and places in Colorado, Utah, and Wyoming, within 100 miles of Rock Springs, Wyo., including Rock Springs. MC-106887 Sub-No. 5—*Machinery, equipment, materials, and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, not including the stringing or picking up of pipe in connection with pipe lines, and *machinery, equipment, materials and supplies* used in, or in connection with, the construction, operation, repair, servicing, maintenance and dismantling of pipe lines, including the stringing and picking up thereof, except the stringing or picking up of pipe in connection with main or trunk pipe lines, between points in Fremont County, Wyo.

Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

No. MC-FC-76807, filed December 26, 1976. Transferee: Hemmings Moving & Storage Co., Inc., P.O. Box 96, Chester, N.J. 07930. Transferor: Kinnaman Storage, Brown St., Washington, N.J. 07882. Applicants' representative: Thomas F. X. Foley, P.O. Box 1409, 167 Fairfield Road, Fairfield, N.J. 07006. Authority sought for purchase by transferee of the operating rights of transferor set forth in Certificates Nos. MC-94007 and MC-94007 (Sub-No. 9), issued by the Commission July 7, 1953 and October 10, 1962, respectively, as follows: Oil, cardboard boxes, textile materials, metal tile, sawdust, household goods, flowers, plants, shrubbery, and greenhouse supplies, from, to, and between points in New Jersey, New York, Pennsylvania, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, Maryland, Delaware, Virginia, Michigan, Virginia, Ohio, West Virginia, and the District of Columbia. Transferee presently holds authority from this Commission under No. MC-142671 TA. Application has not been filed for temporary authority under Section 210a(b).

No. MC-FC-76816, filed November 5, 1976. Transferee: Di-Jub Leasing Corp., P.O. Box 155 Uptown, Hoboken, New Jersey 07030. Transferor: Water Transport, Inc., Suite 960, 17 Battery Place North, New York, New York 10004. Applicant's representatives: Thomas F. X. Foley, Attorney for transferee, c/o Bowes, Millner, Rodgers & Liberstein, P.O. Box 1409, Fairfield, New Jersey 07006. Maxwell A. Howell, Attorney for transferor, 1100 Investment Building, 1511 K Street NW., Washington, D.C. 20005. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificates No. MC-90794 and MC-90794 (Sub-No. 5), issued January 8, 1971, and December 4, 1972, respectively, as follows: Rugs, draperies, ticket booths, advertising material, motion picture machines, premiums, programs, and theatre furniture and furnishings between New York, N.Y., on the one hand, and, on the other, Philadelphia, Pa. and points in New Jersey within 60 miles of Columbus Circle, New York, N.Y.; and general commodities with the usual exceptions in containers or trailers having a prior or subsequent movement by water between points in that part of the New York, N.Y. Commercial Zone within which local operations may be conducted pursuant to the partial exemption of section 203(b)(8) of the Interstate Commerce Act, on the one hand, and, on the

other, points in Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, Rhode Island, and specified portions of Pennsylvania and New York.

Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under section 210a(b).

No. MC-FC-76823, filed November 22, 1976. Transferee: QUIMBY TRUCKING, INC., P.O. Box 807, Hermiston, Oregon 97838. Transferor: Henry L. Campbell, P.O. Box 307, Helix, Oregon 97835. Applicant's representative: Lawrence V. Smart, Jr., Attorney at Law, 419 N.W. 23rd Avenue, Portland, Oregon 97210. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC-115865, issued March 22, 1957, as follows: General commodities with the usual exceptions over specified regular routes between Pendleton, Oreg. and Helix, Oreg. Transferee presently holds no authority from this Commission. Application has been made for temporary authority under section 210a(b).

No. MC-FC-76845, filed December 1, 1976. Transferee: Sibony Lease & Finance Co., a corporation, U.S. Highway #27 at N.W. 1st St., South Bay, Florida 33493. Transferor: J. G. Weeks & Sons, Inc., 140 Market St., Pahokee, Florida 33476. Applicants' representative: John P. Bond, Attorney at Law, 2766 Douglas Rd., Miami, Fla. 33133. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate of Registration No. MC-128775 Sub 1, issued April 26, 1976, as follows: Raw sugar, in bulk, over irregular routes and on irregular schedules between points and places in Palm Beach County, Florida. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

No. MC-FC-76848, filed December 7, 1976. TRANSFEREE: Brainerd A. Brown, 48 Leetes Road, Branford, Connecticut 06405. TRANSFEROR: Sciarra Trucking and Moving, Inc., P.O. Box 613, Branford, Connecticut 06405. APPLICANT'S REPRESENTATIVE: John E. Fay, Esq., 630 Oakwood Avenue, West Hartford, Connecticut 06110. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate of Registration No. MC-97447 (Sub-No. 1), issued September 15, 1972, as follows: General commodities with the usual exceptions over a regular route between Branford and New Haven and over irregular routes within all points in Connecticut, and household goods and office furniture and equipment between all points in Connecticut.

Transferee presently holds no authority from this Commission. Application has not been made for temporary authority under section 210a(b).

No. MC-FC-76850, filed December 2, 1976. TRANSFEREE: Frank Potter Trucking Co., A Corporation, 215 Main Street, Boonville, Mo. 65233. TRANSFEROR: Frank Potter, Doing Business As Frank Potter Trucking Company, RFD 1, Boonville, Mo. 65233. APPLICANTS' REPRESENTATIVE: Herman W. Huber, Esquire, 101 East High Street, Jefferson City, Mo. 65101. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Permit No. MC-124393, issued May 13, 1963, as follows: Fiberboard, from Boonville, Mo., to points in Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Nebraska, Ohio, Oklahoma, South Dakota, Tennessee, Texas, and Wisconsin; wastepaper, from Kansas City, Kans., and East St. Louis, Ill., to Boonville, Mo.; granulated asphalt, from Augusta, Kans., to Boonville, Mo.; aluminum sulphate, in bags, from the site of the plant of Allied Chemical Company at or near Collinsville, Ill., to Boonville, Mo.; and wax, in drums, from Kalamazoo, Mich., to Boonville, Mo.

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.77-541 Filed 1-5-77;8:45 am]

[Volume No. 64]

PETITIONS FOR MODIFICATION, INTERPRETATION OR REINSTATEMENT OF OPERATING RIGHTS AUTHORITY

DECEMBER 31, 1976.

The following petitions seek modification or interpretation of existing operating rights authority, or reinstatement of terminated operating rights authority.

An original and one copy of protests to the granting of the requested authority must be filed with the Commission on or before February 7, 1977. Such protest shall comply with Special Rule 247(d) of the Commission's General Rules of Practice (49 CFR 1100.247)[1] and shall include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition should not be tendered at this time. A copy of the protest shall be served concurrently upon petitioner's representative, or petitioner if no representative is named.

No. MC 129068 (Sub-No. 8), (notice of filing of petition to modify commodity description) filed October 21, 1976. Petitioner: GRIFFIN TRANSPORTATION, INC., 3002 S. Douglas Blvd., Oklahoma City, Okla. 73150. Petitioner's representative: C. L. Phillips, Room 248, 1411 Classen Boulevard, Oklahoma City, Okla. 73106. Petitioner holds a motor *common carrier* Certificate in No. MC 129068 (Sub-No. 8), issued January 5, 1973, authorizing transportation, as pertinent, over irregular routes, of *Used mobile homes*, in secondary movements, in truckaway service, from Lawton, Okla., to points in Arkansas, Colorado, Kansas, Louisiana, Missouri, New Mexico and Texas.

By the instant petition, petitioner seeks to delete the restrictive word "used" from the above commodity so as to read "Mobile homes".

MOTOR CARRIER, BROKER, WATER CARRIER AND FREIGHT FORWARDER OPERATING RIGHTS APPLICATIONS

NOTICE

The following applications are governed by Special Rule 247 of the Commission's *General Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the FEDERAL REGISTER. Failure to seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with section 247(d)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or applicant if no representative is named. If the protest includes a request for oral hearing, such requests shall meet the requirements of section 247(d)(4) of the special rules, and shall include the certification required therein.

Section 247(f) further provides, in part, that an applicant who does not intend timely to prosecute its application shall promptly request dismissal thereof, and that failure to prosecute an application under procedures ordered by the Commission will result in dismissal of the application.

Further processing steps will be by Commission order which will be served on each party of record. Broadening amendments will not be accepted after the date of this publication except for good cause shown, and restrictive amendments will not be entertained following publication in the FEDERAL REGISTER of a notice that the proceeding has been assigned for oral hearing.

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[1] Copies of Special Rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

Each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

No. MC 531 (Sub-No. 343), filed November 26, 1976. Applicant: YOUNGER BROTHERS, INC., 4904 Griggs Road, P.O. Box 14048, Houston, Tex. 77021. Applicant's representative: Wray E. Hughes (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tung oil*, in bulk, in tank vehicles, from Elizabeth and Weehawken, N.J. to Dallas, Tex.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Houston, Tex. or San Francisco, Calif.

No. MC 730 (Sub-No. 400), filed December 6, 1976. Applicant: PACIFIC INTERMOUNTAIN EXPRESS CO., a Corporation, 1417 Clay St., P.O. Box 958, Oakland, Calif. 94612. Applicant's representative: R. N. Cooledge (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals* used for or in soil sealing or binding, from the plantsite of Seepage Control, Inc., located in Maricopa County, Ariz., to points in the United States (except Alaska and Hawaii).

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either San Francisco or Los Angeles, Calif.

No. MC 730 (Sub-No. 401), filed December 6, 1976. Applicant: PACIFIC INTERMOUNTAIN EXPRESS CO., a Corporation, 1417 Clay St., P.O. Box 958, Oakland, Calif. 94612. Applicant's representative: R. N. Cooledge (some address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal feed supplement*, in bulk, in tank vehicles, from Bisbee, Ariz., to points in Colorado, Iowa, Kansas, Missouri, Nebraska, Oklahoma, Texas and Washington.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either San Francisco or Los Angeles, Calif.

No. MC 4405 (Sub-No. 538), filed November 26, 1976. Applicant: DEALERS TRANSIT, INC., 522 Boston Avenue, Enterprise Bldg., Tulsa, Okla. 74103. Applicant's representative: Michael E. Miller, 502 First National Bank Bldg., Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers, semi-trailers and trailer chassis, other than those designed to be drawn by passenger automobiles*, in initial movements, in truckaway service, from points in Carter County, Okla., to points in the United States (except Oklahoma, Alaska and Hawaii).

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Dallas, Tex.

No. MC 11220 (Sub-No. 150), filed December 6, 1976. Applicant: GORDONS TRANSPORTS, INC., 185 West McLemore Avenue, Memphis, Tenn. 38101. Applicant's representative: James J. Emigh, P.O. Box 59, Memphis, Tenn. 38101. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classas A and B explosives, commodities in bulk, and commodities requiring special equipment): Serving the plantsite and warehouse facilities of Rheem Manufacturing Company, located at or near Milledgeville, Ga., as an off-route point in connection with carrier's authorized regular route operation, from and to Atlanta, Ga.

NOTE.—Common control may be involved. If a hearing is deemed necessary applicant requests it be held at Washington, D.C.

No. MC 29643 (Sub-No. 9), filed December 1, 1976. Applicant: WALSH TRUCKING SERVICE, INC., 50 Burney Avenue, Massena, N.Y. 13662. Applicant's representative: Morton E. Kiel, 5 World Trade Center, Suite 6193, New York, N.Y. 10048. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Scrap metal*, from Massena, N.Y., to Jersey Shore, Pa., and (2) *returned shipments*, from Jersey Shore, Pa., to Massena, N.Y.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Massena, N.Y.

No. MC 42537 (Sub-No. 55), filed November 29, 1976. Applicant: CASSENS TRANSPORT COMPANY, a Corporation, P.O. Box 468, Edwardsville, Ill. 62025. Applicant's representative: Donald W. Smith, Suite 2465, One Indiana Square, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Automobiles, trucks, bodies, cabs, chassis and unfinished automobiles, including ambulances, hearses and taxis*, in truckaway service, in initial and secondary service, from Newark, Del., to points in Arkansas, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Ohio, Tennessee, and Wisconsin, the secondary service is restricted to traffic having a prior movement from facilities of Chrysler Corporation or imported by Chrysler Corporation.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Detroit, Mich. or Washington, D.C.

No. MC 42537 (Sub-No. 56), filed November 26, 1976. Applicant: CASSENS TRANSPORT COMPANY, a Corporation, P.O. Bov 468, Edwardsville, Ill. 62025. Applicant's representative: Donald W. Smith, Suite 2465, One Indiana Square, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Automobiles, trucks, bodies, cabs, chassis and unfinished automobiles, including ambulances, hearses, and taxis*, in truckaway service, in initial and secondary movements, from points in Wayne and Macomb Counties, Mich., to points in Delaware, the secondary service is restricted to traffic having a prior movement from facilities of Chrysler Corporation or imported by Chrysler Corporation.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Detroit, Mich. or Washington, D.C.

No. MC 42537 (Sub-No. 57), filed November 26, 1976. Applicant: CASSENS TRANSPORT COMPANY, a Corporation, P.O. Box 468, Edwardsville, Ill. 62025. Applicant's representative: Donald W. Smith, Suite 2465, One Indiana Square, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Motor vehicles* in initial and secondary movements, in truckaway service, *bodies, cabs and chassis*, from the facilities of Chrysler Corporation located in Boone County, Ill., to points in Delaware, Maryland, New Jersey, Virginia, and the District of Columbia, the secondary service is restricted to traffic having a prior movement from facilities of Chrysler Corporation or imported by Chrysler Corporation.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Detroit, Mich. or Washington, D.C.

No. MC 56409 (Sub-No. 12), filed November 26, 1976. Applicant: MAJOR TRANSPORT, INC., Box 204, Highway 135 and Airport Road, Palmyra, Wisc. 53156. Applicant's representative: David V. Purcell, 111 East Wisconsin Avenue, Milwaukee, Wisc. 53202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Generators, parts, and accessories*, from the plantsite and facility of Generac Corporation, in Waukesha County, Wis., to points in the United States (except Alaska and Hawaii).

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Milwaukee, Wis., or Chicago, Ill.

No. MC 59120 (Sub-No. 41), filed November 18, 1976. Applicant: EAZOR EXPRESS, INC., Eazor Square, Pittsburgh, Pa. 15201. Applicant's representative: John A. Vuono, 2310 Grant Building, Pittsburgh, Pa. 15219. 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 commodities requiring special equipment), serving points in West Virginia, points in Virginia on and west of a line beginning at the West Virginia-Virginia State line and extending along Interstate Highway 64 to junction

U.S. Highway 220, and thence along U.S. Highway 220 to the Virginia-North Carolina State line, and points in Kentucky on and east of Interstate Highway 75, as off-route points in connection with carrier's presently authorized regular-route operations.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Pittsburgh, Pa.

No. MC 70267 (Sub-No. 14), filed November 16, 1976. Applicant: ECKERT TRUCKING, INC., 1090 East Springettsbury Avenue, York, Pa. 17403. Applicant's representative: Norman T. Petow, 43 North Duke Street, York, Pa. 17401. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Brick*, from West Manchester Township (York County), Pa., to Birmingham, Demopolis, Gadsden, Leeds, Mobile, N. Birmingham, Phenix City, Ragland, and Robertsdale, Ala.; Brooksville, Bunnell, Dania, Port La Dania, Miami, Tampa, Tarpon Springs, and W. Palm Beach, Fla.; Atlanta, Roberta, and Rockmart, Ga.; Chicago, Hampton, and Granite City, Ill.; Buffalo, Chesterton, E. Chicago, Gary, Greencastle, Speed, and Mitchell, Ind.; Ashland, Butler, Newport, and S. Shore, Ky.; Thomaston, Maine, Alpenas, Bay City, Cement City, Charlevoix, Dearborn, Detroit, Dundee, Essexville, Ludington, Petoskey, Port Huron, and Trenton, Mich.; Artesia, Brandon, and Red Wood, Miss.; Catawba, Harleyville, and Holly Hill, S.C.; Chattanooga, Coumce, Cowan, N. Birmingham, and Nashville, Tenn.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Harrisburg, Pa.

No. MC 83539 (Sub-No. 447), filed December 6, 1976. Applicant: C & H TRANSPORTATION CO., INC., 2010 West Commerce St., P.O. Box 5976, Dallas, Tex. 75222. Applicant's representative: Thomas E. James (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers and trailer chassis* (except those designed to be drawn by passenger automobiles), from points in Coffee County, Ala., to points in the United States (except Alabama and Hawaii).

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Birmingham, Ala., or Washington, D.C.

No. MC 86247 (Sub-No. 8), filed November 29, 1976. Applicant: I.C.L. INTERNATIONAL CARRIERS LIMITED 1333 College Avenue, Windsor, Ontario, Canada N9C3Y9. Applicant's representative: Joseph P. Allen, 1020 18th Street, Detroit, Mich. 48216. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sand*, in dump vehicles, from the plant site of the Ottawa-Silica Company located at or near Rockwood, Mich., to ports on the International Boundary line between the United States and Canada at Detroit, Mich., restricted to a service performed in the provinces of Canada.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Detroit, Mich., or Washington, D.C.

No. MC 103498 (Sub-No. 49), filed December 6, 1976. Applicant: W. D. SMITH TRUCK LINE, INC., P.O. Drawer "C", De Queen, Ark. 71832. Applicant's representative: Thomas B. Staley, 1550 Tower Building, Little Rock, Ark. 71832. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wood chips, bark, sawdust, wood shavings and other wood residual products*, between points in Arkansas, Louisiana, Mississippi, Oklahoma, and Texas.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Little Rock, Ark.

No. MC 107012 (Sub-No. 232), filed November 26, 1976. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Lincoln Highway East & Meyer Road, Fort Wayne, Ind. 46801. Applicant's representative: David D. Bishop (Same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Appliances, equipment, and commercial and institutional fixtures* (except commodities which because of size or weight require the use of special equipment), and *materials, parts and supplies* used in the manufacture of appliances, equipment and commercial and institutional fixtures, between points in Iowa, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii.

NOTE:—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Des Moines, Iowa or Kansas City, Mo.

No. MC 107403 (Sub-No. 991), filed November 26, 1976. Applicant: MATLACK, INC., Ten West Baltimore Avenue, Landsdowne, Pa. 19050. Applicant's representative: John Nelson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Liquid chemicals*, in bulk, in tank vehicles, from the plantsite of Pearl River Chemical Co., located at or near Pearl River, La., to points in Albama, Arkansas, Florida, Georgia, Mississipi, Tennessee, Texas; and (2) *ferrio sulphate*, in bulk, in tank vehicles, from Copperhill, Tenn., to points in Louisiana.

NOTES.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 107403 (Sub-No. 992), filed December 1, 1976, Applicant: MATLACK, INC., Ten West Baltimore Avenue, Lansdowne, Pa. 19050. Applicant's representative: John Nelson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Adipic acid*, dry, in bulk, in tank vehicles, from the plant site of Monsanto Company located at or near Gonzales and Pensacola, Fla., to points in Alabama, Connecticut, Illinois, Maryland, Massachusetts, New Jersey, Ohio, Pennsylvania, and West Virginia.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 110525 (Sub-No. 1177), filed December 6, 1976. Applicant: CHEMICAL LEAMAN TANK LINES, INC., 520 East Lancaster Avenue, P.O. Box 200, Downingtown, Pa. 19335. Applicant's Representative: Thomas J. O'Brien (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Adipic acid*, dry, in bulk, in tank vehicles, from the plantsite of Monsanto Company, at or near Gonzales and Pensacola, Fla., to points in Alabama, Connecticut, Illinois, Maryland, Massachusetts, New Jersey, Ohio, Pennsylvania, and West Virginia.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Miami, Fla., or New Orleans, La.

No. MC 111045 (Sub-No. 137), filed November 19, 1976. Applicant: RED-WING CARRIERS, INC., P.O. Box 426, Tampa, Fla. 33601. Applicant's representative: J. V. McCoy (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Adipic acid, dry*, in bulk, in tank vehicles, from the plantsite of Mansanto Company, at or near Gonzalez and Pensacola, Fla., to points in Illinois, Maryland, Massachusetts, New Jersey, Ohio, and West Virginia.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at St. Louis, Mo., or Pensacola, Fla.

No. MC 114273 (Sub-No. 275), filed December 6, 1976. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, Iowa 52406. Applicant's representative: Robert E. Konchar, Suite 315 Commerce Exchange Bldg., 2720 First Ave. N.E., P.O. Box 1943, Cedar Rapids, Iowa 52406. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper, paper articles, paper products, wrapping paper, printing paper, and pulpboard*, from Franklin, Va., to points in Ohio.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 115904 (Sub-No. 67) filed December 6, 1976. Applicant: GROVER TRUCKING CO., a Corporation, 1710 West Broadway, Idaho Falls, Idaho 83401. Applicant's representative: Irene Warr, 430 Judge Building, Salt Lake City, Utah 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber mill products*, from the plantsite of Amalia Lumber Co., at or near Amalia, N. Mex., to points in Arkansas, Iowa, Kansas, Missouri, Nebraska, Oklahoma, and Texas.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Albuquerque, N. Mex., or Salt Lake City, Utah.

No. MC 117068 (Sub-No. 74), filed December 6, 1976. Applicant: MIDWEST SPECIALIZED TRANSPORTATION, INC., P.O. Box 6418, North Highway 63, Rochester, Minn. 55901. Applicant's representative: Paul F. Sullivan, 711 Washington Building, Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Construction, earth moving, excavating and material handling machinery and equipment, and parts thereof*, from Skyland, N.C., to points in Minnesota, North Dakota, South Dakota, and Wisconsin.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at St. Paul, Minn.

No. MC 117815 (Sub-No. 260), filed November 26, 1976. Applicant: PULLEY FREIGHT LINES, INC., 405 S.E. 20th Street, Des Moines, Iowa 50317. Applicant's representative: Larry D. Knox, 900 Hubbell Building, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except commodities in bulk), from the facilities of U.S. Cold Storage, at Chicago, Ill., to points in Iowa, Kansas, Missouri and Nebraska.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Chicago, Ill.

No. MC 119726 (Sub-No. 77), filed December 6, 1976. Applicant: N.A.B. TRUCKING CO., INC., 1644 West Edgewood Avenue, Indianapolis, Ind. 46217. Applicant's representative: James L. Beattey, Suite 1000, 130 East Washington St., Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, in cans, bottles, kegs and other containers (except in bulk), from the brewery and warehouse facilities of Anheuser-Busch located at or near Jacksonville and Tampa, Fla., and St. Louis, Mo., to points in Bibb County, Ga.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Indianapolis, Ind. or Atlanta, Ga.

No. MC 119765 (Sub-No. 42), filed December 2, 1976. Applicant: EIGHT WAY XPRESS, INC., 5402 South 27th Street, Omaha, Nebr. 68106. Applicant's representative: Arlyn L. Westergren, Suite 530 Univac Bldg., 7100 West Center Road, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Confectionary* (except in bulk), in vehicles equipped with mechanical refrigeration, from Chicago and Carol Stream, Ill., to points in Connecticut, Delaware, Maryland, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Virginia and the District of Columbia.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr.

No. MC 119934 (Sub-No. 208), filed November 30, 1976. Applicant: ECOFF TRUCKING, INC., 625 E. Broadway, Fortville, Ind. 46040. Applicant's representative: Robert W. Loser II, 1009 Chamber of Commerce Bldg., Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hydrochloric acid*, from Louisville, Ky., to points in Illinois, Indiana, Missouri and Ohio.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Indianapolis, Ind. or Louisville, Ky.

No. MC 121496 (Sub-No. 3), filed December 6, 1976. Applicant: CANGO CORPORATION, Suite 2900, 1100 Milam Building, Houston, Tex. 77002. Applicant's representative: E. Stephen Heisley, Suite 805, 666 Eleventh Street, N.W., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (A) *Petroleum products*, as described in Appendix XIII to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 (except liquefied petroleum gases, anhydrous ammonia, and asphalt), in bulk, in tank vehicles, from points in Brazoria, Chambers, Calhoun, Coke, Colorado, Dallas, Ector, Fayette, Galveston, Hansford, Hardin, Harris, Jefferson, Liberty, Matagorda, Midland, Montgomery and Orange Counties, Tex., to points in Florida and Tennessee, (B) *petroleum products*, as described in Appendix XIII to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, in bulk, in tank vehicles, from points in Brazoria, Chambers, Calhoun, Coke, Colorado, Dallas, Ector, Fayette, Galveston, Matagorda, Midland, Montgomery and Orange Counties Tex., to points in Alabama, Arkansas, Georgia, Oklahoma and South Carolina, (C) *petroleum products* (except liquefied petroleum gas), in bulk, in tank vehicles, from points in Brazoria, Chambers, Calhoun, Coke, Colo., Dallas, Ector, Fayette, Galveston, Hansford, Hardin Harris, Jefferson, Liberty, Matagorda, Midland, Montgomery and Orange Counties, Tex., to points in Louisiana and Mississippi (except points in Washington and Warren Counties, Miss.) (D) *petroleum products* (except liquefied petroleum gas) that are liquid chemicals (petrochemicals), in bulk, in tank vehicles, from points in Brazoria, Chambers, Calhoun, Coke, Colorado, Dallas, Ector, Fayette, Galveston Hansford, Hardin, Harris Jefferson, Liberty, Matagorda Midland, Montgomery and Orange Counties, Tex., to points in Alabama, Florida, Georgia, Illinois, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee; and (E) *liquefied petroleum gases*, in bulk, in tank vehicles, from points in Brazoria, Chambers, Calhoun, Coke, Colorado, Dallas, Ector, Fayette, Galveston Hansford, Hardin, Harris, Jefferson, Liberty, Matagorda, Midland, Montgomery and Orange Counties, Tex., to points in Arkansas, Mississippi and Louisiana.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held on a consolidated record with McNair Transport, Inc., at Houston, Tex.

No. MC 123407 (Sub-No. 342), filed December 2, 1976. Applicant: SAWYER TRANSPORT, INC., South Haven Square, U.S. Hwy. 6, Valparaiso, Ind. 46383. Applicant's representative: Robert W. Sawyer (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber products, wood products, and millwork*, (1) from points in Wyoming (except Crook County, Wyo.), to points in Illinois, Indiana, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota and Wisconsin; and (2) from Crook County, Wyo., to points in Kansas, Nebraska, North Dakota and South Dakota.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Denver, Colo.

No. MC 123407 (Sub-No. 346), filed December 6, 1976. Applicant: SAWYER TRANSPORT, INC., South Haven Square, U.S. Highway 6, Valparaiso, Ind., 46383. Applicants' representative: Robert W. Sawyer (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber products, wood products, and millwork* (except commodities in bulk), from points in Idaho, to points in the United States in and east of Colorado, Nebraska, North Dakota, Oklahoma, South Dakota and Texas.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Spokane, Wash.

No. MC 124078 (Sub-No. 709), filed November 26, 1976. Applicant SCHWERMAN TRUCKING CO., a Corporation, 611 South 28 Street, Milwaukee, Wis. 53215. Applicant's representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, Wis. 53201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Adipic acid*, dry, in bulk, in tank vehicles, from the plantsite of Monsanto Company located at or near Gonzales and Pensacola, Fla., to points in Alabama, Connecticut, Illinois, Maryland, Massachusetts, New Jersey, Ohio, Pennsylvania and West Virginia.

NOTE.—Applicant holds contract carrier authority in MC 124078 (Sub-No. 68), therefore dual authority may be involved. Common control may also be involved. If a hearing is deemed necessary, the applicant requests it be held at St. Louis, Mo.

No. MC 124211 (Sub-No. 281), filed November 29, 1976. Applicant: HILT TRUCK LINE, INC., P.O. Box 988, D.T.S., Omaha, Nebr. 68101. Applicant's representative: Thomas L. Hilt (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are manufactured, processed, sold, used, distributed

and dealt in by manufacturers, converters, distributors, and printers or paper and paper products (except in bulk), between points in Wisconsin and the Upper Peninsula of Michigan, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii).

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held on a Consolidated record with Aubrey Freight Lines, Inc., Container Transit, Inc., Curtis Inc., Carl Subler Trucking Inc., Truck Transport, Inc., and Diamond Transportation Systems, Inc., at Milwaukee, Wis.

No. MC 124904 (Sub-No. 5), filed December 3, 1976. Applicant: GIBNEY DISTRIBUTORS, INC., 300 Old Indian Head Road, Kings Park, N.Y. 11754. Applicant's representative: Bruce J. Robbins, One Lefrak City Plaza, Flushing, N.Y. 11368. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Camp baggage*, in seasonal operations extending from June 1 to October 1, both dates inclusive, of each year, between points in Connecticut, Delaware, Maryland, New Jersey, New York and Pennsylvania, points in Suffolk, Norfolk, Plymouth, Essex, Middlesex and Bristol, Counties, Mass., and the District of Columbia, on the one hand, and, on the other, points in Maine, New Hampshire and Pennsylvania.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at New York, N.Y.

No. MC 125777 (Sub-No. 182), filed December 3, 1976. Applicant: JACK GRAY TRANSPORT, INC., 4600 East 15th Avenue, Gary, Ind. 46406. Applicant's representative: Carl L. Steiner, 39 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lead oxide*, in dump vehicles, from Hammond, Ind., to points in the United States (except Alaska and Hawaii).

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Chicago, Ill.

No. MC 126049 (Sub-No. 18), filed November 29, 1976. Applicant: DODEN TRUCKING COMPANY, INC., Woden, Iowa 50484. Applicant's representative: Clayton L. Wornson, 626 Brick and Tile Bldg., Mason City, Iowa 50401. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ice cream, ice milk, and sherbet; and ice milk, sherbet, and fruit flavored novelty items*, between Milwaukee, Wis., on the one hand, and, on the other Dubuque and Cedar Rapids, Iowa.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Mason City, or Des Moines, Iowa.

No. MC 126276 (Sub-No. 161), filed December 3, 1976. Applicant: FAST MOTOR SERVICE, INC., 9100 Plainfield Rd., Brookfield, Ill. 60513. Applicant's representative: James C. Hardman, 33 N. LaSalle St., Chicago, Ill. 60602. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (A) *Containers, container closures, container components, and materials and supplies* used in the manufacture or distribution of containers, (1) from Itasca, Peoria Heights and Chicago, Ill., Kansas City and Lenexa, Kans., Louisville, Ky., Mankato, Minn., St. Joseph and St. Louis, Mo., Omaha, Nebr., Bedford Heights, Cleveland, Columbus and Worthington, Ohio, West Mifflin, Pa., and LaCrosse, Wis., to points in Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, New York, Ohio, Pennsylvania, Tennessee, and Wisconsin, (2) from Danville, Ill., to points in Arkansas, Iowa, Michigan, Nebraska and points in Milwaukee, Kenosha and Racine Counties, Wis., and Kansas City and St. Louis, Mo., (3) from St. Paul and Arden Hills, Minn., to points in Michigan, (4) from Cincinnati, and Sharonville, Ohio, to points in Illinois, Indiana, Iowa, Kentucky, Michigan, and St. Louis, Mo., Minneapolis, Minn., and Kenosha, Milwaukee and Racine, Wis., and (4) from Racine, Wis., to points in Arkansas, Iowa, Kansas, Michigan and Nebraska, and Danville and Chicago, Ill., (B) *closures and materials* used in the manufacture of containers (1) from Burns Harbor, Portage and Chesterton, Ind., to points in Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, New York, Ohio, Pennsylvania, Tennessee and Wisconsin; and (C) *materials and supplies* used in the manufacture and distribution of containers, (1) between the plant and warehouse sites of Continental Can Company, U.S.A., a member of The Continental Group, Inc. at Alsip, Bridgeview, Chicago, Danville, Itasca, and Peoria Heights, Ill., Burns Harbor, Chesterton, Elwood and Portage, Ind., Kansas City and Lenexa, Mo., Louisville, Ky., Shoreham, Mich., Arden Hills, Mankato, and St. Paul, Minn., St. Joseph and St. Louis, Mo., Omaha, Nebr., Bedford Heights, Cincinnati, Cleveland, Columbus, Sharonville, and Worthington, Ohio, Oil City and West Mifflin, Pa., LaCrosse, Milwaukee and Racine, Wis., under a continuous contract or contracts in (A), (B), and (C) above with The Continental Group Inc.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Chicago, Ill.

No. MC 127539 (Sub-No. 53), filed December 2, 1976. Applicant: PARKER REFRIGERATED SERVICE, INC., 1108 54th Ave. East, Tacoma, Wash. 98424. Applicant's representative: Michael D. Duppenthaler, 515 Lyon Bldg., 607 3rd Ave., Seattle, Wash. 98204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Butter*, in cartons or packages, in vehicles equipped with mechanical refrigeration, from Hughson and Willows, Calif., to the facilities of Brown & Haley Candy Company, and Tacoma, Wash.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Seattle, Wash.

No. MC 128030 (Sub-No. 112), filed December 6, 1976. Applicant: THE STOUT TRUCKING CO., INC., P.O. Box 177, Urbana, Ill. 61801. Applicant's representative: James R. Madler, 120 West Madison, Suite 718, Chicago, Ill. 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers, caps and closures thereof and corrugated boxes*, from Joliet, Ill., to points in Kentucky and St. Louis, Mo.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Chicago or Springfield, Ill.

No. MC 128273 (Sub-No. 244), filed December 2, 1976. Applicant: MIDWESTERN DISTRIBUTION, INC., P.O. Box 189, Fort Scott, Kans. 66701. Applicant's representative: Elden Corban (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum* (except commodities which because of size or weight require the use of special equipment), from Chalmette, La. to Philadelphia, Pa. and points in its commercial zone as defined by the Commission; St. Louis, Mo., and points in its commercial zone as defined by the Commission, and points in Illinois, Indiana, Minnesota, Ohio and Wisconsin.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either New Orleans, La. or Washington, D.C.

No. MC 128862 (Sub-No. 25), filed November 29, 1976. Applicant: B. J. CECIL TRUCKING, INC., P.O. Box C, Claypool, Ariz. 85532. Applicant's representative: B. J. Cecil (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Precipitation material*, in bulk, used in a leaching process to extract copper precipitates, from Deming, N. Mex., to Morenci, Ariz.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Phoenix, Ariz., or Silver City, N. Mex.

No. MC 128988 (Sub-No. 92), filed November 22, 1976. Applicant: JO/KEL, INC., 159 South Seventh Avenue, Box 1249, City of Industry, Calif. 91749. Applicant's representative: Patrick E. Quinn, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Watt hour meters*, from the facilities of Westinghouse Electric Corporation located at or near Raleigh, N.C., to points in the United States on and west of a line beginning at the mouth of the Mississippi River and extending along the Mississippi River to its junction with the western boundary of Itasca County, Minn., thence northward along the western boundaries of Itasca and Koochiching Counties, Minn., to the International Boundary line between the United States and Canada, restricted against the trans-

portation of commodities which by reason of size or weight require the use of special equipment, and commodities in bulk, and further restricted to a transportation service to be performed under a continuing contract or contracts with Westinghouse Electric Corporation of Pittsburgh, Pa.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Los Angeles, Calif., or Pittsburgh, Pa.

No. MC 133591 (Sub-No. 28) (correction), filed October 26, 1976, published in the FEDERAL REGISTER issue of December 2, 1976, and republished in part this issue. Applicant: WAYNE DANIEL TRUCK, INC., P.O. Box 303, Mount Vernon, Mo. 65712. Applicant's representative: Harry Ross, 58 South Main Street, Winchester, Ky. 40391. The purpose of this partial republication is to correct the "Note" incorrectly as published: Applicant seeks by this application to convert its Certificate in MC 133591, Sub 3 and other subs, into a Permit of Public Convenience and Necessity. If a hearing is deemed necessary, the applicant requests it be held at St. Louis, Mo. This should have read, as pertinent: Applicant seeks by this application to convert its contract carrier authority in Permits No. MC 134494 (Subs 1, 3, and 6) to common carrier authority. The rest of the publication remains the same.

No. MC 135381 (Sub-No. 5), filed November 30, 1976. Applicant: DRUM TRANSPORTATION COMPANY, A Corporation, R.D. No. 1, Montgomery, Pa. 17752. Applicant's representative: J. G. Dail, Jr., P.O. Box 567, McLean, Va. 22101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Traffic and maintenance paints;* (2) *thermoplastic and cold applied plastic* for street and highway marking; (3) *street and highway marking machines;* and (4) *materials, components, and supplies* used in the manufacture of the commodities named in (1), (2), and (3) above, (except commodities in bulk), between the facilities of Prismo Universal Corporation located at or near Montgomery and Pennsdale, Pa., and Marble Falls, Tex., on the one hand, and, on the other, points in the United States in and east of Arizona, Colorado, Nebraska, North Dakota, and South Dakota, under a continuing contract or contracts with Prismo Universal Corporation.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 135696 (Sub-No. 4), filed December 3, 1976. Applicant: LAKE PORT TRUCKING AND LEASING, INC., 620 South Strange Road, Elmore, Ohio 43416. Applicant's representative: Arthur R. Cline, 420 Security Building, Toledo, Ohio 43604. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Beet pulp*, from Findlay and Fremont, Ohio, to Huron and Toledo, Ohio, restricted to commodities destined in foreign commerce.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Columbus, Ohio or Lansing, Mich.

No. MC 136605 (Sub-No. 20), filed December 1, 1976. Applicant: DAVIS BROS DIST., INC., 2024 Trade Street, P.O. Box 1027, Missoula, Mont. 59801. Applicant's representative: Joe Gerbase, 100 Transwestern Building, 404 North 31st Street, Billings, Mont. 59101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Clay products*, from the plantsite of the Lovell Clay Products Company, located at or near Billings, Mont., to points in Idaho; Box Elder, Cache, Davis, Morgan, Rich, Salt Lake, Summit, Utah, Wasatch and Weber Counties, Utah; and Baker, Malheur, Umatilla, Union and Wallowa Counties, Oreg.

NOTE. — Applicant holds contract carrier authority in MC 127349 (Sub-No. 2); therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Billings or Missoula, Mont.

No. MC 138875 (Sub-No. 39), filed November 17, 1976. Applicant, SHOEMAKER TRUCKING COMPANY, a Corporation, 11900 Franklin Road, Boise, Idaho. 83705. Applicant's representative: Frank L. Sigloh, (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods, and potato products*, other than frozen, from points in Idaho and those in Washington and Oregon (including Metolius), located east of U.S. Highway 97, to points in Indiana, Rhode Island, Delaware, Maryland, Virginia, West Virginia and the District of Columbia.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Boise, Idaho or Washington, D.C.

No. MC 139254 (Sub-No. 4), filed December 2, 1976. Applicant: BROOKS TRANSPORTATION, INC., 30650 Carter Road, Solon, Ohio 44139. Applicant's representative: J. T. Fittipaldi, 1329 E St., N.W., Suite 1150 Munsey Bldg., Washington, D.C. 20004. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products*, from the plantsite of Champion International Corporation, located at or near Courtland, Ala., to points in Illinois, Indiana, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, West Virginia, Wisconsin and the District of Columbia, under a continuing contract with Champion International Corporation.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Cincinnati, Ohio or Washington, D.C.

No. MC 139495 (Sub-No. 182), filed November 29, 1976. Applicant: NATIONAL CARRIERS, INC., 1501 East 8th Street, P.O. Box 1358, Liberal, Kans. 67901. Applicant's representative: Herbert Alan Dubin, 1819 H Street, N.W., Suite 1030, Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hose*, from Olney, Tex., to Los Angeles, Calif., Elmhurst, Ill. and Wilmington, Del.

NOTE.—Applicant holds contract carrier authority in MC 133106 and Subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 139696 (Sub-No. 1), filed December 3, 1976. Applicant: DOOR TO DOOR TRANSPORT, INC., 8300 Military Rd. S., Seattle, Wash. 98108. Applicant's representative: John B. Schenck, P.O. Box 80305, Seattle, Wash. 98108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, in containers, between points in King, Pierce, Kitsap, Mason and Snohomish Counties, Wash., restricted to the transportation of traffic having a prior or subsequent movement beyond said points, and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization or unpacking, uncrating and decontainerization of such traffic.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Seattle or Olympia, Wash.

No. MC 139973 (Sub-No. 9), filed December 2, 1976. Applicant: J. H. WARE TRUCKING, INC., 909 Brown Street, P.O. Box 398, Fulton, Mo. 65251. Applicant's representative: Larry D. Knox, 900 Hubbell Building, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by products, and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk), from the facilities of Farmland Foods, Inc., located at or near Crete, Nebr., and Denison, Carroll, and Iowa Falls, Iowa, to points in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming.

NOTE.—Applicant holds contract carrier authority in MC 138375 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Omaha, Nebr. or Kansas City, Mo.

No. MC 140097 (Sub-No. 1), (CORRECTION), filed August 30, 1976, published in the FEDERAL REGISTER issue of October 29, 1976, and republished as corrected this issue. Applicant: C. V. TRANSPORTATION, INC., 40 Court Street, Newport, N.H. 03773. Applicant's representative: Michael M. Patten, R.F.D. #2, Box 126, Newport, N.H. 03773. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Wood chips*, in bulk, from points in Massachusetts and Vermont, to points in New Hampshire, Maine, New York and Rhode Island, and (2) *square edge lumber*,

from points in New Hampshire and Massachusetts, to points in Vermont, New Hampshire, Maine, Massachusetts, Connecticut, and Rhode Island.

NOTE.—The purpose of this republication is to indicate applicant's request for Connecticut as a destination point in (2) above in lieu of Kentucky. If a hearing is deemed necessary, the applicant requests it be held at either Concord or Newport, N.H.

No. MC 140389 (Sub-No. 11), filed November 22, 1976. Applicant: OSBORN TRANSPORTATION, INC., P.O. Box 180, Highway 77 North, Gadsden, Ala. 35902. Applicant's representative: Larry Smith, P.O. Box 1830, Gadsden, Ala. 35902. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except commodities in bulk), from the facility of Mid-Continent Underground Storage, located at or near Kansas City, Kans., to points in Georgia, Kentucky, Tennessee, Virginia, West Virginia and North Little Rock, Ark.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Atlanta, Ga., or Washington, D.C.

No. MC 140829 (Sub-No. 35), filed December 2, 1976. Applicant: CARGO CONTRACT CARRIER CORP., U.S. Highway 20, P.O. Box 206, Sioux City, Iowa 51102. Applicant's representative: William J. Hanlon, 55 Madison Avenue, Morristown, N.J., 07960. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, Meat products, meat by-products and articles distributed by meat packinghouses*, as described in Section A of Appendix I to the Report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk), from points in Iowa, Minnesota, Missouri, Nebraska and South Dakota to Paris, Tex.

NOTE.—Applicant holds contract carrier authority in MC 136408 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 141503 (Sub-No. 2), filed December 6, 1976. Applicant: JAMES R. HAYES, 14919 Issaquah Hobart Road, Issaquah, Wash. 98027. Applicant's representative: Michael D. Duppenthaler, 607 3rd Avenue, Seattle, Wash. 98104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Treated poles and piling, and untreated poles and pilings*, when shipped in mixed truckloads with untreated poles and pilings, on hydraulic grabble equipped self-unloading equipment, between points in Washington, on the one hand, and, on the other, points in Idaho, Montana and Oregon.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Seattle, Wash.

No. MC 142152 (Sub-No. 1), filed November 22, 1976. Applicant: N.A.T. TRANSPORTATION, INC., 229 North Main Street, Brader, Ohio 43406. Applicant's representative: Robert J. Gill, 29 South LaSalle Street, Chicago, Ill. 60603. Authorty sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Machinery and equipment* for installation in industrial, residential, commercial and marine construction projects used for heating, cooling, air conditioning, pollution control, and the movement of air and other gasses, between Waldron, Mich., and Bradner, Ohio, on the one hand, and, on the other, points in the United States, and (2) *parts, materials, equipment and supplies*, used in the manufacture, distribution, and installation or operation of the items listed in (1) above, (a) between Waldron, Mich., and Bradner, Ohio, on the one hand, and, on the other, points in the United States; and (b) between Waldron, Mich; and Bradner, Ohio and Toledo, Ohio, under a continuing contract or contracts with American Warming and Ventilating, Inc.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at either Chicago, Ill. or Toledo, Ohio.

No. MC 142173 (Sub-No. 2), filed November 12, 1976. Applicant: BYRON DWYER, doing business as, DWYER'S DELIVERY COMPANY, 1217 Millbury, Northwood, Ohio 43619. Applicant's representative: Michael, M. Briley, 300 Madison Avenue, Toledo, Ohio 43604. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Household appliances*, from the facilities of Highland Appliance Co., located at Toledo, Ohio to points in Lenawee and Monroe Counties, Mich.; and (2) *return of defective household appliances*, from the above named destinations in (1) above to the facilities of Highland Appliance Co., located at Toledo, Ohio.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Toledo, Ohio or Washington, D.C.

No. MC 142329 (Sub-No. 2) (Correction), filed October 4, 1976, published in the FEDERAL REGISTER issue of October 29, 1976, republished as corrected this issue. Applicant: J. D. JOHNSON, doing business as, HOUSTON CARTAGE, 3100 Air Cargo Road, P.O. Box 60123, Houston, Tex. 77205. Applicant's representative: J. D. Johnson, 12911 Breezway, Houston, Tex. 77037. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Equipment, materials and supplies* used in the maintenance, service, repair and operation of ships, moving in Bond under the control of U.S. Customs, from Houston, Tex., to ships docked in the Gulf ports of Brownsville, Corpus Christi, Port Lavaca, Point Comfort, Freeport, Galveston, Texas City, Port Neches, Port Arthur, Beaumont and Orange, Tex.; New Orleans, Baton Rouge and Lake Charles, La.

NOTE.—The purpose of this republication is to remove the commodity restriction from this proceeding. If a hearing is deemed necessary, the applicant requests it be held at Houston, Tex.

No. MC 142458 (Sub-No. 1), filed November 22, 1976. Applicant: GOLIATH TRACTOR SERVICE LTD., 32 Atlanta Crescent, S.E., Calgary, Alberta, Canada T2J 0Y1. Applicant's representative: Ray F. Koby, 314 Montana Building, Great Falls, Mont. 59401. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural fertilizers, herbicides, fungicides, pesticides, insecticides, and ingredients thereof*, in ocean going containers on specially designed wheeled undercarriages, from the port of entry on the International Boundary line between the United States and Canada, located at or near Sweetgrass, Mont., to points in Yellowstone and Cascade Counties, Mont., restricted to traffic originating at the Province of Alberta, Canada.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at any city in Montana.

No. MC 142603 (Sub-No. 1), filed November 22, 1976. Applicant: CONTRACT CARRIERS OF AMERICA, INC., P.O. Box 1968, Springfield, Mass. 01101. Applicant's representative: S. Michael Richards, P.O. Box 225, 44 North Avenue, Webster, N.Y. 14580. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Abrasives*, from Chester and Westfield, Mass., to points in the United States (except Alaska and Hawaii).

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Boston, Mass. or New York, N.Y.

No. MC 142664 (Sub-No. 2), filed November 30, 1976. Applicant: IMPORT DEALERS SERVICE CORPORATION, 2222 East Sepulveda, Carson, Calif. 90744. Applicant's representative: William P. Jackson, Jr., P.O. Box 1267, Arlington, Va. 22210. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Motor vehicles*, having a prior or subsequent movement by water or rail, between Los Angeles, Calif., Los Angeles Harbor Commercial Zones, on the one hand, and, on the other, points in California.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Los Angeles, Calif.

No. MC 142698, filed November 12, 1976. Applicant: B. A. STRICKLAND, 620 Old Highway 99 North, Burlington, Wash. 98233. Applicant's representative: Robert G. Gleason, 15 South Grady Way, Suite 217, Renton, Wash. 98055. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Commodities as may be dealt in by retail companies dedicated to the needs of the do-it-yourself market and retailing electrical, lighting, plumbing, promotional merchandise, building materials automotive parts, accessories, carpeting and sporting goods; and* (2) *cabinets*, wooden set up, and *dairy equipment* including *tanks, electrical and building materials*, between points in California, Colorado, Idaho, Kansas, Montana, North Dakota, Nevada, Oklahoma, Oregon, South Dakota,

Utah, Washington and Wyoming, and Springfield, Mo., under a continuing contract or contracts with Sunset Western, Pay 'NPak Stores, Inc., Lobo Auto Parts, and Olympia Sales Co.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Seatle, Wash. or Portland, Oreg.

No. MC 142700, filed November 18, 1976. Applicant: U.I.P. TRANSPORT SERVICES CORP., 366 Garfield Avenue, Duluth, Minn. 55801. Applicant's representative: James C. Hardman, 33 N. LaSalle St., Chicago, Il. 60602. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (A) *Such commodities as are dealt in or used by fabricators of or dealers in metal products, machinery, and machinery components* (except commodities in bulk), (1) between (a) Stambaugh, Mich., (b) Stoughton, Wis., and (c) Proctor, Minn., on the one hand, and, on the other, points in Illinois, Iowa, Michigan, Minnesota, North Dakota, South Dakota, and Wisconsin, under a continuing contract or contracts in (a) above with Upper Peninsula Industries, Inc.; (b) above with Mid-States Steel, Inc.; and (c) above with Zalk-Josephs Company; and (B) *building materials* (except commodities in bulk), between Proctor, Minn., on the one hand, and, on the other, points in Minnesota, Wisconsin, and the Upper Peninsula of Michigan under a continuing contract or contracts with Zalk-Josephs Company.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Chicago, Ill. or St. Paul, Minn.

No. MC 142701, filed November 30, 1976. Applicant: CARL W. REAGAN, doing business as SOUTHEAST TRUCKING CO., 8418 Tallmadge Road, Ravenna, Ohio 44266. Applicant's representative: William P. Jackson, Jr., P.O. Box 1267, 3426 North Washington Boulevard, Arlington, Va. 22210. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron and steel articles* (except pig iron), from Buffalo and Lackawanna, N.Y., Sparrows Point, Md., Bethlehem, Johnstown, and Sharon, Pa., points in Allegheny County, Pa., Chicago and Sterling, Ill., Burns Harbor, Gary, and Kokomo, Ind., Weirton, W. Va., Detroit, Mich., and Roanoke, Va., to Akron, Ohio; and (2) *Iron and steel articles and fabricated, processed and structural steel* (except pig iron), from Akron, Ohio, to points in Illinois, Indiana, Michigan, New York, Pennsylvania and West Virginia, restricted to the transportation of shipments to or from the facilities of Summit Steel Corporation of Akron, Ohio, and further restricted against the transportation of traffic to or from the plant site of the United States Concrete Pipe Company located at or near Mogadore, Ohio.

NOTE.—Applicant holds contract carrier authority in MC 127527 and subs thereunder, therefore dual operations may be involved. Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 142702, filed November 22, 1976. Applicant: NOLIA TRUCKING CO., INC., P.O. Box 1091, Augusta, Ga. 30903. Applicant's representative: Paul M. Daniell, P.O. Box 872, Atlanta, Ga. 30303. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Unfrozen bakery products*, from Augusta, Ga., to points in Florida and South Carolina, under contract with Murray Biscuit Co Division of Beatrice Foods.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Augusta, Ga.

No. MC 142709, filed December 1, 1976. Applicant: W. L. ROENIGK, 798 Ekastown Road, Sarver, Pa. 16055. Applicant's representative: John A. Pillar, 205 Ross Street, Pittsburgh, Pa. 15219. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are sold by building materials and supplies stores or warehouses (except commodities in bulk), between points in Pennsylvania on and west of U.S. Highway 219, on the one hand, and, on the other, points in Ohio and those points in New York on and west of U.S. Highway 15, restricted to service either to or from the facilities of Busy Beaver Building Centers, Inc. or subsidiaries thereof, under a continuing contract, or contracts, with Busy Beaver Building Centers, Inc.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Pittsburgh, Pa. or Washington, D.C.

No. MC 142712, filed November 26, 1976. Applicant: JERRY PAUL, doing business os JERRY PAUL TRUCKING, 1401 East Brady, P.O. Box 699, Clovis, N. Mex. 88101. Applicant's representative: Thomas F. Sedberry, 1102 Perry-Brooks Building, Austin, Tex. 78701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers*, designed to be drawn by passenger vehicles, and *prefabricated buildings*, in sections, between points in New Mexico, on the one hand, and, on the other, points in Texas.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Clovis or Sante Fe, N. Mex. or Dallas, Tex.

No. MC 142716, filed November 26, 1976. Applicant: C & L TRUCKING, INC., 1609 27th Street, NW., Cedar Rapids, Iowa 52405. Applicant's representative: Scott E. Daniel, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Liquid and dry fertilizer*, in bulk, from Fulton, Ill., to points in Iowa, Illinois, Minnesota, Missouri, and Wisconsin; and (2) *dry fertilizer*, in bulk, from Pekin, Ill., to points in Iowa, Minnesota, Missouri, Wisconsin, and Indiana.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Des Moines, Iowa.

PASSENGER APPLICATIONS

No. MC 45626 (Sub-No. 69), filed November 18, 1976. Applicant: VERMONT TRANSIT CO., INC., 135 St. Paul Street, Burlington, Vt. 05401. Applicant's representative: J. J. Dwyer (Same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular and irregular routes, transporting: (I) IRREGULAR ROUTES: *Passengers and their baggage*, in round-trip special operations, beginning and ending at points in Vermont, points in Cheshire and Sullivan Counties, N.H., and points in that part of Grafton County, N.H., west of U.S. Highway 3 and extending to race tracks located at Saratoga Springs, N.Y., and the ports of entry on the International Boundary line between the United States and Canada located in New York, for furtherance to Blue Bonnets Race Track located at Montreal, Quebec, Canada, and return; and (II) regular routes: *Passengers and their baggage, and express and newspapers in the same vehicle with passengers*, between the junction of New Hampshire Highways 103 and 114 east of Bradford, N.H. and Hopkinton, N.H., serving all intermediate points: From the junction of New Hampshire Highways 103 and 114 east of Bradford, N.H. over New Hampshire Highway 114 to its junction with U.S. Highway 202 at Henniker, N.H., thence over U.S. Highway 202 to its junction with New Hampshire Highway 103 at Hopkinton, and return over the same route.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Burlington, Montpelier or Rutland, Vt.

No. MC 141447 (Sub-No. 1), filed November 11, 1976. Applicant: AUTOBUS DES BOIS-FRANCS LTEE, P.O. Box 1134, R.R. No. 1, Plessisville, P.Q., Canada. Applicant's representative: Guy Poliquin, 580 East, Grade-Alle, No. 140, Quebec, G1R 2K3, P.Q., Canada. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in special and charter operations, from ports of entry on the International Boundary line between the United States and Canada, located in Maine, Michigan, New Hampshire, New York and Vermont, to points in the United States (except Alaska and Hawaii), restricted to traffic originating at Trois-Rivieres, Victoriaville, Plessisville, in the Province of Quebec, Canada.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Concord, N.H.

No. MC 142385 (Sub-No. 1), filed November 11, 1976. Applicant: VOTRE CHOIX TRANSPORT, INC., 270 Leonidas, Rimouski, P.Q., Canada. Applicant's representative: Guy Poliquin, 580 East, Grand-Allee, No. 140, Quebec, G1P 3B8, P.Q., Canada. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in charter and special operations, from

ports of entry on the International Boundary line between the United States and Canada, located in Maine, Michigan, New Hampshire, New York and Vermont to points in the United States (except Alaska and Hawaii), restricted to traffic originating at Rimouski, in the Province of Quebec, Canada.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Concord, N.H.

No. MC 142650, filed November 11, 1976. Applicant: PAQUETTE AUTOBUS INC., 295 Grande Cote, St-Eustache, P.Q., Canada. Applicant's representative: Guy Poliquin, 580 East, Grande-Allee, No. 140, Quebec, G1R 2K3, P.Q., Canada. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in charter and special operations, from ports of entry on the International Boundary line between the United States and Canada, located in Maine, Michigan, New Hampshire, New York and Vermont, to points in the United States (except Alaska and Hawaii), restricted to traffic originating at Montreal, St-Eustache, Deux-Montagnes, in the Province of Quebec, Canada.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Concord, N.H.

No. MC 142658, filed November 15, 1976. Applicant: AUTOBUS VIENS, INC., 590 Yamaska, Farnham Province of Quebec. Applicant's representative: Adrien R. Paquette, 200 St-Jacques Street West, Montreal, Quebec H2Y 1M1 Canada. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage* in round-trip charter operations, beginning and ending at ports of entry on the International Boundary line between the United States and Canada, located at points in New York, Vermont, New Hampshire and Maine and extending to points in the United States (except Alaska and Hawaii), for furtherence to the province of Quebec, Canada.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Albany, N.Y. or Montpelier, Vt.

BROKER APPLICATION

No. MC 12981 (Sub-No. 1), filed November 26, 1976. Applicant: FALDMO TOURS, INC., 88 West 500 South, Bountiful, Utah 84010. Applicant's representative: I. Mark Faldmo (same address as applicant). Authority sought to engage in operation, in interstate or foreign commerce, as a *broker* at Bountiful, Utah, to sell or offer to sell the transportation of *groups of passengers and their baggage*, in special or charter operations, in all expense round trip tours, by motor carriers, beginning and ending in points in Utah (except Davis County), and extending to points in the United States, including Alaska and Hawaii.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Salt Lake City or Ogden, Utah.

FINANCE APPLICATIONS

NOTICE

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control through ownership of stock, of rail carriers or motor carriers pursuant to section 5(2) or 210a(b) of the Interstate Commerce Act.

An original and two copies of protests against the granting of the requested authority must be filed with the Commission on or before February 7, 1977. Such protest shall comply with Special Rules 240(c) or 240(d) of the Commission's *General Rules of Practice* (49 CFR 1100.240) and shall include a concise statement of protestant's interest in the proceeding. A copy of the protest shall be served concurrently upon applicant's representative, or applicant, if no representative is named.

No. MC-F-13058. Authority sought for purchase by JOHN A. JUNGERMANN AND SON, INC., P.O. Box 428, Lindenhurst, N.Y. 11757, of a portion of the operating rights of Peak Transfer Co., Inc., 57 Hathaway Street, Wallington, N.J. 07055, and for acquisition by John G. Jungermann, 215 W. Hoffman Avenue, Lindenhurst, N.Y., 11757, of a control of such rights through the purchase. Applicants' attorney and representative: Martin Werner, 2 West 45th St., N.Y., N.Y. 10036 and Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, N.J. 08904. Operating rights sought to be transferred: *General commodities*, with exceptions as a *common carrier* over irregular routes between points in Passaic, Bergen, Essex, Union, and Hudson Counties, N.J., on the one hand, and, on the other, New York, N.Y. Under a certificate of Registration in Docket No. MC-120679 (Sub-No. 1), vendee is authorized to operate as a *common carrier* in New York. Application has not been filed for temporary authority under section 210a(b).

NOTE.—MC-120679 (Sub-No. 2) is a directly related matter.

No. MC-F-13060. Authority sought for purchase by DAGGETT TRUCK LINE, INC., Frazee, MN. 56544, of a portion of the operating rights of Johnsrud Transport, Inc., Highway 9 West, P.O. Box 447, Cresco, IA. 52136, and for acquisition by Vernon Daggett, Frazee, MN, 56544, of control of such rights through the purchase. Applicants' attorneys: Gene P. Johnson, 425 Gate City Bldg., Fargo, N.D. 58102, and Patrick E. Quinn, P.O. Box 82028, Lincoln, NB. 68501. Operating rights sought to be transferred: *Mink and calf feed* and *mink and calf feed ingredients*, except commodities in bulk, as a *common carrier* over irregular routes from New Holstein, Wis., to points in Minnesota, North Dakota, South Dakota, Iowa, Montana, Idaho, Washington, Wyoming, and Colorado, with no transportation for compensation on return except as otherwise authorized. Vendee is authorized to operate as a *contract carrier* in all points in the United States (except Alaska and Hawaii) and as a *common carrier* in North Dakota, Minnesota, Wisconsin, Idaho, and Montana. Application has been filed for temporary authority under section 210a(b).

No. MC-F-13067. Authority sought for control and merge by ROADWAY EXPRESS, INC., 1077 Gorge Blvd., P.O. Box 471, Akron, OH 44309, of Western Gillette, Inc., 2550 E. 28th Street, Los Angeles, CA 90058, and for acquisition by the Roush Voting Trust, 1077 Gorge Blvd., Akron, OH 44309, of control of Western Gillette, Inc. through the acquisition by The Roush Voting Trust. Applicants' attorneys: William O. Turney, Suite 1010, 7101 Wisconsin Ave., Washington, D.C. 20014, and Theodore W. Russell, Suite 606, 1545 Wilshire Blvd., Los Angeles, CA 90017. Operating rights sought to be controlled and merged: General commodities, with certain specified exceptions, and numerous other specified commodities, as a *common carrier*, over regular and irregular routes, from, to and between specified points in the States of California, Arizona, Texas, New Mexico, Nevada, Oklahoma, Missouri, Kansas, Illinois, Arkansas, Tennessee, Indiana, Nebraska, Iowa, Utah, Idaho, Montana, Oregon, Colorado, Wyoming, Ohio, Alabama, Florida, Louisiana, Maryland, Mississippi, Washington, Georgia, Michigan, North Dakota, Pennsylvania, South Dakota, and Vermont, with certain restrictions, serving various intermediate and off-route points, over alternate routes for operating convenience only, as more specifically described in Docket No. MC-8948 and Sub numbers thereunder. This notice does not purport to be a complete description of all of the operating rights of the carrier involved. The foregoing summary is believed to be sufficient for nature and extent of this carrier's operating rights, without stating, in full, the entirety thereof. Vendee is authorized to operate as a *common carrier* in Alabama, Arkansas, Connecticut, Delaware, The District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin. Application has been filed for temporary authority under section 210a(b).

(AMENDED) NOTICE

Star Lake Railroad Company, 80 East Jackson Boulevard, Chicago, Illinois 60604, represented by Mr. Harvey Huston, 80 East Jackson Boulevard, Chicago, Illinois 60604, hereby gives notice that on the 9th day of November, 1976, it

filed with the Interstate Commerce Commission at Washington, D.C., an amended application under section 1(18) of the Interstate Commerce Act for an order approving and authorizing the construction and operation of a line of railroad in the State of New Mexico, in McKinley and San Juan Counties, a distance of approximately 32 miles, which application is assigned Finance Docket No. 28272, and previously published in the FEDERAL REGISTER, September 23, 1976, on page 41826.

The route will begin at a connection on the existing line of The Atchison, Topeka Santa Fe Railway Company's Albuquerque Division near Baca (Railroad name for Prewitt); thence in a southeasterly direction around Haystack Mountain; thence northward for about 20 miles to the Continental Divide; thence northeasterly along the Divide for about 20 miles; thence northwesterly about 10 miles to Tucker Gap; thence north 5 miles through the Pueblo Pintado Canyon to a junction point of the line (Star Lake Junction), the right fork branching to the southeast for about 10 miles terminating in the Star Lake area of McKinley County, and the left fork from the junction branching to the northwest for about 10 miles terminating in the Gallo Wash area of San Juan County. The line will not pass through any incorporated city or village.

In the opinion of the applicant, the granting of the authority sought will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. In accordance with the Commission's regulations (49 CFR 1100.250) in Ex Parte No. 55 (Sub-No. 4), *Implementation—National Environmental Policy Act, 1969*, 352 I.C.C. 451 (1976), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See *Implementation—National Environmental Policy Act, 1969, supra*, at p. 487.

Pursuant to the provisions of the Interstate Commerce Act, as amended, the proceeding will be handled without public hearings unless comments in support or opposition on such application are filed with the Secretary, Interstate Commerce Commission, 12th and Constitution Avenue, NW., Washington, D.C. 20423, and the aforementioned counsel for applicant, within 30 days after the date of first publication in a newspaper of general circulation. Any interested person is entitled to recommend to the Commission that it approve, disapprove, or take any other specified action with respect to such amended application.

STAR LAKE RAILROAD COMPANY

OPERATING RIGHTS APPLICATIONS DIRECTLY RELATED TO FINANCE PROCEEDINGS

NOTICE

The following operating rights application(s) are filed in connection with pending finance applications under section 5(2) of the Interstate Commerce Act, or seek tacking and/or gateway elimination in connection with transfer applications under section 212(b) of the Interstate Commerce Act.

An original and two copies of protests to the granting of the authorities must be filed with the Commission on or before February 7, 1977. Such protests shall comply with Special Rule 247(d) of the Commission's *General Rules of Practice* (49 CFR 1100.247) and include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition should not be tendered at this time. A copy of the protest shall be served concurrently upon applicant's representative, or applicant if no representative is named.

Each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

No. MC 21572 (Sub-No. 3), filed December 6, 1976. Applicant: SCHIPPER'S EXPRESS, INC., 11425 Williamson Road, Cincinnati, Ohio 45241. Applicant's representative: Richard L. Goodman, 8 East Broad Street, Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over regular & irregular routes, transporting: (I) Irregular routes: *General commodities*, between Cincinnati, Ohio, on the one hand, and, on the other, points in Ohio. The purpose of this portion of the application is to convert applicant's Certificate of Registration to a Certificate of Public Convenience and Necessity. (II) Regular routes: *general commodities*, between Cincinnati, Ohio and Cleveland, Ohio: (a) From Cincinnati north over Interstate Highway 71 to Cleveland and return over the same route; (b) from Cincinnati north over Interstate Highway 71 to its junction with Interstate Highway 271, thence east over Interstate Highway 271 to its junction with Interstate Highway 77, thence north over Interstate Highway 77 to Cleveland and return over the same route; and (c) From Cincinnati north over Interstate Highway 71 to its junction with Cincinnati Highway 18, thence east over Cincinnati Highway 18 to its junction with Interstate Highway 77, thence north over Interstate Highway 77 to Cleveland and return over the same route; (2) between Cincinnati and Columbus, Ohio: (a) From Cincinnati north over Interstate Highway 71 to Columbus and return over the same route; and (b) From Cincinnati north over U.S. Highway 42 to its junction with U.S. Highway 40, (or Interstate Highway 70), thence east on U.S. Highway 40 (or Interstate Highway 70) to Columbus and return over the same route; (3) between Cincinnati, Ohio and Portsmouth, Ohio: (a) From Cincinnati east over U.S. Highway 50 to its junction with U.S. Highway 23, thence south on U.S. Highway 23 to Portsmouth and return over the same route.

(b) From Cincinnati east over Cincinnati Highway 32 to its junction with Cincinnati Highway 247, thence south on Cincinnati Highway 247 to its junction with Cincinnati Highway 125, thence east on Cincinnati Highway 125 to its junction with U.S. Highway 52, thence east on U.S. Highway 52 to Portsmouth and return over the same route; (c) From Cincinnati east over Cincinnati Highway 125 to its junction with U.S. Highway 52, thence east on U.S. Highway 52 to Portsmouth and return over the same route; (d) From Cincinnati east over U.S. Highway 52 to Portsmouth and return over the same route; (e) From Cincinnati east over Cincinnati Highway 125 to its junction with U.S. Highway 68, thence south over U.S. Highway 68 to its junction with Cincinnati Highway 353, thence east over Cincinnati Highway 353 to its junction with Cincinnati Highway 125, thence east over Cincinnati Highway 125 to its junction with U.S. Highway 52, thence east on U.S. Highway 52 to Portsmouth and return over the same route; and (f) From Cincinnati east over U.S. Highway 22 to its junction with U.S. Highway 23, thence south over U.S. Highway 23 to Portsmouth and return over the same route; (4) between Cincinnati and Toledo, Ohio: From Cincinnati north over Interstate Highway 75 to Toledo and return over the same route; (5) between Columbus and Circleville, Ohio: From Columbus south over U.S. Highway 23 to Circleville and return over the same route; (6) between Cincinnati and Circleville, Ohio: (a) From Cincinnati north over U.S. Highway 22 to Circleville and return over the same route; (b) From Cincinnati north over Interstate Highway 71 to its junction with U.S. Highway 35, thence east over U.S. Highway 35 to its junction with U.S. Highway 22, thence east over U.S. Highway 22 to Circleville, and return over the same route; and (c) From Cincinnati north over Interstate Highway 71 to its junction with Cincinnati Highway 73; thence east over Cincinnati Highway 73 to its junction with U.S. Highway 22, thence east on U.S. Highway 22 to Circleville and return over the same route; (7) between Cleveland, and Ravenna, Ohio: From Cleveland south over Cincinnati Highway 14 to Ravenna and return over the same route; (8) between Cincinnati and Ravenna, Ohio.

(a) From Cincinnati north over Interstate Highway 71 to its junction with Interstate Highway 76, thence east over Interstate Highway 76 to its junction with Cincinnati Highway 44, thence north over Cincinnati Highway 44 to Ravenna and return over the same route; (b) From Cincinnati north over Interstate Highway 71 to its junction with U.S. Highway 30, thence east over U.S. Highway 30 to its junction with Interstate Highway 77, thence north over Interstate Highway 77 to its junction with Interstate Highway 76, thence east on Interstate Highway 76 to its junction with Cincinnati Highway 44, thence north over Cincinnati Highway 44 to Ravenna and return over the same route; (9) between Cincinnati, and Dayton, Ohio: (a) From Cincinnati north over Interstate Highway 75 to Dayton and return over the same route; (b) From Cincinnati north over U.S. Highway 42 to its junction with U.S. Highway 35, thence west over U.S. Highway 35 to

Dayton and return over the same route; (c) From Cincinnati north over Cincinnati Highway 4 to Hamilton, Ohio, thence continuing north over Cincinnati Highway 4 to Middletown, thence north over Cincinnati Highway 4 to Dayton and return over the same route; (d) From Cincinnati north over Cincinnati Highway 4 to Hamilton, Ohio, thence continuing north over Cincinnati Highway 4 to Middletown, thence north over Cincinnati Highway 73 to its junction with Interstate Highway 75, thence north over Interstate Highway 75 to Dayton and return over the same route; (e) From Cincinnati north on U.S. Highway 127 to Hamilton, thence north over Cincinnati Highway 4 to Middletown, thence east over Cincinnati Highway 73 to Franklin, thence north over Interstate Highway 75 to Dayton and return over the same route.

(f) From Cincinnati north over Interstate Highway 75 to its junction with Cincinnati Highway 122, thence west over Cincinnati Highway 122 to Middletown, Ohio, thence north over Cincinnati Highway 4 to Germantown, Ohio, thence west over Cincinnati 725 to Gratis, Ohio, thence north over Cincinnati Highway 122 to Eaton, Ohio, thence north over U.S. Highway 127 to Celina, Ohio, thence east over U.S. Highway 33 to its junction with Cincinnati Highway 66, thence south over Cincinnati Highway 66 to its junction with Interstate Highway 75, thence south over Interstate Highway 75 to Dayton and return over the same route; and (g) From Cincinnati north over Interstate Highway 75 to its junction with Cincinnati Highway 122, thence west over Cincinnati Highway 122 to Middletown, Ohio, thence north over Cincinnati Highway 4 to Germantown, Ohio, thence west over Cincinnati Highway 725 to Gratis, Ohio, thence north over Cincinnati Highway 122 to Eaton, Ohio, thence north over U.S. Highway 127 to Celina, Ohio, thence east over U.S. Highway 33 to Wapakoneta, Ohio, thence south over Interstate Highway 75 to Dayton and return over the same route; (10) between Xenia, and Fairborn, Ohio: From Xenia north over Cincinnati Highway 235 to Fairborn and return over the same route; (11) between Xenia, Ohio and Springfield, Ohio: From Xenia north over U.S. Highway 68 to Springfield and return over the same route; (12) between Cincinnati and Lebanon, Ohio: From Cincinnati north over U.S. Highway 42 to Lebanon and return over the same route; and (b) From Cincinnati west over Interstate Highway 275 to its junction with Cincinnati Highway 128, thence north over Cincinnati Highway 128 to its junction with U.S. Highway 27, thence north over U.S. Highway 27 to its junction with Cincinnati Highway 73, thence east over Cincinnati Highway 73 to its junction with U.S. Highway 127, thence north over U.S. Highway 127 to Eaton, Ohio, thence south over U.S. Highway 127 to its junction with U.S. Highway 73, thence east over U.S. Highway 73 to its junction with U.S. Highway 42, thence south over U.S. Highway 42 to Lebanon and return over the same route; (13) between Cincinnati and Lima, Ohio: From Cincinnati north on Interstate Highway 75 to Lima and return over the same route, serving the off-route points in Mason, Monroe, Lebanon, Middletown, Franklin, Miamisburg, West Carrollton, Vandalia, Tipp City, Troy, Piqua, Sidney, and Wapakoneta; (14) between Cincinnati and Sidney, Ohio.

(a) From Cincinnati north over Interstate Highway 75 to Sidney and return over the same route; and (b) From Cincinnati north over Interstate Highway 75 to its junction with U.S. Highway 40, thence east over U.S. Highway 40 to Springfield, Ohio, thence north over U.S. Highway 68 to Bellefontaine, Ohio, thence west over Cincinnati Highway 47 to Sidney and return over the same route; (15) between Cincinnati and Piqua, Ohio: (a) From Cincinnati north over Interstate Highway 75 to Piqua and return over the same route; and (b) From Cincinnati north over Interstate Highway 75 to its junction with U.S. Highway 40, thence east over U.S. Highway 40 to Springfield, Ohio, thence north on U.S. Highway 68 to Urbana, Ohio, thence west on U.S. Highway 36 to Piqua and return over the same route; (16) between Cincinnati, and Fremont, Ohio: (a) From Cincinnati north over Interstate Highway 75 to Findlay, Ohio, thence east over Cincinnati Highway 12 to its junction with Cincinnati Highway 53, thence north over Cincinnati Highway 53 to Fremont and return over the same route; (b) From Cincinnati north over Interstate Highway 75 to its junction with Cincinnati Highway 18, thence west over Cincinnati Highway 18 to its junction with Cincinnati Highway 65, thence north over Cincinnati Highway 65 to its junction with U.S. Highway 6, thence east over U.S. Highway 6 to Fremont and return over the same route; (c) From Cincinnati north over Interstate 75 to Lima, Ohio, thence north over Cincinnati Highway 65 to Ottawa, Ohio, thence north over Cincinnati Highway 109 to Hamler, Ohio, thence east over Cincinnati Highway 18 to its junction with Cincinnati Highway 65, thence north over Cincinnati Highway 65 to its junction with U.S. Highway 6, thence east over U.S. Highway 6 to Fremont and return over the same route; and (d) From Cincinnati north over Interstate Highway 71 to Columbus, Ohio, thence north over U.S. Highway 23 to Fostoria, Ohio, thence east over Cincinnati Highway 12 to its junction with Cincinnati Highway 53, thence north over Cincinnati Highway 53 to Fremont and return over the same route.

(17) between Cincinnati, Ohio and Bellefontaine, Ohio; (a) From Cincinnati north over Interstate Highway 75 to its junction with Cincinnati Highway 47, thence east over Cincinnati Highway 47 to Bellefontaine, and return over the same route; (b) From Cincinnati north over Interstate Highway 75 to Dayton, Ohio, thence north over Cincinnati Highway 4 to its junction with U.S. Highway 68, thence north over U.S. Highyaw 68 to Bellefontaine and return over the same route; and (c) From Cincinnati north over Interstate Highway 71 to its junction with Interstate Highway 270, thence north over Interstate Highway 270 to its junction with U.S. Highway 33, thence north over U.S. Highway 33 to its junction with Cincinnati Highway 540, thence west over Cincinnati Highway 540 to Bellefontaine and return over the same route; and (18) between Cincinnati, and Wapakoneta, Ohio: (a) From Cincinnati north over Interstate Highway 75 to its junction with U.S. Highway 36, thence east over U.S. Highway 36 to Urbana, Ohio, thence north over U.S. Highway 68 to Bellefontaine, Ohio, thence west over U.S. Highway 33 to Wapakoneta and return over the same route; and (b) From Cincinnati north over Interstate Highway 75 to Wapakoneta and return over the same route. On all routes, (1) through (18) above, serving all intermediate points. The purpose of this portion of the application is to convert a portion of the above irregular route authority to regular routes.

NOTE.—This is a matter directly related to a Section 5(2) finance proceeding in MC-F-13039 published in the FEDERAL REGISTER issue of December 16, 1976. If a hearing is deemed necessary, the applicant requests it be held at Columbus, Ohio.

No. MC 68860 (Sub-No. 23), filed November 23, 1976. Applicant: RUSSELL TRANSFER, INCORPORATED, 444 Glenmore Drive, Salem, Va. 24153. Applicant's representative: Daniel B. Johnson, 1123 Munsey Building, 1329 E Street, N.W., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except classes A and B explosives, household goods, commodities in bulk, and commodities which because of size and weight require the use of special equipment), (1) between points in Kanawha County, W. Va., on the one hand, and, on the other, points in West Virginia; and (2) between Roanoke, Va., on the one hand, and, on the other, points in West Virginia.

NOTE.—The purpose of this application is to convert a Certificate of Registration to a Certificate of Public Convenience and Necessity. Applicant also seeks to eliminate the Kanawha County gateway so as to provide a through service between Roanoke, Va., on the one hand, and, on the other, points in West Virginia. This is a matter directly related to a Section 5(2) finance proceeding in MC-F-13042, published in the FEDERAL REGISTER issue of December 16, 1976. If a hearing is deemed necessary, the applicant requests it be held at Roanoke, Va.

No. MC 95336 (Sub-No. 8), filed December 3, 1976. Applicant: J. B. WILLIAMS EXPRESS, INC., 120 Apollo Street, Brooklyn, N.Y. 11222. Applicant's

representative: Bruce J. Robbins, One Lefrak City Plaza, Flushing, N.Y. 11368. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *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), (a) between points in Essex, Hudson and Union Counties, N.J., and those in that part of Middlesex County, N.J., on the one hand, and, on the other, New York and Yonkers, N.Y., and points in Nassau County, N.Y. The purpose of this filing is to eliminate the gateway of New York, N.Y. (b) between New York and Yonkers, N.Y., and points in Nassau County, N.Y., on the one hand, and, on the other, New York, N.Y., Philadelphia, Pa., and Camden, N.J. The purpose of this filing is to eliminate the alternate gateways of Essex, Hudson, Union and Middlesex Counties, N.J. (2) *general commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, livestock, commodities in bulk and commodities requiring special equipment), between New York and Yonkers, N.Y., and points in Nassau County, N.Y., on the one hand, and, on the other, New York, N.Y., and points in Nassau, Orange, Westchester, Putnam, Dutchess, Rockland, Ulster, Sullivan and Delaware Counties, N.Y., and those in Fairfield County, Conn. and Berks, Lehigh and Northampton Counties, Pa. The purpose of this filing is to eliminate the alternate gateways of Union or Middlesex Counties, N.J.

NOTE.—This is a matter directly related to a section 5(2) finance proceeding in MC-F-13050 published in the FEDERAL REGISTER issue of December 23, 1976. If a hearing is deemed necessary, the applicant requests it be held at New York, N.Y.

ABANDONMENT APPLICATIONS

NOTICE OF FINDINGS

Notice is hereby given pursuant to section 1a(6)(a) of the Interstate Commerce Act that orders have been entered in the following abandonment applications which are administratively final and which found that subject to conditions the present and future public convenience and necessity permit abandonment.

A Certificate of Abandonment will be issued to the applicant carriers on or before February 7, 1977, unless the instructions set forth in the notices are followed.

[Docket No. AB-26 (Sub-No. 9)]

SOUTHERN RAILWAY COMPANY ABANDONMENT OF OPERATIONS BETWEEN ATLANTA JUNCTION, GA., AND PIEDMONT, ALA.

NOTICE OF FINDINGS

Notice is hereby given pursuant to section 1a(6)(a) of the Interstate Commerce Act (49 U.S.C. 1a(6)(a)) that by an order entered on June 2, 1976, and the decision and order of the Commission, Division 3, served November 29, 1976, which affirmed and adopted the initial decision of the Administrative Law Judge entered on June 2, 1976, a finding, which is administratively final, was made stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in Chicago, B. & Q. R. Co., Abandonment, 257 I.C.C. 700, the present and future public convenience and necessity permit the abandonment of branch-line operations by the Southern Railway Company over its line of railroad in Floyd and Polk Counties, Georgia, and Cherokee and Calhoun Counties, Alabama, extending from milepost 0.0 south of Rome, Georgia, known as Atlanta Junction, Georgia, to milepost 35.8-N near Piedmont, Alabama, a distance of 35.8 miles. A certificate of abandonment will be issued to the Southern Railway Company based on the above-described finding of abandonment, on or before February 7, 1977, unless on or before February 7, 1977, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the FEDERAL REGISTER on March 31, 1976, at 41 FR 13691. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced order.

[Docket No. AB-55 (Sub-No. 3)]

SEABOARD COAST LINE RAILROAD COMPANY ABANDONMENT BETWEEN MALMO AND WHITEVILLE, NORTH CAROLINA

NOTICE OF FINDINGS

Notice is hereby given pursuant to section 1a(6)(a) of the Interstate Commerce Act (49 U.S.C. 1a(6)(a) that by order entered on October 26, 1976, a finding, which is administratively final, was made by the Administrative Law Judge, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in Chicago, B. & Q. R. Co., Abandonment, 257 I.C.C. 700, the present and future public convenience and necessity permit the abandonment by the Seaboard Coast Line Railroad Company of its line of railroad lying between Whiteville, Columbus County, North Carolina, and Malmo, Brunswick County, North Carolina, extending 32.18 miles from milepost 256.82 to milepost 289.60. A certificate of abandonment will be issued to the Seaboard Coast Line Railroad Company based on the above-described finding of abandonment, on or before February 7, 1977, unless on or before February 7, 1977, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the FEDERAL REGISTER on March 31, 1976, at 41 FR 13691. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced order.

MOTOR CARRIER ALTERNATE ROUTE DEVIATIONS

NOTICE

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the

Commission under the Deviation Rules—Motor Carrier of Property (49 CFR 1042.4(c)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed on or before February 7, 1977.

Each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its request.

MOTOR CARRIERS OF PROPERTY

No. MC 52953 (Deviation No. 21), ET&WNC TRANSPORTATION COMPANY, 132 Legion St., Johnson City, Tenn. 37601, filed December 23, 1976. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Monroe, La., over Interstate Highway 20 to Dallas, Tex., and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: From Monroe, La., over U.S. Highway 165 to Bastrop, La., thence over Louisiana Highway 139 to Louisiana-Arkansas state line, thence over Arkansas Highway 81 to junction U.S. Highway 65, thence over U.S. Highway 65 to Pine Bluff, Ark., thence over U.S. Highway 270 to junction Interstate Highway 30, thence over Interstate Highway 30 to Dallas, Tex., and return over the same route.

MOTOR CARRIER ALTERNATE ROUTE DEVIATIONS

NOTICE

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Passengers (49 CFR 1042.2(c)(9)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed on or before February 7, 1977.

Each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its request.

MOTOR CARRIERS OF PASSENGERS

No. MC 55312 (Deviation No. 8), CONTINENTAL TENNESSEE LINES, INC., 418 50th Avenue South, Nashville, Tenn. 37203, filed December 21, 1976. Carrier's representative: D. Paul Stafford, 1500 Jackson St., Suite 422, Dallas, Tex. 75201. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage*, and *express* and *newspapers* in the same vehicle with passengers, over a deviation route as follows: From Shepherdsville, Ky., over Interstate Highway 65 to junction Tennessee Highway 25, thence over Tennessee Highway 25 to junction U.S. Highway 31E at Gallatin, Tenn., and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property over a pertinent service route as follows: From Shepherdsville, Ky., over Kentucky Highway 61 to Boston, Ky., thence over U.S. Highway 62 to Leitchfield, Ky., thence over Kentucky Highway 259 to junction U.S. Highway 31W, thence over U.S. Highway 31W to junction Kentucky Highway 101, thence over Kentucky Highway 101 to Scottsville, Ky., thence over U.S. Highway 31E to Gallatin, Tenn., and return over the same route.

MOTOR CARRIER INTRASTATE APPLICATION(S)

NOTICE

The following application(s) for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act. These applications are governed by Special Rule 245 of the Commission's General Rules of Practice (49 CFR 1100.245), which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, and any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

Kansas Docket No. 7384M, filed December 21, 1976. Applicant: FRANCIS J. GORRELL, doing business as TOPLIFF TRUCK LINE, 746 North Santa Fe, Salina, Kans. 67401. Applicant's representative: Paul V. Dugan, 2707 West Douglas, Wichita, Kans. 67213. Certificate of Public Convenience and Necessity sought to operate a freight service as follows: Transportation of (1) *General commodities:* (except those of unusual value, and household goods as defined by the Interstate Commerce Commission and Classes A and B explosives), (a) to, from, and between Salina, Kansas, on the one hand, and Montrose, Kansas, on the other hand, serving the intermediate points of Rydal, Scandia, Courtland, Formosa, and the off-route points of Esbon, Kackley and Norway, Kans., (b) from the intersection of U.S. 81 and U.S. 24, on present authorized route, north over U.S. 81 to the intersection of U.S. 81 and U.S. 36; thence west over U.S. 36 to the intersection of U.S. 36 and Kansas 181, thence south over Kansas 181 to U.S. 24 on present authority route, and return over the same route; (c) also as alternate routes for operating conveniences only; from U.S. 36 south over Kansas 14 to U.S. 24 on present route and return over same route and; (d) from U.S. 36 south over Kansas 128 to U.S. 24 on present authorized route and return over some route. II. *General commodities:* (except those of unusual value, and household goods as defined by the Interstate Commerce Commission and Classes A and B explosives), (a) to, from, and between Salina, Kansas, on the one hand, and Barnard and Ada, Kansas, on the other hand; From Salina, Kans., north on U.S. 81 to the junction of Kansas 93, thence west to Minneapolis, Kans., thence west on unnumbered county road to the junction of Kansas Highway 14 and return over same route. Intrastate, interstate and foreign commerce authority sought. Hearing: Date, time and place scheduled for Thursday, February 3, 1977, at 10 a.m. at the District Court Conference Room, Saline County Courthouse, 300 West Ash Street, Salina, Kans. Requests for procedural information should be addressed to the Kansas State Office Building, Topeka, Kans. and should not be directed to the Interstate Commerce Commission.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-378 Filed 1-5-77;8:45 a.m.]

federal register

THURSDAY, JANUARY 6, 1977

PART II

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

■

MILK IN DES MOINES, IOWA AND CERTAIN OTHER AREAS

Tentative Marketing Agreement and Orders; Recommended Decision and Opportunity to File Exceptions

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 1063, 1070, 1078, and 1079]

[Docket No. AO-295-A32, etc.]

MILK IN THE DES MOINES, IOWA AND CERTAIN OTHER MARKETING AREAS

Notice of Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

7 CFR part	Marketing area	Docket No.
1079	Des Moines, Iowa	AO-295-A32
1070	Cedar Rapids-Iowa City	AO-229-A32
1078	North central Iowa	AO-272-A27
1061	Quad Cities-Dubuque	AO-105-A43

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in the aforesaid marketing areas.

Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250, on or before January 26, 1977. The exceptions should be filed in quadruplicate. 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 Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

PRELIMINARY STATEMENT

The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreements and to the orders as amended, were formulated, was conducted at Des Moines, Iowa, on March 29 to April 2, 1976, pursuant to notice thereof which was issued on March 9, 1976 (41 FR 10612).

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

1. Whether the handling of milk produced for sale in the proposed merged marketing area is in the current of interstate commerce, or directly burdens, obstructs, or affects interstate commerce in milk or its products;

2. Whether the aforesaid marketing areas should be included under one order;

3. Whether any proposed marketing area should be expanded to include additional territory in the States of Iowa, Illinois, and Missouri; and

4. The appropriate provisions of any proposed merged order with respect to:

(a) Milk to be priced and pooled;

(b) Classification of milk;

(c) Class prices, location adjustments, and the butterfat differential;

(d) Distribution of proceeds to producers; and

(e) Administrative provisions.

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. *Character of commerce.* The handling of milk in the proposed Iowa marketing area is in the current of interstate commerce and directly burdens or affects interstate commerce in milk and milk products.

The proposed marketing area, designated the "Iowa marketing area," will include the present marketing areas of Orders 63 (Quad Cities-Dubuque), 70 (Cedar Rapids-Iowa City), 78 (North Central Iowa), and 79 (Des Moines, Iowa), and 22 other Iowa counties between or adjacent to these four marketing areas.

Milk procurement in this area crosses state boundaries. During 1975, handlers regulated by the Quad Cities-Dubuque order procured milk in Iowa, Minnesota, Illinois, and Wisconsin; handlers regulated under the Cedar Rapids-Iowa City order procured milk in Iowa and Minnesota; handlers regulated under the North Central Iowa order procured milk in Iowa, Minnesota, and Illinois; and handlers regulated under the Des Moines order procured milk in Iowa, Minnesota, Illinois, Wisconsin, and Missouri.

Handlers regulated under the Iowa orders dispose of fluid milk products in neighboring states. Similarly, handlers regulated under Federal orders in neighboring states dispose of fluid milk products in each of the Iowa marketing areas. In addition to the Interstate movements of bulk milk or packaged fluid milk products, there are numerous manufacturing plants within the proposed marketing area that produce manufactured dairy products for sale in other states.

2. *Need for merger of orders.* Marketing conditions in the four separately regulated marketing areas under consideration justify merger of the orders regulating the handling of milk in these areas.

Federal regulation of milk marketing in the Iowa area was first initiated on October 1, 1936, with the establishment of the Dubuque, Iowa, order. The Quad Cities order was established in 1940, followed by the Clinton, Iowa, order in 1944. These three markets were merged into the Quad Cities-Dubuque order on January 1, 1961. The marketing area was expanded to include the Illinois counties of Mercer and Henry on February 1, 1965.

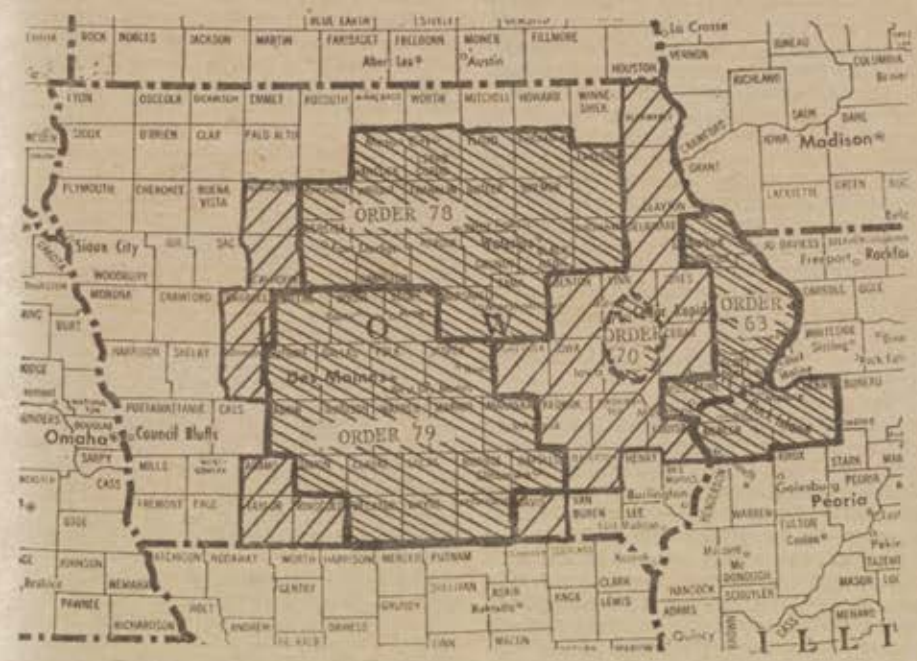
The Cedar Rapids-Iowa City order became effective on September 1, 1951. The marketing area has remained unchanged since its inception.

The North Central Iowa order became effective on November 1, 1957. The marketing area was expanded on December 1, 1959 and has not been modified since that time.

The Des Moines order was promulgated on October 1, 1958. The marketing area has not been changed since then.

The present marketing areas of the four Iowa orders and the proposed merged and expanded Iowa marketing area are shown on the following map.

PROPOSED IOWA MARKETING AREA



The merger of all four markets was proposed by Associated Milk Producers, Inc. (AMPI), Land O'Lakes, Inc. (LOL), Mid-America Dairymen, Inc. (MID-AM), Mississippi Valley Milk Producers Association (MVMPA), and National Farmers Organization (NFO). These cooperative associations represent producers supplying milk to one or more of the four Iowa orders.

There was no opposition expressed to merging the four markets.

The basic reasons given by proponents for merging the several orders include the following: (a) Overlap of Class I distribution, (b) overlap of procurement areas; and (c) changes in market structure and inaccessability of markets to producer groups seeking to supply those markets.

A. *Overlap of Class I distribution.* The range of distribution by regulated handlers has expanded greatly since these four orders were promulgated. The reasons for this expansion are varied, but generally can be attributed to the spread of urbanized areas, better roads, improved technology, economies of large scale operation, and reciprocity of health standards.

As handlers have extended their range of distribution, they have increasingly disposed of fluid milk products in the marketing areas of neighboring orders. In October 1795, only 52 percent of the packaged fluid milk products disposed of in the Order 63 marketing area came from handlers fully regulated under that order. Eighteen percent of the sales came from handlers regulated under Orders 70, 78, or 79, and the remaining 30 percent came from handlers regulated under the Chicago Regional order (Order 30), the St. Louis-Ozarks order (Order 62), the Central Illinois order (Order 50), the Southeastern Minnesota-Northern Iowa order (Order 61), and the Southern Illinois order (Order 32).

In the Cedar Rapids-Iowa City market, 68 percent of the packaged fluid milk products sold on routes during October 1975 were disposed of by handlers fully regulated under Order 70. Eighteen percent of the sales were made by handlers regulated under Orders 63 and 79, while the remaining 14 percent were made by handlers regulated under Orders 30, 50, and 61.

During the same month, only 45 percent of the fluid milk products sold on routes in the North Central Iowa marketing area were made by handlers regulated under Order 78. Forty percent of the sales were made by handlers regulated under Orders 63, 70, and 79, and the remaining sales were made by handlers regulated under Orders 61 and 65 (Nebraska-Western Iowa).

In the Des Moines market, 87 percent of the packaged fluid milk products sold on routes came from fully regulated Order 79 handlers during March 1975. Five percent of the sales came from handlers regulated under Orders 63, 70, and 78, and the remaining 8 percent came from handlers regulated under Orders 30, 61, 64 (Kansas City), and 65.

The above figures indicate a substantial overlap of Class I route disposition by handlers regulated by each of the four Iowa orders. They illustrate that the four regulated areas have lost their identity as distinct markets and actually constitute one marketing area.

Producers supplying a common marketing area should receive a common uniform price. As shown later, however, this has not been the case under the four separate orders. Merger of the four markets will allow all producers supplying the single Iowa marketing area to share equally in the returns generated by that market.

B. *Overlap of procurement areas.* The procurement area for the four Iowa markets is largely confined to three crop reporting districts—the southern district in Minnesota and the northeastern and east central districts in Iowa. In December 1975, these three districts provided about 92 percent of the milk pooled under Order 63, 95 percent of the milk under Order 70, 79 percent of the milk under Order 78, and 52 percent of the milk under Order 79. The northeastern Iowa district alone, which consists of a block of 11 counties, accounted for 62 percent of the producer milk on Order 63, 60 percent of the milk on Order 70, 50 percent of the milk on Order 78, and 35 percent of the milk on Order 79. All of the proponent cooperative associations have member producers in this district.

When similarly located producers receive different prices for their milk, orderly marketing is threatened. Such circumstances could result in a cooperative providing services at below cost to a handler to get its member producers pooled on a particular market. (This would mean, in turn, non-uniform prices to handlers.) It could also result in changes in cooperative affiliation simply for the purpose of getting in a particular pool, or it could mean payments by one cooperative to another for the privilege of using the latter's pool plant as a pooling base. Fortunately, these things have not yet occurred to any great extent in the Iowa markets, although the potential for such disruption is certainly present.

Of the 19 cooperatives operating in the four Iowa markets in January 1976, five had producers on at least two of the markets. Three of these five cooperatives have more producer milk pooled on these four markets than the remaining 11 cooperatives combined. Because these larger cooperatives have followed a prac-

tice of "reblending" returns to their producers, they have been able to mitigate differences in order uniform prices by paying their producers a price that is competitive with that paid by other cooperatives in a particular area. The fact that such reblending has been taking place is evidence that the four separate marketing areas, in actuality, are not separate markets for different groups of producers. It is clear that orderly marketing can best be insured for the future by effecting uniform prices to producers supplying these markets by merging the four markets into a single marketing area.

C. *Market structure and accessibility.* Substantial changes in the operations of milk handlers and cooperative associations have modified the marketing of milk in the Iowa markets. These changes, which have been virtually continuous over the past 15 years (1960–1975), have affected dairy farmers' participation in the returns for milk priced under these orders.

One such change is the number of pool distributing plants. Fluid milk processing plants in these markets have become fewer in number, but generally larger in capacity. The decline in number of plants is shown in the following table:

TABLE 1.—*Pool distributing plants, 4 orders, December 1960, 1970, and 1975—Number of pool distributing plants*

	December—		
	1960	1970	1975
Order No.:			
63	19	12	7
70	5	3	3
78	32	6	3
79	21	12	8
Total	77	33	21

The Iowa markets are somewhat unique in that in each of these markets a major pool distributing plant is owned by a cooperative association. Land O' Lakes operates a distributing plant located at Cedar Rapids that is regulated under Order 63; Mid-America Dairymen, Inc., operates Home Town Dairies, Inc., which is located at Iowa City and regulated by Order 70; Mississippi Valley Milk Producers Association operates Carnation Fresh Milk at Waterloo, Iowa, which is regulated by Order 78; and Prairie Farms Dairy, Inc., operates Flynn Dairy, which is located at Des Moines and regulated by Order 79.

It is noteworthy that, while three of the major cooperatives have guaranteed entry ot the respective markets through such plants, they nevertheless have proposed merging the markets in the interest of stability and orderly marketing.

The instability that can result from the separate markets is evident by the shifts in regulation of plants from one market to another in response to slight shifts in sales patterns. From January 1971 through December 1975, for example, the Land O'Lakes plant at Cedar Rapids was regulated, in succession, for 4 months under Order 63, 4 months under Order 78, 6 months under Order 63, 5 months under Order 78, 10 months under Order 63, 2 months under Order 78, 22 months under Order 63, one month under Order 78, and 6 months under Order 63. The Mid-America supply plant at Marion, Iowa, was regulated, in succession, for 7 months under Order 70, one month under Order 79, one month under Order 70, 4 months under Order 63, 2 months under Order 70, one month under 63, one month under Order 70, 2 months under Order 63, 8 months under Order 70, 2 months under Order 63, one month under Order 70, 2 months under Order 63, and 28 months under Order 70. Another Mid-America supply plant, at Sully, Iowa, has been regulated under all four Iowa orders at various times from 1971 through 1975.

These shifts in regulation demonstrate the small size of the markets involved to the increasingly widespread distribution of sales by handlers. It is, indeed, unusual for a plant located in one marketing area—the Land O'Lakes plant at Cedar Rapids—to be alternately regulated in two other marketing areas. The shifts in regulation also underscore the common procurement area for these markets, which is evident by the fact that a single supply plant has at various times supplied enough milk to each of the four markets to be regulated under each order.

With the major distributing plants under Orders 63, 70, and 78 operated by cooperative associations, the access to these markets by other cooperatives has been limited. As a result, in December 1975, there were only 3 co-ops marketing milk under Order 70, 3 co-ops marketing milk under Order 63, and 6 co-ops marketing milk under Order 78. By contrast, there were 12 co-ops marketing milk under Order 79 in December 1975. Although Prairie Farms Dairy, Inc., a cooperative, operates a large distributing plant under Order 79, it relies on other cooperatives to furnish a supply of milk.

While a merged order will not necessarily increase access to the cooperatives' pool distributing plants, it will, in combination with the pooling standards adopted herein, provide greater access to the market as a whole and will allow more equitable sharing of the returns available from the four separate markets.

Market structure and marketing practices are important in evaluating the effect of separate order regulations compared to a single order for the entire area. This is illustrated in the comparison of the proportions of milk supplies used in Class I in the several order markets. Specifically, in the Cedar Rapids-Iowa City and North Central Iowa markets, there is a substantially higher proportion of milk supplies used in Class I than in the other two markets, as shown in Table 2.

TABLE 2.—*Class I utilization percentage Iowa orders, 1971–75*

	Order—				Combined
	63	70	78	79	
1971	54	61	66	54	57
1972	48	81	64	53	56
1973	55	85	81	52	59
1974	52	65	88	49	55
1975	46	62	79	50	54
Average	51	71	76	52	56

Orders 70 and 78, which in each case had only three pool distributing plants in December 1975 compared to 7 and 8 for Orders 63 and 79, experienced significantly higher Class I utilizations than did Orders 63 and 79. This reflects the limited access to these two markets. In the case of Order 78, which is an individual handler pool, it also reflects each handler's incentive to keep reserve milk supplies to a minimum, thereby maintaining a high Class I utilization and a high uniform price to his producers. (In an individual handler pool market, each handler pays producers a uniform price based on the utilization in his plant, rather than the market's average utilization value.)

The effect of different Class I utilizations on returns to producers under the four orders is manifested through the uniform price. The average uniform prices for the years 1971 through 1975 for the four orders are shown in Table 3.

TABLE 3.—*Average uniform price, Iowa orders, 1971–75*

	Order—			
	63	70	78 [1]	79
1971	5.48	5.67	5.63	5.61
1972	5.68	6.08	5.84	5.83
1973	6.79	7.10	6.98	6.86
1974	7.82	8.00	8.37	7.88
1975	8.10	8.21	8.35	8.21
Average	6.77	7.01	7.03	6.88

[1] Uniform prices shown are weighted average of all handlers.

Even though the Class I differentials of Orders 70 and 78 are only $1.33 and $1.25, respectively, compared to $1.40 and $1.33 for Orders 79 and 63, the uniform prices of Orders 70 and 78 have generally been significantly higher than the uniform prices of Orders 63 and 79. This is due to the higher Class I utilizations of these markets.

The uniform price differences among the four orders have not been conducive to orderly marketing. The four orders in their present form have failed to provide dairy farmers with the opportunity to share equally in market returns, even though the bulk of the Grade A milk pooled is situated in the same general area and is available to all of the four markets.

The aforementioned overlap in Class I distribution, the overlap in procurement area, and the inability of producers in

this area to share equally in the returns from this common sales and procurement area indicate a need for modification of the form of order regulations. The separate regulations for Orders 63, 70, 78, and 79 are not achieving a proper distribution of returns from these markets among the milk supplies immediately to them. As a result, there are disparities in conditions affecting producers marketing their milk under the several orders which will likely result in disorderly marketing conditions if the orders are maintained in their present form. Since roughly half of the milk in Iowa is still manufacturing grade milk, the situation will become increasingly severe as producers of manufacturing grade milk convert to Grade A and seek a market outlet.

Producers can be expected to sell their milk on that market which returns the highest price. In the Iowa markets, this has not been possible because there are certain barriers to market entry. These barriers include: (1) The limited number of pool distributing plants through which to pool milk (especially in the Cedar Rapids-Iowa City and North Central Iowa markets); (2) the fact that cooperative associations operate most of the major pool distributing plants; (3) the individual handler pool in the North Central Iowa market (which discourages the pooling of reserve milk supplies because that results in a lower uniform price for the handler pooling the milk); (4) traditional supply patterns (which impede entry of new cooperative associations on the market); and (5) the pooling standards now in the separate orders (which, of necessity, limit the pooling of milk to that milk associated with distributing plant outlets in the respective markets).

Merger of the four orders will remove the basic problem of nonuniform sharing of market proceeds among all of the Grade A producers in this area. It will also promote greater efficiency in the moving and handling of milk. Present efforts of cooperative associations and handlers to pool on these markets the milk produced in associated production areas have, at times, involved movements unrelated to economical supply systems for a particular market. This is particularly true in the case of supplies moved to more distant markets for lack of a pooling outlet in Iowa. In conjunction with the pooling standards adopted herein, the merged order will provide a broader base for pooling Grade A milk supplies produced within and close to the proposed marketing area and will reduce uneconomic milk handling resulting from cooperatives attempting to maintain or adjust levels of Class I utilization in individual markets.

3. *Additional territory to be regulated.* The merged Iowa marketing area should include additional unregulated territory comprised of 22 Iowa counties, including Linn and Johnson Counties, part of which are now regulated.

AMPI, LOL, MID-AM, and MVMPA (hereinafter referred to as Proponent No. 1) proposed the inclusion of 18 unregulated counties (including Linn and Johnson). The territory extends from Clayton County in northeastern Iowa to the Missouri border and includes the counties of Clayton, Delaware, Benton, Linn, Jones, Poweshiek, Iowa, Johnson, Cedar, Keokuk, Washington, Louisa, Jefferson, Henry, Des Moines, Davis, Van Buren, and Lee.

NFO also proposed inclusion of these 18 counties and also Allamakee County in northeastern Iowa. In addition, NFO proposed inclusion of 12 counties to the west of Orders 78 and 79. These counties include Dickinson, Emmet, Clay, Palo Alto, Buena Vista, Pocahontas, Calhoun, Carroll, Audubon, Adams, Taylor, and Ringgold. At the hearing, NFO suggested that Dickinson, Emmet, Clay, and Palo Alto Counties should not be included in the Iowa marketing area but should be reserved for inclusion in the Nebraska-Western Iowa marketing area or any merged order including that market. However, in its brief, NFO stated that these four counties should be included in the Iowa marketing area.

A third proposal regarding marketing area was submitted by Beatrice Foods Company. Beatrice proposed adding 13 unregulated Iowa counties, 18 unregulated northeastern Missouri counties, and Adams County, Illinois, to the merged marketing area. However, no spokesman for Beatrice appeared at the hearing to support this proposal when it came up on the agenda, and the Administrative Law Judge ruled the proposal abandoned. The Iowa counties proposed by Beatrice were proposed and supported by the other merger proponents at the hearing. No other parties proposed or supported inclusion of the other territory proposed by Beatrice, but several handlers went on record as opposing any such proposal.

Fifteen of the 19 unregulated Iowa counties to the east of Orders 78 and 79 should be included in the merged marketing area. These counties include all all of those proposed at the hearing with the exception of Lee, Des Moines, Van Buren, and Henry Counties in the southeastern corner of Iowa. A majority of the sales in each of these counties are made by handlers regulated under the four Iowa orders.

There is only one unregulated distributing plant located in the 15 now-unregulated counties proposed for inclusion in the merged order. This is Superior Dairy at Tipton, Iowa, which is part of Cedar County. Testimony by merger proponents indicated that 98 percent of the Class I sales through stores in this county are made by handlers fully regulated under Orders 63 and 70 and that the remaining 2 percent are made by a handler regulated under the Central Illinois order. Another witness, a sales manager for Land O'Lakes, Inc., testified that these figures conform reasonably well to his knowledge of the area, although he did state that the figures would change somewhat if home delivery and institutional business were taken into account.

Testimony at the hearing indicates that Superior Dairy's sales are confined to Cedar County and constitute a small portion of the total Class I sales in that county. Nevertheless, the overwhelming proportion of the Class I sales in Cedar County and those counties that surround it by regulated Iowa handlers indicates that this county is an integral part of the sales area for such handlers. Thus, Cedar County should be included in the merged marketing area to insure equity among competing handlers. Although Superior Dairy's area of competition is relatively limited, the unregulated status of this plant can still provide this distributor with a cost advantage on raw milk supplies relative to the regulated handlers who must pay minimum class prices for their milk. Moreover, it is apparent that Superior Dairy's milk supply is produced in competition with presently regulated Iowa handlers, since nearly all the Grade A milk produced in this county is marketed under the Iowa orders. Thus, regulation of the Tipton handler under the Iowa order will tend to insure uniformity in returns to producers located in this county.

No one from Superior Dairy either appeared at the hearing or filed a brief expressing any opposition to inclusion of Cedar County in the merged marketing area.

With respect to the unregulated territory in the southeastern corner of Iowa, a Quincy, Illinois handler, in his brief, opposed expansion of regulation in this area. He contends that regulation of the small handlers in Burlington (Des Moines County) and Fort Madison (Lee County) would place such handlers in a difficult position in competing for a supply of milk.

The southeastern corner of Iowa is on the fringe of the main sales territory of presently regulated Iowa handlers. Much of the fluid milk sales into this area originates from plants regulated under the Central Illinois, Southern Illinois, and Chicago Regional milk orders. A small proportion of the fluid milk sales business is by local unregulated plants. The primary Federal order market outlets for milk produced in this area are the Southern Illinois and St. Louis-Ozarks markets.

In Henry, Lee, and Van Buren Counties, the majority of the fluid milk sales are not made by handlers regulated under the four Iowa orders. In Van Buren County, only 23 percent of the sales are made by Iowa handlers; in Henry County, 48 percent; and in Lee County, only 18 percent.

According to the data collected by Mid-America Dairymen, Inc., 53 percent of the sales in Des Moines County are made by Iowa handlers, and 37 percent of the sales are accounted for by handlers regulated under other orders. Ten percent of the sales in this county are accounted for by an unregulated distributing plant, Gustafson's Sunshine Dairy, at Burlington, Iowa. This handler is apparently very small in terms of volume. His distribution—as can be ascertained from the limited information on the record—is limited to the counties of Des Moines, Henry, Washington, and Louisa. He buys all of his milk from nonmember producers, although he occasion-

ally purchases supplemental milk from Mississippi Valley Milk Producers Association. According to one witness, this handler pays his producers a price competitive with the uniform price under the Southern Illinois order, adjusted for the Burlington location.

There are also two unregulated handlers located in Lee County. The Blue Grass Dairy at Fort Madison is a producer-handler and has limited sales only in Lee County. Freesmeir's Home Town Dairy, which is also located at Fort Madison, has sales in Lee County and also in northern Missouri and, perhaps, Illinois.

The testimony on the record does not indicate that these three unregulated handlers have been a disruptive factor in southeastern Iowa. To regulate them would require inclusion of territory that, at this point, is not closely related—in terms of sales and procurement—to the rest of the proposed marketing area. It is also questionable whether the uniform price generated by the merged order would enable these handlers to hold a milk supply in competition with handlers under the Southern Illinois and St. Louis-Ozarks orders. For these reasons, the four Iowa counties of Van Buren, Lee, Henry, and Des Moines should not be included in the Iowa marketing area.

The Iowa marketing area should also include seven now-unregulated counties to the west of Orders 78 and 79. These counties are Pocahontas, Calhoun, Carroll, Audubon, Adams, Taylor, and Ringgold. Five other counties—Dickinson, Emmet, Clay, Palo Alto, and Buena Vista—should not be incorporated in the new marketing area.

All of these 12 counties were proposed by the National Farmers Organization. Other parties indicated either support or indifference to inclusion of these 12 counties in the marketing area.

There are no distributing plants located in any of these seven counties proposed herein to be included in the marketing area. No new plants will become regulated as a result of their inclusion in the marketing area. However, to assure that orderly marketing conditions prevail as orders are merged and enlarged in this general area, these seven counties should be brought under the merged Iowa marketing area.

A survey by NFO showed that in each of these seven counties the majority of sales to supermarkets were made by handlers regulated under Orders 78 and 79. In each of the other five counties, the majority of such sales were made by handlers regulated under Orders 65 (Nebraska-Western Iowa) or 76 (Eastern South Dakota). In view of this, the latter five counties should not be included in the Iowa marketing area.

A proposal to remove seven—amended at the hearing to eight—countries (Union, Clarke, Lucas, Monroe, Appanoose, Wayne, Decatur, and Ringgold) from the Des Moines, Iowa, marketing area must be denied. The proponent handler, Jones Dairy, Inc., Corydon, Iowa, testified that 15 producers supplying his plant did not want the marketing service charge of 5 cents per hundredweight increased to 6 cents, which was one of the proposals for the merged order. Proponent also contended that the market administrator was losing money having to sample the milk of the handler's producers and audit his plant, which is located 85 miles from the market administrator's office. Moreover, he stated it takes up some of his own time to fill out reports to the market administrator.

Proponent handler testified that 65 percent of his Class I sales are within the eight counties proposed for exclusion. At least two other fully regulated handlers located at Des Moines also do business in this eight-county area. In addition, a fully regulated handler located at Ottumwa, Iowa, competes in several of these counties. The remainder of his sales are in Missouri territory where he competes with Order 79 handlers and a Federal order handler whose plant is in St. Joseph, Missouri. Proponent testified that he purchased milk from a cooperative association to supplement his own producers' milk during the short production months of the year.

Proponent would have a substantial price advantage over his competitors if he were not required to pay the classified use value for his milk. If the handler did pay his producers the classified use value for his milk—as he says he would, this would result in a wide disparity in returns among producers supplying milk for sale in the 8 counties because the handler's use value would be well above the uniform price under the merged order.

There is no basis to exclude this handler from regulation merely because he would like to avoid the costs of administration of the order. Even though he testified he would pay his producers on a classified use basis, there is no certainty this would be so in the absence of an actual audit.

The continued regulation of this eight-county area is necessary to insure orderly marketing under the merged order. Accordingly, the proposal is denied.

4. (a) *Milk to be priced and pooled.* It is necessary to designate clearly what milk and which persons would be subject to the merged order. This is accomplished by providing definitions to describe the persons, plants, and milk to which the applicable provisions of the order relate.

The following provisions included in the proposed order will serve to identify the specific types of milk and milk products to be subject to regulation and the persons and facilities involved with the handling of such milk and milk products. Definitions relating to handling and facilities are "route disposition," "plant," "pool plant," and "nonpool plant." Definitions relating to milk and milk products include "produced milk," "fluid milk product," "fluid cream product," "filled milk," and "other source milk." A number of these definitions were of particular issue at the hearing and are discussed below.

Route disposition. A definition for "route disposition" is a convenience for specifying the various kinds of fluid milk sales outlets that will be considered in determining whether a distributing plant would be regulated under the order. At present, none of the four Iowa orders has a route disposition definition; however, the substance of such a definition is included in the distributing plant and pool plant definitions.

As adopted herein, route disposition would include any delivery of a fluid milk product classified as Class I milk, other than bulk fluid milk products transferred to other plants. It would include a delivery by a vendor or disposition at a store located on the plant premises. It would also include packaged fluid milk products transferred to other plants—pool plants or nonpool plants.

Two different route disposition definitions were proposed at the hearing. The proposal by Proponent No. 1 defined route disposition as "a delivery (including disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk product classified as Class I milk to a retail or wholesale outlet other than a pool plant or a nonpool plant."

A slightly different proposal by Prairie Farms Dairy, Inc., defines route disposition as "distribution of Class I milk by a handler to retail or wholesale outlets which include vending machines but do not include plants or distribution points."

It was the expressed desire of both proponents that final route disposition of a product would occur only when control and title of the product are transferred from one party to another. Thus, proponents would not consider transfers of fluid milk products from a handler's plant to a distribution point of the handler off the premises of the plant as a final disposition.

This issue—when "disposition" occurs—is involved with accounting and pricing of milk. Under the terms of each of the Iowa milk orders, a fluid milk product is considered disposed of on a route when it leaves the plant (except when delivered to another plant). The handler must account for the product at the Class I price. This has generally been reasonable, since in most instances the handler has made final use of the product at the time of disposition from the plant. When a fluid milk product is in inventory at the plant at the end of the month, the handler is only required to account for the product at the Class III price.

The problem concerning Prairie Farms arises because Prairie Farms, like many other handlers, operates a distribution point off the premises of the plant. Therefore, even though a fluid milk product leaves its plant—and, accordingly, is priced as Class I—it is not unusual for the product to be in inventory at the distribution point at the end of the month. According to the Prairie Farms witness, this necessitates keeping two sets of inventories—one for the administrator and the other for the company's records based on "generally accepted accounting principles".

It would be an undue administrative burden on the market administrator to adopt the route disposition concept suggested by proponents.

It is common knowledge that many handlers in the Iowa market have distribution points and/or retail outlets in several locations and even several states. Under these circumstances, it might take the entire audit staff of the market administrator to make a physical inventory of one handler on the last day of a given month.

The "transfer of title" principle expounded by proponents cannot be faulted logically. Similarly, the problems described by Prairie Farms cannot be dismissed lightly. On balance, however, the benefits to be reaped from incorporating their concept in the order cannot justify the additional time, travel, and administrative expense that would necessarily be involved. For these reasons, the proposal is denied.

Plant. A "plant" definition should be provided for the purpose of designating the type of handling facilities to which the order provisions would apply. As defined under the merged order, a plant would be the land, buildings, facilities, and equipment that constitute a single operating unit at which milk or milk products are received, processed, or packaged. Separate facilities used solely as intermediary distribution points in the disposition of packaged fluid milk products would not be plants. Similarly, separate facilities at which milk is only reloaded from one tank truck to another would not be a plant as defined herein.

None of the four orders provide for the pricing or pooling of milk at a reload point. It is not intended under the merged order that facilities that are used only for the reloading of milk from one tank truck to another be the pricing point for milk so handled. A reload operation must be distinguishable, however, from facilities at which milk handled is to be priced.

It is not usual for milk to be received, processed, or packaged at a reload point. Rather, it is customary for milk that has been picked up at the farm by several tank trucks to be brought to the reload point and transferred directly to a large over-the-road tank truck for movement to processing plants. In this circumstance the identity of the producer milk that is transshiped in the over-the-road tank truck is ascertainable. Thus, it is not necessary to consider milk as being received at a reload point for purposes of accounting for an individual producer's milk. Accordingly, any facility at which milk from farms is only reloaded onto another tank truck is a reasonable means of identifying a reload facility.

Situations could arise where the individual producer identity for milk handled at reload points is lost. Some of the milk on a farm pick-up tanker could be reloaded onto an over-the-road tank truck and delivered to a pool plant while the remaining milk on the farm truck is held overnight in a tank truck and perhaps transported to another plant (either pool or nonpool) the next day. In this situation, it is not possible to know which producer's milk was delivered to which plant on which day. It is necessary, nonetheless, for the order to provide for the pricing of the milk of those dairy farmers at a plant location. Under these circumstances, the milk of individual producers involved should be prorated between the plants at which their commingled milk was received.

As described later in this decision, it is provided that milk picked up at a producer's farm during the month in a tank truck owned and operated by, or under the control of, a handler (including a cooperative association in its capacity as a bulk tank handler) but which is not received at a plant until the following month shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm and shall be priced at the location of the plant where the milk is physically received in the following month. These guidelines are discussed later in more detail under the heading "Producer milk."

Pool plant. Essential to the operation of a marketwide pool is the establishment of minimum performance standards to distinguish between those plants engaged in serving the fluid needs of the regulated market and those plants that do not serve the market in a way or to a degree that warrants their sharing (by being included in the pool) in the Class I utilization of the market. The pooling standards for distributing plants and supply plants that are contained in the attached order have been structured to accomplish this.

The "pool plant" definition adopted herein sets forth all of the various performance standards that plants must meet to qualify for pooling. For this reason, definitions of a "distributing plant" and a "supply plant," as contained in the individual orders, are not needed. Reference is made in this decision to such types of plants, nevertheless, since the adopted pooling standards relate to plants performing different types of functions in the market.

The following discussion sets forth the pooling standards that should apply to the several types of plants. To facilitate the discussion, it is noted that the pooling standards for a distributing plant or a supply plant provide that the plant's required association with the market shall be measured in terms of the proportion of its milk supply that is disposed of in the market. It is intended that such milk supply shall include any producer milk that is diverted from the plant by the plant operator to other plants. Although diverted milk is not physically received at the plant from which diverted, it is, nevertheless, an integral part of that plant's supply of milk and acquires pool status by virtue of its association with such plant. Therefore, diverted milk must be included as a receipt for purposes of establishing the diverting plant's qualification for pooling.

Milk that a cooperative may divert from a pool plant (other than its own) should not be included in the plant's receipts for purposes of determining the plant's pool plant status. Milk handling arrangments in this market may make it difficult at times for a plant operator to know how much milk is being diverted from his plant by a cooperative. Consequently, his plant could fail to meet the pooling standards by virtue of diverted milk being associated with his plant without his knowledge. The diversion limitations discussed later will effectively limit diversions by a cooperative from another handler's plant to an appropriate level without the necessity of this milk being included as part of the pool plant's receipts.

Under the adopted standards, any distributing plant that is approved by a duly constituted regulatory agency for the processing or packaging of Grade A milk would be a pool plant if it meets certain performance standards during the month. Specifically, during September through November, a plant's "route disposition" must be not less than 40 percent of the bulk Grade A fluid milk products received at the plant during the month. During other months of the year, this requirement would be 35 percent. In addition, at least 15 percent of a plant's receipts should be disposed of as route disposition in the marketing area.

This definition is basically the same as the one proposed by Proponent No. 1, but with certain minor differences. Under proponent's proposal, all milk diverted from the plant would be included in the plant's receipts for pooling purposes. This is being modified for the reasons just noted.

Another difference is that proponent would require a pool distributing plant to have route disposition equal to 40 percent of its receipts during the months of September through January and 35 percent during all other months, as opposed to 40 percent during September through November and 35 percent all other months, as adopted herein. During 1975, the five highest Class I utilization months for the four orders combined were October (68.7 percent), September (68.2 percent), November (62.2 percent), December (58.7 percent), and January (56.9 percent). While it is somewhat arbitrary as to which months are chosen for the higher route disposition requirement, it would be logical to choose the same months—for the same reasons—that also apply to supply plant pooling standards and to diversion limitations, both of which will be discussed later. At present, however, and as proposed by Proponent No. 1, different months apply to all three categories, which is possibly a result of piece-meal amendment of the orders over time. In any event, it would appear that the months of September, October, and November are most clearly distinguishable as the high utilization months and would best serve as the high-performance, low-diversion period.

NFO proposed that the total route disposition requirement be set at the Class I utilization for the same month of the preceding year. This is the same kind of provision contained in the Upper Midwest order, which was presumably used as a model. Because of the much smaller size of the Iowa market compared to the Upper Midwest market, there could be considerably greater variation in Class I utilization in Iowa. For this reason, the Class I utilization for the same month of

the preceding year may not be a good indication of what the appropriate pooling standard should be for the current month. Accordingly, it is preferable in this order to adopt a fixed percentage as now in the four separate orders and as proposed by Proponent No. 1.

Presently, the total route disposition requirement for distributing plants under the Des Moines and Cedar Rapids-Iowa City orders is 35 percent during every month of the year. Under the Quad Cities-Dubuque order, it is 45 percent during September through January and 40 percent during February through August. Under the North Central Iowa order, the total route disposition requirement is an average of 1000 pounds per day.

The in-area route disposition requirements adopted herein fit closely with what was proposed and with what is currently in effect. They are reasonable in view of the expected Class I utilization of the merged order.

The total route disposition requirement is now 15 percent under all four orders. NFO proposed this same standard for the merged order. Although the other cooperative proponents proposed a 10 percent standard, their spokesman expressed no objection to retaining the 15 percent standard as a reasonable measure of a plant's association with the market. Thus, the 15 percent standard should be retained for the merged order.

Several variations of the supply plant provisions were proposed for the merged order. Proposal No. 1, as modified at the hearing, would provide for "unit pooling", which would allow two or more plants of one or more cooperatives (or one proprietary handler) to be combined in a unit for the purpose of meeting the shipping requirement under the order. Another feature of this proposal is that receipts at distributing plants directly from member producers' farms would be considered as having been shipped from a supply plant of the cooperative.

The shipping requirements of this proposal are 35 percent of Grade A receipts every month. However, if a plant shipped 50 percent during the immediately preceding period of September through November, it would have to ship only 20 percent during the following months of December through August.

The NFO proposed supply plant provisions requiring regular shipments every month and a "reserve supply plant" provision patterned after the one in the Upper Midwest order. The latter provision does not require regular shipments from a supply plant, but a "call" (or shipping requirement) is announced by the market administrator when he determines that shipments are needed.

A spokesman for AMPI stated at the hearing that his organization would favor either proposal No. 1—but with reduced shipping percentages—or, alternatively, the "reserve supply plant" provision proposed by NFO.

Both AMPI and NFO testified that present pooling standards have not permitted them to pool their member producer milk on the Iowa markets, even though such milk was produced in the same general area as the milk of other cooperatives on these markets. In particular, they testified that they had difficulty finding pooling outlets through which to pool milk of member producers located in Iowa. Earlier, in the discussion concerning the need for merger, the potential problems associated with the limited access to these markets were discussed.

In view of the record testimony and the marketing conditions in the Iowa area, it is concluded that supply plant pooling provisions similar to those proposed by Proponent No. 1 are most appropriate for the merged order. However, certain additional features should be included in such provisions to accommodate the pooling of additional Grade A milk that is available in the Iowa procurement area.

During the months of September through November, any supply plant, regardless of location, should qualify for pooling by shipping 35 percent of its Grade A receipts to pool distributing plants. During December through August, a supply plant should have to ship only 20 percent of its receipts. For those supply plants that are within the customary procurement area of the Iowa market, additional flexibility should be provided in meeting these standards. The procurement area, for this purpose, should include the States of Iowa, Minnesota, and Wisconsin, and that portion of Illinois north of Interstate 80.

In this area, untis of two or more supply plants operated by one or more cooperatives or by a single proprietary handler should be allowed to qualify as a single plant; producer milk that is delivered by a coopertaive directly from producers' farms to pool distributing plants should be considered as qualifying shipments from a supply plant or unit if so requested by the handler; and shipments to distributing plants that are fully regulated under other Federal orders should be considered as qualifying shipments under this order, except that credits for shipments to other Federal orders should not exceed shipments to pool distributing plants under this order.

The four separate orders now differ considerably in their supply plant pooling standards. Under the Quad Cities-Dubuque order, a supply plant has to ship 35 percent of its receipts to pool distributing plants. However, if it ships 50 percent of its receipts during the months of September through November, it would automatically qualify as a pool plant during the following months of December through August. In addition, a plant operated by a cooperative association would qualify as a pool plant if the total pounds of member producer milk received at pool plants of other handlers during the month, or during the 12-month period preceding the month, are more than the total pounds of Grade A milk received at its plant during the corresponding period.

Under the Cedar Rapids-Iowa City order, a supply plant operated by a proprietary handler has to ship 35 percent of its Grade A receipts to pool distributing plants to qualify as a pool plant. If it ships 50 percent of its receipts during the months of September through November, it would automatically qualify as a pool plant during the following months of March through June. A supply plant operated by a cooperative association may qualify for pooling if the association delivers milk (any amount) to pool distributing plants during the month.

Under the North Central Iowa order, a supply plant qualifies for pooling it if ships milk to pool distributing plants on not less than 10 days during the months of September through November and on not less than 5 days during other months.

Under the Des Moines order, a supply plant must ship 35 percent of its receipts to pool distributing plants during the months of September through March and 30 percent during April through August. However, if it ships 50 percent of its receipts during the months of September through November, it would automatically qualify for pooling during the following months of March through June.

A spokesman for Proponent No. 1, in explaining their proposal, testified that supply plant shipping requirements are necessary to identify those plants that are willing, able, and actively supplying the Class I needs of the market. Year-round shipping requirements, he said, assure that a potential supplier has both the ability to ship and has a customer.

The witness also stated that unit pooling, in combination with allowing direct shipments from producers' farms to pool distributing plants to count as qualifying shipments, would provide a maximum degree of flexibility in supplying the market. It would allow shipments to be made from those supply plants most favorably situated to the distributing plants needing the milk. It would give an organization with a variety of facilities and capabilities the opportunity to serve the requirements of the market in the most efficient manner.

The witness gave several examples of how the market could be better served with this provision. He said that supply plant operations are superior in terms of efficiency and quality to direct deliveries of milk from producers' farms. Because supply plants are generally located in the proximity of the farms where the milk is produced, he said, it is shorter to haul the milk to a supply plant than to a distributing plant. Therefore, less quality deterioration takes place before the milk is delivered. Once received in the plant, the milk is cooled to a temperature which inhibits further deterioration. It can then be shipped to a distributing plant at a lower temperature than milk shiped directly from producers' farms.

The witness said another advantage of supply plants is that full loads can be made up in supply plant shipments to distributing plants, whereas with milk shipped directly from the farm or through a reload, it is rare that a full

load can be made up. He said that supply plant milk, thus, results in fuel savings. Also, because the loads are full, the milk is agitated less and arrives with less quality deterioration.

A final advantage which the witness described is the "banking" of milk which is possible with supply plants. Direct-shipped milk that is not needed on a given day must be diverted to a nonpool plant, where it is no longer available for fluid use. However, milk delivered to a supply plant can be stored there until the following day and then delivered. Thus, a smaller amount of reserve milk is needed to supply the fluid needs of the market.

The witness also testified that certain provisions of the four Iowa orders have deterred the operation of supply plants, accounting for the small number (5) of supply plants now operating as pool plants. He said that the unit pooling provision, in conjunction with their proposal concerning location adjustment credits for supply plants, would allow a greater number of supply plants to be established, thereby providing greater service and efficiency to the market.

A spokesman for NFO testified that it has been unusually difficult to pool milk on the Iowa markets because other cooperative associations operate pool distributing plants which account for more than half of the total milk pooled under the four orders. When his organization has tried to supply direct-ship milk to certain distributing plants, he said, they have been refused because such shipments would have displaced shipments from the handler's own supply plants, even though the direct-shipped milk was cheaper than the milk brought in through such supply plants. The NFO spokesman said the pooling standards proposed by Proponent No. 1—in particular, the year-round shipping requirement—would continue to discourage the purchase of direct-shipped milk from NFO.

The witness also stated that more equitable, broader-based pooling standards are needed in Iowa to accommodate the pooling of all of the Grade A milk available and to avoid disorderly marketing conditions in the future.

A spokesman for AMPI testified that significant volumes of milk produced in the State of Iowa are being pooled outside the four Iowa markets. AMPI, he said, has pooled such milk in many other markets, sometimes because of a better return on such other markets, and sometimes because they were unable to pool the milk under the Iowa markets.

The witness also testified that the pooling standards proposed by Proponent No. 1 (of which it is a part, but not on this issue) would provide no better access to the merged order than has been available under the four separate orders. For this reason, AMPI proposes either reducing the shipping requirements or adopting the reserve supply plant provision that is in the Upper Midwest order. The witness specifically suggested a shipping requirement of 25 percent year-round or 40 percent in the fall months and 15 percent during the other months of the year.

The president of Anderson-Erickson Dairy, Des Moines, Iowa, also offered testimony on supply plant pooling standards. He stated that he favors year-round shipping requirements as contained in proposal No. 1, but opposes the unit pooling aspect of the proposal because it discriminates against a proprietary handler.

The Iowa market, unlike the Upper Midwest market, is not a uniformly heavy milk producing area. Seventy-nine percent of the milk pooled under the four Iowa orders in 1975 was produced in Iowa, 17 percent was produced in Minnesota, 3 percent was produced in Wisconsin, and about 1 percent was produced in Illinois. Of the 79 percent produced in Iowa, 47 percent was produced in the 11 counties that comprise the northeastern district. Of the 17 percent produced in Minnesota, 13 percent was produced in the 9 counties comprising the southeastern district (directly north of the northeastern district in Iowa).

While most of the milk produced in Iowa comes from the northeastern corner of the State, most of the fluid milk products are consumed in the major population centers outside of this area. For example, Polk County, which encompasses Des Moines, had an estimated population of 294,000 in 1973, which made it the most populated county in the State. Des Moines is 108 miles from the closet part of the northeastern district of Iowa.

Similarly, Cedar Rapids, Iowa City, and the Quad Cities are also outside this heavy milk producing area. Accordingly, milk must be imported into these heavily populated areas on a year-round basis.

Iowa handlers compete with other order handlers for milk supplies. The supply area for the Iowa market is also part of the supply area for more southerly deficit production areas such as the Central Illinois, Southern Illinois, and St. Louis-Ozarks Federal order markets. These markets and the Iowa market also obtain milk supplies from the more northerly heavy milk production area in Minnesota and Wisconsin encompassed by the Upper Midwest Federal order marketing area.

These neighboring Federal order market pools represent alternative outlets for milk produced in the Iowa market production area. Consequently, the Iowa order uniform price should be maintained at a competitive level with other order uniform prices in the supply area in order for the Iowa handlers to obtain adequate supplies. Moreover, to effect orderly marketing among orders, the Iowa order uniform price should be maintained in close relationship to alternative market uniform prices in common procurement areas.

Pooling standards can aid in accomplishing the appropriate alignment of intermarket uniform prices. Should pooling standards be set too low, it would be possible for pool handlers to attach excessive milk supplies with the market for manufacturing use and thereby reduce the uniform price below the competitive level, while other handlers in the pool are in need of additional milk for Class I use. On the other hand, if pooling standards are set too high, the order would tend to deny access of milk to the pool in the event the uniform price is sufficiently above alternative market uniform prices to attract additional milk supplies. This would disrupt orderly marketing among orders.

The institutional structure of the Iowa market and neighboring markets presents the risk of a handler attaching an excessive amount of milk to the Iowa pool for manufacturing use. The larger cooperative associations that operate pool plants and whose member producers supply milk to the Iowa market also have a large number of member producers in the Iowa supply area whose milk is marketed under neighboring orders. Such milk supplies could be shifted readily to the Iowa pool by the cooperatives.

The Order 63 (Quad Cities-Dubuque) and Order 79 (Des Moines) uniform prices were generally in close alignment with alternative market uniform prices in common supply areas during 1975. But the Order 70 uniform price and the Order 78 weighted average uniform price have tended to be somewhat higher than other uniform prices in the Iowa supply area. Consequently, at the outset of the merger of the orders, it can be expected that the uniform price under the Iowa order will be slightly higher than other order uniform prices in the supply area. This will tend to attract additional milk to the pool and thus reduce the uniform price to where it is comparable to alternative market uniform prices.

In 1975, the combined Class 1 utilization of the Iowa orders averaged about 54 percent, or 4 percent higher than the Class I utilization under the Des Moines order and 8 percent higher than the 46 percent Class I utilization under the Quad Cities order. Under the combined Iowa order, producer receipts averaged 107 million pounds and Class I disposition averaged 58 million pounds per month in 1975. To reduce the combined market Class I utilization percentage to the Des Moines order level, 8 million pounds of milk per month would need to be added to the pool. It would have taken an increase of 18 million pounds of producer milk receipts monthly to reduce the Iowa Class I utilization to the 46 percent that prevailed under the Quad Cities-Dubuque order. Thus, it can be expected that under the merged order the uniform price will attract some 10 to 15 million pounds of milk to be shifted from other order pools to the Iowa order pool.

It is not uncommon for a single supply plant to have monthly receipts of 10 to 15 million pounds of milk. Accordingly, no major reduction need be made in the level of supply plant shipping percentages to accommodate pooling the milk supplies that should be accommodated in the Iowa pool. In fact, the pooling standards should require pool milk to be continuously associated with the fluid use outlets as a basis of pooling. Otherwise, excessive supplies of milk could be tied up for manufacturing use at Iowa locations when it is needed for fluid use in

Iowa or in the more southerly deficit markets. This would tend to force shipment of milk from the more northerly reserve milk supply areas of Minnesota and Wisconsin for bottling use which would entail greater transportation costs.

Additionally, pooling standards that require continuous association with distributing plant outlets need to be maintained so that the reserve milk supplies in the production area that are pooled on more southerly markets will not be shifted to the Iowa pool during the flush production season. Any such shift of milk supplies seasonally could be accomplished rather easily by handlers who operate pool plants in both markets. Moreover, the seasonal incentive payment plans in the Central Illinois, Southern Illinois, and St. Louis-Ozarks Federal order markets result in seasonal uniform price differences that would encourage such shifts of milk to the Iowa pool in the absence of shipping requirements.

In light of the abovementioned circumstances prevailing in this market, the supply plant shipping standards adopted herein are most appropriate for the merged order.

Unit pooling will permit the economic movement of milk to the market. Savings to the pool can result from reducing shipments of milk to pool distributing plants from distant supply plants solely for the purpose of qualifying such plants when closer milk is available, either on a direct-ship basis or from a closer plant.

Unit pooling will permit a cooperative or proprietary handler to direct milk shipments from supply plants according to the most efficient use of the milk at all plants in the system. In the event some phase of the milk manufacturing operation were to become more profitable than another, adjustments could be made in supply arrangements so that reserve milk could be manufactured at certain plants, while other plants supply the market with milk for fluid use.

In order to form a unit, a handler (or group of cooperatives) must notify the market administrator in writing prior to the first day in September that he (they) is requesting that two or more of his (their) plants be considered a unit for the subsequent months of September through August. In such request, the handler shall list the plants in the sequence in which they will qualify for pooling based on the deliveries made. In the event that insufficient deliveries are made to qualify the entire unit, the plant(s) last on the list will be disqualified from pooling and removed from the unit.

Once a unit is formed, no plants may be added to it in subsequent months. A plant may be removed from a unit or the unit may be discontinued if the handler notifies the market administrator of such intent prior to the first day of the month that the action is to be effective. Such actions shall then be permanent until the following September, when units may be formed anew.

Since the prospective date on which the new order will become effective is several months away from the next unit-forming period, units should be allowed to form as of the effective date of the Iowa order. Such units may then continue in effect until the next qualifying period in September 1977. Parties seeking to form a unit should notify the market administrator of such intent prior to the effective date of the new order.

Cooperatives and proprietary handlers should be allowed to meet supply plant shipping requirements on the basis of direct deliveries from producers' farms. Much of the milk produced for the Iowa market can and should be delivered on a direct-delivery basis. Although one witness explained that supply plant milk is of better quality and is more efficient to supply, the operator of the largest distributing plant in the market testified that he preferred to purchase milk on a direct-ship basis.

Under certain circumstances, both of these points of view probably have merit. What is of primary importance, however, is that handlers and cooperatives have the opportunity to market milk in the most efficient way possible. Testimony indicates that current order provisions have not always permitted this. Inclusion of direct deliveries as qualifying shipments will remove the necessity of supplying milk through a supply plant—simply to keep the plant qualified for pooling—when the milk can be more economically supplied directly from producers' farms.

A supply plant or unit should be given credit for its shipments to distributing plants regulated under other orders. Such credit, however, should be limited to the amount of milk supplied by the plant or unit to pool distributing plants under the Iowa order. This provision will help accommodate the orderly pooling of Grade A milk that is produced in the Iowa market procurement area, even though local fluid outlets might not require all of the milk that is available.

Frequently, cooperatives have the opportunity of supplying milk to distributing plants regulated under different orders, but are reluctant to do so because of the necessity of supplying a minimum quantity of milk to distributing plants under just one order. For example, if the shipping requirements for each of three hypothetical orders were 50 percent, and a supply plant supplied 25 percent of its milk to one order, 19 percent to another order, and 10 percent to the remaining order, it would not qualify for pooling under any of them. Even though these other orders would provide the most lucrative outlet for this cooperative's milk, the cooperative would be unable to supply these other markets because of the necessity of qualifying its plant for pooling.

If a supply plant is given credit for its shipments to other markets, it will be encouraged to offer "spot" shipments of milk where needed. This will not only help the cooperative maximize its returns, it will also help the handler in the buying market to obtain milk from the closest available source.

Credit for shipments to other markets should be limited to the amount of milk delivered to distributing plants regulated under this market to insure that adequate supplies of milk will be made available to distributing plants in this market. If no limit were provided on credit for shipments to other markets, situations could arise where most of the milk in Iowa would be moved to other markets. In such a case, it would undermine the effectiveness of the Iowa order in insuring an adequate supply of milk for fluid use within the market.

The provisions discussed above, i.e., unit pooling, direct-delivery credits, and other order credits, should be limited to plants within the procurement area because they allow a plant to pool without any actual shipments from that plant. Consequently, a plant operated by an Iowa handler in a distant, higher-priced market could conceivably qualify for pooling on the Iowa market based on direct deliveries or the performance of a local plant if it were included in a unit. This could result in serious price misalignment between similarly located plants that are regulated under different orders. Therefore, the pooling options mentioned above should be confined to plants located in lower-priced areas, i.e., Iowa, Minnesota, Wisconsin, and northern Illinois.

All proponents proposed a provision that would allow a plant to qualify as a pool plant in the current month if it met the pool performance standards in the immediately preceding three months. This provision should be adopted for the merged order. However, it should not apply to plants qualifying as part of a unit.

Allowing a plant that failed to meet the pooling standards for the month to be a pool plant if it met the requirements in each of the three preceding months is a reasonable and equitable basis for protecting producers' interests. It will afford handlers the opportunity to make corrective adjustments in their operations in the event of unanticipated circumstances or a miscalculation, and it will afford producers reasonable opportunity to find an alternative pool outlet for their milk without losing pooling privileges in the interim.

It is not necessary to extend the one-month automatic pooling privilege to plants that are included in a unit since such plants already have the security of being in a unit. Thus, failure to perform does not mean such a plant will lose its pool status so long as the unit as a whole performs.

Nonpool plant. The "nonpool plant" definition of the merged order should specify those categories of plants other than pool plants. The four Iowa orders now have identical "nonpool plant" definitions.

A spokesman for Proponent #1 proposed that a governmental agency plant also be included in the nonpool plant definition. This suggestion should be adopted. A governmental agency plant should be defined as a plant operated by a governmental agency from which fluid

milk products are distributed in the marketing area.

Presently, there are no known governmental agency plants located in or near the Iowa marketing area. However, in the event that a state university, state prison, or some other governmental institution establishes a plant in the future, provision should be made for its exclusion from regulation under the order.

Governmental agency plants are generally operated in the public interest to carry out a recognized function of the State. These operations are not in the nature of operations of proprietary handlers whose regulation is necessary to effectuate the intent of the Act.

A governmental agency plant which operates its own farms may at time have production in excess of its usual requirements. In light of the exempt status here provided, whereby producers generally do not share in the Class I utilization of such operations, it would be inappropriate to permit such institutions to share in the proceeds from the sales of pool milk. Accordingly, the order should provide that milk received at pool plants from such operations be allocated to Class III. Any such milk allocated to Class I at a pool plant would be subject to a compensatory payment at the difference between the Class I and Class III prices. This is identical to the treatment accorded producer-handlers with respect to any sale of milk to pool plants.

A governmental agency plant may at times find it necessary to purchase supplemental supplies from regulated handlers under the merged order. It may reasonably be expected that purchases in the form of fluid milk products would be made and used for Class I purposes. The order should provide, therefore, that fluid milk products transferred or diverted from pool plants to governmental agency plants be classified as Class I.

Handler. The impact of regulation under an order is primarily on handlers. The handler definition identifies persons who will have responsibility for filing reports and making payments for milk under the merged order.

Accordingly, the order should designate handler status for the following persons:

(1) The operator of a pool plant;

(2) A cooperative association with respect to milk that is diverted for its account;

(3) A cooperative association with respect to bulk tank milk picked up at the farm for delivery to a pool plant under specified circumstances;

(4) The operator of a partially regulated distributing plant;

(5) A producer-handler;

(6) The operator of an other order plant from which milk is disposed of in the market; and

(7) The operator of an unregulated supply plant.

Presently, the Des Moines order defines all of these categories of handlers. The Quad Cities-Dubuque order does not include a cooperative association as a handler on bulk tank milk. The Cedar Rapids-Iowa City order does not define the operator of an unregulated supply plant as a handler. The North Central Iowa order does not define as a handler a cooperative association with respect to milk diverted for its account, the operator of a partially regulated distributing plant, a producer-handler, the operator of an other order plant from which milk is disposed of in the marketing area, or the operator of an unregulated supply plant.

All parties that may have an obligation under the order should be included in the handler definition. This will assure that all information necessary to determine their status under the order can be readily obtained.

The definition for a cooperative association acting as a handler on bulk tank milk proposed for the merged order by Proponent #1 should not be adopted. Such proposal would give a cooperative the option of not being the handler on bulk tank milk under its control. The present cooperative bulk tank handler definition under the Des Moines order should be retained for the new order. It requires a cooperative to be the handler on bulk tank milk under its control, unless the buying handler agrees to buy such milk on the basis of weights and tests determined from measurement at the farm.

Supporters of proposal No. 1 testified in opposition to the bulk tank handler provision in the Des Moines order. Such provision states that "unless both the cooperative association and the operator of the pool plant notify the market administrator that the plant operator will be responsible for payment for the milk and is purchasing the milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples", the cooperative association will be the handler on such milk.

A spokesman stated that this provision places a cooperative in a difficult position because it must absorb the shrinkage (or loss) between farm weights and tests and tanker weights and tests. He argued that this difference is a part of raw ingredient cost and should be passed on up the marketing chain, ultimately reaching the consumer level.

Two handlers testified in opposition to the proposed definition. One handler testified that the proposed definition works to the detriment of the handler, who has no power to enforce weighing and testing procedures because the hauler who transports the milk from the farm to his plant is under the control of the producers and cooperative associations. Consequently, he stated, the handler must absorb losses over which he has no control. Another handler supported the current provision of the Des Moines order, testifying that a handler should only pay for that milk actually received at his plant.

A cooperative should be a handler with respect to any such milk which it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative. However, if there is a mutual arrangement between the cooperative and the plant operator, noticed to the market administrator, whereby the plant operator agrees to purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, either the cooperative or the pool plant operator may be the reporting handler for such milk, according to the agreement reached between them.

When the milk of any producer is commingled in a tank truck with that of other producers, the identity of the individual producer's milk is lost. The amount of the producer's milk in the truck and the butterfat content thereof can be determined only from measurement of the milk at the farm and from milk samples taken from the farm tank. After the milk has been pumped from the individual producer's farm tank into the tank truck of the hauler and commingled with the milk of other producers, there is no opportunity to measure, sample, or reject the milk of an individual producer.

Much of the milk received at pool plants in the proposed marketing area is picked up at the farm in trucks owned or operated by, or under the control of, cooperative associations. In this case, it is only the association that has the opportunity to measure and sample the milk of individual producers that is received at the pool plant. In the absence of any agreement by the plant operator to be the handler for the milk, the association necessarily must be the responsible handler for the milk as it leaves the farm.

When a cooperative is the handler for farm bulk tank milk, certain accounting and payment procedures should apply under the merged order with respect to such milk. As provided in the attached order, the milk would be considered as a receipt of producer milk by the cooperative at the location of the pool plant to which the milk is delivered. The purchase of such milk by the pool plant operator would be treated as an interhandler transfer but would be classified pro rata with producer milk that the pool plant operator may receive. The pool plant operator would be obligated to the producer-settlement fund for the milk received directly from producers and by transfer from bulk tank cooperative handlers at its classified use value. The cooperative in turn would be reimbursed by the handler at the blended price. Milk which the cooperative has picked up from the farm bulk tank and which has not been delivered to a plant during the month will be accounted for by the cooperative as ending inventory and the cooperative will be paid the blended price applicable at the location of the plant of physical receipt in the following month. In the following month, the cooperative's pool obligation will be adjusted to reflect the value of such inventory at the Class III price for the previous month.

The adopted accounting and payment procedure will facilitate administration of the order with respect to matters of financial responsibility and audit adjustments. It is the pool plant operator who processes the milk and distributes it to

consumers. It is reasonable, then, that the responsibility for accounting for the utilization of such milk and for its payment be placed directly on the plant operator. Were settlement with the pool to be made by the cooperative association, i.e., should the plant operator settle with the cooperative at class prices and the cooperative pay to the producer-settlement fund, an unnecessary third party is involved in the transaction. Also, the adopted procedure will facilitate the handling of audit adjustments that might result from the verification of a plant's utilization of milk. An error in the reported classification of milk at the pool plant, for example, would not require a related adjustment in the cooperative's classification of milk and, thus, its obligation to the pool for such milk.

A pool plant operator receiving farm bulk tank milk from a cooperative also should be responsible for paying to the market administrator the administrative assessment on such milk. The audit and verification activities of the market administrator relate essentially to the operations of the pool plant where the milk is processed. Accordingly, the plant operator should pay his pro rata share of the administrative costs on milk received from the cooperative in its capacity as a bulk tank handler, just as he does on milk received directly from producers.

When the cooperative is the responsible handler on farm bulk tank milk, the pool plant operator may buy such milk on the basis of weights and butterfat tests determined at the plant rather than on the basis of those determined at the farm. Usually, the quantity of milk picked up at the farm slightly exceeds the quantity ascertained as actually received at the plant. In such cases, the difference should be considered as a receipt of producer milk by the cooperative association at the location of the pool plant where the milk in the tank truck was delivered. The cooperative should be obligated to settle with the producer-settlement fund and to pay the administrative assessment on the milk involved.

The pool plant operator should be permitted under the merged order to be the responsible handler on bulk tank milk moved by the cooperative from the farm to the plant if both the cooperative and the pool plant operator notify the market administrator that they have agreed to such a handler arrangement and that the plant operator agrees to purchase the milk on the basis of weights and tests determined at the farm. Under this arrangement, the pool plant operator may agree to be responsible for the milk in the same manner as for producer milk that he receives at his plant directly from the farm. This could include being responsible for submitting to the market administrator monthly reports showing for each producer the farm weights and tests of milk received at his plant. It should be noted, however, that when the pool plant operator purchases milk from the cooperative on the basis of farm weights and tests, he need not be the reporting handler for such milk.

A cooperative association also should be a handler with respect to the milk of a producer which is diverted for the account of the association from a pool plant of another handler to a nonpool plant that is not a producer-handler plant. Three of the four orders proposed to be merged provide that a cooperative may act as a handler for diverted milk. Continuation of this handling arrangement will facilitate the movement of milk not needed for fluid use to nonpool plants for manufacturing.

The merged order should afford all cooperatives in the market flexibility in the arrangements under which they sell milk to pool plants or dispose of reserve supplies. If it so chooses, a cooperative should be able to pick up the milk of nonmember producers along with the milk of its members for delivery to a pool plant or for diversion to nonpool plants. This procedure will enable the cooperative to act as the marketing agent for a nonmember producer who, although he has not become a member of the cooperative, has contracted with the cooperative to act as the marketing agent for his milk. Nothing in the order would require a cooperative to pick up the milk of nonmember producers. It would provide, however, that, when a cooperative does pick up milk of nonmember producers on trucks under its control, it must assume varying degrees of responsibility with respect to such milk, depending on the handling arrangements made.

The Capper-Volstead Act provides the criteria by which cooperative associations are determined to be qualified cooperatives under the Agricultural Marketing Agreement Act. With the adopted handler definition, the merged order would be consistent with that provision of the Capper-Volstead Act which recognizes that cooperatives may "deal in the products of nonmembers" and which limits such dealings to amounts not greater in value than as are "handled by it for members."

In the event a cooperative does market the milk of a producer who is not a member of the association, a question arises about the appropriate method of paying such producer. If the nonmember producer has signed a contract with the cooperative whereby he authorizes the cooperative to market his milk and collect payments therefor, the cooperative may pay the nonmember in accordance with the contract. If such marketing functions occur in the absence of a written contract, the cooperative would be required to pay the nonmember producer not less than the prices prescribed by the order.

Producer-handler. The merged order should continue the exemption now contained in each of the four individual orders of a "producer-handler" from the pooling and pricing provisions of the order.

Experience under the separate orders has demonstrated that effective regulation can be insured without the full regulation of individuals who process and distribute milk produced on their own farm and who buy no milk from other dairy farmers. Such operations are basically self-sufficient in that they rely primarily on their own farm production and assume the burden of maintaining the necessary reserve supply of milk associated with their fluid milk operation and of disposing of any daily or seasonal surpluses they may produce.

As adopted herein, a "producer-handler" would be any person who operates a dairy farm and a processing plant and who receives no fluid milk products from sources other than his own farm production, pool plants of other handlers, and other order plants. He could use no nonfluid milk products for reconstituting fluid milk products. To qualify as a producer-handler, such person would have to provide proof satisfactory to the market administrator that the care and management of the dairy farm and other resources necessary for his own farm production of milk and the management and operation of the processing plant are the personal enterprise and risk of such person.

The producer-handler definition adopted herein is almost identical to the one proposed and supported by merger proponents. It forbids the receipt of nonfluid milk products for use in reconstituting fluid milk products, but such receipts are allowed for use in fortifying fluid milk products. Also, receipts of fluid milk products during the month from fully regulated plants are limited to 50,000 pounds.

Producer-handler definitions under most orders limit such purchases of supplemental milk supplies and require that such supplies only come from pool plants or other order plants. Since producer-handlers are expected to be self-sufficient in their operation, only occasionally should they require a supplemental supply of milk.

Although this 50,000 pound limit is somewhat arbitrary, it was proposed and supported by all merger proponents and represents a realistic, but not excessive, limit on the purchase of supplemental milk supplies by a producer-handler.

There are two known producer-handlers operating in the merged Iowa marketing area. What testimony there is on the record relative to producer-handlers indicates that neither of these handlers purchases supplemental milk supplies from any source. Therefore, the 50,000 pound limitation on the purchase of supplemental supplies will not cause these handlers to lose their exemption under the order.

Under the merged order, producer-handler status would be contingent upon such person substantiating to the satisfaction of the market administrator that the operation of the dairy farm and processing plant in question is at his sole risk. As indicated, a producer-handler's exemption from the pooling and pricing provisions is predicated on the premise of self-sufficiency of the total operation. Accordingly, no other person should be permitted to share the risk involved with the operation of a producer-handler's farm or his plant. All resources necessary for his own farm production of milk and for the operation of the processing plant must be his personal risk.

The risk concept need not extend to the actual distribution on routes of the milk processed by the producer-handler. Experience with the producer-handler provision indicates it is unnecessary to require a producer-handler to have sole responsibility for his route distribution. It must be understood, however, that the restrictions applicable to a producer-handler regarding milk supplies from sources other than his own farm are equally applicable to any distribution facility (including routes) operated by him, an affiliate, or by any person who controls or is controlled by him. Any receipts of milk from other than his own farm that are disposed of through such a facility or on such routes will be included as though a receipt at his plant for the purpose of determining his status as a producer-handler.

Producer. The term "producer" defines those dairy farmers who constitute the regular source of supply for the market. The producer definition proposed herein follows closely the one proposed and supported by each of the merger proponents. It is virtually identical to the producer definitions in each of the four separate orders.

Producer status under the merged order should be provided for any dairy farmer who produces milk approved by a duly constituted regulatory agency for disposition as Grade A milk and whose milk is received at a pool plant directly from the dairy farmer or received by a cooperative association as a handler for farm bulk tank milk for delivery to a pool plant. Producer status also should be accorded such a dairy farmer who has an established association with the market and whose milk is diverted to nonpool plants for surplus disposal. To determine a producer's association with the market and to insure the marketability of his milk in Grade A channels, it is reasonable to require that a dairy farmer's milk be received at a pool plant at least once each month in order to be eligible for diversion to a nonpool plant.

A producer-handler, who would have exempt status under the order, is excepted from the producer definition. In addition, provision must be made to preclude the possibility of a dairy farmer being a producer under two orders with respect to the same milk. In this regard, the producer definition should continue the provisions of the present orders that exclude (1) a person with respect to milk which is received at a pool plant regulated under this order as diverted milk from a pool plant under another order if the dairy farmer whose milk is involved is a producer under the other order with respect to such milk and it is allocated to Class II or Class III use under this order, and (2) a person with respect to milk which is diverted to another order plant from a pool plant regulated under this order if assigned to Class I milk under the other order.

Producer milk. The "producer milk" definition is intended to define that milk to be priced and pooled under the merged order. The definition adopted herein contains the basic features in the proposals by the merger proponents.

As provided herein, producer milk would include milk received directly from a producer at a pool plant by the plant operator, milk picked up at a producer's farm during the month in a tank truck under the control of a handler that is received at a plant in the following month, and milk of a producer that is received by a cooperative association as a bulk tank handler for delivery to a pool plant. Producer milk also would include milk of producers that is diverted under specified conditions.

Producer milk should include milk picked up at a producer's farm during the month in a tank truck owned and operated by, or under the control of, a pool handler but which is not received at a plant until the following month. Such milk should be considered as having been received by the handler in the month it is picked up at the producer's farm and should be priced at the location of the plant where the milk is physically received in the following month.

Under the present accounting procedure in the respective orders, milk which is picked up at the farm in the current month, but which is not physically received at a plant until the following month, is treated as a receipt of producer milk in such following month. This procedure has presented substantial accounting problems, particularly when milk passes through a reload facility. In such instance, a portion of the pick-up tanker's load may be transferred to an over-the-road tanker and delivered during the month, while the remainder of the load may be held at the reload facility. While administrative guidelines have been adopted to insure uniform accounting procedures for such milk throughout much of the Federal order system, the procedures have not fully resolved the accounting problems to the satisfaction of affected parties. Further, individual producers have not understood the deferred settlement which results when milk picked up in the current month is not physically received at a plant during the month.

Dairy farmers need not be required to wait one and a half months before receiving the uniform price for milk that is picked up at their farms on the last day of a month but is not received at a plant until the following month. The accounting procedure will be simplified and should be more readily accepted if milk is pooled in all cases in the month in which it is picked up at the farm. Milk not physically received at a plant in the current month will be included in the responsible handler's end-of-the-month inventory and will be priced at the location of the plant where the milk is physically received in the following month. Since this milk normally will be received at a plant on the first day of the following month, the handler will know the location of the plant of actual receipt in time to include this information in his monthly report, which he is required to file by the 8th day of the following month. If, however, none of the milk loaded into a pickup tanker is received at a plant, such milk will not be included in the responsible handler's report and he will have no pool obligation on it. This conforms with the present provisions, which tie the producer milk provisions to receipt of such milk at a plant.

If the operator of a pool plant is the responsible handler, he will account for the producer milk which has not arrived at his plant by the end of the month as part of his end-of-the-month inventory and will be charged the Class III price in the month it is picked up at the farm. In the following month, this milk will be treated in the same manner as other fluid milk products he had in inventory.

If a cooperative association bulk tank handler is the responsible handler, such cooperative will account for the milk in transit as inventory at the Class III price and will be credited at the blend price. Additional conforming changes are needed to implement this procedure to insure that in the following month the cooperative is credited for its pool obligation in the preceding month on such milk. In such following month, this milk is included in the obligation of the pool plant handler who physically received it and he will account to the market administrator for this milk at the classified prices. Such monies would be deposited in the producer-settlement fund, but, since the milk was pooled in the preceding month, it would not be included in the pool computation of the current month.

NFO proposed that diversion limitations be set at the combined Class II and III utilization percentage for the same month of the preceding year. Proponent No. 1 proposed that diversion limits be set at 50 percent during the months of September through January and 70 percent in other months.

The diversion limits adopted herein are 50 percent during the months of September through November and 70 percent in all other months. Although the Class I utilization can be expected to vary from year to year, in the most recent year the highest utilization occurred during the months of September through November. Accordingly, diversion limits should be lowest during those months since less milk is produced in excess of fluid needs at this time of year. Moreover, these months best fit in with the pooling standards proposed. As discussed earlier, the months of high performance should also be the months of lower diversions. The months of September through November are those adopted for the highest pooling performance and, therefore, should also be used for the lowest diversion limitation.

Since the market's Class I utilization may vary from 50 percent in the fall months to 30 percent in the flush production months, the 50 and 70 percent limits adopted are well coordinated with the expected Class II and III utilization.

The proposal by NFO to use the combined Class II and III utilization for the same month of the preceding year should not be adopted for the same reasons ex-

plained above with regard to pooling standards: namely, that the Iowa market is not expected to have the same stability in utilization as the larger Upper Midwest market. Therefore, the combined Class II and III utilization of a year ago may not be a good reflection of this year's supply-demand situation. While the same criticism would apply to the fixed percentages adopted here, we believe they are liberal enough to preclude any problems for the foreseeable future.

The diversion limits adopted are applied as a percent of a handler's total producer milk. Thus, individual producers may be diverted on an unlimited basis, except for the requirement that their milk be received at a pool plant at least once each month. Under these circumstances, it is unlikely that a handler would have any difficulty disposing of his surplus milk on a diversion basis.

The merged order should permit the proprietary operator of a pool plant to divert milk to any other pool plant for his (the diverting handler's) account. Such treatment is necessary to assure proprietary handlers the same privileges accorded cooperative associations, who, as previously mentioned, operate pool plants in the four markets in direct competition with proprietary handlers.

Diversions between pool plants need not be allowed in the case of a plant operated by a cooperative association, since provision is already provided in the order for the cooperative to be a handler on milk shipped directly from producers' farms to pool plants of other handlers. Further latitude in the handling of milk by a cooperative association is not needed.

The merged order should, in so far as possible, promote the most efficient handling of milk. To this end, the proprietary operator of a pool plant should be permitted to divert milk supplies to another pool plant and retain the producer milk status and payroll responsibility for such milk. Without such a provision, a handler wishing to retain his regular producers on his payroll for the entire month would have to physically receive the milk of such producers into his plant (so that it will be considered "producer milk" there), then pump it back into the truck, and deliver it to the other pool plant. Such milk would then be considered a transfer from one plant to another with the transferor handler accounting to the pool for the milk and paying those producers as well.

This practice is obviously uneconomic, resulting in unnecessary and costly movements of milk. In addition, the unnecessary pumping of milk is damaging to its quality. Permitting diversions of milk between proprietary pool plants will promote efficient handling of milk and also will facilitate more simplified accounting procedures on producer milk weights, butterfat testing, and payrolling.

A cooperative association spokesman testified to the desirability of recognizing the transfer of milk through a pipeline connecting a pool plant to an adjoining or adjacent facility which is not approved for the handling of Grade A milk, in lieu of transfer in a tank truck. The witness stated that recognition of pipeline transfers would promote efficient handling of milk and facilitate the use of storage capacity in the Grade A part of any such plant or complex.

It is essential to the proper operation of the order that movements of milk between plants be fully and accurately reported to the market administrator and that reported movements be readily verifiable. Transfers of milk through a pipeline may not always be readily verifiable. Thus, the flexibility to be accorded handlers with respect to the manner of movement of milk is an administrative matter that may be left to the discretion of the market administrator.

As proposed by the merger proponents, all diverted milk for pricing purposes is treated as a receipt by the diverting handler at the location of the plant to which the milk was diverted. This treatment is presently applicable under two of the four separate orders and must be retained. The Act specifically provides for the pricing of milk "at the location at which delivery * * * is made."

(b) *Classification of milk.* The uniform classification plan that became effective on August 1, 1974 (as amended August 1, 1975), for each of the orders under consideration should be continued under the merged order.

All of the proponent cooperative associations supported the continuation of the current classification plan, which was developed on the basis of very extensive hearings that had been held on this issue relative to 39 orders. However, Prairie Farms Dairy, Inc., proposed certain modifications of the plan.

Prairie Farms proposed including certain language that would have the effect of classifying certain products in the handler's distribution system, such as packaged fluid milk products, as end-of-month inventory even though such products had left the handler's plant. A spokesman testified that such changes would complement their proposed definition of route disposition.

As previously discussed, the route disposition definition adopted herein would include fluid milk products held at a distribution point (except a distribution point on the plant premises) of a handler at the end of the month. Such products, accordingly, would receive a Class I classification.

Prairie Farms also proposed that fluid milk products disposed of for animal feed receive a Class III classification "at any point of the handler's distribution system if adequate records are maintained." A spokesman testified that under some orders the market administrator requires that unsaleable products must be returned to the distributing plant to receive a Class III classification.

To preserve the integrity of the order, disposition of fluid milk products in other than Class I use must be verifiable by the market administrator's office. For verification purposes, it may be necessary that route returns or unsaleable products be brought back to the handler's plant for reclassification in Class III. The precise manner of handling such products should be left to the discretion of the market administrator, who has the overall responsibility of administering the order.

Shrinkage. Shrinkage provisions for the merged order should be patterned after those presently in the Des Moines order, except for conforming modification to accommodate diversions between pool plants.

All of the proponents, except Prairie Farms, proposed the basic shrinkage provisions now in most Federal orders, including the four Iowa orders. These provisions provide a Class III shrinkage limit for fluid milk products lost either enroute from farm to plant or in plant processing. Excess shrinkage is classified as Class I use.

Essentially, a handler is given a 0.5 percent Class III shrinkage limit for milk transported from producers' farms to his plant and a 1.5 percent Class III shrinkage limit for fluid milk products processed at the plant. If a cooperative is the handler on milk delivered from producers' farms, then the pool plant operator gets only a 1.5 percent shrinkage limit and the cooperative gets the other 0.5 percent. The Class III shrinkage limit is also adjusted to reflect bulk transfers or diversions to other plants and bulk receipts from other plants. No shrinkage limit is provided on certain categories of other source milk.

Prairie Farms proposed that all shrinkage experienced by a handler be classified as Class I milk and that the handler receive a fixed money credit based on his total receipts. The money credit would be computed by multiplying the Class I differential by a factor of 0.02, 0.015, or 0.005 (to conform with the present division of shrinkage as between milk assembly and processing functions), and the resulting product would then be multiplied by the hundredweight of milk received.

If a handler experienced the maximum shrinkage limit, there would be no difference in the impact of the present and proposed treatment of shrinkage of producer milk (for the handlers not using other source milk). However, if a handler experienced less than the maximum Class III shrinkage now allowed, he would still get, under the proposal, the fixed maximum credit allowance rather than a Class III classification of shrinkage based only on the actual shrinkage as under the present provisions. Accordingly, handlers could gain from the proposed provision to the extent that they receive an allowance for shrinkage which they did not incur. However, the proposed provisions would establish a shrinkage limit on other source milk, such as other order milk and unregulated supply plant milk for which Class II and Class III classification is requested. This could impose a greater obligation on handlers than presently.

Proponent contended that the proposed shrinkage provision would encourage a handler to better account for all milk product disposition. This would seem to be the case only with respect to use of other source milk on which no shrinkage

limit is now provided under the orders. The proposed provision would encourage handlers to better account for receipts of other source milk since any amount of disappearance of such milk in excess of 2 percent would be priced as Class I milk compared to Class III under the present provisions. With respect to receipts of producer milk, it appears there would be no greater incentive than now to fully account for disposition of fluid milk products that would be a Class I use, but there would be a greater incentive to account for disposition in Class II or III use in the case of a handler with less than 2 percent of his milk unaccounted for because whatever was unaccounted for would be priced as Class I and thereby increase his pool obligation. For a handler with 2 percent or more shrinkage, there would be no change in the incentive for a handler to better account for packaged fluid milk product disposition, as in either case unaccounted for milk would be priced as Class I.

Proponent also proposed that shrinkage be accounted for on a product pounds basis as opposed to the present skim milk and butterfat basis. This would be workable so long as handlers experienced only shrinkage of milk receipts, since the price difference between a hundredweight of Class I and Class III skim milk is the same as the price difference between a hundredweight of Class I and Class III butterfat. Therefore, it makes no difference whether the shrinkage is accounted for on a skim milk and butterfat basis or on a product pound basis. In actual practice, however, handlers sometimes experience overages (i.e., have greater disposition of skim milk or buttterfat than reported receipts) which are offset by any shrinkage in the plant. Since a hundredweight of butterfat has a far higher value than a hundredweight of skim milk, it would not be appropriate to offset an overage of butterfat with a shrinkage of skim milk, which could result from not accounting for disappearance of milk on both a skim milk and butterfat basis.

Adoption of the proposed shrinkage provisions could result in a handler being charged the Class I price on shrinkage of other source milk that he accepted for allocation to Class II or Class III use and also could result in a handler not making full payment for an overage of butterfat. Therefore, the proposal should be denied.

(c) *Class I price and location adjustments.* The Class I price in the Iowa marketing area should be the basic formula price for the second preceding month plus $1.40. It should continue to be announced on the fifth day of the preceding month.

Three pricing zones should be defined for the purpose of determining plant location adjustments. The accompanying map illustrates these zones.

Zone 1 should include all of the territory, both inside and outside the marketing area, not included in Zones 2 and 3. No location adjustment should apply in this territory.

Zone 2 should include the Iowa counties of Marshall, Tama, Benton, Linn, Poweshiek, Iowa, Johnson, Jones, Clinton, Cedar, Scott, Muscatine, Keokuk, Washington, and Louisa, and also the Illinois counties of Rock Island, Henry and Mercer. A minus location adjustment of 7 cents should apply in Zone 2.

Zone 3 should include the Iowa counties of Alamakee, Black Hawk, Bremer, Buchanan, Butler, Cerro Gordo, Chickasaw, Clay, Clayton, Delaware, Dickinson, Dubuque, Emmet, Fayette, Floyd, Franklin, Grundy, Hamilton, Hancock, Hardin, Howard, Humboldt, Jackson, Kossuth, Mitchell, Palo Alto, Pocahontas, Webster, Winnebago, Winneshiek, Worth, and Wright; the States of Minnesota and Wisconsin; and that portion of Illinois north of Interstate 80. Location adjustments in Zone 3 should be based on mileage from three basing points—Ames, Marshalltown, or Cedar Rapids, Iowa. The location adjustment would be computed by subtracting 7 cents and an additional 1.5 cents per 10 miles that a plant is located from the nearer of the Post Offices in Ames, Marshalltown, or Cedar Rapids.

Presently, the Class I differential under the Des Moines order is $1.40. For plants located outside the marketing area and betwen 60 and 75 miles from Des Moines or Ottumwa, the Class I price is reduced by 10 cents and by an additional 1.5 cents per 10 miles beyond 75 miles.

PLANT LOCATION ADJUSTMENTS - IOWA MARKETING AREA

☐ ZONE 1, No adjustment

▧ ZONE 2, Minus 7 cents

▨ ZONE 3, Minus 7 cents and minus 1.5 cents per 10 miles from nearer of Ames, Marshalltown, or Cedar Rapids

The Class I differential under the Cedar Rapids-Iowa City order is $1.33. For plants located between 50 and 65 miles of the nearer of Cedar Rapids or Iowa City, the Class I price is reduced by 10 cents and by an additional 1.5 cents per 10 miles beyond 65 miles.

The Class I differential for the Quad Cities-Dubuque market is also $1.33. It is reduced by 10 cents in Dubuque and Jackson Counties and in East Dubuque, Illinois. There are various plus and minus location adjustments in areas outside the marketing area.

The North Central Iowa marketing area is now divided into four pricing zones. The Class I differential in Zone I is $1.25. In the remaining three zones, it is adjusted to $1.33, $1.20, and $.15. At locations outside the marketing area that are more than 65 miles from the nearer of Fort Dodge, Marshalltown, Mason City, and Waterloo, there is a location adjustment of minus 10 cents for the first 65 miles and an additional 1.5 cents per 10 miles thereafter.

The heaviest milk production in the Upper Midwest stretches from central to southeastern Minnesota into northeastern Iowa and into southern and central Wisconsin. When local market supplies are inadequate for Class I needs, it is this heavy production area that must be considered the prime reserve supply area. In fact, as mentioned earlier, significant quantities of milk for the Iowa markets already come out of southeastern Minnesota and western Wisconsin.

In order to encourage milk to move from production areas to consumption areas, prices must be aligned so as to cover transportation costs associated with distance and provide a favorable return compared to alternative local manufacturing outlets or other fluid markets. A differential of $1.40 in the base zone for the Iowa marketing area will provide the necessary economic incentive to attract the needed supplies. As indicated, this is the Class I differential presently applicable in the Des Moines market.

The National Farmers Organization proposed a pricing structure comprised of four pricing zones with Class I differentials ranging from $1.50 in southern Iowa and Missouri to $1.26 in Minnesota

and Wisconsin. However, in its brief, NFO modified this proposal to include six pricing zones, with Class I differentials ranging from $1.50 in the southern half of Iowa to $1.06 in Minnesota and Wisconsin.

The NFO proposal, as modified, should not be adopted. The proposal would increase the Class I differential from $1.40 to $1.50. This increase cannot be justified on the basis of this record. There was no evidence to suggest that such an increase was necessary to insure an adequate supply of milk for the Iowa market, which in 1975 had a Class I utilization slightly above 50 percent. As noted in the discussion on pooling standards, substantial quantities of milk are already available in Iowa for the fluid market.

Although the NFO proposal is structured to provide location adjustments that would align prices with neighboring markets, the price-breaks between zones are of necessity rather large (23 cents between zones III and IV, for example). Such a large change in price might unduly influence plant location and milk movements merely to take advantage of a higher price zone. This would be disruptive to orderly marketing.

Because any zone pricing involving only a few zones north into Minnesota and Wisconsin would—even with a Class I differential of $1.40—involve rather large price increments, a zone pricing structure based on 10 mile increments should be adopted for the heavy milk production area in northeastern Iowa and farther north into Minnesota and Wisconsin.

The pricing structure adopted herein is very similar to that proposed by Proponent No. 1. However, Zone 1 as adopted herein does not include Poweshiek County, as proposed by Proponent No. 1. Poweshiek County should be excluded from Zone 1 because geographically it is located about the same distance from the main production area for the market as are plants in the Zone 2 suggested by proponents.

The president of Boone Dairy, speaking also on behalf of Boyd's Dairy at Boone, Iowa, proposed that Boone and Story Counties be priced 15 cents below the price in the Des Moines area. He testified that, prior to December 1971, Boone and Story Counties were priced 10 cents below Des Moines. However, at a public hearing held in April of 1971 it was proposed that this minus location adjustment be removed. Since there was no opposition to this proposal, the minus 10 cents was removed effective December 1, 1971.

The witness testified that he and other handlers in Boone and Story Counties erred in not being present at the April 1971 hearing. He contends that, in any event, the decision based on that hearing does not give any material reasons for the change. By contrast, he cited an April 1969 decision which defends and reaffirms the need for a minus 10-cent location adjustment in Boone and Story Counties.

This handler testified that he distributes only in Boone and Story Counties and that he competes extensively with handlers to the north of him. He cited handlers in Rochester, Waterloo, Omaha, and Des Moines with whom he competes. He contends that the present and proposed pricing structure would put him at a competitive disadvantage with respect to his major competitors from the north.

On the basis of this record, it is concluded that the price in Boone and Story Counties should be the same as the price at Des Moines, about 40 miles south of Boone.

The primary contention of the Boone handlers is that the current and proposed pricing structure puts them at a competitive disadvantage with plants to the north of them. In particular, they cited a plant at Rochester, Minnesota, and one at Waterloo, Iowa.

It is widely accepted that the cost of transporting packaged fluid milk products is at least the 1.5 cents per hundredweight per 10 miles location adjustment rate provided under the order and probably more than that. Under the Upper Midwest order, the Rochester plant has a Class I differential of $1.12 per hundredweight. Since Rochester is about 200 miles from Boone, the cost for transporting milk from Rochester to Boone is at least 30 cents per hundredweight. Thus, the Rochester plant has an effective Class I differential of $1.42 at Boone, compared to Boone's Class I differential of $1.40 under the Des Moines order.

Waterloo is approximately 110 miles from Boone. The Class I differential at Waterloo is presently $1.25. Adding transportation at 1.5 cents per 10 miles, the Waterloo plant has an effective Class I differential cost of $1.41 at Boone.

These figures, which must be considered minimum costs, clearly refute the Boone spokesman's argument that the order prices put Boone at a disadvantage with its competition from the north. If competing handlers have a competitive advantage over Boone Dairy, it is likely that economies of large scale operation is the reason for it and not the minimum Class I price under the order.

The Boone witness did not know how his proposed 15-cent price reduction would affect his procurement of milk. However, it is certainly doubtful that the handler could procure his supply of milk at 15 cents per hundredweight under the price at Des Moines, since the cooperative which supplies him has the option of delivering the milk to Des Moines. Therefore, even if the order price were reduced, as he suggests, in all probability he would still have to pay an effective price to the co-op equal to what he is paying now.

As mentioned above, the witness cited a 1969 decision which removed a minus 10-cent location adjustment in all of the counties in the Des Moines marketing area with the exception of Boone and Story Counties. At the time of that hearing, there was a handler at Fort Dodge, in Webster County (directly north of Boone County), regulated under the North Central Iowa order, and there were two handlers at Ames, in Story County. A handler at Marshalltown, in Marshall County (adjacent to Story County) competed with the Ames handlers in Ames. The Marshalltown handler had a price under the North Central Iowa order that was 5 cents lower than the Des Moines order price at Ames. The transportation from Marshalltown to Ames was equal to about 6 cents per hundredweight. Therefore, to remove the minus 10-cent location adjustment in Story County at the time of the 1969 hearing would have put the Ames handlers at a competitive disadvantage with respect to the Marshalltown handlers.

A similar situation existed with respect to the Boone handlers. The Fort Dodge handler, who by the 1971 hearing had gone out of business, had a Class I price that was 10 cents below the price at Boone. The distance from Fort Dodge to Boone is 50 miles, which would support a transportation allowance of about 7.5 cents. If the minus 10-cent location adjustment had been removed from Boone County at that time, the Boone handlers would have been at a serious price disadvantage with respect to the Fort Dodge handler. It was primarily for this reason—competition among handlers—that the minue 10-cent location adjustment was not removed from Boone and Story Counties.

By 1971, the situation had changed considerably. The two Ames handlers and the Fort Dodge handler were no longer in business. Thus, the competive situation was substantially different at the time a Des Moines handler proposed at the 1971 hearing that Boone and Story Counties be includde in the base zone (i.e., removing the 10-cent location adjustment). The 1971 amendments resulting from that hearing removed the 10-cent location adjustment from Boone and Story Counties. The change in price was deliberate and was supported by evidence and was not an oversight as suggested by the Boone handler.

Zone 2 adopted herein differs from the proposed Zone 2 by the exclusion of Jackson County.

There is one pool distributing plant in Jackson County in Maquoketa. Jackson County, presently part of the Quad Cities-Dubuque marketing area, has an adjusted Class I differential of $1.23. Proposal #1 would increase the differential to $1.33. Since Jackson County is close to the heavy milk production area in northeastern Iowa, there is no need to increase the Class I price 10 cents in this county to insure an adequate supply of milk for the Maquoketa handler. Moreover, since Jackson County borders on the Chicago Regional market, which has an adjusted Class I differential of $1.10 in adjacent Jo Daviess County, a differential of $1.33 in this county would clearly worsen price alignment between the two orders. For these reasons, Jackson County should be included in Zone 3. At Maquoketa, Iowa, the Class I differential under the merged order thus would be $1.24, one cent more than it is now under the Quad Cities-Dubuque order.

Proponent #1 proposed a location adjustment of minus 15 cents in their Zone

3, which included a band of 13 counties directly north of their Zone 2. They proposed a fourth zone, comprised of six counties directly north of Zone III, that would carry a location adjustment of minus 20 cents.

The location adjustments adopted herein do not differ appreciably from those proposed by Proponent #1 but do provide a more gradual decline, thereby eliminating large price-breaks at county lines. A breakdown of the adjusted Class I differential at present, as proposed, and as adopted herein at various locations is shown in the following table:

TABLE 4.—*Adjusted class I differential—Iowa market*

Location	Presently	Per proposal No. 1	Per NFO proposal	As adopted
Des Moines	1.40	1.40	1.50	1.40
Pella	1.40	1.40	1.50	1.40
Ottumwa	1.40	1.40	1.50	1.40
Corydon	1.40	1.40	1.50	1.40
Boone	1.40	1.40	1.50	1.40
Marshalltown	1.33	1.33	1.35	1.33
Cedar Rapids	1.33	1.33	1.35	1.33
Iowa City	1.33	1.33	1.35	1.33
Quad Cities	1.33	1.33	1.35	1.33
Maquoketa	1.23	1.33	1.35	1.24
Dubuque	1.23	1.25	1.35	1.225
Waterloo	1.25	1.25	1.35	1.24
Stacyville	1.165	1.20	1.35	1.165

For a plant located outside the Iowa marketing area, inside some other Federal order marketing area, Proponent #1 proposed a Class I location adjustment that would result in the same price under the Iowa order as would be applicable under the order in which the plant was located. For a plant located outside of any Federal order marketing area, proponent proposed a minus location adjustment at the rate of 1.5 cents per 10 miles from the nearer of Des Moines, Davenport, or Waterloo.

As adopted herein, plants that may be located in lower priced marketing areas would be located in Zone 3 and would, accordingly, have a minus location adjustment based on the distances from Ames, Marshalltown, or Cedar Rapids. All locations that are not included within Zones 2 or 3 would be included in Zone 1, with no location adjustment applicable.

The Class I price adopted herein for the merged order is the price that is considered necessary to attract adequate milk supplies to the market for fluid use. However, because milk supplies often must be moved from distant supply plants to the market center, it is necessary to adjust the Class I price downward at such plants because of the costs involved in moving the milk. Without such adjustments, distributing plant operators could not attract the milk to the market center unless they assumed the cost of transporting the milk. This would place such handlers at a competitive disadvantage relative to other handlers at the market center who receive milk directly from producers and who thus do not incur the additional transportation costs.

Customarily, Class I prices under the Iowa orders have been reduced at distant plants irrespective of their location. Under the merged order, however, downward adjustments should be applicable only in those areas from which milk supplies logically would be drawn for the Iowa market. Milk supplies in Minnesota, Wisconsin, and northeastern Iowa are very heavy, while in areas south and west of Iowa milk supplies are generally much less plentiful. Thus, Iowa handlers should not be encouraged to procure milk from plants in these tighter-supply areas through the application of minus location adjustments. In the interest of marketing efficiency, any available milk supplies in the southern and western areas should be encouraged to move to those markets that are more distant from the heavy production areas than is the Iowa market.

Although Proponent #1 proposed that plus location adjustments be applicable in areas generally south and west of the Iowa market, the record does not indicate a need at this time for adjusting the Class I price upward in these areas. Presently, none of the plants now pooled under the four Iowa orders is located south or west of the marketing area adopted. Moreover, because the Class I prices in the southern and western areas are generally higher than the Class I price for the Iowa market, distributing plants in these areas normally would not be expected to become associated with the Iowa market to the extent that they would become pooled under the Iowa order.

Should such a plant become regulated by the Iowa order, it is reasonable to expect that the plant operator would have to pay more than the base zone Class I price to obtain a supply of milk on a normal and regular basis. The handler would still be competing with nearby handlers for milk supplies and presumably would have to pay the higher price prevailing in his local area. On this basis, the Class I price applicable under the Iowa order in areas to the south and west of the Iowa marketing area perhaps should be comparable to the Class I prices prevailing in those areas. From an administrative standpoint, however, it is difficult to provide under the Iowa order a broad price structure that would parallel the prices prevailing at various locations in the southern and western areas. Thus, in the absence of testimony with respect to specific plant locations that require special consideration at this time, it is preferable that no plus adjustments be established under the order for areas south and west of the central market.

To encourage efficient movement of milk between plants under Federal orders, it is generally necessary, either through the allocation procedure in the assignment of milk receipts to classes of utilization or in the application of location adjustment credits, to protect the pool from bearing the costs of unnecessarily moving milk to the central market for other than Class I use. In the Iowa markets, this has been done by assigning location adjustment credits for Class I milk transferred between pool plants first to the transferor plants at which the least location adjustment applies and then in sequence to plants having the next least location adjustment (or the next highest price). This procedure is intended to encourage milk to come from the closest sources of production.

Proponent No. 1 testified in opposition to the present procedure. The cooperatives object to the amount of location adjustment credits assigned and to the manner in which they are assigned.

With regard to the first point, a spokesman presented data showing the unavoidable Class II and Class III utilization associated with Class I use at the Land O'Lakes, Cedar Rapids, Iowa, distributing plant during the period from March 1975 through February 1976. There were four types of non-Class I uses involved: (1) Disposing of excess cream resulting from standardization of milk to a lower fat content than that of milk received from the farm; (2) route returns that were disposed of for animal feed; (3) inventory variation (fluid milk products that are classified as Class III because they are in inventory at the end of the month); and (4) shrinkage.

The witness testified that an allowance should be provided for this unavoidable Class II and III utilization based on the highest possible unavoidable Class II and III use that might be experienced in a plant. He computed this figure by taking the highest percentage use in each of the four categories for the 12-month period and arrived at a potentially unavoidable Class II and III use of 11.25 percent of Class I sales. The monthly unavoidable Class II and III use for this period ranged from 2.6 to 9.9 percent of Class I sales.

The witness also testified that the unavoidable Class II and III uses at the Cedar Rapids plant might be understated for a variety of reasons. Therefore, he proposed that an allowance of 15 percent be provided for unavoidable Class II and III utilization.

Presently, no allowance for unavoidable Class II and III utilization is provided under Orders 63 and 78; an allowance of 5 percent is provided under Orders 70 and 79.

It is concluded on the basis of the evidence presented that an allowance of 10 percent should be provided under the merged order. A 10 percent allowance should accommodate the necessary Class II and III use experienced by most plants in the market. An allowance above 10 percent, as proposed, is clearly excessive and should not be adopted.

The second objection voiced by the witness was the manner in which the location adjustment credits were allocated. Under the Des Moines order, Class I location adjustment credits are determined by first subtracting receipts from unregulated supply plants and other order plants that are assigned a Class I classification and then subtracting from the remaining Class I use at the transferee-plant receipts from producers and from cooperative associations acting as handlers on bulk tank milk.

The remaining Class I milk is then allocated to transferor-plants, allocating

it first to the closest plant and then to progressively more distant plants until all of the Class I milk is allocated.

Opponents of this procedure argued that all bulk receipts of milk at the plant should share pro rata in the plant's Class I utilization. It was charged that the present procedure gives preference to receipts from unregulated supply plants and other order plants.

Presently, the Des Moines order does, in fact, assign Class I milk first to bulk receipts from unregulated supply plants and other order plants in computing location adjustment credits. However, it should be noted that, under the allocation provisions of the order, such receipts are allocated pro rata to the classes of utilization in the transferee-plant. Accordingly, such other source milk does not receive a disproportionate share of the Class I utilization, as charged.

The milk received directly from producers and cooperative associations does receive a priority assignment to Class I for location adjustment credit purposes, though, since 100 percent of these receipts are subtracted from the remaining Class I milk at the transferee-plant prior to assignment of receipts from transferor pool plants. The allowance for 10 percent unavoidable Class II and III use at the transferee-plant, however, should facilitate the transportation of supply plant milk needed at distributing plants for Class I use.

The aggregate amount of Class I milk assigned to transferor pool plants for location adjustment credit purposes should be prorated to each transferer pool plant based on the proportion of receipts from each plant. This will assure that each transferor pool plant gets a proportionate share of the Class I location adjustment credits, instead of, as presently being done, giving preference first to the closest plant and then to successively more distant plants.

The latter procedure was adopted to encourage milk to come from the closest sources of production, thereby eliminating unnecessary transportation. However, changes in milk marketing have made this procedure impractical and inappropriate for the merged Iowa market.

Whereas, in the past, a handler would bottle a fairly even amount of milk six or seven days a week, now handlers bottle on only 4 or 5 days a week, and there is a wide variation in the amount bottled from one day to the next. Accordingly, on certain days handlers may require more milk than can be supplied from the nearest supply plant. However, if a handler purchases milk from more than one supply plant, the more distant supply plant may not be allocated its proportionate share of Class I location adjustmet credits. To avoid this problem, a handler would have the incentive to purchase all of his milk from a larger, but more distant, supply plant, thereby being assured that all of the milk purchased from the supply plant would get the maximum amount of Class I location adjustment credits available. Under these cirumstances, the provision now in the orders would result in greater transportation costs from the pool—exactly the opposite of what it is intended to do.

The pro rata assignment of location adjustment credits will provide greater equity for milk trasferred from supply plants to distributing plants because all plants will share equally in the Class I location adjustment credits, regardless of their location. Since supply plant pooling standards may be met by direct deliveries from producers' farms, it may be presumed that, when milk is transferred to pool distributing plants, such transfers reflect a need for milk that can not otherwise be met. In view of this, the interest of both handlers and producers will best be served by providing for equal treatment to all supply plants that ship milk to a pool distributing plant.

Mississippi Valley Milk Producers Association, in its brief, urged that the allowance for location adjustment credits be increased to 125 percent of the Class I milk in the plant to accommodate "companion products" (products other than fluid milk products) that are also produced by handlers to augment area needs of consumers. MVMPA stated that the allowance of 15 percent above Class I proposed at the hearing will not adequately serve the market and may restrict unnecessarily the movement of milk to market, presumably because the allowance will not provide transportation credits for milk intended for Class II and III use.

Only that milk needed for Class I use should be encouraged to move from production areas to bottling plants. That is why location adjustments for handlers apply only on Class I milk. No location adjustments are applied to Class II and Class III milk, so as not to encourage the movement of milk for such uses. Rather than be processed at the city, manufactured products should be processed and packaged near procurement areas and transported to the central market in finished form, since it is cheaper to transport these products in packaged form than to ship the bulk milk necessary to manufacture them.

It has been argued by Mississippi Valley and others, however, that Class II products are part of a handler's regular product line. Many handlers expect to receive a regular supply of milk for Class II use as well as Class I.

It would not be appropriate under the order to encourage the movement of milk to the city for Class II use unless handlers paid for such transportation under the order. Otherwise, the handlers would get free transportation of this milk at the expense of all producers in the market. If handlers want milk at deficit production locations for Class II use, they should be willing to pay for it, either under the order or outside the order. Under the order, this could be accomplished by substantially increasing the Class II price. Location adjustments could then be incorporated in the order to accommodate the movement of milk for this use. Any further accommodation for the movement of milk for Class II use should be accompanied by some restructuring of the classification and pricing provisions for such milk under the order, which is beyond the scope of this hearing.

Pricing milk not needed for Class I use. The Class II price under the merged order should be the basic formula price for the month plus 10 cents. The Class III price should be the basic formula price for the month. These prices should be announced by the 5th day after the month to which they apply.

These prices were proposed by all of the proponent organizations and are now applicable under each of the orders to be merged. They were adopted for all of these orders in conjunction with the 39-market classification proceedings referred to earlier in this decision and are appropriate for the identical reason for which they were adopted in the separate orders.

Butterfat differential. A single butterfat differential should apply under the merged order. It should be computed by multiplying the average Chicago 92-score butter price for the month by 0.115 and rounding such amount to the nearest 0.1 cent. The differential should be announced by the market administrator by the 5th day after the end of the month in which it applies. This differential is now applicable under the separate orders and was adopted in conjunction with the uniform classification plan now in use.

Land O'Lakes proposed that the butterfat differential be reduced to 10.5 percent of the Chicago 92-score butter price. No other parties supported the proposal either at the hearing or in the briefs that were filed. NFO opposed the reduction in its brief.

LOL spokesman testified that the butterfat differentials now under the separate orders price surplus cream considerably higher than its market value. He presented a table showing that LOL's Cedar Rapids plant lost from $1.86 to $4.26 per hundredweight on its sales of surplus cream between January and December of 1975. He also presented a table showing the effect of his proposed lower butterfat differential for the same period. With a butterfat differential of 10.5 percent of the Chicago 92-score butter price, LOL would have lost as much as $1.71 per hundredweight in January 1975 and would have gained up to $1.66 per hundredweight during December 1975.

The witness stated that a fluid milk handler buying whole milk is at a disadvantage compared to one who buys skim milk since the former must absorb a loss on the cream portion of his milk. He acknowledged, however, that LOL charges over-order prices on skim milk sold to handlers which would reduce this advantage.

The testimony given by the witness raises some serious questions about the appropriateness of the present butterfat differential in this area of the country. It would appear that, if it were not for other overriding considerations that relate to this issue, some reduction in the butterfat differential could be justified based on his testimony. However, other factors must also be considered, such as the wide-ranging repercussions such a change would have on intermarket competition.

Since the market for butter, nonfat dry milk, and cheese is national in scope, handlers in surrounding markets would be adversely affected by such a change since it would give handlers in the Iowa market a competitive advantage with respect to milk products testing above 3.5 pecent butterfat. Similarly, handlers manufacturing products that require milk testing below 3.5 percent butterfat would be at a competitive disadvantage compared to handlers in other markets because the cost of milk with less than 3.5 percent butterfat would be increased.

The matter of the appropriate butterfat differential was an issue dealt with fully in the 39-market proceedings mentioned earlier. Although the present record indicates that some reduction in the butterfat differential might be appropriate, such a modification must be accomplished on a regional or national basis if orderly marketing is to be maintained.

(d) *Distribution of Proceeds to Producers.* A marketwide pool should be provided under the merged order as a means of equitably distributing among all producers in the market the total proceeds derived from the sale of producers' milk by all regulated handlers. Under marketwide pooling, one uniform price, adjusted for location of the plant to which the milk was delivered, is paid to all producers regardless of how a particular producer's milk is used by the handler to whom it is delivered. By receiving payment at the market uniform price, each producer shares equally in the higher-valued Class I milk of the market as well as in the lower-valued Class II and Class III uses of milk. This type of pooling is now being used in three of the four Iowa orders and was supported by all parties of interest for use under the merged order.

The North Central Iowa market is now an individual handler pool. As such, a uniform price is computed for each handler based on the utilization of his milk.

This type of pooling would be contrary to the proposals and testimony offered by all of the interested parties involved. One of the primary reasons for the merger is that a broad sharing of returns is needed for producers supplying handlers in this common procurement and marketing area. This can only be accomplished through a marketwide pool.

COMPUTATION AND ANNOUNCEMENT OF UNIFORM PRICE

A uniform price to producers should be computed for each month by the market administrator and announced by the 12th day of the following month.

Presently, all four individual orders provide for announcement of the previous month's uniform price by the 10th day of the month. Proponent #1 recommended extending the announcement date by two additional days to compensate for the additional day given to handlers in filing reports of receipts and utilization and also to allow the market administrator one additional day to compute the uniform price. This proposal should be adopted.

NFO proposed computation of a uniform price based on estimated pool values. This type of provision was recently incorporated in the new Upper Midwest order. Its principal advantage is that it allows somewhat earlier announcement of the uniform price, since the market administrator does not have to wait until all reports are processed.

This provision should not be adopted for the merged Iowa market because of the much greater chance for error in esstimating a price for this much smaller market. While the Upper Midwest market has in excess of 400 million pounds of milk per month, the Iowa market will average only slightly more than 100 million pounds per month. Combined with the higher Class I price and Class I utilization for the Iowa market, this makes it much more difficult to accurately estimate the uniform price. For these reasons, this procedure should not be adopted for the Iowa market.

Proponent #1 proposed a provision that is not presently in the separate orders which would allow the market administrator to include in his computation of the uniform price the report of a handler who has not made payment to the producer-settlement fund for the preceding month if the unreserve cash balance in the producer-settlement fund is not less than two cents per hundredweight. A witness testified that this language is intended to prevent complete depletion of the producer-settlement fund in the event a handler defaults on his payments.

Presently, the orders exclude from the current month's pool computation the repofts of handlers who failed to make payments to the producer-settlement fund for the preceding month. The proposal would include those reports if there is two cents per hundredweight unreserved cash balance in the producer-settlement fund.

Technically, the present provision of the orders would exclude a handler from the pool, even though he owed only a very small amount to the producer-settlement fund. Such obligation could have resulted in an error discovered during audit of the handler's records.

No purpose is served in excluding a handler's report from the pool computation, except to guard against depletion of the fund to where obligations from the fund cannot be paid in the event the handler defaults on his obligation. The proposed two-cent per hundredweight balance provides sufficient safeguard to preclude this from happening.

Payments to producers. The merged order should continue to require handlers to make payments to cooperative associations and producers for milk received. This is now the method of payment under each of the four orders.

Proponent #1 proposed a payment plan whereby all handlers receiving milk from a cooperative association would pay their total pool obligation for such milk to the market administrator who, in turn, would pay the cooperative associations. Under their plan, proprietary handlers who have not been delinquent in their payment obligations under the order would be allowed to pay their nonmember producers if a cooperative association is not collecting payment on their behalf.

Proponents' witness testified that their proposal would provide handlers with a stronger incentive for making prompt payment of their order obligations because handlers tend to pay the Market Administrator on a timely basis. He stated that late payments by certain handlers could result in an inequitable situation for those handlers making timely payments because the delinquent handlers are using money due producers to overcome cash-flow problems, while the prompt handlers with similar problems must borrow money or use their own capital.

The witness also testified that the proposed payment procedure would make it easier for the market administrator to enforce timely payments to producers. Proponents contend that their proposal would strengthen the position of the market administrator considerably in any legal proceeding involving payment, since the amount owed would be to the producer-settlement fund.

In support of their proposal, proponents offered an exhibit purporting to show late payments by six handlers. Proponents did not identify the six handlers, but conceded that they could include both proprietary handlers and co-op handlers.

The exhibit showed that for the 12 months of 1975, the six handlers averaged 3.4, 1.9, 14.5, 1.8, 10.5, and 12.9 days late in making the partial payment and 6.8, 2.4, 12.0, 3.8, 10.0, and 16.3 days late in making the final payment. In computing these figures, proponent considered payments to be late if not received by the date specified in the order.

The market administrator of the four Iowa orders has considered payments to be on time if postmarked by the date specified in the orders. With this interpretation, two of the six handlers included in the survey may not actually have been late in making the payments, since two or three days for mail delivery is not uncommon.

Also, it is possible that one or more of the three chronically late-paying handlers included in the survey are cooperative associations. The proposed provision would do nothing to insure prompt payment from such handlers, since, under the proposal, cooperatives are allowed to offset payments to the producer-settlement fund by the amount of payments due from the market administrator.

The largest handler in the four Iowa markets stated in his brief that he has never failed to make timely payments. He emphasized that only proprietary handlers would be required to make payments to the producer-settlement fund. Consequently, a cooperative handler would have the use of its money for this period of time, with the result that a cooperative handler would have an unfair advantage over a proprietary handler.

Proponents testified that this advantage was not intended and that their

proposal should be modified to provide equal treatment between proprietary handlers and cooperative association handlers.

Proponents have not made a convincing argument as to the need for channelling payments through the market administrator. They have not, by their own admission, strictly enforced prompt payments by handlers, either through threatening to cut off supplies or by charging interest on late payments. Proponents indicated that the competitive situation precluded them from taking such steps.

Under the merged order, cooperatives should have a stronger hand to enforce prompt payments by handlers. The broader pooling opportunities under the merged order will ease the pressure to maintain customers who do not pay their bills on time. Accordingly, cooperatives should be better able to enforce prompt payments without subjecting those handlers who are conscientious about making timely payments to their proposed payment arrangement.

In referring to the payment dates specified below, it is intended that payments must be postmarked by such dates, rather than be received by such dates. If a payment must be postmarked by a certain date, it reasonably should be received a day or two later.

Under the terms adopted herein for the merged order, milk received from a cooperative acting as a handler for farm bulk tank milk will be treated as an interhandler transfer but will be classified pro rata with producer milk at the transferee-plant. The pool plant operator will be obligated to the producer-settlement fund for the milk received directly from producers and by transfer from bulk tank cooperative handlers at its classified use value.

In its capacity as the operator of a pool plant, the cooperative association will account to the pool at class prices for milk transferred to other pool plants. The transferee-handler will pay the cooperative the class prices for such milk.

A handler should be required to make a partial payment to a cooperative association or a producer on or before the last day of the month for milk received during the first 15 days of the month. The partial payment should be at the uniform price for the preceding month adjusted at the handler's plant location.

Final accounting for milk from producers and cooperative bulk tank handlers will be completed after the end of the month. Handlers will be required to submit to the market administrator a report of all receipts and utilization by the 8th day after the end of the month. The uniform price is announced by the 12th day. On the 12th day, handlers are required to pay cooperative associations for all skim milk and butterfat received from pool plants operated by such cooperative associations at not less than the class prices, as adjusted by the butterfat differential, applicable at the location of the receiving handler's pool plant less the amount of partial payment. Earlier payment on such plant milk is necessary to allow the cooperative association operating the transferor pool plant to meet any possible obligation to the producer-settlement fund.

Handlers whose pool obligation exceeds the value of their producer milk at the uniform price should be required to make payment to the producer-settlement fund on or before the 15th day after the end of the month. On or before the 17th day after the end of the month, the market administrator will make payments to handlers whose total pool obligation is less than the value of their producer receipts at the uniform price.

Final payment by proprietary handlers to cooperative association handlers on farm bulk tank milk will be made on or before the 18th day after the end of the month. Such payment will be at not less than the uniform price for the month, less the amount of partial payment made for milk received during the first 15 days of the month. On or before the 18th day after the end of the month, handlers will also make final payment to each producer for milk which was not caused to be delivered by a cooperative association acting as a handler on farm bulk tank milk. Such payment will also be at the uniform price for the month, less the amount of partial payment for milk received during the first 15 days of the month.

This schedule of reporting and payment dates adopted is intended to insure producers prompt payment for their milk. It closely resembles the payment schedule proposed, except for the interpretation of the dates specified, which are considered to be postmark dates.

Plant location adjustments for producers and on nonpool milk. The uniform price to producers should be adjusted for the location of the plant of actual receipt. The location adjustments should be the same as those provided for handlers with respect to Class I milk. The uniform price applicable to other source milk should also be adjusted at these rates, except that the adjusted uniform price should not be less than the Class III price.

Provisions of this nature are included in the four Iowa orders. They were proposed for the merged order by Proponent #1.

The National Farmers Organization proposed that there be no location adjustments for producers, but that there be credits from the pool for supply plants and reload points that ship milk for Class I use to pool distributing plants. Four basing points were proposed for this purpose. Location adjustments would be computed at the rate of 8 cents for the first 45 miles and 2 cents per 10 miles thereafter that such supply plant or reload point is located from the nearer of Des Moines, Rock Island, Cedar Rapids, or Dubuque.

A NFO spokesman testified that the practice of equating location adjustments to producers with Class I location adjustments for handlers creates inequities. He stated that, from a cost of production viewpoint, there is no legitimate reason for paying a producer a lower price because he happens to be located farther from a market than another producer.

He stated the proposed pool credits, coupled with a flat price to producers, would bring about a much more equitable arrangement in the marketing of Federal order milk.

The pricing structure in the Federal order system generally increases from north to south to reflect costs associated with distance in transporting milk from surplus milk production areas to deficit areas. Accordingly, a dairy farmer always has the choice of shipping his milk to the local market or shipping it to a higher priced market at his own expense. If the price in the alternative market will at least equal the local market price plus transportation, the dairy farmer will have the incentive to ship his milk to the alternative market.

Under the NFO proposal, all producers supplying the market would receive the same uniform price. This would result in a substantial redistribution of income from producers in the southern part of the market to those in northeastern Iowa and into Minnesota and Wisconsin.

The reduction in price to producers in central and southern Iowa would make alternative market prices very attractive. Thus, there would be an undue price incentive for such producers to associate with the St. Louis, Southern Illinois, or Kansas City markets, to name a few.

The proposal would also have a disruptive effect on price alignment in southern Minnesota and west-central Wisconsin, since the Iowa uniform price would provide an incentive for producers supplying the Upper Midwest and Chicago markets to switch over to the Iowa market. This would cause handlers in the former two markets to pay excessive prices in order to hold their milk supply.

The NFO proposal would provide no incentive for producers to move their milk to other than the closest outlet, since they would get the same price whether they shipped their milk to a supply plant five miles from their farm or to a city distributing plant 70 miles away. Furthermore, the proposal would force all milk into the nearest pool plant, which is not likely to be a pool distributing plant, since most of the milk supply of Iowa handlers is produced in northeastern Iowa. The milk would then have to be transferred to pool distributing plants. Although, in many cases, this milk can be moved more efficiently on a direct-ship basis, the incentive would be to move it from a supply plant to a distributing plant because only in that way can transportation cost be recovered.

While under the NFO proposal producers would get no reimbursement for transportation through a higher uniform price, supply plants would seemingly—and perhaps inadvertently—get a double location adjustment for milk transferred for Class I use. This is because the NFO proposal provides a minus 15-cent location adjustment between Zones I and III. On top of the 15 cents, there would apparently be a further transportation credit based on the distance from the supply plant to the nearest basing point.

In light of the above considerations, it is concluded that the NFO proposal would promote inequities and a misallocation of resources, and would not be conducive to the most efficient marketing of milk. For these reasons, the proposal is denied.

SERVICE CHARGES

Service charges for milk received from a cooperative association should not be adopted for the merged order.

Land O'Lakes, Inc., proposed that service charges be incorporated in the order to accommodate the recovery of a cooperative association's costs for field services, testing for milk quality, coordination of milk movements, disposition of reserve supplies, producer payrolls, and operation and maintenance of storage and handling facilities. Its proposal would provide a charge of 10 cents per hundredweight on milk delivered directly from the farm to a handler's plant and 18 cents per hundredweight on milk delivered from a supply plant to a handler's plant.

A Land O'Lakes witness testified that most cooperative associations supplying proprietary handlers are able to recover the cost of various services rendered through service charges levied by the cooperative. He said, however, that not all cooperatives in the Iowa marketing area always levey such a charge and the charges that are made vary from organization to organization and possibly from customer to customer. Consequently, a milk distributor who pays a small charge or none at all has a procurement cost advantage over a competitor buying milk from a cooperative that does charge for services rendered. The witness concluded that this situation is not in keeping with the legislative requirement of the Agricultural Marketing Agreement Act that "prices shall be uniform to all handlers."

Mississippi Valley Milk Producers Association and the National Farmers Organization also gave testimony in support of the Land O'Lakes proposal. A MVMPA spokesman stated that his organization heartily supports Land O'Lakes' proposal. He testified, however, that MVMPA has experienced higher costs than LOL for the services covered in the proposal.

The NFO spokesman testified that, if a service charge is provided for milk received from supply plants, a similar service charge should apply to milk handled through reload stations. He stated that NFO has experienced little, if any, difference in the actual operating cost of a reload station versus a supply plant.

Land O'Lakes presented an exhibit showing the costs experienced by it in providing supply plant milk and direct-shipped milk to other handlers. Although LOL does not presently operate any supply plants under the four separate Iowa orders, the cooperative indicated that its cost in handling milk through supply plants in neighboring markets amount to 18 cents per hundredweight. Its costs on direct-shipped milk were given as 9 cents per hundredweight. These costs are broken down as follows:

TABLE 5.—*Land O'Lakes milk procurement costs per hundredweight for 1975*

Cost Item	Supply plant milk	Direct-shipped milk
Depreciation	$0.0188	
Corporate overhead and interest	.0062	
Plant labor	.0498	
Utilities	.0109	
Grade A division overhead	.0170	$0.0170
Shrinkage	.0307	.0262
Producer payroll costs	.0122	.0122
Field service	.0281	.0281
Quality testing	.0066	.0066
Total	.1803	.0901

As proponent pointed out, a basic requirement of the statutory authority for milk orders is that the class prices established thereunder be uniform to all handlers except for specified adjustments, such as for locations at which delivery of milk is made to such handlers and butterfat content of the milk. It is questionable, however, whether this can be construed to mean that the "cost" of milk shall be uniform to all handlers. Proponent's position would suggest that the orders should assure that the total "cost" of obtaining milk be made the same for each handler in the market. This does not appear to be a reasonable interpretation of the Act, nor does the attainment of such cost uniformity appear feasible.

The Act provides that the class prices under an order are minimum prices that handlers must pay producers or associations of producers for milk. Handlers may, and do, pay producers or their cooperatives prices that are higher than the established minimum level. There is no statutory requirement that such overorder prices be related to specific costs that producers or cooperatives may incur in making milk available to handlers. Even if service charges were applied under the order, handlers could still make additional payments to producers in excess of those necessary to meet the minimum class prices and applicable service charges. Thus, it is difficult to conclude that, under the statutory requirement for uniform class prices to handlers, the order is intended also to assure uniform milk costs to all handlers in a regulated market.

From a practical standpoint, it is not possible to assure that all handlers incur the same costs in obtaining their milk supplies. The extent of the procurement costs incurred by competing handlers may be influenced by any number of things. A handler may choose to obtain his milk supply directly from producers, for example. In doing so, a small handler may be able to limit his procurement activities to milk testing and producer payrolling. Other handlers may undertake various additional activities, such as field services, hauling and operation of reload points or supply plants. The cost of such activities may be affected by such factors as the volume of milk handled, location of producers, type and size of hauling equipment, and payrolling procedures, to name just a few. The handler may choose, on the other hand, to obtain his supply of milk solely from a cooperative association, or perhaps just a portion of his supply from a cooperative. Under these arrangements, also, a handler can expect to experience still different sets of costs for his milk supply. Because handlers in Iowa use different means of procuring their milk supplies, the procurement costs can be expected to differ among the competing handlers.

Undoubtedly, wide differences in procurement costs are of great concern to both cooperatives and proprietary handlers. Assuming comparable operating efficiencies, those handlers with the lower procurement costs obviously have a competitive advantage in the marketplace. It is understandable, then, why there is support for the institution of service charges under the proposed Iowa order.

There are significant problems inherent in the establishment of service charges under an order. Some of these are clearly evident from the record of this proceeding. The only detailed cost information introduced at the hearing in support of the proposed service charges was that offered by Land O'Lakes, the proponent cooperative. Actually, the cooperative's supporting data for a service charge on supply plant milk reflected its operating experience in other markets rather than under the four separate Iowa orders. Another cooperative indicated that its costs for similar services were higher than those experienced by Land O'Lakes. Because of differences in their methods of operation, each cooperative in the market can be expected to incur different costs for similar services. This makes it difficult to establish representative service charges under the order. In the case of this proceeding, the record evidence does not provide an adequate basis for determining representative charges.

Other problems are involved, also. Each organization can be expected to allocate costs to various services differently. In the case of Land O'Lakes, the proposed 18-cent service charge for supply plant milk was derived in part from costs for "Corporate overhead" and "Grade A Division overhead." Corporate overhead was not used in arriving at the proposed 10-cent charge on direct-shipped milk. The particular corporate structure and scope of operations for other cooperatives presumably would result in a different make-up of costs for services.

In addition, the question arises as to what services should be represented by any service charge that might be adopted. If a mandatory charge is made for a service or services not wanted by a buying handler, this could place a cooperative's milk at a competitive disadvantage relative to the milk of proprietary supply plants or nonmember producers. A major cost component used in the make-up of Land O'Lakes' proposed service charges was shrinkage. If a pool plant operator were to purchase milk on the basis of farm weights and tests,

the cooperative would not be accountable for any shrinkage and the handler would have no basis for paying a charge on such shrinkage.

Also, service charges incorporated in the order would need to be up-dated on a reasonably current basis if such charges are to be reflective of actual operating conditions in the market. This would place an additional burden on the administration of the program. The level of service charges in Iowa has been determined largely by the competitive forces in the market. Such charges can be changed almost immediately in response to changing conditions.

For these several reasons, it is much more preferable that service charges be a matter of negotiation between cooperatives and buying handlers. The record does not provide compelling reasons for mandating service charges at prescribed levels under the merged order. Accordingly, the proposal for service charges is denied.

(e) *Administrative provisions.—Charges on overdue accounts.* The merged order should provide for charges on handler obligations to the producer-settlement fund that are overdue. Such charge should be at the rate of three-fourths of one percent per month (9 percent annually). The charge should apply beginning the day following the date on which payment of an obligation is due.

It is essential that all handler payments to the producer-settlement fund be made promptly in order that the market administrator will be able to make the required payments out of the producer-settlement fund. A charge on overdue accounts should provide an incentive to handlers to make their payments on time. Moreover, handlers who pay late are, in effect, borrowing money from producers. Without a charge for late payments, handlers delinquent in their payments would have a financial advantage relative to those handlers making timely payments.

It should be noted that such charges are not a substitute for prompt payments by handlers. Those delinquent in their obligations will be subject to legal enforcement action as authorized under the Act.

Presently, none of the four orders provides for a late payment charge. The charge was proposed by Proponent #1. No one testified or filed a brief in opposition to it.

Administrative assessment. The maximum rate of payment by handlers for the cost of administering the merged order should be 4 cents per hundredweight. Currently, the maximum rates under the separate orders are 4 cents per hundredweight under the Cedar Rapids-Iowa City, Des Moines, and North Central Iowa orders, and 3 cents per hundredweight under the Quad Cities-Dubuque order.

Proponent No. 1 proposed a maximum administrative assessment rate of 5 cents per hundredweight. Recognizing that the maximum rate need not be charged by the market administrator, proponent testified that the higher rate would eliminate the necessity of a hearing at some future date in the event administrative costs should rise.

The maximum rate of 4 cents per hundredweight, now included in three of the four orders, should be adequate for the merged order, which can be expected to be administered somewhat more efficiently than four separate orders. It is necessary, of course, that the administrator have adequate funds to perform all of those functions necessary for effective administration. However, if experience indicates that the merged order can be administered at a lesser rate, the Secretary, under the terms of the order, may adjust the effective rate of assessment without the necessity of a hearing.

The administrative assessment should apply to all receipts of milk within the month from producers, including milk of such handler's own production, any other source milk allocated to Class I (except milk so assessed under another Federal order), milk received from a cooperative association in its capacity as a handler on farm bulk tank milk, and milk transferred to a pool plant from a plant owned and operated by a cooperative association. A cooperative association should pay the administrative assessment only on its receipts for which such assessment is not to be paid by other handlers.

The Act provides that the administrative cost of the order shall be borne by handlers and that minimum prices to all handlers be fixed for milk received from producers or associations of producers. When a proprietary handler purchases milk from a cooperative association handler, the assessment should be passed on to the proprietary handler.

Presently, none of the four orders places on proprietary handlers the administrative assessment on milk received from a cooperative association in its capacity as a handler on plant milk transferred. Proponents testified that the administrative assessment should be borne by the proprietary handler ultimately receiving the milk.

When a cooperative association operates a processing plant or acts in the capacity of a handler diverting milk to nonpool plants or in the limited capacity as responsible handler with respect to farm bulk tank milk which it causes to be picked up at the farm and which is not received at any plant, it, of course, must be held responsible for the assessment payable on such milk.

Marketing service deduction. With respect to payments to producers, the order should provide for a maximum deduction of 6 cents per hundredweight for marketing services furnished by the market administrator. Such deductions are necessary to enable the market administrator. Such deductions are necessary to enable the market administrator to conduct an adequate marketing service program for producers supplying the market.

The maximum rates now for such services are 5 cents under the Cedar Rapids-Iowa City, Des Moines, and North Central Iowa orders, and 6 cents under the Quad Cities-Dubuque order.

The 6-cent rate, which was proposed at the hearing, should permit the market administrator to conduct an adequate marketing service program for those producers not receiving such services (providing for market information to producers and verification of weights, sampling, and testing of milk purchased from producers) from a cooperative association. The average rate now charged under the four markets is slightly above 5 cents per hundredweight. Therefore, a maximum rate of 6 cents should provide adequate funds for these services.

The order should provide for the transfer of funds from a proprietary handler to a cooperative association when the latter is performing the marketing services for producers. The language suggested by proponents would merely direct that no money be withheld in the case of producers for whom a cooperative is performing the marketing services. This would be adequate when the handler pays the cooperative association for the milk and the cooperative then pays the producers. In this case, the cooperative could obviously withhold the marketing service fee. But in the case where the handler pays the producer directly, a provision is needed to provide for the transfer of funds from the handler to the cooperative to cover the marketing services performed. The language adopted herein specifically provides for this transfer of funds, accompanied by a statement showing the quantity of milk for which a deduction was computed for each producer.

Merger of the administrative expense, marketing service, and producer-settlement funds. To accomplish the merger of the orders effectively and equitably, the reserves in the administrative expense funds that have resulted under the four separate orders should be combined. Similar procedure should be followed with respect to the marketing service fund reserves of these individual orders. Any liabilities of such funds under the individual orders should be paid from the appropriate new fund established under the merged order. Similarly, obligations that are due the several funds under the individual orders should be paid to the appropriate combined fund under the merged order.

The money paid to the administrative expense fund is each handler's proportionate share of the cost of administering the order. It is anticipated that all handlers currently regulated under the individual orders will continue to be regulated under the merged order. In view of this, it would be an unnecessary administrative and financial burden to allocate back to handlers the reserve funds under the individual orders and then accumulate an adequate reserve for the merged order. It is more efficient to combine the administrative monies accumulated under the individual orders and to pay any liabilities against such funds from the consolidated fund of the merged order.

The money accumulated in the marketing service funds of the four orders is that which has been paid by producers for whom the market administrator is

performing services. The producers who have contributed to the marketing service fund of each order are expected to continue to supply milk for the Iowa market. The consolidation of the reserves in the individual marketing service funds is therefore appropriate in view of the continuation of the marketing service program for these producers under the merged order.

The producer-settlement fund balances in Orders 63, 70, and 79 should be liquidated and paid out to producers through the blend price computed for the month immediately preceding the month the merged order becomes effective. Since the North Central Iowa market is an individual handler pool market, there is no producer-settlement fund. Consequently, a combining of the producer-settlement fund balances would not be fair to those producers who have contributed to the funds, while it would result in a windfall to producers under Order 78 who have not contributed to a producer-settlement fund.

PROVISIONS REQUIRING NO REVISION

Handlers and producers indicated that provisions of the Des Moines order for which they were proposing no changes were appropriate for the expanded marketing area.

No testimony was presented indicating that the reasons set forth in the decisions providing for the adoption of such provisions were not equally applicable to regulation of the expanded marketing area.

For the reasons previously stated, the remaining unrevised provisions of the order are appropriate for the extended order and are hereby adopted.

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 conclusions 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.

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 each of the aforesaid orders 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 Iowa order, which amends and merges the Des Moines, Quad Cities-Dubuque, Cedar Rapids-Iowa City, and North Central Iowa orders, 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 Iowa marketing area, and the minimum prices specified in the tentative marketing agreement and the Iowa order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreement and the Iowa order 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, the marketing agreements upon which a hearing has been held;

(d) All milk and milk products handled by handlers, as defined in the tentative marketing agreement and the Iowa order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(e) It s hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1079.85 of the aforesaid tentative marketing agreement and the Iowa order.

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 Iowa order. The following order regulating the handling of milk in the Iowa marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

Part 1079 is revised in its entirety, including the heading.

PART 1079—MILK IN THE IOWA MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1079.1 General provisions.

DEFINITIONS

1079.2 Iowa marketing area.
1079.3 Route disposition.
1079.4 Plant.
1079.5 [Reserved]
1079.6 [Reserved]
1079.7 Pool plant.
1079.8 Nonpool plant.
1079.9 Handler.
1079.10 Producer-handler.
1079.11 [Reserved]
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1079.13 Producer milk.
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GENERAL PROVISIONS

§ 1079.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1079.2 Iowa marketing area.

"Iowa marketing area" (referred to in this Part as the "marketing area") means all the territory within the boundaries listed below, including all territory that is now, or in the future, occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part of such territory is within the designated geographical limits of the marketing area:

(a) The Iowa counties of:

Adair	Humboldt
Adams	Iowa
Allamakee	Jackson
Appanoose	Jasper
Audubon	Jefferson
Benton	Johnson
Black Hawk	Jones
Boone	Keokuk
Bremer	Linn
Buchanan	Louisa
Butler	Lucas
Calhoun	Madison
Carroll	Mahaska
Cedar	Marion
Cerro Gordo	Marshall
Chickasaw	Monroe
Clarke	Muscatine
Clayton	Pocahontas
Clinton	Polk
Dallas	Poweshiek
Davis	Ringgold
Decatur	Scott
Delaware	Story
Dubuque	Tama
Fayette	Taylor
Floyd	Union
Franklin	Wapello
Greene	Warren
Grundy	Washington
Guthrie	Wayne
Hamilton	Webster
Hancock	Wright
Hardin	

and the city of Osage in Mitchell County.

(b) The Illinois counties of:

Henry	Rock Island
Mercer	

and the city of East Dubuque in Jo Daviess County.

§ 1079.3 Route disposition.

"Route disposition" means any delivery (including any delivery by a vendor or disposition at a plant store) of a fluid milk product classified as Class I milk, other than bulk fluid milk products transferred to other plants.

§ 1079.4 Plant.

"Plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed, or packaged. Separate facilities used only as a distribution point for storing packaged fluid milk products in transit or separate facilities at which milk is only reloaded from one tank truck to another for transshipment shall not be a "plant" under this definition.

§ 1079.5 [Reserved]

§ 1079.6 [Reserved]

§ 1079.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) Any plant (which, if qualified pursuant to this paragraph, shall be known as a "pool distributing plant") that is approved by a duly constituted regulatory agency for the processing or packaging of Grade A milk and from which during the month:

(1) The total route disposition (excluding packaged fluid milk products received from other plants and filled milk) as a percent of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator is equal to 40 percent or more during each of the months of September through November and 35 percent or more during all other months; and

(2) Not less than 15 percent of such receipts are disposed of as route disposition (except filled milk) in the marketing area.

(b) Any plant (which, if qualified pursuant to this paragraph, shall be known as a "pool supply plant") that is approved by a duly constituted regulatory agency for the handling of Grade A milk and from which during the month the volume of bulk fluid milk products transferred to pool distributing plants during each of the months of September through November is 35 percent or more and during each of the months of December through August is 20 percent or more of the total Grade A milk received at the plant from dairy farmers and handlers described in § 1079.9(c), including milk diverted therefrom by the plant operator pursuant to § 1079.13. For plants located within the States of Iowa, Minnesota, Wisconsin, or that portion of Illinois north of Interstate 80, the shipping requirements of this paragraph may also be met in the following ways:

(1) Upon written request to the market administrator, a cooperative association that operates a supply plant may include as qualifying shipments its deliveries to pool distributing plants directly from farms of producers pursuant to § 1079.9(c);

(2) Upon written request to the market administrator, a proprietary handler may include as qualifying shipments milk diverted pursuant to § 1079.13(d) to pool distributing plants;

(3) Upon written request to the market administrator, the operator of a supply plant may include as qualifying shipments transfers of fluid milk products to distributing plants regulated under other Federal orders, except that credit for such transfers shall be limited to the amount of milk, including milk shipped directly from producers' farms, delivered to pool distributing plants under this order; and

(4) Two or more supply plants operated by the same handler or by one or more cooperative associations may qualify for pooling as a unit by meeting the applicable percentage requirements of this paragraph in the same manner as a single plant if the handler submits a written request to the market administrator prior to the first day of September requesting that such plants qualify as a unit for the period September through August of the following year. (Units may form on the effective date of the merged order. Such units may continue in effect through August 1977.) The request shall list the plants to be included in the unit in the sequence in which they shall qualify for pool plant status based on the minimum deliveries required. If the deliveries made are insufficient to qualify the entire unit for pooling, the plant last on the list shall be excluded from the unit, followed by the plant next-to-last on the list, and continuing in this sequence until the remaining plants on the last have met the minimum shipping requirements. Each plant that qualifies as a pool plant within a unit shall continue each month as a plant in the unit through the following August unless the plant fails subsequently to qualify for pooling or the handler submits a written request to the market administrator prior to the first day of the month that the plant be deleted from the unit or that the unit be discontinued. Any plant that has been so deleted from the unit, or that has failed to qualify in any month, will not be part of the unit for the remaining months through August. No plant may be added in any subsequent month through the following August to a unit that qualifies in September.

(c) Any plant, except a plant included in a unit, that qualified as a pool plant in each of the immediately preceding three months on the basis of performance standards described in paragraph (a) or (b) of this section.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A governmental agency plant;

(3) A plant qualified as a pool plant pursuant to this section if the conditions of paragraph (d)(3)(i) and (ii) of this section are met. Such plant shall be exempt from the provisions of this part except for reports that may be required pursuant to § 1079.30(d) and verification of such reports by the market administrator in accordance with § 1000.5 of this chapter:

(i) The Secretary determines that a greater quantity of fluid milk products in fluid form is disposed of from such plant to a regulated marketing area as defined in another order issued pursuant to the Act either as route disposition, excluding filled milk, or to other order plants qualified on the basis of route disposition, than is disposed of from such plant in the Iowa marketing area either as route disposition, excluding filled milk, or to pool plants qualified on the basis of route disposition; and

(ii) Such milk would be subject to the class price and producer payment provisions of the other order upon being made exempt from this part; and

(4) That portion of a plant that is physically separated from the Grade A portion of such plant, is operated separately, and is not approved by any regulatory agency for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

§ 1079.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as

defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is not an other order plant, a producer-handler plant, or a governmental agency plant, from which Grade A milk or filled milk is disposed of as route disposition in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is not an other order plant, a producer-handler plant, or a governmental agency plant from which fluid milk products are shipped during the month to a pool plant.

(e) "Governmental agency plant" means a plant that is operated by a government institution and from which fluid milk products are distributed in the marketing area. Such plant shall be exempt from all provisions of this part.

§ 1079.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association with respect to milk of a producer that is diverted for the account of the cooperative association from a pool plant of another handler in accordance with §1079.13;

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler for such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) Any person who is a producer-handler;

(f) Any person who operates another order plant described in § 1079.7(d); and

(g) Any person who operates an unregulated supply plant.

§ 1079.10 Producer-handler.

"Producer-handler" means any person who meets all of the following conditions:

(a) Operates a dairy farm and a distributing plant at which Grade A milk of his own production is processed and packaged, and from which there is route disposition in the marketing area;

(b) Receives no milk or fluid milk products at his plant (or at any distribution facility, including routes, operated by him, an affiliate, or any person who controls or is controlled by him) from the farms of other dairy farmers nor from any other source, except receipts of not more than 50,000 pounds of fluid milk products during the month from pool plants or from other order plants;

(c) Receives no nonfluid milk products from any source for use in reconstituting fluid milk products; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for his own farm production and the operation of the processing and packaging business are the personal enterprise and risk of such person.

§ 1079.11 [Reserved]

§ 1079.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved by a duly constituted regulatory agency for disposition as Grade A milk and whose milk is:

(1) Received at a pool plant directly from such person;

(2) Received by a handler described in § 1079.9(c); or

(3) Diverted from a pool plant in accordance with § 1079.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him that is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1079.44 (a)(8)(iii) and the corresponding step of § 1079.44 (b);

(3) Any person with respect to milk produced by him that is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order; and

(4) Any government institution which produces milk in conjunction with the operation of a plant exempt from all provisions of this Part pursuant to § 1079.8(e).

§ 1079.13 Producer milk.

"Producer milk" means the skim milk and butterfat in milk of a producer that is:

(a) Received at a pool plant directly from such producer by the operator of the plant;

(b) Received by a handler described in § 1079.9(c);

(c) Picked up from the producer's farm tank in a tank truck owned and operated by, or under the control of, the operator of a pool plant but which is not received at a plant until the following month. Such milk shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm and shall be priced at the location of the plant where it is physically received in the following month. This paragraph shall apply in like manner to milk received by the operator of a pool plant who, in accordance with § 1079.9(c), is the handler for such milk;

(d) Diverted from the pool plant of a proprietary handler for the account of the handler operating such plant to another pool plant or diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of the handler operating such pool plant or for the account of a handler described in § 1079.9(b), subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion under this section unless during the month at least one day's production of milk of such dairy farmer is physically received as producer milk at a pool plant;

(2) The total quality of milk diverted by a cooperative association during the month may not exceed 50 percent in the months of September through November and 70 percent in other months, of the producer milk that the cooperative association causes to be delivered to or diverted from pool plants during the month;

(3) The operator of a pool plant (other than a cooperative association) may divert for his account any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d)(2) of this section. The total quantity so diverted during the month may not exceed 50 percent in the months of September through November, and 70 percent in other months, of the milk received at or diverted from such pool plant during the month that is eligible to be diverted by the plant operator;

(4) Any milk diverted in excess of the limits prescribed in paragraph (d)(2) and (3) of this section shall not be producer milk. The diverting handler may designate the dairy farmers whose diverted milk will not be producer milk, otherwise the milk last diverted—in lots of an entire day's production—shall be excluded first in determining which milk should not be producer milk; and

(5) Diverted milk shall be priced at the location of the plant to which diverted.

§ 1079.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1079.40(b)(1) from any source other than producers, handlers described in § 1079.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1079.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1079.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1079.40(b)(1) for which the handler fails to establish a disposition.

§ 1079.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1079.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1079.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milk fat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1079.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) Is qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act;"

(b) Has full authority in the sale of milk of its members and is engaged in making collective sales of or marketing milk or its products for its members; and

(c) Has its entire activities under the control of its members.

HANDLER REPORTS

§ 1079.30 Reports of receipts and utilization.

On or before the 8th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1079.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1079.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1079.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1079.31 Payroll reports.

(a) On or before the 22nd day of each month, each handler described in § 1079.9(a), (b), and (c) shall report to the market administrator his producer payroll for the preceding month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1079.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1079.32 Other reports.

In addition to the reports required pursuant to §§ 1079.30 and 1079.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1079.40 Classes of utilization.

Except as provided in § 1079.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1079.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in

paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In fluid milk products destroyed or lost under extraordinary circumstances;

(6) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1079.15; and

(7) In shrinkage assigned pursuant to § 1079.41(a) to the receipts specified in § 1079.41(a)(2) and in shrinkage specified in § 1079.41 (b) and (c).

§ 1079.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1079.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat;

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1079.9(c) and in milk diverted to such plant from another pool plant, except that, in either case, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5) and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1079.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1079.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to § 1079.44 (a)(12) and the corresponding step of § 1079.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1079.44(a)(7) or the corresponding step of § 1079.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1079.44(a) (11) or (12) or the corresponding steps of § 1079.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section;

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1079.40.

(c) *Transfers to producer-handlers and transfers and diversions to governmental agency plants.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted to a governmental agency plant shall be classified:

(1) As Class I milk, if transferred or diverted in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat, transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or a governmental agency plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1079.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route dispostion in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in paragraph (d)(2) of this section.

(e) *Transfers by a handler described in § 1079.9(c) to pool plants.* Skim milk and butterfat transferred in the form of bulk milk by a handler described in § 1079.9(c) to another handler's pool plant shall be classified pursuant to § 1079.44 pro rata with producer milk received at the transferee-handler's plant.

§ 1079.43 General classification rules.

In determining the classification of producer milk, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other abvious errors all reports filed pursuant to § 1079.30 and shall compute separately for each pool plant, and for each cooperative association with respect to milk for which it is the handler pursuant to § 1079.9 (b) or (c) that was not received at a pool plant, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1079.40, 1079.41, and 1079.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in § 1079.9 (b) or (c) shall be such handler's classification of producer milk;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1079.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1079.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in § 1079.9(a) for each of his separate pool plants the classification of producer milk and milk received from a handler described in § 1079.9(c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1079.41 (b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1079.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) For a pool plant that was subject to § 1079.40(b)(1) or comparable provisions of another Federal order in the immediately preceding month, subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1079.40(b)(1) that

were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1079.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1079.40b(1) that was not subtracted pursuant to paragraphs (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from a governmental agency plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1079.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1079.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (a)(8)(iii) of this section:

(i) Subject to the provisions of paragraps (a)(12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1079.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all poolplants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at

all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computation pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1079.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, and milk received from a handler described in § 1079.9(c), subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk and milk received from a handler described in § 1079.9(c) in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1079.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1079.44(a)(12) and the corresponding step of § 1079.44(b), estimate and publicly announce on or before the 12th day of the month the Class I utilization (to the nearest whole percentage) during the previous month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1079.44 on the basis of such report, and thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 14th day after the end of each month, report to each cooperative association which so requests, the class utilization of producer milk received by each handler from a cooperative association or from members of the association. For the purpose of this report, the milk caused to be delivered by an association shall be prorated to each class in the proportion that the total receipts of milk received from producers by such handler were used in each class.

CLASS PRICES

§ 1079.50 Class prices.

Subject to the provisions of § 1079.52, the class prices for the month per hundredweight of milk shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.40.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1079.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1079.52 Plant location adjustments for handlers.

(a) The following zones are defined for the purpose of determining location adjustments:

(1) Zone 1 shall include that terirtory, both inside and outside the marketing area, not included in Zones 2 and 3.

(2) Zone 2 shall include:

(i) The Iowa counties of Benton, Cedar, Clinton, Iowa, Johnson, Jones, Keokuk, Linn, Louisa, Marshall, Muscatine, Poweshiek, Scott, Tama, and Washington; and

(ii) The Illinois counties of Henry, Mercer, and Rock Island.

(3) Zone 3 shall include:

(i) The Iowa counties of Alamakee, Black Hawk, Bremer, Buchanan, Butler, Cerro Gordo, Chickasaw, Clay, Clayton, Delaware, Dickinson, Dubuque, Emmet, Fayette, Floyd, Franklin, Grundy, Hamilton, Hancock, Hardin, Howard, Humboldt, Jackson, Kossuth, Mitchell, Palo Alto, Pocahontas, Webster, Winnebago, Winneshiek, Worth and Wright; and

(ii) The States of Minnesota and Wisconsin and that portion of Illinois that is north of Interstate 80.

(b) For milk received at a plant from producers or from a handler described in § 1079.9(c) and which is classified as Class I milk without movement in bulk form to a pool distributing plant, the price specified in § 1079.50(a) shall be adjusted as follows:

(1) In Zone 1, no adjustment;

(2) In Zone 2, minus 7 cents; and

(3) In Zone 3, the price shall be reduced by 7 cents and by an additional 1.5 cents for each 10 miles or fraction thereof (by shortest hard-surfaced highway distance as measured by the market administrator) that such plant is located from the nearer of the Post Offices of Ames, Marshalltown, or Cedar Rapids, Iowa.

(c) The Class I price applicable to other source milk shall be adjusted by the amounts set forth in paragraph (b) of this section, except that the adjusted Class I price shall not be less than the Class III price.

(d) For fluid milk products transfered in bulk from a pool plant to a pool distributing plant, a Class I location adjustment credit for the transferor-plant shall be determined by the market administrator as follows:

(1) Multiply the pounds of Class I milk at the transferee-plant after the

computations pursuant to § 1079.44 (a)(12) and (b) by 110 percent;

(2) Subtract the pounds of fluid milk products received at the transferee-plant from producers and handlers described in § 1079.9(c) from the total pounds computed in paragraph (d)(1) of this section; and

(3) Assign the pounds computed in paragraph (d)(2) of this section pro rata to the bulk receipts of fluid milk products from each transferor pool plant.

§ 1079.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and III prices for the preceding month.

§ 1079.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constitutent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1079.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1079.9 (b) and (c) with respect to milk that was not received at a pool plant as follows:

(a) Multiply the pounds of producer milk and milk received from a handler described in § 1079.9(c) in each class as determined pursuant to § 1079.43(a) and § 1079.44(c) by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1079.44(a)(14) and the corresponding step of § 1079.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1079.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1079.44(a)(9) and the corresponding step of § 1079.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to §1079.44(a)(7)(i) through (iv) and the corresponding step of § 1079.44 (b), excluding receipts of bulk fluid cream products from another order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1079.44(a)(7)(v) and (vi) and the corresponding step of § 1079.44 (b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1079.44(a)(11) and the corresponding step of § 1079.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) Subtract, for a handler described in § 1079.9(c), the amount obtained from multiplying the Class III price for the preceding month by the hundredweight of skim milk and butterfat contained in inventory at the beginning of the month that was delivered to another handler's pool plant during the month.

§ 1079.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight of producer milk of 3.5 percent butterfat content at plants in Zone 1 pursuant to paragraphs (a) through (e) of this section. If the unreserved cash balance in the producer-settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the report of any handler who has not made the payments required pursuant to § 1079.71 for the preceding month shall not be included in the computation of the uniform price. The report of such handler shall not be included in the computation for succeeding months until he has made full payment of outstanding monthly obligations. Subject to the aforementioned conditions, the market administrator shall compute the uniform price in the following manner:

(a) Combine into one total the values computed pursuant to § 1079.60 for all handlers;

(b) Add an amount equal to the sum of the location adjustments computed pursuant to § 1079.75;

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

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

(1) The total hundredweight of producer milk; and

(2) The total hundredweight of milk for which a value is computed pursuant to § 1079.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be known as the uniform price for milk received from producers.

§ 1079.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1079.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1079.71, 1079.76, and 1079.77 and out of which he shall make all payments due handlers pursuant to §§ 1079.72 and 1079.77: *Provided*, That the market administrator shall offset any payments due any handler against payments due from such handler.

§ 1079.71 Payments to the producer-settlement fund.

(a) On or before the 15th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1079.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1079.75, of such handler's receipts of producer milk and milk received from a handler described in § 1079.9(c). In the case of a handler described in § 1079.9(c), less the amount due from other handlers pursuant to § 1079.73, exclusive of differential butterfat values; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1079.60(f).

§ 1079.72 Payments from the producer-settlement fund.

On or before the 17th day after the end of the month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1079.71(a)(2) exceeds the amount computed pursuant to § 1079.71(a)(1); *Provided*, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such pay-

ments and shall complete such payments as soon as the necessary funds become available.

§ 1079.73 Payments to producers and to cooperative associations.

(a) On or before the last day of the month, each handler shall pay for milk received from producers and cooperative associations during the first 15 days of the month as follows:

(1) If received from a cooperative association that is a handler pursuant to § 1079.9(a), at not less than the uniform price at the transferee plant location for the preceding month, adjusted by the butterfat differential for the preceding month;

(2) If received from a cooperative association that is a handler pursuant to § 1079.9(c), at not less than the uniform price for the preceding month, adjusted by the location adjustments specified in § 1079.75;

(3) If received from a cooperative association that is not a handler but which is authorized to collect payment on behalf of its member producers and has requested that payment be made to it in aggregate, at not less than the uniform price for the preceding month, adjusted by the location adjustments specified in § 1079.75; and

(4) If received from a producer for whom payment is not being made pursuant to paragraph (a) (2) or (3) of this section and who has not discontinued shipping to such handler, at not less than the uniform price for the preceding month, adjusted by the location adjustments specified in § 1079.75.

(b) On or before the 12th day after the end of the month, each handler shall pay for milk received during the month from a cooperative association which is a handler pursuant to § 1079.9(a) at not less than the value of such milk computed at the applicable class prices for the month, as adjusted by the butterfat differential specified in § 1079.74 and plant location adjustments specified in § 1079.52, less the partial payment pursuant to paragraph (a) of this section.

(c) On or before the 18th day after the end of the month, each handler shall make a final payment for milk received during the month from producers and cooperative associations that were not handlers for such milk pursuant to § 1079.9(a). The amount of such payment shall be computed by multiplying the hundredweight of milk received from the producer or cooperative association by not less than the uniform price for the month (as adjusted by the butterfat differential specified in § 1079.74 and the location adjustments specified in § 1079.-75) and by subtracting from this product any payment made to such producer or cooperative pursuant to paragraph (a) of this section. Those producers and cooperative associations covered by this paragraph include:

(1) A cooperative association that is a handler pursuant to § 1079.9(c);

(2) A cooperative association that is not a handler but which is authorized to collect payment on behalf of its member producers and has requested that payment be made to it in aggregate; and

(3) A producer for whom payment is not being made pursuant to paragraph (c)(1) or (2) of this section.

(d) In making payments pursuant to paragraph (a)(3) and (4) and (c)(2) and (3) of this section, deductions may be made for marketing service pursuant to § 1079.86 and for any proper deductions authorized in writing by the producer. In the event a handler has not received full payment from the market administrator pursuant to § 1079.72 by the 18th day of the month, he may reduce pro rata his payments to producers pursuant to paragraph (c) of this section by not more than the amount of such underpayment. Following receipt of the balance due from the market administrator, the handler shall complete payments to producers not later than the next payment date provided under this section.

(e) In making payment to individual producers as required by this section, each handler shall furnish each producer from whom he received milk a supporting statement, in such form that it may be retained by the producer, which shall show:

(1) The month involved, and the identity of the handler and of the producer;

(2) The total pounds and the average butterfat content of the milk received from the producer;

(3) The minimum rate at which payment to the producer is required pursuant to this section;

(4) The rate used in making the payment, if such rate is other than the applicable minimum;

(5) The amount (or rate) per hundredweight of each deduction claimed by the handler, including any deduction claimed under § 1079.86, together with a description of the respective deductions; and

(6) The net amount of the payment to the producer.

§ 1079.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1079.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant or diverted from a pool plant shall be adjusted according to the location of the plant of actual receipt at the rates set for in § 1079.52.

(b) The uniform price applicable to other source milk shall be reduced at the rates set forth in § 1079.52, except that the adjusted uniform price shall not be less than the Class III price.

§ 1079.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1079.30(b) and 1079.-31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition of fluid milk products in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition of fluid milk products in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1079.-60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which

such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1079.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective orders; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1079.60 for such handler shall include, in lieu of the value of other source milk specified in § 1079.60(f) less the value of such other source milk specified in § 1079.71(a)(2)(ii), a value of milk determined pursuant to § 1079.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1079.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1079.30(b) and 1079.31(b) similar reports for each such nonpool supply plant;

(b) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1079.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1079.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1079.74, for milk received at the plant during the month that would have been producer milk of the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1079.77 Adjustment of accounts.

(a) Whenever verification by the market administrator of reports or payments by any handler discloses errors in payments to the producer-settlement fund pursuant to § 1079.71, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 5 days of such billing, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, the market administrator shall, within 5 days, make payments to such handler.

(b) Whenever verification by the market administrator of the payments by a handler to any producer or cooperative association discloses payment of less than is required by § 1079.73, the handler shall pay the balance due such producer or cooperative association not later than the time for making payments next following such disclosure.

§ 1079.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1079.71, 1079.76, 1079.77 (a), and 1079.85, for which remittance has not been made (or, if mailed, postmarked) by the date specified for such payment, shall be increased three-fourths of 1 percent, and any remaining amount due shall be increased at a similar rate on the corresponding day of each month thereafter until paid. The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously made pursuant to this section; and for the purpose of this section any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1079.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Receipts of producer milk (including such handler's own production) other than:

(1) Receipts of producer milk by a handler described in § 1079.9(c) that were delivered to pool plants of other handlers; and

(2) Receipts of producer milk that were transferred to pool plants of other handlers by a cooperative association in its capacity as a handler pursuant to § 1079.9(a);

(b) Receipts from a handler described in § 1079.9(c);

(c) Receipts from a cooperative association in its capacity as a handler pursuant to § 1079.9(a);

(d) Other source milk allocated to Class I pursuant to § 1079.44(a)1(7) and (11) and the corresponding steps of § 1079.44(b), except such other source milk that is excluded from the computations pursuant to § 1079.60 (d) and (f); and

(e) Route dispostion in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat specified in § 1079.76(a)(2).

§ 1079.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments directly to producers (other than himself) pursuant to § 1079.73, shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe with respect to all milk received from producers' farms during the month, and shall pay such deductions to the market administrator on or before the 15th day after the end of such month. Such moneys shall be expended by the market administrator to provide for market information and to verify the weights, samples, and tests of milk of producers who are not receiving such services from a cooperative association.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers and on or before the 15th day after the end of each month shall pay such deductions to the cooperative association rendering such services, accompanied by a statement showing the quantity of milk for which a deduction was computed for each producer.

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

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

DONALD E. WILKINSON,
Administrator.

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THURSDAY, JANUARY 6, 1977

PART III

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

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PUBLIC SAFETY OFFICERS' DEATH BENEFITS

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

[28 CFR Part 32]

PUBLIC SAFETY OFFICERS' DEATH BENEFITS

INTRODUCTION

The Public Safety Officers' Benefits Act of 1976, Pub. L. 94-430, 90 Stat. 1346 ("the Act") was signed into law on September 29, 1976. The Act provides for payment of a $50,000 death benefit to the specified survivors of a public safety officer who dies as the direct and proximate result of a personal injury sustained in the line of duty.

Section 704(a) of the Act, 42 U.S.C. 3796c, authorizes LEAA to "establish such rules, regulations, and procedures as may be necessary to carry out the purposes of (the Act)." The regulations herein proposed are intended to explain which officers are covered by the Act, the standards of eligibility, and the administrative process by which LEAA will make its determinations.

LEAA invites comment on all aspects of the proposed regulations. This introduction highlights several key proposals on which comment is specifically invited. A section-by-section commentary is also appended to the regulations.

In order that there will be a full opportunity to consider the opinions of interested persons, written comments, suggestions, and data or arguments may be submitted to the Administrator, Law Enforcement Assistance Administration, U.S. Department of Justice, Washington, D.C. 20531, Attention: Thomas J. Madden, General Counsel, on or before February 20, 1977. LEAA will consider these comments and publish final rules no later than April 6, 1977. Public hearings will be held in Washington at LEAA offices if requested on or before January 31, 1977. Requests for hearings should be sent to Thomas J. Madden at the above address.

Comment is specifically invited on the following issues:

Officers covered. The Act defines "public safety officer" as "a person serving a public agency in an official capacity, with or without compensation, as a law enforcement officer or as a fireman." "Law enforcement officer" means "a person involved in crime and juvenile delinquency control or reduction, or enforcement of the criminal laws. This includes, but is not limited to, police, corrections, probation, parole, and judicial officers." "Fireman" is defined by the Act to include "a person serving as an officially recognized or designated member of a legally organized volunteer fire department." The definitions in § 32.2 (g) and (h), and the Commentary on those sections, elaborate further on the scope of "fireman" and "law enforcement officer."

LEAA has generally proposed to make the authority of the deceased officer the touchstone of the Act's applicability, rather than his status. Classifications such as sworn and non-sworn, uniformed and civilian, full-time and part-time, paid and volunteer, and the difference between agencies in duties assigned persons in those classifications make an analysis of authority rather than status more appropriate. In short, the duties the decedent was authorized to perform in the line of duty will determine whether he was a "public safety officer" within the meaning of the Act. See the Commentary on § 32.2 (g) and (h). Comment is specifically invited on this approach as well as other possible criteria for determining which officers are covered by the Act.

Potential beneficiaries. The eligibility of a deceased officer's spouse or children for benefits under the Act is not conditioned on any demonstration of dependence. Only the officer's parents must show they were "substantially reliant for support" on the officer to be eligible for benefits. Accordingly, the terms "spouse" (§ 32.2(i)) and "stepchild" (§ 32.2(j)) are defined very broadly. A spouse living apart from a deceased officer "for any reason" at the time of death is eligible for benefits, as is a stepchild whose parent may no longer be married to the deceased officer. See the Commentary of § 32.2(j).

Comment on these definitions in particular is specifically invited.

Representation of claimants. The "rules, regulations, and procedures" LEAA is authorized to establish by section 704(a) may include:

> regulations governing the recognition of agents or other persons representing claimants under this part before the Administration. The Administration may prescribe the maximum fees which may be charged for services performed in connection with any claim under this part before the Administration, and any agreement in violation of such rules and regulations shall be void.

During the debate of an earlier Public Safety Officers' Benefits bill, Congressman Hamilton Fish of New York, a manager of the bill, explained the intent of a provision identical to present section 704(a):

> To avoid development of a so-called "bar association" of lawyers who file questionable claims for benefits, with a high percentage of the $50,000 as their contingent fee, one committee amendment provides that LEAA may, by regulation prescribe the maximum fee allowable for representing claimants. Cong. Rec. H 3121 (April 24, 1974, daily ed.).

LEAA has not proposed fixed-dollar fee ceilings; the appropriate fee for each case will be determined on the basis of the representative's petition (§ 32.22(e)) and the review criteria listed in § 32.22 (f). Stipulated and contingency fee contracts are expressly prohibited.

The LEAA fee determination applies only to the representation of a claimant "before the Administration"; it does not purport to limit an attorney's fees if the claimant seeks judicial review of a final determination by the Administration.

Comment is specifically invited on whether a fixed-dollar ceiling for specific services rendered is an appropriate alternative to the fee determination method proposed and on the scope and adequacy of the review criteria proposed in § 32.22(f).

PART 32—PUBLIC SAFETY OFFICERS' DEATH BENEFITS

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32.23 Determination.
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AUTHORITY: Secs. 501 and 704(a) of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, et seq., as amended (Pub. L. 90-351, as amended by Pub. L. 93-83, Pub. L. 93-415, Pub. L. 94-430, and Pub. L. 94-503).

Subpart A—Introduction

§ 32.1 Purpose.

The purpose of this regulation is to implement Part J, "Public Safety Officers' Death Benefits," of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, et seq., as amended (Pub. L. 90-351, as amended by Pub. L. 93-83, Pub. L. 93-415, Pub. L. 94-430 and Pub. L. 94-503).

§ 32.2 Definitions.

(a) "The Act" means the Public Safety Officers' Benefits Act of 1974, 42 U.S.C. 3796, et seq., Pub. L. 94-430, 90 Stat. 1346 (September 29, 1976).

(b) "Administration" means the Law Enforcement Assistance Administration.

(c) "Line of duty" means any action which an officer is obligated or authorized by rule, regulation, condition of employment, or law to perform, including those social, ceremonial, or athletic functions to which he is assigned, or for which he is compensated, by the public agency he serves.

(d) "Direct and proximate" or "proximate" means that the antecedent event is a substantial factor in the result.

(e) "Personal injury" means any injury to the body which is inflicted by an outside force, whether or not it is accompanied by physical impact, as well as diseases which are caused by or result from such an injury, but not diseases

which arise merely out of the performance of duty.

(f) "Public safety officer" means any person serving a public agency in an official capacity, with or without compensation, as a law enforcement officer or firefighter.

(g) "Law enforcement officer" means any official involved in crime and juvenile delinquency control or reduction, or enforcement of the criminal laws, including but not limited to police, corrections, probation, parole, and judicial officers, and officials engaged in programs relating to narcotics addiction, such as those responsible for screening arrestees or prisoners for possible diversion into drug treatment programs, who are exposed, on a regular basis, to criminal offenders.

(h) "Firefighter" includes all fire service personnel serving a public agency in an official capacity, including any individual serving as an officially recognized or designated member of a legally-organized volunteer fire department.

(i) "Child" means any natural, illegitimate, adopted, or posthumous child or stepchild of a deceased public safety officer who, at the time of the public safety officer's death, is—

(1) Eighteen years of age or under;

(2) Over eighteen years of age and a student; or

(3) Over eighteen years of age and incapable of selfsupport because of physical or mental disability.

(j) "Stepchild" means a child of the officer's spouse. The relationship of stepchild is not terminated by the divorce, remarriage, or death of the stepchild's natural parent.

(k) "Student" means an individual under 23 years of age who has not completed four years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is—

(1) A school or college or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof;

(2) A school or college or university which has been accredited by a State or by a State recognized or nationally recognized accrediting agency or body;

(3) A school or college or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited; or

(4) An additional type of educational or training institution as defined by the Secretary of Labor.

Such an individual is deemed not to have ceased to be a student during an interim between school years if the interim is not more than four months and if he shows to the satisfaction of the Administration that he has a bona fide intention of continuing to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim or during periods of reasonable duration during which, in the judgment of the Administration, he is prevented by factors beyond his control from pursuing his education. A student whose 23rd birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period.

(l) "Spouse" means the husband or wife of the deceased officer at the time of the officer's death, and includes a spouse living apart from the officer at the time of the officer's death for any reason.

(m) "Dependent" means a person who was substantially reliant for support upon the income of the deceased public safety officer.

(n) "Intoxication" means a disturbance of mental or physical faculties resulting from the introduction of alcohol, drugs, or other substances into the body.

(o) "Public agency" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States, or any unit of local government, combination of such States, or units, or any department, agency, or instrumentality of any of the foregoing.

(p) "Support" means food, shelter, clothing, ordinary medical expenses, and other ordinary and customary items for maintenance of the person supported.

Subpart B—Officers Covered

§ 32.3 Coverage.

In any case in which the Administration determines, pursuant to these regulations, that a public safety officer, as defined in § 32.2(f), has died as the direct and proximate result of a personal injury sustained in the line of duty, the Administration shall pay a benefit of $50,000 in the order specified in § 32.10, subject to the conditions set forth in §§ 32.6, 32.9, or 32.11.

§ 32.4 Reasonable doubt of coverage.

The Administration shall resolve any reasonable doubt arising from the circumstances of the officer's death in favor of payment of the death benefit.

§ 32.5 Findings of State and local agencies.

The Administration will give substantial weight to the evidence and findings presented by State and local administrative and investigative agencies. The Administration will request additional assistance or conduct its own investigation when it believes that the existing evidence does not provide the Administration a rational basis for a decision on a material element of eligibility.

§ 32.6 Conditions on payment.

(a) No benefit shall be paid—

(1) If the death was caused by—

(i) The intentional misconduct of the public safety officer; or

(ii) The officer's intention to bring about his death;

(2) If voluntary intoxication of the public safety officer was the proximate cause of death; or

(3) To any person whose actions were a substantial contributing factor to the death of the officer.

(b) The Act applies only to deaths occurring from injuries sustained on or after September 29, 1976.

§ 32.7 Intentional misconduct of the officer.

The Administration will consider at least the following factors in determining whether death was caused by the intentional misconduct of the officer:

(a) Whether the conduct was in violation of rules and regulations of the employer, or ordinances and laws; and

(1) Whether the officer knew the conduct was prohibited and understood its import;

(2) Whether there was a reasonable excuse for the violation; or

(3) Whether the rule violated is habitually observed and enforced;

(b) Whether the conduct involved either intentional wrongdoing or reckless disregard of its probable consequence;

(c) Whether the officer had previously engaged in similar misconduct;

(d) Whether the officer's intentional misconduct was a substantial factor in the officer's death; and

(e) The existence of an intervening force which would have independently caused the officer's death and which would not otherwise prohibit payment of a death benefit pursuant to these regulations.

§ 32.8 Intention to bring about death.

The Administration will consider at least the following factors in determining whether the officer intended to bring about his own death:

(a) Whether the suicide was caused by insanity, through an uncontrollable impulse or without conscious volition to produce death;

(b) Whether the insanity resulted directly from an injury which would otherwise be within the scope of the Act if death had directly resulted from the injury;

(c) Whether the officer had a prior history of attempted suicide;

(d) Whether the officer's intent to bring about his death was a substantial factor in the officer's death; and

(e) The existence of an intervening force or action which would have independently caused the officer's death and which would not otherwise prohibit payment of a death benefit pursuant to these regulations.

§ 32.9 Voluntary intoxication.

The Administration will consider at least the following factors in determining whether voluntary intoxication was the proximate cause of the officer's death:

(a) The evidence of intoxication at the time the injury from which death resulted was sustained;

(b) Whether, and to what extent, the officer had a prior history of voluntary intoxication while in the line of duty;

(c) Whether and to what degree the officer had previously used the intoxicant in question;

(d) Whether the intoxicant was prescribed medically and was taken within the prescribed dosage;

(e) Whether the voluntary intoxication was a substantial factor in the officer's death; and

(f) The existence of an intervening force or action which would have independently caused the officer's death and which would not otherwise prohibit payment of a death benefit pursuant to these regulations.

Subpart C—Beneficiaries

§ 32.10 Order of priority.

(a) When the Administration has determined that a benefit may be paid according to the provisions of Subpart B of this part and § 32.11, a benefit of $50,000 shall be paid in the following order of precedence—

(1) If there is no surviving child of the deceased officer, to the spouse of such officer;

(2) If there is no spouse, to the child or children, in equal shares;

(3) If there are both a spouse and one or more children, one-half to the spouse and one-half to the child or children, in equal shares; and

(4) If there is no survivor in the above classes, to the dependent parent or parents, in equal shares.

(b) If no one qualifies as provided in paragraph (a) of this section, no benefit shall be paid.

§ 32.11 Contributing factor to death.

(a) No benefit shall be paid to any person who would otherwise be entitled to a benefit under this part if such person's intentional actions were a substantial contributing factor to the death of the public safety officer.

(b) When a potential beneficary is denied benefits under paragraph (a) of this section, the benefits shall be paid to the remaining eligible survivors, if any, of the officer as if the potential beneficiary denied benefits did not survive the officer.

§ 32.12 Determination of relationship of spouse.

(a) Marriage should be established by one (or more) of the following types of evidence in the following order of preference—

(1) Copy of the public record of marriage, certified or attested, or by an abstract of the public record, containing sufficient data to identify the parties, the date and place of the marriage, and the number of prior marriages by either party if shown on the official record, issued by the officer having custody of the record or other public official authorized to certify the record, or a certified copy of the religious record of marriage;

(2) Official report from a public agency as to a marriage which occurred while the officer was employed with such agency;

(3) The affidavit of the clergyman or magistrate who officiated;

(4) The original certificate of marriage accompanied by proof of its genuineness and the authority of the person to perform the marriage;

(5) The affidavits or certified statements of two or more eyewitnesses to the ceremony;

(6) In jurisdictions where marriages other than by ceremony are recognized, the affidavits or certified statements of the spouse setting forth all of the facts and circumstances concerning the alleged marriage, such as the agreement between the parties at the beginning of their cohabitation, the period of cohabitation, places and dates of residences, and whether children were born as the result of the relationship. This evidence should be supplemented by affidavits or certified statements from two or more persons who know as the result of personal observation the reputed relationship which existed between the parties to the alleged marriage including the period of cohabitation, places of residences, whether the parties held themselves out as husband and wife, and whether they were generally accepted as such in the communities in which they lived; or

(7) Any other evidence which would reasonably support a belief by the Administration that a valid marriage actually existed.

(b) If applicable, certified copies of divorce decrees of previous marriages of either party must be submitted.

§ 32.13 Determination of relationship of child.

(a) *In general.* A claimant is the child of a public safety officer if his birth certificate shows the officer as his parent.

(b) *Alternative.* If the birth certificate does not show the public safety officer as the claimant's parent, the sufficiency of the evidence will be determined in accordance with the facts of a particular case. Proof of the relationship may consist of—

(1) An acknowledgement in writing signed by the public safety officer; or

(2) Evidence that the officer has been identified as the child's parent by a judicial decree ordering him to contribute to the child's support or for other purposes; or

(3) Any other evidence which reasonably supports a finding of a parent-child relationship, such as—

(i) A certified copy of the public record of birth or a religious record showing that the officer was the informant and was named as the parent of the child; or

(ii) Statements of persons who know that the officer accepted the child as his; or

(iii) Information obtained from a public agency or public records, such as school or welfare agencies, which shows that with his knowledge the officer was named as the parent of the child.

(c) *Adopted child.* Except as may be provided in paragraph (b) of this section, evidence of relationship must be shown by a certified copy of the decree of adoption and such other evidence as may be necessary. In jurisdictions where petition must be made to the court for release of adoption documents or information, or where the release of such documents or information is prohibited, a revised birth certificate will be sufficient to establish the fact of adoption.

(d) *Stepchild.* The relationship of a stepchild to the deceased officer shall be demonstrated by—

(1) Evidence of birth to the spouse of the officer as required by paragraphs (a) and (b) of this section; or

(2) If adopted by the spouse, evidence of adoption as required by paragraph (c) of this section; or

(3) Other evidence, such as that specified in § 32.14(b), which reasonably supports the existence of a parent-child relationship between the child and the spouse; and

(4) Evidence of the marriage of the officer and the spouse, as required by § 32.12.

§ 32.14 Determination of relationship of parent.

(a) *In general.* A claimant is the parent of a public safety officer if the officer's birth certificate shows the claimant as his parent.

(b) *Alternative.* If the birth certificate does not show the claimant as the officer's parent, proof of the relationship may be shown by—

(1) An acknowledgement in writing signed by the claimant before the officer's death; or

(2) Evidence that the claimant has been identified as the officer's parent by judicial decree ordering him to contribute to the officer's support or for other purposes; or

(3) Any other evidence which reasonably supports a finding of a parent-child relationship, such as:

(i) A certified copy of the public record of birth or a religious record showing that the claimant was the informant and was named as the parent of the officer; or

(ii) Statements of persons who know the claimant had accepted the officer as his child; or

(iii) Information obtained from a public agency or public records, such as school or welfare agencies, which shows that with his knowledge the claimant had been named as the parent of the child.

(c) *Adopted child.* Except as provided in paragraph (b) of this section, evidence of relationship must be shown by a certified copy of the decree of adoption and such other evidence as may be necessary. In jurisdictions where petition must be made to the court for release of adoption documents or information, or where release of such documents or information is prohibited, a revised birth certificate showing the claimant as the officer's parent will suffice.

(d) *Step-parent.* The relationship of a step-parent to the deceased officer shall be demonstrated by—

(1) (i) Evidence of the officer's birth to the spouse of the step-parent as required by § 32.13 (a) and (b); or

(ii) If adopted by the spouse of the step-parent, proof of adoption as required by § 32.13(c); or

(iii) Other evidence, such as that specified in paragraph (b) of this section,

which reasonably supports a parent-child relationship between the spouse and the officer; and

(2) Evidence of the marriage of the spouse and the step-parent, as required by § 32.12.

§ 32.15 Determination of dependency.

(a) To be eligible for a death benefit under the Act, a parent of the deceased officer shall demonstrate that he or she was substantially reliant for support upon the income of the officer.

(b) The claimant parent shall demonstrate that he or she was dependent upon the decedent at either the time of the officer's death or of the personal injury that was a substantial factor in the officer's death.

(c) The claimant parent shall demonstrate dependency by submitting a signed statement of dependency within a year of the officer's death. This statement shall include the following information—

(1) A list of all sources of income or support for the twelve months preceding the officer's injury or death;

(2) The amount of income or value of support derived from each source listed; and

(3) The nature of support provided by each source.

(d) Generally, the Administration will consider a parent "dependent" if he or she was reliant on the income of the deceased officer for over one-third of his or her support.

Subpart D—Interim and Reduced Payments

§ 32.16 Interim payment in general.

Whenever the Administration determines, upon a showing of need and prior to taking final action, that a death of a public safety officer is one with respect to which a benefit will probably be paid, the Administration may make an interim benefit payment not exceeding $3,000, to a person entitled to receive a benefit under Subpart C of this part.

§ 32.17 Repayment and waiver of repayment.

Where there is no final benefit paid, the recipient of any interim benefit paid under § 32.16 shall be liable for repayment of such amount. The Administration may waive all or part of such repayment and shall consider for this purpose the hardship which would result from repayment.

§ 32.18 Reduction of payment.

(a) The benefit payable under this part shall be in addition to any other benefits that may be due from any other source, but shall be reduced by—

(1) Payments authorized by Section 8191 of Title 5, United States Code, providing compensation for law enforcement officers not employed by the United States killed in connection with the commission of a crime against the United States;

(2) Payments authorized by Section 12(k) of the Act of September 1, 1916, as amended (section 4-531(1) of the District of Columbia Code); and

(3) The amount of the interim benefit payment made to the claimant pursuant to § 32.16.

(b) No benefit paid under this part shall be subject to execution or attachment.

Subpart E—Filing and Processing of Claims

§ 32.19 Persons executing claims.

(a) The Administration shall determine who is the proper party to execute a claim in accordance with the following rules—

(1) The claim shall be executed by the claimant or his legally designated representative if the claimant is mentally competent and physically able to execute the claim.

(2) If the claimant is mentally incompetent or physically unable to execute the claim and

(i) Has a legally appointed guardian, committee, or other representative, the claim may be executed by such guardian, committee, or other representative, or

(ii) Is in the care of an institution, the claim may be executed by the manager or principal officer of such institution.

(3) For good cause shown, such as the age or prolonged absence of the claimant, the Administration may accept a claim executed by a person other than one described in paragraphs (a) (1) and (2) of this section.

(b) Where the claim is executed by a person other than the claimant, such person shall, at the time of filing the claim or within a reasonable time thereafter, file evidence of his authority to execute the claim on behalf of such claimant in accordance with the following rules—

(1) If the person executing the claim is the legally-appointed guardian, committee, or other legally-designated representative of such claimant, the evidence shall be a certificate executed by the proper official of the court of appointment.

(2) If the person executing the claim is not such a legally-designated representative, the evidence shall be a statement describing his relationship to the claimant or the extent to which he has the care of such claimant or his position as an officer of the institution of which the claimant is an inmate or patient. The Administration may, at any time, require additional evidence to establish the authority of any such person to file or withdraw a claim.

§ 32.20 Claims.

(a) Where an individual files a standardized claim form or other written statement with the Administration which indicates an intention to claim benefits, and such statement bears a signature or mark properly witnessed, the filing of such written statement shall be considered to be the filing of a claim for benefits.

(b) A claim by or on behalf of a survivor of a public safety officer shall be filed within one year after the date of death unless the Administration finds that the failure to file was justified by good cause.

(c) Except as otherwise provided in this part, the withdrawal of a claim, the cancellation of a request for such withdrawal, or any notice provided for pursuant to the regulations in this part, shall be in writing and shall be signed by the claimant or the person legally designated to execute a claim under § 32.19.

§ 32.21 Evidence.

(a) A claimant for any benefit or fee under the Act and the regulations shall submit such evidence of eligibility or other material facts as is specified by these regulations. The Administration may at any time require additional evidence to be submitted with regard to entitlement, the right to receive payment, the amount to be paid, or any other material issue.

(b) Whenever a claimant for any benefit or fee under the Act and the regulations has submitted no evidence or insufficient evidence of any material issue or fact, the Administration shall inform the claimant what evidence is necessary for a determination as to such issue or fact and shall request him to submit such evidence within a reasonable specified time. The claimant's failure to submit evidence on a material issue or fact, as requested by the Administration, shall be a basis for determining that the claimant fails to satisfy the conditions required to award a benefit or fee or any part thereof.

(c) In cases where a copy of a record, document, or other evidence, or an excerpt of information therefrom, is acceptable as evidence in lieu of the original, such copy or excerpt shall, except as may otherwise clearly be indicated thereon, be certified as a true and exact copy or excerpt by the official custodian of such record, or other public official authorized to certify the copy.

§ 32.22 Representation.

(a) A claimant may be represented in any proceeding before the Administration by an attorney or other person authorized to act on behalf of the claimant pursuant to § 32.19.

(b) No contract for a stipulated fee or for a fee on a contingent basis will be recognized. Any agreement between a representative and a claimant in violation of this subsection is void.

(c) Any individual who desires to charge or receive a fee for services rendered for an individual in any application or proceeding before the Administration must file a written petition therefore in accordance with paragraph (e) of this section. The amount of the fee he may charge or receive, if any, shall be determined by the Administration on the basis of the factors described in paragraphs (e) and (f) of this section.

(d) Written notice of a fee determination made in accordance with paragraph (f) of this section shall be mailed to the representative and the claimant at their last known addresses. Such notice shall inform the parties of the amount of the fee authorized, the basis of the determination, and the fact that the Administration assumes no responsibility for payment.

(e) To obtain approval of a fee for services performed before the Administration, a representative, upon completion of the proceedings in which he rendered services, must file with the Administration a written petition containing the following information—

(1) The dates his services began and ended;

(2) An itemization of services rendered with the amount of time spent in hours, or parts thereof;

(3) The amount of the fee he desires to charge for services performed;

(4) The amount of fee requested or charged for services rendered in the same matter before any State or Federal court;

(5) The amount and itemization of expenses incurred for which reimbursement has been made or is expected;

(6) The special qualifications which enabled him to render valuable services to the claimant (this requirement does not apply where the representative is an attorney); and

(7) A statement showing that a copy of the petition was sent to the person represented.

(f) In evaluating a request for approval of a fee, the purpose of the public safety officers' benefits program—to provide a measure of economic security for the beneficiaries thereof—will be considered, together with the following factors—

(1) The services performed (including type of service);

(2) The complexity of the case;

(3) The level of skill and competence required in rendition of the services;

(4) The amount of time spent on the case;

(5) The results achieved;

(6) The level of administrative review to which the claim was carried within the Administration and the level of such review at which the representative entered the proceedings;

(7) The amount of the fee requested for services rendered, excluding the amount of any expenses incurred, but including any amount previously authorized or requested;

(8) The customary fee for this kind of service; and

(9) Other awards in similar cases.

(g) In awarding a fee, the Administration shall consider and add thereto the amount of reasonable and unreimbursed expenses incurred in establishing the claimant's case. No amount of reimbursement shall be permitted for expenses incurred in obtaining medical or documentary evidence in support of the claim which has previously been obtained by the Administration, and no reimbursement shall be allowed for expenses incurred by him in establishing or pursuing his application for approval of his fee.

Subpart F—Determination and Request for Reconsideration

§ 32.23 Determination.

Upon making a determination of eligibility, the Administration shall notify each claimant of its disposition of his or her claim. In those cases where the Administration has determined the claimant to be ineligible for a death benefit, the Administration shall specify the reasons for the determination.

§ 32.24 Request for reconsideration.

(a) A claimant may, within 30 days after notification of ineligibility by the Administration, request the Administration to reconsider its determination of ineligibility. The Administration shall provide the claimant the opportunity for an oral hearing which shall be held within 30 days of the request for reconsideration. The claimant may waive the oral hearing, and present written evidence to the Administration within 30 days of the request.

(b) If requested, the oral hearing shall be conducted in the LEAA Regional Office most convenient to the claimant, or other mutually agreeable location, before the Deputy Administrator for Policy Development or his designee. The Deputy shall conduct the hearing so as to bring out pertinent facts, including the production of pertinent documents. Rules of evidence shall not be applied strictly, but the Deputy shall exclude irrelevant or unduly repetitious evidence. The claimant, his representative, and the representatives of the Administration at the hearing shall be given the opportunity to cross-examine witnesses who appear and testify. Testimony shall be under oath or affirmation.

(c) The hearing shall be recorded and transcribed verbatim. All documents submitted to, and accepted by the Deputy at the hearing, shall be made part of the record of the hearing. If either party submits a document that is accepted, he shall furnish a copy to the other.

(d) The Deputy shall, within fifteen days after hearing, transmit the record and his recommendations to the Administrator for reconsideration. The Administrator shall, within fifteen days of the receipt of the record, make a final determination of eligibility and notify the claimant of his determination. The notice of determination shall set forth the findings of fact and conclusions of law supporting the determination.

(e) No payment of any portion of a death benefit may be made until all requests for reconsideration which may affect that payment have been acted on by the Administration.

JAMES M. H. GREGG,
Acting Administrator.

COMMENTARY

Section 32.2(c). An officer is not acting within the line of duty when he is grossly negligent. See the dialogue between Congressmen Brown and Eilberg at Cong. Rec. H 10135–36 (September 15, 1976, daily ed.).

Section 32.2(d). In determining whether an injury was a substantial factor in the officer's death, LEAA will make no presumptions with respect to the length of time between the injury and death. The claimant has the burden in all cases of showing that the injury was a substantial factor in the officer's death.

Section 32.2(e). Deaths arising from occupational diseases alone are not within the purview of the Act. The officer's death should ordinarily be traceable to a specific event or act. If an officer who has been stabbed while in the line of duty subsequently dies of hepatitis contracted from the knife wound, his death would be covered by the Act. If an officer's death is attributable to the general stress of the job, or prolonged exposure to a poor working environment, however, it would not.

Section 32.2 (g) and (h). Civilians are covered by the Act if they are performing an activity, or in a category of personnel listed in the definitions of "law enforcement officer" or "firefighter." Uniformed officers performing clerical or other non-law enforcement or firefighting duties are also covered if they are obligated to be available to perform as specified in §§ 32.2 (g) and (h).

Judicial officers include those attorneys involved in enforcement of the criminal law who serve a public agency in an official capacity, e.g., prosecutors and public defenders, as well as those officers of the court engaged in the activities listed in § 32.2(g).

Section 32.2(j). LEAA considered alternative definitions of "stepchild," which would require some dependence or status as a member of the household, but these were rejected for lack of support in either the legislative history of the Act or Federal case law.

Section 32.2(k). As directed by the Act, "student" is defined as provided in 5 U.S.C. 8101.

Section 32.2(o). Neither the United States, nor any of its agencies or instrumentalities, are public agencies within the meaning of the Act. Federal public safety officers are not, therefore, covered by the Act.

Section 32.3. In 42 U.S.C. 3796c, LEAA is authorized to "establish such rules, regulations, and procedures as may be necessary to carry out the purposes of (the Act). Such rules, regulations, and procedures will be determinative of conflict of laws issues arising under this part."

In applying terms such as "direct and proximate result" or "line of duty," or in determining proof of relationship, the applicable State law will be considered, but will not be determinative. LEAA seeks to assure that eligibility will be determined by a uniform set of rules, regardless of where in the country the officer died or his beneficiaries reside. LEAA believes that the establishment of uniform rules and precedents best manifests congressional intent.

Section 32.9. The officer's history of treatment or counseling for alcoholic problems will also be considered in determining whether the voluntary intoxication of the officer was the proximate cause of his death.

Section 32.18(b). The Anti-Assignment Act, 31 U.S.C. 203, also prohibits

transfer or assignment of a claim against the United States prior to the allowance of the claim.

Section 32.24. Because the Act does not require the opportunity for a hearing on the record, the adjudication provisions of the Administrative Procedures Act (APA), 5 U.S.C. 554, do not apply. LEAA has, however, proposed an informal and expedited review process pursuant to which determinations may be reconsidered. The review process is intended to minimize the financial and logistical burden on the claimant, yet provide a fair hearing of his views. A claimant dissatisfied with the Administration's final determination may then proceed to seek such judicial relief as might be available.

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THURSDAY, JANUARY 6, 1977

PART IV

ENVIRONMENTAL PROTECTION AGENCY

■

PULP, PAPER, AND PAPERBOARD POINT SOURCE CATEGORY

Effluent Guidelines and Standards

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER N—EFFLUENT GUIDELINES AND STANDARDS

[FRL 667-2]

PART 430—PULP, PAPER, AND PAPERBOARD POINT SOURCE CATEGORY

Promulgation

Notice is hereby given of final amendments to the interim final rulemaking promulgated on February 19, 1976. Comments were solicited on the interim final rulemaking and review of submitted comments and further analysis of the existing data base has resulted in a number of changes to the interim final regulations as set forth below. Except as specifically noted, the preamble to the interim final regulations is incorporated herein by reference. On May 29, 1974, EPA promulgated a regulation adding Part 430 to Title 40 of the Code of Federal Regulations (39 FR 18742). That regulation with subsequent amendments established effluent limitations and guidelines for existing sources and standards of performance and pretreatment standards for new sources for the pulp, paper, and paperboard point source category. The regulation set forth below will amend 40 CFR Part 430—pulp, paper, and paperboard point source category and will be applicable to existing sources pursuant to sections 301 and 304 (b) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, 1311, 1314 (b) and (c), 86 Stat. 816 et seq.; Pub. L. 92-500) (the Act).

A description and discussion of the legal authority for this regulation is contained in Appendix A to this preamble. Appendix B to this preamble contains definitions of the subcategories established for the purpose of identifying the best practicable control technology currently available.

Prior to this publication, many agencies and groups were consulted and given an opportunity to participate in the development of effluent limitations and standards proposed for the pulp, paper, and paperboard category. An initial draft of the Development Document was sent to all participants and comments were solicited on that report. These comments were reviewed with a result that numerous significant changes were made. A second draft of the Development Document entitled "Development Document for Advanced Notice of Proposed or Promulgated Rulemaking for Effluent Limitations Guidelines and New Source Performance Standards for the Bleached Kraft, Groundwood, Sulfite, Soda, Deink, and Non-Integrated Paper Mills Segment of the Pulp, Paper, and Paperboard Mills Point Source Category" (August 1975) was also distributed for comments. The Advance Notice of Proposed or Promulgated Rulemaking was published in the FEDERAL REGISTER on September 5, 1975. The Agency published the Advance Notice rather than propose the regulations in order to meet the court imposed deadline of January 30, 1976, and to allow the maximum possible participation of interested parties prior to promulgation of the effluent limitations as interim final. The Interim Final Regulations were published in the FEDERAL REGISTER on February 19, 1976, and the Development Document entitled "Development Document for Interim Final and Proposed Effluent Limitations Guidelines and New Source Performance Standards for the Bleached Kraft, Groundwood, Sulfite, Soda, Deink, and Non-integrated Paper Mills Segment of the Pulp, Paper, and Paperboard Point Source Category" was distributed to all interested parties following the FEDERAL REGISTER notice and comments were solicited. A substantial number of comments were received and several provided new information and data. A summary of the comments received on the interim final regulations and the Agency's response is contained in Appendix C to this preamble. Review of the comments and analysis of the submitted information along with the existing data base pointed out a number of areas in which revisions to the regulations were warranted. As a result, the final regulations as set forth contain a number of significant changes from the interim final regulations. The primary changes are listed below:

1. Annual average effluent limitations were established to be met by mills using end-of-pipe treatment systems consisting of biological treatment followed by storage ponds with controlled discharges. The annual average limitations apply only to mills which in effect are required by the NPDES authorities to use these types of treatment systems due to water quality considerations. Mills are eligible for the annual average limitations only if maximum day and average of 30 consecutive days limitations are also established in their NPDES permits.

2. The woodyard allowance was revised for all wood pulping subcategories (Subparts F, G, H, I, J, K, L, M, N, O, P, and U) into three separate allowances for specific operations in the woodyard: (a) barking, (b) log washing and chip thawing or washing, and (c) log flumes and ponds.

3. The definition of production was changed in order to clarify the meaning of annual average and provide direction to the NPDES authority.

4. The zinc limitations for the four groundwood subcategories were changed to be based upon chemical coagulation, flocculation, and sedimentation of waste waters from mills using zinc hydrosulfite. The result was that the zinc limitations were made less stringent.

5. The Low Alpha Subcategory and the High Alpha Subcategory were eliminated and combined into the Dissolving Sulfite Pulp Subcategory. Within the new subcategory, four separate allowances for the different grades of sulfite dissolving pulp were established (i.e., nitration, viscose, cellophane, and acetate). In addition, the definition of the Dissolving Sulfite Pulp Subcategory was revised to include only the manufacture of dissolving sulfite pulp from softwoods.

6. The definitions of the Bleached Kraft Fine Papers and the Bleached Kraft BCT Papers Subcategories were revised to include market pulp as one of the products from mills in these subcategories.

7. The definition of the Groundwood: Chemi-mechanical Subcategory was revised to include only those mills with yields of 90 percent or higher, and the definition of the Groundwood: Thermo-mechanical Subcategory was revised to include only those mills with yields of approximately 95 percent or greater.

8. Definitions of most subcategories were revised to provide clarity and consistency between subcategory definitions.

9. The Papergrade Sulfite Subcategory was divided into two subcategories, Papergrade Sulfite (Blow Pit Wash) and Papergrade Sulfite (Drum Wash), based upon the type of pulp washing equipment. Within both subcategories, separate allowances were established for (a) barometric condensers and (b) composition of the cooking liquor. In addition, a separate allowance was established for the use of continuous digestion operations within the Papergrade (Drum Wash) Subcategory.

10. The Papergrade Sulfite Market Pulp Subcategory was eliminated since papergrade sulfite market pulp mills are now included in the revised Papergrade Sulfite Subcategory.

11. The discussion of non-water quality impacts of the regulations has been expanded in the Development Document.

12. Costs of internal controls were revised, and costs of the external controls were revised based upon revised subcategory raw waste loads and effluent limitations. The revised costs are presented in the Development Document.

13. Revised energy estimates of achieving BPCTCA are included in the Development Document.

14. Analyses of new information and data along with the existing data base resulted in revisions of the BOD5 and TSS effluent limitations in the following subparts: F, G, H, I, J, K, L, M, N, O, Q, T, and U.

The revised cost estimates were examined in terms of economic impact. It was determined that the conclusions of the economic impact analysis reached for the interim final regulations were unchanged.

The report entitled "Development Document for Final Effluent Limitations Guidelines for the Bleached Kraft, Groundwood, Sulfite, Soda, Deink and Non-Integrated Paper Mills Segment of the Pulp, Paper, and Paperboard Point Source Category" details the analysis undertaken in support of the final regulation set forth herein and is available for inspection at the EPA Public Information Reference Unit, Room 2922 (EPA Library), Waterside Mall, 401 M St., S.W., Washington, D.C., at all EPA regional offices, and at State water pollution control offices. The analysis prepared for EPA of the possible economic effects of the regulation is also available for inspection at these locations.

Copies of the Development Document are available for the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Copies of the economic analysis document are available through the National Technical Information Service, Springfield, VA 22151. (See EPA's Advance Notice of Public Review Procedures, 38 FR 21202, August 6, 1973).

In addition, Section 8 of the FWPCA authorizes the Small Business Administration, through its economic disaster loan program, to make loans to assist any small business concern in effecting additions to or alterations in their equipment, facilities, or methods of operation so as to meet water pollution control requirements under the FWPCA, if the concern is likely to suffer a substantial economic injury without such assistance.

For further details on this Federal loan program, write to EPA, Office of Analysis and Evaluation, WH-586, 401 M St., S.W., Washington, D.C. 20460.

In consideration of the foregoing, 40 CFR Part 430 is hereby amended as set forth below.

Dated: December 23, 1976.

JOHN QUARLES,
Acting Administrator.

40 CFR Part 430 is amended by revising subparts F through U as set forth below.

Subpart F—Dissolving Kraft Subcategory

Sec.
430.60 Applicability; description of the dissolving kraft subcategory.
430.61 Specialized definitions.
430.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Subpart G—Market Bleached Kraft Subcategory

430.70 Applicability; description of the market bleached kraft subcategory.
430.71 Specialized definitions.
430.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Subpart H—BCT Bleached Kraft Subcategory

430.80 Applicability; description of the BCT bleached kraft subcategory.
430.81 Specialized definitions.
430.82 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Subpart I—Fine Bleached Kraft Subcategory

430.90 Applicability; description of the fine bleached kraft subcategory.
430.91 Specialized definitions.
430.92 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Subpart J—Papergrade Sulfite (Blow Pit Wash) Subcategory

Sec.
430.100 Applicability; description of the papergrade sulfite (blow pit wash) subcategory.
430.101 Specialized definitions.
430.102 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Subpart K—Dissolving Sulfite Pulp Subcategory

430.110 Applicability; description of the dissolving sulfite pulp subcategory.
430.111 Specialized definitions.
430.112 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Subpart L—Groundwood-Chemi-Mechanical Subcategory

430.120 Applicability; description of the groundwood - chemi - mechanical subcategory.
430.121 Specialized definitions.
430.122 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Subpart M—Groundwood-Thermo-Mechanical Subcategory

430.130 Applicability; description of the groundwood - thermo-mechanical subcategory.
430.131 Specialized definitions.
430.132 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Subpart N—Groundwood-CMN Papers Subcategory

430.140 Applicability; description of the groundwood-CMN papers subcategory.
430.141 Specialized definitions.
430.142 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Subpart O—Groundwood-Fine Papers Subcategory

430.150 Applicability; description of the groundwood-fine papers subcategory.
430.151 Specialized definitions.
430.152 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Subpart P—Soda Subcategory

430.160 Applicability; description of the soda subcategory.
430.161 Specialized definitions.
430.162 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Subpart Q—Deink Subcategory

430.170 Applicability; description of the deink subcategory.
430.171 Specialized definitions.
430.172 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Subpart R—NI Fine Papers Subcategory

430.180 Applicability; description of the NI fine papers subcategory.
430.181 Specialized definitions.
430.182 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Subpart S—NI Tissue Papers Subcategory

430.190 Applicability; description of the NI tissue papers subcategory.
430.191 Specialized definitions.
430.192 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Subpart T—NI Tissue (FWP) Subcategory

430.200 Applicability; description of the NI tissue (FWP) subcategory.
430.201 Specialized definitions.
430.202 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Subpart U—Papergrade Sulfite (Drum Wash) Subcategory

430.210 Applicability; description of the papergrade sulfite (drum wash) subcategory.
430.211 Specialized definitions.
430.212 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Subpart F—Dissolving Kraft Subcategory

§ 430.60 Applicability; description of the dissolving kraft subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of dissolving pulp by kraft mills.

§ 430.61 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production in air-dry-tons (10% moisture) divided by the number of operating days during that year. Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) Wet barking operations shall be defined to include hydraulic barking operations and wet drum barking opera-

tions which are those drum barking operations that use substantial quantities of water in either water sprays in the barking drums or in a partial submersion of the drums in a "tub" of water.

(d) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect waste water treatment levels that are representative of application of best practicable control technology currently available in lieu of the maximum day and average of 30 consecutive day effluent limitations set forth in this subpart.

§ 430.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available, except that all point sources other than non-continuous dischargers shall not be subject to the annual average limitations, and that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations.

Effluent characteristic	Effluent limitations		
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	23.6	12.25	6.9
TSS	37.3	20.05	11.05
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	47.2	24.5	13.8
TSS	74.6	40.1	22.1
pH		Within the range 5.0 to 9.0.	

(b) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, resulting from the use of wet barking operations, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs which are subject to such operations.

Effluent characteristic	Effluent limitations		
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	3.2	1.7	0.95
TSS	6.9	3.75	2.0
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	6.4	3.4	1.9
TSS	13.8	7.5	4.0
pH		Within the range 5.0 to 9.0.	

(c) The following limitations establish the quantity or quality of pollutants or pollutant parameters, controlled by this section, resulting from the use of log washing or chip washing operations, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs and/or chips which are subject to such operations.

Effluent characteristics	Effluent limitations		
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	0.35	0.2	0.1
TSS	0.7	0.4	0.2
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	0.7	0.4	0.2
TSS	1.4	0.8	0.4
pH		Within the range 5.0 to 9.0.	

(d) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, resulting from the use of log flumes or log ponds, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs which are subject to such operations.

Effluent characteristics	Effluent limitations		
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	0.6	0.35	0.2
TSS	1.45	0.8	0.4
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	1.2	0.7	0.4
TSS	2.9	1.6	0.8
pH		Within the range 5.0 to 9.0.	

Subpart G—Market Bleached Kraft Subcategory

§ 430.70 Applicability; description of the market bleached kraft subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of market pulp by bleached kraft mills.

§ 430.71 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production in air-dry-tons (10 percent moisture) divided by the number of operating days during that year. Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) Wet barking operations shall be defined to include hydraulic barking operations and wet drum barking operations which are those drum barking operations that use substantial quantities of water in either water sprays in the barking drums or in a partial submersion of the drums in a "tub" of water.

(d) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for noncontinuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect waste water treatment levels that are representative of application of best practicable control technology currently available in lieu of the maximum day and average of 30 consecutive day effluent limitations set forth in this subpart.

§ 430.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available, except that all point sources other than non-continuous dischargers shall not be subject to the annual average limitations, and that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations.

Effluent characteristic	Effluent limitations		
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	15.45	8.05	4.5
TSS	30.4	16.4	9.0
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	30.9	16.1	9.0
TSS	60.8	32.8	18.0
pH		Within the range 5.0 to 9.0.	

(b) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, resulting from the use of wet barking operations, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs which are subject to such operations.

Effluent characteristic	Effluent limitations		
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	2.8	1.2	0.7
TSS	5.3	2.85	1.55
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	4.6	2.4	1.4
TSS	10.6	5.7	3.1
pH		Within the range 5.0 to 9.0.	

(c) The following limitations establish the quantity or quality of pollutants or pollutant parameters, controlled by this section, resulting from the use of log washing or chip washing operations, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs and/or chips which are subject to such operations.

Effluent characteristics	Effluent limitations		
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	0.2	0.1	0.1
TSS	0.6	0.3	0.15
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	0.4	0.2	0.2
TSS	1.2	0.6	0.3
pH		Within the range 5.0 to 9.0.	

(d) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, resulting from the use of log flumes or log ponds, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs which are subject to such operations.

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	0.4	0.2	0.15
TSS	1.15	0.6	0.35
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	0.8	0.4	0.3
TSS	2.3	1.2	0.7
pH		Within the range 5.0 to 9.0.	

Subpart H—BCT Bleached Kraft Subcategory

§ 430.80 Applicability; description of the BCT bleached kraft subcategory.

The provisions of this subpart are applicable to discharges resulting from the integrated production of paper-board, coarse paper, and tissue paper by bleached kraft mills.

§ 430.81 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Paper production shall be measured in the off-the-machine moisture content whereas market pulp shall be measured in air-dry-tons (10 percent moisture). Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) Wet barking operations shall be defined to include hydraulic barking operations and wet drum barking operations which are those drum barking operations that use substantial quantities of water in either water sprays in the barking drums or in a partial submersion of the drums in a "tub" of water.

(d) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations, established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect waste water treatment levels that are representative of application of best practicable control technology currently available in lieu of the maximum day and average of 30 consecutive day effluent limitations set forth in this subpart.

§ 430.82 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available, except that all point sources other than non-continuous dischargers shall not be subject to the annual average limitations, and that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations.

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	13.65	7.1	4.0
TSS	24.0	12.9	7.1
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	27.3	14.2	8.0
TSS	48.0	25.8	14.2
pH		Within the range 5.0 to 9.0.	

(b) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, resulting from the use of wet barking operations, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs which are subject to such operations.

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	2.25	1.2	0.65
TSS	5.75	3.1	1.7
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	4.5	2.4	1.3
TSS	11.5	6.2	3.4
pH		Within the range 5.0 to 9.0.	

(c) The following limitations establish the quantity or quality of pollutants or pollutant parameters, controlled by this section, resulting from the use of log washing or chip washing operations, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs and/or chips which are subject to such operations.

Effluent characteristics	Effluent limitations		
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	0.25	0.15	0.05
TSS	0.65	0.35	0.2
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	0.5	0.3	1.0
TSS	1.3	0.7	0.4
pH		Within the range 5.0 to 9.0.	

(d) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, resulting from the use of log flumes or log ponds, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs which are subject to such operations.

Effluent characteristics	Effluent limitations		
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	0.45	0.25	0.1
TSS	1.25	0.7	0.35
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	0.9	0.5	0.2
TSS	2.5	1.4	0.7
pH		Within the range 5.0 to 9.0.	

Subpart I—Fine Bleached Kraft Subcategory

§ 430.90 Applicability; description of the fine bleached kraft subcategory.

The provisions of this subpart are applicable to discharges resulting from the integrated production of pulp and fine papers by bleached kraft mills.

§ 430.91 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Paper production shall be measured in the off-the-machine moisture content whereas market pulp shall be measured in air-dry-tons (10% moisture). Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) Wet barking operations shall be defined to include hydraulic barking operations and wet drum barking operations which are those drum barking operations that use substantial quantities of water in either water sprays in the barking drums or in a partial submersion of the drums in a "tub" of water.

(d) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect waste water treatment levels that are representative of application of best practicable control technology currently available in lieu of the maximum day and average of 30 consecutive day effluent limitations set forth in this subpart.

§ 430.92 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available, except that all point sources other than non-continuous dischargers shall not be subject to the annual average limitations, and that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations.

Effluent characteristic	Effluent limitations		
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	10.6	5.5	3.1
TSS	22.15	11.9	6.55
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	21.2	11.0	6.1
TSS	44.3	23.8	13.2
pH		Within the range 5.0 to 9.0.	

(b) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, resulting from the use of wet barking operations, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs which are subject to such operations.

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	1.95	1.0	0.35
TSS	5.8	2.85	1.55
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	3.9	2.0	1.1
TSS	10.6	5.7	3.1
pH		Within the range 5.0 to 9.0.	

(c) The following limitations establish the quantity or quality of pollutants or pollutant parameters, controlled by this section, resulting from the use of log washing or chip washing operations, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs and/or chips which are subject to such operations.

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	0.3	0.1	0.05
TSS	0.55	0.3	0.15
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	0.4	0.2	0.1
TSS	1.1	0.6	0.3
pH		Within the range 5.0 to 9.0.	

(d) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, resulting from the use of log flumes or log ponds, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs which are subject to such operations.

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	0.35	0.2	0.1
TSS	1.15	0.6	0.3
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	0.7	0.4	0.2
TSS	2.3	1.2	0.6
pH		Within the range 5.0 to 9.0.	

Subpart J—Papergrade Sulfite (Blow Pit Wash) Subcategory

§ 430.100 Applicability; description of the papergrade sulfite (blow pit wash) subcategory.

The provisions of this subpart are applicable to discharges resulting from the integrated production of pulp and paper by papergrade sulfite mills, which use blow pit pulp washing techniques.

§ 430.101 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Paper production shall be measured in the off-the-machine moisture content whereas market pulp shall be measured in air-dry-tons (10 percent moisture). Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) Wet barking operations shall be defined to include hydraulic barking operations and wet drum barking operations which are those drum barking operations that use substantial quantities of water in either water sprays in the barking drums or in a partial submersion of the drums in a "tub" of water.

(d) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharged unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for noncontinuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for noncontinuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect waste water treatment levels that are representative of application of best practicable control technology currently available in lieu of the maximum day and average of 30 consecutive day effluent limitations set forth in this subpart.

(e) Sulfite cooking liquor shall be defined as bisulfite cooking liquor when the pH of the liquor is between 3.0 and 6.0 and as acid sulfite cooking liquor when the pH is less than 3.0.

§ 430.102 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available, except that all point sources other than non-continuous dischargers shall not be subject to the annual average limitations, and that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations.

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	31.8	16.55	9.3
TSS	43.95	23.05	13.0
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	63.6	33.1	18.6
TSS	87.9	47.3	26.0
pH		Within the range 5.0 to 9.0.	

(b) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, resulting from the use of wet barking operations, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs which are subject to such operations.

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	2.7	1.45	0.8
TSS	7.5	3.95	2.2
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	5.4	2.9	1.6
TSS	15.0	7.9	4.4
pH		Within the range 5.0 to 9.0.	

(c) The following limitations establish the quantity or quality of pollutants or pollutant parameters, controlled by this section, resulting from the use of log washing or chip washing operations, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs and/or chips which are subject to such operations.

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	0.45	0.1	0.06
TSS	2.55	1.35	0.75
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	0.9	0.2	0.1
TSS	5.1	2.7	1.5
pH		Within the range 5.0 to 9.0.	

(d) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, resulting from the use of log flumes or log ponds, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs which are subject to such operations.

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	0.35	0.2	0.1
TSS	1.7	0.9	0.5
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	0.7	0.4	0.2
TSS	3.4	1.8	1.0
pH		Within the range 5.0 to 9.0.	

(e) The following limitations establish the quantity or quality of pollutants or pollutant parameters, controlled by this section, resulting from the use of bisulfite cooking liquor and barometric condensers, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production subject to such operations.

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	2.9	1.5	0.85
TSS	8.25	4.45	2.45
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	5.8	3.0	1.7
TSS	16.5	8.9	4.9
pH		Within the range 5.0 to 9.0.	

(f) The following limitations establish the quantity or quality of pollutants or pollutant parameters, controlled by this section, resulting from the use of acid sulfite cooking liquor and surface condensers, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production subject to such operations.

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	0.5	0.25	0.15
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	1.0	0.5	0.3
pH		Within the range 5.0 to 9.0.	

(g) The following limitations establish the quantity or quality of pollutants or pollutant parameters, controlled by this section, resulting from the use of acid sulfite cooking liquor and barometric condensers, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production subject to such operations.

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	3.75	1.95	1.1
TSS	8.25	4.45	2.45
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	7.5	3.9	2.2
TSS	16.5	8.9	4.9
pH		Within the range 5.0 to 9.0.	

Subpart K—Dissolving Sulfite Pulp Subcategory

§ 430.110 Applicability; description of the dissolving sulfite pulp subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of pulp by dissolving sulfite mills.

§ 430.111 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production in air-dry-tons (10 percent moisture) divided by the number of operating days during that year. Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) Wet barking operatings shall be defined to include hydraulic barking operations and wet drum barking operations which are those drum barking operations that use substantial quantities of water in either water sprays in the barking drums or in a partial submersion of the drums in a "tub" of water.

(d) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for noncontinuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for noncontinuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect waste water treatment levels that are representative of application of best practicable control technology currently available in lieu of the maximum day and average of 30 consecutive day effluent limitations set forth in this subpart.

§ 430.112 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available, except that all point sources other than non-continuous dischargers shall not be subject to the annual average limitations, and that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations.

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	41.4	21.5	12.1
TSS	70.65	38.05	20.9
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	82.8	43.1	24.2
TSS	141.3	76.1	41.8
pH		Within the range 5.0 to 9.0.	

(b) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, resulting from the use of wet barking operations, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs which are subject to such operations.

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	0.7	0.35	0.2
TSS	0.15	0.1	0.05
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	1.4	0.7	0.4
TSS	0.3	0.2	0.1
pH		Within the range 5.0 to 9.0.	

(c) The following limitations establish the quantity or quality of pollutants or pollutant parameters, controlled by this section, resulting from the use of log washing or chip washing operations, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs and/or chips which are subject to such operations.

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	0.15	0.1	0.05
TSS	0.15	0.1	0.05
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	0.3	0.2	0.1
TSS	0.3	0.2	0.1
pH		Within the range 5.0 to 9.0.	

(d) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, resulting from the use of log flumes or log ponds, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs which are subject to such operations.

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	0.15	0.1	0.05
TSS	0.15	0.1	0.05
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	0.3	0.2	0.1
TSS	0.3	0.2	0.1
pH		Within the range 5.0 to 9.0.	

(e) The following limitations establish the quantity or quality of pollutants or pollutant parameters, controlled by this section, resulting from the production of viscose grade dissolving sulfite pulp, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production which includes this grade.

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	2.9	1.5	0.85
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	5.8	3.0	1.7
pH		Within the range 5.0 to 9.0.	

(f) The following limitations establish the quantity or quality of pollutants or pollutant parameters, controlled by this section, resulting from the production of cellophane grade dissolving sulfite pulp, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production which includes this grade.

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	6.65	3.45	1.95
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	13.3	6.9	3.9
pH		Within the range 5.0 to 9.0.	

(g) The following limitations establish the quantity or quality of pollutants or pollutant parameters, controlled by this section, resulting from the production of acetate grade dissolving sulfite pulp, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production which includes this grade.

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	9.4	4.9	2.75
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	18.8	9.8	5.5
pH		Within the range 5.0 to 9.0.	

Subpart L—Groundwood-Chemi-Mechanical Subcategory

§ 430.120 Applicability; description of the groundwood-chemi-mechanical subcategory.

The provisions of this subpart are applicable to discharges resulting from the integrated production of pulp and paper by groundwood chemi-mechanical mills.

§ 430.121 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Paper production shall be measured in the off-the-machine moisture content whereas market pulp shall be measured in air-dry-tons (10% moisture). Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) Wet barking operations shall be defined to include hydraulic barking operations and wet drum barking operations which are those drum barking operations that use substantial quantities of water in either water sprays in the barking drums or in a partial submersion of the drums in a "tub" of water.

(d) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart

for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect waste water treatment levels that are representative of application of best practicable control technology currently available in lieu of the maximum day and average of 30 consecutive day effluent limitations set forth in this subpart.

§ 430.122 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available, except that all point sources other than non-continuous dischargers shall not be subject to the annual average limitations, and that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations.

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	13.5	7.05	3.95
TSS	19.75	10.65	5.85
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	27.0	14.1	7.9
TSS	39.5	21.3	11.7
pH		Within the range 5.0 to 9.0.	

(b) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, resulting from the use of wet barking operations, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs which are subject to such operations.

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	0.9	0.45	0.25
TSS	2.6	1.45	0.8
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	1.8	0.9	0.5
TSS	5.2	2.9	1.6
pH		Within the range 5.0 to 9.0.	

(c) The following limitations establish the quantity or quality of pollutants or pollutant parameters, controlled by this section, resulting from the use of log washing or chip washing operations, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs and/or chips which are subject to such operations.

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	0.05	0.05	0.05
TSS	0.25	0.15	0.1
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	0.1	0.1	0.1
TSS	0.5	0.3	0.2
pH		Within the range 5.0 to 9.0.	

(d) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, resulting from the use of log flumes or log ponds, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs which are subject to such operations.

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	0.15	0.05	0.05
TSS	0.55	0.3	0.15
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	0.3	0.1	0.1
TSS	1.1	0.6	0.3
pH		Within the range 5.0 to 9.0.	

(f) For those mills using zinc hydrosulfite as a bleaching agent in the manufacturing process, the following effluent limitations are to be added to the base limitations set forth in paragraph (a):

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
Zinc	0.34	0.17	0.115
English units (pounds per ton of product)			
Zinc	0.68	0.34	0.23

Subpart M—Groundwood—Thermo—Mechanical Subcategory

§ 430.130 Applicability; description of the groundwood—thermo—mechanical subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of pulp and paper by groundwood thermo—mechanical mills.

§ 430.131 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Paper production shall be measured in the off-the-machine moisture content whereas market pulp shall be measured in air-dry-tons (10% moisture). Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) Wet barking operations shall be defined to include hydraulic barking operations and wet drum barking operations which are those drum barking operations that use substantial quantities of water in either water sprays in the barking drums or in a partial submersion of the drums in a "tub" of water.

(d) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect waste water treatment levels that are representative of application of best practicable control technology currently available in lieu of the maximum day and average of 30 consecutive day effluent limitations set forth in this subpart.

§ 430.132 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available, except that all point sources other than non-continuous dischargers shall not be subject to the annual average limitations, and that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations.

Effluent characteristics	Effluent limitations		
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	10.6	5.55	3.1
TSS	15.55	8.35	4.6
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	21.2	11.1	6.2
TSS	31.1	16.7	9.2
pH		Within the range 5.0 to 9.0.	

(b) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, resulting from the use of wet barking operations, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs which are subject to such operations.

Effluent characteristic	Effluent limitations		
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	0.9	0.45	0.3
TSS	2.7	1.45	0.75
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	1.8	0.9	0.6
TSS	5.4	2.9	1.5
pH		Within the range 5.0 to 9.0.	

(c) The following limitations establish the quantity or quality of pollutants or pollutant parameters, controlled by this section, resulting from the use of log washing or chip washing operations, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs and/or chips which are subject to such operations.

Effluent characteristic	Effluent limitations		
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	0.05	0.05	0.05
TSS	0.3	0.15	0.05
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	0.1	0.1	0.1
TSS	0.6	0.3	0.1
pH		Within the range 5.0 to 9.0.	

(d) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, resulting from the use of log flumes or log ponds, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due

to use of logs which are subject to such operations.

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	0.15	0.1	0.05
TSS	0.6	0.35	0.15
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	0.3	0.2	0.1
TSS	1.2	0.7	0.3
pH		Within the range 5.0 to 9.0.	

(f) For those mills using zinc hydrosulfite as a bleaching agent in the manufacturing process, the following effluent limitations are to be added to the base limitations set forth in paragraph (a):

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
Zinc	0.26	0.13	0.085
English units (pounds per ton of product)			
Zinc	0.52	0.26	0.17

Subpart N—Groundwood–CMN Papers Subcategory

§ 430.140 Applicability; description of the groundwood–CMN papers subcategory.

The provisions of this subpart are applicable to discharges resulting from the integrated production of pulp and coarse paper, molded pulp products, and newspaper by groundwood mills.

§ 430.141 Specialized definitions.

For the purpose of this subpart: (a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Paper production shall be measured in the off-the-machine moisture content whereas market pulp shall be measured in air-dry-tons (10% moisture). Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) Wet barking operations shall be defined to include hydraulic barking operations and wet drum barking operations which are those drum barking operations that use substantial quantities of water in either water sprays in the barking drums or in a partial submersion of the drums in a "tub" of water.

(d) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect waste water treatment levels that are representative of application of best practicable control technology currently available in lieu of the maximum day and average of 30 consecutive day effluent limitations set forth in this subpart.

§ 430.142 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available, except that all point sources other than non-continuous dischargers shall not be subject to the annual average limitations, and that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations.

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	7.45	3.9	2.2
TSS	12.75	6.85	3.75
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	14.9	7.8	4.4
TSS	25.5	13.7	7.5
pH		Within the range 5.0 to 9.0.	

(b) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, resulting from the use of wet barking operations, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs which are subject to such operations.

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	1.15	0.55	0.3
TSS	2.0	1.1	0.6
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	2.3	1.1	0.6
TSS	4.0	2.2	1.2
pH		Within the range 5.0 to 9.0.	

(c) The following limitations establish the quantity or quality of pollutants or pollutant parameters, controlled by this section, resulting from the use of log washing or chip washing operations, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs and/or chips which are subject to such operations.

Effluent characteristics	Effluent limitations		
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	0.15	0.05	0.05
TSS	0.2	0.15	0.1
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	0.3	0.1	0.1
TSS	0.4	0.3	0.2
pH		Within the range 5.0 to 9.0.	

(d) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, resulting from the use of log flumes or log ponds, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs which are subject to such operations.

Effluent characteristics	Effluent limitations		
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	0.25	0.1	0.05
TSS	0.45	0.25	0.15
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	0.5	0.2	0.1
TSS	0.9	0.5	0.3
pH		Within the range 5.0 to 9.0.	

(f) For those mills using zinc hydrosulfite as a bleaching agent in the manufacturing process, the following effluent limitations are to be added to the base limitations set forth in paragraph (a):

Effluent characteristic	Effluent limitations		
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
Zinc	0.30	0.15	0.10
English units (pounds per ton of product)			
Zinc	0.60	0.30	0.20

Subpart O—Groundwood—Fine Papers Subcategory

§ 430.150 Applicability; description of the groundwood-fine papers subcategory.

The provisions of this subpart are applicable to discharges resulting from the integrated production of pulp and fine paper by groundwood mills.

§ 430.151 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Paper production shall be measured in the off-the-machine moisture content whereas market pulp shall be measured in air-dry-tons (10% moisture). Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) Wet barking operations shall be defined to include hydraulic barking operations and wet drum barking operations which are those drum barking operations that use substantial quantities of water in either water sprays in the barking drums or in a partial submersion of the drums in a "tub" of water.

(d) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect waste water treatment levels that are representative of application of best practicable control technology currently available in lieu of the maximum day and average of 30 consecutive day effluent limitations set forth in this subpart.

§ 430.152 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available, except that all point sources other than non-continuous dischargers shall not be subject to the annual average limitations, and that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations.

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	6.85	3.6	2.0
TSS	11.75	6.3	3.45
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	13.7	7.2	4.0
TSS	23.5	12.6	6.9
pH		Within the range 5.0 to 9.0.	

(b) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, resulting from the use of wet barking operations, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs which are subject to such operations.

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	1.1	0.55	0.35
TSS	1.95	1.4	0.6
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	2.2	1.1	0.7
TSS	3.9	2.2	1.2
pH		Within the range 5.0 to 9.0.	

(c) The following limitations establish the quantity or quality of pollutants or pollutant parameters, controlled by this section, resulting from the use of log washing or chip washing operations, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs and/or chips which are subject to such operations.

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	0.15	0.05	0.0[5]
TSS	0.2	0.15	0.1
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	0.3	0.1	0.1
TSS	0.4	0.3	0.2
pH		Within the range 5.0 to 9.0.	

(d) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, resulting from the use of log flumes or log ponds, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs which are subject to such operations.

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	0.2	0.05	0.05
TSS	0.4	0.25	0.15
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	0.4	0.1	0.1
TSS	0.8	0.5	0.3
pH		Within the range 5.0 to 9.0.	

(f) For those mills using zinc hydrosulfite as a bleaching agent in the manufacturing process, the following effluent limitations are to be added to the base limitations set forth in paragraph (a):

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
Zinc	0.275	0.135	0.09
English units (pounds per ton of product)			
Zinc	0.55	0.27	0.18

Subpart P—Soda Subcategory

§ 430.160 Applicability; description of the soda subcategory.

The provisions of this subpart are applicable to discharges resulting from the integrated production of pulp and paper by soda mills.

§ 430.161 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Paper production shall be measured in the off-the-machine moisture content whereas market pulp shall be measured in air-dry-tons (10 percent moisture). Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) Wet barking operations shall be defined to include hydraulic barking operations and wet drum barking operations which are those drum barking operations that use substantial quantities of water in either water sprays in the barking drums or in a partial submersion of the drums in a "tub" of water.

(d) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect waste water treatment levels that are representative of application of best practicable control technology currently available in lieu of the maximum day and average of 30 consecutive day effluent limitations set forth in this subpart.

§ 430.162 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization

and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available, except that all point sources other than non-continuous dischargers shall not be subject to the annual average limitations, and that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations.

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	13.7	7.1	4.0
TSS	24.5	13.2	7.25
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	27.4	14.2	8.0
TSS	49.0	26.4	14.5
pH		Within the range 5.0 to 9.0.	

(b) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, resulting from the use of wet barking operations, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs which are subject to such operations.

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	2.05	1.1	0.6
TSS	5.85	2.8	1.55
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	4.1	2.2	1.2
TSS	10.5	5.6	3.1
pH		Within the range 5.0 to 9.0.	

(c) The following limitations establish the quantity or quality of pollutants or pollutant parameters, controlled by this section, resulting from the use of log washing or chip washing operations, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs and/or chips which are subject to such operations.

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 year shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	0.15	0.1	0.05
TSS	0.5	0.25	0.15
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	0.3	0.2	0.1
TSS	1.0	0.5	0.3
pH		Within the range 5.0 to 9.0.	

(d) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, resulting from the use of log flumes or log ponds, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs which are subject to such operations.

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	0.3	0.2	0.1
TSS	1.1	0.55	0.35
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	0.6	0.4	0.2
TSS	2.2	1.1	0.7
pH		Within the range 5.0 to 9.0.	

Subpart Q—Deink Subcategory

§ 430.170 Applicability; description of the deink subcategory.

The provisions of this subpart are applicable to discharges resulting from the integrated production of pulp and paper by deink mills.

§ 430.171 Specialized definitions.

For the purpose of this subpart: (a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Paper production shall be measured in the off-the-machine moisture content whereas market pulp shall be measured in air-dry-tons (10% moisture). Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations

for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect waste water treatment levels that are representative of application of best practicable control technology currently available in lieu of the maximum day and average of 30 consecutive days effluent limitations set forth in this subpart.

§ 430.172 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available, except that all point sources other than non-continuous dischargers shall not be subject to the annual average limitations, and that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations.

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	18.1	9.4	5.3
TSS	24.05	12.95	7.1
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	36.2	18.8	10.6
TSS	48.1	25.9	14.2
pH		Within the range 5.0 to 9.0.	

Subpart R—NI Fine Papers Subcategory

§ 430.180 Applicability; description of the NI fine papers subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of fine paper by non-integrated mills.

§ 430.181 Specialized definitions.

For the purpose of this subpart: (a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Production shall be in terms of off-the-machine moisture content. Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect waste water treatment levels that are representative of application of best practicable control technology currently available in lieu of the maximum day and average of 30 consecutive day effluent limitations set forth in this subpart.

§ 430.182 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available, except that all point sources other than non-continuous dischargers shall not be subject to the annual average limitations, and that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations.

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	8.2	4.25	2.4
TSS	11.0	5.9	3.25
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	16.4	8.5	4.8
TSS	22.0	11.8	6.5
pH		Within the range 5.0 to 9.0.	

Subpart S—NI Tissue Papers Subcategory

§ 430.190 Applicability; description of the NI tissue papers subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of tissue papers by non-integrated mills.

§ 430.191 Specialized definitions.

For the purpose of this subpart: (a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Production shall be in terms of off-the-machine moisture content. Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect waste water treatment levels that are representative of application of best practicable control technology currently available in lieu of the maximum day and average of 30 consecutive day effluent limitations set forth in this subpart.

§ 430.192 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available, except that all point sources other than non-continuous dischargers shall not be subject to the annual average limitations, and that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations.

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	11.4	6.25	3.5
TSS	10.25	5.9	2.85
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	22.8	12.5	7.0
TSS	20.5	10.0	5.7
pH		Within the range 5.0 to 9.0.	

Subpart T—NI Tissue (FWP) Subcategory

§ 430.200 Applicability; description of the NI tissue (FWP) subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of tissue paper from waste paper by non-integrated mills.

§ 430.201 Specialized definitions.

For the purpose of this subpart: (a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Production shall be in terms of off-the-machine moisture content. Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect waste water treatment levels that are representative of application of best practicable control technology currently available in lieu of

the maximum day and average of 30 consecutive day effluent limitations set forth in this subpart.

§ 430.202 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available, except that all point sources other than non-continuous dischargers shall not be subject to the annual average limitations, and that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations.

Effluent characteristics	Effluent limitations		
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	13.7	7.1	4.0
TSS	17.05	9.2	5.05
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	27.4	14.2	8.0
TSS	34.1	18.4	10.1
pH		Within the range 5.0 to 9.0.	

Subpart U—Papergrade Sulfite (Drum Wash) Subcategory

§ 430.210 Applicability; description of the papergrade sulfite (drum wash) subcategory.

The provisions of this subpart are applicable to discharges resulting from the integrated production of pulp and paper by papergrade sulfite mills, using vacuum or pressure drums in their pulp washing operations.

§ 430.211 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) Production shall be defined as the annual off-the-machine production (including off-the-machine coating where applicable) divided by the number of operating days during that year. Paper production shall be measured in the off-the-machine moisture content whereas market pulp shall be measured in air-dry-tons (10% moisture). Production shall be determined for each mill based upon past production practices, present trends, or committed growth.

(c) Wet barking operations shall be defined to include hydraulic barking operations and wet drum barking operations which are those drum barking operations that use substantial quantities of water in either water sprays in the barking drums or in a partial submersion of the drums in a "tub" of water.

(d) A non-continuous discharger is a mill which is prohibited by the NPDES authority from discharging pollutants during specific periods of time for reasons other than treatment plant upset control, such periods being at least 24 hours in duration. A mill shall not be deemed a non-continuous discharger unless its permit, in addition to setting forth the prohibition described above, requires compliance with the effluent limitations established by this subpart for non-continuous dischargers and also requires compliance with maximum day and average of 30 consecutive days effluent limitations. Such maximum day and average of 30 consecutive days effluent limitations for non-continuous dischargers shall be established by the NPDES authority in the form of concentrations which reflect waste water treatment levels that are representative of application of best practicable control technology currently available in lieu of the maximum day and average of 30 consecutive day effluent limitations set forth in this subpart.

(e) Sulfite cooking liquor shall be defined as bisulfite cooking liquor when the pH of the liquor is between 3.0 and 6.0 and as acid sulfite cooking liquor when the pH is less than 3.0.

§ 430.212 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different

factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available, except that all point sources other than non-continuous dischargers shall not be subject to the annual average limitations, and that non-continuous dischargers shall not be subject to the maximum day and average of 30 consecutive days limitations.

Effluent characteristics	Effluent limitations		
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	26.7	13.9	7.8
TSS	43.95	23.65	13.0
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	53.4	27.8	15.6
TSS	87.9	47.3	26.0
pH		Within the range 5.0 to 9.0.	

(b) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, resulting from the use of wet barking operations, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs which are subject to such operations.

Effluent characteristics	Effluent limitations		
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	3.05	1.6	0.9
TSS	7.5	3.95	2.2
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	6.1	3.2	1.8
TSS	15.0	7.9	4.4
pH		Within the range 5.0 to 9.0.	

(c) The following limitations establish the quantity or quality of pollutants or pollutant parameters, controlled by this section, resulting from the use of log washing or chip washing operations, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs and/or chips which are subject to such operations.

Effluent characteristics	Effluent limitations		
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	0.35	0.2	0.1
TSS	2.55	1.35	0.75
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	0.7	0.4	0.2
TSS	5.1	2.7	1.5
pH		Within the range 5.0 to 9.0.	

(d) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, resulting from the use of log flumes or log ponds, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production due to use of logs which are subject to such operations.

Effluent characteristics	Effluent limitations		
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	0.7	0.35	0.2
TSS	1.7	0.9	0.5
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	1.4	0.7	0.4
TSS	3.4	1.8	1.0
pH		Within the range 5.0 to 9.0.	

(e) The following limitations establish the quantity or quality of pollutants or pollutant parameters, controlled by this section, resulting from the use of bisulfite cooking liquor and barometric condensers (not including those mills using continuous digesters), which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production subject to such operations.

Effluent characteristics	Effluent limitations		
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	2.7	1.4	0.8
TSS	8.25	4.45	2.45
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	5.4	2.8	1.6
TSS	16.5	8.9	4.9
pH		Within the range 5.0 to 9.0.	

(f) The following limitations establish the quantity or quality of pollutants or pollutant parameters, controlled by this section, resulting from the use of acid sulfite cooking liquor and surface condensers (not including those mills using continuous digesters), which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production subject to such operations.

Effluent characteristics	Effluent limitations		
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	3.05	1.6	0.9
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	6.1	3.2	1.8
pH		Within the range 5.0 to 9.0.	

(g) The following limitations establish the quantity or quality of pollutants or pollutant parameters, controlled by this section, resulting from the use of acid sulfite cooking liquor and barometric condensers (not including those mills using continuous digesters), which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production subject to such operations.

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	5.8	3.0	1.7
TSS	8.25	4.45	2.45
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	11.6	6.0	3.4
TSS	16.5	8.9	4.9
pH		Within the range 5.0 to 9.0.	

(h) The following limitations establish the quantity or quality of pollutants or pollutant parameters, controlled by this section, resulting from the use of continuous digesters, which may be discharged by a point source subject to the provisions of this subpart. These limitations are in addition to the limitations set forth in paragraph (a) of this section and shall be calculated using the proportion of the mill's total production subject to such operations.

Effluent characteristics	Effluent limitations: Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed	Annual average of daily values for 1 yr shall not exceed
Metric units (kilograms per 1,000 kg of product)			
BOD5	11.45	5.95	3.35
TSS	9.8	5.3	2.9
pH		Within the range 5.0 to 9.0.	
English units (pounds per ton of product)			
BOD5	22.9	11.9	6.7
TSS	19.6	10.6	5.8
pH		Within the range 5.0 to 9.0.	

APPENDIX A

LEGAL AUTHORITY

Section 301(b) of the Act requires the achievement by not later than July 1, 1977, of effluent limitations for point sources, other than publicly owned treatment works, which require the application of the best practicable control technology currently available as defined by the Administrator pursuant to section 304(b) of the Act.

Section 304(b) of the Act requires the Administrator to publish regulations providing guidelines for effluent limitations setting forth the degree of effluent reduction attainable through the application of the best practicable control technology currently available.

APPENDIX B

TECHNICAL SUMMARY AND BASIS FOR REGULATIONS

For the purpose of identifying the best practicable control technology currently available and in order to establish effluent limitations, the bleached kraft, groundwood, sulfite, soda, deink and non-integrated paper mills segment of the pulp, paper and paperboard manufacturing industry category was divided into sixteen discrete subcategories, primarily based on a consideration of the raw materials utilized, production processes employed, products produced, size and age of mills, waste water characteristics and treatability, geographical location, and costs and economic factors as outlined in the report entitled, "Development Document for Final Rulemaking for the Bleached Kraft, Groundwood, Sulfite, Soda, Deink and Non-Integrated Paper Mills Segment of the Pulp, Paper, and Paperboard Point Source Category". The definitions of the subcategories in the preamble to the interim final regulations have been revised and are given below.

(1) Subpart F—Dissolving Kraft Subcategory. This subcategory includes mills which produce a highly bleached pulp by a "full cook" process, utilizing a highly alkaline sodium hydroxide and sodium sulfide cooking liquor. Included in the manufacturing process is a "pre-cook" operation termed prehydrolysis. The principal product made by this process is a highly bleached and purified dissolving pulp used principally for the manufacture of rayon and other products requiring the virtual absence of lignin and a very high alpha cellulose content.

(2) Subpart G—Market Bleached Kraft Subcategory. This subcategory includes mills which produce a bleached pulp by a "full cook" process utilizing a highly alkaline sodium hydroxide and sodium sulfide cooking liquor. The product made by this process is papergrade market pulp.

(3) Subpart H—BCT Bleached Kraft Subcategory. This subcategory includes the integrated production of bleached kraft pulp and paper. Integrated production is considered to be pulp and paper manufacturing operations where all or part of the manufactured pulp is processed into paper at common or adjacent sites. The bleached kraft pulp is produced in a "full cook" process utilizing a highly alkaline sodium hydroxide and sodium sulfide cooking liquor. The principal products include paperboard (B), coarse papers (C), tissue papers (T), and market pulp.

(4) Subpart I—Fine Bleached Kraft Subcategory. This subcategory includes the integrated production of bleached kraft pulp and paper. Integrated production is considered to be pulp and paper manufacturing operations where all or part of the manufactured pulp is processed into paper at common or adjacent sites. The bleached kraft pulp is produced in a "full cook" process utilizing a highly alkaline sodium hydroxide and sodium sulfite cooking liquor. The principal products are fine papers, which include business, writing, and printing papers, and market pulp.

(5) Subpart J—Papergrade Sulfite (Blow Pit Wash) Subcategory. This subcategory includes integrated production of sulfite pulp and paper. The sulfite pulp is produced in a "full cook" process using an acidic cooking liquor of sulfites of calcium, magnesium, ammonia, or sodium. Following the cooking operations, the spent cooking liquor is separated from the pulp in the blow pits. The principal products made by this process are tissue papers, newspapers, fine papers, and market pulp.

(6) Subpart K—Dissolving Sulfite Pulp Subcategory. This subcategory includes mills which produce a highly bleached and purified pulp from softwoods by a "full cook" process using strong solutions of sulfites of calcium, magnesium, ammonia, or sodium. The pulps produced by this process are viscose, nitration, cellophane, or acetate grades and are used principally for the manufacture of rayon and other products that require the virtual absence of lignin.

(7) Subpart L—Groundwood—Chemi-Mechanical Subcategory. This subcategory includes the integrated production of chemi-mechanical groundwood pulp and paper. The chemi-mechanical groundwood pulp is produced utilizing a chemical cooking liquor to partially cook the wood followed by mechanical defibration by refining with or without brightening, resulting in yields of 90% or greater. The principal products include fine papers, newsprint, and molded fiber products.

(8) Subpart M—Groundwood—Thermo-Mechanical Subcategory. This subcategory includes the production of thermo-mechanical groundwood pulp and paper. The thermo-mechanical groundwood is produced by a brief cook utilizing steam, with or without the addition of cooking chemicals such as sodium sulfite, followed by mechanical defibration by refiners which are frequently under pressure with or without brightening, and resulting in yields of approximately 95% or greater. The principal products of this process are market pulp, fine papers, newsprint, and tissue papers.

(9) Subpart N—Groundwood—CMN Papers Subcategory. This subcategory includes the integrated production of groundwood pulp and paper. The groundwood pulp is produced, with or without brightening, utilizing only mechanical defibration by either stone grinders or refiners. The principal products made by this process include coarse papers (C), molded fiber products (M), and newsprint (N).

(10) Subpart O—Groundwood—Fine Papers Subcategory. This subcategory includes the integrated production of groundwood pulp and paper. The groundwood pulp is produced, with or without brightening, utilizing only mechanical defibration by either stone grinders or refiners. The principal products are fine papers which include business, writing, and printing papers.

(11) Subpart P—Soda Subcategory. This subcategory includes the integrated production of bleached soda pulp and paper. The bleached soda pulp is produced by a "full cook" process utilizing a highly alkaline sodium hydroxide cooking liquor. The principal products are fine papers, which include printing, writing, and business papers, and market pulp.

(12) Subpart Q—Deink Subcategory. This subcategory includes the integrated production of deinked pulp and paper. The deinked pulp is usually brightened or bleached from waste papers in which an alkaline treatment is utilized to remove contaminants such as ink and coating pigments. The principal products include printing, writing and business papers, tissue papers, and newsprint.

(13) Subpart R—NI Fine Papers Subcategory. This subcategory includes non-integrated(NI) mills which produce fine papers from wood pulp or deinked pulp prepared at another site. The principal products of this process are printing, writing, business, and technical papers.

(14) Subpart S—NI Tissue Papers Subcategory. This subcategory includes non-integrated(NI) mills which produce tissue papers from wood pulp or deinked pulp prepared at another site. The principal products of this process include facial and toilet papers, glassine, paper diapers, and paper towels.

(15) Subpart T—NI Tissue (FWP) Subcategory. This subcategory includes non-integrated(NI) mills which produce tissue papers from waste papers (FWP) without deinking. The principal products made by this

process include facial and toilet papers, glassine, paper diapers, and paper towels.

(16) Subpart U—Papergrade Sulfite (Drum Wash) Subcategory. This subcategory includes integrated production of sulfite pulp and paper. The sulfite pulp is produced in a "full cook" process using an acidic cooking liquor of sulfites of calcium, magnesium, ammonia, or sodium. Following the cooking operations, the spent cooking liquor is washed from the pulp on vacuum or pressure drums. Also included are mills using belt extraction systems for pulp washing. The principal products made from pulp manufactured by this process are tissue papers, fine papers, newspapers, and market pulp.

APPENDIX C

SUMMARY OF PUBLIC PARTICIPATION

Prior to this publication, many agencies and groups were consulted and given an opportunity to particiapte in the development of effluent limitations and standards proposed for the pulp, paper, and paperboard category. An initial draft of the Development Document was sent to all participants and comments were solicited on that report. These comments were reviewed with a result that numerous significant changes were made. A second draft of the Development Document entitled "Development Document for Advanced Notice of Proposed or Promulgated Rule Making for Effluent Limitations Guidelines and New Source Performance Standards for the Bleached Kraft, Groundwood, Sulfite, Soda, Deink, and Non-Integrated Paper Mills Segment of the Pulp, Paper, and Paperboard Mills Point Source Category" (August 1975) was also distributed for comments. The Advance Notice of Proposed or Promulgated Rulemaking was published in the FEDERAL REGISTER on September 5, 1975. The Agency published the Advance Notice rather than propose the regulations in order to meet the court imposed deadline of January 30, 1976, to allow the maximum possible participation of interested parties prior to promulgation of the effluent limitations as interim final. The Interim Final Regulations were published in the FEDERAL REGISTER on February 19, 1976, and the Development Document entitled "Development Document for Interim Final and Proposed Effluent Limitations Guidelines and New Source Performance Standards for the Bleached Kraft, Groundwood, Sulfite, Soda, Deink, and Non-integrated Paper Mills Segment of the Pulp, Paper, and Paperboard Point Source Category" was distributed to all interested parties following the FEDERAL REGISTER notice and comments were solicited. A substantial number of comments were received, some of which provided new information and data. Review of the comments and analysis of the submitted information along with the existing data base pointed out a number of areas in which revisions to the regulations were warranted. As a result, the final regulations as set forth contain a number of significant changes from the interim final regulations.

The following are the principal agencies and groups consulted: (1) Effluent Standards and Water Quality Information Advisory Committee (established under section 515 of the Act); (2) all State and U.S. Territory Pollution Control Agencies; (3) other public agencies, interest groups, and associations; (4) U.S. Department of the Interior; (5) U.S. Department of Health, Education, and Welfare; (6) Environmental Defense Fund, Inc.; (7) Natural Resources Defense Council; (8) Water Pollution Control Federation; (9) National Wildlife Federation; (10) U.S. Department of Transportation; (11) Tennessee Valley Authority; (12) U.S. Department of Housing and Urban Development; (13) U.S. Department of Agriculture; (14) U.S. Nuclear Regulatory Commission; (15) U.S. Department of Defense; (16) U.S. Internal Revenue Service; (17) U.S. Federal Power Commission; (18) National Commission on Water Quality; (19) U.S. Federal Energy Administration; (20) Water Resources Council; (21) Office of Management and Budget; (22) Council on Environmental Quality; (23) U.S. Department of Treasury; (24) National Council for Air and Stream Improvement, Inc., Technical Association of the Pulp and Paper Industry; (25) American Paper Institute; (26) The American Society of Mechanical Engineers; (27) Businessman for the Public Interest; (28) The American Society of Civil Engineers; and (29) the Izaak Walton League.

The following responded with comments on the Notice of Interim Final Rulemaking: St. Regis Paper Co.; State of Texas; Union Camp Corporation; Council on Wage and Price Stability; P. H. Gladfelter Co.; Scott Paper Co.; State of Wisconsin; Northwest Pulp and Paper Assn.; Hammermill Paper Co.; Alaska Lumber and Pulp Co.; Crown Zellerbach Corp.; U.S. Department of the Interior; U.S. Department of Health, Education, and Welfare; National Council of the Paper Industry for Air and Stream Improvement, Inc.; Mead Corp.; State of Minnesota; Kimberly-Clark Corp.; American Can Co.; Fibreboard Corp.; Louisiana-Pacific Corp.; Weyerhaeuser Co.; Nekoosa Papers Corp.; International Paper Co.; The Buckeye Cellulose Corp.; Georgia-Pacific Corp.; Ketchikan Pulp Co.; American Paper Institute; The Procter and Gamble Co.; and Boise-Cascade Corp.

The primary issues raised in the comments on the interim final effluent limitations and the treatment of these issues herein are as follows:

1. Several comments were received that stated that the low alpha dissolving pulp subcategory should be further divided to take into account the differences in raw waste load resulting from the production of the different grades of pulp (nitration, viscose, and cellophane) produced by mills within the subcategory. Data were submitted showing raw waste BOD5 loads associated with the production of each grade.

The Agency has carefully examined the submitted data and has determined that significant differences in raw waste loads result from the production of the different grades of dissolving sulfite pulp. Previous analyses had shown significant differences in raw waste loads resulting from the production of high alpha (acetate) grades and low alpha (nitration, viscose, and cellophane) grades and, therefore, two subcategories were established. Additional information and data have shown that it is more appropriate to establish one subcategory for all dissolving sulfite pulp mills and provide four specific allowances within the one subcategory depending upon the grade of pulp: nitration, viscose, cellophane, and acetate.

2. One commenter objected to the Agency's determination that spent sulfite liquor (SSL) recovery and biological treatment represents BPCTCA for the dissolving sulfite subcategories. The commenter stated that only one mill had both SSL recovery and biological treatment when the Federal Water Pollution Control Act was passed in 1972.

In 1972, five of the six dissolving sulfite mills had SSL recovery systems and one of these mills had a biological treatment system. In addition, prior to finalizing this regulation, the Agency has found that all six dissolving sulfite mills had SSL recovery, two of the mills had biological treatment systems in place, two mills were installing biological treatment systems, and the other two mills had accepted NPDES permits which required effluent levels that were reflective of application of biological treatment systems. The Agency therefore properly determined that BPCTCA for dissolving sulfite mills includes both SSL recovery and biological treatment.

3. A number of commenters objected to the methodology used in determining the effluent limitations for the papergrade and dissolving sulfite subcategories. The objections included: (a) direct use of pilot plant data on an equal basis with full scale data without adjustment for the controlled characteristics of pilot plant operations, (b) use of activated sludge treatment system data in the analysis, and (c) use of data from both papergrade and dissolving sulfite mills in the same data analysis. One commenter stated that drawing any conclusions using the number of sulfite mills included in the analysis is questionable both on statistical and practical grounds. The commenter recommended setting effluent limitations on mill-by-mill basis as an alternative or delaying establishment of effluent limitations until more full scale biological treatment data are available.

Because of the limited application of full scale biological treatment systems at papergrade and dissolving sulfite mills, the Agency has developed the effluent limitations for these mills based upon both full scale systems as well as pilot plant operations at sulfite mills. Four sulfite mills presently have biological treatment facilities but one of these systems was determined not to be representative of BPCTCA. A number of sulfite mills have recently operated pilot plant biological treatment systems prior to installation of full-scale facilities. In order to achieve maximum representation, the data from these mills were included in the analyses used for establishing the effluent limitations. Additional data from full scale and pilot plant treatment systems at sulfite mills were submitted and have been included in reanalyzing the available data.

The Agency agrees that pilot plants are sometimes operated under certain controls in order to determine how effective the treatment system is in reducing the raw waste load. However, in scale-up to a full sized system, conservative design considerations are generally included in sizing the pieces of equipment in order to assure achievement of a specific effluent quality. This has been demonstrated by mill 512. Pilot plant data from mill 512 were used in the data analysis. Mill 512 is now designing a full scale system based upon its pilot plant operations to achieve effluent qualities equal to or better than those achieved by the pilot plant. Thus, the Agency believes that the use of pilot plant data along with full scale data is entirely proper.

The effluent limitations are based upon both activated sludge systems (AS) and aerated stabilization basins (ASB). Either of these systems is capable of achieving the effluent limitations and exclusion of activated sludge systems would therefore be inappropriate. Commenters contend that activated sludge systems can achieve better effluent qualities on an annual basis than aerated stabilization basins with standard designs. However, the commenters have also stated that activated sludge systems have higher effluent variabilities than aerated stabilization basins. The statistical reliability of each of the systems was examined and maximum 30 consecutive days and maximum day effluent limitations have been established which can be achieved by either system. Furthermore, examination of treatment systems in use by mills in other subcategories which have extensive experience with biological treatment performance shows that in many cases aerated stabilization basins are achieving better quality effluents than activated sludge systems. The contention that activated sludge systems cost more than aerated stabilization basins was considered in the economic impact analysis. In gen-

eral, it was determined that mills can install activated sludge treatment systems and maintain a competitive profitability level.

The Agency has determined that the use of both papergrade sulfite and dissolving sulfite data in the data analysis is fully justified and appropriate. Treatability of the waste waters are similar even though dissolving sulfite mills have higher raw waste loads. This would be expected since the manufacturing operations are similar in that similar raw materials and cooking and bleaching liquors are used. As an example, mill 401 produces both papergrade and dissolving sulfite pulp at separate times by changing operating conditions. The mill treats the raw waste waters generated during the production of either papergrade pulp or dissolving grade pulp in the same biological treatment system to comparable effluent quality.

The existing data base includes information and data from every sulfite mill in the country along with data from a number of foreign mills. Included in the data base therefore is information and data concerning the effects of such factors as different treatment technologies, different chemical bases, wood species, and ages and sizes of mills. Thorough examination of the available information and statistical analyses have shown that it is appropriate and technically practicable to establish effluent limitations from the existing data base.

4. Two commenters expressed concern that the Agency has not given sufficient attention to the adverse effects of sludge incineration, including air emissions and consumption of fuel oil.

The discussion in Section VIII of the Development Document on non-water quality impacts has been expanded to include the potential impacts of sludge incineration on air emissions and consumption of fuel oil. The potential impacts are not considered to be significant because air pollution control technologies are available. The Agency has determined that very few mills, if any at all, will install sludge incinerators.

5. One commenter contended that the costs presented in the Development Document were low and therefore, the economic impact was understated. The commenter was concerned that the costs of sludge incineration were not included and he questioned several of the basic design parameters used in the cost estimates including detention times and aeration capacities.

The Agency has examined the specific design variables pointed out in the comments and has evaluated the costs of sludge incineration. Several cost figures were revised and these are presented in the Development Document in addition to the costs of sludge incineration which are displayed separately. After consideration of the costs of sludge incineration, it has been determined that the differences in costs cause no significant differences in the results of the economic impact analysis.

6. Several commenters objected to the Agency's consideration of costs and effluent reduction benefits. The commenters felt that the Agency should examine the cost versus the benefits of alternative treatment systems, and one of the commenters stated that the Agency should do this for every mill in one of the subcategories. Examples were provided for two dissolving sulfite mills showing costs and effluent reductions associated with various levels of treatment. One of these showed the costs of five treatment alternatives (four of the five are considered to be less than full treatment of the mill waste waters) and the percent BOD removals associated with each treatment alternative.

Included in Section IX of the Development Document are total costs of treatment versus total effluent reduction benefits. The discussion has also been expanded to include the costs of treatment versus the effluent reduction benefits for model mills within each subcategory. Development of treatment alternatives for individual mills within each subcategory is beyond the scope of what Congress intended the Administrator to do in setting national effluent limitations.

7. A few commenters indicated that the Agency had not adequately considered non-water quality environmental impacts and had ignored indirect non-water quality environmental impacts.

The Agency has carefully considered all direct non-water quality environmental impacts of the effluent limitations. Such impacts were determined to be insignificant and the discussion in Section VIII of the Development Document has been expanded to more adequately explain this determination. The indirect impacts which the commenters suggested that the Agency examine include such items as impacts on energy consumption, air pollution, and solid waste generation resulting from such things as the production and transportation to the mill site of nutrients for use in biological treatment. The commenters did not provide any information or data that showed significant impacts. Evaluation of available information and data does not indicate any significant indirect impacts.

8. One of the primary concerns expressed by a number of commenters was the Agency's approach to consideration of effluent variability. The commenters stated that the Agency should provide some allowance for excursions which are beyond the control of the manufacturer, such as extended production shutdowns, catastrophic breakdowns, and labor interruptions. The commenters suggested that if no allowances for these types of excursions are provided then the effluent limitations should be increased substantially to provide some factor of safety from enforcement action by the NPDES authority for events beyond the manufacturer's control. The commenters suggested that basing the effluent limitations on 99.9 percent confidence rather than 99 percent confidence would be one method of making the effluent limitations less stringent to take this into account.

Data were analyzed from numerous pulp and paper mills in establishing variability factors to be utilized in determining the effluent limitations. The Agency included all available mill data in establishing the 99 percent confidence level for each mill, and the data analysis did not exclude any data due to such things as production shutdowns or breakdowns (See section VII of the Development Document). The use of 99 percent confidence should not be misinterpreted as meaning that mills will exceed the limitations approximately 4 times per year, or that these excursions will be due to uncontrollable factors such as shutdowns, breakdowns, and labor interruptions. While the determination of the variability factors did involve the 99 percent confidence level for mills properly operating treatment facilities representative of the best practicable control technology currently available, the variability factors were not determined by averaging the 99 percent confidence levels for all such mills. Instead, the variability factors were based upon those mills exhibiting the highest variabilities within this group (i.e., the marginal mills). For mills achieving levels better than the marginal mills, the variability factors actually represent better than 99 percent confidence and for a number of mills better than 99.9 percent confidence. Detailed examination of mills with BOD5 variability near the determined variability factors generally disclosed that treatment system operations or treatment system modifications have resulted in greater variability than would be exhibited by more properly operated treatment systems. The variability factors used in determining the effluent limitations allow for a daily maximum discharge of approximately three and one half times the pollutants discharged over the long term daily average. The Agency expects that the performance of the worst cases will be improved by proper controls and that the effluent limitations can be achieved by properly operated and maintained plants. Modification of the regulations to allow for excursions above the effluent limitations which have resulted from documented improper treatment system operations would be counter to the goals set forth by Congress to establish effluent limitations based upon the best practicable control technology currently available.

9. One commenter was concerned that clarifier sludge generated in the treatment of raw intake water was not considered in the development of the effluent limitations.

This source of waste water was not specifically addressed in the evaluation of data from the mills considered in determining the effluent limitations. However, a number of mills that discharge the raw water treatment sludge to the process waste water treatment facilities were included in the data analyses that determined the effluent limitations. The Agency believes that clarifier underflow from treatment of intake water should be treated prior to discharge and may be addressed in the NPDES permit.

10. One comment was received that stated that there was no recognition in the Development Document of the greater BOD raw waste loads resulting from a typical ammonia base dissolving sulfite mill over a magnesium base mill. The commenter stated that the higher waste load was a result of the inability of the ammonia base mill to economically neutralize the spent sulfite liquor (SSL) prior to evaporation.

The discussion in the Development Document has been expanded and includes the data on SSL neutralization which was submitted to the Agency. The subcategorization of the dissolving sulfite mills accounts for any differences in raw waste load attributable to the cooking liquor base since all of the mills using magnesium base produce similar grades of pulp (nitration, viscose, and cellophane) while all of the mills using an ammonia base primarily produce acetate grades of pulp. The type of cooking liquor chemical base was examined in relation to the raw waste loads from papergrade sulfite mills and it was determined that any impact of this factor is insignificant compared to the impact of more significant factors, such as the effectiveness of SSL recovery.

11. Several commenters felt that the Agency should either justify the assumption that the operating costs of internal controls are canceled by the operating benefits or include these costs in the Development Document and in the economic impact analysis.

The Agency has carefully reexamined the operating costs and benefits of internal controls and in every case except one has determined that the operating costs of internal controls are more than offset by the operating benefits. In fact, the analyses showed that a number of internal controls were earning positive returns on investment that were sufficient to be termed part of the manufacturing process and not pollution control. For these reasons, the capital costs for these controls were deleted from the costs tables presented in the Development Document, Section VIII.

It should be pointed out that based upon further information and data the list of internal controls applicable to BPCTCA has been revised to include several additional internal controls. Capital costs have been included in the cost tables for these added internal controls. Operating and mainte-

nance costs were again determined to be more than offset by the operating benefits of the controls, and thus operating costs were not included in the cost tables.

It should be noted that the net benefits of internal controls (over and above the costs of internal controls) were not subtracted from the annual costs. The one exception, as mentioned above, is the internal control of SSL collection and evaporation which was determined to have net operating costs associated with it. These costs are included in Section VIII of the Development Document for the sulfite subcategories and are considered as maximum costs. Most sulfite mills have installed SSL collection and evaporation systems along with incineration in order to recover as much of the heat and chemicals as possible, and significantly lesser annual costs are incurred by these mills (the operating benefits nearly cover the operating costs and amortized capital) than mills that collect and evaporate their SSL without incineration. Costs of both systems are shown in the Development Document. It should be pointed out that mills using these systems produce a saleable by-product and the benefits of the sales are not subtracted from the operating costs (see also comment number 15). After consideration of these costs in the economic impact analysis, it has been determined that the conclusions of the economic impact analysis are unchanged.

12. One commenter stated that the impact of hardwood versus softwood on raw waste load in the sulfite industry was not addressed in the Development Document. The commenter provided information and data in support of his contention that the use of hardwood by sulfite mills results in a higher raw waste load than the use of softwood.

The Agency has carefully examined the impacts on raw waste load of the use of hardwood and softwood at sulfite mills, and the discussion in the Development Document in Sections IV and V has been revised to explain the analyses. With the exception of dissolving sulfite pulp manufacturing (see comment No. 27), the Agency has determined that differences in raw waste load between sulfite mills relate to process factors rather than to the type of wood used. It should be pointed out that allowances within the papergrade sulfite subcategory have been established for the process factors which were determined to have significant impacts on raw waste load; these include: type of pulp washing equipment, type of condenser, type of digestor, cooking liquor composition, and three types of woodyard operations.

13. Several commenters stated that the rationale in the Development Document explaining the determination of the TSS limitations for the sulfite subcategories was inadequate and difficult to follow. Other commenters stated that the data base as well as the rationale were inadequate and that the TSS limitations should be made less stringent to account for the limited data base. Data were presented for mill 051 showing higher TSS levels than those used for mill 051 in the development of the effluent limitations. It was suggested that the more recent TSS data for mill 051 be used in determination of less stringent TSS limitations.

The Agency has carefully examined the basis for the TSS limitations for the sulfite subcategories and has determined that the existing data base is adequate. None of the submissions provided any further data which would improve upon the data base. However, Section IX of the Development Document has been expanded to explain the analysis used in determining the TSS limitations for the sulfite subcategories. It should be pointed out that the Agency did expand the existing data base by inclusion of available pilot plant data. Use of the pilot plant data along with the existing data base resulted in TSS levels used as the basis for the final effluent limitations which were less stringent than the TSS levels used in the interim final regulations. From information from mill 051, it was determined that the most recent data for mill 051 was representative of a period of time when the treatment facility was operated at less than optimum treatment levels and therefore was considered as less than BPCTCA.

14. Several commenters were concerned that the Development Document understated the technical problems of dewatering and disposal of sludge and as a result the costs and non-water quality impacts were not correctly represented in the documents.

The costs, technical problems associated with sludge dewatering and disposal, and the non-water quality impacts of sludge disposal have been reviewed, and the revised costs and expanded discussions of these items are presented in the Development Document.

15. Comments were received which suggested that the Agency should further subcategorize the papergrade sulfite subcategories to take into account such factors as the degree of SSL recovery, yield loss, age, geographical location, and land availability. The commenters further stated that SSL recovery varies from zero to 98 percent recovery and does not designate one single, uniform process (as in kraft) but represents various processes including pulp washing, evaporation, and incineration, evaporation and sale of SSL by-products, and fermentation of blow pit SSL into by-products.

The Agency has carefully evaluated each of these factors and has revised the subcategorization to appropriately take each factor into account. While the commenters state that SSL recovery represents various processes, the objective of SSL recovery is to recover heat and chemicals (and by-products) and to reduce the raw waste load and as such is considered as a single technology. Full recovery of SSL is considered to be at least 85 percent and many mills are commonly achieving well over 90 percent removal of SSL. Twenty-six of twenty-nine sulfite mills have SSL recovery systems and only four of these are reported to have less than full (85 percent) recovery. While the Development Document shows that SSL recovery varies from zero to 98 percent, subcategorization for mills with less than full recovery would not fulfill the congressional intent that BPCTCA be based upon commonly used internal controls. The type of SSL recovery system (i.e., incineration or by-product recovery) does not impact the raw waste load so long as similar levels of recovery are being achieved. Therefore, the fact that SSL recovery is achieved by a number of methods, such as evaporation and incineration, evaporation and sale of by-products, or fermentation of SSL, makes no difference in establishing effluent limitations since BPCTCA includes full recovery of SSL.

Examination of mills with full recovery has shown that the most significant impacts of age is in the type of pulp washing and SSL collection equipment used and the type of condenser used in the SSL recovery system at the sulfite mills. In order to take these factors into account, the papergrade sulfite subcategory was divided into two subcategories; one of the subcategories, the Papergrade Sulfite (Blow Pit Wash) Subcategory is based upon the use of the older less efficient pulp washing techniques of blow pit washing, and the other subcategory, the Papergrade Sulfite (Drum Wash) Subcategory, is based upon vacuum (or pressure) drum pulp washing. Within each of the two subcategories, provisions have also been established for mills using barometric condensers whereas the subcategory limitations are based upon surface condensers. In addition, allowances were established for continuous digestion and the composition of the cooking liquor. In establishing the subcategories, the Agency also examined the yield loss and determined that the yield loss, which indicates process factors, was adequately taken into account in the present subcategorization. The discussion in Section IV of the Development Document has been revised in order to show how factors such as yield loss were taken into account and to more thoroughly explain and support the subcategorization of the sulfite mills. It should be noted that the geographical location and land availability factor was examined and considered in the economic impact analysis for sulfite mills. Since sulfite mills which are land limited (See Section V of the Development Document) will probably install activated sludge systems and since the costs of activated sludge systems were included in the Development Document and the economic impact analysis, the Agency determined that further subcategorization based upon land availability would not be necessary.

16. Several commenters objected to the methodology used to determine the effluent limitations for the sulfite subcategories stating that the Agency should base the limitations on concentrations actually obtained by mills using the designated technology rather than on achievable concentrations. One commenter felt that excluding mill 052 from the data analysis was inconsistent with the draft Development Document.

In determining effluent limitations, it is the Agency's responsibility to evaluate the technologies presently in use by mills within the industrial category in order to determine if the treatment systems represent BPCTCA. The draft report to which the commenter referred was a contractor's draft report and in the case of mill 052, further evalutions showed that the contractor's report was in error in that the detention time of the treatment system a mill 052 was inadequate and is thereby not represenative of BPCTCA.

In order to include as much data as possible on which to base the effluent limitations, all available sulfite mill biological treatment data (with the exception of mill 052), including full scale systems and pilot plant operations, were used to determine achievable concentrations through use of biological treatment (See Comment No. 3). The achievable concentrations which were determined in the analyses are therefore based upon concentrations actually obtained by mills using the designated technology (as the commenter suggested would be proper).

17. Several commenters stated that the energy estimates in the Development Document were low and suggested that EPA reexamine the basis for the estimates.

The basis for the energy estimates have been reexamined and the Development Document has been revised to show the appropriate changes.

18. A number of commenters stated that the Agency's evaluation of the factors affecting flow and raw waste load from mills in the groundwood, bleached kraft, soda, and drink subcategories was inadequate. Some of the factors with which the commenters were concerned included the following: raw materials, including type of wood and season of harvest, geographical location including temperature impacts on manufacturing processes and external treatment efficiencies, age and type of equipment, production processes including variations in yield and bleaching, physical layout, and variations in papermaking operations including number of grades, frequency of grade changes, use of additives, and form of the final product (i.e., rolls vs sheets).

In determining the present subcategorization and the special provisions within several of the subcategories, the Agency thoroughly evaluated all of the appropriate factors including those listed above. The comments submitted were carefully reviewed and because of the length of the arguments presented are addressed in Section IV of the Development Document. Thus, Section IV has been expanded to describe more thoroughly how each of the factors was taken into account in developing the subcategorization.

19. One commenter was concerned that the Agency did not examine the reasons for differences in raw waste loads between mills and that a range of effluent limitations would be an appropriate methodology for taking into account any differences in raw waste loads between mills. Mills 108, 127, and 510 were cited as examples of mills with varying raw waste loads within the same subcategory. Another commenter contended that the differences between mill 510 and mills 127 and 108 were due to the use of hardwood at mill 510 which resulted in higher raw waste loads. The commenter felt that the Agency should take into account the higher raw waste loads due to the use of hardwoods.

The Agency examined all available information and data in determining the subcategory raw waste loads on which the effluent limitations were based. As an example of the detailed analyses which were made of mills for which data were available, the discussion in Section V of the Development Document has been expanded to present the detailed information analyzed for each mill used in determining the bleached kraft dissolving pulp subcategory raw waste load (mills 108, 127, and 510). The discussion shows that no allowances are necessary for hardwood used at mill 510 since mill 108 which uses primarily softwood has a higher raw waste load.

20. One commenter stated that the Agency has failed to demonstrate that overflow rates of 600 gallons per square foot per day will achieve the TSS limitations for the groundwood subcategories. The commenter also stated that the Agency failed to identify existing internal control technologies which would be used by groundwood mills to achieve the average raw waste loads.

The Agency has identified the internal control technologies available to groundwood mills for reduction in raw waste flow volumes. See Sections VII and VIII of the Development Document. The TSS limitations are based upon actual operating data for mills using systems representative of BPCTCA. The value of 600 gallons per square foot per day was identified as a parameter commonly used in designing secondary clarifiers (see treatment plant schematic drawings in Section VII of the Development Document) and was used in determining the costs presented in the Development Document.

21. Several comments were received that were concerned with the woodyard allowance. The commenters stated that some allowance for chip thawing or washing should be included and that the limitations should be based upon the wood yield achieved by mills within the different subcategories. One commenter provided yield data in terms of cords per ton for the groundwood, bleached kraft, and dissolving pulp subcategories.

The woodyard allowance now includes chip washing and thawing operations and was revised to reflect the different yields achieved by mills in the different pulping processes including groundwood pulps, chemical paper-grade pulps, and dissolving pulps. In addition, instead of one woodyard allowance, three separate woodyard allowances have been established depending upon the specific woodyard operation; these include: (1) barking, (2) log transport and defreezing flumes and ponds, and (3) log and chip washing and dethawing.

22. Several comments were received that stated that the Agency cost estimates were low and that the Agency estimates were based upon annual average performance whereas the limitations are based upon 30 day and daily maximums.

The effluent limitations (30 day and daily maximum) were determined from actual operating data from mills using systems representative of BPCTCA. However, the cost estimates were based upon "worst case" design parameters in many cases and as a minimum were determined upon commonly used design considerations. For example, a number of mills are achieving the effluent limitations with ASBs with detention times ranging from 8 days to 14 days. In this case, costs were based upon the 14 day ASB. Costs of activated sludge systems, however, were based upon common design considerations because detention times used by mills with activated sludge systems to achieve the effluent limitations generally do not vary as much as detention times of ASBs.

The commenters are incorrect in their statements that the cost estimates were based upon annual average performance. The cost estimates used design waste characteristics based upon the maximum 30 consecutive days. As stated previously, the Agency has thoroughly reviewed the cost estimates in the Development Document and has determined that the costs are up-to-date and accurate.

23. Four comments were submitted that stated that the Agency should recognize in the regulation that long term storage of biologically treated waste waters with short term release systems are a viable alternative to continuous discharge systems. One of the commenters provided extensive information and data for a system which stores the treated effluents for eight months and releases over a four month period. The commenters suggested that mills which are required by the NPDES authority to use these types of systems because of water quality considerations should be required to meet annual average limitations rather than the average of 30 consecutive days and maximum day limitations.

The Agency has carefully examined the submitted comments and data and has determined that it is appropriate to establish annual average effluent limitations for those mills which in effect are required to use storage ponds following their biological treatment systems because of water quality considerations. However, as defined in the regulations, mills using these types of systems (non-continuous dischargers) must also meet maximum day and average of 30 consecutive days limitations as established by the NPDES authority. In setting the maximum day and average of 30 consecutive days limitations for each non-continuous discharger, the NPDES authority will refer to Section IX of the Development Document which sets forth effluent concentrations which reflect waste water treatment levels that are representative of application of best practicable control technology currently available.

It is emphasized that the pollutant control requirements for non-continuous dischargers are not any less stringent than those for continuous dischargers but that only the format of the limitations is changed.

24. Several commenters objected to the statement in the Development Document that all of the data used was based upon twelve or more months since mills 127 and 111 have only five months and seven months of data, respectively, included in the data base. In addition, the commenters questioned the inclusion of mills with fewer data points than one per day over 12 months (i.e., mill 101 has 123 data points over 12 months). The commenters also were concerned over several alleged discrepancies in the data base for specific mills in the Development Document and for differences between data bases from previous Development Documents.

The Agency has carefully examined the submissions to determine the technical adequacy of including in the data base several mills which have less than 12 months of data and mills with fewer data points than one per day. Inclusion of these mills is appropriate as discussed in the Development Document; however, additional data have recently been received for most of these mills. The Agency agrees that several data points for specific mills were incorrect and that additional discussion in the Development Document is necessary to more fully explain and justify which mills are included in the data base and how more recent data have been combined or not combined with the previous data. The Agency has recently collected additional data for many of the mills and these data have been combined with the previous data base. As a result, the Development Document has been updated to include new data, added discussions of the data base, and has been edited to remove any incorrect data.

25. One commenter stated that the use of flow and final effluent concentrations from different mills to establish the effluent limitations resulted in irrational limitation because it is an "apples and oranges" situation.

The Agency understands the commenter's concern that the use of a low flow from one mill and the use of a low concentration from another mill (which has a high flow) could result in improper effluent limitations. However, the effluent limitations were based upon actual data from a large number of mills and therefore, the data analysis does not represent the improper analysis which the commenter suggests could occur. The appropriateness of using flows, concentrations, and variability factors to determine effluent limitations is demonstrated by the large number of mills presently achieving the effluent limitations. See Sections VII and IX of the Development Document.

26. One commenter stated that the effect of temperature on the settleability of TSS from a high rate system was not given adequate treatment. The commenter stated that increases of 20 to 30% in TSS levels in the effluent are expected during the winter months even though the treatment system has been designed for a Northern location.

The Agency recognizes that well designed and operated treatment systems may experience variability in effluent qualities at mills located in Northern climates (as well as mills in Southern climates). In this regard, the effluent limitations were determined using variability factors based upon actual mill operating data which reflect maximum 30 consecutive and maximum day values that are achieved at plants using systems representative of BPCTCA. The Agency feels that these variability factors are more than adequate to provide for effluent variability and it appears that the data provided by the commenter supports the Agency's position. The variability to which the commenter referred translates to 1.2 to 1.3 (ratio of maximum 30 days or maximum day—commenter did not specify whether his data were maximum 30 days or maximum day—to the annual average). The effluent limitations were based upon approximately 1.8 and 3.4 (ratio of maximum 30 consecutive days to annual average and ratio of maximum day to annual average, respectively), which are much higher than the commenters' data and indicate that the

Agency has more than adequately taken his concerns into account.

27. One comment was received that provided a substantial amount of raw waste and final effluent data for mill 401. The data were submitted to support the contention that the raw waste load presented in the Development Document for mill 401 and used in determining the raw waste load for the low alpha dissolving sulfite pulp subcategory was understated. Information and data were also provided showing differences in raw waste load which result from production of nitration and cellophane grades of pulp using hardwood and softwoods. The commenter contended that use of hardwoods results in significantly higher raw waste loads than the use of softwoods.

The data submitted on mill 401 have been examined and were included in determining the raw waste loads on which the effluent limitations were based for the dissolving sulfite pulp subcategory. The submitted data from mill 401 showed significant differences in raw waste loads when producing nitration grades with either hardwoods or softwoods. Since mill 401 is the only dissolving sulfite mill using hardwoods, the subcategory raw waste loads have been based upon production of pulp from softwoods. In addition, the definition of the Dissolving Sulfite Subcategory has been revised to include only the production of dissolving sulfite pulp from softwoods.

28. One commenter objected to the inclusion of vacuum drum pulp washing as an internal control in BPCTCA for dissolving sulfite mills. The commenter suggested that vacuum drum washing should be included in BATEA.

As the commenter stated, BPCTCA emphasizes end-of-pipe treatment but also includes commonly practiced inplant control measures. Since five of the six dissolving sulfite mills use vacuum drum washers (one mill of the five is presently installing vacuum drum washers), the Agency has determined that vacuum drum washers may be appropriately included in BPCTCA.

29. One comment was received that suggested that the Agency reexamine the available information and data on mill 066 because the mill has recently completed a number of inplant changes and significantly altered the raw waste load.

A member of the Agency staff recently made an on-site inspection of mill 066 in order to collect the most recent information and data. These data are presented in the Development Document but only the flow data were used along with data from other mills to determine the effluent limitations for the papergrade sulfite subcategory. The mill management stated that inplant controls had been installed, and it would be expected that a reduction in the raw waste load would have been achieved. However, the mill management also stated that close-up of the SO2 system resulted in an additional BOD5 discharge of 5,000 pounds per day (41 pounds per ton). The data for the period previous to the inplant changes and SO2 system close-up showed a BOD5 raw waste load of 260 pounds per ton (represents 12 months of data), and data for the more recent period show a raw waste load BOD5 of 383 pounds per ton (four months of data). Since the new data are for only four months of operation and since the BOD5 data are inconsistent (i.e., inplant controls other than SO2 close-up resulted in higher raw waste loads), the BOD5 data were not used in the analyses.

30. Several comments were received that stated that the effluent limitations were far less restrictive than necessary and that the limitations may not be truly representative of the goals intended by Congress. The commenters cited several examples of mills which were nearly achieving the BATEA limitations using the BPCTCA technology or mills using less than BPCTCA but nearly achieving the BPCTCA limitations. The commenters suggested that the Agency closely examine the technologies in use in relation to the effluent qualities being achieved. Data were provided.

The effluent limitations are based upon actual data from mills using systems representative of BPCTCA. The Agency has recently received additional data which were analyzed along with the original data base and the data provided by the commenters. As a result, a number of effluent limitations have been revised to more accurately reflect the levels that can be achieved by the application of BPCTCA. The information and data are presented in the Development Document along with an extensive discussion of the methodology and rationale for the determination of the effluent limitations. The Agency believes that the effluent limitations are responsive to the intent of Congress and reflect those effluent levels presently being achieved by mills using systems representative of BPCTCA.

31. One commenter objected to the use of raw waste load data from certain mills which the commenter asserts are using BATEA internal controls in determining PBCTCA raw waste loads. The commenter also sugested that the Agency should delete from the final effluent averages the data from mills employing biological treatment followed by post stabilization ponds. The commenter contended that these systems are beyond BPCTCA.

The average BPCTCA raw waste loads for each subcategory are generally based upon all mills within a subcategory for which data were available. The extent of internal controls used by mills is generally indicated by the mill's raw waste load. Since BPCTCA properly includes normally or commonly used internal controls, it is appropriate to use data from all mills to determine average raw waste loads. It should be pointed out that the Agency did examine the raw waste loads and internal controls in use by mills, and mills with exceptionally low raw waste loads were excluded from the raw waste load averages. Thus, the subcategory raw waste loads reflect commonly used internal controls and not raw waste loads associated with BATEA internal controls.

In addition, the Agency believes that final effluent BOD5 data from mills using biological treatment systems followed by post stabilization basins should be included in determining the final effluent averages. These systems are considered to be BPCTCA since mills with biological treatment systems followed by post storage ponds have generally designed their biological treatment systems to rely on some additional BOD5 reduction in the storage pond. Thus, the entire system including both the biological treatment system and the post storage pond are considered to be BPCTCA at these mills. The Agency did exclude the TSS data from the analysis but this was because the large land areas used by the post storage ponds are not always available to all mills, and the TSS reduction that occurs in the post storage ponds cannot always be achieved by mills using only an aerated stabilization basin (ASB). This is in contrast to the BOD5 levels since the BOD5 levels achieved by mills using biological treatment followed by post storage can be achieved by mills using only an ASB. Thus, the Agency based the effluent limitations on BOD5 levels on both types of systems and TSS levels only on ASBs. See Section VII of the Development Document.

32. A number of comments were received that questioned the method used to take into account the raw waste loads resulting from the production of bleached kraft market pulp at mills producing both market pulp and papers. The commenters suggested that the Agency should revise its analysis of the raw waste load at these mills and consider that the raw waste load generated by the production of market pulp is the same as that resulting from the production of papers.

The available information and data for those mills producing market pulp and papers have been reexaminated and no evidence has been found to show that higher waste loads result from the production of market pulp at these mills. The Agency therefore concurs with the commenters and has revised the method for determining the raw waste load for the bleached kraft fine papers and the bleached kraft BCT papers subcategories. Revision of the method also resulted in a change in the definition of the two subcategories to include market pulp as one of the products.

33. One commenter stated that the Agency has used treatment systems employed at Southern mills in determining BPCTCA effluent limitations but failed to consider the increased costs and economic impact for mills located in Northern locations of achieving the limitations.

The effluent limitations were based upon mills located in both the North and South and can be achieved through use of BPC TCA. The Agency has carefully considered costs and economic impacts for mills located in Northern climates. Activated sludge treatment systems were identified as BPC TCA for mills located in Northern climates and appropriate costs have been included in the Development Document and in the economic impact analysis. It should again be emphasized that the Agency is not requiring mills to install a specific type of treatment system but has identified a type of treatment system capable of achieving the effluent limitations and one that may be used to establish costs and assess the economic impact. Depending upon the specific mill situation, other types of treatment may be more desirable and less expensive, such as a three day modified activated sludge system or an aerated stabilization pond with very long detention times. Relative costs of alternative treatment systems are presented in Section VIII of the Development Document.

34. Two commenters felt that the BOD5 raw waste load of 56 pounds per ton for the groundwood thermo-mechanical subcategory was low in view of recent data from mill 041. The commenters contended that the data from mill 041 show that BOD5 levels are in the range of 90 to 100 pounds per ton and the commenters suggested that EPA take the higher raw waste load into account. In addition, one of the commenters suggested that the groundwood thermo-mechanical subcategory be split into two subcategories to take into account the predicted lower raw waste loads from thermo-mechanical mills producing newsprint such as mill 184. Data were provided for a pilot plant conducted at mill 184 which showed a BOD5 raw waste load of 65 pounds per ton.

The raw waste load for the groundwood thermo-mechanical subcategory has been revised based upon the actual operating data from mill 041 which is one of the two mills in the country producing 100% thermo-mechanical pulp. The data from mill 041 shows a raw waste BOD5 of 78 pounds per ton rather than the 90 to 100 pounds suggested to be representative in the comments. Data from the other mill, mill 028, shows substantially less BOD5 raw waste loads than for mill 041. The BOD5 raw waste load for mill 028 is approximately 40 pounds per ton. The subcategory raw waste load has been based upon mill 041 in order to conservatively take the process factors into account. The effluent limitations have also been revised to reflect the higher raw waste loads.

Since there are presently no mills producing newsprint from 100% thermo-mechanical pulping, it is considered more appropriate at this time to establish one subcategory based upon mill 041 which has a higher raw waste load than the predicted performance of mill 184.

35. One comment was received that suggested that the Agency reexamine the relationships between raw waste loads and bleaching in the bleached kraft subcategories. The commenter felt that there is every reason to believe that pulp brightness can be correlated with yield and BOD load from the bleach plant. However, the commenter did point out that the correlation may be masked to some extent by other variables.

The Agency has reviewed all available data with regard to waste loads generated within the bleach plant at bleached kraft mills. As the commenter pointed out, the incremental impacts of differences in bleaching are generally masked by other more significant variables within the mills. Most of the BOD that is generated during bleaching operations occurs in bleaching the unbleached pulp of brightness levels of 20 to 25 (% G. E.) up to brightness levels of about 75 to 80 (% G. E.). Thus, since brightness levels of the products of bleached kraft mills are generally above 80 (% G. E.), the relative differences in total raw waste BOD are insignificant when increasing brightness levels above 80 (% G. E.). In any event, the Agency believes that the present subcategorization does take into account any differences in raw waste loads as a result of bleaching operations. The available data show that dissolving kraft, market kraft, and kraft paper mills bleach to different levels of brightness (i.e., 90-92 (% G. E.), 86-90, and 80-86, respectively). Thus, the Agency believes that any effects of bleaching are taken into account in the present subcategorization which establishes the bleached kraft dissolving pulp, the bleached kraft market pulp, and the bleached kraft BCT and Fine Paper subcategories. These points are thoroughly discussed in Section IV of the Development Document.

36. One commenter suggested that the Agency use the TSS data for mills with post storage ponds which are measured between the aerated stabilization basin (ASB) and the post storage pond.

The Agency does not believe that the ASBs at these mills are representative of BPCTCA (see comment 31) and therefore, it would be inappropriate to use the TSS data measured between the ASB and the post storage pond. The Agency believes that it is more appropriate to use TSS data from a mill with an ASB without post storage. The total biological treatment system including both the ASB and the post storage pond are BPCTCA at these mills and the ASB alone is not representative of BPCTCA.

37. One commenter was concerned that the production basis for mill 512 appeared to be the maximum seven days production rather than the annual average. The commenter also stated that there was no indication in the Development Document that the Agency gave any consideration to demonstrated production capacity or committed growth in the calculation of the effluent limitations.

The raw waste data for mill 512 have been revised to reflect the annual average production rate rather than the maximum seven days. The commenter's reference to demonstrated production capacity or committed growth would more appropriately be addressed to the NPDES authority because development of the effluent limitations uses actual production data for the period of time for which the waste water data are used.

38. A number of commenters were concerned that the data base was biased towards mills located in southern climates and that because of better treatment efficiencies, this resulted in overly stringent limitations for mills in northern climates.

The Agency has examined the location of mills included in the data base to determine if mills located in southern climates are achieving effluent qualities better than those in northern climates. The results of the analyses as shown in the Development Document show that comparable effluent qualities are being achieved by mills in both locations. It should be pointed out that the type of biological treatment system upon which the limitations are based for mills in the northern climates is different than for mills located in southern climates, since treatment systems can be designed to take into account the effects of temperature on biological treatment efficiencies. Design for temperature considerations does not necessarily eliminate all impacts on treatment efficiencies, but the impacts can be minimized to the point where effluent variabilities for mills using treatment systems representative of BPCTCA are similar for mills located in both northern and southern climates. These points are demonstrated by a number of mills in Northern climates which are presently achieving the effluent limitations using the identified technologies. See section VII of the Development Document.

39. Concern was expressed by one commenter that the Agency ignored TSS levels as a basic factor in development of the subcategories. The commenter stated that many of the technologies discussed in the Development Document were for the reduction of TSS and that this should logically be a significant factor in subcategorization.

Many of the technologies identified in the Development Document are for the reduction of TSS as the commenter contends. However, the two primary factors of external treatment design are flow and BOD5 which were appropriately used as the primary bases for subcategorization. Design considerations for raw waste TSS relate primarily to primary treatment and sludge disposal since the TSS design considerations of biological treatment are more related to the raw waste BOD (due to generation of biological suspended solids) than to the raw waste TSS. Therefore, raw waste TSS is not as critical a factor as flow and BOD5.

40. One commenter felt that chemical addition in secondary clarifiers in order to improve suspended solids removal should be included as a necessary component of BPC TCA.

BPCTCA has been identified by the Agency to include commonly practiced internal controls, primary treatment, and biological treatment. The biological treatment portion of BPCTCA includes design and operating provisions for suspended solids removal. The effluent limitations are based upon well designed and operated aerated stabilization basins and activated sludge systems without the use of chemical addition in secondary clarifiers. This is not to say, however, that chemical addition in secondary clarifiers is not an available alternative technology which can be used to achieve the effluent limitations. Mills may choose to add chemicals to their secondary clarifiers to improve TSS (and BOD5) removal in order to make up for some design and operating deficiency in some other part of their treatment system which results in high TSS levels in the final effluents.

41. One commenter stated that the effluent limitations for the non-integrated tissue subcategory appear to be achievable with the Agency identified technology but that the explanation of how the actual limitations were determined was somewhat confusing. The commenter suggested that the precise methodology employed by the Agency be clarified.

The explanation of the method used in determining the effluent limitations for the non-integrated tissue subcategory has been revised to show how the effluent limitations were determined.

42. One comment was received that stated that EPA should examine the impact on production and raw waste load of using cull logs and sawdust. The commenter contended that the use of an annual average production would not properly describe the impact on raw waste load during times when large percentages of a mill's wood supply were cull logs and sawdust due to the lesser yields and higher waste loads. The commenter suggested that defining production as the maximum seven days of mill capacity would properly address the alledged problem.

The Agency believes that defining production as the annual average is entirely appropriate since the effluent limitations are based upon annual average production data. Issuance of NPDES permits based on maximum seven days of production using effluent limitations which are based upon annual average production would be inconsistent. Regarding the impact of cull logs and sawdust on production and raw waste loads, these items are included in the data base and any impacts are more than taken into account in the use of maximum 30 days and maximum day variability factors which were developed from actual mill data included in the data base. It should be noted that no specific data were submitted on the impacts of cull logs or sawdust.

43. The comment was made that off-the-machine production does not necessarily reflect production on any particular day since it does not take into consideration trim and furnish that are in various parts of the system as storage.

The Agency agrees with the commenter but feels that it is relatively unimportant when using annual average production since any particular day of production is included in the long term average.

44. One commenter stated that zinc hydrosulfite bleaches to a higher brightness level than sodium hydrosulfite and in order to achieve the same brightness levels more sodium hydrosulfite is required. The commenter was concerned because sodium hydrosulfite costs more and the Agency did not include such costs in the Development Document.

The zinc effluent limitations were revised and are now based upon chemical coagulation, floculation, and sedimentation of waste waters from mills using zinc hydrosulfite in the bleaching process. As a result, the zinc limitations were made less stringent. Costs of achieving the effluent limitations were determined and are included in Section VIII of the Development Document. After consideration of these costs in the economic impact analysis, it was determined that the conclusions were unaffected.

45. One commenter was concerned that the TSS limitations were overly stringent since the systems that he had investigated discharged TSS levels of 50 mg/l to 80 mg/l on many days using secondary clarifier overflow rates as low as 300 gpd/sq. ft.

The TSS effluent limitations are based upon annual average TSS levels of approximately 50 mg/l. The maximum day limitations were determined by multiplying the annual average TSS level by the daily maximum TSS variability factor which is 3.38. Using 50 mg/l as an example of the TSS annual average, the daily maximum limitation would be based upon 169 mg/l which is well above the 50 to 80 level mg/l with which the commenter is concerned.

46. A number of comments were received that were concerned with the selection of BOD5, TSS, ammonia, zinc, and pH as significant pollutant parameters. In addition,

several commenters stated that separate subcategories should be established for mills discharging to marine waters or into large bodies of water. The commenters suggested that BPCTCA for these mills would be primary treatment and deep water outfalls.

Both of these concerns were considered by the Agency prior to publishing the interim final regulations, and responses to these comments are contained in the preamble to those regulations. It can be again pointed out that Section VI of the Development Document presents the rationale for selection of each of the pollutant parameters.

47. One commenter suggested that mill closures were underestimated because average cost of compliance estimates were used and costs are recognized to vary substantially for individual mills.

The "average cost" approach was *not* used to identify or assess the impact of pollution abatement cost on possible closure candidates. The "average" or cost model approach was used solely to derive and aggregate the cost of compliance for (a) subcategories and (b) the total industry.

Closure candidates were identified on the basis of mill capacity and type and extent of in-place facilities for effluent treatment. Officials in these plants were interviewed by telephone, and from the information obtained plus process data, the costs and the resultant economic impact of achieving the effluent limitations were determined. Site-specific conditions were considered in developing the economic assessment of the closure candidates. Thus, closures were not underestimated because site-specific conditions were taken into account in determining the number of potential closures which would result from application of the regulations.

48. Several commenters noted that land costs were excluded from the average cost of compliance estimates and therefore concluded that land costs were ignored.

Land costs have not been ignored. They were not included in the industry-wide estimates because: (1) they are extremely variable, (2) many firms already own the land and do not face out-of-pocket costs, and (3) they would total only about $25 million industry-wide which is less than 1 percent of the total capital requirement for water pollution control. Availability of land for treatment technologies was considered in assessing a closure candidate.

49. Some comments noted that specific assumptions in the cost of compliance estimates were unrealistic and resulted in an underestimate of pollution control costs. More specifically, the commenters were concerned that the costs of sludge disposal were based upon land disposal which is less costly than sludge incineration which may have to be used by a number of mills.

It is true that the Development Document assumes land disposal of sludge and that the capital and operating costs for compliance would be greater for an individual mill if it were required to employ the incineration technique for sludge disposal. However, it appears that separate sludge incineration will only be used by a few mills, if any at all, and thereby, the overall cost to the industry is not significantly changed.

50. Several commenters criticized the basic methodology used in the economic report. The commenters contended that the report failed to recognize that firms possess limited capital resources and that pollution control investment will result in either slower capacity growth or increases in prices (and profits) in order to replenish available investment funds. The commenters concluded that the economic analysis ignored the impact of pollution control expenditures on potential capacity shortage or capital availability.

The concept that the pool of investment funds is fixed and that pollution control costs force a substitution from capital expansion investment is incorrect within the context of accepted economic theory. Firms can raise funds in capital markets and do not have to rely on price increases to replenish capital funds spent on pollution control. According to economic principles, pollution control should induce price increases which are sufficient to maintain an adequate return on investment. An adequate return is measured by the weighted cost of capital for debt and equity for the pulp and paper industry. The estimate of long term price impacts was computed in this manner.

Nevertheless, the economic analysis explicitly studied whether effluent limitations would lead to shortage-induced price increases by comparing future supply and demand and the effect of pollution control on supply. Supply was estimated by adding to existing capacity the announced capacity expansions as reported by the American Paper Institute and deducting estimated capacity lost through mill closures due to pollution control and other factors. Therefore, the effect of pollution control in contributing to shortages is directly considered by deducting mill closures. It is indirectly considered to the extent that announced capacity expansions are made with recognition of the firms' priority capital commitments to pollution control requirements.

51. One commenter criticized the economic analysis for excluding an analysis of secondary impacts of pollution control. In particular, the argument was made that intermediary paper distributors will retain historic profit margins on sales and therefore, the increase in final prices will become a multiple of pollution control costs to the manufacturer of paper.

The assumption that profit margins at intermediary levels will remain fixed is unsupported. Under conventional assumptions used in economic analysis (i.e., profit maximization and no entry barriers), economic theory suggests that the constant profit margin assumption is false with regard to both the short run and long run. In the long run, prices adjust to changing investment, operating, and materials costs. However, any price pass-on at the primary level of paper production does not generally affect investment requirements or operating costs. Intermediary dealers' prices are increased to a minor extent by pollution control induced price increases on the product held in inventory and by the increased price of paper at the primary level. However, even taking these factors into account, long run price increases will increase proportionately less for intermediary dealers than for the primary manufacturer of paper. In the short run, the supply curve or marginal cost is only affected by the increase in the price of paper and the intermediary dealer could pass this amount along at most. Therefore, the extent of secondary impacts for both the short and long run analysis are less than the primary impacts. Since the primary price impacts were not significant, and because the primary impacts provided an upper bound, a detailed analysis of secondary effects was not necessary.

52. Some commenters were concerned that the amortization of capital costs at the rate of 15% as presented in the Development Document underestimated common thresholds for investment decisions in the industry.

The amortization rate of capital costs as presented in the Development Document (i.e., 15%) was used only for illustrative purposes in determining annual costs. The economic impact analysis used a rate of 12.8% because it was determined to be appropriate as discussed below. For the long run price impacts, it was assumed that the industry would require between 10% and 12% return on investment after taxes. These figures approximate the average cost of capital to the pulp and paper industry. The estimate of price impacts in the short run by the full cost pass-on method used a 16 year depreciation life and a 10% interest rate which yields a capital recovery factor of 12.8% on capital charges. The life of pollution control equipment is generally greater than 16 years. (See Economic Impact Analysis).

53. Several comments suggested that economic impacts were underestimated because the cost of SSL recovery was excluded.

The capital cost of SSL recovery was excluded from the industry-wide cost of compliance estimates because operating savings from such an investment can nearly justify the investment on economic grounds alone. Since the capital costs and operating and maintenance costs are nearly covered by the operating benefits (chemical and heat recovery) (See Section VIII of the Development Document) and since there are so few mills involved relative to other types of mills competing in the same product markets, any costs would have a negligible impact on the product market. In terms of the economic impact analysis, the screening procedure for plant closings paid particular attention to whether a mill had installed SSL recovery. Therefore, SSL recovery was explicitly considered in the analysis.

54. A number of commenters stated that the economic impact may have been understated because the costs in the Development Document appeared to be understated. The commenters cited several recent mill experiences with equipment purchases in concluding that the costs were low.

The Agency has carefully examined the basis for the costs presented in the Development Document and has concluded that the costs are accurate. In a number of cases, costs have been revised reflecting such things as revisions in the costs of sludge disposal (i.e. inclusion of the operation of the sludge disposal site), addition of 1.5% of capital investment for taxes and insurance, revisions in subcategory raw waste loads and effluent limitations, and revisions in the list of internal control measures included in the BPCTCA costs. The costs were examined in terms of economic impact and the conclusions of the economic impact analysis reached for the interim final regulations were unchanged. The costs were developed using June 1974 prices and were for various size model plants within each subcategory, and it is not expected that these model plants would precisely fit the commenters' mills so that direct price comparisons could be made and especially if the commenters' prices are more recent than the June 1974 prices (i.e., the commenters prices should be adjusted to June 1974 prices using appropriate cost indices).

The Agency finding that the basis for the costs are accurate is supported by findings of the National Commission on Water Quality (NCWQ). Using the costs in the Development, the economic impact analysis concluded that compliance with BPCTCA would cost $2.28 billion for capital expenditures and $250 million for operating and maintenance. The NCWQ through an independent contractor estimated that compliance with BPCTCA would cost $2.19 billion for capital and $140 million for operating and maintenance costs.

55. Several comments noted that the macroeconomic forecast included a recession in

1978 and may have therefore underestimated capacity shortages by underestimating demand.

The economic impact study used a forecast of national economic activity prepared by Chase Econometric Associates, Inc., which included the assumption of a recession in 1978. The analysis also utilized more optimistic forecasts of national economic activity. On the basis of further studies using these optimistic forecasts and thus assuming high demand for product, it was determined that (even after subtracting loss in capacity from mill closures) no significant capacity shortages could be identified.

56. One commenter was concerned that the BPCTCA TSS effluent limitations were abnormally high, especially in the dissolving sulfite subcategory. The commenter stated that at least one mill may be able to achieve the TSS effluent limitations while improperly operating the mill's treatment facilities by operations such as the following: (1) solids are not removed in the final clarifier to design levels (i.e., improper operation of the clarifier allowing the solids to be discharged over the weirs rather than being settled and removed with the sludge) or (2) solids are removed in the clarifier and then are reinjected back into the final effluent. The commenter felt that allowing pollutants to be discharged by such types of improper treatment facility operations was contrary to the concept of best practicable control technology currently available. The commenter suggested that either the TSS limitations should be made more stringent or that a settleable solids limitation of 1.0 milliliter per liter be established in addition to the TSS limitations.

The Agency has determined the effluent limitations based upon all available data from mills properly operating treatment facilities representative of the best practicable control technology currently available. It is emphasized that the determined effluent limitations are minimum levels of control and more stringent limitations can be established in NPDES permits.

The Agency concurs with the commenter in that improper treatment facility operations are contrary to the intent of Congress in establishing the best practicable control technology currently available. Certainly, treatment facilities should be operated such that pollutants are removed to the maximum efficiency and that pollutants, once removed, should not be allowed to be reintroduced into the final effluent. It should be pointed out that most NPDES permits contain requirements that waste water treatment facilities are to be operated at maximum efficiency at all times.

While establishment of settleable solids effluent limitations in the regulations is not appropriate at this time, the Agency feels that requirements for settleable solids limitations of 1.0 milliliter per liter in NPDES permits would be proper in such cases.

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federal register

THURSDAY, JANUARY 6, 1977

PART V

CONSUMER PRODUCT SAFETY COMMISSION

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ARCHITECTURAL GLAZING MATERIALS

Establishment of Safety Standards

Title 16—Commercial Practices

CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

PART 1201—SAFETY STANDARD FOR ARCHITECTURAL GLAZING MATERIALS

Establishment of Standard

In this document, the Consumer Product Safety Commission issues a consumer product safety standard for architectural glazing materials (16 CFR Part 1201), effective July 6, 1977 except for wired glass used in doors or other assemblies to retard the passage of fire where such doors or other assemblies are required by a federal, state, local or municipal fire ordinance, for which the standard is effective January 6, 1980, as provided in § 1201.7 of this Part 1201. The standard is intended to reduce the unreasonable risks of injury associated with architectural glazing materials by ensuring that the glazing materials used in certain architectural products either do not break when impacted with a certain energy, or break with characteristics that are less likely than other glazing materials to present an unreasonable risk of injury.

The injuries this standard is designed to reduce or eliminate are as follows:

A. Lacerations, contusions, abrasions, and other injury or death resulting from walking or running into glazed doors or sliding glass doors believed to be open or glazed panels mistaken as a means of ingress or egress, or pushing against glazing material in doors or glazed panels in an attempt to open a door.

B. Lacerations, contusions, abrasions, and other injury or death resulting from accidentally falling into or through glazing material in doors, sliding glass doors, glazed panels, bathtub doors and enclosures and shower doors and enclosures.

C. Lacerations, contusions, abrasions, and other injury or death resulting from the act of installing, replacing, storing or otherwise manipulating glazing material in doors, sliding glass doors, glazed panels, bathtub doors and enclosures and shower doors and enclosures, or from broken glass in doors, sliding glass doors, glazed panels, bathtub doors and enclosures and shower doors and enclosures.

Copies of all the documents, data, information relative to the original petition for a standard, the Commission's decisions thereon and other materials reviewed and considered by the Commission and/or the staff, in connection with the development of the proposed standard and the final standard, or otherwise mentioned in this notice are available for public inspection in the Office of the Secretary, 1111 18th Street, N.W., 3rd Floor, Washington, D.C. 20207.

I. Background

On June 20, 1973, the Consumer Safety Glazing Committee (CSGC) petitioned the Commission under section 10 of the Consumer Product Safety Act (15 U.S.C. 2059) (hereinafter referred to as CPSA or act) to commence a proceeding for the development of a consumer product safety standard to address the hazards associated with architectural glass. CSGC is an ad hoc group of industry, labor and general interest groups initially formed in 1968 for the purpose of drafting and lobbying for passage of a Model Safety Glazing bill in the various states.

On November 1, 1973, the Commission granted the CSGC's petition on the basis of information submitted by CSGC, consideration of injury data reported by the National Electronic Injury Surveillance System (NEISS), and review of data and information gathered by the National Commission on Product Safety.

Thereafter, the Commission commenced a proceeding under section 7 of the act (15 U.S.C. 2056) to develop a consumer product safety standard applicable to architectural glass by publishing a notice in the Federal Register of May 28, 1974 (39 FR 18502). In the proceedings prior to publication by the Commission in the Federal Register of the proposed standard on February 11, 1976 (41 FR 6178), the product covered by the standard was referred to as "architectural glass". Commencing with the publication of the proposed standard, the designation of the product was changed to "architectural glazing materials". The change was made because the term "architectural glazing materials" includes materials that may consist in whole or in part of materials other than glass. As indicated in the notice of proceeding, the Commission had intended the standard to cover glass and non-glass glazing materials.

In the notice of proceeding, the Commission preliminarily determined (1) that hazards associated with architectural glass present unreasonable risks of injury or death and (2) that one or more consumer product safety standards are necessary to eliminate or reduce those unreasonable risks of injury. The notice included an invitation to interested persons to submit offers to develop a recommended safety standard, or to submit an existing standard as a proposed product safety standard.

Four offers were received and two existing voluntary standards were submitted in response to the notice of proceeding. In the Federal Register of August 21, 1974 (39 FR 30191), the Commission announced its acceptance of a CSGC offer to develop a recommended standard. CSGC submitted a recommended standard to the Commission on January 24, 1975.

On February 11, 1976, the Commission published a proposed standard in the Federal Register (41 FR 6178) for public comment in accordance with sections 7 and 9 of the CPSA (15 U.S.C. 2056 and 2058). The proposed standard was designed to reduce or eliminate the unreasonable risks of injury associated with architectural glazing materials by ensuring that the glazing materials used in certain architectural products either do not break when impacted with a certain energy or break with characteristics that are less likely than other glazing materials to cause an unreasonable risk of injury. The proposed standard is basically the standard which was recommended by CSGC with certain revisions, additions, and deletions made by the Commission's staff in response to direction by the Commission.

A more complete discussion of the Commission's consideration of the CSGC recommended standard, the rationale for the changes made in that standard and a description of the provisions of the proposed standard were set forth in the preamble of the proposal of February 11, 1976. A discussion of the preliminary determination of unreasonable risk associated with architectural glazing materials, and a discussion of the technical rationale which formed the basis for the Commission's proposal of the standard were also set forth in that preamble.

In the Federal Register of April 15, 1976 (41 FR 15873), the Commission announced the extension of the period by 60 days, or until June 11, 1976, in which it must either issue a final consumer product safety standard for architectural glazing materials, or withdraw the notice of proceeding. In the Federal Register of July 7, 1976 (41 FR 27952), the Commission announced a further extension of this period until December 1, 1976, due to the complexity and variety of the technical issues raised in the public record requiring staff review and analysis.

II. Description of the Standard

The standard, 16 CFR Part 1201 published below, prescribes safety requirements for glazing materials manufactured after its effective date for use in storm doors or combination doors, doors used for human passage (both exterior and interior), shower and bathtub doors and enclosures, certain glazed panels, and sliding or patio-type doors. The standard also requires that the architectural products enumerated above which incorporate glazing materials and which are manufactured after the effective date of the standard be constructed with glazing materials that meet the requirements of the standard. Thus, the glazing materials and architectural products incorporating those glazing materials manufactured after the effective date of the standard must meet the requirements of the standard.

While the standard issued below prescribes a test method to determine whether glazing materials subject to the standard meet the requirements of the standard, the standard itself does not require that a manufacturer test any glazing materials or products subject to the standard. Manufacturers of glazing material, however, are required to perform testing under section 14 of the Consumer Product Safety Act (15 U.S.C. 2063) which prescribes certification requirements. The Commission will establish regulations regarding certification by a separate rulemaking proceeding. However, the Commission intends to use the test procedures set forth in the standard issued below to determine whether materials and products subject to the standard meet the requirements of the standard.

The standard is designed for residential and certain nonresidential applications. It does not cover glazing materials used in the manufacture and construction of architectural products not identified in the standard such as (but not necessarily restricted to) prime windows and storm windows.

After the effective date of the standard, no person shall manufacture for sale, offer for sale, distribute in commerce or import into the United States glazing material or the enumerated products incorporating glazing materials subject to the standard which do not comply with the requirements of the standard.

For purposes of this standard, fabricators (persons who assemble or otherwise incorporate glazing materials into the architectural products identified) are considered to be manufacturers as defined in § 1201.2(a) (15) and (16) of the standard and sections 3(a)(4) and 3(a)(8) of the act (15 U.S.C. 2052(a)(4) and (a)(8)). Distributors and retailers of glazing materials (including persons cutting glazing materials to size) are also subject to the standard. The effective date for the standard is July 6, 1977, except for wired glass used in doors or other assemblies to retard the passage of fire, where such doors or other assemblies are required by a federal, state, local or municipal fire ordinance, for which the standard is effective January 6, 1980 as provided in § 1201.7 of this Part 1201.

The standard, Part 1201 below, is designed to reduce or eliminate the unreasonable risks of injury associated with architectural glazing materials by ensuring that the glazing materials used in certain architectural products either do not break when impacted with a certain energy or break with characteristics that are less likely than other glazing materials to present an unreasonable risk of injury. The standard is basically the standard which was proposed by the Commission with certain revisions, additions, and deletions made in response to the comments submitted on the proposal by interested persons. The major provisions of Part 1201, and the principal differences from the proposed standard are described below. The Commission provides further explanations for the changes and addresses comments on the proposed standard under Section III of the preamble entitled "Response to the Proposal."

A. *Impact tests.* In § 1201.2 of the standard, affected products are defined and divided into two categories according to the expectation of whether in normal use or during reasonably foreseeable misuse they will be subjected to high energy or low energy impact and whether it is likely that an individual's full body will be involved in the impact. Included in the final standard is a revision in the definition of Category I and Category II doors and glazed panels. The dividing line is now 9 square feet rather than 6 square feet. (§ 1201.2(a) (3) and (4) below). Section 1201.4(d)(1) describes the impact tests for both categories. The requirements for impact kinetic energy of 150 foot pounds for Category I products (impact from a drop height of 18 inches) and 400 foot pounds for Category II products (impact from drop height of 48 inches) have been retained in the final standard.

B. *Breakage characteristics.* The standard, at § 1201.4(e)(1), provides that glazing materials when impacted as required must either not break, or break with one of a series of alternative acceptable breakage characteristics. These breakage characteristics are similar to the ones proposed, but have been revised as described below.

1. For reasons detailed in Section III (C)(2)(a)(3) of this preamble, § 1201.4 (e)(1)(i), which describes a criterion for passing the impact test, has been revised to specify the period of time that a sphere should remain on the glazing material after it has been placed in a horizontal position.

2. Also for reasons detailed in Section III(C)(2)(c)(2) of this preamble, § 1201.4(e)(1)(ii), which describes a criterion for passing the impact test, has been revised by deleting the term "crack free" and by adding a definition of the term "particle" for purposes of this section. The purpose of these changes is to require that large shards having cracks that terminate in the shard be considered in determining the 10 largest pieces to be selected.

3. The standard does not require, as a criterion for passing the impact test, that glazing meet an included angle criterion. The Commission's position on this matter is further detailed in section III (C)(2)(d) of this preamble.

C. *Environmental durability tests.* Section 1201.4(a)(2) of the standard requires that accelerated or simulated weathering tests be conducted to ensure environmental durability of the glazing materials.

1. Section 1201.4(d)(2)(i) of the proposed standard specified a boil test procedure which included a first soak and a second soak (immersion) of test specimens. This requirement has been retained in that section of the final standard since the standard sets forth the manner in which the Commission will test for compliance with the standard. The first soak may be made optional for manufacturers of glazing materials in the Commission's certification testing program which will be published in another document. This is further discussed in part III(C)(3)(a)(*1*) of this preamble.

2. Section 1201.4(b)(3)(ii) regarding the simulated weathering test has been revised to eliminate the use of the carbon arc test equipment and to specify the type of xenon arc test equipment that will be used by the Commission to determine compliance with the standard. This is also further discussed in part III(C)(3)(a)(2) of this preamble.

D. *Glazed panel definition.* The definition of "glazed panel" included in §§ 1201.2(a)(10)(i) and 1201(a)(10(ii) of the standard has been revised to exclude transoms by restricting the definition of glazed panels to those "* * * whose bottom edge is below the level of the top of the door * * *". This addition clarifies that transoms and other glazed panels beginning above door level are not included within the standard.

E. *Exemptions to Part 1201.* Certain product exemptions to this Part 1201 have been included in § 1201.1(c) of the standard. The rationales for such exemptions are detailed in section III(A) of this preamble.

The Commission has deferred the applicability of the standard to wired glass used in doors or other fire assemblies to retard the passage of fire where such doors or other assemblies are required by a federal, state, local, or municipal fire ordinance for 2½ years from the effective date of the standard. A total exemption from the requirements of the standard has been provided for the louvers of jalousie doors as that term is defined in § 1201.2(a)(12). Non-complying glazing materials may be used in any door opening provided that a 3-inch diameter sphere cannot pass through the opening. This Part 1201 does not apply to the curved sidelights of revolving doors. Decorative leaded glass is excluded from the provisions of Part 1201 when no individual pane is greater than 30 square inches in area. Commercial refrigerated glass cabinet doors are also exempted. The basis for these exemptions is explained in section III(A) of this preamble.

III. Response to the Proposal

In response to the proposal of February 11, 1976, fifty-four written comments were received. In addition, a proceeding to receive oral comments was held on March 8, 1976, at the offices of the Commission in Washington, D.C. Oral comments were made by representatives of eight organizations. The principal issues raised by the comments and the Commission's conclusions thereon are set forth below. Significant revisions in the final standard resulting from the comments and/or Commission decisions are also discussed.

In addition, eight individual consumers expressed their approval of the Commission's action to increase the safety of architectural glazing materials and to reduce the number of injuries connected with architectural glazing products. One consumer expressed disapproval of a testing standard and recommended a labeling standard instead.

A. *Scope and application; exemptions.* A number of comments were received relating to § 1201.1 which deals with the scope and application of the proposed standard and the ancillary § 1201.2 setting forth definitions of terms used in the proposed standard.

1. *Glazed panels.* a. PPG Industries commented on § 1201.2(a)(10)(iv)(B) of the standard which exempts from the standard panels that have a visual barrier in the form of a horizontal member such as a piece of framing or a permanent chair rail of specified dimensions and location. PPG objected to this exemption on the grounds that this section does not provide for an adequate physical barrier.

One of the modes of injury associated with glazed panels is that of the person

who walks or runs into the glazed panel because he/she fails to see the glazing and believes that the area is a passageway—an open door. The standard is designed to reduce or eliminate this mode of injury by providing for the use of a visual barrier when safety glazing is not used. Therefore, the Commission has not accepted the change recommended by PPG because the Commission does not intend the horizontal member to be a physical barrier.

b. The Federal Housing Administration (FHA) of the Department of Housing and Urban Development suggested in a comment that the Commission narrow the allowable range of heights for this visual barrier, i.e., 18 to 36 inches above the walking surface, because a single barrier at the 18 inch level might contribute to the severity of injury.

The Commission agrees that a barrier at 18 inches may be ineffective as a visual barrier and, in addition, may present a hazard of tripping. The Commission, therefore, has raised the minimum level to 24 inches for this visual barrier. The new range would continue to afford protection to children as well as adults, as a visual barrier, while reducing the risk of tripping by adults. Therefore, the Commission has revised the definition of glazed panel as contained in § 1201.2(a)(10)(iv)(B) to exempt from coverage as glazed panels those panels in nonresidential buildings which are not adjacent to doors and which have horizontal members located between 24 and 36 inches above the walking surface.

FHA also suggested an exemption for glazed panels having a painted stripe or design as a visual barrier. However, paint is not permanent and is easily omitted during construction or retrofit. Therefore, the request is denied.

2. *Windows and transoms.* The Flat Glass Marketing Association (FGMA) stated that there is no economic or empirical justification for excluding windows from the scope of a standard and yet, including those windows and transoms which are close enough to a door to come within the definition of a glazed panel as contained in § 1201.2(a)(10) of the standard.

Only when a window falls within the definition of a glazed panel does it come within the scope of the standard. The risks of injury associated with glazed panels include lacerations, contusions, abrasions, and other injuries and death resulting from walking or running into glazed panels mistaken as a means of ingress or egress, pushing against glazed panels in an attempt to open a door (e.g., when distracted while intending to open a door), or accidentally falling into or through glazed panels. The risks of injury from windows in general are lacerations, contusions, abrasions and other injuries and death resulting from falling against, opening, closing, washing or otherwise handling windows.

When the window falls within the definition of glazed panel as used in this standard, it is associated with the risks of injury from glazed panels as well as the risks of injury associated with windows in general. The purpose of including such windows in the standard is to address the risks of injury associated with glazed panels and not windows in general. The Commission will continue to encourage further efforts to reduce injuries associated with windows. The Commission will continue to review information available concerning injuries associated with windows and the technological practicability of developing a standard for that product and may, in the future if warranted, initiate a standard development proceeding relative to windows.

The comment on windows from FGMA appears to be based in part on the belief that the Commission intended that transoms be included within the scope of the proposed standard. This was not the Commission's intent. The location of the customary above-the-door transom, usually more than 6 feet above the walking surface, would generally forestall the specified risks of injury associated with architectural glazing materials to which the proposed standard was addressed. In addition, there were no injuries related to transoms discovered in a review of the Commission's investigative reports and a potential for injury does not appear to exist. Thus, a transom whose bottom edge is above the top of the door is not included in the standard. Accordingly, §§ 1201.2(a)(10)(i) and 1201.2(a)(10)(ii) have been revised to clarify that such transoms are excluded from the standard.

3. *Wired glass in fire assemblies.* Comments relative to the treatment to be accorded glazing used in fire doors were submitted by CSGC; Doorlite Producers Association; Flat Glass Association of Japan; Chairman, Committee on Fire Doors and Windows, National Fire Protection Association (NFPA); C-E Glass Co.; and the American Insurance Association. They recommended, in effect, that wired glass used in fire doors be exempt from the provisions of the standard or, in the alternative, be tested at an impact level of 100 foot pounds or less rather than the 150 or 400 foot pounds levels established in § 1201.4(d)(1) of the standard.

For the most part, the glazing used in fire doors is ¼ inch wired glass. Several of the commentors stated, in effect, that virtually every federal, state and muncipal fire code requires the use of wired glass, and that ¼ inch wired glass is the only material currently manufactured that meets the requirements of such fire codes. The commentors stated that such glass cannot now meet the requirements of the standard.

The commentors indicated that the hazards of injury by being struck by a door while it is being opened, or of death, personal injury, and more extensive property damage by handicapping fire fighting, outweigh the types of injury to which the standard is addressed. Presumably they believe that if wired glass for fire doors must comply with the standard, vision panels in fire doors would disappear, resulting in decreased safety to occupants and firefighters during a fire and increased door accidents during routine use of the building.

At the public hearing, a representative of the C-E Glass Co. advanced the proposal that should the Commission continue to believe that wired glass should be included within the scope of the standard, then the industry should be permitted sufficient time to develop the necessary technology for the production of glazing materials for use in fire doors which will meet the requirements of a standard.

The Commission has investigated these comments. It recognizes that wired glass which is intended to retard the passage of fire is often used in high risk locations where there is genuine potential for serious injury from the hazards the standard is designed to prevent. The Commission believes that wired glass intended for use in doors and other assemblies which will both retard the passage of fire and meet this standard can be developed. However, the Commission does not have sufficient information to determine whether wired glass intended to retard the passage of fire and which would met Category I impact test requirements (specified in §§ 1201.4(d)) is available at this time. Consequently, for the reasons advanced by the commentors, the Commission has decided for good cause and in the public interest and safety to defer for 2½ years from the effective date of the standard the effective date of the standard as to wired glass used in doors or other assemblies subject to this Part 1201 and used to retard the passage of fire, when such wired glass is required by federal, state, local or municipal fire ordinance. A deferred effective date of 2½ years from the overall effective date has been established in order to allow a period of time for the technological development of such materials, and additional time for fire codes to be amended in order that glazing materials meeting the requirements of both the fire codes for retarding the passage of fire and Category I of this standard might be readily manufactured and marketed. This deferred effective date is reflected in §§ 1201.1(c)(1) and 1201.7 of the final standard.

Furthermore, the Commission has made a revision in the standard which should further assist in meeting the requirements of both fire codes and the standard. In the proposed standard, § 1201.2(a)(3) and (4) established the dividing line between Category I and Category II doors, storm doors, and glazed panels at 6 square feet. Thus, depending on the size of the glazing material some products covered by this standard and required to retard the passage of fire would have been required to use glazing material meeting Category I requirements, whereas others would have been required to use glazing material meeting the more stringent Category II impact requirements (see § 1201.4(d)(1)). For reasons which are more fully discussed in section III(B) of this preamble, the dividing line between Category I and Category II doors, storm doors and glazed panels has been revised from 6 to 9 square feet. As a result of this

change, fire doors, as defined by the National Fire Protection Association standard for firedoors and windows (NFPA 80-1975), would fall within Category I requirements which are less stringent than Category II requirements. The Commission believes that these changes continue to provide protection to the public because there is little, if any, likelihood for full body impact with glazing material in doors and other assemblies intended to retard the passage of fire, which is the hazard the impact levels of Category II are intended to address.

4. *Louvers of jalousie doors.* The Exterior Home Products Manufacturers Association, Karey Products Corporation, and The Perfect-Seal and Louvre-Seal Corporations have requested an exemption from the standard for the louvers of jalousie doors.

The operating louvers or vents in a jalousie door are generally made of annealed glass. Each louver is one of a series of overlapping pieces of glazing material designed to admit ventilation and light but exclude rain. The louvers have rounded edges which when opened point outward toward anyone approaching the door. When closed, the louvers overlap one another. The louvers are operated by a crank and gear mechanism located on one side of the door, and proper closing of one louver against the other to ensure a weather tight seal is dependent upon the louvers being rigid and perfectly flat.

Annealed glass appears to be uniquely suited for use in the louvers of jalousie doors. There is some question whether tempered glass can be used in louvers due to the possibility that such glass may warp when employed in sizes used in louvers. The use of laminated glass, whose edges allegedly cannot be polished, could result in sharp and potentially hazardous edges. The use of laminated glass may also meet with a good deal of consumer resistance because the exposed interlayer might be thought by many to be esthetically unsightly. It is also probable that organic-coated glass would be unsuited to this form of usage because the adhesive bond would be exposed to the weather creating the possibility of delamination. The practicability of mandating the use of plastics is undermined by the fact that plastics tend to lose visual clarity over a period of time through clouding or scratching. Some plastics also appear to be too flexible for louver use.

The Commission estimates from its surveillance information that 226 injuries associated with jalousie glass doors were treated in all hospital emergency rooms during 1975. There have been three in-depth investigations involving this product. Two of the injuries resulted from contact with the rough edge of the louver, while the third injury involved a person who punched the glass in anger and broke it.

Further, the Exterior Home Products Manufacturers Association has estimated that to require jalousie doors to meet the requirements of the standard would increase the cost of the product by 25 percent to 30 percent, a figure which the Commission believes is reasonably accurate based upon its own economic analysis. In view of this information, the Commission has determined to exempt the louvers of jalousie doors from the requirements of the standard. Accordingly, § 1201.1(c)(2) of the standard reflects this exemption. In addition, the Commission has added a definition of jalousie door at § 1201.2(a)(12).

5. *Exemptions for glazing materials in small openings.* a. PPG Industries has requested an exemption from the standard for glazing materials used in openings in doors through which a 3-inch diameter sphere is unable to pass. PPG contends that a piece of glazing material this narrow could not possibly fail the impact test requirements of the standard (see § 1201.4(e)(1)(i)).

The Commission agrees in principle that there are certain size openings in doors in which glazing materials are unlikely to present the hazards identified because it is unlikely that any part of a consumer's body is likely to impact such a small opening or, if it does, is unlikely to pass into such an opening. Therefore, the Commission has determined to permit the exemption as requested. Accordingly, § 1201.1(c)(3) of the standard has been added to reflect this exemption.

b. Exterior Home Products Manufacturers Association requested an exemption for vertical lites or strips which are 6 inches or less in width and are used as decorative strips in high fashion jalousie doors.

The Commission believes that openings in doors through which a 3 inch diameter sphere can pass present the injury potential which the standard has been designed to reduce or eliminate. Accordingly, this specific request for exemption is denied. However, as previously indicated, the Commission has granted exemptions for louvers in jalousie doors and for any openings in a door through which a 3 inch diameter sphere cannot pass.

6. *Commercial refrigerated cabinet doors.* Comments by Anthony's Manufacturing Company, Inc. recommend that the proposed standard include within the scope of its coverage glass doors of commercial refrigerated cabinets, typically used by consumers in food stores.

The definition of glazed panel contained in § 1201.2(a)(10)(iii) of the standard, if read literally, could be interpreted to include these products when the doors are open. However, it was not the intent of the Commission to include such products within the scope of the standard. Therefore with that fact in mind and since the Commission is unaware of any injury information as to these products, the Commission has determined to exempt commercial refrigerated cabinet glass doors from the scope of the standard at this time. Accordingly, § 1201.1(c)(6) reflects this exemption.

7. *Garage doors.* One commentor, Phenix Manufacturing Company, requested a clarification of § 1201.2(a)(7), which defines doors, as to whether glazing materials used in garage doors designed for vehicular passage are included in the scope of the standard.

The Commission intends that § 1201.2(a)(7) apply only to doors designed for human passage and therefore does not apply to garage doors designed for vehicular passage. However, glazing materials in doors of garages which are designed solely for human passage are included in the scope of Part 1201, since such doors are associated with the same types of injury as other doors designed for human passage. The Commission believes these explanations are clear in this standard and therefore has not changed the text as requested.

8. *Specialty products.* a. PPG Industries commented that certain specialty products, such as bullet resistant glazing, would be covered by the standard, but are consistently overdesigned when compared with the impact test criteria. For example, bullet resistant glazing is presumably so thick that it will consistently pass the impact test criteria.

PPG recommended that § 1201.4(a)(3) be amended to exempt these products from certain tests if it can be demonstrated that the product is overdesigned for the characteristic in question.

As stated earlier in the preamble, any obligation of a manufacturer to test glazing materials subject to the standard is created by provisions of section 14 of the Consumer Product Safety Act and any regulations thereunder prescribing a reasonable testing program which the Commission may issue. The Commission has stated its intention to begin a separate rulemaking proceeding to issue regulations governing reasonable testing programs for architectural glazing materials subject to the standard. Provisions to exempt materials from some or all of the requirements for testing, or to limit the amount of testing, will be addressed in a regulation governing testing programs when it is published for public comment.

b. A representative of The Association of Motion Picture and Television Producers, Inc. asked whether an exemption is being made for break-away glass in the making of motion pictures where such glass is needed in connection with the filming of motion picture stories.

Such glazing materials do not appear to be produced or distributed for sale to or for use or enjoyment of consumers, but are used only by employees of motion picture producers. Therefore, such products do not appear to be consumer products and would not be covered by the standard.

9. *Curved glazed panels of revolving doors.* One commentor, the Crane Fulview Glass Door Company, inquired whether the Commission intended to include within the scope of the standard the curved sidelights (glazed panels—see § 1201.2(a)(10)) of revolving doors.

The Commission does not have any injury information associated with the curved sidelights of revolving doors. It also recognizes that there is less likely to be a potential for injury from these items than with other sidelights by vir-

tue of the design of revolving door assemblies.

The Commission also has conflicting information as to whether the use of laminated and tempered glazing are technologically feasible in the curved sidelights of revolving doors. Available information indicates that the use of thick annealed glass would be costly and that the use of plastic glazing may present scratching and clouding problems. Finally, the specific test procedure set out in § 1201.4 would have to be adapted before it could be used with these curved glazing materials.

In view of the foregoing, the Commission is exempting curved sidelights of revolving doors from coverage of the standard. This exemption is set out in § 1201.1(c)(5). If the Commission obtains information indicating that an unreasonable risk of injury exists with respect to these curved sidelights, the Commission will consider amending the standard by repealing the exemption and, if necessary, revising the test procedure to accommodate such materials.

10. *Leaded glass.* Visador, a manufacturer of decorative leaded glass, requested a limited exception under suggested conditions for this product. Doorlite Producers Association requested a complete exemption for this product.

Leaded glass is a composite glazing panel composed of relatively small pieces of glass, the individual pieces being supported by lead or zinc bars. When used, it is used primarily as glazing material in doors and glazed panels of residential dwellings. Leaded glass is a specialized, rather expensive product used for its esthetic qualities. As a result, it is used infrequently. Because of the infrequent use of the product in locations addressed by the standard, it is difficult to assess the degree of the risk of injury associated with this product.

Visador has suggested that leaded glass be excluded from the scope of the standard when the individual panels are no greater than thirty square inches, and the total leaded glass area is no greater than 6 square feet. The 6 square feet limit was requested, in part, to be consistent with the Commission's dividing line between Category I and Category II doors and glazed panels included in the proposed standard (see proposed § 1201.2(a) (3) and (4)).

The Commission recognizes that inclusion of leaded glass within the scope of the standard would result in a reduction in its esthetic qualities, and loss of consumer utility. The Commission is also aware that leaded glass is a speciality product and represents an extremely small part of the total market for glazing materials.

Therefore, the Commission has determined to exclude leaded glass from the requirements of the standard when no individual panel of glass is greater than thirty square inches. The Commission has also concluded that no restriction is necessary for the total leaded glass area. Accordingly, § 1201.1(c)(4) has been added to reflect this exemption.

11. *Glazing materials in boats.* An interested individual recommended that glazing materials used in boats should be required to comply with the standard.

Section 3(a)(1)(G) of the CPSA (15 U.S.C. 2052(a)(1)(G)) excludes from the CPSC's jurisdiction boats which could be subject to safety regulation under the Federal Boat Safety Act. Since glazing materials on boats could be subject to such regulation, the Commission has no authority to require that glazing material used in boats comply with the Commission's standard.

12. *Residential greenhouses and storm windows.* The Plastic Safety Glazing Committee and Rohm and Haas Company requested that residential greenhouses and removable storm windows be included within the scope of the standard.

To the extent that doors of greenhouses and glazed panels fall within the definition of doors and glazed panels in § 1201.2(a) (7) and (10), they would be subject to the standard. The requirements of the standard would not apply, per se, to other portions of greenhouses. This principle would apply to all greenhouses used by consumers.

Removable storm windows are considered by the Commission to be windows. Windows in general are not included within the scope of the standard for reasons detailed in the preamble to the proposed standard (41 FR 6178, February 11, 1976).

13. *Glazing materials in mobile homes and motor homes.* a. The Skyline Corporation and the Flat Glass Marketers Association submitted a recommendation that the standard should expressly exclude glazing materials used in mobile homes.

The Commission has concurrent jurisdiction with the Department of Housing and Urban Development (HUD) over consumer products used in or around mobile homes as that term is defined in the Mobile Home Construction and Safety Standards Act (Mobile Home Act). Pursuant to that act, HUD has issued construction and safety standards for mobile homes which, in part, include requirements for the use of safety glazing materials in windows and sliding glass doors, unbacked mirrored wardrobe doors, shower and bathtub enclosures and surrounds to a height of 6 feet above the bathroom floor level, storm doors or combination doors, and in panels located within 12 inches on either side of exit or entrance doors (24 CFR 200.114, 40 FR 50757). In order to avoid a conflict between HUD's standards and the Commission's standard, the Commission has, as a matter of policy, determined not to apply this standard to architectural glazing material used in the architectural products identified in § 1201.1(a) of the standard when the products are used in mobile homes. Section 1201.1(b) of the standard has been changed, accordingly.

b. PPG Industries commented that the definition of mobile home appears to include motor homes and that such vehicles should be under the jurisdiction of the National Highway Traffic Safety Administration and not the Commission.

Section 3(a)(1)(C) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(1)(C)) excludes from the Commission's jurisdiction motor vehicles and motor vehicle equipment as defined by the National Traffic and Motor Vehicle Safety Act. To the extent that glazing materials used in motor homes would be motor vehicle equipment, they would not be included within the scope of the Commission's standard. No additional amendment to the standard is necessary to indicate this lack of authority.

14. *Laminated glass.* Representatives of manufacturers of laminated glass have objected to provisions of the standard which they believe adversely affect them. The Glass Tempering Association and the Ford Motor Company have suggested that there are no recorded instances of injury from the use of laminated glass, and that more severe test procedures than those recommended by CSGC are not warranted. Ford, Buchmin Industries, Globe Amerada Glass Company, Libbey-Owens Ford Company, and the Glass Laminators Committee have claimed that laminated glass should not be subject to the 400 foot pound impact test level set out in § 1201.4(d)(1). All have claimed that there would be a serious economic effect, primarily on competition between laminated glass and its competitors, by mandating the standard as proposed, and that this effect is unwarranted in view of the safety record of laminated glass.

Three remedies have been suggested by these commentors. These are: (1) A return to the test procedure recommended by CSGC which provides for incremental levels of impact and usually has the effect of subjecting laminated glass to no more than 150 foot pounds of kinetic energy, (2) testing laminated glass at one level intermediate between 150 foot pounds and 400 foot pounds rather than at 400 foot pounds, or (3) modifying the definitions of Category I and Category II (§ 1201.2(a) (3) and (4)) so that the dividing line for glazing materials used in doors, storm doors, and glazed panels is 18 square feet rather than 6 square feet.

The Commission acknowledges that laminated glass is safer than annealed glass. However, for the reasons discussed in section III(C)(1)(a) of this preamble, the Commission believes that 400 foot pounds is a foreseeable kinetic energy of human impact for glazing material, including laminated glass, where there is a possibility of full body impact. Failure of products used in such locations to withstand impacts or break acceptably at 400 foot pounds could result in those injuries which the standard is designed to reduce or eliminate. A possible explanation for the lack of injury data associated with laminated glass is that laminated glass has not been used to the same extent as annealed glass so that exposure to injury from laminated glass is less.

The Commission's economic analysis indicates that the competitive impact of the proposed changes would not severely weaken the position of laminated glass in the market place. (See Economic Con-

siderations, Part III(D) of this preamble). This analysis indicates that there will be a price increase which will be borne by consumers but that the increase will be minor. Despite the increase, the Commission continues to believe that glazing materials should withstand impacts or break acceptably at levels of kinetic energy which are foreseeable in the event of human impact.

The Commission does not agree with the suggestion that the demarcation for glazing materials in Category I and Category II doors, storm doors, and glazed panels be changed from 6 square feet to 18 square feet. This change would have the effect of putting most, if not all, doors and glazed panels for residential uses in Category I and would fail to subject some sizes of glazing materials that are large enough for full body impacts to kinetic energy levels which are foreseeable. However, for reasons discussed in section III(B), "Distinction Between Category I and Category II," of this preamble, the dividing line will now be set at 9 square feet. (See § 1201.2(a) (3) and (4).)

15. *Organic-coated glass.* a. One manufacturer of organic-coated glass, Break-Safe Glass, and one manufacturer of the film used to make organic-coated glass, the 3M Company, have objected to provisions of the proposed standard which they believe adversely affect them. They have stated that there are no injuries from the use of organic-coated glass; that the product has more utility than its principal competitor (plastics) because of the scratch resistance provided by organic coated glass on one side; and that, a dividing line for glazing materials in Category I and Category II doors, storm doors, and glazed panels at six square feet so restricts their potential market that they could not continue to sell the product because it could not meet the test criteria for impact of Category II products (see § 1201.4(d) (1)). They recommended that the dividing line between Category I and II (§ 1201.2(a) (3) and (4)) be set at 18 square feet to allow most products to use glazing materials tested at 150 foot pounds.

The Commission acknowledges that organic-coated glass is safer than annealed glass. However, for the reasons discussed in section III(C) (1) (a) of the preamble, the Commission believes that 400 foot pounds is a foreseeable kinetic energy of human impact for glazing materials where there is a possibility of full body impact. Failure of products used in such locations to withstand impacts of or break acceptably at 400 foot pounds could result in those injuries which the standard is designed to reduce or eliminate.

A possible explanation for the lack of injury data associated with organic-coated glass is that organic-coated glass is a new product with relatively few sales. Thus, there has not been significant use information to evaluate the risk of injury based on injury statistics alone. However, for the reasons set forth in the preamble discussion on laminated glass in section III(A) (14) and in section III(B) below, entitled "Distinction Between Category I and Category II", the Commission declines to set the dividing line between Category I and Category II at 18 square feet but has instead set it at 9 square feet.

The Commission's economic analysis of the standard's effect upon organic-coated glass is discussed in section D of the preamble, entitled "Economic Considerations."

b. PPG Industries commented that the definition for organic-coated glass, proposed at § 1201.2(a) (18), permits organic-coated glass to have a polymeric coating on both sides of the glass but that the accelerated environmental durability tests, proposed at § 1201.4(d) (2) (ii), and the labeling provision which directs the orientation of the material on the product, proposed at § 1201.5(c), only permit use of glazing materials that have the coating on one side. It suggests that the Commission resolve this ambiguity.

The intent of the definition for organic-coated glass, now set out at § 1201.2(a) (20), is to include within its scope glass that has a polymeric coating on one or both sides. The intent of proposed § 1201.4(d) (2) (ii) and proposed § 1201.5(c) is to ensure that glass which has a polymeric coating on one side only, with an adhesive-coating system intended to be oriented to the inside of a building, is tested with that surface away from the radiant source of energy and labeled accordingly.

However, it was not intended that glass having a polymeric coating on both sides, or glass having an organic coating on one side and that is resistant on that side to outdoor weathering, be restricted to inside orientation. Accordingly, § 1201.4(c) (3) (ii) on test specimens, § 1201.4(d) (2) (ii) on test procedures, and § 1201.4(c) (2) (ii) have been revised to allow for testing under either condition. Section 1201.5(c) continues to prescribe labeling requirements for organic-coated glass that has been tested for environmental exposure from one side only.

16. *Windblown missiles and wind induced blowouts.* A professor at Villanova University commented that the standard should include requirements for hazards associated with the impact of windblown missiles and with wind induced blowouts of wall panels.

Such hazards were not included in the risks of injury cited in the notice of proceeding or in the proposed standard. The Commission also has no injury information associated with these hazards. Accordingly, the request is denied.

B. *Distinction between Category I and Category II.* Several comments were made recommending an upward revision of the 6 square foot division point for glazing materials in Category I and Category II doors, storm doors and glazed panels (§ 1201.2(a) (3) and (4)). Representatives of manufacturers of laminated glass and organic-coated glass suggested a division point of 18 square feet.

The proposed standard divided products containing architectural glazing materials into two categories for impact test purposes depending in part upon the area of the individual pieces of glazing used. The division point was established at 6 square feet. Section 1201.2(a) (3) of the proposal defines Category I doors, storm doors, and glazed panels as those in which no piece of glazing material is greater than 6 square feet in surface area, and § 1201.2(a) (4) defines Category II doors, storm doors, and glazed panels as those in which any piece of glazing material is greater than 6 square feet in surface area. Section 1201.4(d) (1) requires that glazing materials used in Category I products meet the criteria of the standard when tested at 150 foot pounds, while glazing materials used in Category II products must meet the criteria when tested at 400 foot pounds. These impact requirements are designed to ensure that glazing materials for each of the two categories will not break or will break with characteristics less likely than other glazing materials to cause an unreasonable risk of injury.

After careful consideration of the comments received in the public record, engineering and medical sources, and information provided by its staff, the Commission has determined that the proposed division point of 6 square feet is unnecessarily restrictive. Consequently, the definitions of Category I and Category II doors, storm doors, and glazed panels have been revised. The two categories of products are intended to differentiate products where there is a potential for full body impact from those products where there is not such a potential. In order to have full body impact, an individual must be able to fit through an opening without contacting any portion of the supporting frame or the frame will absorb an unknown amount of the total energy. The age group most frequently injured in accidents associated with architectural glazing materials is children under the age of 15. In the judement of the Commission, children aged 11 years and older appear to be able to generate 400 foot pounds of kinetic energy and could deliver a full body impact to glazed panels of 9 square feet or greater. Therefore, it is estimated that in an accident situation such children could impact a panel larger than 9 square feet with a kinetic energy greater than 150 foot pounds.

Moreover, many products containing glazing materials in pieces which are 9 square feet or less usually have the glazing material located so that full body impact is not likely to occur. For instance, in storm doors incorporating one large panel of glazing material over most of the area of the door, and in which full body impact is probable, the glazing material is in excess of 9 square feet. In storm doors containing one smaller panel of glazing material, that glazing material is generally located in the upper half of the door. Where 2 or more small panels are used, the area of each piece is less than 9 square feet and each piece is utilized in such a manner so as to make full body impact with either piece unlikely.

Therefore, the Commission believes that a 9 square foot division point between Category I and Category II doors, storm doors, and glazed panels is reasonable. Section 1201.2(a) (3) now defines Category I doors, storm doors, and glazed panels as those in which no single piece of glazing material is greater than 9 square feet in surface area, and § 1201.2 (a) (4) now defines Category II doors, storm doors, and glazed panels as those in which any piece of glazing material is greater than 9 square feet in surface area.

C. *Test procedures.* Many of the written comments and a good deal of the oral testimony dealt with the test procedures contained in § 1201.4 of the proposed standard.

1. Impact test procedures. Eleven substantive written comments relate to the impact testing procedures of § 1201.4(d) (1) of the proposed rule. The transcript of the oral testimony also contains significant testimony on this matter. The commentors were Associated Laboratories, Inc.; CSGC; Associated Certification, Inc.; Glass Tempering Association; Flat Glass Marketing Association; PPG Industries; Fourco Glass Company; Libby-Owens-Ford Company; International Conference of Building Officials; Glass Laminators Committee; C. E. Glass Company; 3M Company; and the Globe Glass and Trim Company.

a. *Impact kinetic energies. 1.* A number of commentors requested the use of the incremental impact test procedure of the offeror's recommended standard, which provides for a test specimen of glazing material to be impacted at increasingly higher kinetic energies until breakage occurs or the specimen fails to break from a 48 inch drop height (400 foot pounds of kinetic energy). This incremental loading procedure does not check break patterns above the lowest drop height from which breakage occurs, and therefore the Commission believes it to be deficient.

The Commission is of the opinion that the incremental loading procedure also has the anomalous effect of passing materials which break acceptably at a lower energy yet failing others which do not even break at that lower energy but break unacceptably at a higher energy level. Accordingly, the Commission still approves of the procedure of the proposed standard, which abandons the incremental loading procedure, and instead provides a more performance oriented impact procedure which divides products into two categories according to the expectation of high energy or low energy impacts. In view of the foregoing, an impact test procedure based on two categories has been retained in the final standard at § 1201.4(d) (1).

2. One commentor argued that materials that pass the impact test level for Category II should not also be required to be tested at the impact test level for Category I in order to be used in Category I products. Others stated that impact testing should be required at both levels if the glazing material is to be certified at both levels.

The Commission is unaware of any instance in which glazing materials that pass the Category II requirements would not also be adequate for Category I requirements. Therefore, it has concluded that materials that pass the impact test requirements for Category II may be used in either Category I or Category II applications. Glazing materials intended solely for use in Category I applications must continue to be tested in accordance with the impact test procedure for Category I. Accordingly, § 1201.4 (e) (1) has been revised to reflect this alteration in the test procedure.

3. Several commentors stated that it is unnecessarily restrictive and unjustifiable to require glazing materials used in Category I and Category II products to meet the impact test drop heights in the proposed standard of 18 inches (150 foot pounds kinetic energy) and 48 inches, (400 foot pounds kinetic energy) respectively. Although these two drop heights were used in the impact test procedure recommended to the Commission by the offeror, they were used only if a material failed to break at a lower drop height of 12 inches. In the proposed standard, the 18 inch drop height is mandated for Category I products, resulting in a kinetic energy of 150 foot pounds at impact. The 48 inch drop height is mandated for Category II products, resulting in a kinetic energy at impact of 400 foot pounds.

When the Commission evaluated the recommended standard submitted to it by the offeror, it recognized that materials should not be accepted by tests based on unrepresentative energy levels. It further recognized that glazing materials used in products in such a manner that full body impacts are reasonably foreseeable should be tested at higher energy levels than glazing materials used in products where reasonably foreseeable impacts would tend to be at lower energy levels and generally confined to less than full body impacts.

Because the Commission had not conducted experiments of its own to determine appropriate levels of test impact energy, the Commission used data from the offeror, the National Center for Health Statistics, and from CPSC studies of football players to calculate probable ranges of expected energy levels for full body and less than full body impacts. The results of these calculations were then compared to the three energy levels of 100, 150 and 400 foot pounds found in the standard recommended by the CSGC to determine if any or all of them were appropriate. (Engineering Report, Bureau of Engineering Sciences, August 20, 1975). The Commission also reviewed information contained in the voluntary standard ANSI Z97.1–1975, "Performance Specifications and Methods of Tests for Safety Glazing Material Used in Buildings," September 26, 1975; information contained in the Testing and Standards Subcommittee Report submitted by CSGC; and calculations submitted by CSGC regarding energy levels of the impact test and energy levels involved in accidental human contact with glazing. (ANSI standards are approved and published by the American National Standards Institute, Inc., 1430 Broadway, New York, N.Y. 10018.)

Expected maximum velocity and mean weight, broken down by age group, were determined from the information supplied by the aforementioned sources. From this procedure, it was estimated that kinetic energies that could be generated ranged from 59 foot pounds for children under five years old to 1503 foot pounds for a running male football player. These energy levels were than adjusted using factors suggested by CSGC to estimate the kinetic energies likely to be generated by various body parts in different impact situations.

The results of the estimates, which as indicated in the preamble to the proposal are available for review by the public, showed that the 400 foot pound energy level (corresponding to the 48 inch drop height) could offer protection to most adult males for lower extremity, torso and arm contact and thus those in other age groups as well. The Commission therefore considered a 400 foot pound test requirement to be in an appropriate range of values to protect consumers against injuries due to full body impact.

For smaller glazing applications, the estimates showed that the 100 foot pound energy level (corresponding to the 12 inch drop height) of the CSGC's recommended standard would protect only the age group below five years old. On the other hand, the 150 foot pound energy level (corresponding to the 18 inch drop height) appears to offer protection for hand and arm impacts to adults and protection to children below 10 years old for whole body impacts. Thus, a more appropriate level for Category I appears to be 150 foot pounds. For this reason, the Commission has chosen the 150 foot pound energy level for Category I products instead of the 100 foot pound level. Section 1201.4(d) (1) of the standard has therefore not been changed in this regard.

4. 3M stated that the proposed test levels in § 1201.4(d) (1) appear to be inconsistent with CSGC test results. To determine if the proposed test levels are inconsistent with the CSGC test results, it is necessary to consider the test procedures used by CSGC. CSGC asked human volunteers to walk and run into panels which were instrumented to measure the energy absorbed by the panel when impacted by the subject. While this testing suggested the glazing materials when impacted absorbed energies lower than 400 foot pounds, the Commission believes that to ask volunteers to incur full body, full speed impacts, where the potential for harm appears so real, may result in test impacts of lower values than occur in actual accidental situations. Therefore, the Commission disagrees with the observation of 3M.

5. Several commentors objected to the concept in the proposed standard of two categories of products for which the glazing materials must meet different impact test levels. The Commission believes

it is meaningful to provide different tests for products that will be foreseeably subject to full body impact and those subject to less than full body impact because:

a. the prescribed test impacts are reasonably related to foreseeable human impacts, as discussed above, and;

b. the alternatives to the use of such categories at this time would appear to be either a return to the deficient incremental loading concept recommended by CSGC (discussed above); or imposition of uniform test requirements which are unnecessarily strict and would eliminate some safety glazing materials; or evaluation of breakage at a series of energy levels, which would cause an undue test burden.

After due consideration, the Commission determined to retain in § 1201.2(a)(3) and (4) of the final standard two categories with different impact test requirements for each category (§ 1201.4(d)(1)), and a revised dividing line of 9 square feet.

b. *Impactor. 1.* Sears, Roebuck and Co. commented with regard to the impactor that glass will break at different kinetic energies depending upon the size and shape of the impactor, its velocity, and other characteristics of the impact. The Commission agrees with the comment. Glass breakage is typically a phenomenon which originates at the surface, and an impactor that is smaller or harder than the impactor prescribed in § 1201.4(b)(2) of the standard will be able to raise higher surface stresses at the same kinetic energy. Similarly, various parts of the body impart differing types of impacts to glazing material.

Both CSGC and the Commission were aware of problems of matching a single impactor to several different body parts that could impact glazing materials. This anomaly will arise with any impactor chosen, and the Commission has not seen any persuasive specific data indicating that §§ 1201.4(b)(2) or 1201.4(d)(1) should be revised.

2. Another commentor, PPG Industries, suggested that the 4 ounce (0.11 kilograms) weight tolerance for the 100 pound impactor contained in § 1201.4(b)(2)(i) be increased to one pound, because PPG contends it is difficult to construct an impactor with the weight tolerance specified in the proposal. However, because this impactor is tightly filled with lead shot, the possibility arises that a fairly small decrease in the amount of shot would work a significant change in the impact absorbing characteristics of the impactor, thereby adding another variable to the test method. The weight tolerance specified in § 1201.4(b)(2)(i) can be achieved by persons testing under the standard and, in fact, has an established and recognized history. Therefore, the Commission has retained it in the standard.

3. The Glass Laminators Committee commented that secondary impacts caused by the punching bag impactor can occur. The Commission is of the opinion that secondary impacts can be controlled, for example, by means of a tie line in connection with a cam cleat or a jam cleat.

2. *Interpretation of impact test results*—a. *Three inch hole test. 1.* CSGC, PPG Industries, 3M Company, Libby-Owens-Ford Company, Glass Laminators Committee, and Globe Glass and Trim Company commented in regard to the provision in § 1201.4(e)(1)(i)(A) of the proposal (§ 1201.4(e)(1)(i) of the final standard), regarding one criterion for interpreting results of the impact tests. They stated that moving the broken glazing to a horizontal position in order to measure whether a 3 inch sphere will pass through might induce additional breakage not related to the punching bag impact or to impact conditions in real life, but related only to the weight of the glazing.

The Commission's intent in requiring the impacted glazing to be moved to a horizontal position is to deal with an inadequacy in CSGC's recommended test procedure for the 3 inch hole criterion which allowed specimens to pass if a shard of glazing material remains dangling in the opening. In such a case, the specimen would have passed because geometrically there is not a 3 inch hole, despite the fact that the specimen still presents an unacceptable hazard. The procedure in § 1201.4 (e) (i) requires turning the broken specimen horizontally so that such a shard will fall through, exposing the hole.

Another intent of the horizontal measurement is to address the situation where the material opens wide during impact (thus presenting the hazard of exposing limbs to entrapment) but closes to a smaller size before measurement. Furthermore, in an accident situation the victim could foreseeably create a larger opening by secondary contacts with the glazing material, or by momentum from the initial impact. Therefore, some additional breakage is foreseeable, and a procedure which may produce some additional breakage is not unreasonable. To address these two hazards, the Commission believes that the test procedure which causes additional stress on the opening by the force created by the weight of the glazing material in a horizontal position and by placing of a 4 pound ball on the opening is reasonable. Therefore, the Commission has retained the provisions of § 1201.4(e)(1)(i).

2. Several commentors stated that in the interpretation of results of the impact test (§ 1201.4(e)(1)(i) the standard as worded does not cover the instance in which the edge of organic-coated glass pulls from the frame yet the broken specimen remains completely intact. Tests conducted for the Commission demonstrated that such occurrences can and do happen during testing. If the organic coating and adhesive are so strong that they hold the specimen intact even though it pulls out of the test frame, it is foreseeable that the same would happen even more frequently in architectural uses, where the glazing is less firmly gripped by the framing. In such a case, a person impacting the glazing would not be pierced or lacerated by holes opening in the specimen, which remains intact. In such a situation, the specimen would be acceptable under § 1201.4(e)(1)(i) since this section states: "* * * no opening shall develop *in* the test sample through which (the three-inch diameter sphere may pass)" [Emphasis added]. Therefore, § 1201.4(e)(1)(i) has not been revised in this regard.

Because the broken specimen may hang limply out of the frame as in the above case, commentors have questioned how the 3 inch diameter sphere criterion of § 1201.4(e)(1)(i) may be applied with the specimen in a horizontal position. Although it is not desirable to handle broken glass, it should be possible to support the edges of the broken specimen in a horizontal position and then set the test sphere on this supported specimen. The Commission would permit this procedure only if the edge of the specimen had actually pulled out of the subframe, because it is only in that case where the edge of the original specimen needs to be supported.

3. A commentor implies that the 3 inch diameter sphere will pass through openings in different materials in different periods of time, and he asks how long the sphere should be left in the opening. The intent of using the sphere is to make a geometric test as is done in the offeror's recommended standard, to push aside any dangling shards, and to address the situation where the glazing material has closed after impact. The sphere may be removed quickly and still satisfy these intents. For the sake of uniformity, the Commission has determined that a time of one second would be technically appropriate. Section 1201.4(e)(1)(i) has been revised accordingly.

b. *Modulus of elasticity and hardness. 1.* Comments on § 1201.4(e)(1)(i)(C) of the proposal (§ 1201.4(e)(1)(iii) of the final standard), relative to the hardness and modulus of elasticity of plastic glazing materials, were received from the Plastic Safety Glazing Committee, representing the domestic plastic industry; Rohm and Haas Company and Dow Chemical Co., manufacturers of plastic glazing materials; and Associated Laboratories, Inc. Two of these organizations also made oral presentations at the public hearing. Several of these comments requested different tests for modulus of elasticity (stiffness) and hardness from those specified in the proposed standard.

For the purposes of determining whether plastic glazing materials meet necessary stiffness and hardness values, the Commission has determined that the proposed tests shall be included in the final standard, rather than the other tests which the comments recommended. The tests which were proposed have an established and recognized history and the public record contains no arguments persuasive to the Commission as to why they should be revised or eliminated.

Section 14 of the CPSA regarding certification, rather than the standard, imposes obligations on manufacturers to test products subject to the standard. The Commission plans to issue regula-

tions under section 14 governing reasonable testing programs for certification of compliance with the standard. The Commission will in that proceeding consider the possibility of permitting stiffness and hardness tests for purposes of certification other than those currently set forth in § 1201.4(e)(1)(iii) of the final rule. Nevertheless, the Commission will employ the stiffness and hardness tests specified in the standard in its compliance program.

2. Rohm and Haas Company recommended that the first line of proposed § 1201.4(e)(1)(i)(C) be revised to specify that plastic glazing materials must actually be impacted.

In view of the fact that the proposed criteria for plastic glazing materials do not contain performance specifications, the Commission is of the opinion that there is no technical reason to require that plastics actually be impacted since the proposed criteria are measurements of stiffness and hardness, which can be measured independently of an impact test and would not be altered by an impact test. The Commission therefore has determined that the criteria in the final standard, now set out as § 1201.4(e)(1)(iii), should not be changed. For clarity, the Commission has indicated at § 1201.4(d)(1) that such specimens need not be impacted.

3. Associated Laboratories suggested that the allowable modulus of elasticity and hardness readings be raised by 33 percent. The comment states that this change would include all known plastics. (The proposed levels, so far as is known to the Commission, allow all presently used glazing plastics to pass the impact test. The suggested change would allow all plastics to pass the test.)

In the absence of empirical or experimental correlations between the two suggested measurements and safety, the Commission believes that the suggested revision should not be made. For a given thickness of material, such a revision would result in passing plastics of lesser impact resistance than would pass under the standard as proposed. If such plastics were marketed and used as glazing materials in the products covered by the standard, they could be involved in a statistically higher number of breakages, which marginally would increase the risks associated with these products. Moreover, no manufacturer of plastics has furnished information to the Commission indicating that a product will be adversely affected by the modulus of elasticity and hardness criteria as proposed and now included in the final standard at § 1201.4(e)(1)(iii).

c. *Criterion for 10 largest pieces.* The criterion contained in proposed § 1201.4(e)(1)(i)(B) was the subject of comments by Associated Laboratories, Inc. and Associated Certification, Inc. That section provides that specimens pass the impact test when the 10 largest crackfree particles selected within five minutes after the test weigh no more than a certain amount.

1. Associated Laboratories suggested substituting a shape factor for the proposed criterion. Associated Certification suggested shortening the time allowed to search for and weigh the 10 largest pieces and cushioning hard surfaces behind and below the test frame upon which the broken pieces impact.

After careful consideration, the Commission determined not to make these recommended revisions. The test as proposed has an established and recognized history as part of the voluntary standards and appears to have served well over the years. The Commission considers the test procedure included in the final standard at § 1201.4(e)(1)(ii) satisfactory to eliminate or reduce the risks of injury associated with glazing materials. The recommended revisions would make the test more stringent than the proposal, a development for which the Commission sees no compellingly persuasive reason.

2. Associated Certification, Inc. reported having seen a large number of poorly tempered specimens break into large pieces having cracks which terminate within the shard. Such cracks have prevented the particle from being a "crack free particle" within the meaning of the proposed criterion, as a result of which the particle is not used for determining whether the specimen passes or fails the test.

Results of tests conducted by the Commission corroborate the commentor's statements, and the Commission has concluded that use of the term "crack free" in the proposed test may actually favor poorly tempered glass over well-tempered glass. Consequently, the term "crack free" has been excised from the final standard and an additional sentence containing a definition of "particle" has been added to § 1201.4 (e)(1)(ii) to clarify that a poorly tempered piece of glass which has a crack terminating within the shard is to be considered for inclusion as one of the 10 largest pieces, and to indicate that a network of granules is not considered a "particle" but is instead a grouping of many particles.

d. *Included angle criterion.* In the preamble to the proposed standard, the Commission solicited comment on a staff developed provision that plastics be impacted and pieces no longer than 2 inches remaining in the frame after the impact test be no sharper than 60 degrees (an included angle requirement). The Commission received a number of comments on this subject.

After consideration of the comments received relative to the issue of an included angle criterion, the Commission has determined that most of the issues raised on the proposal concerning this matter are still unresolved. Therefore, the final standard issued below contains no included angle criterion for determining whether a specimen passes the impact test. The Commission is commencing technical studies looking toward the resolution of this matter. If this additional effort leads to development of a criterion which is considered by the Commission to be acceptable either for plastics or for other glazing materials, the Commission may consider amending this standard in accord with the provisions of section 9(e), CPSA, 15 U.S.C. 2058(e).

3. *Environmental durability tests*—a. *Equipment.* PPG Industries, Atlas Electric Devices Company, and Rohm & Haas Company submitted comments addressed to the environmental durability test equipment specified in § 1201.4(b)(3)(i) and (ii) of the proposed standard.

1. PPG commented upon the equipment for conducting the boil test for laminated glass as specified in § 1201.4(d)(2)(i) of the proposed standard. PPG requested that the first soak required in the boil test be made optional. The request, if granted, would allow the test equipment to be composed of one tank of water instead of two. Under the proposed standard, this equipment consists in part of two tanks of water, one maintained at 150°±5° F (66°±2°C) and the second at a slow boil at atmospheric pressure. (See § 1201.4(b)(3)(i)). The test procedure of the proposed standard specified that the specimens shall first be placed for three minutes in the tank containing the water at 150° F. This is called the first soak. The specimens are then quickly removed and put in the tank containing the boiling water where they experience the second soak for two hours.

The actual test is the second soak. The purpose of the first soak is to provide a transition phase for the test specimens, in the form of an intermediate temperature, so that they are not exposed to severe thermal shock upon being thrust into boiling water directly from room temperatures. By protecting the test specimens from such thermal shock, the test procedure minimizes the likelihood of the glass cracking, which could invalidate that trial and require that the test be repeated.

The purpose of the test procedures in the standard is to specify how the Commission will conduct compliance testing. Omission of the first soak of the boil test would only affect the efficient conduct of such testing due to the increased likelihood of a test specimen's cracking from thermal shock, which in turn would lead to an increase in the number of specimens that must be discarded before an uncracked specimen can be evaluated. Accordingly, the Commission has not modified §§ 1201.4(d)(2)(i) and 1201.4(b)(3)(i) of the standard.

However in the certification regulation to be issued subsequently, the Commission will consider providing that a boil test, which omits the first soak (150° F) specified in the procedure, is the technical equivalent of a boil test when conducted exactly as specified in the standard. This change, if permitted, would allow manufacturers of laminated glass to conduct a reasonable testing program in accord with Section 14 of the CPSA, in which the first soak of the boil test specified in § 1201.4(b)(3)(i) is omitted.

2. Atlas Electric Devices Company made many technical comments concerning the range of test equipment available for accelerated weathering and the proper use of such equipment. Five of these comments were technical state-

ments making no requests or suggestions for change and, therefore, they are not discussed in this document.

Eight of Atlas' comments pertain to the various types and uses of test equipment required by § 1201.4(b)(3)(ii) of the proposed standard for simulated weathering tests. These points were technical in nature and pointed out ambiguities in the description of the test equipment. The Commission has determined that the standard should clearly specify the particular pieces of test equipment to be used by the Commission when it conducts compliance testing using the simulated weathering test or other accelerated weathering tests specified in the standard. The Commission has deleted from the final standard the following sections that appeared in the proposal: 1201.4(b)(3)(iii) (Outdoor weathering test equipment), 1201.4(b)(3)(iv) (Intensified weathering test), and 1201.4(d)(2)(iv) (Identification of plastic and adhesive specimens). In addition, the language of § 1201.4(b)(3)(ii) has been changed by deleting the requirement for use of the carbon arc Weather-Ometer and specifically defining the type of xenon arc Weather-Ometer equipment which the Commission intends to use for compliance purposes in simulated weathering tests. The Commission will expose samples in the xenon arc Weather-Ometer for 1200 hours. This exposure time has been estimated to represent the equivalent ultraviolet exposure of 2000 hours exposure in the carbon arc Weather-Ometer used by many testers and of 375,000 langleys of solar radiation (in the range of two to three years outdoor exposure in Florida). There is underway an interlaboratory testing program sponsored by the American National Standards Institute which may determine and refine these equivalent exposures by measurement. When the study is completed, the Commission may consider amending the exposure requirements for the xenon arc Weather-Ometer. In such a situation, the amendment would be issued in accordance with section 9(e) of the CPA, 15 U.S.C. 2058(e).

3. Rohm and Haas requested that the sentence "Recorders shall monitor the energy reaching the specimens" be deleted from proposed § 1201.4(b)(3)(ii) regarding simulated weathering test equipment. The company states that none of the test apparatus enumerated in that section has provisions for recording the energy reaching the specimens. The Commission believes that the use of the word "recorders" has caused a misunderstanding. The Commission intended to specify a device to either monitor or record the total amount of energy reaching the specimens. The Commission believes that the changes made in the final standard in § 1201.4(b)(3)(ii), based on the comments from Atlas Electric Devices Company, have also addressed the comment by Rohm & Haas. The new wording of this section specifies a piece of commercially available test equipment that has such a monitor.

b. *Test procedures and interpretations of results.* 1. Sears, Roebuck and Co. recommended reducing the strength of the glazing material prior to impact testing through abrasion and scratching. The standard is intended to reduce the unreasonable risks of injury associated with architectural glazing materials by assuring that the glazing materials used in certain architectural products either do not break when impacted with a certain energy, or break with characteristics that are less likely than other glazing materials to present an unreasonable risk of injury. The Commission has no information to indicate that a decrease in the strength of the test specimen, which is brought about by abrasive conditioning of the specimen prior to the impact test, is likely to have an effect on the break pattern or likely to affect the result of the test. Therefore, the Commission declines to modify the standard as recommended.

2. 3M Company requested that the provisions of proposed § 1201.4(d)(2)(iv) regarding plastic specimens be extended to organic-coated glass. As proposed, this section permitted the use of infrared spectra for plastic specimens as a substitute for repeated accelerated environmental durability testing. The tester would attest that there had been no change in the formula of plastic safety glazing materials since material made to the same formula had first been subjected to environmental testing. 3M maintained that the weathering tests are long or expensive or both, and that the infrared spectrum can be used to show that the manufacturer is continuing to use the same plastic and adhesive.

For the reasons noted elsewhere in this preamble, § 1201.4(d)(2)(iv) of the proposal has been deleted from the final standard. However, as previously indicated, the Commission will issue regulations governing reasonable testing programs to support the certification required by section 14 of the CPSA by a separate rulemaking proceeding. Those regulations may allow the use of different test equipment or different test procedures as alternatives to the ones specified in the standard for particular materials under specified conditions.

(3) Associated Laboratories, Inc. and Eastman Chemical Products, Inc. commented in regard to the pass fail criterion set out in § 1201.4(e)(2)(ii)(A) for the accelerated weathering tests for plastics. They question whether permitting a 25 percent decrease in impact strength after weathering, as permitted by § 1201.4(e)(2)(ii)(A)(2), has any effect upon the break characteristics of plastic glazing material or any correlation with safety.

The intent of the pass fail criterion for weathering was to prohibit any significant change in the impact strength of a plastic glazing material after weathering. The Commission believes any change in impact strength of a plastic glazing material after accelerated environmental exposure could indicate that there would be a significant change in mechanical characteristics of that glazing material due to weathering during use. Such long term changes could affect the long term break characteristics of the glazing material, and, therefore, its safety performance characteristics. The permitted decrease of 25 percent is believed to be the maximum decrease in the impact strength that can be permitted in this test without the expectation of a serious decrease in the actual long term impact strength.

4. Both Associated Laboratories and the National Highway Safety Research Center suggested that the Commission substitute the stiffness/hardness criteria of the impact strength test of the proposal (proposed § 1201.4(e)(1)(i)(C), final § 1201.4(e)(1)(iii)) in place of the Charpy type impact strength test used in the environmental durability procedure (§ 1201.4(e)(2)(ii)(A)) both before and after environmental testing.

The Charpy type impact test has an established and recognized history as a standard engineering test method. The public record contains no arguments persuasive to the Commission that the Charpy type test is inappropriate for this standard. Furthermore, as indicated elsewhere in the preamble (Section III (C)(2)(d)), the Commission staff is currently studying alternative requirements to the stiffness/hardness tests as criteria to evaluate the breakage of plastics. Therefore, it appears to be premature to investigate whether the stiffness/hardness criteria should be used elsewhere in the standard. Accordingly, § 1201.4(e)(2)(ii)(A) is issued below without change.

D. *Labeling.* Proposed §§ 1201.5 (b) and (c) prescribed requirements for permanent labeling of certain types of plastic and organic-coated glazing to give information necessary for proper installation or use of those materials. Proposed § 1201.5(d) prohibited the removal of any labeling required by proposed §§ 1201.5 (b) and (c) by anyone other than the ultimate consumer.

1. A comment from the Flat Glass Marketing Association states that there is no economic or empirical justification for prohibiting a fabricator or installer from destroying a permanent label when cutting a sheet of glazing material into smaller pieces, if the smaller pieces are then relabeled. (See proposed § 1201.5(d)).

The purpose of proposed § 1201.5(d) was to assure that all of the information which is required by the standard to appear on a permanent label will reach the ultimate consumer of the glazing material or product containing that material. The text of proposed § 1201.5(d) did not take into consideration the possibility that some glazing materials may be cut to smaller sizes by fabricators and installers before they reach ultimate consumers. Accordingly, proposed § 1201.5(d) has been deleted from the standard issued below. However, requirements for labels required to appear on glazing materials subject to the standard or on products incorporating those materials when those materials or products are

sold to ultimate consumers may, under the authority of section 14(c) of the CPSA, be issued in a separate rulemaking proceeding.

2. The Plastic Safety Glazing Committee and Rohm & Haas Co. have recommended that the Commission eliminate the words "* * * and destructible polyester labels * * *" from the definition of permanent label set forth in § 1201.2(a)(20) as it is claimed that such labels cannot be permanent. The purpose of the permanent labels required in § 1201.5 is to ensure that a label cannot be transferred from the glazing material for which it is intended to some other glazing material. A destructible polyester label meets this intent. Therefore, the Commission has not changed the definition of permanent label now found at § 1201.2(a)(22) of the final standard.

E. *Economic considerations.* Numerous comments have been received relative to the economic implications of the proposed standard. The significant comments and the Commission's response thereto are set forth below.

1. *Laminated glass.* a. Buchmin Industries, Ford Motor Co., the Glass Tempering Association, Globe Amerada Glass Co., and the Glass Laminators Committee commented that currently manufactured laminated glass could not pass the 400 foot pound impact test level of § 1201.4(d)(1) of the proposed standard for Category II products. (See § 1201.2(a)(4)). Two of the commentors stated that this inability to pass the Category II impact levels would result in the elimination of the use of laminated glass in Category II products. Another commentor stated the plastic inner layer in laminated glass would have to be doubled in thickness to .030 inches in order to pass the impact test for Category II products. The commentors thus maintained that the standard would have an adverse economic effect on the laminated glass industry.

The Commission believes laminated glass currently used for Category I applications can meet the 150 foot pound impact test requirements found at § 1201.4(d)(1) of the proposal. However, not all laminated glass currently used for Category II applications can meet the Category II 400 foot pound impact test requirements. At the time the proposed standard was published most of the laminated glass applications covered by the proposal required classification into Category II. The final standard has revised upward the division point between Category I and Category II from 6 square feet to 9 square feet (See § 1201.2(a)(3) and (4)). As a result, more applications for laminated glass covered by the standard will fall into Category I. However, many applications within the scope of the standard will still be covered by Category II requirements.

Manufacturers have indicated to the Commission that to pass the 400 foot pound test, the standard .015 inch plastic interlayer material now used in laminated glass would need to be doubled to .030 inch. (Official Transcript of Proceedings before the Consumer Product Safety Commission, page 33.) There is no technological impediment to meeting the standard, i.e., an additional .015 inch would not create a problem in fitting frames because current manufacturing tolerances on glazing and framing materials should accommodate this increase. However, manufacturers are concerned about the economic consequences of doubling the size of the interlayer material.

The Commission has obtained the following information on the possible economic consequences of this change. The incremental cost to the consumer for laminated glass with the thicker interlayer will vary because of the variance in mark ups, which depends primarily on the particular end use application and the distribution method. The incremental cost at retail is estimated to range from 55 cents to 65 cents per square foot for most applications. Because the standard should not affect the price of competitive glazing materials, such as tempered glass and plastics, the concern of laminated glass manufacturers for their product is understandable. It is difficult to assess how seriously the price change will affect the market share of the 17 laminated glass manufacturers. However, there is some basis for suggesting that the laminated glass industry will maintain its overall market share.

First, the major share of the market held by the laminated glass industry as a whole is in the motor vehicle field. Since motor vehicles are not within the Commission's jurisdiction, automotive glazing materials are not subject to this standard. Secondly, some of the specialty laminated glass within the scope of the standard, and used, for example, for sound reduction, security, bullet proofing, light glare, and heat reduction can meet the Category II, 400 foot pound requirements at the present time.

In addition, it appears likely that the laminated glass industry will maintain its competitive advantage in the important replacement market which currently comprises more than half of all laminated glass sales for applications within the scope of the standard.

Tempered glass is cheaper than laminated glass. However, in much of the replacement market laminated glass has the price advantage over tempered glass since laminated glass can be installed almost immediately when needed, eliminating expensive board up charges which are associated with the extended delivery time of non-standard size tempered glass. With the increased cost of laminated glass in Category II applications caused by the standard, the price advantage of laminated glass over tempered glass in the replacement market is no longer certain. Nevertheless, estimates of board up costs associated with tempered glass (around $80) and data on the incremental cost of laminated glass indicate that laminated glass is likely to retain its price advantage over tempered glass by a narrow margin under most conditions. An analysis of this advantage is included in the Commission's Economic Impact Statement, dated December 14, 1976, which is included in the public record available in the Office of the Secretary of the Commission. Under certain conditions the price advantage of laminated glass could be lost, for example, if the variable board up costs are significantly below normal and the variable mark ups on laminated glass are on the high side. All in all, considering the relative price and the quick-replacement advantage of laminated over tempered glazing material, there is reason to believe that laminated will not lose a significant share of the replacement market to tempered glass.

Laminated glass is currently priced about the same as plastics at the glazing dealer level. Both materials are used in the replacement market, since they can be easily stocked and readily cut to a custom size. An important use of laminated glass in the replacement market is for fixed panels in nonresidential entranceways. Presently, laminated is preferred to plastics in this use for esthetic reasons, for example, because it has better scratch resistance and is less likely to discolor. Considering the unique physical characteristics of laminated glass, it is unlikely that the price increase of laminated glass will cause it to lose a significant share of the replacement market to plastics.

In summary, if the laminated glass industry does double the thickness of the plastic interlayer for Category II applications in order to meet the standard, it appears likely that its market share generally will be maintained.

The effect of the standard will vary among the 17 U.S. firms that manufacture laminated glass. For most of these firms, laminated glass production affected by the standard would be well under 10 percent of the individual firm's total production of glazing materials, such as tempered, annealed glass and laminated glass unaffected by the standard. For at least one firm, the figure could reach 25 percent. For the largest firms, the figure is near zero.

Finally, it should be pointed out that the standard could provide increased sales opportunities for laminated glass since noncomplying glazing material will relinquish its share of the replacement market.

b. Several commentors from the U.S. laminated industry expressed a concern that the proposed standard would lead to major foreign inroads.

The possibility of increased foreign competition exists regardless of a CPSC standard. It is the Commission's view that the effect of the standard on the import situation will be minimal since the manufacturing cost differential between domestic and foreign firms will remain nearly constant. The additional interlayer plastic material required to meet the standard's 400 ft lb test is nearly equally priced for domestic and foreign firms.

2. *Wired glass.* The C-E Glass Company commented that the proposed standard would have a deleterious economic effect on the wired glass industry.

After reviewing information presented by the commentor, and its own analysis, the Commission concludes that the proposed standard will cause serious economic disruptions in the wired glass industry because technological improvements in the product will need to be made beforew ired glass can be used in Category I (low energy) applications, and because it probably will not be usable at all in Category II (high energy) applications, because the product probably will not be able to pass the impact test of § 1201.4(d)(1). Other than for the effects on wired glass manufacturers, disruption will be minor in most markets where wired glass is incorporated into a consumer product, since in most applications a complying glazing material is readily available as a substitute for wired glass and wired glass is only 2 percent of the total glazing used in the U.S. annually. However, in the market for doors and assemblies intended to retard the passage of fire, the unique physical properties of wired glass appear to make it the only practical material at this time for use in fire doors.

Therefore, depending on the success the wired glass industry has in technologically improving its products, the disruption to the fire door and fire assembly market could be extremely significant.

The Commission, for reasons more fully discussed in section B above, has in the final standard revised the division line between Category I and Category II doors and glazed panels from 6 square feet to 9 square feet.

(See § 1201.2(a) (3) and (4).) As a result, wired glass for use in doors intended to retard the passage of fire would now generally only be subject to the 150 foot pound impact requirements of Category I. (§ 1201.4(d)(1).)

Nevertheless, as described earlier in this preamble, since it is doubtful that much wired glass can now comply with the 150 foot pound Category I impact test requirements, the Commission has concluded that there is good cause for deferring for a period of 2½ years application of the standard to wired glass intended to retard the passage of fire. This period will allow the industry time to develop the technology necessary to produce glazing materials for such applications which will meet Category I requirements, and will allow time to amend federal, state and municipal fire codes to permit the use of the improved glazing material. This decision is reflected in §§ 1201.1(c)(1) and 1201.7 of the final standard.

3. *Organic-coated glass.* Comments were submitted on the economic implications of the proposed standard with respect to organic-coated glass.

Applications of a polymer film to glazing already in place is a relatively new concept to the field of architectural glazing with significant benefits for consumers. It allows consumers to upgrade glazing material for safety or for energy economy without replacing glazing material already installed. Comments expressed concern that this benefit might be lost to consumers under the standard. However, since the application of polymer film to glazing already in place is not within the scope of the standard, the Commission does not expect this market to be disrupted.

In most currently marketed thicknesses, organic coated glass which has the film applied to annealed glass at the factory cannot meet the Category II impact requirements of § 1201.4(d)(1). Some members of the industry believe that a market limited to Category I products alone is too small and segmented to be profitable for most manufacturers. The revised upward division point between Category I and Category II doors, storm doors, and glazed panels in the final standard will ease this problem (see §§ 1201.2(a) (3) and (4)). It is not clear to what extent the factory produced organic coated glass market will be disrupted. However, the economic impact in relation to the entire glazing industry will be negligible, since this material accounts for less than ⅓ of one percent of the total volume.

4. *Summary of economic impact.* The discussions above indicate that certain segments of the glazing industry are likely to be adversely affected by the standard. Specifically, there is likely to be disruption to the wired glass (other than fire door uses), the organic-coated glass market and, to a lesser extent, in the laminated glass market. However, these markets are small in relation to the entire industry. For the glazing industry in general, the disruptions and dislocations of existing manufacturing and commercial practices due to the standard are expected to be minor.

5. *Cost benefit analysis.* A comment received from the Council on Wage and Price Stability (CWPS) outlined a formal cost benefit analysis and urged that this approach be adopted by the Commission. While the Commission is required by section 9(c) of the CPSA, 15 U.S.C. 2058(c) to consider and make findings regarding certain economic matters, the act does not require the Commission to conduct a cost benefit analysis. The Commission has made the required findings in § 1201.1(d) of the standard and has discussed economic effects of the standard in this section of the preamble. Because important social costs and benefits have not been adequately identified and quantified in the present state of the art, the Commission believes that there are at this time substantial questions concerning the usefulness of cost benefit analysis when applied to product safety. However, the Commission has made certain cost benefit calculations, which are part of the public record.

In the comment, CWPS performed a rough calculation which indicated that the costs of the standard far exceed the benefits. The Commission believes that the CWPS calculation contains inadequacies and that CWPS has not supported its conclusion. Important benefits which are not easily quantifiable were ignored and implicitly assigned a value of zero; examples include savings to consumers due to reduced breakage of safety glazing, possible reduction in retail prices due to distribution efficiencies made possible by a uniform national standard, and social benefits from reduced pain and suffering. In addition, the calculation failed to recognize fully the need for dynamic analysis when considering both cost and benefit streams over a period of time.

Other potential economic effects of the standard taken into account by the Commission are discussed in an economic analysis prepared by the Commission and the findings set forth in § 1201.1(d) of the standard. A copy of the Commission's Economic Impact Statement is included in the public record and may be seen in the Office of the Secretary.

F. *Stockpiling.* Section 1201.6 of the proposed standard set forth provisions relative to what the Commission considered to be prohibited acts of stockpiling within the scope of section 9(d)(2) of the CPSA (15 U.S.C. 2058(d)(2)). This section authorizes the Commission to prohibit manufacturers from stockpiling a product subject to a consumer product safety standard between issuance of the final standard and its effective date. Stockpiling is defined as manufacturing or importing of a product during this time period at a rate significantly greater than the rate at which the product was produced or imported during a base period (set by rule) ending prior to the promulgation date.

The proposed stockpiling provision, § 1201.6, specified that manufacturers, fabricators, and importers of certain architectural products who incorporate glazing material into those products shall not incorporate glazing materials which do not comply with the requirements of the standard between the date the final standard is issued and the date the standard becomes effective, at a rate which is greater than the rate of production or importation during the base period plus ten percent.

The Consumer Safety Glazing Committee, the Glass Division of the Ford Motor Company, and the Glass Tempering Association commented that the fixed base period dates proposed in § 1201.6(c)(2) were inappropriate. The Commission believes that the fixed base period dates were appropriate for the proposed standard, and the earlier timetable for publication of the final standard. However, the intent of the stockpiling provision is to prevent a manufacturer from circumventing the purpose of a consumer product safety rule while permitting the manufacturer to continue at production rates that would have been typical in the absence of a rule. Therefore, it is appropriate for a base period to be set that takes into account the publication date of the standard. The Commission, therefore, has determined that the stockpiling provision be modified to provide for a base period related to the publication date as set forth below at § 1201.6.

IV. Other Considerations

A. *Environmental effects of the standard.* Prior to publishing the proposed standard, the Commission considered the

environmental effects of its action and determined that there was no potentially significant environmental effect associated with the implementation of the proposed standard. Because the factors leading to this determination have not changed as a result of any changes, additions, or corrections made in the standard as adopted below, and in view of its Economic Impact Statement of December 14, 1976, the Commission reaffirms its decision that there is no potentially significant environmental effect associated with the promulgation of the standard. The factors leading to the original determination were set forth in an environmental assessment of the proposed standard which may be seen in the Office of the Secretary.

B. *Certification and labeling.* 1. Comments were received from the Consumer Safety Glazing Committee and PPG Industries requesting the Commission to specify in the final standard a reasonable testing program for purposes of certifying that glazing materials and products subject to the standard comply with its requirements; and to include provisions within the standard for certification and labeling of glazing materials and products for compliance with the standard. Associated Laboratories recommended that the Commission include in the provisions of the final standard a specification of the number of specimens which must be tested to determine compliance with the standard. Ford Motor Company's Glass Division requested the Commission to issue product identification labeling provisions pursuant to section 14(c) of the CPSA. Additional comments and suggestions with respect to numbers of specimens, certification, and labeling were submitted by the Glass Tempering Association, the Flat Glass Marketing Association, the Plastic Safety Glazing Committee, PPG Industries, the Anderson Manufacturing Company, Rohm and Haas Company, the Fourco Glass Company, and Sheffield Poly-Glaz, Inc.

The standard does not impose any testing requirements upon manufacturers of glazing materials. However, section 14(a) of the CPSA requires manufacturers and private labelers of products subject to standards to issue certificates of conformance, based on a test of each product or upon a reasonable testing program. Section 14(b) authorizes the Commission to prescribe by rule reasonable testing programs. The Commission anticipates issuing such a rule under the authority of section 14(b). The rule will be issued in accordance with 5 U.S.C. 553 (Administrative Procedure Act).

In issuing a rule under section 14, the Commission will consider, among other things, such matters as the number of specimens to be tested in any reasonable testing program, possible alternative tests that industry members might conduct, existing third party certification, and labeling both before and after the glazing material has been cut. It is anticipated that such a regulation will be issued prior to the effective date of the architectural glazing material standard to become effective at the same time as the standard. If it appears that the certification rule under section 14 could not be made effective at the same time as the standard, the Commission will consider an extension in the effective date of the standard.

2. Ford Motor Co. and the Glass Tempering Association requested that provision be made for permitting the use of glazing materials after the effective date of the standard which were certified to comply with previously existing standards, but which also might meet the requirements of Part 1201. The Commission believes that the effective date of the standard contains an adequate lead time for fabricators to exhaust supplies of glazing material that have not been certified as complying with the standard and for glazing material manufacturers to provide glazing materials which have been certified as complying with the standard. However, the Commission will consider these concerns in the development of the certification and labeling regulation.

C. *Preemption.* The City of Phoenix, Arizona questioned the wisdom of the Commission's preempting local requirements for architectural glazing material.

Section 26(a) of the Act (15 U.S.C. 2075(a)) provides that whenever a consumer product safety standard issued under the act is in effect and applies to a risk of injury associated with a consumer product, no state or political subdivision of a state shall have any authority either to establish or to continue in effect any provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging, or labeling of such products which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the standard promulgated under the act. This means, in effect, that most state standards in existence that are applicable to the same products and risks of injury subject to regulation under the standard will be completely or substantially preempted by the CPSC standard upon its effective date. Such state standards that address the same risks of injury dealt with by the federal standard must be identical to the federal standard to remain in effect. Thus, the act gives the Commission no discretion to avoid preemption of state and local regulations. It is the view of the Commission, however, that the preemption provisions of the Consumer Product Safety Act would not apply to those products exempted from the scope of this standard by § 1201.1(c).

Section 26(c) of the act as amended (15 U.S.C. 2075(c)), however, provides that upon application of a state or political subdivision thereof, the Commission may by rule, after notice and opportunity for oral presentation of views, exempt from the preemption provisions of section 26(a) (under such conditions as the Commission may impose) a proposed safety standard or regulation described in the application for exemption and which is designed to protect against a risk of injury associated with a consumer product subject to a consumer product safety standard. In such cases, the Commission must find that the proposed standard or regulation (1) provides a significantly higher degree of protection from such risk of injury than the consumer product safety standard under the act, and (2) does not unduly burden interstate commerce. Thus, states and local governments may apply to the Commission for exemption from preemption.

D. *Jurisdiction.* One commentor raised the question of what product the Commission is regulating in its proposed standard, and alleges that there are serious questions about the Commission's jurisdiction over glazing material used in the architectural products identified in the standard.

The consumer products that are the subject of the Commission's standard are the architectural glazing material itself used in storm doors or combination doors, doors, bathtub doors and enclosures, shower doors and enclosures, glazed panels and sliding glass doors (patio-type). In addition, the standard applies to the above enumerated architectural products in which the glazing material is incorporated, in that those products must be constructed of glazing material that complies with the standard.

In regard to the question of jurisdiction, it is the Commission's view that the architectural glazing material and the architectural products in which the glazing material is incorporated is produced or distributed for sale to and/or use or enjoyment of consumers in or around a permanent or temporary household or residence, a school, in recreation, or otherwise. Thus, the glazing material and architectural products subject to the standard are consumer products and within the jurisdiction of the Commission.

E. *Reference standards.* Certain voluntary standards have been referenced in this Part 1201. The references pertain to the voluntary standards issued on the cited dates, and not to any prior or subsequent revisions. Revisions to those reference standards would not be incorporated into the standard unless the Commission amends the standard to incorporate these revisions.

G. *Metric conversions.* This standard was developed using the English system of units. Metric equivalents have been included in the text of the standard for convenience. Metric equivalents have not been added to illustrations 1 through 5. The conversion factors to be used there are:

1 inch = 2.54 centimeters.
1 pound = .4536 kilograms.

H. *Elderly and handicapped.* Section 9(b) of the act, 15 U.S.C. 2058(b), as amended, requires the Commission to consider and take into account the special needs of elderly and handicapped persons to determine the extent to which such persons may be adversely affected by the standard. The Commission has

done so and determined that no such adverse effect will result from the issuance of the standard, because it is unaware of any situation where an elderly or handicapped person would sustain injuries of greater severity because safety glazing had been present, or would be inconvenienced by the presence of safety glazing. To the extent that the elderly and handicapped may be likely to push on glazing to operate doors, their protection would be the same or greater as other persons.

I. *Findings*. Section 9(c) of the CPSA requires that prior to promulgating a consumer product safety rule the Commission shall consider, and shall make appropriate findings for inclusion in such a rule as to: (1) The degree and nature of the risk of injury the rule is designed to eliminate or reduce; (2) the approximate number of consumer products, or types or classes thereof, subject to such rule; (3) the need of the public for the consumer products subject to such rule, and the probable effect of such rule upon the utility, cost, or availability of such products to meet such need; (4) any means of achieving the effect of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety; (5) that the rule is reasonably necessary to eliminate or reduce an unreasonable risk associated with such products; and (6) that the promulgation of the rule is in the public interest (15 U.S.C. 2058(c)).

The findings required by section 9(c) of the act have been made by the Commission and are incorporated in § 1201.1 below.

V. MISCELLANEOUS

In response to a number of comments which were received suggesting editorial changes, and upon its own review, the Commission has made certain revisions in the final standard. Among these changes are the following:

1. Wired glass and annealed glass have been added to the list of products in Table 1 of the final standard, with a notation that both are exempt from the environmental durability tests.

2. The definition of laminated glass contained in proposed § 1201.2(a)(12) has been modified to make it clear that laminated wired glass is to be considered laminated glass. (See § 1201.2(a)(13) of the final standard).

3. A compression tolerance of 10 percent to 15 percent has been added to § 1201.4(b)(1)(v) and to Figure 3.

4. In proposed § 1201.2(a)(31), now set out at § 1201.2(a)(33), the term "* * * properly tempered * * *" has been revised to "* * * highly tempered * * *", and the term "granular pieces" has been revised to read "particles".

5. The latter portion of proposed § 1201.4(b)(1)(i) has been deleted beginning with "* * * except that impact test frames * * *" to reflect that the Commission will only use test frames manufactured to the specifications of the standard.

6. One commenter, the Plastic Safety Glazing Committee, recommended the deletion of the term "Accelerated" from the title heading of § 1201.4(d)(2)(ii) which is "Accelerated weathering test." The Commission has not made this change because all of the testing specified in this section is, in fact, accelerated. Use of the term "accelerated" in this context is consistent with the practice of the National Bureau of Standards.

7. Proposed § 1201.4(e)(1)(i)(D), now set out as §§ 1201.4(e)(1) (iv) and (v), provides criteria for passing the impact test. It has been revised first to state more clearly that a specimen is considered to pass the test if "The specimen does not remain within the subframe and no breakage is caused by the impactor" (§ 1201.4(e)(1)(iv)). This revision covers those situations where the glazing material comes out of the frame upon impact. A new paragraph § 1201.4(e)(1)(v) has been added, to provide the other criterion which was set out in proposed § 1201.4(e)(1)(D). The new paragraph states, "The specimen does not break."

8. The definition of glazed panel, § 1201.2(a)(10)(1), pertaining to glazed panels in residential buildings, has been revised so that the definition includes any panel whose nearest vertical edge is within 12 inches of the door rather than only the first panel. This change is consistent with the intent of the Commission to apply the standard to all glazed panels beginning within 12 inches of a door in residential buildings.

9. The labeling language of proposed § 1201.5(c) has been revised to read "Glaze this side in" and now conforms with ANSI Z97.1-1975 entitled "Performance Specifications and Methods of Test for Safety Glazing Material Used in Buildings", September 26, 1975, approved and published by American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

10. Definitions for "jalousie door" and "leaded glass" have been added as §§ 1201.2(a) (12) and (14), and in proposed § 1201.2(a)(25), now set out as § 1201.2(a)(27), the definition of residential buildings, has been revised to additionally include "* * * any structure which is attendant to, a part of, or appurtenant to" the buildings described in the definition. Other definitions have been renumbered as necessary.

11. In response to comments submitted by Phenix Manufacturing Co. and Ford Motor Co., § 1201.1(b) has been revised to make clear that Part 1201 does not apply to glazing materials manufactured on or before the effective date of the standard. However, architectural products enumerated in the standard that are manufactured after the effective date must incorporate glazing materials that comply with the standard.

CONCLUSION

Having considered the offeror's submission, the published proposal, the oral and written response to the proposal, and other relevant material, the Commission issues the safety standard for architectural glazing materials as set forth below:

Therefore, pursuant to provisions of the Consumer Product Safety Act (Sec. 9(a), Pub. L. 92-573, 86 Stat. 1215; 15 U.S.C. 2058(a)), a new Part 1201 is added to Title 16, Chapter II, Subchapter B, as follows:

Sec.
1201.1 Scope, application and findings.
1201.2 Definitions.
1201.3 General requirements.
1201.4 Test procedures.
1201.5 Certification and labeling requirements.
1201.6 Prohibited stockpiling.
1201.7 Effective date.

AUTHORITY: Secs. 2, 3, 7, 9, 14, 19, Pub. L. 92-573, 86 Stat. 1212-17; (15 U.S.C. 2051, 2052, 2056, 2058, 2063, 2068).

§ 1201.1 Scope, application and findings.

(a) *Scope*. This Part 1201, a consumer product safety standard, prescribes the safety requirements for glazing materials used or intended for use in any of the following architectural products:

(1) Storm doors or combination doors.
(2) Doors.
(3) Bathtub doors and enclosures.
(4) Shower doors and enclosures.
(5) Glazed panels.
(6) Sliding glass doors (patio-type).

It also requires that these architectural products which incorporate glazing materials be constructed with glazing materials that meet the requirements of this part. The safety requirements are designed to reduce or eliminate unreasonable risks of death or serious injury to consumers when glazing material is broken by human contact.

(b) *Application*. This Part 1201 shall apply to glazing materials for use in the architectural products listed in paragraph (a) of this section and to those architectural products listed in paragraph (a) of this section if they are made with or incorporate glazing materials. The standard applies to glazing materials and architectural products incorporating glazing materials that are produced or distributed for sale to or for the personal use, consumption or enjoyment of consumers in or around a permanent or temporary household or residence or in recreational, school, public, or other buildings or parts thereof. This Part 1201 applies only to those glazing materials manufactured after the effective date of the standard; and to those architectural products identified in paragraph (a) of this section that are manufactured after the effective date of the standard. Thus, architectural products identified in paragraph (a) of this section manufactured after the effective date of the standard must incorporate glazing materials that comply with the standard. For purposes of this standard, fabricators and persons who assemble glazed panels are considered to be manufacturers of the architectural products listed in paragraph (a) of this section. Architectural glazing materials used in the products listed in paragraph (a) of this section and used in mobile homes are not subject to the

provisions of this Part 1201. While this Part 1201 prescribes a test method to determine whether glazing materials subject to this Part 1201 standard meet the requirements of the standard, the standard itself does not require that a manufacturer test any glazing materials or products subject to the standard. All obligations of manufacturers to perform testing are imposed by section 14 of the Consumer Product Safety Act and certification regulations which will be established by a separate rulemaking proceeding. However, the Commission intends to use the test procedures set forth in this Part 1201 to determine whether materials and products subject to the standard meet the requirements of the standard.

(c) *Exemptions.* The following products, materials and uses are exempt from this Part 1201:

(1) Wired glass used in doors or other assemblies to retard the passage of fire, where such door or assembly is required by a federal, state, local or municipal fire ordinance, except that this exemption shall terminate on January 6, 1980.

(2) Louvers of jalousie doors;

(3) Openings in doors through which a 3 inch diameter sphere is unable to pass;

(4) Leaded glass panels where no individual piece of glass has an area greater than 30 square inches;

(5) Glazing materials used as curved glazed panels in revolving doors;

(6) Commercial refrigerated cabinet glazed doors.

(d) *Findings*—(1) *The degree and nature of the risk of injury the rule is designed to eliminate or reduce.* The Commission finds that the nature of the risks of injury this standard is designed to eliminate or reduce are as follows:

(i) Lacerations, contusions, abrasions, and other injury or death resulting from walking or running into glazed doors or sliding glass doors believed to be open or glazed panels mistaken as a means of ingress or egress, or pushing against glazing material in doors or glazed panels in an attempt to open a door.

(ii) Lacerations, contusions, abrasions, and other injury or death resulting from accidentally falling into or through glazed doors, sliding glass doors, glazed panels, bathtub doors and enclosures and shower doors and enclosures.

(iii) Lacerations, contusions, abrasions, and other injury or death resulting from the act of installing, replacing, storing or otherwise manipulating glazing material in doors, sliding glass doors, glazed panels, bathtub doors and enclosures and shower doors and enclosures, or from broken glazing material in doors, sliding glass doors, glazed panels, bathtub doors and enclosures and shower doors and enclosures. The Commission estimates that 73,000 injuries associated with architectural glazing materials in the architectural products within the scope of this standard were treated in hospital emergency rooms during 1975, and that about 2,400 of these injuries required the patients to be hospitalized. Extrapolating to total injuries in the United States the Commission further estimates that approximately 190,000 injuries were associated with architectural glazing products covered by this standard. Although injuries occur at any age, children aged 14 and under appear to be at particular risk of injury since as a group they represent approximately half the injuries while comprising less than 30 percent of the population. Lacerations are the most common injuries associated with architectural glazing materials and account for 72 percent to 93 percent of the injuries associated with the architectural products identified in paragraph (a) of this section. These lacerative injuries span a broad spectrum of severity and extent of body part affected. During 1975, an estimated 200 injuries were treated in emergency rooms for lacerations over 25 to 50 percent of the victims' bodies and over 7,000 persons were treated for lacerations to the head or face. On the basis of all injury information available to the Commission, it is apparent that the severity of the injuries associated with architectural glazing materials ranges from minor cuts to damage to tendons, nerves, muscles, and blood vessels resulting in extensive surgery. Peripheral nerve injuries result in varying degrees of loss in sensation and motion which may never be restored completely. Tendon and muscle injuries may involve loss of movement. Some victims of architectural glazing material incidents are disfigured, and sustain emotional trauma as well. Severing of arteries and veins has led to death. One way of quantifying the extent of the public health problem relating to injuries associated with products is to estimate the total number of disability days resulting from the injuries. Using average days of restricted activity by age for specific injuries and body parts (Vital and Health Statistics, Series 10, Number 57, National Center for Health Statistics, U.S. Department of Health, Education, and Welfare), it is estimated that about 230,000 days of restricted activity resulted from injuries associated with architectural products which were treated in emergency rooms alone.

(2) *The approximate number of consumer products, or types or classes thereof, subject to the standard.* The types of glazing materials affected by or subject to the standard are laminated glass, tempered glass, wired glass, organic-coated glass, annealed glass, and plastics. Architectural products that incorporate the aforementioned glazing materials that are also affected by or subject to the standard are: storm doors or combination doors, doors, bathtub doors and enclosures, shower doors and enclosures, glazed panels and sliding glass doors (patio-type) (see paragraph (a) of this section). The Commission has estimated that 13 to 16 percent of the total market for glazing material incorporated in products within the scope of the standard will be affected by the standard. Most of the glazing subject to the standard is currently covered by state safety glazing legislation. To date, more than 30 states have enacted safety glazing legislation, but this legislation is neither consistent nor completely uniform among states. Annual markets for the architectural products which incorporate glazing material and that are within the scope of the standard have been estimated by the Commission in terms of square feet of glazed area and number of units. The market for glazing material incorporated in products within the scope of the standard was estimated to be 234.8 million square feet in 1975. These figures are discussed in the Economic Impact Statement, pp. 3-7, and Appendix A to the Economic Impact Statement, pp. 18-30, which are available for review in the Office of the Secretary of the Commission, Washington, D.C. 20207.

(3) *The need of the public for the architectural glazing material and products incorporating that glazing material subject to the standard, and the probable effect of the standard upon the utility, cost or availability of those products to meet the need of the public*—(i) *The need of the public for the architectural glazing materials and products incorporating that glazing material.* The need of the public for architectural products within the scope of the standard incorporating glazing material is substantial since these products serve such functions as transmission of light, visual communication, protection from weather, ventilation, and indoor climate control, and since reasonable substitutes for these products do not exist as a group. Each of the types of glazing material subject to the standard has individual properties which meet public needs, although one type of glazing material is often an acceptable substitute for another.

(ii) *Probable effect of the standard upon the cost of architectural glazing materials and architectural products incorporating the glazing material to meet the need of the public for the products.* The probable cost effects of the standard for architectural glazing materials are listed below.

(A) The cost impact of the standard on consumers will be concentrated in those states with no present state safety glazing legislation. In those states, the average increase in cost per housing start resulting from the standard is estimated to range from $30 to $50, or approximately one-tenth of one percent of the price of a typical new house; and the cost for residential remodeling and replacement is expected to be in the range of $0.25 to $0.30 per household annually.

(B) The increased cost of glazing material for nonresidential uses will be paid ultimately by consumers through higher prices of goods and services. Generally, the increased cost of glazing is not passed to consumers immediately, but is spread over the life of the nonresidential structure. Therefore, the increased cost to consumers for glazing material in nonresidential structures will probably rise slowly over time to an annual level of approximately $1.10 per household in states with no safety glazing legislation and $0.20 to $0.50 per household in the other states. In many of the states with state regulations, the impact of the standard on residential construction and new housing prices will be near zero.

since most of the glazing is currently covered by the state glazing legislation.

(C) The probable effect of the standard on the various glazing materials within the scope of the standard will differ. The retail price of laminated glass used in some Category II applications will probably increase by 10 to 15 percent per square foot. The incremental cost to consumers for ungraded laminated glass is estimated to be approximately $0.14 per household, annually. The cost to consumers for tempered glass, organic-coated glass, and plastics is not expected to increase because of the standard. Information available to the Commission indicates that the technology needed for producing wired glass which can comply with the standard is not readily available. See Appendix A of the Economic Impact Statement, pp. 45–56, for the incremental cost calculation by product category and application.

(iii) *Probable effect of the standard upon the utility of architectural glazing materials and architectural products incorporating the glazing materials to meet the need of the public for the products.* The probable effect of the standard in regard to the utility of architectural glazing materials and the architectural products incorporating glazing material should be to increase the utility of the products. The basic effect of the standard would be the substitution of certain safer glazing materials for annealed glass in certain architectural products. The Commission believes that such a substitution would increase utility for most consumers because of the usually increased durability of the glazing material that complies with the Commission's standard, and the knowledge that the product incorporating the glazing material is safer. There will be disutility for those consumers who prefer non-complying wired glass and organic-coated glass when these materials become unavailable for certain applications due to their likely inability to comply with the standard. However, the share of the glazing material market claimed by organic-coated and wired glass is small.

(iv) *Probable effect of the standard upon the availability of architectural glazing materials and architectural products incorporating the glazing materials to meet the need of the public for the products.* The Commission finds that the proposed standard should not have impacts of significant magnitude on the availability of architectural products within the scope of the standard, since domestic production capacity appears to be sufficient to handle any increased demand for glazing material to be used in those products. In addition, an increased demand for raw materials necessary to manufacture glazing materials that comply with the standard will be small in comparison to the volume of raw materials currently used for glazing for the products that will be subject to the standard. Furthermore, no major change in demand for the architectural products subject to the standard incorporating glazing materials which would affect production is expected. The Commission finds that, in the absence of technological advances, certain glazing materials will no longer be available for particular applications. Unless technological advances are made, wired glass will be unavailable for use in the architectural products within the scope of the standard with the exception of fire door applications where special provisions of the standard apply. Similarly, organic-coated glass which has the film applied to annealed glass at the factory may no longer be available for Category II products due to an inability to pass those impact test provisions of the standard. The availability of glass replacement glazing in residential applications may be reduced, since plastic glazing often will be the only economical material available to consumers when immediate replacement is needed.

(4) *Any means of achieving the objectives of the standard while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety.* The Commission has considered other means of achieving the objective of the standard, but has found none that it believes would have fewer adverse effects on competition or that would cause less disruption or dislocation of manufacturing and other commerical practices, consistent with the public health and safety. For the glazing industry in general, the disruptions and dislocations of existing manufacturing and commercial practices due to the standard are expected to be minor. However, it is possible that individual segments of the glazing materials industry are likely to be adversely affected by the standard. Specifically, there is likely to be disruption to the wired glass market, the organic-coated glass market and, to a lesser extent, to the laminated glass market. Manufacturers of wired glass will face a serious problem because technological improvements in the product will need to be made before wired glass can be used in Category I applications and because it probably will not be usable at all in Category II applications (see § 1201.2(a) (3) and (4) of the standard), since there appears to be little prospect at this time of developing a wired glass product capable of withstanding the Category II, 400 foot pound impact test prescribed in § 1201.4 of the standard. Laminated glass currently used for Category I applications can meet the 150 foot pound impact test requirements, but not all laminated glass currently used for Category II applications can meet the 400 foot pound impact test requirements. The price increase for technologically upgrading laminated glass will be borne by consumers. The Commission believes, however, that the competitive impact of the proposed changes would not severely weaken the position of laminated glass in the market place. The wired glass, organic-coated glass, and laminated glass markets affected by the standard are small in relation to the entire industry. The standard is not expected to have an appreciable impact on foreign or domestic competition. Increased competition is expected between primary glass temperers and regional temperers, with primary temperers taking an increased share of the original storm door, sliding door, bathtub enclosure and shower door markets. Sales of nonresidential glazing for major nonresidential buildings will remain with the primary glass companies. The regional temperers are expected to handle almost all the tempering of glazing for smaller nonresidential buildings. Thus, they will gain some of this market at the expense of local dealers and distributors. However, the distributors and dealers probably will operate as order takers for the smallest jobs. It is expected that glazing distibutors and dealers will experience reduced market shares in both the residential and nonresidential new glazing markets. This will occur as a result of the transfer of business to the primary glass manufacturers and regional temperers, since tempered glass must be produced to size and it is not feasible to keep in inventory all sizes which might be needed.

(5) *Summary finding.* The Commission finds that there are unreasonable risks of injury associated with architectural glazing materials used in the architectural products listed in paragraph (a) of this section. In assessing the question of whether unreasonable risks of injury or injury potential are associated with architectural glazing materials, the Commission has balanced the degree, nature and frequency of injury against the potential effect of the standard on the ability of architectural glazing materials to meet the need of the public and the effect of the standard on the cost, utility, and availability of architectural glazing materials to meet that need. The Commission finds that this standard, including its effective date, is reasonably necessary to eliminate or reduce the unreasonable risks of injury associated with architectural glazing materials and that promulgation of the standard is in the public interest.

§ 1201.2 Definitions.

(a) As used in this Part 1201:

(1) "Annealed glass" means glass that has been subjected to a slow, controlled cooling process during manufacture to control residual stresses so that it can be cut or subjected to other fabrication. Regular polished plate, float, sheet, rolled, and some patterned surface glasses are examples of annealed glass.

(2) "Bathtub doors and enclosures" means assemblies of panels and/or doors that are installed on the lip of or immediately surrounding a bathtub.

(3) "Category I products" means any of the following architectural products:

(i) Storm doors or combination doors that contain no single piece of glazing material greater than 9 square feet (0.83 square meters) in surface area of one side of the piece of glazing material.

(ii) Doors that contain no single piece of glazing material greater than 9 square feet (0.83 square meters) in surface area of one side of the piece of glazing material.

(iii) Glazed panels that contain no single piece of glazing material greater

than 9 square feet (0.83 square meters) in surface area of one side of the piece of glazing material.

(4) "Category II products" means any of the following architectural products:

(i) Shower doors and enclosures.

(ii) Bathtub doors and enclosures.

(iii) Sliding glass doors (patio type).

(iv) Storm doors or combination doors that contain any piece of glazing material greater than 9 square feet (0.83 square meters) in surface area of one side of the piece of glazing material.

(v) Doors that contain any piece of glazing material greater than 9 square feet (0.83 square meters) in surface area of one side of the piece of glazing material.

(vi) Glazed panels that contain any piece of glazing material greater than 9 square feet (0.83 square meters) in surface area of one side of the piece of glazing material.

(5) "Distributor" means a person to whom a consumer product is delivered or sold for purposes of distribution in commerce, including persons cutting glazing material to size, except that such term does not include a manufacturer or retailer of such product.

(6) "Distribution in commerce" means to sell in commerce, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce.

(7) "Door" means an assembly that is installed in an interior or exterior wall; that is movable in a sliding, pivoting, hinged, or revolving manner of movement; and that is used by consumers to produce or close off an opening for use as a means of human passage.

(8) "Fabricator" means any person who assembles or otherwise incorporates glazing materials into an architectural product listed in § 1201.1(a). A fabricator is considered a manufacturer as defined in paragraph (a)(16) of this section.

(9) "Glass" means a hard, brittle, amorphous substance produced by fusion, usually consisting of mutually dissolved silica and silicates that also contains sods and lime. It may be transparent, translucent, or opaque.

(10) "Glazed panel" means a glazing material used in any building listed in § 1201.1(b) that is:

(i) In residential buildings, any piece of operable or nonoperable glazing material adjacent to a door whose nearest vertical edge is within 12 inches (31 centimeters) from the door in a closed position, and whose bottom edge is below the level of the top of the door; or

(ii) In all buildings other than residential buildings, any piece of operable or nonoperable glazing material adjacent to a door whose nearest vertical edge is within 48 inches (1.2 meters) from the door in a closed position and whose bottom edge is below the level of the top of the door; or

(iii) In all buildings other than residential buildings, all panes not described in paragraph (a)(10)(ii) of this section where:

(A) The lowest edge of the glazing material is less than 18 inches (46 centimeters) above any floor or any walking surface; and

(B) The exposed glazing material in such panel exceeds 9 square feet (0.3 square meters); and

(C) There is a walking surface on both sides, either of which is within 36 inches (92 centimeters) of such panel and the horizontal planes of such walking surfaces are within 12 inches (31 centimeters) of each other.

(iv) Not included in the definition of glazed panels are:

(A) Panels where an intervening interior permanent wall is between the door and the panel(s) described in paragraph (a)(10)(ii) of this section;

(B) Panels described in paragraph (a)(10)(iii) of this section that have a horizontal member such as a piece of the framing or permanent chair rail no less than 1½ inches (4 centimeters) in width, which is located between 24 and 36 inches (61 and 91 centimeters) above the walking surface.

(11) "Glazing material" means plastics, glass, including annealed glass, organic-coated glass, tempered glass, laminated glass, wired glass; or combinations thereof where these are used:

(i) In openings through the architectural products listed in § 1201.1(a), or

(ii) As the architectural products themselves, e.g. glazed panels or unframed doors.

(12) "Jalousie door" means a door (as "door" is defined in paragraph (a)(7) of this section) having an opening glazed with operable, overlapping louvers. Each louver is one of a series of overlapping pieces of glazing material designed to admit ventilation and light but exclude rain and is typically operated by a crank and gear mechanism.

(13) "Laminated glass" means glazing material composed of two or more pieces of glass, each piece being either tempered glass, heat strengthened glass, annealed glass or wired glass, bonded to an intervening layer or layers of resilient plastic material.

(14) "Leaded glass" means a decorative composite glazing material made of individual pieces of glass whose circumference is enclosed by lengths of durable metal such as lead or zinc and the pieces of glass are completely held together and supported by such metal.

(15) "Manufacture" means to manufacture, produce or assemble.

(16) "Manufacturer" means any person who manufactures, fabricates or imports a glazing material or architectural product listed in § 1201.1(a) that incorporates glazing material.

(17) "Mirror" means a treated, polished or smooth glazing material that forms images by the reflection of light.

(18) "Mobile home" means a structure transportable in one or more sections, which is eight body feet (2.4 body meters) or more in width and is thirty-two body feet (9.7 body meters) or more in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities.

(19) "Other buildings or parts thereof" means buildings or parts thereof (other than residential, school, public, or recreational buildings) in which all or part of the building is open to the public with or without specific invitation. Included are buildings or parts thereof such as banks and recreational or retail facilities in a building and multiuse buildings that contain residential units.

(20) "Organic-coated glass" means a glazing material consisting of a piece of glass, coated and bonded on one or both sides with an applied polymeric coating, sheeting, or film.

(21) "Patio door" (See "sliding glass doors (patio-type)" in paragraph (a)(31) of this section).

(22) "Permanent label" means a label that will remain permanently legible and visible after installation of the glazing material and that would be destroyed in attempts to remove it from the glazing material and includes (but is not limited to) sandblast, acid etch, hot-stamp, and destructible polyester labels.

(23) "Plastic" means a single sheet of organic glazing material, a combination of two or more such sheets laminated or coextruded together, or a combination of such sheets and reinforcement material in the form of fiber or flakes.

(24) "Private labeler" means an owner of a brand or trademark on the label of a consumer product which bears a private label, and includes any fabricator, distributor, or installer who cuts certified and permanently labeled glazing materials into smaller pieces.

(25) "Public building" means a building of public assembly or meeting including (but not limited to) a museum, place of worship, or restaurant.

(26) "Recreational building" means a building used for recreational purposes including (but not limited to) a theater, stadium, gymnasium, amusement park building or library.

(27) "Residential building" means a building, permanent or temporary, such as a single or multifamily residence, including (but not limited to) a house, apartment building, lodging home, dormitory, hotel, motel, hospital, sanitarium, and nursing home, used as a dwelling for one or more persons or families and any structure which is attached to, a part of, or appurtenant to such a building. Public areas of all residential buildings, such as lobbies and other common facilities, are included within the definition of "other buildings or parts thereof" in paragraph (a)(19) of this section. For purposes of this Part 1201, a mobile home as defined in paragraph (a)(18) of this section is not considered to be a residential building.

(28) "Retailer" means a person to whom a consumer product is delivered or sold for purposes of sale or distribution by such person to a consumer; the term retailer includes a person who cuts glazing material to size for consumers.

(29) "School building" means a building designed primarily for the conduct of educational instruction and includes the

classrooms, libraries, administrative offices, auditoriums, eating and sanitary facilities, stadiums, gymnasiums and all other structures associated with such buildings.

(30) "Shower door and enclosure" means an assembly of one or more panels installed to form all or part of the wall and or door of a shower stall.

(31) "Sliding glass door (patio-type)" means an assembly of one or more panels, at least one of which is suitably movable for use as a means of human ingress or egress. The term includes the nonmovable and movable panels of such assembly.

(32) "Storm door (or combination door)" means a movable assembly, used in tandem with an exterior door to protect the exterior door against weather elements and/or to improve indoor climate control.

(33) "Tempered glass" means a piece of specially heat treated or chemically treated glass that cannot be cut, drilled, ground, or polished after treatment without fracture. When fractured at any point, if highly tempered, the entire piece breaks into small particles.

(34) "Wired glass" means a single piece of annealed glass that contains wire embedded in the body of the glass.

(35) "Commission" means the Consumer Product Safety Commission.

(b) Definitions given in the Consumer Product Safety Act, and not repeated in this section, are applicable to this Part 1201.

(c) Test methods and recommended practices published by the American Society for Testing and Materials (ASTM), and referred to in this Part 1201, are hereby incorporated by reference into this Part 1201.[1]

§ 1201.3 General requirements.

(a) All glazing materials to which this standard applies, as described in § 1201.1, shall meet the impact and environmental test requirements in § 1201.4, and shall be labeled by manufacturers in accordance with § 1201.5.

(b) Glazing materials used in architectural products not listed in § 1201.1(a) are not subject to this Part 1201.

§ 1201.4 Test procedures.

(a) *Types of tests*—(1) *Impact test.* Specimens shall be struck as prescribed by paragraph (d)(1) of this section using equipment specified by paragraphs (b)(1) and (2) of this section. Results of the impact test are to be interpreted in accordance with paragraph (e)(1) of this section. The test specimens shall be selected in accordance with paragraph (c)(1) and (2) of this section.

(2) *Accelerated environmental durability tests.* Each specimen of glazing material subject to this Part 1201 shall be tested in accordance with the accelerated tests referenced in table 1, "Accelerated Tests" of this section. However, tempered glass, wired glass, and annealed glass are not required to be subjected to the accelerated environmental durability tests.

TABLE 1.—*Accelerated tests (applicable paragraphs)*

Glazing material	Specimen	Test equipment	Exposure	Criteria for passing
Laminated glass	Sec. 1201.4 (c)(1) and (c)(3)(i).	Sec. 1201.4(b)(3)(i)	Sec. 1201.4(d)(2)(i)	Sec. 1201.4(e)(2)(i).
Organic-coated glass.	Sec. 1201.4 (c)(1) and (c)(3)(ii) (B).	Sec. 1201.4(b)(3)(ii)	Sec. 1201.4(d)(2)(ii) (B).	Sec. 1201.4(e)(2)(ii) (B).
Plastics	Sec. 1201.4 (c)(1) and (c)(3)(ii)(A).	Sec. 1201.4(b)(3)(ii)	Sec. 1201.4(d)(2)(ii) (A).	Sec. 1201.4(e)(2)(ii) (A).
Plastics (indoor)	Sec. 1201.4 (c)(1) and (c)(3)(iii).	Sec. 1201.4(b)(3)(iii)	Sec. 1201.4(d)(2)(iii)	Sec. 1201.4(e)(2)(ii) (C).
Tempered glass	Exempt	Exempt	Exempt	Exempt.
Wired glass	do	do	do	Do.
Annealed glass	do	do	do	Do.

(3) Separate testing is required for different glazing materials or for differences within a type of glazing material that could noticeably affect performance in the impact or environmental durability tests. Such differences could include (but are not limited to): Nominal thickness or thicknesses, method of manufacture (in appropriate cases), types and amounts of additives, and composition of base materials and adhesives.

(b) *Test equipment*—(1) *Impact test frame and subframe.* (See figures 1, 2, 3, and 4.) (i) The impact test frame shall be constructed to minimize movement and deflection of its members during testing. For this purpose, the structural framing and bracing members shall be steel angles 3 inches by 5 inches by ¼ inch (7.7 centimeters by 12.7 centimeters by 0.7 centimeters) or other sections and materials of equal or greater rigidity.

(ii) The structural framing shall be welded or securely bolted at the corners and braced by one of the alternate methods shown in figure 1 and shall be securely bolted to the floor.

(iii) The subframe for securing the test specimen on all four edges shall be reinforced at each corner. The material is shown as wood in figure 3, but other materials may be used provided the test specimen will contact only the neoprene strips.

(iv) Any reasonable means may be used to secure the subframe to the test frame so long as the mounting is secure and the pressure on the glazing in the subframe is not significantly altered when the subframe is removed.

(v) Pressures on the test specimen shall be controlled, and the compression of the neoprene strips shall be between 10 and 15 percent of the original thickness of the neoprene. Securing methods such as wing bolts and clamps shall be uniformly spaced no greater than 18 inches (45 centimeters) apart with no fewer than two on any edge. To limit the compression of the neoprene and prevent distortion of the subframe, metal shims of an appropriate thickness shall be used as shown in figures 3 and 4.

(2) *Impactor.* (i) The impactor shall be a leather punching bag as shown in figure 5 of this section. The bag shall be filled with No. 7½ chilled lead shot to a total weight of completed assembly before taping, as shown in figure 5, of 100 pounds ±4 ounces (45.36±0.11 kilograms). The rubber bladder shall be left in place and filled through a hole cut into the upper part. After filling the rubber bladder, the top should be either twisted around the threaded metal rod below the metal sleeve or pulled over the metal sleeve and tied with a cord or leather thong. Note that the hanging strap must be removed. The bag should be laced in the normal manner. The exterior of the bag shall be completely covered by ½ inch (1.3 centimeters) wide glass filament reinforced pressure sensitive tape. (Figure 5).

(ii) The impactor shall be supported as shown in figure 2. Provisions shall be made for raising the impactor to drop heights of up to 48 inches (1.22 meters). At its release it shall have been supported so that the pin going through its center was in line with the steel cable. The impactor shall not wobble or oscillate after its release.

(3) *Environmental durability test equipment*—(i) *Boil test.* Two containers of water shall be provided with means to maintain one at 150° ±5° F (66° ±2° C) and the second at a slow boil at atmospheric pressure. The containers shall be large enough to accept a rack holding three specimens, each 12 inches (30 centimeters) square, of the glazing material in a vertical position. The rack shall be positioned so that each specimen is surrounded by at least one inch (2.5 centimeters) of water.

(ii) *Simulated weathering test.* The equipment shall be a xenon arc (water-cooled) Weather-Ometer employing a lamp rated at 6500 watts and automatic light monitoring and control systems. Borosilicate inner and outer filters shall be used. An appropriate water spray cycle shall be used. Operating procedures shall be in accordance with ASTM G 26–70, "Standard Recommended Practice for Operating Light- and Water-Exposure Apparatus (Xenon-Arc Type) for Exposure of Nonmetallic Materials," April 13, 1970, as augmented for plastics by ASTM D 2565–70, "Standard Recommended Practice for Operating Xenon-Arc Type (Water-Cooled) Light- and Water-Exposure Apparatus for Exposure of Plastics," Procedure B, June 12, 1970.

[1] ASTM test methods and recommended practices are approved by, published by, and available for purchase from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(iii) *Indoor aging test.* A test chamber large enough to contain four specimens of size used in the impact test (see paragraph (c)(2) of this section) shall be used. Hangers shall be provided to support the specimens vertically with a minimum of 4 inches (11 centimeters) of separation for air circulation. The chamber shall be capable of maintaining 140° F (60° C) at 95 percent relative humidity during testing.

(c) *Test specimens*—(1) *Condition of specimens.* All specimens shall be tested as supplied by the manufacturer, following removal of any temporary protective masking materials. No tests shall be commenced before the specimens have been stored in the laboratory for 4 hours. Specimens shall be arranged to permit free circulation of air to all surfaces during this period.

(2) *Impact specimens.* Impact specimens shall be of the largest size manufactured up to a maximum width of 34 inches (86 centimeters) and a maximum height of 76 inches (1.9 meters). Specimens shall be tested for each nominal thickness offered by the manufacturer.

(3) *Environmental durability specimens*—(i) *Boil test.* Three pieces 12 inches by 12 inches (30 centimeters by 30 centimeters) with nominal thickness identical to those submitted for the impact test shall be used.

(ii) *Weathering tests*—(A) *Plastics.* Not less than 10 plastic specimens ½ inches by 5 inches (1.3 centimeters by 12.7 centimeters) by nominal thickness identical to those submitted for the impact test shall be used.

(B) *Organic-coated glass*—(1) *Orientation specified.* Six organic-coated glass specimens 2 inches by 6 inches (5 centimeters by 15 centimeters) by nominal thickness identical to those submitted for the impact test shall be used.

(2) *Orientation unspecified.* Nine organic-coated glass specimens, 2 inches by 6 inches (5 centimeters by 15 centimeters) by nominal thickness identical to those submitted for the impact test shall be used except that when the glazing material is symmetric across its thickness, six specimens may be used.

(iii) *Indoor service.* Four additional samples identical to those submitted for the impact test.

(d) *Test procedures*—(1) *Impact test procedure.* Each specimen shall be struck within 2 inches (5 centimeters) of its geometric center with the impactor dropped from a single height, designated according to the product category. Specimens for Category I shall be impacted one time from a drop height of 18 to 18½ inches (458 to 470 millimeters). Specimens for Category II shall be impacted one time from drop height of 48 to 48½ inches (1.22 to 1.23 meters). For all specimens that are not symmetric from surface to surface, an equal number of specimens shall be impacted on each side. For glazing materials which will be evaluated by paragraph (e)(1)(iii) of this section, this impact test procedure is not required.

(2) *Environmental durability test procedures*—(i) *Boil test.* The specimens shall be immersed in the 150° F (66° C) water for 3 minutes. They shall then be quickly removed and immersed in the boiling water and left there for 2 hours. The specimens shall then be removed, cooled, and dried for examination as specified in § 1201.4(e)(2)(i) of this standard.

(ii) *Accelerated weathering test.* The specimens shall be retained in the Weather-Ometer (paragraph (b)(3)(ii) of this section) for a period of 1200±1 hours, and exposed to a radiant flux of 50 microwatts per square centimeter (12 calories per second per square centimeter) while monitoring at a wavelength of 340 nanometers.

(A) *Plastics.* Five of the specimens shall be exposed to radiation and five shall be kept in darkness at 73° F (23° C) for use as controls.

(B) *Organic-coated glass*—(1) *Orientation specified.* Three specimens shall be mounted with the surface that is intended to be oriented indoors faced away from the radiation source; the other three specimens shall be kept in darkness at 73° F (23° C) for use as controls. Materials so tested shall be labeled according to § 1201.5(c) of this Part 1201.

(2) *Orientation unspecified.* Three specimens shall be mounted with one of the surfaces toward the radiation; three specimens shall be mounted with the other surface toward the radiation, and three specimens shall be kept in darkness at 73° F (23° C) for use as controls. When the glazing material is symmetric across its thickness, three specimens shall be irradiated.

(iii) *Indoor aging test.* The specimens shall be hung in the test chamber for 10 complete cycles (480 hours). The procedure shall be in accordance with procedure A of ASTM D 756-56, "Test for Resistance of Plastics to Accelerated Service Conditioning," September 10, 1956, (Reapproved 1971) except that during the humid phase of the cycle the relative humidity shall be maintained at 95 percent.

(e) *Interpretation of results*—(1) *Impact test.* A glazing material may be qualified for use in both Category I and Category II products if it meets the impact requirements for Category II. A glazing material shall be judged to pass the impact test if the specimen tested meets any one of the criteria listed in paragraphs (e)(1)(i) through (v) of this section:

(i) When breakage occurs (numerous cracks and fissures may occur) no opening shall develop in the test sample through which a 3 inch (76 millimeter) diameter solid steel sphere, weighing 4 pounds ±3 oz (1.81±0.08 kilograms), passes when placed (not dropped) in the opening and permitted to remain for a period of one second. For this criterion, the sample after being impacted shall be placed, while remaining in the subframe, in a horizontal, impact side up position with a minimum of one foot (31 centimeters) of free space immediately beneath the specimen.

(ii) When breakage occurs, what appear to be the 10 largest particles shall be selected within 5 minutes subsequent to the test and shall weigh no more than the equivalent weight of 10 square inches (64 square centimeters) of the original specimen. For the purposes of this section "particle" means a portion of a broken test specimen which is determined by identifying the smallest possible perimeter around all points in the portion of the broken test specimen, always passing along cracks or exposed surfaces.

(iii) The specimen has:

(A) a modulus of elasticity less than 750,000 psi (5,170 megapascal) when measured by ASTM D 790-71, "Standard Method of Test for Flexural Properties of Plastics," October 29, 1971, and

(B) a Rockwell hardness (M or R scale) less than 140 when measured by ASTM D 785-65 (Reapproved 1970), "Standard Method of Test for Rockwell Hardness of Plastics and Electrical Insulating Materials," August 31, 1965.

(iv) The specimen does not remain within the subframe and no breakage is caused by the impactor.

(v) The specimen does not break.

(2) *Environmental durability tests*—(i) *Boil test.* The glass itself may crack in this test, but no bubbles or other defects shall develop more than ½ inch (12 millimeters) from the outer edge of the specimen or from any crack that may develop. Any specimen in which the glass cracks to an extent that confuses the interpretation of the results shall be discarded, and another specimen shall be tested in its stead.

(ii) *Accelerated weathering test*—(A) *Plastics.* (1) Plastic specimens shall be evaluated before and after exposure as described in Method B, "Simple Beam (Charpy-Type) Test," of ASTM D 256-73, "Test for Impact Resistance of Plastics and Electrical Insulating Materials," November 27, 1973. The exposed specimens shall be tested with the exposed surface subjected to tension. In the case of thin materials, the span of the specimens shall be reduced to 2 inches (50 millimeters) to avoid having the specimens bend enough to slip between the supports without breaking. For materials that will not break on this 2 inch (50 millimeters) span the specimens shall be notched across the ½ inch (12 millimeters) surface prior to exposure. The notch shall be a 45 degree angle and the radius at the bottom shall be 0.010±0.002 inch (0.25±0.04 millimeters). The thickness of the material beneath the notch shall be uniform within ±0.002 inch (±0.05 millimeters) for all specimens and shall not be less than 70 percent of the specimen thickness. During exposure the notch shall face the radiation source.

(2) Plastic materials shall be acceptable if the impact strength is not reduced by more than 25 percent during exposure. Some discoloration is permissible, but defects other than this discoloration shall not be permissible. No bubbles or other noticeable decomposition shall be permissible in the irradiated portion.

(B) *Organic-coated glass.* Specimens shall be judged satisfactory if they pass both the adhesion test and the tensile test described below in paragraph (e)(ii)(B)(1) and (2) of this section.

(1) *Adhesion test (organic-coated glass only)*—(i) *Specimens.* The specimens for this test are the 2 inch by 6 inch (5 centimeters by 15 centimeters) weathered specimens and the control specimens. The specimens shall be conditioned just prior to the performance of the adhesion test at 73° ±6° F (23° ±3° C) and 50 ±5 percent relative humidity for 24 hours.

(ii) *Apparatus.* The test apparatus shall consist of a constant-rate-of-extension-type (CRE) tensile tester with the moving crosshead set to move at 12 inches per minute (5 millimeters per second) and load range such that the average pull force will fall at 30 to 50 percent of full scale. A cutter shall be used containing new razor blades for cutting 1 inch (25 millimeter) wide specimens of the organic coating on the glass. The razor blades shall be used one time only.

(iii) *Procedure.* Using the razor cutter, cut a straight, 1 inch (25 millimeter) wide strip of the organic coating in the lengthwise direction of the glass specimen along and within ¼ inch (6 millimeters) of one edge. Peel back, cleanly and evenly, about 2 inches (50 millimeters) of one end of the 1 inch (25 millimeters) wide organic strip. Attach a strip of reinforced pressure sensitive tape to the side of the organic strip opposite the adhesive, to extend this free end to about 8 inches (200 millimeters) in length. Place the end of the glass panel from which the organic strip was removed in the lower clamp of the tensile tester and and the free end of the tape in the upper clamp. Peel the remainder of the organic strip from the glass mechanically and obtain a record of the pull force value. Determine and record the average pull force value for each specimen from the chart. Weathered and control specimens are to be tested alternately.

(iv) *Interpretation of results.* The organic-coated glass adhesion shall be judged satisfactory if the average pull force for the weathered specimens is no less than 90 percent of the average pull force for the control specimens.

(2) *Tensile strength test (organic-coated glass only).* (i) The specimens for this test are the same 2 inch by 6 inch (5 centimeter by 15 centimeter) specimens used in the adhesion test.

(ii) *Apparatus.* The CRE tensile tester shall be used with the moving crosshead set to move at 2 inches per minute (0.8 millimeter per second) and the load range such that the specimens will break at 30 to 60% of full scale. A cutter shall be used containing new razor blades for cutting ½ inch (12 millimeter) wide specimens of the organic coating on the glass. The razor blades shall be used one time only.

(iii) *Procedure.* Using the ½ inch (12 millimeter) razor cutter, cut a straight strip of the organic coating in the lengthwise direction of the glass specimen for the full 6 inch (15 centimeter) length. Carefully peel this strip from the glass panel and test it for breaking strength in the tensile tester.

(iv) *Interpretation of results.* The organic coating tensile strength shall be judged satisfactory if the average tensile value of the weathered specimens is no less than 75 percent of the average of the control specimens. Weathered and control specimens are to be tested alternately.

(C) *Plastic (indoor service).* Specimens shall be judged satisfactory if, after the indoor aging test (paragraph (d)(2)(iii) of this section), they again pass the impact test (paragraph (d)(1) of this section).

§ 1201.5 Certification and labeling requirements.

(a) Manufacturers and private labelers of glazing materials covered by this Part 1201 shall comply with the requirements of section 14 CPSA (15 U.S.C. 2063) and regulations issued under section 14.

(b) Any glazing material that for accelerated environmental durability tests meets only the requirements of § 1201.4(e)(2)(ii)(C) entitled "Plastic (indoor service)" shall bear the statement "INDOOR USE ONLY" as part of a permanent label.

(c) Organic-coated glass that has been tested for environmental exposure from one side only must bear a permanent label on the coating stating "GLAZE THIS SIDE IN" and shall bear in the central 50 percent of the surface area the following message in letters at least ¼ inch (7 millimeters) high: "SEE PERMANENT LABEL FOR IMPORTANT MOUNTING INSTRUCTION." The latter message shall be attached to either side of the glazing by any means which shall ensure the message will remain in place until installation.

§ 1201.6 Prohibited stockpiling.

(a) *Stockpiling.* For the purposes of this section, the term "stockpiling" means manufacturing or importing the affected products between the date of issuance of this Part 1201 in the FEDERAL REGISTER and the effective date set out below in § 1201.7 at a rate significantly greater (prescribed in paragraph (b) of this section) than the rate at which the affected products were produced or imported during a base period (prescribed in paragraph (c)(2) of this section).

(b) *Prohibited acts.* Manufacturers and importers of glazing materials, fabricators, and manufacturers or importers of architectural products specified in § 1201.1(a) who incorporate glazing material shall not incorporate glazing materials which do not comply with the requirements of this Part 1201 into such products between the date of issuance of this Part 1201 in the FEDERAL REGISTER and the effective date set out in § 1201.7 below at a rate greater than the rate of production or importation during the base period (defined in paragraph (c)(2) of this section) plus ten percent. For wired glass used in doors or other assemblies subject to this Part 1201 and intended to retard the passage of fire, when such doors or other assemblies are required by a federal, state, local or municipal fire ordinance, the rate of production during the base period may be increased annually by no more than 10 percent.

(c) *Definitions.* As used in this § 1201.6:

(1) "Rate of production (or importation)" means the total number of affected architectural products incorporating glazing material not complying with this Part 1201 manufactured or imported during a stated base period.

(2) "Base period" means, at the option of the manufacturer or importer, any period of 180 consecutive days prior to January 6, 1977, said period to be selected within an interval which begins July 6, 1975.

§ 1201.7 Effective date.

The effective date of this Part 1201 shall be July 6, 1977; except that for glazing materials used in doors or other assemblies subject to this Part 1201 and intended to retard the passage of fire, when such doors or other assemblies are required by a federal, state, local or municipal fire ordiance, the effective date shall be January 6, 1980.

(Sec. 9(a), Pub. L. 92-573, 86 Stat. 1215; (15 U.S.C. 2058(a)))

Dated: January 3, 1977.

SHELDON D. BUTTS,
Acting Secretary, Consumer Product Safety Commission.

NOTE: Incorporation by reference provisions were approved by the Director of the Federal Register on December 30, 1976, and those materials are on file at the office of the Federal Register.

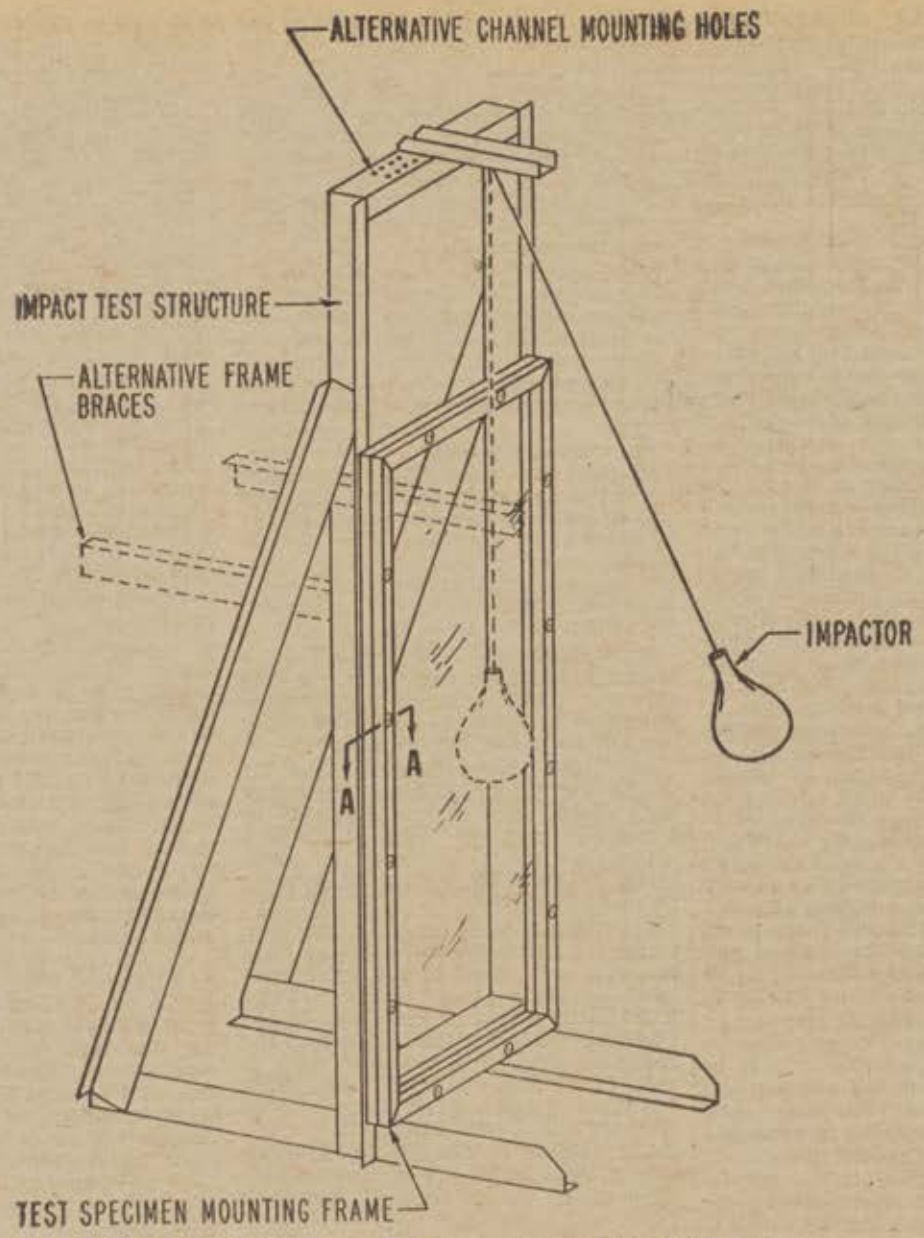

FIG I-GLASS IMPACT TEST STRUCTURE

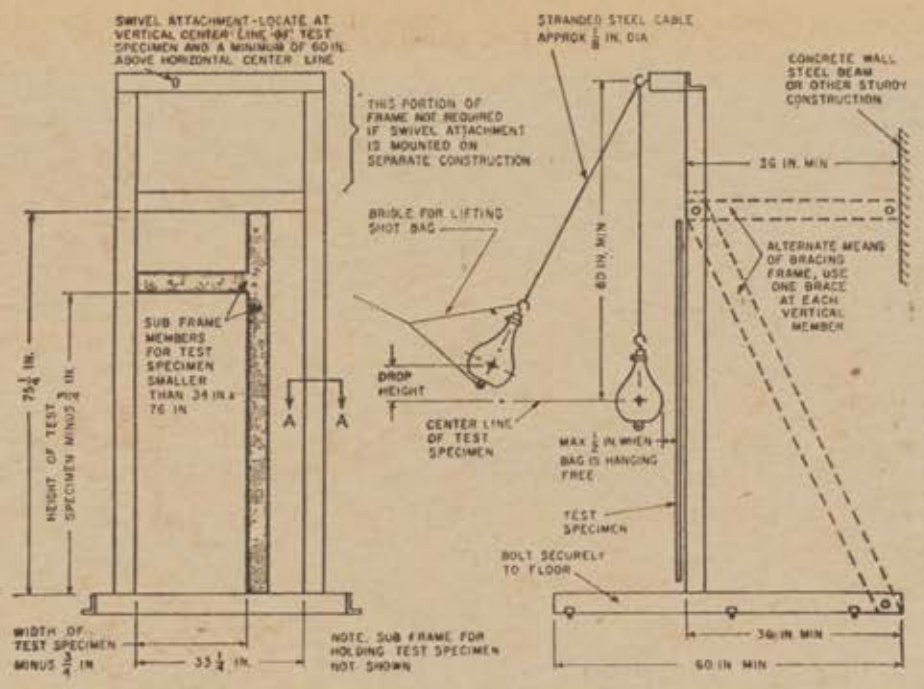

FIG 2-TEST FRAME

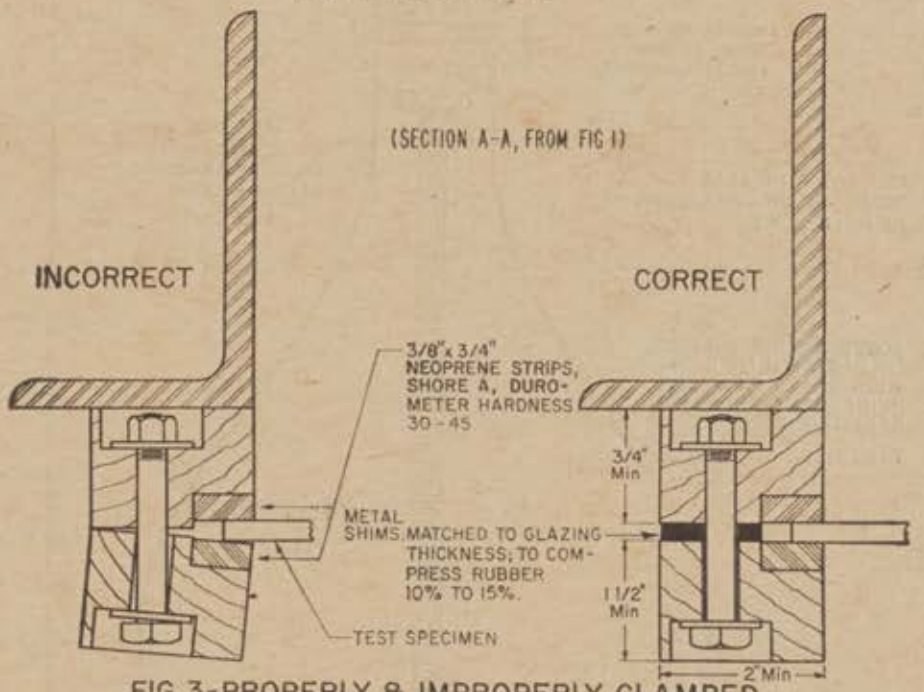

FIG 3-PROPERLY & IMPROPERLY CLAMPED TEST SPECIMEN(>1/8" THICK)

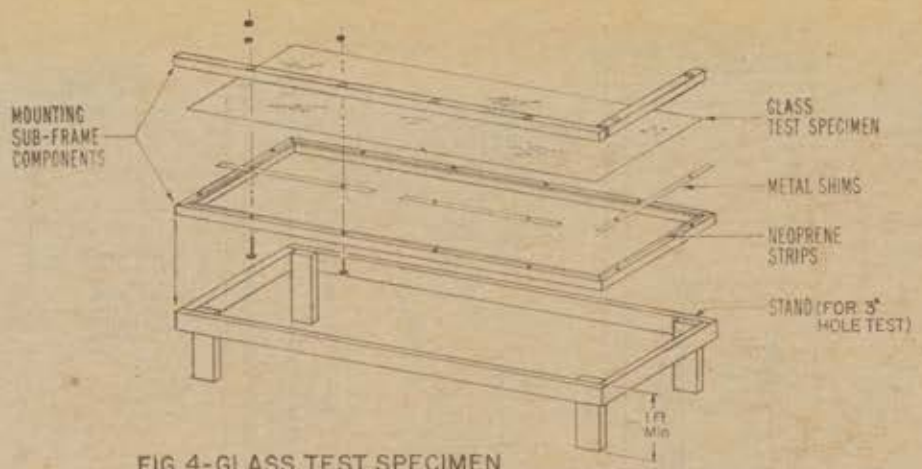

FIG 4-GLASS TEST SPECIMEN MOUNTING SUB-FRAME (EXPLODED) & STAND

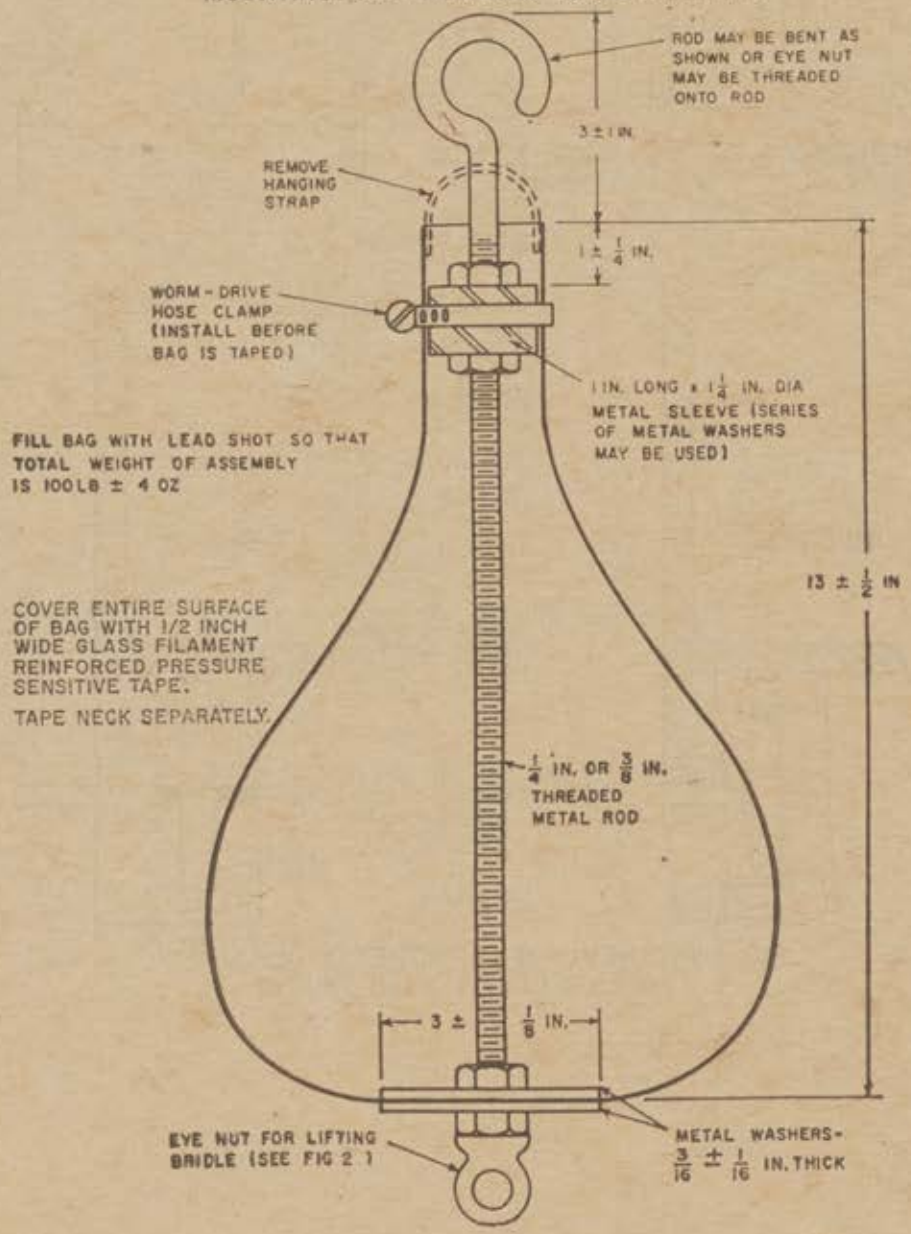

FIG 5-IMPACTOR

[FR Doc.77-478 Filed 1-5-77;8:45 am]

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