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highlights

PART I:

FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT
OFR announces three workshops in Los Angeles, 2–23 thru 2–25–77 and three workshops in San Francisco, 3–1 thru 3–3–77 3908

EMERGENCY SCHOOL AID
HEW/OE notice on "desegregation" plan interpretation .. 3900
HEW/OE sets standards for evaluation of applications .. 3842

AIR TRAFFIC REGULATORY REVIEW PROGRAM
DOT/FAA announces schedule and invites proposals by 3–15–77 for review of flight rules 3863

REAL ESTATE INVESTMENTS AND IMPROVEMENTS
USDA/REA reduces instances in which title insurance is required 3847

MOBILE HOME LOANS
HUD/FHC conforms regulation to new fiscal year; effective 1–17–77 3839

INCOME TAX
Treasury/IRS proposes regulations on corporate separations; comments by 3–5–77 3866

NEW PNEUMATIC TIRES
DOT/NHTSA adds certain size designations to Federal Motor Vehicle Safety Standard 3844

PRIVACY ACT OF 1974
OMB reports on new systems 3909

STATE DEMONSTRATION PROGRAM
DOT/FAA selects certain States for participation in receiving Federal grants for airway development 3946

CIVIL AVIATION
NTSB announces availability of 1976 safety statistics 3907

FOREIGN EMBARKATION LIVESTOCK QUARANTINE FACILITY
USDA/APHIS proposes criteria and standards for establishment; comments by 3–22–77 3859

CONTINUED INSIDE

reminders

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

Rules Going Into Effect Today

DOT/CG—Drawbridge operations; Curtis Creek, Md..... 55345; 12–20–76
EPA—Implementation plans; Virgin Islands..... 55530; 12–21–76

List of Public Laws

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

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

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

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

Documents normally scheduled on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

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

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FEDERAL REGISTER, Daily Issue:

Subscriptions and distribution	202–783–3238
"Dial - a - Regulation" (recorded summary of highlighted documents appearing in next day's issue).	202–523–5022
Scheduling of documents for publication.	523–5220
Copies of documents appearing in the Federal Register.	523–5240
Corrections	523–5286
Public Inspection Desk	523–5215
Finding Aids	523–5227
Public Briefings: "How To Use the Federal Register."	523–5282
Code of Federal Regulations (CFR)	523–5266
Finding Aids	523–5227

PRESIDENTIAL PAPERS:

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

PUBLIC LAWS:

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

HIGHLIGHTS—Continued

ANIMAL DRUGS

HEW/FDA approves cambendazole suspension, pellets, or paste for treating helminth in horses; effective 1–21–77 ... 3838

HEW/FDA changes sponsor name for certain new drugs; effective 1–21–77 ... 3837

HEW/FDA clarifies use of Ketamine hydrochloride injection in cats; effective 1–21–77 ... 3838

SHUTTLE SERVICES

NASA procedures for reimbursement from non-U.S. Government users; effective 1–21–77 ... 3829

FEDERAL OIL AND GAS FIELDS

Interior seeks comments by 2–22–77 on procedures for determination of Maximum Efficient Rate and Temporary Emergency Production Rate ... 3904

AGRICULTURAL COMMODITIES

USDA/CCC proposes to revise export credit sales program; comments by 2–22–77 ... 3849

GOVERNMENT IN SUNSHINE ACT

Foreign Claims Settlement Commission proposes procedures for public meetings; comments by 2–17–77 ... 3872

Indian Claims Commission proposes opening agency meetings to public and prohibiting **ex parte** communications; comments by 2–28–77 ... 3864

CHILD CARE FOOD PROGRAM

USDA/FNS prescribes food cost factors for meals for 1–1–77 thru 6–30–77; effective 1–1–77 ... 3885

CHANGED MEETINGS—

Commerce/DIBA: Importers' Textile Advisory Committee; 2–9–77 ... 3886

Management-Labor Textile Advisory Committee; 2–10–77 ... 3886

NSF: Advisory Committee for Research; 1–27 thru 1–28–77; location change ... 3905

MEETINGS—

Advisory Council on Historic Preservation; 2–2 thru 2–3–77 ... 3875

USDA/FS: President's Quetico-Superior Committee; 3–17–77 ... 3885

Superior National Forest Advisory Committee; 2–24–77 ... 3885

CRC: South Carolina Advisory Committee; 2–4–77 ... 3885

Commerce/NOAA: Marine Fisheries Advisory Committee; 2–9 thru 2–10–77 ... 3887

HEW/Federal Council on Aging: Committee on Economics of Aging; 2–14 thru 2–15–77 ... 3899

Senior Services Committee; 2–15 thru 2–16–77 ... 3900

International Trade Commission; 1–24–77 ... 3905

NRC: Advisory Committee on Reactor Safeguards:

Emergency Core Cooling Systems Subcommittee; 2–5–77 ... 3906

Preliminary schedule; January thru March ... 3905

State: Ocean Affairs Advisory Committee; 1–25 thru 1–26–77 ... 3944

Secretary of State's Advisory Committee on Private International Law, Study Group of Hotelkeepers Liability; 2–17–77 ... 3945

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; 2–17–77 ... 3945

AID: International Food and Agricultural Development Board; 2–14 thru 2–15–77 ... 3945

DOT/FAA: Microwave Landing System Advisory Committee; 2–3–77 ... 3947

PART II:

HEALTH PLANNING
HEW/PHS regulates capital expenditure review, certificate of need, and review of new institutional health services; effective 2–22–77 4001

PART III:

LIFE INSURANCE CONTRACTS
Labor/P&WPB and Treasury/IRS announce proposed class exemption for transfers between plan participants and employee benefit plans (2 documents); comments by 2–22–77..... 4034, 4036

PART IV:

INDEX
FEC publishes index to Advisory Opinions issued by the Commission 4039

PART V:

NATIONAL RESEARCH AND TECHNICAL ASSISTANCE PROGRAM
Commerce/NOAA proposes procedures for operation and awarding of grants; comments by 2–21–77..... 4045

PART VI:

EMPLOYEE SELECTION PROCEDURES
Justice, Labor/FCCPO, and CSC issue document on questions and answers on Federal executive agency guidelines 4051

PART VII:

MINIMUM WAGES
Labor/ESA publishes general wage determination decisions for Federal and federally assisted construction.... 4051

contents

AGENCY FOR INTERNATIONAL DEVELOPMENT
Notices
Meetings:
International Food and Agricultural Development Board..... 3945

AGING, FEDERAL COUNCIL
Notices
Meetings:
Economics of Aging Committee 3899
Senior Services Committee..... 3900

AGRICULTURAL MARKETING SERVICE
Rules
Almonds grown in Calif..... 3847
Oranges (navel) grown in Ariz. and Calif (2 documents)... 3845, 3846

AGRICULTURE DEPARTMENT
See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Commodity Credit Corporation; Farmers Home Administration; Food and Nutrition Service; Forest Service; Rural Electrification Administration; Soil Conservation Service.

ALCOHOL, TOBACCO AND FIREARMS BUREAU
Rules
Metric fill standards; distilled spirits; conversion factor..... 3839

ANIMAL AND PLANT HEALTH INSPECTION SERVICE
Proposed Rules
Animal and poultry import restrictions:
Livestock foreign embarkation quarantine station, establishment; criteria and standards.. 3859

ARMY DEPARTMENT
See Engineers Corps.

CHILD SUPPORT ENFORCEMENT OFFICE
Rules
Federal financial participation:
Deferral, disallowance, and reconsideration of claims..... 3843

CIVIL RIGHTS COMMISSION
Notices
Meetings:
South Carolina Advisory Committee 3885

CIVIL SERVICE COMMISSION
Rules
Excepted service:
Army Department..... 3827
National Aeronautics and Space Administration 3827
Overseas Private Investment Corp 3827
Veterans Administration..... 3827
Notices
Employee selection procedure guidelines; appendices to Federal Personnel Manual Supplement; questions and answers... 4058
President's Commission on White House Fellowships; availability of report on 1976 activities..... 3886

COAST GUARD
Rules
Drawbridge operations:
California, Oakland Inner Harbor Tidal Canal..... 3841
Proposed Rules
Anchorage regulations:
Hawaii 3871
Notices
Bridges, highway; proposed construction:
Boca Raton, Fla., hearing..... 3946
Committees; establishment, renewals, etc.:
Towing Industry Advisory Committee et al.; appointment of members 3945

COMMERCE DEPARTMENT
See Domestic and International Business Administration; Maritime Administration; National Oceanic and Atmospheric Administration.

COMMODITY CREDIT CORPORATION
Proposed Rules
Export programs:
Agricultural commodities; financing of sales from private stocks 3849

DEFENSE DEPARTMENT
See Engineers Corps.

DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION
Notices
Meetings:
Management-Labor and Importers Textile Advisory Committees; date and time changes 3886

EDUCATION OFFICE
Rules
Emergency school aid:
Applications; criteria and procedures 3842
Notices
Emergency school aid; interpretation regarding desegregation plans 3900

EMPLOYMENT STANDARDS ADMINISTRATION
Rules
Longshoremen's and Harbor Workers' Compensation Act:
Administering Agency; definitions and use of terms; and administration and procedures; redesignation of Office of Workers' Compensation Programs and establishment and changes in compensation districts 3847
Notices
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, modifications, and supersedeas decisions..... 4059

CONTENTS

ENGINEERS CORPS

Rules

Planning assistance to States:
Water resources development... 3841

ENVIRONMENTAL PROTECTION AGENCY

Rules

Air quality implementation plans; various States, etc.:
New Jersey; mass transit priority incentives... 3841

Notices

Air pollution; motorcycles, exhaust and crankcase emission standards; availability of environmental statement... 3889
Air quality implementation plans, preparation, adoption and submittal; interpretative ruling, hearings... 3888
Pesticide chemicals; tolerances, exemptions, etc.; petitions:
BASF Wyandotte Corp.; correction... 3889
Water pollution; availability of environmental statements on wastewater management facilities:
New Milford, Conn... 3889
Western Contra Costa County, Calif... 3889

FARMERS HOME ADMINISTRATION

Notices

Disaster and emergency areas:
Arkansas... 3884
Minnesota... 3884
New York... 3884
Wisconsin... 3884

FEDERAL AVIATION ADMINISTRATION

Rules

Airworthiness directives:
Boeing... 3828
General Electric... 3828
Rockwell... 3828
Restricted areas... 3829

Proposed Rules

Air traffic operating and flight rules:
Regulatory review program; inquiry... 3863
Transition areas (4 documents)... 3861–3863

Notices

Airport development, State demonstration programs; implementation and operation... 3946
Meetings:
Microwave Landing System Advisory Committee... 3947

FEDERAL COMMUNICATIONS COMMISSION

Notices

Interference from spark-type ignition systems in motor vehicles; extension of time... 3894
Hearings, etc.:
Hildreth Communications Co. and A–R Microwave Corp... 3890
Newhouse Alabama Microwave, Inc., et al... 3890
WTWV, Inc... 3891

FEDERAL CONTRACT COMPLIANCE PROGRAMS OFFICE

Rules

Employee selection procedures; guidelines; questions and answers... 4057

FEDERAL ELECTION COMMISSION

Notices

Index of advisory opinions issued by the Commission... 4040

FEDERAL HOME LOAN BANK BOARD

Notices

Applications, etc.:
Hickory Investments, Inc... 3894

FEDERAL HOUSING COMMISSIONER—OFFICE OF ASSISTANT SECRETARY FOR HOUSING

Rules

Minimum property standards; fire protection, lighting, etc... 3838
Mortgage and loan insurance programs:
Property improvement and mobile home loans; fiscal year conformation... 3839

FEDERAL POWER COMMISSION

Notices

Hydroelectric project licenses, specified reasonable rate of return... 3878
Hearings, etc.:
Chattanooga Gas Co... 3875
Cities Service Gas Co. (2 documents)... 3875, 3876
Columbia Gas Transmission Corp... 3876
East Tennessee Natural Gas Co. 3877
El Paso Electric Co... 3877
Granite State Gas Transmission, Inc... 3877
Iowa Public Service Co... 3878
Mid Louisiana Gas Co... 3878
Midwestern Gas Transmission Co... 3878
New England Power Co... 3879
Oklahoma Gas & Electric Co... 3879
Panhandle Eastern Pipe Line Co... 3880
Tenneco Atlantic Pipeline Co... 3880
Tennessee Gas Pipeline Co... 3882
Transcontinental Gas Pipe Line Corp... 3883
United Gas Pipe Line Co. (2 documents)... 3883

FEDERAL RAILROAD ADMINISTRATION

Rules

Operating rules:
Workmen, blue signal, protection; correction... 3843
Rear end marking devices, passenger, commuter, and freight trains; correction... 3843

FEDERAL REGISTER OFFICE

Notices

"Federal Register—what it is and how to use it," educational workshops; Los Angeles and San Francisco, Calif... 3908

FEDERAL RESERVE SYSTEM

Rules

Truth-in-lending:
Official staff interpretations... 3827

Notices

Board actions; applications and reports... 3897
Applications, etc.:
American National Bancshares, Inc... 3894
Ellis Banking Corp... 3896
Farmers Bancshares, Inc... 3895
First City Bancorporation of Texas, Inc... 3895
Indiana National Corp... 3896
Mahaska Investment Co... 3896
Royal Trust Co... 3897

FEDERAL TRADE COMMISSION

Rules

Prohibited trade practices:
International Telephone & Telegraph Corp. et al... 3833

FISH AND WILDLIFE SERVICE

Rules

Fishing:
Savannah National Wildlife Refuge, Ga... 3845
Public access, entry, use, and recreation:
Wheeler National Wildlife Refuge, Ala... 3845

FOOD AND DRUG ADMINISTRATION

Rules

Animal drugs, feeds, and related products:
Byk-Gulden, Inc.; sponsor name change... 3837
Cambendazole... 3838
Ketamine hydrochloride injection... 3838

FOOD AND NUTRITION SERVICE

Notices

Child care food program:
Food cost factors, January–June 1977... 3885

FOREIGN CLAIMS SETTLEMENT COMMISSION

Proposed Rules

Sunshine Act implementation; meetings, public observation... 3872

FOREST SERVICE

Notices

Meetings:
Quetico-Superior Committee... 3885
Superior National Forest Advisory Committee... 3885

GEOLOGICAL SURVEY

Notices

Geothermal resource areas, operations, etc.:
California... 3903

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

See Child Support Enforcement Office; Education Office; Food and Drug Administration; Public Health Service; Social Security Administration.

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

See Federal Housing Commissioner—Office of Assistant Secretary for Housing.

HISTORIC PRESERVATION, ADVISORY COUNCIL

Notices

Meeting 3875

INDIAN CLAIMS COMMISSION

Proposed Rules

Sunshine Act implementation; public observation of meetings and ex parte communications.. 3864

INTERIOR DEPARTMENT

See also Fish and Wildlife Service; Geological Survey; Land Management Bureau.

Notices

Oil and gas fields, Federal; implementation of section 106, Energy Policy and Conservation Act 3904

Rate adjustment; Pacific Gas and Electric Co., final position..... 3903

INTERNAL REVENUE SERVICE

Rules

Income taxes:
Retirement accounts, annuities, and endowment contracts, individual; disclosure statements 3839

Proposed Rules

Income taxes:
Corporate separations; distribution of stock and securities; republication 3866

Notices

Life insurance contracts transfer to employee benefit plans; pendency of proposed class exemption 4034

INTERNATIONAL TRADE COMMISSION

Notices

Meeting, closed portion..... 3905

INTERSTATE COMMERCE COMMISSION

Rules

Railroad car service orders:
Boxcars; substitution of stock cars 3844

Notices

Abandonment of railroad services, etc:
Louisville and Nashville Railroad Co..... 3949

Car service exemptions, mandatory (2 documents)..... 3948

Hearing assignments..... 3948

Motor carriers:
Temporary authority applications 3949

Petitions, applications, finance matters (including temporary authorities), railroad abandonments, alternate route deviations, and intrastate applications 3953

JUSTICE DEPARTMENT

Notices

Employee selection procedures; uniform guidelines; questions and answers..... 4052

LABOR DEPARTMENT

See Employment Standards Administration; Federal Contract Compliance Programs Office; Pension and Welfare Benefit Programs Office.

LAND MANAGEMENT BUREAU

Notices

Airport leases:
Nevada (2 documents)..... 3901, 3902

Applications, etc.:
New Mexico (4 documents)..... 3902

Authority delegations:
Lands and Minerals Operations Branch, Lands Section Chief and Minerals Section Chief.. 3901

Opening of public lands:
Oregon 3902

Outer Continental Shelf official protraction diagram, approval.. 3903

Withdrawal and reservation of lands, proposed, etc.:
Colorado 3903

MANAGEMENT AND BUDGET OFFICE

Notices

Clearance of reports; list of requests 3908

Privacy Act of 1974, reports on new systems..... 3909

MARITIME ADMINISTRATION

Notices

Foreign construction cost computations:
LASH Type vessels; MA Design C9-S-81f 3886

Applications, etc.:
States Steamship Co..... 3886

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Rules

Shuttle services, reimbursement; non-U.S. government users..... 3829

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Rules

Motor vehicle safety standards:
Tires, new pneumatic, for passenger cars..... 3844

Organization and functions:
Authority delegation to chief counsel; odometers..... 3843

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Rules

Marine mammals:
Taking and importation; State laws and regulations, approval and review; correction..... 3845

Proposed Rules

Coastal zone management programs; research and technical assistance 4045

Notices

Meetings:
Marine Fisheries Advisory Committee 3887

Marine mammals:
Incidental taking; yellowfin tuna purse seine fishing operations; receipt of recommended decision..... 3886

Marine mammal permit applications, etc.:
Mystic Marinelife Aquarium... 3886

NATIONAL SCIENCE FOUNDATION

Notices

Meetings:
Research Advisory Committee; location change..... 3905

NATIONAL TRANSPORTATION SAFETY BOARD

Notices

Safety recommendations and accident reports, and 1976 civil aviation safety statistics; availability and receipt..... 3907

NUCLEAR REGULATORY COMMISSION

Notices

Meetings:
Reactor Safeguards Advisory Committee (2 documents).... 3905, 3906

PENSION AND WELFARE BENEFIT PROGRAMS OFFICE

Rules

Life insurance contracts transfer to employee benefit plans; pendency of proposed class exemption; cross reference..... 4057

Proposed Rules

Fiduciary responsibility:
Employer securities and real property; acquisition and holding, divestiture; correction 3871

Notices

Employee benefit plans:
Life insurance contracts and annuities transfer to plan participants; pendency of proposed class exemption..... 4036

Employee Benefit Plans

Life insurance contracts and annuities transfer to plan participants; pendency of proposed class exemption; cross reference 4036

PUBLIC HEALTH SERVICE

Rules

Health planning and resources development:
Capital expenditure review, certificate of need, and review of new institutional health services ---- 4001

Notices

Health maintenance organizations, qualified ---- 3901

RURAL ELECTRIFICATION ADMINISTRATION

Rules

Information, public:
Title insurance for realty investments; Bulletin 380–1 supplement ---- 3847

Notices

Environmental statements; availability, etc.:
Colorado-Ute Electric Association, Inc ---- 3885
Pacific Northwest Generating Co ---- 3885

SECURITIES AND EXCHANGE COMMISSION

Notices

Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc. 3909
Chicago Board Options Exchange, Inc. (2 documents) ---- 3909, 3911
Pacific Stock Exchange Inc. 3914
Philadelphia Stock Exchange, Inc ---- 3915

Hearings, etc.:
Boston Stock Exchange ---- 3939
CNA Money Instruments, Inc. 3939
General Public Utilities Corp. 3912
Jersey Central Power & Light Co., et al ---- 3913
Keogh-Smathers Fund, Inc. 3939
Midwest Stock Exchange, Inc. 3940
National Association of Securities Dealers, Inc ---- 3913
National Securities Clearing Corp ---- 3916
Options Clearing Corp ---- 3914
Philadelphia Stock Exchange, Inc ---- 3915
Schuster Spectrum Fund, Inc. 3915
Stephens Arkansas Tax-Exempt Bond Fund and Stephens, Inc ---- 3940
SoGen International Fund Inc. 3942

SMALL BUSINESS ADMINISTRATION

Notices

Applications, etc.:
Admiral Investment Co., Inc. 3943
Cameron-Brown Capital Corp. 3944
Disaster areas:
Minnesota ---- 3944

SOIL CONSERVATION SERVICE

Rules

Organization and functions:
Administrator; coordination of State coastal zone management plan reviews ---- 3845

SOCIAL SECURITY ADMINISTRATION

Notices

Authority delegations:
Deputy Commissioner, et al., kidney transplant and dialysis services reimbursement limits; correction ---- 3901

STATE DEPARTMENT

See also Agency for International Development.

Notices

Meetings:
Ocean Affairs Advisory Committee ---- 3944
Private International Law Advisory Committee, Hotelkeepers' Liability Study Group ---- 3945
Shipping Coordinating Committee, Safety of Life at Sea Subcommittee ---- 3945

TEXTILE AGREEMENTS IMPLEMENTATION COMMITTEE

Notices

Tariff schedules of United States Annotated Numbers; correlation of textile and apparel categories ---- 3888

TRANSPORTATION DEPARTMENT

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

Notices

Deepwater port licenses:
LOOP and Seadock ---- 3947

TREASURY DEPARTMENT

See also Alcohol, Tobacco and Firearms Bureau; Internal Revenue Service.

Rules

Foreign diplomatic missions, protection; procedures for assistance to State and local governments; correction ---- 3841

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

Briefings at the Office of the Federal Register

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

RESERVATIONS: DEAN L. SMITH, 523–5282

list of cfr parts affected in this issue

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

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

5 CFR

213 (4 documents) 3827

7 CFR

601 3845
907 (2 documents) 3845, 3846
981 3847
1701 3847

PROPOSED RULES:

1488 3849

9 CFR

PROPOSED RULES:

92 3859

12 CFR

226 3827

14 CFR

39 (3 documents) 3828
71 3829
73 3829
1214 3829

PROPOSED RULES:

71 (4 documents) 3861–3863
91 3863

15 CFR

PROPOSED RULES:

933 4046

16 CFR

13 3833

20 CFR

701 3847
702 3847

21 CFR

510 3837
520 3838
522 3838
548 3838
555 3838

24 CFR

200 3838
201 3839

25 CFR

PROPOSED RULES:

504 3864

26 CFR

1 3839

PROPOSED RULES:

1 3866

27 CFR

170 3840
194 3840
201 3840

29 CFR

PROPOSED RULES:

2550 3871

31 CFR

13 3841

33 CFR

117 3841
265 3841

PROPOSED RULES:

110 3871

40 CFR

52 3841

41 CFR

60–3 4057

42 CFR

100 4024
122 4024
123 4028

45 CFR

185 3842
304 3843

PROPOSED RULES:

504 3872

49 CFR

218 3843
221 3843
501 3843
571 3844
1033 3844

50 CFR

28 3845
33 3845
216 3845

CUMULATIVE LIST OF PARTS AFFECTED DURING JANUARY

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

1 CFR

PROPOSED RULES:

442 ... 1267

3 CFR

EXECUTIVE ORDERS:

10480 (Amended by EO 11956) ... 2947
11490 (Amended by EO 11953) ... 2491
11651 (Amended by EO 11951) ... 1453
11724 (Superseded by EO 11954) ... 2297
11793 (Revoked by EO 11957) ... 3295
11821 (Amended by EO 11949) ... 1017
11921 (See EO 11953) ... 2491
11949 ... 1017
11950 ... 1451
11951 ... 1453
11952 ... 2293
11953 ... 2491
11954 ... 2297
11955 ... 2499
11956 ... 2947
11957 ... 3295

5 CFR

213 ... 1455, 2949, 3297, 3827
610 ... 3297
1410 ... 2299

7 CFR

1 ... 743
2 ... 2968
26 ... 1019
55 ... 2969
56 ... 2970
59 ... 2971
70 ... 2971
210 ... 2971
226 ... 1475
354 ... 1475
601 ... 3845
718 ... 2973
722 ... 1476
726 ... 2300
729 ... 749
730 ... 2301
905 ... 1022
907 ... 1230, 2665, 3845, 3846
910 ... 1476, 2977, 3297
917 ... 3625
928 ... 1, 2, 2665
930 ... 3626
959 ... 2308
971 ... 2666, 3626
981 ... 3159, 3847
1430 ... 3
1473 ... 2977
1701 ... 3847
1822 ... 1023, 2051
1843 ... 1231
1845 ... 2308

PROPOSED RULES:

52 ... 3178
270 ... 1479
271 ... 1479
272 ... 780, 2328
275 ... 1479
661 ... 3311
730 ... 780
967 ... 2691
987 ... 2503
1063 ... 1356

7 CFR—Continued

PROPOSED RULES—Continued

1070 ... 1356
1078 ... 1356
1079 ... 1356
1205 ... 2503
1421 ... 2328
1434 ... 2980
1473 ... 2977
1488 ... 3849
1701 ... 1479

8 CFR

204 ... 3626
212 ... 3627
214 ... 3627

9 CFR

73 ... 2949, 3297
97 ... 1455
113 ... 750, 1456
317 ... 3298
319 ... 751, 3298
381 ... 2949

PROPOSED RULES:

92 ... 1483, 3859

10 CFR

100 ... 2051
140 ... 46
Ch. II ... 1036
203 ... 3814
212 ... 1036, 1456, 2308

FEA RULINGS:

1977–1 ... 3628

PROPOSED RULES:

2 ... 3178
51 ... 3178
212 ... 2646
215 ... 3652

11 CFR

PROPOSED RULES:

2 ... 3810
3 ... 3810

12 CFR

4 ... 2950
16 ... 2200, 3299
202 ... 1242, 2950
206 ... 3171
207 ... 968
211 ... 752
212 ... 2951
213 ... 752
220 ... 752
221 ... 968
224 ... 968
225 ... 752, 1263, 2951
226 ... 753, 1264, 2650, 3827
227 ... 2950
265 ... 2501, 2950
563 ... 2952
570 ... 2952
601 ... 2666
704 ... 1458

PROPOSED RULES:

226 ... 780, 1268
505b ... 2503

12 CFR—Continued

PROPOSED RULES—Continued

523 ... 2338
545 ... 2328
564 ... 2328
604 ... 55, 2078

13 CFR

309 ... 753

PROPOSED RULES:

112 ... 2506
121 ... 2505, 2980

14 CFR

25 ... 2052
37 ... 19
39 ... 1217, 1218, 2053–2055, 3870, 3828
71 ... 300, 2055, 2056, 3170, 3171, 3829
73 ... 300, 3829
75 ... 300
97 ... 1219, 2056, 3171
221a ... 1220
241 ... 1219
288 ... 3299
302 ... 2667
378a ... 2309
385 ... 1220, 2667, 2668
1214 ... 3829

PROPOSED RULES:

39 ... 1268–1270
71 ... 1270, 1271, 2078, 2079, 3179, 3861–3863
91 ... 3863
152 ... 2850
239 ... 2693
288 ... 1271
298 ... 2692
310b ... 2995
370 ... 2995
399 ... 3180

15 CFR

369 ... 2057
371 ... 1222
377 ... 1222
931 ... 1164

PROPOSED RULES:

920 ... 2507
933 ... 4046

16 CFR

2 ... 3300
13 ... 3–5, 3636, 3640, 3833
1201 ... 1428

PROPOSED RULES:

1 ... 2980
4 ... 2079
438 ... 1483
447 ... 2694
450 ... 1038
801 ... 3181, 3655
1301 ... 1484

17 CFR

1 ... 2628
180 ... 3433
200 ... 753
211 ... 2058
240 ... 753, 754, 2060, 3301

17 CFR—Continued
241 759
276 2953
PROPOSED RULES:
239 3312
240 781, 782, 3312
249 782
270 3312
275 3312

18 CFR
2 2954
11 1226
141 6
154 2954
300 2668
PROPOSED RULES:
1 2079
2 2329
3 2079
154 1272
157 56

19 CFR
4 3160
6 2309
10 2309, 2310, 3161
153 2501
172 3161
PROPOSED RULES:
1 2329
113 2330
201 805

20 CFR
401 3640
404 2062
405 1028
416 2062
422 3640
614 1459
656 3440
701 3847
702 3847
PROPOSED RULES:
416 2079, 3316

21 CFR
2 1459
4 3108
8 1459
102 761
121 1460, 1461, 3302
314 1624, 1638, 3109
320 1624, 1638
510 3837
514 3109
520 1462, 3838
522 3838
540 1462
548 3838
555 3838
558 761, 1463, 2312
PROPOSED RULES:
1 2330
3e 1483
11 806
18 2330
121 1483
128d 807
369 2330
500 2330
510 2981
701 2330

21 CFR—Continued
PROPOSED RULES—Continued
740 2330
801 2330

22 CFR
41 2501
42 2501

23 CFR
625 6, 3642
712 7

24 CFR
200 3838
201 3839
203 762
207 764, 2954
213 764, 2954
221 765, 2954
231 766, 2954
241 763, 3162
280 960
1905 3162
1914 2193
1917 2063–2068
3282 2576
PROPOSED RULES:
201 1487
242 3655
279 3112
406 2796
501 1488
570 3292, 3437
866 3181
1917 2082

25 CFR
PROPOSED RULES:
221 3319
504 3864

26 CFR
1 767, 1195, 1463, 2501, 3839
7 1469, 1471, 2954
41 2671
48 2671
142 2677
154 2312
404 1029, 2313
PROPOSED RULES:
1 57, 2694, 3181, 3866
54 1488
301 1038, 1489

27 CFRN
170 3840
194 3840
201 3840

28 CFR
0 3163
PROPOSED RULES:
32 1390

29 CFR
15 769
60 3440
94 1656, 2426
95 2427
96 2428
97 1656
98 2428
99 773, 2430
511 2313

29 CFR—Continued
609 2954
613 3303
672 2955
673 2955
720 3303
1601 3163
1910 2956, 3304
1926 2956
1952 2313
2608 2677
2610 2678
PROPOSED RULES:
90 2981
215 3319
1910 808, 1742, 1806
2550 1488, 1618, 3871

30 CFR
100 1214
211 3642
PROPOSED RULES:
11 2986
77 2800
211 1489, 2082
251 3321

31 CFR
1 2311
13 3841
51 2196, 2422
101 1471
210 9
515 1472

32 CFR
40 3646
256 773
2000 2679
PROPOSED RULES:
242a 1492
903 2085
1482 3322

33 CFR
40 10
92 2681
117 3841
159 11
183 2681, 2682
204 3646
265 3841
PROPOSED RULES:
110 3871
114 3181
115 3181
161 3182
209 2572

34 CFR
Ch. I 12
232 1478

36 CFR
212 2957
221 2957
231 2957
251 2957
261 2957
262 2961
271 2962
272 2962
291 2962
295 2962
606 1473

36 CFR—Continued

PROPOSED RULES:

7 ... 3655, 3656
16 ... 812
17 ... 812

37 CFR

201 ... 2962

PROPOSED RULES:

1 ... 2632
3 ... 2632
5 ... 2632

38 CFR

0 ... 2314
3 ... 2069
17 ... 2316

39 CFR

111 ... 3470
3002 ... 3646

PROPOSED RULES:

1 ... 2699
2 ... 2699
3 ... 2699
4 ... 2699
5 ... 2699
6 ... 2699
7 ... 2699
8 ... 2699

40 CFR

6 ... 2450
52 ... 3841
60 ... 1214
61 ... 1215
86 ... 1122, 1150
129 ... 2588, 2617
136 ... 3306
190 ... 2858
220 ... 2468
221 ... 2470
222 ... 2471
223 ... 2474
224 ... 2474
225 ... 2475
226 ... 2475
227 ... 2476
228 ... 2482
229 ... 2489
409 ... 3164
430 ... 1398
440 ... 3165
455 ... 2316

PROPOSED RULES:

22 ... 1492
52 ... 1273, 1494, 2705, 3657
60 ... 2842
80 ... 3183
85 ... 1044
180 ... 815
201 ... 2330
202 ... 2330
260 ... 2331
1516 ... 1044

41 CFR

3-3 ... 2683
3-4 ... 2684
3-16 ... 2684
3-50 ... 2684
9-7 ... 2963
9-15 ... 2963
9-51 ... 2684
Ch. 14 ... 1215
14-1 ... 1215

41 CFR—Continued

14-10 ... 1215
60-1 ... 3458
60-2 ... 3461
60-3 ... 3825
60-30 ... 3462, 4057
60-741 ... 3307
101-1 ... 12
101-25 ... 1030
101-26 ... 1032
101-28 ... 2317
101-38 ... 1477

PROPOSED RULES:

3-1 ... 1273
101-17 ... 816

42 CFR

100 ... 4024
122 ... 4024
123 ... 4028

PROPOSED RULES:

54b ... 2986
101 ... 2994

43 CFR

4 ... 1216
419 ... 3307
2650 ... 779
3100 ... 1032
4110 ... 778
4120 ... 778

PUBLIC LAND ORDER:

5561 (Amended by PLO 5612) ... 2684
5611 (Corrected by PLO 5612) ... 2684
5612 ... 2706

PROPOSED RULES:

29 ... 3660
2400 ... 3657
3520 ... 2684
3800 ... 1045

45 CFR

177 ... 2963
185 ... 3842
193 ... 1190
233 ... 3307
248 ... 2684
250 ... 779
304 ... 3843
1005 ... 3165
1050 ... 3272
1068 ... 3165
1336 ... 3782

PROPOSED RULES:

Subtitle A ... 3325
46 ... 2792, 3076
153 ... 3792
158 ... 2086
Ch. II ... 2445
201 ... 3664
205 ... 2440
249 ... 3325, 3665
250 ... 2331, 3328
304 ... 3663
504 ... 3872
706 ... 2708
1480 ... 1045
1703 ... 3667

46 CFR

536 ... 1473

PROPOSED RULES:

10 ... 3186
12 ... 1278

46 CFR—Continued

PROPOSED RULES—Continued

502 ... 817
531 ... 3186

47 CFR

0 ... 3166, 3167
1 ... 3166-3168, 3308
13 ... 1231
15 ... 1231, 3308
21 ... 1232
73 ... 1233, 2502, 3167, 3308, 3646
74 ... 2069
76 ... 3308
81 ... 1474
83 ... 1231, 1474
87 ... 3168, 3308
97 ... 3166, 3167

PROPOSED RULES:

64 ... 1278
73 ... 1278, 1279, 2086, 3186
74 ... 2087
76 ... 3670
83 ... 2088
97 ... 2089

49 CFR

Ch. V ... 2864
25 ... 12
99 ... 3118
173 ... 2071, 2688
174 ... 2071
178 ... 2688
218 ... 2318, 3843
221 ... 2321, 3843
225 ... 1221
231 ... 1222
310 ... 2964
501 ... 3843
571 ... 3844
630 ... 3772
1033 ... 2965, 3309, 3310, 3844
1047 ... 19
1056 ... 3169
1241 ... 1474
1249 ... 1474
1250 ... 1474
1251 ... 1474

PROPOSED RULES:

Subtitle A ... 2868
173 ... 2709
179 ... 2709
228 ... 2994
230 ... 2994
267 ... 2507
523 ... 2092
571 ... 3187
1251 ... 2092

50 CFR

17 ... 2071, 2965
26 ... 1033, 2689, 2690, 3845
32 ... 2690
33 ... 1034, 2690, 3845
216 ... 1034, 3845
260 ... 2326
261 ... 2326
262 ... 2326
263 ... 2326
264 ... 2326
265 ... 2326
266 ... 2326
267 ... 2326
268 ... 2326
269 ... 2326
270 ... 2326
271 ... 2326
272 ... 2326
273 ... 2326

50 CFR—Continued

274 2326
275 2326
276 2326
277 2326
278 2326
279 2326

50 CFR—Continued

601 2968
602 2968

PROPOSED RULES:

17 ..... 2101, 2102, 2507
216 1049

FEDERAL REGISTER PAGES AND DATES—JANUARY

Pages	*Date*
1–741	Jan. 3
743–1015	4
1017–1194	5
1195–1450	6
1451–2049	7
2051–2291	10
2293–2497	11
2499–2664	12
2665–2946	13
2947–3157	14
3159–3294	17
3295–3624	18
3625–3826	19
3827–4109	21

rules and regulations

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

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

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of the Army

Part 213 is amended to show that 10 positions of professor in the National Defense University are excepted under Schedule B. Simultaneously, Schedule A § 213.3107(e), which is superseded by the Schedule B authority, is revoked.

Effective on January 21, 1977, § 213.3107(e) is revoked and § 213.3207 (b) is added as set out below:

§ 213.3107 Department of the Army.

* * * * *

(e) [Revoked].

* * * * *

§ 213.3207 Department of the Army.

(b) *National Defense University.* (1) Ten positions of professor for employment of any one individual not to exceed 1 year. Such employment may be extended twice for additional periods not to exceed 1 year with prior Commission approval. Total employment of any one individual under this authority may not exceed 3 years.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.77-1934 Filed 1-19-77;8:45 am]

PART 213—EXCEPTED SERVICE

Overseas Private Investment Corporation

Section 213.3317 is amended to show that one position of Secretary (Stenography) to the Vice President, Insurance, is excepted under Schedule C.

Effective on January 21, 1977, § 213.3317(d) is added as set out below:

§ 213.3317 Overseas Private Investment Corporation.

* * * * *

(d) One Secretary (Stenography) to the Vice President, Insurance.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.77-1933 Filed 1-19-77;8:45 am]

PART 213—EXCEPTED SERVICE

Veterans Administration

Section 213.3327 is amended to show that the following positions are reestablished under Schedule C: Four Confidential Assistants to the Special Assistant to the Administrator; one Confidential Assistant to the Administrator; two Confidential Assistants to the Executive Assistant to the Administrator; and one Confidential Assistant to the Assistant Deputy Administrator.

Effective on January 21, 1977, §§ 213.3327(a)(1), (a)(6), (a)(7), and (a)(8) are amended as set out below:

§ 213.3327 Veterans Administration.

(a) *Office of the Administrator.* (1) Five Confidential Assistants to the Special Assistant to the Administrator.

* * * * *

(6) Four Confidential Assistants to the Administrator.

(7) Three Confidential Assistants to the Executive Assistant to the Administrator.

(8) Five Confidential Assistants to the Assistant Deputy Administrator.

* * * * *

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.77-1936 Filed 1-19-77;8:45 am]

PART 213—EXCEPTED SERVICE

National Aeronautics and Space Administration

Section 213.3348 is amended to show that two positions of Special Assistant to the Associate Administrator for External Affairs are excepted under Schedule C.

Effective on January 21, 1977, § 213.3348(e) is added as set out below:

§ 213.3348 National Aeronautics and Space Administration.

* * * * *

(e) Two Special Assistants to the Associate Administrator for External Affairs.

* * * * *

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioner.

[FR Doc.77-1935 Filed 1-19-77;8:45 am]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. Z; FC-0036, FC-0037]

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 17, 1977.

§ 226.7(k); Creditor who must adjust computer software may use either § 226.7(k)(7)(i) alternative until October 28, 1977.

JANUARY 3, 1977.

This is in response to your letter of _____, in which you raised questions under § 226.7(k) of Regulation Z. Your concern is with a situation in which a creditor's computer software needs modification in order to comply with the requirements of § 226.7(k)(3)(ii). This section requires a descriptively billed non-sale credit transaction to be identified by a characterization of the transaction as a cash advance, overdraft loan, or other designation as appropriate. You ask whether a creditor who must modify computer systems in order to comply can make use of the alternative of omitting information which is not reasonably available and treating any inquiry as a billing error and an erroneous billing, and providing documentary evidence of the transaction under § 226.7(k)(7)(i)(B).

In staff's opinion, § 226.7(k)(7)(i) was intended to provide alternatives to creditors until October 28, 1977, to enable them to adjust their systems and procedures for compliance with the ultimate requirements of the Regulation and, at the same time, to ensure that customers are provided meaningful information regarding open end credit transactions. Therefore, staff believes that a creditor whose computer systems must be modified to comply with the requirements of § 226.7(k)(3)(ii) can avail himself of the § 226.7(k)(7)(i)(B) alternative. The required information would not be consid-

ered "reasonably available" in such circumstances.

In staff's opinion no different standards were intended by the Board for use of the different alternatives provided under § 226.7 (k) (7) (i) (A) and § 226.7(k) (7) (i) (B). They are both equally available during the transition period for creditors who must make adjustments to their procedures and systems in order to comply. It is the individual creditor's choice as to which of the alternatives is used.

In your letter you indicate that it is your belief that § 226.7(k) (3) (ii) requires an "alpha" description of each transaction. I should point out that it is staff's view that the designation of the transaction as a cash advance, overdraft, or other loan can be made by clearly and conspicuously referenced symbols.

This is an official staff interpretation of Regulation Z, issued in accordance with § 226.1(d) (3) of the Regulation and limited in its application to the facts outlined herein. I trust that it is responsive to your inquiry.

Sincerely,

JERAULD C. KLUCKMAN,
Assistant Director.

§ 226.4(a) (5) and § 226.4(a) (6); Credit life health and accident insurance disclosures required in order to exclude the premiums from the finance charge may be made on a statement separate from the disclosure form. This also applies to the insurance disclosures required under § 226.4(a) (6).

JANUARY 4, 1977.

This is in response to your letter of * * * in which you requested an official staff interpretation concerning the disclosure requirements of § 226.4(a) (5) of Regulation Z.

You have pointed out in your letter that Public Opinion Letter 853, dated October 30, 1974, takes the position that the disclosures required under § 226.4(a) (5) in order to exclude the premiums for credit life, accident and health insurance from the finance charge may be made on a statement separate from the regular Truth in Lending disclosure form. Several of your clients have proposed that they remove from the Truth in Lending disclosure forms all reference to credit life, accident and health insurance except for a statement that such insurance is not required by the lender. The disclosure of the cost of the insurance and the indication of the borrower's desire for the insurance would be made on a separate brochure sent to all borrowers for their consideration. You have asked for an official staff interpretation confirming that this method of disclosing insurance premiums under § 226.4(a) (5) would be in compliance with the requirements of Regulation Z.

Staff is of the opinion that the disclosures required by § 226.4(a) (5) in order to exclude the premiums for credit life, accident and health insurance from the finance charge may be made on a statement separate from the regular Truth in Lending disclosure form. This also applies to the insurance disclosures required under § 226.4(a) (6).

This is an official staff interpretation issued in accordance with § 226.1(d) (3) and is confined to the facts as stated. I trust that it is responsive to your inquiry.

Sincerely,

JERAULD C. KLUCKMAN,
Assistant Director.

Board of Governors of the Federal Reserve System, January 12, 1977.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.77-1830 Filed 1-19-77;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 76-NW-26-AD; Amdt. 39-2808]

PART 39—AIRWORTHINESS DIRECTIVES

Boeing 727-100/-100C Series Airplanes

Amendment 39-2720 (41 FR 38759) AD 76-18-11, as amended by Amendments 39-2736 (41 FR 43713) and 39-2771 (41 FR 50805) requires inspection of the aft cargo door lowest side stop fittings and repair/replacement, as necessary on Boeing Model 727-100 and 727-100C series airplanes. After issuing Amendment 39-2771, the FAA has become aware that Boeing 727 operators interchange cargo doors in their fleet. Presently the AD requires inspection of only those airplanes listed in Boeing Alert Service Bulletin No. 727-52-A102 which are only those airplanes originally delivered with aft cargo doors having the stop fittings subject to fatigue cracking. These stop fittings are identified as P/N 65-19670-2 and -3. Accordingly, the AD is being amended to include all Boeing Model 727-100 and -100C series airplanes with P/N 65-59670-2 and -3 aft cargo door lowest side stop fittings which have accumulated 15,000 or more pressurization cycles.

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

(Secs. 313(a), 601, and 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)))

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 FR 13697), § 39.13 of the Federal Aviation Regulations, Amendment 39-2720 (41 FR 38759) AD 76-18-11, as amended by Amendments 39-2736 (41 FR 43713) and 39-2771 (41 FR 50805) is amended by amending the applicability to read as follows:

BOEING. Applies to all Model 727-100 and 727-100C series airplanes, certificated in all categories, with P/N 65-19670-2 and -3 aft cargo door lowest side stop fittings which have accumulated 15,000 or more pressurization cycles.

Compliance required as indicated.

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

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

An evaluation of the anticipated impacts has been made, and it is expected that the final regulation is neither costly nor controversial.

The preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107 is not required.

This amendment becomes effective February 18, 1977.

Issued in Seattle, Washington, February 10, 1977.

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

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

[FR Doc.77-1616 Filed 1-19-77;8:45 am]

[Docket No. 76-NE-36; Amdt. 39-2809]

PART 39—AIRWORTHINESS DIRECTIVES

General Electric Company CT64-820-4 Model Engines

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive reducing the engine output shaft overspeed limit was published in 41 FR 50274.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No objections were received.

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.

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

GENERAL ELECTRIC COMPANY. Applies to all General Electric Company CT64-820-4 model turboprop engines.

Compliance required within the next 100 hours time in service after the effective date of this AD, unless already accomplished.

To prevent the possibility of overstressing the Stage 4 turbine buckets, the engine output shaft overspeed limit is reduced from 1512 rpm to 1450 rpm. The original limit is given in Note 2 of Type Certificate Data Sheet E13EA-10, dated February 15, 1976.

This amendment becomes effective February 9, 1977.

(Secs. 313(a), 601, and 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)))

Issued in Burlington, Massachusetts, on January 11, 1977.

QUENTIN S. TAYLOR,
Director, New England Region.

[FR Doc.77-1618 Filed 1-19-77;8:45 am]

[Airworthiness Docket No. 76-SW-61; Amdt. 39-2805]

PART 39—AIRWORTHINESS DIRECTIVES

Rockwell Model 112 Airplanes

There have been failures of the oil pressure gauge line Part Number 46320-

1, on Rockwell Commander Model 112 airplanes which resulted in total loss of engine oil causing engine seizure and consequent forced emergency landing. Since this condition is likely to exist or develop in other airplanes of the same type design, an airworthiness directive is being issued to require replacement of the present copper oil pressure line assembly with a flexible hose assembly on Rockwell Commander Model 112 airplanes.

Since a situation exists which 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:

ROCKWELL INTERNATIONAL. Applies to Model 112 airplanes (Serial Numbers 3 through 470) certificated in all categories.

Compliance required as indicated. To prevent engine failure due to loss of engine oil from failure of the engine oil pressure tube assembly, accomplish the following:

(a) As a part of each preflight check, after the effective date of this airworthiness directive, conduct a visual check of the P/N 46320-1 copper oil pressure tube assembly for cracks and oil leakage, particularly in the areas where the copper tube and its fittings attach. If any cracks or leakage are detected, remove and replace such assembly as described in paragraph c below before further flight.

(b) Within the next ten hours' time in service after the effective date of this airworthiness directive and thereafter at intervals not to exceed ten hours' time in service, accomplish the following:

(1) Remove the upper engine cowling.

(2) Clean the copper oil pressure tube assembly, P/N 46320-1, with an oil soluble solvent.

(3) Start and operate the engine until it is warm enough to respond smoothly to throttle changes (monitor oil temperature and cylinder head temperature gauges to maintain temperatures within limits), then stop the engine.

(4) Check the copper oil pressure tube assembly, P/N 46320-1, for cracks, chaffing, or any signs of oil leakage.

(5) If any of the conditions in step 4 above are detected, remove and replace such assembly as described in paragraph c below before further flight.

(6) Part I(1)(b) of Rockwell International Service Bulletin No. SB-112-46 dated November 2, 1976, refers to this same subject.

A pilot may perform the requirements of items a and b above pursuant to the provisions of FAR 43.3(h).

NOTE.—For the requirements regarding the listing of compliance and method of compliance with paragraphs a and b of this AD in the aircraft permanent maintenance record, see FAR 91.173.

(c) Within 50 hours' time in service after the effective date of this airworthiness directive, remove the P/N 46320-1 copper oil pressure tube assembly, the P/N 46080-1 elbow, the AN919-0 reducer, and the P/N 46136-47 hose assembly and replace them with P/N 46136-63 hose assembly and P/N 46080-3 elbow in accordance with Part II of Rockwell Commander Service Bulletin No. SB-112-46 dated November 2, 1976, or later FAA DOA approved revision. Previous compliance with Rockwell Commander Service Letter No. SL-112-26, June 3, 1976, satisfies this airworthiness directive.

(d) The checks required by paragraphs a and b of this airworthiness directive are no longer required after paragraph c of this airworthiness directive is accomplished.

(e) The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Customer Service Department, Rockwell International, General Aviation Division, 5001 North Rockwell Avenue, Bethany, Oklahoma 73008. These documents may also be examined at the Office of the Regional Counsel, Southwest Region, FAA, 4400 Blue Mound Road, Fort Worth, Texas, and at FAA Headquarters, 800 Independence Avenue, S.W., Washington, D.C. A historical file on this AD which includes the incorporated material in full is maintained by the FAA at its headquarters in Washington, D.C., and at the Southwest Region Office in Fort Worth, Texas.

(f) Any alternate equivalent method of compliance with this airworthiness directive must be approved by the Chief, Engineering and Manufacturing Branch, Flight Standards Division, Southwest Region, Federal Aviation Administration.

This amendment becomes effective on January 14, 1977.

(Secs. 313(a), 601, and 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)).)

Issued in Fort Worth, Texas, on December 30, 1976.

HENRY L. NEWMAN,
Director, Southwest Region.

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

[FR Doc.77-1617 Filed 1-19-77;8:45 am]

[Airspace Docket No. 76-SW-60]

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

PART 73—SPECIAL USE AIRSPACE

Rescission of a Restricted Area

The purpose of these amendments to Parts 71 and 73 of the Federal Aviation Regulations is to revoke the Camp Claiborne, La., Restricted Area, R-3801D.

The United States Air Force, the using agency, has advised the Federal Aviation Administration (FAA) that no present or future requirements exist for use of this airspace.

Because this airspace is no longer used for the purpose for which it was designated, this revocation is a minor matter upon which the public would have no particular desire to comment. For this reason, notice and public procedure thereon are unnecessary.

Since these actions return airspace to public use and it is desirable to incorporate these changes in the regulations to correctly reflect current airspace use, good reason exists for making these changes effective on less than 30 days notice.

In consideration of the foregoing, Parts 71 and 73 of the Federal Aviation Regulations are amended, effective January 21, 1977 as hereinafter set forth.

§ 71.151 [Amended]

1. In § 71.151 (42 FR 345) R-3801D Camp Claiborne, La., title is deleted.

§ 73.38 [Amended]

2. In § 73.38 (42 FR 679) R-3801D Camp Claiborne, La., title and text is deleted.

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

Issued in Washington, D.C., on January 10, 1977.

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

[FR Doc.77-1615 Filed 1-19-77;8:45 am]

CHAPTER V—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

PART 1214—REIMBURSEMENT FOR SHUTTLE SERVICES

Reimbursement for Shuttle Services Provided to Non-U.S. Government Users

The following policy identifies the pricing method that the National Aeronautics and Space Administration (NASA) shall employ in providing various Shuttle services to non-U.S. Government users under appropriate agreements. It states NASA policy with respect to patent and data rights and responsibility for damage to a user's payload to be launched on Shuttle, and it assigns responsibility within NASA for implementation of certain aspects of the policy. This policy covers a twelve-year period of Shuttle operations but it is recognized that the policy may evolve and be changed during the Shuttle program as NASA acquires experience in providing Shuttle services and receives recommendations for improvement from Shuttle users and other persons and organizations.

Since the policy involves the use of public property and the policy will be applied in agreements entered into by NASA, the notice and public procedures of 5 U.S.C. 553 were not followed since the policy is determined to be exempt under 5 U.S.C. 553(a)(2) "as a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts."

1. 14 CFR Chapter V is amended by adding a new Part 1214 consisting at this time of Subpart 1214.1, reading as follows:

Subpart 1214.1—Reimbursement for Shuttle Services Provided to Non-U.S. Government Users

Sec.
1214.100 Scope.
1214.101 Definition.
1214.102 Reimbursement policy.
1214.103 Reflight guarantee.

Sec.
1214.104 Patent and data rights.
1214.105 Revisit and/or retrieval services.
1214.106 Damage to payload.
1214.107 Responsibilities.

Appendix A—Costs for which NASA shall be reimbursed.
Appendix B—Standard Shuttle services.
Appendix C—Optional Shuttle services.
Appendix D—Shared flight charge and graph.
Appendix E—Occupancy fee schedule.

AUTHORITY: Sec. 203, Pub. L. 85-568, 72 Stat. 429, as amended (42 U.S.C. 2473); sec. 201(b), Pub. L. 87-624, 76 Stat. 421 (47 U.S.C. 721(b)).

Subpart 1214.1—Reimbursement for Shuttle Services Provided to Non-U.S. Government Users

§ 1214.100 Scope.

This Subpart 1214.1 sets forth:

(a) The policy on reimbursement for Shuttle services which are provided by NASA to non-U.S. Government users (as defined in § 1214.101) under launch services agreements, and

(b) Responsibilities for putting such policy into effect and carrying it out.

§ 1214.101 Definition.

For the purpose of this subpart, the term "Non-U.S. Government Users" means:

(a) Private persons or private organizations of the United States, including its territories, the District of Columbia, Panama Canal Zone, and Puerto Rico.

(b) Public organizations of the United States that are not part of the Government of the United States.

(c) Foreign governments or private persons and private or public organizations of foreign countries, except for the government of Canada and governments of the European Space Agency (ESA) member nations participating in Spacelab development when conducting experimental science or experimental applications missions, with no near-term commercial implications, undertaken on behalf of government agencies. The NASA Administrator shall determine the missions which qualify for this exception.

(d) International organizations, except the ESA when conducting experimental science or experimental applications missions with no near-term commercial implications.

(e) Other U.S. Government agencies, Canadian government agencies and the ESA, requesting Shuttle services from NASA in connection with launch and other services being performed by such agencies for users listed in paragraphs (a) through (d) of this section.

§ 1214.102 Reimbursement policy.

(a) *Features of policy.* (1) All users will be charged on a fixed price basis; there will be no post-flight charges, except for prespecified optional services.

(2) The price will be based on estimated costs.

(3) The price will be held constant for flights in the first three years of Space Transportation Systems (STS) operations.

(4) Payments with respect to total operations costs shall be escalated according to the Bureau of Labor Statistics Index for Compensation per hour, Total Private. Payments with respect to the use charge shall not be escalated.

(5) Subsequent to the first three years the price will be adjusted annually to insure that aggregate costs are recovered over a twelve-year period.

(6) Pricing incentives are designed to maximize the proper utilization of the STS.

(b) *Dedicated flight reimbursements.* (1) For the purposes of this policy, a dedicated flight is one sold to a single customer.

(2) The policy is established for two distinct phases of Shuttle operations. The first phase is through the third full fiscal year of Shuttle operations and the second phase consists of nine full fiscal years subsequent to the first phase.

(i) For a dedicated Shuttle flight during the first phase, NASA shall be reimbursed in an amount which is a pro-rata share of forecast additive costs averaged over the first phase of three years, plus a use charge in lieu of depreciation for the use of facilities, support equipment and the Shuttle fleet; however, the price shall not be less than a pro-rata share of forecast aggregate costs averaged over both the first and second phases of the twelve-year Shuttle operation period.

(ii) For a dedicated Shuttle flight during the second phase, NASA shall be reimbursed a pro-rata share of forecast aggregate costs over both phases to insure that total aggregate costs are recovered over the twelve year period.

(iii) The definition of the costs as specified in this Subpart are set forth in Appendix A to this subpart.

(iv) Subject to NASA approval, a dedicated flight user may apportion and assign STS services to other STS users provided they satisfy STS user requirements. The price of integrating additional payloads will be negotiated.

(v) A summary of standard Shuttle services included in the flight price is set forth in Appendix B to this subpart.

(vi) The prices of optional Shuttle services are being developed and shall be set forth in the Shuttle Price Book which is being developed. A summary of the optional services is set forth in Appendix C to this subpart.

(vii) For the user with an experimental, new use of space or first time use of space of great public value, the reimbursement to NASA for the dedicated, standard Shuttle flight in either the first or second phase shall be a pro-rata share of the average twelve-year additive costs as estimated at the time of negotiations. Programs which qualify for this price will be determined by an STS Exceptional Program Selection Process. In all cases, the Administrator will be the selection official.

(viii) For dedicated flight users, NASA and the user will identify a desired launch date within a period of ninety days three years prior to flight. One year prior to the flight a firm launch and payload delivery date will be identified by NASA. The firm launch date will be within the first sixty days of the original ninety-day period. Launch will occur on the firmly scheduled launch date or within a period of thirty days thereafter. The payload must be ready to launch for the duration of that period.

(c) *Shared flight reimbursements.* (1) The price of a shared Shuttle flight will be a fraction of the dedicated Shuttle flight price. The fraction will be based on the length and weight of the payload and the mission destination at the time of contract negotiations. The formula for computing the fraction is set forth in Appendix D to this subpart.

(2) For shared flight users, NASA and the user will identify a desired launch date three years prior to flight. Launch will occur within a period of ninety days, beginning on the desired launch date. One year prior to flight a payload delivery date and a firm launch date will be coordinated among the share flight users. This firm launch date will be within the first thirty days of the original ninety-day period. The launch will occur on the firmly scheduled launch date or within a period of sixty days thereafter. The payloads must be ready to launch for the duration of that period.

(3) A 20 percent discount on the standard flight price will be given to shared flight users who will fly on a space-available (standby) basis. NASA will provide launch services within a prenegotiated period of one year. Shared flight payloads must be flight deliverable to the launch site on the first day of the one-year period and sustain that condition until delivery to the launch site. The user will be notified sixty days prior to the firmly scheduled launch date which has been established by NASA. At that time, NASA will also establish a payload delivery date. The payload must be available at the launch site on the assigned delivery date and ready to launch for a period of sixty days after the firmly scheduled launch date.

(d) *Small self-contained payloads.* Packages under 200 pounds and smaller than five cubic feet which require no Shuttle services (power, deployment, etc.), and are for R&D purposes, will be flown on a space-available basis during both phases of Shuttle operation. The price for this service will be negotiated based on size and weight, but will not exceed $10,000 in 1975 dollars. A minimum charge of $3,000 in 1975 dollars will be made. If Shuttle services are required, the price will be individually negotiated. Reimbursement to NASA will be made at the time the package is scheduled for flight.

(e) *Options.* (1) Options for future flights will be made available to STS users already contracting for STS launch services. Fixed price options for flights in a given year beyond the three year fixed price period will be made available. For fixed price options, NASA shall be reimbursed the user's flight price compounded at 8 percent per year for each year beyond the fixed price period. The fee for

this option is one million dollars in 1975 dollars. The option fee will be applied to the price of the user's flight. The user will exercise his option by contracting for the flight on the normal 33-month reimbursement schedule or the option fee will be retained by NASA.

(2) In order to insure that space will be available for flights in a given future year, scheduled launch options, where NASA will provide a launch during a ninety-day period, will be given to STS users already contracting for flights at a fee of $100,000 in 1975 dollars. The option fee will be applied to the price of the user's flight. The user will exercise his option by contracting for the flight on the normal 33-month reimbursement schedule or the option fee will be retained by NASA.

(3) In order to allow the user greater flexibility in selecting a launch date, the user may purchase a "floating launch date" option. At the time of contract execution, the user will begin to make payments according to a 33-month reimbursement schedule for this launching. At any time during Phase 1 or 2, the user may exercise this option by informing NASA of his desired launch date for this option which will then be negotiated by NASA and the user. This launch date must be at least 33 months after the date of the first reimbursement payment. If the desired launch date is within one year of the date of declaration, the short term call-up option and associated fee will apply. If the desired launch is to occur in a year for which a new price per flight is in effect, the user will pay the new price. The fee for this option is 10 percent of the user's flight price in effect at the time of contract execution and is payable at that time. This fee will not be applied to the price of the user's flight.

(4) Options must be exercised for a flight by the end of the second phase of operations or the option fee will be retained by NASA.

(f) *Fixed price period and escalation.* (1) The price will remain constant for flights during the first phase of Shuttle operation. For flights during the second phase, the price will be adjusted on a yearly basis, if necessary, to assure recovery of aggregate costs over a twelve year period. These adjusted prices will be applicable only to agreements executed after the adjustment is made.

(2) Shuttle services for both phases will be contracted on a fixed price basis. The payments in the contract will be escalated to the time of the payment using the Bureau of Labor Statistics Index for Compensation per hour, Total Private.

(g) *Earnest money.* Earnest money will be paid to NASA prior to contract negotiations. The earnest money required per contract shall be $100,000 in 1975 dollars; however, if the payload is a small self-contained payload, the earnest money shall be $500.00. The earnest money will be applied to the first payment made by the customer or will be retained by NASA.

(h) *Reimbursement schedule.* (1) Reimbursement shall be made in accordance with the reimbursement schedule contained in this subsection. No charges shall be made after the flight, except as negotiated in the contract for prespecified extra services. Those users who contract for Shuttle services less than three years before the desired launch date will be accommodated and will pay on an accelerated basis according to the reimbursement schedule.

(2) Standby payloads.

(i) Before the establishment of a firmly scheduled launch date, the number of months before launch will be computed assuming a launch date at the mid-point of the designated one-year period.

(ii) Once the firmly scheduled launch date is established, the user shall reimburse NASA to make his payments current according to the reimbursement schedule.

(3) Reimbursement schedule.

Number of months before launch flight is scheduled	Percent of price: Months prior to scheduled launch date					
	33	27	21	15	9	3
33 or more	10	10	17	17	23	23
27-32	21	17	17	23	23	
21-26	40	17	23	23		
15-20	61	23	23			
9-14	90	23				
3-8	122					

This schedule holds unless there are offsetting advantages to the U.S. Government of an accelerated launch schedule.

(4) Contracts for Shuttle services made one year or less before a flight and up to three months before a flight will be made on a space-available basis unless the short term call-up option is elected.

(i) *Short term call-up option.* (1) For flights contracted one year or less before launch, but not less than three months before launch, short term call-up will be provided to dedicated flight users at the dedicated flight price according to the reimbursement schedule.

(2) For dedicated flight users requiring short term call-up flights less than three months before launch, NASA will provide STS launch services on a space-available basis. NASA shall be reimbursed the dedicated flight price according to the reimbursement schedule plus short term call-up additional costs. The additional costs will be based on estimated costs to be incurred.

(3) For shared flights contracted one year or less before launch, but more than six months before launch, users may elect to short term call-up option. The user shall reimburse NASA the standard shared flight price according to the reimbursement schedule plus a load factor-recovery fee. The load factor-recovery fee is half the difference between a dedicated flight price and the user's shared flight price or the difference between a dedicated flight price and the total adjusted reimbursements from all shared users, whichever is less.

(4) For shared flights contracted six months or less before launch, but more than three months before launch, users may elect the short term call-up option. The user shall reimburse NASA the standard shared flight price according to the reimbursement schedule plus a load factor-recovery fee which is the difference between a dedicated flight price and the total adjusted reimbursement from all shared flight users.

(5) Shared flights contracted three months or less before launch will be flown on a space-available basis. NASA shall be reimbursed the shared flight price according to the reimbursement schedule plus short term call-up additional costs. These additional charges will be based on estimated costs to be incurred.

(6) For the purposes of this subparagraph, "adjusted reimbursements" is defined to be reimbursements assuming all shared users are non-U.S. Government.

(7) The load factor-recovery fee will never be less than zero.

(8) The load factor-recovery fee is payable upon receipt of NASA's billing therefor.

(j) *Accelerated launches.* For users who reschedule a launch so that it occurs earlier than the planned launch, the user will pay on an accelerated reimbursement schedule. The user will reimburse NASA to make his payments current on the new accelerated reimbursement schedule. If the time from notification of acceleration is less than one year from the new launch date, short term call-up reimbursements will also apply.

(k) *Postponements.* (1) Non-standby payloads. (i) A user can postpone a flight of his payload one time with no additional charge if postponement occurs more than one year before launch. For subsequent postponed flights more than one year before launch, the user shall reimburse NASA a postponement fee of 5 percent of the user's flight price. For postponements one year or less before launch, the user shall reimburse NASA 5 percent of the user's flight price plus an occupancy fee according to the occupancy fee schedule in Appendix E to this subpart.

(ii) If the postponement of a flight causes the payload to be launched in a year for which a different price per flight has been established, the new price shall apply if it is higher than the originally contracted price.

(2) Standby payloads.

(i) For flights postponed more than six months prior to the beginning of the negotiated one-year period, NASA shall renegotiate a new one-year period during which launch will occur. No additional fee will be imposed.

(ii) For flights postponed six months or less prior to the beginning of the negotiated one-year period, the user shall reimburse NASA 5 percent of the user's flight price plus an occupancy fee according to the occupancy fee schedule set forth in Appendix E to this Subpart.

(3) Postponement fees are payable upon receipt of NASA's billing therefor.

(4) Flights postponed will henceforth be treated as newly scheduled launches according to the reimbursement schedule. The number of months prior to launch will be taken as the total number of months between the date postpone-

ment is elected and the new launch date. Short-term call-up options and associated fees shall apply.

(5) Minor delays (up to three days) caused by the users will not constitute a postponement. No fee will be charged for a minor delay.

(i) *Cancellations.* (1) Non-standby payloads. Users who cancel a flight more than one year before launch shall reimburse NASA 10 percent of the user's flight price. For a cancelled flight one year or less before launch, the user shall reimburse NASA 10 percent of the user's flight price plus an occupancy fee as set forth in Appendix E to this subpart.

(2) Standby payloads.

(i) Users who cancel a flight more than six months prior to the beginning of the negotiated one-year period shall reimburse NASA 10 percent of the user's flight price.

(ii) For a flight cancelled six months or less prior to the beginning of the negotiated one-year period, the user shall reimburse NASA 10 percent of the user's flight price plus an occupancy fee as set forth in Appendix E to this subpart.

(3) Cancellation fees are payable upon receipt of NASA's billing therefor.

§ 1214.103 Reflight guarantee.

(a) A fee for a reflight guarantee is included in the price charged the user. In consideration of that fee, NASA guarantees one reflight of:

(1) The launch and deployment of a free flying payload into a Shuttle compatible mission orbit if, through no fault of the user, the first launch and deployment attempt is unsuccessful and if the payload returns safely to earth or a second payload is provided by the user.

(2) The launch of an attached payload into its mission orbit if the first launch attempt is unsuccessful through no fault of the user, and if the payload returns safely to earth or a second payload is provided by the user.

(3) A launch of a Shuttle into a payload mission orbit for the purpose of retrieving a payload if the first retrieval attempt is unsuccessful through no fault of the user. This guarantee only applies if the payload is in a safe retrievable condition as determined by NASA.

(b) This reflight guarantee will not be applicable to payloads or upper stages placed into orbits other than the Shuttle mission orbit.

§ 1214.104 Patent and data rights.

(a) NASA will not acquire rights to inventions, patents or proprietary data privately funded by a user, or arising out of activities for which a user has reimbursed NASA under the policies set forth herein. However, in certain instances in which the NASA Administrator has determined that activities may have a significant impact on the public health, safety or welfare, NASA may obtain assurances from the user that the results will be made available to the public on terms and conditions reasonable under the circumstances.

(b) The user will be required to furnish NASA with sufficient information to verify peaceful purposes and to insure Shuttle safety and NASA's and the U.S. Government's continued compliance with law and the Government's obligations.

§ 1214.105 Revisit and/or retrieval services.

These services will be priced on the basis of estimated costs. If a special dedicated Shuttle flight is required, the full dedicated price will be charged. If the user's retrieval requirement is such that it can be accomplished on a scheduled Shuttle flight, he will only pay for added mission planning, unique hardware or software, time on orbit, and other extra costs incurred by the revisit.

§ 1214.106 Damage to payload.

The price does not include a contingency or premium for damage that may be caused to a payload through the fault of the U.S. Government or its contractors. The U.S. Government, therefore, will assume no risk for damage or loss to the user's payload. The users will assume that risk or obtain insurance protecting themselves against that risk.

§ 1214.107 Responsibilities.

(a) *Headquarters officials.* (1) The NASA Comptroller, in coordination with the Associate Administrator for Space Flight will:

(i) Prescribe guidelines, procedures, and other instructions which are necessary for estimating costs and setting prices and publishing them in the NASA Issuance System, and

(ii) Review and arrange for the billing of users.

(2) The Associate Administrator for Space Flight will arrange for:

(i) Developing estimates for costs and establishing prices in sufficient detail to reveal their basis and rationale.

(ii) Obtaining approval of the NASA Comptroller of such estimates and related information prior to the execution of any agreement, and

(iii) Reviewing of final billings to users prior to submission to the NASA Comptroller.

(b) *Field installation officials.* The Directors of Field Installations responsible for the STS operations will:

(1) Maintain and/or establish agency systems which are needed to identify costs in the manner prescribed by the NASA Comptroller,

(2) Compile financial records, reports, and related information, and

(3) Provide assistance to other NASA officials concerned with costs and related information.

Appendix A—Costs for Which NASA Shall Be Reimbursed

Additive Costs. All additional costs, both direct and indirect, that the NASA has to incur above those it would otherwise have incurred had it not undertaken to meet non-NASA user requirements.

Total Operations Costs. Total Operations Costs include all direct and indirect costs, excluding costs composing the use charge. Such costs include direct program charges for manpower, expended hardware, refurbishment of hardware, spares, propellants, provisions, consumables and launch and recovery services. They also include a charge for program support, center overhead, and contract administration.

Use Charge. A charge in lieu of depreciation for use of facilities, support equipment and the Shuttle fleet.

Aggregate Costs. Aggregate costs are all reasonable costs which include the sum of the use charge and total operations costs.

Appendix B—Standard Shuttle Services

Two standard mission destinations:
(1) 160 NM Altitude; 28.5° Inclination.
(2) 160 NM Altitude; 56.0° Inclination.
One day mission operations
Orbiter flight planning services
Transmission of payload data to compatible receiving stations
A three-man flight crew
On-orbit payload handling
Deployment of a free flyer
NASA support of payload design reviews
Prelaunch payload installation, verification and orbiter compatibility testing
NASA payload safety review

Appendix C—Optional Shuttle Services

Revisit and retrieval
Use of Spacelab or other special equipment
Use of Mission Kits to extend basic orbiter capability
Use of Upper Stages
EVA services
Unique payload/orbiter integration and test
Payload mission planning services, other than for launch, deployment and entry phases
Additional time on-orbit
Payload data processing
Launch from Western Test Range
Two standard mission destinations are available from the Western Test Range site:
(1) 160 NM Altitude; 90.0° Inclination.
(2) 160 NM Altitude; 104.0° Inclination.

Appendix D—Shared Flight Charge

To calculate the cost of individual payloads transported on a flight shared with other payloads:

(1) Find the load factor for the payload by dividing the payload weight by the Shuttle capability for the desired inclination (Table in Figure 1).

(2) Find the load factor for the payload by dividing the payload length by 60 feet.

(3) Enter the curve (Figure 1) at the higher value obtained from steps 1 and 2 and read the Charge Factor (C_f) from the curve.

(4) Multiply the C_f value times the quoted price per dedicated flight. This will result in the price for the payload flight.

The price for each payload flight (Step 4) entitles the user to be provided a pro-rata share of the facilities available on board the standard Shuttle flight. For example, if the payload load factor is 0.5, then the payload is entitled to 50% of the power, cooling, and other services provided on the standard flight. Standard services required that exceed the pro-rata share will be an additional charge to the user based on the cost of the service provided.

For purposes of this attachment, payload weight includes a pro-rata share of all special equipment (e.g., spin tables and their controls) needed for the user's mission. Payload length includes a pro-rata share of the clearance length necessary to operate or deploy the payload, including the length of deployment mechanisms.

DETERMINATION OF CHARGE FACTOR (C_f) FOR 160 N.MI

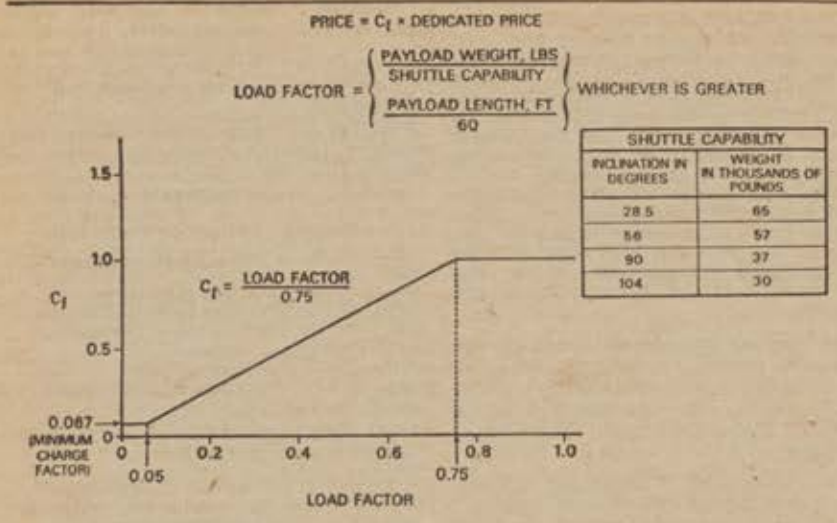


FIG 1

APPENDIX E—OCCUPANCY FEE SCHEDULE

For a postponed or cancelled dedicated flight, the occupancy fee will be zero.

For a postponed or cancelled shared flight, the occupancy fee will be computed according to the computation instructions set forth below. If the computation results in an occupancy fee which is less than zero, the occupancy fee will be reset to zero.

For a postponed or cancelled shared flight one year or less, but more than six months before launch, the user shall reimburse NASA an occupancy fee of half the user's flight price less any adjusted reimbursements from other users who contract for the same flight subsequent to the postponement or cancellation date.

For a postponed or cancelled shared flight six months or less before launch, the user shall reimburse NASA an occupancy fee of 90% of the user's flight price less any adjusted reimbursements from other users who contract for the same flight subsequent to the postponement or cancellation date.

For a given shared flight, if the occupancy fee so computed would result in total adjusted reimbursements (exclusive of the 5% (10%) postponement (cancellation) fee) in excess of the price of a dedicated flight, the occupancy fee will be reduced in order to recover the price of a dedicated flight.

In the event that, as a result of the postponement or cancellation, the Shuttle is not launched at all for the intended flight, the occupancy fee will be zero.

(For purposes of this attachment, "adjusted reimbursements" is defined to be reimbursements assuming all users are non-U.S. Government.)

Effective date: January 21, 1977.

JAMES C. FLETCHER,
Administrator.

[FR Doc.77-1872 Filed 1-19-77;8:45 am]

Title 16—Commercial Practices

CHAPTER 1—FEDERAL TRADE COMMISSION

[Docket C-2854]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

International Telephone and Telegraph Corporation, et al.

Subpart—Advertising falsely or misleadingly: § 13.10 Advertising falsely or misleadingly; 13.10–1 Availability of merchandise and/or facilities; § 13.35 Condition of goods; § 13.42 Connection of others with goods; § 13.55 Demand, business or other opportunities; § 13.90 History of product or offering; § 13.143 Opportunities; § 13.155 Prices; 13.155–5 Additional charges unmentioned; 13.155–95 Terms and conditions; § 13.160 Promotional sales plans; § 13.195 Safety; 13.195–30 Investment; § 13.205 Scientific or other relevant facts; § 13.285 Value. Subpart—Corrective actions and/or requirements: § 13.533 Corrective actions and/or requirements; 13.533–20 Disclosures. Subpart—Misrepresenting oneself and goods—Goods: § 13.1595 Condition of goods; § 13.1615 Earnings and profits; § 13.1650 History of product; § 13.1675 Law or legal requirements; § 13.1697 Opportunities in product or service; § 13.1740 Scientific or other relevant facts; § 13.1760 Terms and conditions; 13.1760–50 Sales contract; § 13.1775 Value. Prices: § 13.1778 Additional costs unmentioned; § 13.1823 Terms and conditions; Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1863 Limitations of product; § 13.1882 Prices; 13.1882–10 Additional prices unmentioned; § 13.1889 Risk of loss; § 13.1892 Sales contract, right-to-cancel provision; § 13.1895 Scientific or other relevant facts; § 13.1905 Terms and conditions; 13.1905–50 Sales contract. Subpart—Offering unfair, improper and deceptive inducements to purchase or deal: § 13.1935 Earnings and profits; § 13.2000 Limited offers or supply; § 13.2015 Opportunities in product or service; § 13.2040 Returns and reimbursements; § 13.2063 Scientific or other relevant facts; § 13.2080 Terms and conditions.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.)

In the matter of International Telephone and Telegraph Corporation, a corporation, ITT Community Development Corporation, a corporation, and Palm Coast, Inc., a corporation.

Consent order requiring a New York City conglomerate and its Miami, Fla., subsidiaries, ITT Community Development Corporation and Palm Coast, Inc., among other things to cease misrepresenting or failing to make pertinent oral and/or written disclosures regarding the risks, value, and soundness of land development; misrepresenting the degree of development of the land they offer; failing to disclose additional costs to be incurred and misrepresenting the property's proximity to waterways, major roads, shopping and recreational facilities; and failing to disclose purchaser's rights to cancellation and refunds. Further, the order requires construction of particular facilities intended to improve the value of land already sold, and limits the sale of registered lots for a period of fifteen (15) years.

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

ORDER

For the purposes of this Order, the following definitions shall apply:

1. "Business Day" shall mean any calendar day except Saturday, Sunday and the following holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

2. "Contract" shall be limited to contracts for the sale of land.

3. "Land" shall be limited to any residential lot which has been or is being

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

sold by one or more of the respondents to any purchaser.

4. "Purchaser" shall mean any person, partnership, corporation or other entity who has signed a contract to purchase land from one or more of the respondents.

5. "Property Report" shall be understood to include any Public Offering Statement, prospectus or other report required by state or federal law to be provided to a purchaser or prospective purchaser of land.

As used in this Order, a requirement to cease and desist from representing or misrepresenting shall include representing or misrepresenting directly or by implication.

For purposes of this Order, all required disclosures shall be made in a clear and conspicuous manner.

It is ordered that respondents International Telephone and Telegraph Corporation ("ITT"), ITT Community Development Corporation ("ICDC"), Palm Coast, Inc., ("Palm Coast"), and their officers, and their subsidiaries and the officers of those subsidiaries, and respondents' successors, assigns, agents, representatives and employees, directly or through any corporate or other device in connection with the advertising, offering for sale to prospective purchasers, or sale to purchasers of land, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

1. Misrepresenting that respondent ITT or any business entity or third party is legally responsible for any debts or obligations of respondent ICDC or any of ICDC's subsidiaries.

2. (a) Failing, if ITT has not assumed legal responsibility for any of the debts or obligations of ICDC or any of its subsidiaries, to disclose in any property report the following statement:

The debts and obligations of ITT Community Development Corporation are NOT legally guaranteed by International Telephone and Telegraph Corporation, and International Telephone and Telegraph Corporation has not pledged its assets for the development of Palm Coast.

(b) Failing, if ITT has assumed legal responsibility for some or all of the debts or obligations of ICDC or any of ICDC's subsidiaries, to disclose in any property report the following statement, in which the blank portions are to be accurately completed:

ITT has assumed legal liability for approximately ____ percent (to the nearest 5 percent) of the total debts and obligations of (names of corporations for which debts and obligations have been guaranteed).

3. Failing to set forth as the title of any contract in boldface type the following language: "CONTRACT FOR THE PURCHASE OF LAND."

4. (a) Failing to include the following statement in 12 point boldface type on the first page of any contract:

This is a contract by which you agree to purchase land. The future value of this land, as well as all undeveloped real estate, is speculative. You should not assume that the value of land will increase. Do not assume that you will be able to resell your land without significant community development and population growth. You have ten (10) business days in which to determine whether to continue this contract or cancel it with full refund. See the attached "Notice of Cancellation" form for an explanation of your rights. Use this time to examine with care the property report (also called a Public Offering Statement) which must be given to you at or before the time you sign this contract. It is suggested that you have both this contract and the property report reviewed by a qualified professional.

(b) Failing to include the following statement in any property report relating to land for which neither respondents nor any other parties are legally obligated to make a central sewer system available:

ITT Community Development Corporation is not legally obligated to provide a central sewer system in Section (number) of (name of subdivision). Installation of a septic tank will be at your expense, which is now approximately (amount). The use of a septic tank on your lot is contingent on approval by governmental authorities.

(c) Failing to include the following statement, completed as appropriate, in any property report relating to land for which a central sewer system may or will become available in the future, or such other language as clearly and fully sets forth and discloses the amount of any sewer connection fee(s) and the time and circumstances in which such fee(s) must be paid:

A central sewer system (may or will) be available to your lot in the future. (If or when) it becomes available, you will be required to pay a sewer connection fee, which is now approximately (amount), on the date that the sewer is available to your lot, whether or not connection is actually made at that time, or at the time (name of respondent) conveys title to the lot, whichever date occurs later.

(d) Failing to include the following statement in any contract:

Note to buyer: See page (insert page number) of the property report for statements relating to the additional expense for sewerage systems.

5. Failing to disclose the following statement in any promotional material relating to the sale of land:

Since land values are uncertain, you should consult with a qualified professional before purchasing.

Provided, however, That the above statement need not be included in the following:

(a) Billboard advertisements;

(b) Radio or television advertisements of ten (10) seconds or less;

(c) Magazine advertisements of one-eighth page or less; or

(d) Newspaper advertisements of one-eighth page or less.

6. Failing to disclose in all sales presentations relating to the sale of land the following statement:

The future value of this land, as well as all undeveloped real estate, is speculative. You should not assume that the value of land will increase. Do not assume that you will be able to resell your lot without significant community development and population growth. You should consult a qualified professional before purchasing

7. Failing, where any provisions or conditions are set forth on the reverse side of the contract, to disclose at the bottom of the front side of the contract that the purchaser should examine the reverse side.

8. (a) Failing to include in boldface type in any contract, in immediate proximity to the space reserved in the contract for the signature of the purchaser, the following statement:

You, the purchaser(s), may cancel this transaction at any time prior to midnight of the tenth (10th) business day after the date on which you signed this contract. See the attached "Notice of Cancellation" form for an explanation of this right.

(b) Failing to provide each purchaser, at the time any contract is entered into, with two copies of a "Notice of Cancellation" granting the purchaser at least ten (10) business days after receipt of the notice in which to cancel the contract without any loss, expense, penalty or obligation.

9. Failing to inform a prospective purchaser orally, at or before the time a contract is signed, of his or her right to cancel the contract in accordance with the provisions of Paragraph 8 of this Order.

10. Whenever respondents offer a refund that is contingent upon the purchaser taking a company-guided inspection tour of the property in which the purchaser's land is located:

(a) Failing to afford the purchaser three (3) business days after taking such tour in which to request a refund;

(b) Failing to include in any contract, in immediate proximity to any provision setting forth the availability of a refund upon the completion of a company-guided inspection tour of the property, the following statement:

You, the purchaser(s), have a right to cancel this contract if you take the company-guided tour of the property and notify the company prior to midnight of the third business day after the date of such tour.

(c) Failing orally to inform each purchaser of any such cancellation right at or before the execution of any contract and at the time any such tour is taken;

(d) Failing to furnish each purchaser immediately upon the conclusion of such tour, a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be completed in accordance with subparagraph (e) of this paragraph, and shall consist of the following statements:

NOTICE OF CANCELLATION

[enter date of company-guided inspection tour of property]

[enter contract number]

YOU MAY CANCEL YOUR CONTRACT, WITHOUT ANY LOSS, EXPENSE, PENALTY OR OBLIGATION, AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD (3rd) BUSINESS DAY AFTER THE ABOVE DATE.

IF YOU CANCEL, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT WILL BE RETURNED WITHIN TEN (10) BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE.

TO CANCEL YOUR CONTRACT, DELIVER OR MAIL (CERTIFIED MAIL, RETURN RECEIPT REQUESTED, IS RECOMMENDED) A SIGNED COPY OF THIS CANCELLATION NOTICE OR ANY SIMILAR WRITTEN CANCELLATION NOTICE, OR SEND A TELEGRAM OF CANCELLATION TO: ITT COMMUNITY DEVELOPMENT CORPORATION, AT _____
(address of place of business)
NOT LATER THAN MIDNIGHT OF _____
_____

IF TWO OR MORE PERSONS HAVE SIGNED THE CONTRACT AS PURCHASERS, EACH OF THOSE PERSONS SHOULD SIGN THIS NOTICE, IN ORDER TO CANCEL THE CONTRACT.

IF, HOWEVER, ALL OF THE PURCHASERS DO NOT SIGN THE NOTICE, THOSE WHO DO SIGN THEREBY REPRESENT THAT THEY ARE DULY AUTHORIZED TO ACT ON BEHALF OF ALL OF THE OTHER PURCHASERS. I (WE) HEREBY CANCEL THE CONTRACT.

_____
(Date)

_____
(Signature(s))

(e) Failing, before furnishing to the purchaser the "Notice of Cancellation" set forth in subparagraph (d) of this paragraph, to complete both copies of such notice by entering the address of ICDC's place of business, the date of the company-guided inspection tour of the property, and the date, not earlier than the third business day following the date of such tour, by which the purchaser may give notice of cancellation.

11. Failing or refusing to honor any valid and timely notice of cancellation submitted by a purchaser in accordance with the provisions of Paragraphs 8 and 10 of this Order, and within ten (10) business days after the receipt of such notice, to refund all payments made and cancel any indebtedness under the contract.

12. Failing in any promotional material, contract or sales presentation that expressly refers or relates to one or more specific lots, to disclose the existence, nature and location of any easements, mortgages and covenants running with the land.

13. Representing that any of respondents' lots is located within any property or portion thereof designated or described as a "self-contained" or "fully developed" community or designated or described by words or terms that are of similar import to "self-contained" or "fully developed" unless:

(a) Those facilities, amenities and public services normally associated with a "self-contained" and "fully developed" community, including but not limited to shopping, commercial, recreational and industrial facilities, public services, and amenities, are available within the property in which each lot is located; and

(b) Paved roads, electricity, telephone service, central water, and a sewer system or septic tanks are available to all lots within each property or portion thereof designated or described as a "self-contained" or "fully developed" community or by words or terms of similar import.

14. Failing to include in any contract a provision that if any utility or improvement which respondents are legally obligated to make available under the terms of a contract is not available to the lot which is the subject of the contract or if any of the facilities required by the contract to be provided by respondents are not completed,

(i) Within six (6) months of the date(s) certain specified in the contract or property report, for the availability or completion of the utility, improvement or facility, or, if there is no such date, within six (6) months after the maturity date of the contract, plus, whether or not there is such a date certain, the actual number of days of delay in the availability of any such utility, improvement or facility that are caused by any strike, work stoppage or other such event beyond respondents' control, or

(ii) If the availability of any such utility, improvement or facility is delayed by reason of any act or omission of any federal, state or local governmental agency or officer, within eighteen (18) months after such date certain, or, if none, the maturity date of the contract, respondents will, upon conclusion of the applicable period, provide the purchaser within fifteen (15) business days with notice of the unavailability or failure to complete, and of the purchaser's right to cancel and receive a full refund of monies paid, plus interest at the rate of seven percent (7%) per annum compounded annually on each payment made by the purchaser from the date of the payment to the date upon which the purchaser received notification of a right to refund.

15. (a) Failing, if any utility or improvement required to be provided by respondents under the terms of a contract is not available to the lot which is the subject of the contract or any facility required to be provided by respondents under the terms of a contract is not completed

(i) Within six (6) months of any date certain specified in the contract or property report, for the availability or completion of the utility, improvement or facility, or, if there is no such date, within six (6) months after the maturity date of the contract, plus, whether or not there is such a date certain, the actual number of days of delay in the availability of any such utility, improvement or facility that are caused by any strike, work stoppage or other such event beyond respondents' control, or

(ii) If the availability of any such utility, improvement or facility is delayed by reason of any act or omission of any federal, state or local governmental agency or officer, within eighteen (18) months after such date certain, or, if none, the maturity date of the contract, to provide each purchaser with a notice by certified mail, return receipt requested, immediately upon the conclusion of the applicable period, which is titled "Important Notice of Your Right to a Refund." Such notice must clearly disclose the fact of default and state that the purchaser is entitled to a full refund plus interest at the rate of seven percent (7%) per annum compounded annually on the amount to be refunded, computed in accordance with the provisions of Paragraph 14 of this Order.

(b) Failing to refund, to any purchaser who exercises the option for a refund, within sixty (60) days of receipt of such notification from the purchaser, all monies paid by the purchaser pursuant to the contract plus interest at the rate of seven percent (7%) per annum, compounded annually on each payment made by the purchaser, from the date of the payment to the date upon which the notification of the right to refund is received by the purchaser.

16. Imposing any condition or limitation upon the right of a purchaser to a refund as set forth in Paragraphs 14 and 15 of this Order; *Provided, however*, That respondents may require a purchaser to exercise an option for a refund within a stated time period of not less than thirty (30) days after the receipt by the purchaser of the notice required by Paragraphs 14 and 15 of this Order; and may offer by mail to each purchaser the additional option of exchanging his or her land for other land in the same or a different portion of respondents' property; and may require a purchaser to execute a quitclaim deed or other documents necessary to release his or her interest in the land as to which the purchaser has elected to accept a refund or exchange. All such documents shall be included in the same envelope used to mail the notice of right to refund described in Paragraphs 14 and 15 of this Order and the purpose for which such documents are being sent shall be disclosed.

17, Making any statement or representation concerning the proximity to respondents' property of any city, the Atlantic Ocean, the Intracoastal Waterway, major shopping center, recreational or educational facility, or access to I-95, A1A or U.S. Highway 1 without disclosing, in immediate conjunction therewith and with the same conspicuousness as such statement or representation, the distance in road miles to the nearest two miles from such place or facility to the Welcome Center or similar facility on respondents' property.

18. Making any statement or representation using words such as "adjacent," "near to," or any word or term of similar import or meaning to describe the

proximity to any specific lot in respondents' property of any city, the Atlantic Ocean, the Intracoastal Waterway, major shopping center, recreational or educational facility, or access to I-95, A1A or U.S. Highway 1, without disclosing, in immediate conjunction therewith and with the same conspicuousness as such statement or representation, the distance in road miles to the nearest two miles from such place or facility to the specific lot referred to in the statement or representation; *Provided, however*, That if such distance is less than two miles, such distance shall be disclosed to the nearest one-fifth of a mile.

19. Making any statement or representation concerning any past, present or future population, employment or industrial statistic or trend or other statistic or trend, unless respondents have a reasonable basis to believe that such statistic or trend has or will in the near future have relevance to respondents' property or any part thereof to which such statement or representation relates.

A reasonable basis for a statement or representation shall consist of current, relevant and objective statistical or economic data or studies, where such data are collected or such studies are conducted in accordance with accepted applicable demographic, economic or statistical principles.

20. Making any written statement or representation concerning the purchase price of any land without disclosing:

(i) The nature and approximate amount of any additional payments that must be made by a purchaser to respondents in order to purchase such land;

(ii) The approximate cost of sewage connection or septic tank installation, as appropriate; and

(iii) The approximate cost of any tree stump removal, if necessary.

21. Failing, at least once during any sales presentation in which any statement or representation is made concerning the purchase price of any land, to disclose:

(i) The nature and approximate amount of any additional payments that must be made by a purchaser to respondents in order to purchase such land;

(ii) The approximate cost of sewage connection or septic tank installation, as appropriate; and

(iii) The approximate cost of any tree stump removal, if necessary.

22. Failing to include in any contract entered into on or after January 1, 1974, a provision limiting the amount forfeited, in the event of default, to an amount not larger than 44.8% of the cash price disclosed in the contract.

23. Soliciting the written acknowledgement of a purchaser that he or she has been afforded an opportunity to inspect respondents' land and has concluded that the land is satisfactory and in accord with all contractual agreements. This provision shall not be construed to prohibit respondents from providing a form of acknowledgement to the purchaser at the same time as the notice of cancellation required by Paragraph 10 herein, and informing such purchaser that he or she may elect at his or her option to return to respondents by mail the notice of cancellation, the acknowledgement, or neither of them.

24. Representing that the purchase for resale of land in respondents' property is a way to achieve financial security, to deal with inflation, or to become wealthy.

25. Representing that real estate is a good or safe investment, or the purchase of land in respondents' property is a good or safe investment.

26. Making any statement or representation that refers to or concerns investment in stocks, banks, annuities or any other form of investment other than respondents' land.

27. Making any statement or representation concerning the approximate number of homes presently located in respondent's property without disclosing in conjunction therewith and with the same prominence the approximate number of residential lots to the nearest 1,000 lots] planned to be located within the property after respondents have finished subdividing it.

28. Representing that the prices of respondents' land periodically rise or that prices are increasing, have increased, or will increase, without disclosing at the same time, and by the same medium by which such representation is comunicated, that such price increases are made at respondents' discretion and do not necessarily relate to changes in the value of the land.

29. Representing, unless such is the fact, that respondents may or will buy back land from or resell for purchasers, or may or will set up a resale division, or that purchasers can resell their land or their interest therein at a profit.

30. Representing that respondents have undertaken any legal obligation or commitment to provide any facility or amenity without, in conjunction with any such representation, stating the calendar year during which the facility or amenity is at the time of the representation, reasonably expected to be available.

31. Making any statement or representation as to any increase in the number of residents in respondents' property without disclosing in conjunction therewith the approximate number of such residents at the time the representation is made.

32. Making any statement or representation as to any increase in the number of facilities in respondents' property without disclosing in conjunction therewith the number of such facilities at the time the representation is made.

33. Making any statement or representation concerning possible visits by any purchaser or prospective purchaser to any lot in respondents' property without disclosing in conjunction therewith that such purchaser or prospective purchaser may not be able to visit such lot, unless such lot is capable of being reached by automobile.

34. Misrepresenting that land similar to that being offered for sale may not or will not be available in the future.

It is further ordered: (a) That respondents deliver, by certified mail or in person, a copy of this Order to all of their present or future salesmen, independent brokers, advertising agencies, and other employees of respondents who sell or, through personal contact or telephone communication with potential purchasers, promote the sale of land;

(b) That respondents provide a form to each of their present or future salesmen, independent brokers, others who, on behalf of respondents, sell land, and each person conducting tours for any purchaser or prospective purchaser on respondents' property, to be returned to respondents, clearly affirming the intention of that person to be bound by and to conform his business practices with the requirements of this Order;

(c) That respondents inform each of the persons referred to in subparagraph (a) of this paragraph that respondents are required by this order not to use, and shall not use, any such person to sell or to promote the sale of land unless that person complies with the provisions of this Order;

(d) That respondents continue and improve their program of surveillance to determine whether the business operations of the persons described in subparagraph (b) of this paragraph conform with the applicable provisions of this Order;

(e) That respondents upon receiving any information that any of the persons referred to in subparagraph (b) of this paragraph has violated any of the applicable provisions of this Order shall cause such person to receive instruction in the terms and requirements of this Order, and if respondents subsequently receive reliable information that such person has, despite such instruction, continued to violate any provision of this Order, respondents shall take steps promptly to suspend or terminate the employment or contractual relationship of the offending person with respondents.

It is further ordered. That if the Interstate Land Sales Full Disclosure Act, presently codified at 15 U.S.C. 1701–20 (1970), or any regulation that has been or may be promulgated pursuant thereto, requires an act or practice that is prohibited by any provision of this Order, or prohibits an act or practice that is required by any such provision, or is otherwise wholly or partly inconsistent with any such provision of this Order, any such provision of this Order shall be without legal force or effect, except insofar as such provision increases any time period within which any act may be performed.

It is further ordered that nothing in this Order shall be understood to prevent respondents from accurately representing or describing any contributions or services made or provided by ITT or any of its subsidiaries to ICDC or any of ICDC's subsidiaries.

It is further ordered that, for a period of fifteen (15) years after the service upon respondents of this Order, except with the prior authorization of the Fed-

eral Trade Commission, respondents shall limit and restrict the deveelopment presently known as Palm Coast and consisting of approximately 93,000 acres, to a maximum of approximately 48,000 registered lots in a maximum of 42,000 acres, including substantial areas set aside for commercial, industrial and reserve parcels, locations for multi-family housing, and areas of conservation and preservation; and, accordingly, respondents shall neither register any lots nor sell any registered lots in the balance of such approximately 93,000 acres.

It is further ordered That the provisions of this Order shall have no application to the sale of ten (10) or more residential lots by any of the respondents to a builder, developer or other person who purchases the lots for purposes of development. *Provided*, That, for a period of fifteen (15) years after the service upon respondents of this Order (or, if under the following two paragraphs the Commission extends the fifteen-year period, for an additional period equal to any such extension), except with the prior authorization of the Federal Trade Commission, such sales of ten (10) or more residential lots at Palm Coast shall be confined to the 42,000 acres referred to in the preceding paragraph.

It is further ordered That respondents shall, 720 days prior to the expiration of the aforementioned fifteen-year period, submit to the Commission a written report in which they shall describe the extent of development at Palm Coast, including, but not limited to, information regarding the number of dwelling units, the extent of recreational facilities, and the extent of public and commercial services.

It is further ordered That unless, at the time of the submission of the report referred to in the preceding paragraph, it reliably appears that the number of dwelling units located or under construction at Palm Coast after the expiration of the fifteen-year period referred to above will be equal to at least 50 percent of the number of lots at Palm Coast then authorized for residential use as to which deeds are at that time held by purchasers or their assignees, the Commission may initiate proceedings under § 3.72 of the Commission's Rules to extend the fifteen-year period for an additional period not to exceed five years. Any such extension must be ordered not later than the expiration of the fifteen-year period. Respondents shall not, by reason of this Order, be deemed to have waived or abandoned any procedural step or right other than the right to seek judicial review of any proceedings provided for in this paragraph.

It is further ordered That respondents shall not represent that as the result of any portion of this Order any agency of the United States Government has endorsed or approved the land development presently known as Palm Coast.

It is further ordered That, not later than six (6) years after the service upon respondents of this Order, respondents shall cause the corporate headquarters of ICDC to be transferred to and located at respondents' property at Palm Coast, Florida.

It is further ordered That respondents shall provide or lawfully cause others to provide, not later than six (6) years after the service upon respondents of this Order, each of the following:

(1) Shopping center building or buildings located upon respondents' land at Palm Coast with a total floor space of at least 40,000 square feet;

(2) An office and research park area located upon respondents' land at Palm Coast, to consist of at least 40 acres, which shall include appropriate roads, water lines, sewers and landscaping suitable for possible future construction of office buildings or research facilities;

(3) A multi-purpose office structure located within the office and research park area referred to in (2) herein, which shall have a total floor space of at least 5,000 square feet;

(4) An office building located upon respondents' land at Palm Coast, which shall be suitably designed to house the corporate headquarters of ICDC, and shall have a total floor space of at least 30,000 square feet;

(5) An interchange, substantially similar to plans submitted to the Florida Department of Transportation on or about August 17, 1972, that affords access to and egress from Highway I-95 at a location on or adjacent to respondents' property at Palm Coast; *Provided, however*, That respondents' obligations with respect to such an interchange are conditioned upon (a) receipt of any and all authorizations and approvals that may be required from federal, state and local governmental agencies, and (b) the agreement of all appropriate federal, state and local governmental agencies that any such interchange shall form part of, and shall be administered and maintained by governmental authorities as part of, Highway I-95; and

(6) Paving of the existing St. Joe Road, Flagler County, Florida, between Highway I-95 and U.S. Highway Route 1; *Provided, however*, That respondents' obligations with respect to such paving are conditioned upon (a) the receipt of any and all authorizations and approvals that may be required from federal, state and local governmental agencies, and (b) the agreement of all appropriate federal, state and local governmental agencies that St. Joe Road shall continue to be a public road, and shall continue to be administered and maintained by governmental authorities as a public road.

It is further ordered That respondents shall make good faith efforts to encourage a supermarket operator to establish a supermarket in the shopping center building or buildings referred to in this Order to be provided at Palm Coast, including, if necessary, a good faith offer to agree to reasonable financial incentives, to continue for a period of at least two years, for the establishment of such supermarket.

It is further ordered That respondents shall give notice to the Commission at least thirty (30) days in advance of the date of effectiveness of any proposed legal change in respondents' corporate form if that change may significantly alter or affect respondents' compliance with the provisions of this Order.

It is further ordered That 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.

The Decision and Order was issued by the Commission December 10, 1976.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-1880 Filed 1-19-77;8:45 am]

Title 21—Food and Drugs

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

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

BYK-GULDEN, INC.

Change in Sponsor Name for Certain New Animal Drugs

The Food and Drug Administration approves three supplemental new animal drug applications (NADA's 65-015, 65-016, 65-460V) filed by Byk-Gulden, Inc., Cantiague Rock Rd., P.O. Box 730, Hicksville, NY 11802, providing for the change in sponsor name for zinc bacitracin, polymyxin B sulfate, neomycin sulfate; zinc bacitracin, polymyxin B sulfate, neomycin sulfate, hydrocortisone acetate; and chloramphenicol ophthalmic ointments from Kasco-Efco Laboratories to the parent company, Byk-Gulden, Inc. The approvals are effective January 21, 1977.

The Commissioner of Food and Drugs is amending §§ 510.600, 548.314, and 555.-310 (21 CFR 510.600, 548.314, and 555.-310) to reflect these approvals. This independent action to approve the intracorporate transfer of the NADA's has not required a reevaluation of the parent NADA's and does not constitute a reaffirmation of the drugs' safety and effectiveness.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), Parts 510, 548, and 555 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. Part 510 is amended in § 510.600 in paragraph (c)(1) by alphabetically adding a new sponsor and in paragarph (c)(2) by numerically adding a new sponsor, to read as follows:

§ 510.600 Names, addresses, and code numbers of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address:	*Drug listing No.*
* * * * *	
Byk-Gulden, Inc., Cantiague Rock Rd., P.O. Box 730, Hicksville, NY 11802	025463
* * * * *	

(2) * * *

Drug listing No:	*Firm name and address*
* * * *	
025463	Byk-Gulden, Inc., Cantiague Rock Rd., P.O. Box 730, Hicksville, NY 11802.
* * * *	

PART 548—CERTIFIABLE PEPTIDE ANTIBIOTIC DRUGS FOR ANIMAL USE

2. Part 548 is amended:

§ 548.314a [Amended]

a. In § 548.314a *Zinc bacitracin, polymyxin B sulfate, neomycin sulfate ophthalmic ointment* in paragraph (b)(2) by deleting sponsor No. "010616" and inserting in its place "025463."

§ 548.314b [Amended]

b. In § 548.314b *Zinc bacitracin, polymyxin B sulfate, neomycin sulfate, hydrocortisone acetate, ophthalmic ointment* in paragraph (c)(2) by deleting sponsor No. "010616" and inserting in its place "025463."

PART 555—CHLORAMPHENICOL DRUGS FOR ANIMAL USE

§ 555.310c [Amended]

3. Part 555 is amended in § 555.310c *Chloramphenicol ophthalmic ointment* in paragraph (c)(2) by deleting sponsor No. "010616" and inserting in its place "025463."

Effective date: This amendment shall be effective January 21, 1977.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b (i)).)

Dated: January 11, 1977.

C. D. VAN HOUWELING,
Director, Bureau of Veterinary Medicine.

[FR Doc.77-1702 Filed 1-19-77;8:45 am]

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Cambendazole Oral Dosage Forms

The Food and Drug Administration approves supplemental new animal drug applications (NADA's 94-642V, 96-506V, 96-731V) filed by Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., Rahway, NJ 07065, proposing the safe and effective use of cambendazole suspension, pellets, or paste for treating certain helminth infections in horses. The supplemental applications provide for a caution statement in the labeling that the drug is not to be administered to pregnant mares during the first 3 months of pregnancy. The approval is effective January 21, 1977.

The Commissioner of Food and Drugs is amending Part 520 (21 CFR Part 520) to reflect this approval.

In accordance with § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)) of the animal drug regulations, a summary of the safety and effectiveness data and information submitted to support the approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), Part 520 is amended as follows:

1. In §520.300a, paragraph (c)(5) is revised to read as follows:

§ 520.300a Cambendazole suspension.

* * * * *

(c) * * *

(5) Caution: Do not administer to pregnant mares during first 3 months of pregnancy.

* * * * *

2. In § 520.300b, paragraph (c)(5) is revised to read as follows:

§ 520.300b Cambendazole pellets.

* * * * *

(c) * * *

(5) Caution: Do not administer to pregnant mares during first 3 months of pregnancy.

* * * * *

3. In § 520.300c, paragraph (c)(5) is revised to read as follows:

§ 520.300c Cambendazole paste.

* * * * *

(c) * * *

(5) Caution: Do not administer to pregnant mares during first 3 months of pregnancy.

* * * * *

Effective date: These amendments shall be effective January 21, 1977.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: January 12, 1977.

C. D. VAN HOUWELING,
Director, Bureau of Veterinary Medicine.

[FR Doc.77-1701 Filed 1-19-77;8:45 am]

[Docket No. 75N-0027]

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Ketamine Hydrochloride Injection

The Food and Drug Administration is clarifying an animal drug regulation regarding a ketamine hydrochloride injection used in cats; effective January 21, 1977.

A regulation published in the FEDERAL REGISTER of December 23, 1975 (40 FR 59342) provided for the approval of a new animal drug application, NADA 92-116V filed by Bristol Laboratories, Division of Bristol-Myers Co., P.O. Box 657, Syracuse, NY 13201, by issuance of § 522.1222b *Ketamine hydrochloride with promazine hydrochloride and aminopentamide hydrogen sulfate injection* (21 CFR 522.1222b). It provides in paragraph (e)(1) for use of the drug in cats as the sole anesthetic agent for diagnostic or surgical procedures. To more accurately reflect the labeling approved for the drug, paragraph (e)(1) is revised to state that the drug is used in cats as the sole anesthetic agent for ovariohysterectomy and general surgery.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), § 522.1222b(e)(1) is revised to read as follows:

§ 522.1222b Ketamine hydrochloride with promazine hydrochloride and aminopentamide hydrogen sulfate injection.

* * * * *

(e) * * *

(1) It is used in cats as the sole anesthetic agent for ovariohysterectomy and general surgery.

* * * * *

Effective date: This amendment shall be effective January 21, 1977.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: January 11, 1977.

C. D. VAN HOUWELING,
Director, Bureau of Veterinary Medicine.

[FR Doc.77-1703 Filed 1-19-77;8:45 am]

Title 24—Housing and Urban Development

CHAPTER II—OFFICE OF ASSISTANT SECRETARY FOR HOUSING PRODUCTION AND MORTGAGE CREDIT—FEDERAL HOUSING COMMISSIONER (FEDERAL HOUSING ADMINISTRATION), DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-77-682]

PART 200—INTRODUCTION

Minimum Property Standards

Revision No. 4 containing minor technical amendments to the Minimum

Property Standards has been completed and distributed to the field offices of the Department of Housing and Urban Development. The revision is made to:

(1) Conform our requirements to certain criteria of the National Fire Protection Association,

(2) Reduce required lighting in public spaces in the interest of conservation of energy,

(3) Clarify standards and make them more specific in response to field office needs, requests and questions.

The Minimum Property Standards are incorporated by reference into 200.933, Title 24 of the Code of Federal Regulations. An official, historic file of the Minimum Property Standards and these changes is available in the Office of Mechanical Support, Room 6160, of the HUD Central Office in Washington, D.C., and in each HUD Regional, Area, and Insuring Office. A copy of the standards and revisions is also maintained in the Office of the Federal Register, Washington, D.C. Copies of the Minimum Property Standards and their revisions can be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

A finding of inapplicability of section 102(2)(c) of the National Environmental Policy Act of 1969 and a similar finding in relation to economic impact pursuant to OMB Circular A-107 have been made. Both findings are available for public inspection at the Office of the Rules Docket Clerk, in the HUD Central Office in Washington, D.C. during business hours.

(Sec. 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)).)

Issued at Washington, D.C., January 12, 1977.

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing — Federal Housing Commissioner.

[FR Doc.77-1717 Filed 1-19-77;8:45 am]

[Docket No. R-77-434]

PART 201—PROPERTY IMPROVEMENT AND MOBILE HOME LOANS

Fiscal Year

The Department of Housing and Urban Development is amending its Property Improvement and Mobile Home Regulations to conform with the new fiscal year.

Notice and public procedure are unnecessary under the provisions of 5 U.S.C. 553(b) since the change is for the purpose of conforming the regulation to the new fiscal year. Advance publication for the 30-day period specified in 5 U.S.C. 553(d) is unnecessary and good cause exists for making the revision effective January 17, 1977.

The Department has determined that an Environmental Impact Statement is not required with respect to this rule. A copy of the Finding of Inapplicability is available for public inspection and copying according to the Departmental rules and regulations at the office of the Rules Docket Clerk, Room 10141, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C.

Accordingly, § 201.12 (c) and (e) are revised to read as follows:

§ 201.12 Insurance reserve.

* * * * *

(c) *Adjustment of general reserve.* The amount of the general insurance reserve to the credit of each insured shall be adjusted on October 1 of each year * * *

However, no such adjustment shall be made in the insurance reserve of any financial institution until the first day of October * * *

* * * * *

(e) *Transfer of insurance reserve.* Insurance reserve of more than $5,000 shall not be transferred to or from the reserve account of any insured during any fiscal year (October 1 through September 30) without the prior approval of the Commissioner. * * *

* * * * *

(Sec. 7(d) 79 Stat. 670 (42 U.S.C. 3535(d)); sec. 2, 48 Stat. 1246, (12 U.S.C. 1703).)

NOTE.—It is hereby certified that the economic and inflationary impacts of this proposed regulation have been carefully evaluated in accordance with OMB Circular A-107.

Effective date: This amendment is effective January 17, 1977.

JOHN T. HOWLEY,
Acting Assistant Secretary for Housing — Federal Housing Commissioner.

[FR Doc.77-1848 Filed 1-19-77;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7462]

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

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

This document adopts an amendment to the Income Tax Regulations (26 CFR Part 1) under section 408(i) of the Internal Revenue Code of 1954, relating to disclosure statements regarding individual retirement accounts, individual retirement annuities and certain endowment contracts, to postpone the effective date of such regulations from January 1, 1977 to February 15, 1977.

ADOPTION OF AMENDMENT TO THE REGULATIONS

§ 1.408-1 [Amended]

In order to postpone the effective date of income tax regulations under section 408(i) of the Internal Revenue Code of 1954, § 1.408-1(d)(4)(x) of the Income Tax Regulations (26 CFR Part 1) is amended by striking out "December 31, 1976" and inserting in lieu thereof "February 14, 1977".

Because this Treasury decision merely postpones the effective date of a rule, and because of the need for immediate guidance with respect to such postponement, it is found unnecessary and impracticable to issue this Treasury decision with notice and public procedure thereon under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

(Sec. 408(i), 7805, Internal Revenue Code of 1954 (88 Stat. 964 and 68A Stat. 917; (26 U.S.C. 408(i), 7805)).)

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: January 13, 1977.

CHARLES M. WALKER,
Assistant Secretary of the Treasury.

[FR Doc.77-1839 Filed 1-19-77;8:45 am]

Title 27—Alcohol, Tobacco Products and Firearms

CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

[T.D. ATF-39]

CONVERSION FACTOR

Metric Standards of Fill

The Bureau of Alcohol, Tobacco and Firearms (ATF) published Treasury decision ATF-34 in the FEDERAL REGISTER on October 26, 1976 (41 FR 46859). That decision made a number of changes in Title 27 CFR, one of which was the addition of three sections prescribing a conversion factor to be used in converting metric units into U.S. units. ATF is now revising these conversion factor sections to clarify how the converted amounts should be rounded off.

Background. On October 1, 1976, members of the distilled spirits industry could begin importing or bottling distilled spirits according to metric standards of fill. To implement the new metric sizes, ATF issued T.D. ATF-34 which: (1) Prescribed case marking requirements for metric-size bottles; (2) required separate strip stamp accounting for metric sizes; (3) liberalized record-keeping requirements; and (4) prescribed a conversion factor to use when converting metric units to U.S. units.

Records and conversion factor. Since current Federal excise tax statutes and regulations are based upon wine gallon and proof gallon units, industry members who handle cases of metric-size bottles may have to convert metric units to U.S. units. T.D. ATF-34 enables industry members to choose when these conversions are made. Thus, an industry member may keep required commercial records (1) in liter or wine gallon units; (2) in liters per case and proof, wine gallons per case and proof, or proof gallons per case; (3) in liters per case or wine gallons per case; or (4) in proof gallons. (In general, industry members will not have as many options when required forms, reports or tax returns are prepared since proof gallons are still the basis for computing taxes, claims, etc.)

Potential Problem. Industry members may face a potential problem depending

on whether the prescribed conversion factor (0.264172) is used before or after multiplying by the number of cases. The following examples illustrate the problem which may arise:

If an industry member were computing the total wine gallons in 4,567 cases of a 1.75 liter-size product, the industry member could calculate—

(1) 1.75 liters×6 bottles per case=10.5 liters per case; 10.5×4,567=47,953.5 liters; 47,953.5×0.264172=12,667.97 wine gallons; or

(2) 1.75 liters×6 bottles per case=10.5 liters per case; 10.5×0.264172=2.77 wine gallons per case (rounded off to two decimal places as allowed by §§ 170.64, 194.232 and 201.611a); 2.77×4,567=12,650.59 wine gallons.

If another industry member were computing the wine gallon total of 4,567 cases of a 50 ml size product, that industry member could calculate—

(3) 0.050 liters×120 bottles per case=6 liters per case; 6×4,567 cases=27,402.0 liters; 27,402×0.264172=7,238.84 wine gallons; or

(4) 0.050 liters×120 bottles per case=6 liters; 6×0.264172=1.59 wine gallons per case; 1.59×4,567=7,261.53 wine gallons.

In the above examples using the 1.75 liter size, there is an approximately 17-wine gallon difference depending on whether the conversion factor is used before or after multiplying by the number of cases. With the 50 ml size, the difference is about 23 wine gallons. When the conversion factor is used before multiplying by the number of cases, the wine gallon total is understated by about 17 gallons for the 1.75 liter size and overstated by about 23 gallons for the 50 ml size.

The implications of the above differences (depending on whether the conversion factor is used before or after multiplying by the number of cases) could have effects not only on the record-keeping and accounting systems of industry members, but these differences could also affect the payment of excise taxes.

Solutions. The above problems would not arise if industry members only used the conversion factor after multiplying by the number of cases, or if they maintained records in liters where possible (such as the Daily Summary of Removals from Controlled Stock). However, these solutions would give industry members little flexibility in determining what unit to keep their records in.

Another solution is to require that equivalent wine gallon and proof gallons amounts (i.e., liters×0.264172×proof) be rounded off to six decimal places whenever the conversion factor is used before multiplying by the number of cases. Thus, examples (2) and (4) above would be recomputed as follows:

(2) 1.75×6=10.5 liters per case; 10.5×0.264172=2.773806 wine gallons per case; 2.773806×4,567 cases=12,667.97 wine gallons; and

(4) 0.050×120=6 liters per case; 6×0.264172=1.585032 wine gallons per case; 1.585032×4,567 cases=7,238.84 wine gallons.

By rounding the wine-gallons-per-case or proof gallons per case amounts to the nearest sixth decimal place, the computations are exactly equal to examples (1) and (3), respectively. The integrity of all commercial records is preserved and taxpayments would be accurate.

Regulation changes. ATF is, therefore, revising the three conversion factor sections, §§ 170.64, 194.232 and 201.611a, by requiring that conversions from metric to U.S. units be carried out to the nearest sixth decimal place whenever the conversion factor is used before multiplying by the number of cases. Whenever the conversion factor is used after multiplying by the number of cases, the equivalent U.S. units need only be rounded off to the nearest hundredth.

The following examples illustrate how conversions from metric to U.S. units are to be rounded off:

(5) 1.75 liters×6 bottles=10.5 liters per cases; 10.5×0.264172=2.773806 wine gallons per case; 4,567 cases×2.773806=12,667.97 wine gallons.

(6) 1.75 liters×6 bottles=10.5 liters per case; 10.5×0.264172=2.773806 wine gallons per case; 2.773806×0.8 (proof divided by 100)=2.219045 proof gallons per case; 2.219045×4,567 cases=10,134.38 proof gallons; or

(7) 1.75 liters×6 bottles=10.5 liters per case; 10.5×0.264172=2.773806 wine gallons per case; 2.773806×4,567 cases=12,667.97 wine gallons; 12,667.97×0.8 (proof divided by 100)=10,134.38 proof gallons.

(8) 1.75 liters×6 bottles=10.5 liters per case; 10.5×4,567 cases=47,953.50 liters; 47,953.50×0.264172=12,667.97 wine gallons; 12,667.97×0.8 (proof divided by 100)=10,134.38 proof gallons.

In the above examples, once the amounts are multiplied by the number of cases, it is only necessary to round off to the nearest one-hundredth.

The following regulations are issued under the authority contained in 26 U.S.C. 7805 (68 Stat. 917).

REGULATION CHANGES

In consideration of the foregoing, 27 CFR is amended as follows:

PART 170—MISCELLANEOUS REGULATIONS RELATING TO LIQUOR

Paragraph 1. Section 170.64 of Part 170 is amended to read as follows:

§ 170.64 Conversion between metric and U.S. units.

Whenever liters are converted to wine gallons, the quantity in liters shall be multiplied by 0.264172 to determine the equivalent quantity in wine gallons. If the conversion from liters to wine gallons is made before multiplying by the number of cases, the quantity in U.S. units shall be rounded off to the nearest sixth decimal place. If the conversion from liters to U.S. units is made after multiplying by the number of cases, the quantity in U.S. units shall be rounded off to the nearest hundredth.

PART 194—LIQUOR DEALERS

Par. 2. Section 194.232 is amended to read as follows:

§ 194.232 Conversion between metric and U.S. units.

Whenever liters are converted to wine gallons, the quantity in liters shall be multiplied by 0.264172 to determine the equivalent quantity in wine gallons. If the conversion from liters to U.S. units is made before multiplying by the numbers of cases, the quantity in U.S. units shall be rounded off to the nearest sixth decimal place. If the conversion from liters to U.S. units is made after multiplying by the number of cases, the quantity in U.S. units shall be rounded off to the nearest hundredth.

PART 201—DISTILLED SPIRITS PLANTS

Par. 3. Section 201.611a of Part 201 is amended to read as follows:

§ 201.611a Conversion between metric and U.S. units.

Whenever liters are converted to wine gallons, the quantity in liters shall be multiplied by 0.264172 to determine the equivalent quantity in wine gallons. If the conversion from liters to U.S. units is made before multiplying by the number of cases, the quantity in U.S. units shall be rounded off to the nearest sixth decimal place. If the conversion is made after multiplying by the number of cases, the quantity in U.S. units shall be rounded off to the nearest hundredth.

Because the amendments made by this Treasury decision correct a potential inequity in determining excise taxes and are clarifying in nature, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. 553(b) nor subject to the effective date limitation of 5 U.S.C. 553(d).

Therefore, this Treasury decision shall become effective on January 21, 1977.

The Bureau of Alcohol, Tobacco and Firearms 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: December 15, 1976.

REX D. DAVIS,
Director.

Approved: January 10, 1977.

JERRY THOMAS,
Under Secretary of the Treasury.

[FR Doc.77-1924 Filed 1-19-77;8:45 am]

Title 31—Money and Finance

SUBTITLE A—OFFICE OF THE SECRETARY OF THE TREASURY

PART 13—PROCEDURES FOR PROVIDING ASSISTANCE TO STATE AND LOCAL GOVERNMENTS IN PROTECTING FOREIGN DIPLOMATIC MISSIONS

Daily Cost Sheets; Correction

In FR Doc. 76-37077, appearing at page 55179 in the issue for Friday, December 17, 1976, the last line of page 55187, reading "*Attach daily cost sheets (Appendix I (B) through I(E)." should be changed to read: "*Attach daily cost sheets (Appendix II(B) through II(E))."

Dated: January 11, 1977.

JERRY THOMAS,
Under Secretary of the Treasury.

[FR Doc.77-1835 Filed 1-19-77;8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 76-119]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Oakland Inner Harbor Tidal Canal, Calif.

This amendment changes the regulations for the High Street bridge to provide for closed periods from 7:30 a.m. to 8:30 a.m. and from 3:45 p.m. to 5:45 p.m., Monday through Friday. This amendment was circulated as a public notice dated October 29, 1976 by the Commander, Twelfth Coast Guard District and was published in the FEDERAL REGISTER as a notice of proposed rulemaking (CGD 76-119) on October 28, 1976 (41 FR 47263). Four replies were received that concurred with or had no objection to the proposal.

Ownership of the Fruitvale Avenue bridge has been transferred from the Department of the Army to Alameda County and the heading of § 117.712(d) is amended to reflect this change.

Accordingly, Part 117 of Title 33 of the Code of Federal Regulations is amended by revising § 117.712(d) to read as follows:

§ 117.712 Tributaries of San Francisco Bay and San Pablo Bay, Calif.

* * * * *

(d) *Oakland Inner Harbor Tidal Canal; County of Alameda Highway bridges at Park, Fruitvale Avenue (Miller-Sweeny) and High Streets and Department of Army railroad bridge at Fruitvale Avenue.* (1) From 7:30 a.m. to 8:30 a.m., and from 3:45 p.m. to 5:45 p.m., Monday through Friday, except holidays, the draw need not open for the passage of vessels except that—

(i) The draw shall open as soon as possible for vessels in distress, and emergency vessels, including commercial vessels engaged in rescue or emergency salvage operations; and

(ii) The draw shall open after two hours notice to the Park Street bridge for vessels which must, for reasons of safety, move on a tide or slack water.

(2) At all other time, the draw shall open on signal.

* * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; (33 U.S.C. 499, 49 U.S.C. 1655(g)(2)); 49 CFR 1.46(c)(5), 33 CFR 1.051(c)(4).)

Effective date: This revision shall be come effective on February 22, 1977.

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

Dated: January 17, 1977.

A. F. FUGARO,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.77-1874 Filed 1-19-76;8:45 am]

CHAPTER II—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

[ER 1105-2-81]

PART 265—PLANNING ASSISTANCE TO STATES

Amendments

On September 15, 1975, the Chief of Engineers adopted a regulation on the Corps of Engineers implementation of section 22 of the Water Resources Development Act of 1974 (Pub. L. 93-251). This law permits the Chief of Engineers to participate with States in developing comprehensive water resources plans.

Section 168 of the Water Resources Development Act of 1976 (Pub. L. 94-587), raised the annual monetary limitation for the section 22 planning assistance program from $2 million to $4 million.

This amendment revises the Corps regulation to reflect the new monetary limitation and to clarify the eligibility criteria for work under the section 22 program.

Since the amendments to this regulation contain no changes in policies or procedures for the section 22 program, the amendments are not being published under proposed rulemaking and are being adopted effective 22 October 1976, the date on which the President approved Pub. L. 94-587.

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

Dated: January 10, 1977.

RUSSELL J. LAMP,
Colonel, Corps of Engineers Executive.

Part 265 of Title 33 is amended as follows:

§ 265.10 [Amended]

1. Section 265.10 is amended to add two words at the end of sentence to read as follows: "This regulation provides basic policies and general guidelines for Corps of Engineers' participation in the program authorized by section 22 of the Water Resources Development Act of 1974 (Pub. L. 93-251), as amended."

§ 265.12 [Amended]

2. Section 265.12(a) is revised to indicate amendment to referenced section 22, Pub. L. 251, to read as follows: "Section 22, Public Law 93-251, Water Resources Development Act of 1974, 7 March 1974, as amended by section 168, Pub. L. 94-587, Water Resources Development Act of 1976, 22 October 1976 (90 Stat. 2936)".

§ 265.13 [Amended]

3. Section 265.13(a) is amended to add two words in first sentence to read as follows: "Specifically, section 22, as amended, provides for the following:"

4. Section 265.13(a)(2) is amended to change the amount from "$2,000,000" to "$4,000,000".

§ 265.15 [Amended]

5. Section 265.15(b) is amended to revise first sentence to read as follows: "As outlined in paragraph 5a, the primary factor in the determination of eligibility is the objective of the study. The section 22 program is to furnish information into a larger study to be used in some type of State water plan."

[FR Doc.77-1332 Filed 1-19-77;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 670-8]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Mass Transit Priority Incentives in the State of New Jersey; Action of Employers' Programs

The purpose of this notice is to announce approval by the Environmental Protection Agency (EPA) of two employer transit incentive programs and to announce the discontinuation of another program previously approved. These programs are developed in accordance with a part of the air pollution control plan for the State of New Jersey as contained in 40 CFR 52.1590, "Employer's provisions for mass transit priority incentives." This regulation requires certain employers who maintain 400 or more parking spaces available for use by their employees to submit an adequate transit incentive program designed to encourage the use of mass transit, carpooling, vanpooling and other strategies.

In the November 12, 1976 FEDERAL REGISTER (41 FR 50052), EPA announced its proposed approval of transit incentive plans submitted by the BASF Wyandotte Corporation located in Parsippany, New Jersey and Nabisco, Inc. located in East Hanover, New Jersey. In that same notice EPA announced its intention to approve the discontinuation of the program previously approved for the Otis Elevator Company of Harrison, New Jersey. Otis Elevator Company no longer maintains 400 or more employee parking spaces at its facility.

The November 12 FEDERAL REGISTER notice also provided an opportunity for public comment on each of these actions. No comments were received. EPA review has determined that the transit incentive plans submitted by the BASF Wyandotte Corporation, Parsippany, New Jersey and Nabisco, Inc., East Hanover, New Jersey maximize carpooling and transit utilization and represent a good faith effort on the part of these employers. Therefore, they are hereby approved. The transit incentive program of the Otis Elevator Company, Harrison, New Jersey, also is hereby approved for discontinuance.

Dated: January 12, 1977.

JOHN QUARLES,
Acting Administrator,
Environmental Protection Agency.

[FR Doc.77-1625 Filed 1-19-77; 8:45 am]

Title 45—Public Welfare

CHAPTER I—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 185—EMERGENCY SCHOOL AID

Amended Criteria and Procedures

On October 15, 1976 there was published in the FEDERAL REGISTER, at 41 FR 45702, a Notice of Proposed Rulemaking which set forth standards for the minimum acceptable merit of applications for assistance under sections 706(a), 706(b), 708(b), and 708(c) of the Emergency School Aid Act, as amended (20 U.S.C. 1601–1619) and procedures for evaluating these applications.

Interested persons were given 45 days to submit comments and recommendations concerning the proposed amendments. One letter of comment was received, but none of the comments and recommendations in that letter pertained to standards for the minimum acceptable merit of applications or to fund reservation procedures to be used in evaluating applications. Since the only comments and recommendations received were, therefore, beyond the scope of the proposed amendments, those amendments are adopted without change.

As required by section 431(d) of the General Education Provisions Act, as amended (20 U.S.C. 1232(d)), these regulations have been transmitted to the Congress concurrently with the publication of this document in the FEDERAL REGISTER. That section provides that regulations subject to it become effective on the forty-fifth day following transmission, subject to the provisions in that section concerning Congressional action and adjournment.

The Assistant Secretary for Education 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.

In consideration of the foregoing, Part 185 of Title 45 of the Code of Federal Regulations is amended as set forth below.

(Catalog of Federal Domestic Assistance Number 13.525 Emergency School Aid—Basic Grants; 13.526 Emergency School Aid—Pilot Projects; 13.528 Emergency School Aid—Bilingual Projects; 13.529 Emergency School Aid—Nonprofit Organizations.)

Dated: December 23, 1976.

CHARLES E. HANSEN,
Acting Assistant
Secretary for Education.

Approved: January 12, 1977.

DAVID MATHEWS,
Secretary of Health, Education, and Welfare.

1. In § 185.14, paragraph (c) is revised to read as follows:

§ 185.14 Criteria for assistance.

* * * * *

(c) *Funding criteria and procedures.* (1) In determining amounts to be awarded to applicants for assistance under this subpart, the Assistant Secretary shall consider:

(i) The additional cost to such applicants (as such cost is defined in § 185.13 (a) of effectively carrying out its proposed program, project, or activity; and

(ii) The amount of funds available for assistance under this subpart within the State in relation to other applications from the State pending before the Assistant Secretary.

(2) An application for assistance under this subpart will be considered to set forth a program, project, or activity of such insufficient promise for achieving the purpose of the Act that its approval is not warranted, and shall not be approved for funding, if such application has been awarded:

(i) fewer than 40 points on the basis of the criteria in paragraphs (a) and (b) of this section; or

(ii) fewer than 28 points on the basis of the criteria in paragraph (b) of this section.

(3) An application determined on the basis of the standards in paragraph (c)(2) of this section to be unapprovable will be returned to the applicant. The Assistant Secretary shall notify the applicant of the specific reasons for such determination, and shall afford the applicant an appropriate opportunity to modify and resubmit its application.

(4) Except as provided in paragraph (c)(5) of this section, the Assistant Secretary shall award funds to applicants for assistance under this subpart from a State (whose applications meet the requirements of the Act and are approvable on the basis of the standards in paragraph (c)(2) of this section) in the order of their ranking on the basis of the criteria set out in paragraphs (a) and (b) of this section until the funds apportioned to the State for the purpose of this subpart have been exhausted.

(5)(i) Not less than one-third of the funds apportioned to a State for the purpose of this subpart shall be reserved until applicants whose initial applications were determined to be unapprovable on the basis of the standards in paragraph (c)(2) of this section have been afforded an appropriate opportunity to modify and resubmit their applications. From the funds not so reserved, the Assistant Secretary shall award funds to applicants whose applications are approvable in the order of the ranking of their initial applications (on the basis of the criteria set out in paragraphs (a) and (b) of this section) until unreserved funds are insufficient to support the next ranking approvable application at the level determined by the Assistant Secretary to be necessary to carry out effectively the proposed program, project or activity.

(ii) Where unreserved funds are insufficient to support the next ranking approvable application at the level determined by the Assistant Secretary to be necessary to carry out effectively the proposed program, project or activity, the Assistant Secretary shall notify the applicant of the specific reasons for its ranking, and shall afford the applicant an appropriate opportunity to modify and resubmit its application to compete for reserved funds. If such an applicant chooses to modify and resubmit its application, its ranking shall be determined on the basis of the criteria set out in paragraphs (a) and (b) of this section as applied to its resubmitted application.

(Public Law 92–318, sections 702; 705(a)(1), (b)(3); 706(a); 710(c), (d)(2).)

2. In § 185.24, paragraph (c) is revised to read as follows:

§ 185.24 Criteria for assistance.

* * * * *

(c) *Funding criteria and procedures.* The provisions of § 185.14(c) shall apply to awards of assistance under this subpart, except that:

(1) References in § 185.14(c) to "this subpart" shall be understood to refer to Subpart C—Pilot Projects;

(2) References in § 185.14(c) to "this section" shall be understood to refer to § 185.24; and

(3) The minimum points referred to in paragraph (c)(2) of § 185.14 shall, for the purpose of this subpart, be 45 on the basis of the criteria in paragraphs (a) and (b) of this section and 33 on the basis of the criteria in paragraph (b).

(Public Law 92–318, sections 702; 705(a)(2), (b)(3); 706(b); 710(c), (d)(2).)

3. In § 185.54, paragraph (c) is revised to read as follows:

§ 185.54 Criteria for assistance.

* * * * *

(c) *Funding criteria and procedures.* The provisions of § 185.14(c) shall apply to awards of assistance under this subpart, except that:

(1) References in § 185.14(c) to "this subpart" shall be understood to refer to Subpart F—Bilingual Projects;

(3) References in § 185.14(c) to "this section" shall be understood to refer to § 185.54;

(3) References in § 185.14(c) to a "State" shall be understood to refer to the 50 States and the District of Columbia, taken together; and

(4) The minimum points referred to in subparagraph (2) of § 185.14(c) shall, for the purpose of this subpart, be 45 on the basis of the criteria in paragraphs (a) and (b) of this section, and 33 on the basis of the criteria in § 185.54(b).

(20 U.S.C. 1601; 1603(b)(A); 1607(c); 1609 (d)(2).)

4. In § 185.64, paragraph (c) is revised to read as follows:

§ 185.64 Criteria for assistance.

* * * * *

(c) *Funding criteria and procedures.* The provisions of § 185.14(c) shall apply to awards of assistance under this subpart, except that:

(1) References in § 185.14(c) to "this subpart" shall be understood to refer to Subpart G—Public or Nonprofit Private Organizations; and

(2) References in § 185.14(c) to "this section" shall be understood to refer to § 185.64.

(Public Law 92-318, sections 702; 705(a)(3), (b)(3); 708(b).)

[FR Doc.77-1947 Filed 1-19-77;8:45 am]

CHAPTER III—OFFICE OF CHILD SUPPORT ENFORCEMENT (CHILD SUPPORT ENFORCEMENT PROGRAM) DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 304—FEDERAL FINANCIAL PARTICIPATION

Applicability of Other Regulations

Part 304, Chapter III, Title 45 of the Code of Federal Regulations is amended by adding a new § 304.29 which explicitly conforms §§ 201.14 and 201.15 of 45 CFR Part 201, Grants to States for Public Assistance Programs, relating to disallowance, deferral and reconsideration of claims for FFP, to the terminology used in the Child Support Enforcement Program.

Good cause exists to dispense with notice of proposed rulemaking since 45 CFR 201.14 and 45 CFR 201.15 already apply to all of title IV, including title IV-D. The purpose of this regulation is to clarify which officials perform the specific tasks related to disallowance, deferral and reconsideration in the Office of Child Support Enforcement.

As amended, Part 304 reads as set forth below:

Section 304.29 is added to read as follows:

§ 304.29 Applicability of other regulations.

Sections 201.14 and 201.15 of Chapter II of Title 45 of the Code of Federal Regulations, which establish procedures for disallowance, deferral and reconsideration of claims for expenditures submitted by the States, shall apply to all expenditures claimed for FFP under title IV-D of the Act. For purposes of applying those provisions under title IV-D, "Service" shall read "Office" which refers to the Office of Child Support Enforcement; "Administrator" shall read "Director" which refers to the Director, Office of Child Support Enforcement; "Deputy Administrator" shall read "Deputy Director" which refers to the Deputy Director, Office of Child Support Enforcement; "Regional Commissioner" shall read "Regional Representative" which refers to the Regional Representatives of the Office of Child Support Enforcement; and "State" shall refer to the State IV-D agency.

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302).)

This regulation shall be effective on January 21, 1977.

(Catalog of Federal Domestic Assistance Program No. 13679, Child Support Enforcement Program.)

NOTE.—The Office of Child Support Enforcement has determined that this document does not require preparation of an inflationary impact statement under Executive Order 11821 and OMB Circular A-107.

Dated: January 10, 1977.

ROBERT FULTON,
Director, Office of Child Support Enforcement.

Approved: January 13, 1977.

MARJORIE LYNCH,
Acting Secretary.

[FR Doc.77-1946 Filed 1-19-77;8:45 am]

Title 49—Transportation

CHAPTER II—FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[FRA Docket No. RSOR-3; Notice 6]

PART 218—RAILROAD OPERATING RULES

Blue Signal Protection of Workmen; Correction

In FR Doc. 77-1043 appearing at page 2318 in the FEDERAL REGISTER of Tuesday, January 11, 1977, paragraph (a) of § 218.23 appearing on page 2320 is corrected in the second line of that paragraph by inserting the words "§ 218.25 or" immediately following the word "with", and immediately before the word "§ 218.27".

Dated: January 14, 1977.

R. LAWRENCE MCCAFFREY, Jr.,
Chief Counsel.

[FR Doc.77-1817 Filed 1-19-77;8:45 am]

[FRA Docket No. RSRM-1; Notice 3]

PART 221—REAR END MARKING DEVICE—PASSENGER, COMMUTER AND FREIGHT TRAINS

Miscellaneous Corrections

In FR Doc. 77-1044 appearing at page 2321 in the FEDERAL REGISTER of Tuesday, January 11, 1977, the following changes should be made:

1. On page 2325 paragraph (c) of § 221.5 is corrected in the first line and in the fourth line by deleting from both lines the word "selfpropelled" and inserting in its place in both lines the word "self-propelled".

2. On page 2326 paragraph (a) of § 221.13 is corrected in the fourth line by deleting the word "located" and inserting in its place the word "located".

3. On page 2326 paragraph (a) of § 218.15 is corrected by deleting the period at the end thereof and inserting in its place "with:".

4. On page 2326 paragraph (c)(1) of § 221.15 is corrected to read as follows:

§ 221.15 Marking devices.

* * * * *

(c) * * *

(1) At least one marking device which complies with paragraph (a) of this section; or

* * * * *

Dated: January 14, 1977.

R. LAWRENCE MCCAFFREY, Jr.
Chief Counsel.

[FR Doc.77-1816 Filed 1-19-77;8:45 am]

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 501—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

Amended Delegations of Authority

This notice amends the delegation of authority to administer the odometer requirements of Title IV of the Motor Vehicle Information and Cost Savings Act (Pub. L. 92-513, as amended Pub. L. 94-364, 15 U.S.C. 1981-1999).

The authority to administer Title IV, delegated to the Associate Administrator for Motor Vehicle Programs at 49 CFR 501.8(c), is hereby deleted from § 501.8 (c) and redelegated to the Chief Counsel as paragraph (a) of a new § 501.8(i).

In consideration of the foregoing, Part 501 of Title 49, Code of Federal Regulations, is amended as follows:

§ 501.8 [Amended]

1. The last clause of § 501.8(c) is amended as follows:

* * * * *

(c) * * *; and Titles I and II of the Motor Vehicle Information and Cost Savings Act (86 Stat. 947, as amended 90 Stat. 981; 15 U.S.C. 1901).

* * * * *

2. Section 501.8(i) is added as follows:

* * * * *

(i) *Chief Counsel.* The Chief Counsel is delegated authority to:

(1) Exercise the powers of the Administrator under Title IV of the Motor Vehicle Information and Cost Savings Act (86 Stat. 947, as amended 90 Stat. 981; 15 U.S.C. 1901).

This notice amends a rule of agency practice and therefore requires no notice of proposed rulemaking and opportunity for comment thereon.

(Pub. L. 92-513, 86 Stat. 947, as amended Pub. L. 94-364, 90 Stat 981, 15 U.S.C. 1901-1999; delegation at 49 CFR 1.50(f).)

Effective date: January 14, 1977.

Issued on: January 14, 1977.

JOHN W. SNOW,
Administrator.

[FR Doc.77-1870 Filed 1-19-77;8:45 am]

[Docket No. 76-3; Notice 4]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

New Pneumatic Tires for Passenger Cars

This amendment adds certain tire size designations to 49 CFR 571.109 (Federal Motor Vehicle Safety Standard No. 109).

Guidelines were published in the FEDERAL REGISTER on October 5, 1968 (33 FR 14964), and amended August 31, 1974 (39 FR 28980), specifying procedures by which routine additions could be made effective 30 days from publication in the FEDERAL REGISTER, if no objections are received. If objections are received, rulemaking procedures for the issuance of motor vehicle safety standards (49 CFR Part 553) are followed.

Accordingly, Appendix A of 49 CFR § 571.109 is amended, subject to the 30-day provision indicated above, as specified below.

Effective date: February 22, 1977, if objections are not received.

The following changes are made to Appendix A of § 571.109, Standard No. 109, New Pneumatic Tires.

§ 571.109 [Appendix Amended].

1. Amendment requested by the Rubber Manufacturers Association:

In Table I-G, the following new tire size designation and corresponding values are added.

TABLE I-G.—*Tire load ratings, test rims, minimum size factors, and section widths for "70 Series" radial ply tires*

Tire size [1] designation	Maximum tire loads (pounds) at various cold inflation pressures (pounds per square inch)													Test rim width (inches)	Minimum size factor (inches)	Section width [2] (inches)
	16	18	20	22	24	26	28	30	32	34	36	38	40			
BR70-15	780	840	890	930	980	1,030	1,070	1,110	1,150	1,190	1,230	1,270	1,300	5	31.92	7.10

[1] The letters "HR," "SR" or "VR" may be included in any specified tire size designation adjacent to or in place of the dash.
[2] Actual section width and overall width shall not exceed the specified section width by more than 7 pct.

2. Amendment requested by the European Tyre and Rim Technical Organisation:

In Table I-Y the following new tire size designation and corresponding values are added.

TABLE I-Y.—*Tire load ratings, test rims, minimum size factors, and section widths for all millimetric "65" series radial ply tires*

Tire size [1] designation	Maximum tire loads (pounds) at various cold inflation pressures (pounds per square inch)													Test rim width (millimeter)	Minimum size factor (inches)	Section width [2] (inches)
	16	18	20	22	24	26	28	30	32	34	36	38	40			
195/65R375	865	905	945	990	1,035	1,080	1,125	1,170	1,210	1,250	1,290	1,330	1,370	105	31.68	7.48

[1] The letters "H," "S" or "V" may be included in any specified tire size designation adjacent to the letter "R."
[2] Actual section width and overall width shall not exceed the specified section width by more than 7 pct.

(Secs. 103, 119, 201 and 202, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407, 1421 and 1422); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.)

Issued on January 12, 1977.

ROBERT L. CARTER,
Associate Administrator,
Motor Vehicle Programs.

[FR Doc.77-1511 Filed 1-19-77;8:45 am]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Revised Service Order No. 1182]

PART 1033—CAR SERVICE

Substitution of Stock Cars for Boxcars

At a Session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 14th day of January, 1977.

It appearing, That, because of an acute shortage of boxcars for shipments of grain, grain screenings, grain products, soybeans or soybean products, during past months, certain shippers were granted permission to install at their own expense, plywood linings to stock cars owned by the Burlington Northern Inc. (BN); that such cars are assigned by the BN to those shippers for transporting shipments of the aforementioned commodities; that continued use of these cars for transporting grain, grain screenings, grain products, soybeans or soybean products is precluded by certain tariff provisions requiring the use of boxcars, thus curtailing shipments of grain, grain screenings, grain products, soybeans or soybean products and creating great economic loss; that present regulations and practices with respect to the use of boxcars are ineffective. It is the opinion of the Commission that continued use of these cars will promote car service in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

§ 1033.1182 Substitution of stock cars for boxcars.

(a) *Substitution of cars.* Subject to the concurrence of the shipper, the Burlington Northern Inc. (BN) may substitute specially conditioned stock cars for shipments of grain, grain screenings, grain products, soybeans or soybean products, whether from the point of origin or from an intermediate in-transit point, regardless of tariff provisions requiring the use of boxcars.

(b) *Minimum weights.* The minimum weights per shipments of grain, grain screenings, grain products, soybeans or soybean products transported in stock cars substituted for boxcars shall be the minimum weights specified in the tariffs for shipments made in boxcars regardless of the number of stock cars required to be used to secure the minimum weight.

(c) Bills of lading covering movements authorized by this order shall contain a notation that shipment is moving under authority of Revised Service Order No. 1182.

(d) The term "stock cars" means all cars listed in the Official Railway Equipment Register, I.C.C.-R.E.R. No. 401, issued by W. J. Trezise, or successive issues thereof, as having one of the mechanical designations listed under the heading Class "S"—Stock Car Type, and bearing reporting marks assigned to the BN.

(e) The term "boxcars" means all cars listed in the Official Railway Equipment Register, I.C.C.-R.E.R. No. 401, issued by W. J. Trezise, or successive issues thereof, as having one of the mechanical designations listed under the heading Class "X"—Box Car Type.

(f) *Rules and regulations suspended.* The operation of tariffs or other rules and regulations, insofar as they conflict with the provisions of this order, is hereby suspended.

(g) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(h) *Effective date.* This order shall become effective at 11:59 p.m., January 15, 1977.

(i) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., July 15, 1977, unles otherwise modified, changed, or suspended by order of this Commission.

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

It is further ordered, That a copy of this order and direction shall be served

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

By the Commission, Railroad Service Board, members Joel E. Burns, Lewis R. Teeple and Thomas J. Byrne.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1960 Filed 1-19-77;8:45 am]

Title 50—Wildlife and Fisheries

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

PART 33—SPORT FISHING

Savannah National Wildlife Refuge, Georgia

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

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

GEORGIA

SAVANNAH NATIONAL WILDLIFE REFUGE

Sport fishing on the Savannah National Wildlife Refuge is permitted only on impounded waters, tidal creeks, ditches and canals in an area comprising 13,000 acres and delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, N.E., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing season on the refuge extends from March 15, 1977 through October 25, 1977.

(2) Fishing is permitted during daylight hours only.

(3) Outboard motors prohibited in impounded waters.

(4) Tidal creeks may be fished from boat only from February 1 through October 25.

(5) Rod and reel, pole and line, artificial and live baits permitted.

(6) All areas posted with "closed area signs" are closed to all activities including fishing.

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

KENNETH E. BLACK,
Regional Director,
Fish and Wildlife Service.

JANUARY 11, 1977.

[FR Doc.77-1923 Filed 1-19-77;8:45 am]

PART 28—PUBLIC ACCESS, USE, AND RECREATION

Wheeler National Wildlife Refuge, Alabama

The following special regulation is issued and is effective on April 1, 1977.

§ 28.28 Special regulations, public access, use, and recreation; for individual wildlife refuge areas.

ALABAMA

WHEELER NATIONAL WILDLIFE REFUGE

With the exception of the display pool adjoining the observation building, the area immediately north of its dike, and along the headquarters shoreline, which are closed to all fishing throughout the year, the area is open to transportation of unstrung bows and arrows when used for fishing in conformance with Alabama State fishing regulations. This regulation effective April 1, 1977 through June 30, 1977.

KENNETH E. BLACK,
Regional Director,
Fish and Wildlife Service.

JANUARY 11, 1977.

[FR Doc.77-1922 Filed 1-19-77;8:45 am]

CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

Approval and Review of State Laws and Regulations; Correction

On August 31, 1976, in FR Doc. 76-25514 appearing at page 36659, the Director, National Marine Fisheries Service, published final regulations regarding the approval and review of State laws and regulations governing the taking and importing of marine mammals.

The following amendment is made: On page 36661, in § 216.107, the word "rate" is deleted from the second line.

Dated: January 14, 1977.

JACK W. GEHRINGER,
Deputy Director,
National Marine Fisheries Service.

[FR Doc.77-1826 Filed 1-19-77;8:45 am]

Title 7—Agriculture

CHAPTER VI—SOIL CONSERVATION SERVICE, DEPARTMENT OF AGRICULTURE

PART 601—FUNCTIONS

Functions Assigned

On December 17, 1973, there was published in the FEDERAL REGISTER (38 FR 34642) a notice of organization and functions of the Soil Conservation Service, United States Department of Agriculture. This was published in Chapter VI of Title 7 of the Code of Federal Regulations. It is necessary to add the function assigned to the Soil Conservation Service for coordination of the United States Department of Agriculture input to the Coastal Zone Management Program administered by the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, Department of Commerce.

The Administrator of the Soil Conservation Service was designated on March 31, 1975, by letter from the Secretary of Agriculture to the Acting Secretary of Commerce, as the USDA representative to coordinate reviews of State coastal zone management plans and associated environmental impact statements within USDA and with the Office of Coastal Zone Management. This publication adds that assignment to the list of functions assigned.

7 CFR 601.1 is amended by adding a new § 601.1(h), reading as follows:

§ 601.1 Functions assigned.

* * * * *

(h) Coordination of Departmental input and assistance to the Office of Coastal Zone Management, Department of Commerce, and to qualifying states and localities in the development, review, and implementation of coastal management programs prepared under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.).

Effective date: January 21, 1977.

R. M. DAVIS,
Administrator.

[FR Doc.77-1820 Filed 1-19-77;8:45 am]

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

[Navel Orange Reg. 391, Amdt. 1]

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

Minimum Size Requirement

This amendment extends the minimum size requirement of 2.32 inches in diameter currently in effect for navel oranges grown in District 2 of the production area, effective January 21, through July 15, 1977. This size requirement is designed to promote orderly marketing in the interest of producers and consumers.

On December 30, 1976, notice was published in the FEDERAL REGISTER (41 FR 56821) regarding a proposed amendment to be made effective 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. This notice allowed interested persons 14 days during which they could submit written data, views, or arguments pertaining to this proposed amendment. None were submitted. The amendment was proposed by the Navel Orange Administrative Committee established pursuant to the said marketing agreement and order. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

This action reflects the Department's appraisal of the need for regulation based on the current and prospective crop and market conditions. Shipment of navel oranges from District 2 of the production area is now in progress, and such navel oranges in fresh domestic shipments are required to be at least 2.32 inches in diameter through January 20, 1977. This amendment extends the effective period of this minimum size requirement through July 15, 1977. The volume and size composition of the navel orange crop grown in District 2 is such that ample supplies of the more desirable sizes of fruit are available to satisfy the demand in regulated channels. The amendment is designed to permit shipment of ample supplies of navel oranges of acceptable sizes in the interest of both growers and consumers, and is necessary to maintain orderly marketing conditions, provide consumer satisfaction, and prevent shipment of fruit of less desirable sizes. Navel oranges which do not meet the minimum size requirement may be shipped to fresh export markets where smaller fruit is in demand, left on the trees to attain further growth, or utilized in processing. The amendment is consistent with the objectives of the act of promoting orderly marketing and protecting the interest of consumers.

After consideration of all relevant matter presented, including the proposal set forth in the aforesaid notice, the recommendation and information submitted by the committee, and other available information, it is hereby found and determined that the amendment, as hereinafter set forth, is in accordance with the provisions of the said amended marketing agreement and order and will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) notice of this proposed amendment was published in the FEDERAL REGISTER and no objections were received; (2) the regulatory provisions in the amendment are the same as those now in effect through January 20, 1977, (3) compliance with these regulatory provisions will not require any special preparation on the part of navel orange handlers which cannot be completed by January 21, 1977; and (4) shipment of navel oranges from District 2 is now in progress, and insofar as practicable, the regulatory provisions should apply to all shipments of such oranges in order to effectuate the declared policy of the act.

Order. The provisions of § 907.691 *Navel Orange Regulation 391* (41 FR 54197) are amended to read as follows:

§ 907.691 Navel Orange Regulation 391.

Order. (a) During the period January 21, 1977, through July 15, 1977, no handler shall handle any navel oranges grown in District 2 which are of a size smaller than 2.32 inches in diameter, which shall be the largest measurement at a right angle to a straight line running from the stem to the blossom end of the fruit: *Provided*, That not to exceed 5 percent, by count, of the navel oranges contained in any type of container may measure smaller than 2.32 inches in diameter.

(b) The terms "handler" and "handle" as used herein shall have the same meaning as is given to the respective terms in said marketing agreement and order.

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

Dated, January 17, 1977, to become effective January 21, 1977.

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

[FR Doc.77-1965 Filed 1-19-77;8:45 am]

[Navel Orange Reg. 397]

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 21–27, 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.

§ 907.697 Navel orange regulation 397.

(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 regulation 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 improved during the past week. Prices f.o.b. averaged $3.46 a carton on a reported sales volume of 623 carlots last week, compared with $3.63 per carton on sales of 685 carlots a week earlier. Track and rolling supplies at 340 cars were up 11 cars from last week.

(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 regulation until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this regulation is based because available and the time this regulation must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for 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 regulation effective during the period herein specified; and compliance with this regulation will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on January 18, 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 21, 1977, through January 27, 1977, are hereby fixed as follows:

(i) District 1: 1,121,000 cartons;

(ii) District 2: 229,000 cartons;

(iii) District 3: Unlimited movement.

(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 19, 1977.

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

[FR Doc.77-2237 Filed 1-19-77;11:58 am]

PART 981—HANDLING OF ALMONDS GROWN IN CALIFORNIA

Revision of Salable and Reserve Percentages for 1976–77 Crop Year

This action revises the salable and reserve percentages for the 1976–77 crop year to 100 percent and 0 percent, respectively. Currently, salable, reserve and export percentages of 96.8 percent, 3.2 percent and 0 percent, respectively, for California almonds for the 1976–77 crop year are in effect (41 FR 43710). The 1976–77 crop year began July 1, 1976.

The action was unanimously recommended by the Almond Board of California pursuant to the provisions of the marketing agreement, as amended, and Order No. 981, as amended (7 CFR Part 981; 41 FR 26852, 27827, 53650), regulating the handling of almonds grown in California. The marketing agreement and order program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

In arriving at its recommendation the Board noted that there is no immediate prospect of selling reserve almonds in new-use outlets. Moreover, shipments of salable almonds during the first five months of the 1976–77 season were greater than handlers expected, and it now appears that trade demand for the entire year will exceed the projections made at the Almond Board meeting July 29, 1976. Thus, the quantity of almonds now held in reserve is needed to fill demand in normal marketing channels. Currently, the reserve percentage is 3.2 percent (8.3 million pounds) of the estimated marketable production of 264 million pounds as estimated by the Board at its July 29, 1976, meeting. The reserve is available to develop new outlets noncompetitive with existing normal domestic and export outlets. However, due to the changing market conditions, the Board has not specified any outlets.

In recommending a salable percentage of 100 percent, the Board, pursuant to §§ 981.47 and 981.49, revised its July estimates on which the percentages currently in effect were based. The Board's estimate of total production remains at 280 million pounds, but the Board lowered its estimate of California 1976 marketable production to 260 million pounds because poor harvest conditions caused a higher than anticipated rate of inedible material. Trade demand for the 1976–77 crop year is now estimated at 230 million pounds—95 million pounds for domestic needs and 135 million pounds for export needs. Previously, the Board estimated 1976–77 trade demand at 215 million pounds—95 million in domestic markets and 120 million pounds in export. A carryover adjustment of 30 million pounds, instead of 40.7 million pounds, is the result of an estimate of 89 million pounds for desirable handler carryover from the 1976 crop minus the 59 million pounds handlers carried over from the 1975 crop. This carryover adjustment is added to the trade demand estimate to equal 260 million pounds, the quantity of almonds from the estimated marketable production available for trade demand needs. Since the salable percentage is computed as the ratio of the total marketable production, 260 million pounds, to this total, also 260 million pounds, the salable percentage equals 100 percent. The reserve percentage, therefore, equals 0 percent.

After consideration of the Board's recommendation and supporting information, and other available information, it is found that to establish salable, reserve, and export percentages as hereinafter set forth will tend to effectuate the declared policy of the act.

It is also found that, it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in public rulemaking procedure, and that good cause exists for not postponing the effective time of this action until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that: (1) The relevant provisions of said amended marketing agreement and this part require that salable, reserve and export percentages designated for a particular crop year shall be applicable to all almonds received by handlers for their own accounts during such year; (2) the current crop year began on July 1, 1976, and the percentages established herein will automatically apply to all such almonds beginning with such date; and (3) this action relieves a restriction on handlers.

Therefore, the salable and reserve percentages for almonds received by handlers for their own account during the 1976–77 crop year are established as follows:

§ 981.226 Salable, reserve, and export percentages for almonds during the crop year, beginning July 1 1976.

The salable, reserve, and export percentages during the crop year beginning July 1, 1976, shall be 100 percent, 0 percent and 0 percent, respectively.

NOTE.—It is hereby certified that the economic and inflationary impacts of this regulation have been carefully evaluated in accordance with OMB Circular A-107.

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

Dated: January 14, 1977.

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

[FR Doc.77-1844 Filed 1-19-77;8:45 am]

CHAPTER XVII—RURAL ELECTRIFICATION ADMINISTRATION, DEPARTMENT OF AGRICULTURE

PART 1701—PUBLIC INFORMATION

Appendix A—REA Bulletins; Title Insurance

Appendix A to Part 1701, Title 7, is hereby amended to include a new supplement dated January 14, 1977, to REA Bulletin 380–1, Right-of-Way and Title Procedures, Telephone.

The purpose of this supplement is to further reduce the number of instances in which REA requires borrowers to secure title insurance for investments in real estate and improvements thereon which legally are considered part of the realty. Effective with the date of this supplement, REA will require title insurance only in cases in which the borrower's investment in realty is $250,000 or more. The revised regulation replaces that of April 12, 1966, which requires title insurance in cases in which the real estate investment is $100,000 or more.

Since this change will result in fewer instances in which title insurance will be required to be obtained by REA borrowers, and thereby benefits borrowers without the imposition of any additional burdens, it is not considered necessary to invite public comment prior to its adoption. However, any comment on the revised requirement may be submitted to the Director, Telephone Operations and Standards Division, Room 1355, South Building, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250, for appropriate consideration in any further revisions. Copies of the new supplement are available from the office named above.

Dated: January 14, 1977.

DAVID A. HAMIL,
Administrator.

[FR Doc.77-1847 Filed 1-19-77;8:45 am]

Title 20—Employees' Benefits

CHAPTER VI—EMPLOYMENT STANDARDS ADMINISTRATION, DEPARTMENT OF LABOR

SUBCHAPTER A—LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT AND RELATED STATUTES

PART 701—GENERAL; ADMINISTERING AGENCY; DEFINITIONS AND USE OF TERMS

PART 702—ADMINISTRATION AND PROCEDURES

Office of Workers' Compensation Programs; Longshoremen's and Harbor Workers' Compensation

On August 13, 1976, the Employment Standards Administration of the U.S. Department of Labor published a notice of proposed amendments to certain provisions of 20 CFR 701 and 702 in the FEDERAL REGISTER (41 FR 34294). The proposed amendments were intended to clarify and expand certain procedural rules applicable to the filing, processing and adjudication of claims under the

Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 901 et seq., as amended. The notice also established a 30-day comment period, during which time interested persons were invited to submit written comments on the proposal.

The Employment Standards Administration has received comments regarding many of the proposed amendments. No comments were received, however, concerning the proposed amendments to §§ 701.201 or 701.301(a)(5) which would redesignate the Office of Workmen's Compensation Programs as the Office of Worker's Compensation Programs, or to § 702.101 which would establish two new compensation districts—District No. 11 and District No. 12—and change the boundaries of Districts No. 10 and 14. To avoid further delay in effectuating these procedural amendments while considering the comments submitted concerning other amendments, the Employment Standards Administration adopts unchanged the amendments to §§ 701.201, 701.301(a)(5) and 702.101 as set forth in the FEDERAL REGISTER on August 13, 1976 at 41 FR 34294 and 34295 and as set forth below. Section 701.201 and § 701.301(a)(5) will be effective January 21, 1977. To insure the orderly transfer of responsibilities to the newly designated compensation districts and to protect the rights of persons affected by changes in existing boundaries, § 702.101 will be effective on March 1, 1977.

Section 701.201 is amended to read as follows:

§ 701.201 Establishment of the Office of Workers' Compensation Programs.

The Assistant Secretary of Labor for Employment Standards, by authority vested in him by the Secretary of Labor in Secretary's Order 16–75, 40 FR 55913, established in the Employment Standards Administration (ESA) an Office of Workers' Compensation Programs (OWCP) by Employment Standards Order 2–75, 40 FR 56743. The Assistant Secretary has further designated as the head thereof a Director who, under the general supervision of the Assistant Secretary, shall administer the programs assigned to that Office by the Assistant Secretary.

Section 701.301(a)(5) is amended to read as follows:

§ 701.301 Definitions and use of terms.

(a) * * *

(5) "Office of Workers' Compensation Programs" or "OWCP" or "the Office" means the Office of Workers' Compensation Programs in the Department of Labor, described in § 701.201 of this part. Whenever the term "Office of Workmen's Compensation Programs" appears in this part or in Part 702, it shall have the same meaning as "Office of Worker's Compensation Programs."

Section 702.101 is amended to read as follows:

§ 702.101 Establishment of compensation districts.

Pursuant to section 39(b) of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 939(b), the following compensation districts have been established:

District No. 1. Comprises the States of Massachusetts, Maine, New Hampshire, Vermont, Rhode Island, and Connecticut; with headquarters at Boston, Mass.

District No. 2. Comprises the States of New York and New Jersey; with headquarters at New York, N.Y.

District No. 3. Comprises the States of Pennsylvania, Delaware, and West Virginia; with headquarters at Philadelphia, Pa.

District No. 4. Comprises the State of Maryland and the District of Columbia; with headquarters at Baltimore, Md.

District No. 5. Comprises the State of Virginia; with headquarters at Norfolk, Va.

District No. 6. Comprises the States of Florida, North Carolina, Kentucky, Tennessee, South Carolina, Georgia, Alabama, and Mississippi; with headquarters at Jacksonville, Fla.

District No. 7. Comprises the States of Louisiana and Arkansas; with headquarters at New Orleans, La.

District No. 8. Comprises the States of Texas, Oklahoma, and New Mexico; with headquarters at Houston, Tex.

District No. 9. Comprises the States of Ohio, Indiana, and Michigan; with headquarters at Cleveland, Ohio.

District No. 10. Comprises the States of Illinois, Minnesota, and Wisconsin; with headquarters at Chicago, Ill.

District No. 11. Comprises the States of Missouri, Iowa, Kansas and Nebraska; with headquarters at Kansas City, Mo.

District No. 12. Comprises the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming; with headquarters at Denver, Colo.

District No. 13. Comprises the States of California, Arizona, and Nevada; with headquarters at San Francisco, Calif.

District No. 14. Comprises the States of Washington, Idaho, Oregon, and Alaska; with headquarters at Seattle, Wash.

District No. 15. Comprises the State of Hawaii; with headquarters at Honolulu, Hawaii.

Signed at Washington, D.C. this 13th day of January 1977.

JOHN C. READ,
Assistant Secretary for Employment Standards.

[FR Doc.77-2131 Filed 1-19-77;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.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

[7 CFR Part 1488]

FINANCING OF SALES OF AGRICULTURAL COMMODITIES

Financing of Export Sales of Agricultural Commodities From Private Stocks Under CCC Export Credit Sales Program (GSM–5)

The Office of the General Sales Manager (OGSM) is proposing to revise the regulations entitled *Financing of Export Sales of Agricultural Commodities from Private Stocks under CCC Export Credit Sales Program (GSM–4, Revision III)* and supplements I, II, and III, thereto, covering beef breeding cattle, dairy breeding cattle, and breeding swine, respectively. This revision includes minor editorial changes and the following proposed major changes:

1. The filing of financing applications and the issuance of financing approvals are eliminated.

2. The interest rate applicable to a particular sale will be the interest rate in effect on the date CCC receives the sale registration request.

Interested persons may participate in this proposed rulemaking by submitting written comments, suggestions, data, views, or arguments to the Assistant Sales Manager, Commercial Export Programs, Office of the General Sales Manager, U.S. Department of Agriculture, 14th Street and Independence Avenue, S.W., Washington, D.C. 20250. Each person submitting a comment should include his name and address, identify the notice (GSM–5), and give reasons for any recommendations. In order to be sure of consideration before final action is taken on this proposal, comments must be received before February 22, 1977. Copies of all written comments received will be available for examination by interested persons in room 4526, South Agriculture Building, 14th Street and Independence Avenue, S.W., Washington, D.C. 20250.

It is proposed to revise Part 1488, Title 7, Code of Federal Regulations, covering the CCC Export Credit Sales Program (GSM–4) published in the FEDERAL REGISTER on April 11, 1975 (40 FR 16322–16333), to read as follows:

Subpart A—Financing of Export Sales of Agricultural Commodities From Private Stocks Under CCC Export Credit Sales Program (GSM–5)

GENERAL

Sec.
1488.1 General Statement.
1488.2 Definition of terms.

FINANCING EXPORT SALES

1488.3 General.
1488.4 Submission of requests for sale registrations.
1488.5 Acceptance of sales registrations.
1488.6 Amendments to financing agreement.
1488.7 Expiration of period(s) for delivery and/or export.

DOCUMENTS REQUIRED FOR FINANCING

1488.8 Documents required after delivery.
1488.9 Evidence of export.

DOCUMENTS REQUIRED AFTER FINANCING

1488.10 Evidence of entry into country of destination.

DELIVERY REQUIREMENTS

1488.11 Liquidated damages.

BANK OBLIGATIONS AND REPAYMENT

1488.12 Coverage of bank obligations.
1488.13 CCC drafts.
1488.14 Interest charges.
1488.15 Advance payment.
1488.16 Liability for payment.

MISCELLANEOUS PROVISIONS

1488.17 Assignment.
1488.18 Covenant against contingent fees.
1488.19 Shipments of commodities on vessels calling at Cuban and North Vietnamese ports.
1488.20 Officials not to benefit.
1488.21 Exporter's records and accounts.
1488.22 Communications.

SUPPLEMENT I—BEEF BREEDING CATTLE
SUPPLEMENT II—DAIRY BREEDING CATTLE
SUPPLEMENT III—BREEDING SWINE

Authority: Sec. 5(f), 62 Stat. 1072 (15 U.S.C. 714c), and sec. 4, 80 Stat. 1538 (7 U.S.C. 1707a).

Subpart A—Financing of Export Sales of Agricultural Commodities From Private Stocks Under CCC Export Credit Sales Program (GSM–5)

GENERAL

§ 1488.1 General statement.

(a) Except as otherwise provided in this paragraph (a), the regulations and the supplements thereto contained in this Subpart A supersede the regulations and supplements revised April 1975, and set forth the terms and conditions governing the CCC Export Credit Sales Program (GSM–5). The maximum financing period shall be three years. The regulations and supplements as revised in April 1971 and April 1975, shall remain in effect for all transactions under financing approvals issued thereunder.

(b) Subject to the terms and conditions set forth in this Subpart A, CCC will purchase for cash, after delivery, the exporter's account receivable arising from the export sale.

(c) The provisions of Public Law 83–664 are not applicable to shipments under this program.

(d) The regulations contained in this Subpart A may be supplemented by additional terms and conditions applicable to specified agricultural commodities and, to the extent that they may be in conflict or inconsistent with any other provisions of this Subpart A, such additional terms and conditions shall prevail.

§ 1488.2 Definition of terms.

As used in this Subpart A and in the forms and documents related thereto, the following terms shall have the meanings assigned to them in this section:

(a) "Account receivable" means the contractual obligation of the foreign importer to the exporter for the port value of the commodity delivered for which the exporter is extending credit to the importer. The account receivable shall be evidenced by documents, in form and substance satisfactory to CCC, establishing the contractual obligation between the U.S. exporter and the foreign importer. The account receivable shall provide for (1) payment of principal and interest in U.S. dollars in the United States, (2) interest in accordance with § 1488.14 and (3) acceleration of payment thereunder in accordance with these regulations.

(b) "Agency or branch bank" means an agency or branch of a foreign bank, supervised by New York State banking authorities or the banking authorities of any other State providing similar supervision, and approved by the Controller, CCC.

(c) "Assistant Sales Manager" means the Assistant Sales Manager, Commercial Export Programs, Office of the General Sales Manager.

(d) "Bank obligation" means an obligation, acceptable to CCC, of a U.S. bank, a foreign bank, an agency or branch bank, to pay to CCC in U.S. dollars the amount of the account receivable, plus interest in accordance with § 1488.14. The bank obligation shall be in the form of an irrevocable letter of credit issued by a U.S. bank or a branch bank, or confirmed or advised by a U.S. bank or an agency or branch bank in accordance with § 1488.12. The bank obligation shall provide for payment under the terms and conditions of the financing agreement and shall be payable not later than the date of expiration of the financing period or of the bank obligation, whichever oc-

curs first, if payment is not received from other sources.

(e) "CCC" means the Commodity Credit Corporation, U.S. Department of Agriculture.

(f) "Carrying charges" means storage, insurance, and interest charges involved in the cost of storing the commodity before delivery as provided for in the sales contract, and other incidential costs as may be approved by the Assistant Sales Manager.

(g) "Commercial risk" means risk of loss due to any cause other than a political risk.

(h) "Date of delivery" means the on-board date of the ocean bill of lading, or the date of airway bill, or, if exported by rail or truck, the date of entry shown on an authenticated landing certificate or similar document issued by an official of the government of the importing country, or, if delivery is before export, the date(s) of the warehouse receipts or other evidence, acceptable to CCC, of delivery of the commodity to a warehouse.

(i) "Date of sale" means the earliest date the exporter has knowledge that a contractual obligation exists with the foreign buyer under which a firm dollar and cent price has been established or a mechanism to establish the price has been agreed upon.

(j) "Delivery" means the delivery required by the export sale contract to transfer to the importer full or conditional title to the agricultural commodity. Delivery before export shall be at a warehouse in the U.S. acceptable to CCC. Delivery at point of export shall be f.a.s. or f.o.b. export carrier at U.S. ports, at U.S. airports, at U.S. border points or exit or, if transshipped though Canada, at ports on the Great Lakes and on the St. Lawrence River.

(k) "Eligible commodities" means agricultural commodities, including eligible cotton, produced in the United States and designated as eligible for export under CCC's Export Credit Sales Program in a USDA announcement. Commodities which have been purchased from CCC are eligible for export as private stocks. Exports of commodities pursuant to any CCC barter contract, PL–480, AID agreement, or direct loan by the Export-Import Bank are not eligible for financing under this program. Commodities delivered prior to CCC receiving the sale registration request in accordance with § 1488.4 are not eligible for financing under this program unless such financing is determined by the Vice President, CCC, or the Assistant Sales Manager to be in the interest of CCC.

(l) "Eligible cotton" means Upland ad Extra long staple cotton grown in the United States: *Provided, however,* That reginned or repacked cotton, as defined in regulations of the U.S. Department of Agriculture under the U.S. Cotton Standards Act (7 CFR 28.40), by-products of cotton such as cotton mill waste, motes, and linters, and any cotton that contains any by-products of cotton are not eligible for export financing hereunder. CCC's determination as to the eligibility of cotton shall be final.

(m) "Eligible destination" means the country which is named in the financing agreement and which meets the licensing requirements of the U.S. Department of Commerce.

(n) "Eligible exporter" or "exporter" means a person (1) who is engaged in the business of buying or selling commodities and for this purpose maintains a bona fide business office in the United States, its territories or possessions, and has someone on whom service of judicial process may be had within the United States, (2) who is financially responsible, and (3) who is not suspended or debarred from contracting or participating in any program financed by CCC on the date of issuance of the financing agreement.

(o) "OGSM" means the Office of the General Sales Manager, U.S. Department of Agriculture.

(p) "Financing agreement" means the exporter's request for a sale registration as approved by the Assistant Sales Manager, including the terms and conditions of the regulations in effect on the date of approval.

(q) "Financing period" means the specified number of months over which repayment is to be made. Such period shall start on the date of delivery or the weighted average delivery date of the commodities to be exported under the financing agreement and shall expire on the expiration of the bank obligation or the specified period over which repayment is to be made, whichever occurs first.

(r) "Foreign bank" means a bank which is not a U.S. bank or an agency or branch bank, but includes a foreign branch of a U.S. bank.

(s) "Foreign importer" or "importer" means the foreign buyer who purchases the commodities to be exported under a financing agreement and executes the documents evidencing the account receivable assigned to CCC.

(t) "GSM–5" means the regulations contained in this Subpart A, and supplements thereto, setting forth the terms and conditions governing the CCC Export Credit Sales Program.

(u) "Political risk" means risk of loss due to (1) inability of the foreign bank through no fault of its own to convert foreign currency to dollars, or (2) nondelivery into the eligible destination of the commodity covered by a financing agreement through no fault of the foreign bank or importer or exporter, because of the cancellation by the government of the eligible destination of the previously issued valid authority to import such shipment into the eligible destination, or because of the imposition of any law or of any order, decree, or regulation having the force of law which prevents the import of such shipment into the eligible destination, or (3) inability of the foreign bank to make payment due to war, hostilities, civil war, rebellion, revolution, insurrection, civil commotion, or other like disturbance occurring in the eligible destination, or expropriation, confiscation, or other like action by the government of the eligible destination country, or (4) failure of the foreign bank to make payment for any reason, if it is an instrumentality of or is wholly owned by the foreign government.

(v) "Port value" means the net amount of the exporter's sale price of the commodity to be exported under the financing agreement, basis f.a.s. or f.o.b. export carrier at U.S. ports, at U.S border points of exit, at U.S. airports if shipped by air, or if transshipped through Canada, at ports on the Great Lakes or on the St. Lawrence River. The port value shall not include ocean freight for a c.&f. sale or ocean freight and marine and war risk insurance for a c.i.f. sale but may include carrying charges as provided for in the sales contract. The net amount of the exporter's sales price means the exporter's contract price for the commodities, on the basis stated above, less any payments made to the exporter and less any discounts, credits, or allowances by the exporter.

(w) "Sale" means a contract to sell on credit U.S. agricultural commodities to be financed under GSM–5.

(x) "United States" means the 50 States, the District of Columbia, and Puerto Rico.

(y) "U.S. bank" means a bank organized under the laws of the United States, a State, or the District of Columbia.

(z) "USDA announcement" means an announcement published monthly by the U.S. Department of Agriculture (USDA), and which includes the list of eligible commodities and interest rates under GSM–5.

(aa) "Vice President, CCC" means the Vice President who is the General Sales Manager, Office of the General Sales Manager.

Financing Export Sales

§ 1488.3 General.

When considering the extension of CCC credit for the purpose of financing agricultural commodities, CCC will take into account the extent to which CCC credit financing will:

(1) Permit U.S. exporters to meet competition from other countries.

(2) Prevent a decline in U.S. commercial export sales.

(3) Substitute commercial dollar sales for sales made pursuant to Pub. L. 480 or other concessional programs.

(4) Result in a new use of the agricultural commodity in the importing country.

(5) Permit expanded consumption of agricultural commodities in the importing country and thereby increase total commercial sales of agricultural commodities to the importing country.

§ 1488.4 Submission of requests for sale registrations.

(a) An eligible exporter shall submit a request for a sale registration for financing to the office specified in § 1488.22.

(b) Requests for sale registrations shall be in writing. If such a request is made by telephone, it must be confirmed by letter or wire.

(c) The total amount requested to be registered under a sale shall not exceed the sale contract value, including the upward tolerance, if any.

(d) Requests for sale registration shall incorporate by reference all terms and conditions of GSM-5. The following information shall also be included in the exporter's request for a sale registration:

(1) The name, class, grade, or quality, as applicable, and quantity of the commodity to be exported.

(2) The country of destination.

(3) The port value of the commodity to be exported and the sale contract tolerance, if applicable.

(4) The date of sale and exporter's sale number.

(5) The date of delivery or the period for delivery and the month in which application for payment will be submitted.

(6) The financing period.

(7) Whether the bank obligation assuring payment of the account receivable will be issued by a U.S. bank, branch bank, or foreign bank. If it will be issued by a foreign bank, its name and address, and the name of the confirming U.S. bank, branch bank, or agency bank (if approved as provided in § 1488.12b), and the percentage of confirmation.

(8) The name and address of the foreign importer.

(9) If delivery of the commodity to be exported is before export, the name and address of the warehouse to which delivery is to be made.

(10) If the commodity will be sold through an intervening purchaser, the name and address of the intervening purchaser, and a statement that the sale of the commodity is or will be conditioned on its resale by the intervening purchaser and that the commodity will be shipped directly to the foreign importer in the destination country specified in paragraph (d)(2) of this section pursuant to a contract in which the foreign importer agrees to pay the U.S. exporter the amount to be financed in accordance with the terms of GSM-5 financing agreement.

(11) Any additional information as determined by CCC.

§ 1488.5 Acceptance of sale registrations.

(a) Upon receiving a request for a sale registration complying with the applicable provisions of this Subpart, the Assistant Sales Manager may approve the registration of the sale. If approved, the exporter will be notified in writing of the financing agreement number which will constitute notice that the sale is registered and eligible for financing.

(b) A sale entered into prior to the date that financing becomes available will not be eligible for financing unless such sale is made contingent upon the availability of CCC credit or unless CCC determines that acceptance of such sale would be in the interest of the program objectives.

(c) CCC reserves the right to reject any and all requests for sale registration.

(d) The registration of a sale shall create a financing agreement between the exporter and CCC which shall consist of the exporter's request for a sale registration, CCC's acceptance of the sale registration, the applicable terms and conditions of this Subpart, including amendments and supplemental announcements hereunder which are in effect on the date of approval.

(e) The financing agreement may contain such terms and conditions, not inconsistent with GSM-5, as are deemed necessary in the interest of CCC.

(f) An exporter shall promptly notify the Assistant Sales Manager when he is unable to fulfill his obligations under any sale registered with CCC.

§ 1488.6 Amendments to financing agreement.

The financing agreement may be amended provided such amendment is in conformity with GSM-5 at the time of amendment and is determined to be in the interest of CCC. Amendments may include extension of the period for delivery or the period for export, and change in the interest rate. After the commodity has been delivered, CCC will consider requests to increase the amount of the sale registration value for any quantity within the tolerance in the sales contract and for carrying charges provided such requests relate to the same sale as originally registered with CCC.

§ 1488.7 Expiration of period(s) for delivery and/or export.

(a) Unless delivery by the exporter to the importer is made within such period as may be provided in the financing agreement or any amendment thereof, or under paragraph (b) of this section, the financing agreement will no longer be valid.

(b) If the Assistant Sales Manager determines that delay in delivery was due solely to causes without the fault or negligence of the exporter, the period for delivery may be extended by CCC by the period of such delay.

(c) If delivery is made before export under the terms of the financing agreement, failure to export within the period specified therefor in the financing agreement shall constitute a breach of the financing agreement. In such case, if full payment under the bank obligation or account receivable has not been received, the account receivable and the bank obligation shall, at the option of the Assistant Sales Manager, become immediately due and payable, and liquidated damages shall be payable in accordance with § 1488.11.

Documents Required for Financing

§ 1488.8 Document required after delivery.

(a) CCC will purchase an exporter's account receivable only if the Treasurer, Commodity Credit Corporation, United States Department of Agriculture, Washington, D.C. 20250, receives the documents specified in paragraphs (b) through (e) of this section within forty-five days, or any extension thereof by the Treasurer or Assistant Treasurer, CCC, after date of delivery of commodities exported or to be exported under the financing agreement.

(b) The exporter shall submit a "Combined Application for Disbursement, Assignment of Account Receivable and Certification" which shall include:

(1) A written application for disbursement, showing the financing agreement number and the port value of the commodity delivered.

(2) An assignment of the account receivable arising from the export sale, in form and substance acceptable to CCC.

(3) The exporter's certification (i) that he has entered into a contract to sell an eligible commodity; (ii) of the date of sale, the grade, quality, quantity, agreed upon price for the commodity and payment terms and interest in accordance with the financing agreement; (iii) that he has in his files documents evidencing the export sale contract and the obligation of the importer to him for the financed portion of the export sale and will retain and furnish them to CCC on demand until 3 years after the end of the financing period; (iv) that agricultural commodities of the grade, quality, and quantity called for in the exporter's sale as registered with CCC have been delivered to the foreign importer; and (v) that he knows of no defenses to the account receivable assigned to CCC.

(c) A copy of the sales invoice to the foreign importer, or, if the commodity has been sold through an intervening purchaser, a copy of the exporter's sales invoice to the intervening purchaser and of the intervening purchaser's sales invoice to the foreign importer.

(d) Either (1) a copy of the document evidencing export provided for in § 1488.9 and, if the consignee is other than the foreign importer named in the financing agreement, such additional information as CCC may request to show that export was made in accordance with the instructions of, or the export sale contract with, the foreign importer, or (2) if delivery is before export, documents acceptable to CCC evidencing delivery of the commodity to the importer or his agent.

(e) A bank obligation or obligations in accordance with § 1488.7(c), § 1488.10, § 1488.12 and paragraph (i) of this section, naming CCC as beneficiary, in form and substance acceptable to CCC, covering the amount of the application for disbursement, citing the financing agreement number; and providing for the payment of interest in accordance with § 1488.14.

(f) On receipt of the documents described in paragraphs (b) through (e) of this section, the Treasurer, CCC will pay promptly to the exporter the amount of the account receivable or the dollar amount of sales registered in accordance with § 1488.5, whichever is the lesser.

(g) If an acceptable application for disbursement and the supporting documents described in paragraphs (b) through (e) of this section have not been received by CCC within 45 days from the date of the delivery, or any extension thereof by the Treasurer or Assistant Treasurer, CCC, the financing agreement shall be void.

(h) If, under the financing agreement, delivery is made before export,

documents evidencing export as provided in § 1488.9 shall be submitted to the Assistant Sales Manager within 20 days after delivery to export carrier.

(i) If for any reason a draft drawn under a foreign bank obligation is dishonored or if the issuing bank is insolvent, in bankruptcy, in receivership, or in liquidation, or has made an assignment for the benefit or creditors, or for any other reason discontinues or suspends payments to depositors or creditors, or otherwise ceases to operate on an unrestricted basis, any balance due on the account receivable assured by the obligation issued by such bank shall, at the option of CCC, become immediately due and payable. CCC may permit the substitution of another acceptable foreign bank obligation covering such balance due if confirmed in accordance with § 1488.12.

§ 1488.9 Evidence of export.

(a) If the commodity is exported by rail or truck, the exporter shall furnish to the Treasurer, CCC, one copy of the bill of lading covering the commodity exported, certified by the exporter as being a true copy, and an authenticated landing certificate or similar document issued by an official of the government of the country to which the commodity is exported, showing the quantity, the gross landed weight of the commodity, the place and date of entry, and the name and address of both the exporter and the importer.

(b) If the commodity is exported by ocean carrier, the exporter shall furnish to the Treasurer, CCC, one non-negotiable copy or photo copy or other type of copy of either (1) an on-board ocean bill of lading or (2) an ocean bill of lading with an onboard endorsement, dated and signed or initialed on behalf of the carrier. The bill of lading must be certified by the exporter as being a true copy and must show the quantity, the date and place of loading the commodity, the name of the vessel, the destination of the commodity and the name and address of both the exporter and the importer.

(c) If the commodity is exported by aircraft, the exporter shall furnish to the Treasurer, CCC, one non-negotiable copy of an airway bill, dated and signed or initialed on behalf of the carrier. The airway bill must be certified by the exporter as being a true copy and must show the date and place of loading the commodity, the name of the airline, the destination of the commodity, and the name and address of both the exporter and the importer.

(d) If the exporter is unable to supply documentary evidence of export as specified in this section, he shall submit such other documentary evidence as may be acceptable to CCC.

(e) For commodities transshipped through Canada via the Great Lakes or the St. Lawrence River, the exporter shall certify that the commodity transshipped was produced in the United States.

DOCUMENTS REQUIRED AFTER FINANCING

§ 1488.10 Evidence of entry into country of destination.

(a) Commodities exported under a financing agreement must enter the destination country specified in the financing agreement.

(b) For a financing agreement under which the financing period is in excess of 12 months, within 90 days, or such extension of time as may be granted in writing by the Assistant Sales Manager, following shipment from the United States of any agricultural commodity exported under the financing agreement, the exporter shall furnish to the office specified in § 1488.22, documentary evidence verifying entry of the commodity into the country of destination specified in the financing agreement. The documentary evidence must (1) identify the agricultural commodity (or permit identification through supplementary documents also furnished) as that exported under the financing agreement, (2) state the quantity and date of entry of the commodity into the destination country, and (3) be signed by (i) a customs official of the destination country, or (ii) the importer, or (iii) a representative of an independent superintending or controlling firm.

(c) When the commodity enters the country of destination in bond, a statement by the importer will be acceptable which (1) identifies the commodity as that exported under the financing agreement, (2) states the quantity of the commodity entered under bond and date of entry into the destination country, and (3) certifies that the commodity will be withdrawn from bonded storage at a later date for consumption in the destination country.

(d) If the evidence of entry is in other than the English language, the exporter shall also provide an English translation thereof.

(e) Failure to furnish, within the time specified, evidence of entry of the commodity into the country of destination shall constitute prima facie evidence of failure to enter or to cause the entry of the commodity into such country as required. In such case, the financing agreement may be terminated by the Assistant Sales Manager, and if full payment under the bank obligation or account receivable has not yet been received, the bank obligation and the account receivable shall at the option of CCC, become due and payable and liquidated damages shall be payable in accordance with § 1488.11. The remedy herein provided shall not be exclusive of other rights available to the Federal Government if the commodity enters a country other than that specified in the financing agreement.

DELIVERY REQUIREMENTS

§ 1488.11 Liquidated damages.

Failure of the exporter to export or cause to be exported, within the period provided therefor, any agricultural commodity financed, when delivery is made before export under the terms of the financing agreement, or failure of the exporter to enter or cause the entry of, such commodity into the country of destination, shall constitute a breach of the financing agreement which will result in serious and substantial damage to CCC and to its program. Since it will be difficult, if not impossible, to prove the exact amount of such damage, the exporter shall pay to CCC promptly on demand, as reasonable compensation and not as a penalty, liquidated damages in lieu of probable actual damages, as follows: (a) For each day of delay in exportation after the final date for exportation, when delivery is made before export under the terms of the financing agreement, .15 percent of the amount financed under the financing agreement for the commodity not exported; (b) for failure to export or cause exportation, when delivery is made before export under the terms of the financing agreement, 5 percent of the amount financed under the financing agreement for the commodity not exported; (c) for failure, after exportation, to enter or cause the entry of the commodity into the country of destination, at the rate of 5 percent a year of the amount financed under the financing agreement for such commodity from the start of the financing period until payment to CCC of the amount financed; *Provided however*, That the aggregate of all amounts assessed under this § 1488.11 with respect to the same commodity shall not exceed 5 percent of the amount financed for such commodity. Liquidated damages shall not be assessed: under paragraph (a) of this section if the Assistant Sales Manager determines that the delay was due to such causes as acts of God or government or public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather; under (b) of this section if the Assistant Sales Manager determines that failure to export was due to loss, damage, destruction or deterioration of the commodity or act of God or government or public enemy; and under paragraph (c) if this section if the Assistant Sales Manager determines that failure to enter or cause the entry of the commodity into the country of destination was due to loss, damage, destruction or deterioration of the commodity or act of God or government or public enemy.

BANK OBLIGATIONS AND REPAYMENT

§ 1488.12 Coverage of bank obligations.

(a) U.S. banks and branch banks shall be liable without regard to risk for payment of bank obligations issued by them.

(b) An obligation issued by a foreign bank must be confirmed and advised, as provided in paragraphs (c), (d), (e), and (f) of this section, by a U.S. bank or a branch bank, or may be confirmed by an agency bank when determined by

the President or Vice President, CCC, after consultation with the Controller, CCC, to be in the interest of CCC.

(c) A U.S. bank must confirm the full amount of an obligation issued by its foreign branch. CCC will hold the U.S. bank liable for payment without regard to risks.

(d) If a branch bank confirms an obligation issued by its home office, or by another branch of its home office, it must confirm the full amount thereof. CCC will hold the branch bank liable for payment without regard to risks.

(e) If CCC accepts an agency bank confirmation of a foreign bank obligation, it must be for the full amount thereof without regard to risks and will be subject to such terms and conditions as may be contained in the financing agreement. CCC will not accept an agency bank confirmation of an obligation issued by its home office, or by a branch of its home office.

(f) Except as provided in paragraphs (c) and (d) of this section, if a U.S. bank or a branch bank confirms an obligation issued by a foreign bank, it must confirm at least 10 percent pro rata and must advise the remainder of the foreign bank obligation. The percentage of confirmation shall be the same for both the account receivable and the interest portions of the obligation. For the confirmed amount, CCC will hold the U.S. bank or branch bank liable for commercial risks but not for political risks. For the advised amount, CCC will not hold the U.S. bank or branch bank liable without regard to risks for all amounts not recovered from the U.S. or branch bank.

(g) Under special circumstances, on application in writing, the Vice President, CCC, may reduce or waive requirement for 10 percent confirmation by a U.S. or branch bank, but a bank will not be relieved of any obligation it undertakes.

(h) Any bank obligation which provides for a bank acceptance of a time draft by CCC (banker's acceptance) shall not be acceptable to CCC.

(i) CCC will consent to cancellation or reduction of a bank obligation to the extent of any payment it receives from other sources of amounts otherwise payable under such bank obligation.

(j) Collection of accounts receivable purchased under GSM–5 will be effected through the issuance by CCC of sight drafts against the bank obligations, but this method of collection shall not be exclusive of any other collection procedures or rights available to CCC.

§ 1488.13 CCC drafts.

CCC will draw one draft for each payment due under bank obligations. If any portion of a CCC draft is dishonored, the U.S. bank or branch bank shall return the dishonored draft together with its statement of the reason for nonpayment. If a draft which is drawn under a partially confirmed bank obligation is dishonored, CCC will replace the draft with separate drafts for the confirmed and unconfirmed portions at the request of the confirming bank. Such replacement shall not alter the confirming bank's obligation for timely payment to CCC of the confirmed portion of the credit. For confirmed amounts, except as provided in § 1488.12 (c) and (d), a U.S. or branch bank may request refund from CCC of the amount paid if it certifies to CCC that it is unable to recover funds from the foreign bank due to a stipulated political risk which existed on the date payment was made to CCC under the draft. If CCC finds that inability to recover funds was due to such a political risk, the refund shall be promptly made together with interest at the Federal Reserve Bank of New York discount rate from and including the date payment was originally made to CCC but not include the date of refund by CCC. For unconfirmed amounts, remittance to CCC shall be considered final, and the U.S. bank or branch bank shall not thereafter have recourse to CCC.

§ 1488.14 Interest charges.

The account receivable assigned to CCC and the related bank obligation(s) shall bear interest as specified in this section. Rates of interest applicable to financing agreements shall be published in a USDA announcement. The interest rate applicable to that portion of an account receivable for which payment is assured by a bank obligation issued or prorata confirmed by a U.S. bank shall be lower than the interest rate applicable for the remainder of the account receivable. The interest rate applicable to that portion of an account receivable the payment of which is assured by a bank obligation issued or prorata confirmed by a branch bank shall, when determined by the President or Vice President, CCC, after consultation with the Controller, CCC, to be in the interest of CCC, be lower than the interest rate applicable for the remainder of the account receivable. The interest rates applicable to accounts receivable the payment of which is assured by an agency bank confirmation may, when determined by the President or Vice President, CCC, after consultation with the Controller, CCC, to be in the interest of CCC, be lower than the interest rate applicable for the remainder of the account receivable. The interest rate applicable will be the rate in effect on the date CCC receives the sale registration request under § 1488.4. Interest shall accrue on the account receivable from the date of delivery or the weighted average delivery date of the agricultural commodities delivered under the financing agreement to the date of payment, or to the date of expiration of the financing period, or to the date of expiration of the bank obligation, whichever occurs first, and shall be payable as specified in the financing agreement. Thereafter, interest shall accrue on any unpaid part of both the principal and interest due as of such expiration date.

§ 1488.15 Advance payment.

If, before expiration of the financing period, the exporter or the U.S. bank or the agency or branch bank accepts payment from or on behalf of the foreign importer of any part of the account receivable, it shall be remitted promptly to CCC. Such prepayment shall be applied first to interest on the unpaid balance of the account receivable to the date CCC receives such prepayment and then to the principal.

§ 1488.16 Liability for payment.

If delivery is made within the coverage of the bank obligation(s) submitted in accordance with § 1488.8, CCC will look to the obligating bank or banks and the foreign importer, rather than to the exporter or intervening purchaser, for payment of all amounts due at maturity of the account receivable and of the bank obligation(s), but the exporter and the intervening purchaser shall remain liable for any loss arising from breach of any contractual obligation, certification or warranty made by them pursuant to the financing agreement, and the exporter shall remain liable for any amounts not covered by the bank obligation which are owing to CCC, and any remittance or refund required by § 1488.15 and § 1488.18, together with interest thereon at the rate specified in the documents evidencing the account receivable, as well as for any liquidated damages provided for in § 1488.11. The liability of the bank and the importer under their respective obligations shall be several.

Miscellaneous Provisions

§ 1488.17 Assignment.

The exporter shall not assign any claim or rights or any amounts payable under the financing agreement, in whole or in part, without written approval of the Vice President, CCC, or the Controller, CCC.

§ 1488.18 Covenant against contingent fees.

The exporter warrants that no person or selling agency has been employed or retained to solicit or secure the financing agreement on an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the exporter for the purpose of securing business. For breach or violation of this warranty, CCC shall have the right, without limitation on any other rights it may have, to annul the financing agreement without liability to CCC. Should the financing agreement be annulled, CCC will promptly consent to the reduction or cancellation of related bank obligations except for amounts outstanding under a financing agreement. Such amounts shall, on demand, be refunded to CCC by the exporter.

§ 1488.19 Shipment of commodities on vessels calling at Cuban and North Vietnamese ports.

Any commodity exported under a financing agreement shall not be shipped from the United States, or transshipped through Canada via ports on the Great Lakes or on the St. Lawrence River, on a vessel which has called at a Cuban port on or after January 1, 1963, or at a North Vietnamese port on or after January 25, 1966, unless a special waiver is granted by the Maritime Administration. Commodities shipped on such vessel shall not be considered to have been exported under the financing agreement.

§ 1488.20 Officials not to benefit.

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the financing agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the financing agreement if made with a corporation for its general benefit.

§ 1488.21 Exporter's records and accounts.

CCC shall have access to and the right to examine any directly pertinent books, documents, papers and records of the exporter involving transactions related to the financed export credit sale until the expiration of three years after the end of the financing period.

§ 1488.22 Communications.

(a) Unless otherwise provided, written requests, notifications, or communications by the applicant pertaining to the financing agreement shall be addressed to the Assistant Sales Manager, Commercial Export Programs, Office of the General Sales Manager, U.S. Department of Agriculture, Washington, D.C. 20250.

SUPPLEMENT I—BEEF BREEDING CATTLE

Section

A. Additional definitions.
B. Submission of requests for sale registrations.
C. Additional documents required after delivery.
D. Miscellaneous (identification, quality, certification).
E. Dual purpose breeds (standards applicable).
Exhibit I—Females (general breed and health requirements).
Exhibit II—Bulls (general breed and health requirements).
Appendix I—Performance Testing.
Appendix II—Specification for Official U.S. Standards for Grades.

A. ADDITIONAL DEFINITIONS

1. "Port value" means the net amount of the exporter's sales price for beef breeding cattle to be exported under the financing agreement, basis f.a.s. or f.o.b. export carrier at U.S. ports, at U.S. border points of exit, or at U.S. airports if shipped by air. The point of exportation for animals shall be designated by the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture. The port value shall not include the ocean freight for a c. & f. sale or ocean freight and marine and war risk insurance for a c.i.f. sale, and shall also not include any animal care or servicing cost incurred after such animals are loaded aboard the export carrier. The net amount of the exporter's sales price means the contract price for the animals less any payments made by the importer and less any discounts credits, or allowances to the importer. Such net amount shall not exceed (a) for registered bulls, $2000 each or, with prior approval of the Assistant Sales Manager for commercial Export Programs, $5,000 if performance has been superior to the performance records specified in Exhibit II to this supplement; (b) for registered females, $1,000 each or, with prior approval of the Assistant Sales Manager for Commercial Export Programs, $1,500 if performance has been superior to the performance records specified in Exhibit I to this supplement; (c) for nonregistered females, and average, for the sale, of $750 each or, with prior approval of the Assistant Sales Manager for Commercial Export Programs, $1,000 if performance has been superior to the performance records specified in said Exhibit I. The difference, if any, between the maximum net amount specified in (a), (b), or (c) of this paragraph A.1. and the contract price for the individual animal, if registered, or the average contract price for the individual animal, if nonregistered, shall not be included as part of the port value.

2. "Producer" means the person holding legal title to the animal at time of birth and who has had continuous ownership of such animal until sold for export under an approved financing agreement.

3. "Bred female" means either a bred heifer or bred cow as set forth in Exhibit I, Option B, which has been certified to as pregnant at the time of inspection.

4. "Breeder" means the person holding legal title to the female animal at the time she was served to qualify such animal hereunder as a bred female.

5. "Eligible animal" means an animal which meets all the following requirements:

(a) The animal must be the progeny of a nationally recognized beef cattle breed (Exhibits I and II);

(b) The animal must have been owned by a person who had continuous title to such animal for a period of at least 90 days immediately before acquisition by the exporter, unless the exporter is the producer of the animal.

(c) The animal must, at the time of export, be individually identified by an eartag, a legible ear tattoo symbol, or a firebrand and ranch holding brand symbol acceptable to USDA testing authority as an authentic identification symbol for such animal. The term "identification number(s)" as used herein shall also include ear tattoo symbol and firebrand and ranch holding brand symbol.

(d) The animal must qualify under the specifications of Exhibit I for females and Exhibit II for bulls.

6. "Registered animal" means an eligible animal which the appropriate natianal breed association has officially registered or otherwise classified as a purebred animal of that breed. Such animal must be marked with a legible tattoo or brand which corresponds with the number shown in the certificate of registration or other official document issued by the appropriate national breed association.

7. "Nonregistered animal" means an eligible animal, whether or not purebred, which is predominantly of the color characteristics and body conformation of the beef breed stated in the contract between the exporter and the importer. (See Exhibits I and II.)

B. SUBMISSION OF REQUESTS FOR SALE REGISTRATIONS

1. In addition to the information required by § 1488.4(c) (1) through (11), the request for a sale registration for financing export credit sales of beef breeding cattle shall include the following:

(a) A general description by breed of the animals to be exported, separately describing the animals under the following classes:

(1) Registered bulls;
(2) Registered bred females;
(3) Registered unbred females;
(4) Nonregistered bred females; and
(5) Nonregistered unbred females.

(b) A statement that such animals will conform to the general specification requirements set forth in Exhibits I or II, as applicable to the class of animals to be exported.

2. In addition to the considerations specified in § 1488.3, a financing period in excess of 12 months but not in excess of 36 months for beef breeding cattle may be justified when it will result in the use by the importer, or by purchasers from the importer, of the animals in the destination country under conditions which will promote expanded demand for additional breeding animals or feed stuffs from the United States.

C. ADDITIONAL DOCUMENTS REQUIRED AFTER DELIVERY

In addition to the documents specified in § 1488.8 (b) through (e), the exporter shall submit the following documents to the Treasurer, Commodity Credit Corporation:

1. Separate animal identification lists for registered animals and for nonregistered animals, containing the following information:

(a) Identification number;

(b) For each registered animal, shown separately opposite the identification number, the sales price as specified in the sales invoice;

(c) For nonregistered animals, shown for each lot group by identification number, the average sales price per animal based on the sales invoice for such nonregistered animals.

2. Performance records for animals for which a higher maximum port value has been approved by the Assistant Sales Manager for Commercial Export Programs as provided in paragraph A.1.

3. A certification by the exporter that animals of the description in the exporter's sales contract have been delivered, and that the exporter knows of no defenses to the account receivable assigned to CCC.

4. A certification by the exporter that the documents specified in paragraph D. of this Supplement have been furnished to the importer.

D. MISCELLANEOUS

The following documents or certifications, as applicable, shall be furnished to the importer by the exporter:

1. The certificates issued by an agent of the Agricultural Marketing Service (AMS), U.S. Department of Agriculture, as to official registration of the animal(s) and listing the identification number(s) and corresponding registration certificate number(s) for each registered animal showing that such numbers have been verified as legible and accurate for such animal, and that the person holding legal title to the animal at the time of export sale has appropriately executed such certificate for transfer to the party designated by the importer. (See Exhibit I or II.)

2. A certification by the breeder of females sold as "bred females" showing the identification numbers and stating that the service bull was a registered bull of the same beef cattle breed as the female to which bred. (See Exhibit I.)

3. The certificate issued or endorsed by Veterinary Services, Animal and Plant Health Inspection Service, listing the identification number(s) and showing that such animal has been inspected for compliance with "Health" requirements. (See Exhibit I or II.)

4. The certificates issued by the Agricultural Marketing Service listing the identification number(s) for each animal showing for such animal compliance with breed, age, weight, and conformation grade, for the class, as shown in Exhibit I or II, as applicable.

5. Certificates issued by a veterinarian accredited by the Animal and Plant Health Inspection Service, showing that bred females, sold as such, were examined and found to be with calf at time of inspection.

6. A semen certification by a veterinarian accredited by the Animal and Plant Health Inspection Service, for bulls over one year of age, except that for Santa Gertrudis and Brahman cattle the certification shall be for bulls over 18 months of age.

E. DUAL PURPOSE BREEDS

When dual purpose breeds [1] are eligible for financing under the provisions of both Supplement I and Supplement II to GSM-5, as revised, the exporter has the option of qualifying such animals under the provisions of either supplement. Such option must be stated in the request for a sale registration filed pursuant to § 1488.4. In the event such dual purpose breeds are approved for export hereunder, the provisions of this supplement shall apply.

EXHIBIT I TO SUPPLEMENT I

USDA Approved Beef Breeding Cattle Export Specifications—Females, Option A (to be specified by purchaser):

1. Registered.[2]

BREED

a. Angus.
b. Hereford.
c. Polled Hereford.
d. Charolais.
e. Santa Gertrudis.
f. Shorthorn.
g. Polled Shorthorn.
h. Brahman.
i. Milking Shorthorn.[3]
j. Red Poll.[3]
k. Other beef cattle breeds having a registry Association in the U.S.

2. Nonregistered.[3]

PREDOMINANT BREED

Specify from breed above.

Option B (to be specified by purchaser):

AGE [4]

1. Calf—(7 to 12 months).
2. Yearling Open—(12 to 18 months).
3. Heifer Open—(18 to 24 months).
4. Bred Heifer—(18 to 36 months).
5. Bred Cow—(24 to 48 months).
6. Mature Cow—(24 to 48 months).[5]

General Requirements:

A. *Health.*[6]

1. Tested negative for tuberculosis within 30 days of loading aboard export carrier.

2. Tested negative for brucellosis within 30 days of loading aboard export carrier, or is an official vaccinate under 30 months of age.

3. Certified that the United States is a country where foot-and-mouth disease has not existed since 1929, contagious bovine pleuropneumonia has not existed since 1892, and rinderpest has never occurred.

4. Animals come from farms that have not been under State or Federal quarantine for any communicable disease during the past year.

5. Animals have been inspected, and found sound (including freedom of blindness, structural defects, etc.), free of evidence of communicable disease and exposure thereto, and free of mites, ticks and ringworm or freed from the same.

B. *Minimum Weight.*[7]

1. Calf—(7 to 12 months), 400 pounds.
2. Yearling Open—(12 to 18 months), 500 pounds.
3. Heifer Open—(18 to 24 months), 600 pounds.
4. Bred Heifer—(18 to 24 months), 700 pounds; (24 to 36 months), 800 pounds.
5. Bred Cow—(24 to 36 months), 800 pounds; (36 to 48 months), 950 pounds.
6. Mature Cow—(24 to 36 months), 800 pounds; (36 to 48 months), 950 pounds.[8]

C. *Minimum Conformation:* Choice.[7]

All nonregistered females must be dehorned or naturally polled unless otherwise specified in the request for a sale registration. Horn stubs in excess of one inch will not be acceptable on dehorned cattle.

D. *Performance Records.*[9] (Optional, unless specified.) (See attached Appendix I to Exhibits I and II.)

1. Minimum adjusted daily gain to weaning 1.6 pounds/day.

2. Minimum adjusted daily gain to weaning of offspring 1.6 pounds/day (if appropriate).

E. *Statement of Service or Other Requirement.* 1. Bred females must have been bred to a registered bull of the same breed and the calf from a registered female must be eligible for registration.[9]

2. Bred females must be at least two months but no more than six months pregnant at time of inspection when being shipped by vessel. If shipped by air, bred females must be at least two months pregnant but may be up to eight months pregnant with veterinarian approval.[10]

3. Mature cows not qualifying as "bred cows", to be eligible for financing hereunder, must be lactating and have their offspring not in excess of approximately five months of age at side at time of inspection by AMS. Such calves, though not eligible for financing, may be supplied along with the parent cow if facilities for their care and safe transportation to destination point are adequate.

EXHIBIT II TO SUPPLEMENT I

USDA Approved Beef Breeding Cattle Export Specifications—Bulls, Option A (to be specified by purchaser):

BREED [1]

1. Angus.
2. Hereford.
3. Polled Hereford.
4. Charolais.
5. Santa Gertrudis.
6. Shorthorn.
7. Polled Shorthorn.
8. Braham.
9. Milking Shorthorn.[2]
10. Red Poll.[2]
11. Other beef cattle breeds having a registry Association in the U.S.

Option B (to be specified by purchaser):

AGE [3]

1. Bull Calf—(7 to 12 months).
2. Yearling Bull—(12 to 18 months).
3. Bull—(18 to 24 months).
4. Mature Bull—(24 to 48 months).

General Requirements:

A. *Health.*[4]

1. Tested negative for tuberculosis within 30 days of loading aboard export carrier.

2. Tested negative for brucellosis within 30 days of loading aboard export carrier.

3. Certified that the United States is a country where foot-and-mouth disease has not existed since 1929, contagious bovine pleuropneumonia has not existed since 1892, and rinderpest has never occurred.

4. Animals come from farms that have not been under State or Federal quarantine for any communicable disease during the past year.

5. Animals have been inspected, and found sound (including freedom from blindness, structual defects, etc.), free of evidence of communicable disease and exposure thereto, and free of mites, ticks, ringworm or freed from the same.

B. *Minimum Weight.*[5]

1. 7 to 12 months, 470 pounds.
2. 12 to 18 months, 790 pounds.
3. 18 to 24 months, 1100 pounds.
4. Over 24 months, 1350 pounds.

C. *Minimum Conformation:* Prime.[5]

D. *Performance Records.*[6] (optional, unless specified). (See attached Appendix I to Exhibits I and II.).

1. Minimum adjusted daily gain to weaning, 1.9 pounds per day.

E. A semen check indicating at least 60 percent sperm motility must be supplied for bulls over one year of age,[7] except that for Santa Gertrudis and Brahman cattle the certification shall be for bulls over 18 months of age.

APPENDIX I TO EXHIBITS I AND II—PERFORMANCE TESTING

Performance testing is known by several names in the United States, but practically all organizations evaluate similar characteristics in beef cattle. The principal factors used in evaluating performance are growth rate and conformation, but not necessarily both. Animals which are tested are weighed at birth and again at weaning. The weaning weight is adjusted to an equivalent of 205 days of age and is also adjusted depending on the age of the dam. This is done to make weights of calves from first-calf heifers comparable to weights of calves from older cows.

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[1] Milking Shorthorn and Red Poll.

[2] Animals must be officially registered with the appropriate National Breed Association and be so certified by AMS agent.

[3] Dual Purpose Breeds (see paragraph E, Supplement I or II).

[4] Nonregistered animals will be certified for breed by the AMS agent.

[5] Certification by AMS agent.

[6] See E3 of this Exhibit I.

[7] Certification or endorsement furnished by Veterinary Services, Animal and Plant Health Inspection Service, USDA.

[8] Certification furnished by Livestock Division, AMS, USDA. Conformation grade to be based on the muscling requirements of the official USDA Feeder Cattle Standards. (See Appendix II attached.)

[9] Official State records or National Breed Association records, or Performance Registry International records.

[9] Must be certified to by the breeder of the female at time of sale to exporter.

[10] Certification of pregnancy shall be issued by an accredited veterinarian.

[1] All animals for delivery under these specifications must be officially registered with the appropriate National Breed Association and be so certified by AMS agent.

[2] Dual Purpose Breeds (see paragraph E, Supplement I or II).

[3] Certification by AMS agent.

[4] Certification or endorsement furnished by Verterinary Services, Animal and Plant Health Inspection Service, USDA.

[5] Certification furnished by Livestock Division, AMS, USDA. Conformation grade based on the muscling requirements of the official USDA Feeder Cattle Standards. (See Appendix II attached.)

[6] Official State records or National Breed Association records, or Performance Registry International records.

[7] Certification must be issued by an accredited veterinarian.

The adjusted daily gain from birth to weaning is indicative not only of inherited gaining ability but also of the milking ability of the dam.

APPENDIX II TO EXHIBITS I AND II—SPECIFICATIONS FOR OFFICIAL UNITED STATES STANDARDS FOR GRADES OF CATTLE (STEERS, HEIFERS, AND COWS) [1]

PRIME

Cattle which possess typical minimum qualifications for the Prime grade are very thickly muscled throughout. They are wide through the chest with well sprung ribs and are moderately wide and thick through the crops, back and loin. The rounds tend to be thick and the twist is moderately deep. They have large, rugged frames with moderately large but refined bone.

CHOICE

Cattle which possess typical minimum qualifications for the Choice grade are thickly muscled throughout. They are moderately wide through the chest with a moderate spring of ribs and are slightly wide and thick through the crops, back and loin. The rounds are slightly thick and the twist is slightly deep. They have moderately large, rugged frames, and the bone usually is moderately large, but may be slightly fine or slightly large and coarse.

SUPPLEMENTAL II—DAIRY BREEDING CATTLE

Sec.
A. Additional definition.
B. Submission of requests for sale registrations.
C. Additional documents required after delivery.
D. Miscellaneous (identification, quality, certification).
E. Dual purpose breeds (standards applicable).

EXHIBIT I—Females (general breed and health requirements). Appendix to Exhibit I.

EXHIBIT II—Bulls (general breed and health requirements). Appendix to Exhibit II.

A. ADDITIONAL DEFINITIONS

1. "Port value" means the net amount of the exporter's sales price for dairy breeding cattle to be exported under the financing agreement, basis f.a.s. or f.o.b. export carrier at U.S. ports, at U.S. border points of exit, or at U.S. airports if shipped by air. The point of exportation for animals shall be designated by the Animal and Plant Health Inspection Service, U.S. Department of Agriculture. The port value shall not include the ocean freight for c. & f. sale or ocean freight and marine and war risk insurance for a c.i.f. sale, and shall also not include any animal care or servicing cost incurred after such animals are loaded aboard the export carrier. The net amount of the exporter's sales price means the contract price for the animals less any payments made by the importer and less any discounts, credits, or allowances to the importer. Such net amount shall not exceed (a) $4,500 each for registered bulls which have an Acceptable performance index as set out in paragraph D.1., Exhibit II to this supplement, or, with prior approval of the Assistant Sales Manager for Commercial Export Programs, $7,500 if such animal has a Superior performance index as set out in paragraph D.2. of Exhibit II; (b) $1,500 each for registered females which have an Acceptable performance index as set out in paragraph D.1., Exhibit I to this supplement, or with prior approval of the Assistant Sales Manager for Commercial Export Programs, $3,000 if such animal has a Superior performance index as set out in paragraph D.2. of Exhibit I; (c) with prior approval of the Assistant Sales Manager for Commercial Export Programs, $5,000 each for registered mature cows which have a Superior performance index asest out in paragraph D.3. of Exhibit I; (d) with prior approval of the Assistant Sales Manager for Commercial Export Programs, $1,500 each for nonregistered mature cows which have a Superior performance index as set out in paragraph D.3. of Exhibit I; or (e) $1,200 average for the sale of nonregistered females, other than mature cows with a Superior performance index, if each such animal has an Acceptable performance index as set out in paragraph D.1. of Exhibit I. The difference, if any, between the maximum net amount specified in (a), (b), (c), (d), or (e) of this paragraph A.1. and the contract price for individual registered animals or nonregistered mature cows with a Superior performance index, or the average contract price for nonregistered females, other than mature cows with a Superior performance index, shall not be included as a part of the port value.

2. "Producer" means the person holding legal title to the animal at time of birth and who has had continuous ownership of such animal until sold for export under an approved financing agreement.

3. "Bred female" means either a bred heifer or bred cow as set forth in Exhibit I, Option B, which has been certified to as pregnant at the time of inspection.

4. "Breeder" means the person holding legal title to the female animal at the time she was served to qualify such animal hereunder as a bred female.

5. "Eligible animal" means an animal which meets all the following requirements:

(a) The animal must be the progeny of a nationally recognized dairy cattle breed (Exhibits I and II);

(b) The animal must have been owned by a person who had continuous title to such animal for a period of at least 90 days immediately before acquisition by the exporter, unless the exporter is the producer of the animal;

(c) The animal must, at the time of export, be individually identified by an eartag, a legible ear tattoo symbol, or a firebrand and ranch holding brand symbol acceptable to USDA testing authority as an authentic identification symbol for such animal. The term "identification number(s)" as used herein shall also include ear tattoo symbol and firebrand and ranch holding brand symbol.

(d) The animal must qualify under the specifications of Exhibit I for females and Exhibit II for bulls.

6. "Registered animal" means an eligible animal which the appropriate national breed association has officially registered or otherwise classified as a purebred animal of that breed. Such animal must be marked with a legible tattoo or brand which corresponds with the number shown in the certificate of registration or other official document issued by the appropriate national breed association.

7. "Nonregistered animal" means an eligible animal, whether or not purebred, which is predominately of the color characteristics and body conformation of the dairy breed stated in the contract between the exporter and the importer. (See Exhibits I and II).

B. SUBMISSION OF REQUESTS FOR SALE REGISTRATIONS FOR FINANCING

1. In addition to the information required by § 1488.4(c) (1) through (11), the request for a sale registration for financing export credit sales of dairy breeding cattle shall include the following:

(a) A general description by breed of the animals to be exported, separately describing the animals under the following classes:
(1) Registered bulls;
(2) Registered bred females;
(3) Registered unbred females;
(4) Nonregistered bred females; and
(5) Nonregistered unbred females.

(b) A statement that such animals will conform to the general specification requirements set forth in Exhibits I or II, as applicable to the class of animals to be exported.

2. In addition to the considerations specified in § 1488.3 a financing period in excess of 12 months but not in excess of 36 months for dairy breeding cattle may be justified when it will result in the use by the importer, or by purchasers from the importer, of the animals in the destination country under conditions which will promote expanded demand for additional breeding animals or feed stuffs from the United States.

C. ADDITIONAL DOCUMENTS REQUIRED AFTER DELIVERY

In addition to the documents specified in § 1488.8 (b) through (e), the exporter shall submit the following documents to the Treasurer, Commodity Credit Corporation:

1. Separate identification lists for each group of animals described in paragraphs A.1. (a), (b), (c), (d), and (e) of this supplement, containing the following information:

(a) Identification number;

(b) For each registered animal or nonregistered mature cow with a Superior performance index, shown separately opposite the identification number, the sales price as specified in the sales invoice;

(c) For nonregistered females other than mature cows with a Superior performance index, shown for each lot group by identification list, the average sales price per animal based on the sales invoice for such nonregistered animals.

2. Production Performance Index records as follows: (a) For registered bulls the applicable Acceptable or Superior performance index records of Sire and Dam as described in paragraph D. 1. or D. 2. of Exhibit II;

(b) For registered females if applicable, the Superior performance index records of Sire and Dam as described in paragraph D. 2. of Exhibit I;

(c) For registered or nonregistered mature cows if applicable, the Superior performance index records of Sire and Dam as described in paragraph D. 3. of Exhibit I.

3. A certification by the exporter that animals of the description in the exporter's sales contract have been delivered and that the exporter knows of no defenses to the account receivable assigned to CCC.

4. A certification by the exporter that the documents specified in paragraph D of this Supplement have been furnished to the importer.

D. MISCELLANEOUS

The following documents or certifications, as applicable, shall be furnished to the importer by the exporter.

1. The certificates issued by an agent of the Agricultural Marketing Service, U.S. Department of Agriculture, as to official registration of the animal(s) and listing the identification number(s) and corresponding

[1] Adapted from Service and Regulatory Announcement AMS 183, issued March 1965. A copy of this publication and charts picturing the grades of feeder cattle may be obtained upon request from the Livestock Division, AMS, USDA, Washington, D.C. 20250.

registration certificate number(s) for each registered animal showing that such numbers have been verified as legible and accurate for such animal, and that the person holding legal title to the animal at the time of export sale has appropriately executed such certificate for transfer to the party designated by the importer. (See Exhibit I or II.)

2. A certification by the breeder of females sold as "bred females" showing the identification number and stating that the service bull was a registered bull of the same dairy cattle breed as the female to which bred. (See Exhibit I.)

3. The certificates issued or endorsed by Veterinary Service, Animal and Plant Health Inspection Service, listing the identification number(s) and showing that such animal has been inspected for compliance with "Health" requirements. (See Exhibit I or II.)

4. The certificates issued by the Agricultural Marketing Service listing the identification number(s) for each animal showing for such animal compliance with breed, age, weight, and conformation specifications, for the class, as shown in Exhibit I or II, as applicable.

5. Certificates issued by a veterinarian accredited by Animal and Plant Health Inspection Service, showing that bred females, sold as such, were examined and found to be with calf at time of inspection.

6. A semen certification by a veterinarian accredited by Animal and Plant Health Inspection Service, for bulls over one year of age.

E. DUAL PURPOSE BREEDS

When dual purpose breeds[1] are eligible for financing under the provisions of both Supplement I and Supplement II to GSM-5, as revised, the exporter has the option of qualifying such animals under the provisions of either supplement. Such option must be stated in the request for a sale registration filed pursuant to Section 1488.4. In the event such dual purpose breeds are approved for export hereunder, the provisions of this supplement shall apply with the exception that the Assistant Sales Manager for Commercial Export Programs is authorized, at the request of the applicant, to establish a minimum weight schedule and DHIR Milk Production Breed Average.

EXHIBIT I TO SUPPLEMENT II

USDA Approved Dairy Cattle Export Specifications—Females, Option A (to be specified by purchaser):

1. Registered.[1]

BREED

a. Ayrshire.
b. Brown Swiss.
c. Guernsey.
d. Holstein.
e. Jersey.
f. Milking Shorthorn.[2]
g. Red Poll.[2]

2. Nonregistered.[3]

PREDOMINANT BREED

Specify from above.

Option B (to be specified by purchaser).

AGE[4]

1. Calf—(6 to 12 months)
2. Yearling Open—(12 to 18 months)
3. Heifer Open—(18 to 30 months)
4. Bred Heifer—(18 to 30 months)
5. Mature Cow—(24 to 48 months)

General Requirements:

A. Health[5]

1. Tested negative for tuberculosis within 30 days of loading export carrier.

2. Tested negative for brucellosis within 30 days of loading aboard export carrier, or is an official vaccinate under 24 months of age.

3. Certified that the United States is a country where foot-and-mouth disease has not existed since 1929, contagious bovine pleuropneumonia has not existed since 1892, and rinderpest has never occurred.

4. Animals come from farms that have not been under State or Federal quarantine for any communicable disease during the past year.

5. Animals have been inspected and found sound (including freedom from blindness, structural defects, etc.), free of evidence of communicable disease and exposure thereto, and free of mites, ticks and ringworm or freed from the same.

6. Mature cows must be physically examined at time of inspection for the presence of mastitis by manipulating and stripping the udder and found not to have evidence of such infection. The exporter, at his option, may require the person from whom he purchases a mature cow to supply additional evidence of non-mastitis infection as he sees fit.

B. Minimum Weights.[6]

1. Registered Animals.

Age[1] (in months)	Holstein and Brown Swiss	Guernsey and Ayrshire	Jersey
a. 6	360	295	260
b. 8	470	385	340
c. 10	565	455	410
d. 12	640	525	470
e. 14	710	585	520
f. 16	775	635	555
g. 18	835	685	600
h. 20	900	745	645
i. 22	970	790	695
j. 24	1,015	845	735
k. 26	1,045	870	760
l. 28	1,070	895	780
m. 30	1,090	910	790
n. 36 and over	1,180	990	865

[1] Minimum weights for ages between the ages shown shall be determined proportionately.

2. *Non-registered Animals*

Class	Holstein and Brown Swiss	Guernsey and Ayrshire	Jersey
a. Calf	360	295	260
b. Yearling Open	640	525	470
c. Heifer Open	835	685	600
d. Heifer Bred	835	685	600
e. Mature Cow	1,015	845	735

C. Minimum Conformation.[6]

All animals must meet the minimum body conformation specifications as described in Appendix to this Exhibit I.

D. Production Performance Index.[7]

1. *Acceptable.* An acceptable performance index for *Registered* or *Nonregistered Females* will be considered to exist if such animals meet the minimum conformation of Item C above.

2. *Superior.* A Superior performance index for a *Registered Female* will be considered to exist if:

(a) *Sire* has a Plus (+) USDA Predicted Difference[8] equal to two percent of DHI breed average as shown in Item E below, or in the event the Sire does not have a summary, his Sire has a predicted difference (+500 pounds)[8] and

(b) *Dam* has a DHI or DHIR record[9] equal to 10 percent above the DHI breed average as shown in Item E below.

3. *Superior.* A superior performance index for a *Registered* or *Nonregistered Mature Cow* will be considered to exist if such animal has a DHI production record[9] 15 percent above the DHI breed average as shown in Item E below.

E. DHI Milk Production Breed Average (Mature Equivalent)

The following breed averages are applicable to these specifications.

Breed	Breed average	2 pct of breed average	10 pct of breed average	15 pct of breed average
	(*Pounds*)	(*Pounds*)	(*Pounds*)	(*Pounds*)
Ayrshire	11,112	222	1,111	1,666
Brown Swiss	12,203	244	1,220	1,830
Guernsey	9,632	192	963	1,444
Holstein	13,943	278	1,394	2,091
Jersey	8,853	177	885	1,328

F. STATEMENT OF SERVICE

1. Bred females must have been bred to a registered bull of the same breed.[10]

2. Bred females must be at least two months pregnant but no more than six months pregnant at time of inspection when being shipped by vessel. If shipped by air, bred females must be at least two months pregnant but may be up to eight months pregnant with veterinarian approval.[11]

APPENDIX TO EXHIBIT I—MINIMUM BODY CONFORMATION SPECIFICATION FOR FEMALES

In addition to meeting the minimum weight for the breed as specified in Exhibit I, the animal shall possess femininity, normal breed conformation, quality and body capacity. She shall have the general appearance of thrift and vitality with eyes bright and ears alert. The feet and legs shall be well formed with the legs straight, strong and well set. The mammary system, if sufficiently developed, shall be strongly attached, well balanced and of fine texture. The teats shall be of acceptable size. There shall be no evidence of lameness or other serious body defects. She shall possess normal dairy character by showing a lack of obvious excess fatty condition for the age class. Females officially classified by the respective breed association as "Good Plus" (or equivalent) or higher shall be acceptable if found at time of inspection not to have developed a physical defect in conflict with the above-stated conditions.

EXHIBIT II

USDA Approved Dairy Cattle Export Specifications—Bulls, Option A (to be specified by purchaser):

[1] Milking Shorthorn and Red Poll.

[2] Animals must be officially registered with the appropriate National Breed Association and be so certified by AMS agent.

[3] Dual purpose breeds (See paragraph E, Supplement I or II).

[4] Nonregistered animals will be certified for breed by AMS agent.

[4] Certification by AMS agent.

[5] Certification or endorsement furnished by Veterinary Service, Animal and Plant Health Inspection Service, USDA.

[6] Certification or endorsement furnished by Livestock Division, AMS, USDA. Conformation specifications to be based on standards as set out in Appendix to Exhibit I attached. Weights may be determined by weighing or by estimates using a girth measurement tape.

[7] DHI or DHIR milk production records mature equivalent based on 305-day, two times day milking.

[8] Source: USDA-DHI Sire Summary Records—Animal and Plant Health Inspection Service.

[9] Source: Breed Association, or Dairy Records Processing Center Serving the DHI Association where tested.

[10] Must be certified to by the breeder of the female at time of sale to exporter.

[11] The certification of pregnancy shall be by an accredited veterinarian.

BREED.[3]

a. Ayrshire.
b. Brown Swiss.
c. Guernsey.
d. Holstein.
e. Jersey.
f. Milking Shorthorn.[3]
g. Red Poll.[3]

Option B (to be specified by purchaser):

AGE.[3]

a. Calf—(6 to 12 months).
b. Yearling—(12 to 18 months).
c. Young Bull—(18 to 24 months).
d. Mature Bull—(24 to 48 months).

General Requirements:

A. *Health.*[4]

1. Tested negative for tuberculosis and brucellosis within 30 days of loading aboard export carrier.

2. Animals come from farms that have not been under quarantine for any communicable disease during the past year.

3. Certified that the United States is a country where foot-and-mouth disease has not existed since 1929, contagious bovine pleuropneumonia has not existed since 1892, and rinderpest has never occurred.

4. Animals have been inspected and found sound (including freedom from blindness, structural defects, etc.), free of evidence of communicable disease and exposure thereto and free of mites, ticks and ringword or freed from the same.

B. *Minimum Weight.*[5]

Age[1] (in months)	Holstein and Brown Swiss	Guernsey and Ayrshire	Jersey
a. 6	450	370	315
b. 8	585	480	410
c. 10	710	555	490
d. 12	820	655	565
e. 14	930	755	645
f. 16	1,040	840	745
g. 18	1,155	920	815
h. 21	1,320	1,065	950
i. 24	1,455	1,210	1,050
j. 27	1,570	1,310	1,140
k. 30	1,670	1,395	1,215
l. 36 and over	1,840	1,545	1,350

[1] Minimun weights for ages between the ages shown shall be determined proportionately.

C. *Minimum Conformation.*[6]

All animals must meet the minimum body conformation as described in Appendix to Exhibit II.

D. *Production performance Index.*[6]

1. *Acceptable.* An Acceptable performance index for a *Registered Bull* will be considered to exist if:

(a) *Sire* has a Plus (+) USDA Predicted Difference[7], and

(b) *Dam* has a DHI or DHIR record[8] 10 percent above the DHIR breed average as shown in item E below.

2. *Superior.* A Superior performance index for a *Registered Bull* will be considered to exist if:

(a) *Sire* has a Plus (+) USDA Predicted Difference[7] equal to two percent of DHIR breed average as shown in item E below, and

(b) *Dam* has a DHI or DHIR record[8] 20 percent above the DHIR breed average as shown in item E below.

E. *DHIR Milk Production Breed Averages (Mature Equivalent).*

The following breed averages are applicable to these specifications:

Breed	Breed average	2 pct of breed average	10 pct of breed average	20 pct of breed average
	(*Pounds*)	(*Pounds*)	(*Pounds*)	(*Pounds*)
Ayrshire	12,556	251	1,255	2,511
Brown Swiss	13,187	264	1,318	2,637
Guernsey	10,483	210	1,048	2,096
Holstein	15,204	304	1,520	3,040
Jersey	9,465	189	946	1,893

F. *A semen check indicating at least 60 percent sperm motility must be supplied for bulls over one year of age.*[9]

APPENDIX TO EXHIBIT II—MINIMUM BODY CONFORMATION SPECIFICATIONS FOR BULLS

In addition to meeting the minimum weight for the breed as specified in Exhibit II, the animal shall possess masculinity, normal breed conformation, quality, and body capacity. He shall have the general appearance of thrift and vitality with eyes bright and ears alert. The feet and legs shall be well formed with legs straight, strong, and well set. There shall be no evidence of lameness or other serious body defects. He shall possess normal dairy character by showing a lack of obvious excess fatty condition for the age class. Bulls officially classified by the respective breed association as "Good Plus" (or equivalent) or higher shall be acceptable if found at time of inspection not to have developed a physical defect in conflict with the above-stated conditions.

SUPPLEMENT III—BREEDING SWINE

Section

A. Additional definitions.
B. Submission of requests for sale registrations.
C. Additional documents required after delivery.
D. Miscellaneous.
Exhibit I—Females.
Exhibit II—Boars.
Appendix I—Health Requirements.
Appendix II—Specifications for Official U.S. Standards for Grades.

A. ADDITIONAL DEFINITIONS

1. "Port value" means the net amount of the exporters sales price for breeding swine to be exported under the financing agreement, basis f.a.s. or f.o.b. export carrier at U.S. ports, at U.S. border points of exit, or at U.S. points of flight if transported by air freight. The point of exportation for animals shall be designated by the Animal and Plant Health Inspecton Service, U.S. Department of Agriculture. The port value shall not include the ocean freight for c.&f. sale or ocean freight and marine and war risk insurance for a c.i.f. sale, and shall also not include any animal care or servicing cost incurred after such animals are loaded aboard the export carrier. The net amount of the exporter's sales price means the contract price for the animals less any payments made by the importer and less any discounts, credits, or allowances to the importer. Such net amount shall not exceed (a) for boars, $750 each; (b) for bred females, $500 each; and (c) for unbred females $400 each, unless approved by the Assistant Sales Manager for Commercial Export Programs. The difference, if any, between the maximum net amount specified in (a) (b), or (c) of this paragraph A. 1. and the contract price for the individual animal shall not be included as part of the port value.

2. "Producer" means the person holding legal title to the animal at time of birth and who has had continuous ownership of such animal until sold for export under an approved financing agreement.

3. "Bred female" means a bred gilt as set forth in Exhibit I, Option B, and must be accompanied by a breeding certificate provided by the breeder.

4. "Breeder" means the person holding legal title to the female animal at the time she was served to qualify such animal hereunder as a bred female.

5. "Registered animal" means an eligible animal which the appropriate national breed association has officially registered, declared eligible for registry or otherwise classified as a purebred animal of that breed.

6. "Eligible animal" means a registered animal which meets all of the following requirements:

(a) The animal must have been owned by a person who had continuous title to such animal for a period of at least 60 days immediately before acquisition by the exporter, unless the exporter is the producer of the animal;

(b) The animal must, at the time of export, have two eartags acceptable to USDA as an authentic identifying symbol for such animal and must be marked with a legible ear notch which corresponds with the number shown in the certificate of registration or other official document issued by the appropriate national breed association;

(c) The animal must qualify under the specifications of Exhibit I for females and Exhibit II for boars.

B. SUBMISSION OF REQUESTS FOR SALE REGISTRATIONS

1. In addition to the information required by § 1488.4(c) (1) through (11), the request for a sale registration for financing export credit sales of breeding swine shall include the following:

(a) A list of the animals to be exported including the identification number, breed, and price under the following classes:

1. Boars.
2. Bred females.
3. Unbred females.

(b) If applicable, a statement of justification for prices over the maximum limits specified in A.1.(a), (b), or (c).

(c) A statement that such animals will conform to the general specification requirements set forth in Exhibit I or II, as applicable to the class of animals to be exported.

2. In addition to the consideration specified in § 1488.3, a financing period in excess of 12 months but not in excess of 36 months for breeding swine may be justified when it will result in the use by the importer, or by purchasers from the importer, of the animals in the destination country under conditions which will promote expanded demand for ad-

[1] All animals for delivery under these specifications must be officially registered with the appropriate National Breed Association and be so certified by AMS agent.

[2] Dual purpose breeds (See paragraph E, Supplement I or II).

[3] Certified by AMS agent.

[4] Certification or endorsement furnished by Veterinary Services, Animal and Plant Health Inspection Service, USDA.

[5] Certification or endorsement furnished by Livestock Division, AMS, USDA. Conformation specifications to be based on standards as set out in Appendix to Exhibit II attached. Weights may be determined by weighing or by estimates using a girth measurement tape.

[6] Certification or endorsement furnished by Livestock Division, AMS, USDA. Conformation specifications to be based on standards as set out in Appendix to Exhibit II attached. Weights may be determined by weighing or by estimates using a girth measurement tape.

[7] DHI or DHIR milk production records. Mature equivalent based on 305-day, two times day milking.

[7] Source: USDA-DHI Sire Summary Records, Animals and Plant Health Inspection Service.

[8] Source: Breed Association or Dairy Records Processing Center Serving the DHI Association where tested.

[9] Certification must be issued by an accredited veterinarian.

ditional breeding animals or feed stuffs from the United States.

C. ADDITIONAL DOCUMENTS REQUIRED AFTER DELIVERY.

In addition to the documents specified in § 1488.8 (b) through (e), the exporter shall submit the following documents to the Treasurer, Commodity Credit Corporation:

1. An animal identification list containing the following information:

(a) Identification number.

(b) For each animal, shown separately opposite the identification number, the sales price as specified in the sales invoice.

2. A certification by the exporter that animals of the description in the exporter's sales contract have been delivered, and that the exporter knows of no defenses to the account receivable assigned to CCC.

D. MISCELLANEOUS

The following documents or certifications, as applicable, shall be furnished to the importer by the exporter:

1. The certificates issued by an agent of the Agricultural Marketing Service, U.S. Department of Agriculture, as to official registration of the animal(s) and listing the identification number(s) and corresponding registration certificate number(s) for each animal showing that such numbers have been verified as legible and accurate for such animal, and that the person holding legal title to the animal at the time of export sale has appropriately executed such certificate for transfer to the party designated by the importer. (See Exhibit I or II.)

2. A certification by the breeder of females sold as "bred females" showing the identification number of both the female and boar and stating that the service boar was a registered boar of the same breed. In addition the breeder will certify that the bred females have missed at least one heat period since last service. It will also be certified by the breeder that the bred females will not be more than three months pregnant at time of departure from point of exit.

3. The certificates issued or endorsed by Veterinary Services, Animal and Plant Health Inspection Service, listing the identification number and showing that such animal has been inspected for compliance with "Health" requirements. (See Appendix I to Exhibits I and II.)

4. The certificates issued by the Agricultural Marketing Service listing the identification number for each animal and showing for such animal compliance with breed registration, number of teats, and USDA grade, for the class, as shown in Exhibit I or II, as applicable.

5. The certificates signed by the breeder listing, for each animal, the individual identification number, breed, and age and a statement that the animal was from a litter of at least seven pigs.

EXHIBIT I TO SUPPLEMENT III

USDA Approved Breeding Swine Export Specifications—Females, Option A (to be specified by purchaser):

1. Registered.[1]

BREED

a. Poland China.
b. Chester White.
c. Yorkshire.
d. Hampshire.
e. Berkshire.
f. Duroc.
g. Tamworth.
h. Landrace.
i. Hereford.
j. Spotted Swine.

Option B (to be sepcified by purchaser):

AGE[1]

1. Unbred female—10 weeks-7 months.[2]
2. Bred female—7-14 months.

General Requirements:

A. *Health.* (See Appendix I)

B. *Minimum USDA Grade—U.S. No. 2.*[3]

C. Eligible females must be out of a litter of at least seven pigs.[4] Also, they must have at least six functional teats on each side of the underline with no inverted nipples.[4]

D. *Statement of Service or Other Requirements.*

Bred females must have been bred to a registered boar of the same breed. In addition, bred females shall have missed at least one heat period since last service and be not more than three months pregnant at time of departure from point of exit.[5]

EXHIBIT II TO SUPPLEMENT III

USDA Approved Breeding Swine Export Specifications—Boars, Option A (to be specified by purchaser):

BREED[1]

(a) Poland China.
(b) Chester White.
(c) Yorkshire.
(d) Hampshire.
(e) Berkshire.
(f) Duroc.
(g) Tamworth.
(h) Landrace.
(i) Hereford.
(j) Spotted Swine.

Option B (to be specified by purchaser)

AGE[2]

1. Boar pigs—10-16 weeks.[3]
2. Boars—4-8 months.
3. Boars—8-12 months.

General Requirements:

A. *Health.* (See Appendix I).

B. *Minimum USDA grade—U.S. No. 1.*[4]

C. Eligible boars must be from a litter of at least seven pigs.[5]

APPENDIX I TO EXHIBITS I AND II

HEALTH REQUIREMENTS[1]

Swine financed for export under the CCC Export Credit Sales Program shall be certified by the appropriate USDA inspectors as follows:

1. U.S. is free of foot-and-mouth disease, African swine fever, Teschen disease and vesicular exanthema.

2. The swine originate from a free area[2] where hog cholera is not known to exist according to Title 9, Part 76 of the U.S. Department of Agriculture regulations.

3. Animals have been inspected and found sound (including freedom from blindness, structural defects, etc.), free of evidence of communicable disease and exposure thereto, and free of mites, lice, and ticks or freed from the same.

Export inspection and certification requirements of the U.S. Department of Agriculture must be met.

APPENDIX II TO EXHIBITS I AND II

Specifications for Official United States Standards for Grades of Feeder Pigs:

U.S. NO. 1

Feeder pigs in this grade near the borderline of the U.S. No. 2 grade are long and have thick muscling throughout. Thickness of muscling is particularly evident in thick and full hams and shoulders. The hams and shoulders are thicker than the back, which is well-rounded. They usually present a well-balanced appearance.

U.S. NO. 2

Feeder pigs in this grade near the borderline of the U.S. No. 3 grade are moderately long and have moderately thick muscling throughout. Thickness of muscling is particularly evident in moderately thick and full hams and shoulders. The back usually appears slightly full and well-rounded. They usually present a well-balanced appearance.

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

Signed at Washington, D.C. on January 14, 1977.

JAMES L. HUTCHINSON,
Vice President, Commodity Credit Corporation and General Sales Manager, Office of the General Sales Manager.

[FR Doc.77-1841 Filed 1-19-77;8:45 am]

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[1] All animals for delivery under these specifications must be certified by AMS agent as officially registered with the appropriate National Breed Association.

[1] Certification by breeder.

[2] Female pigs in this class must weigh at least 60 pounds. Certification furnished by Livestock Division, AMS, USDA.

[3] Certification furnished by Livestock Division, AMS, USDA, Grade to be based on the official U.S. standards for grades of feeder pigs. (See Appendix II.)

[4] Certification by Livestock Division, AMS, USDA.

[5] All animals for delivery under these specifications must be certified by AMS agent as officially registered with the appropriate National breeder.

[1] Certification by Breeder.

[2] Boar pigs must weigh at least 60 pounds. Certification furnished by Livestock Division, AMS, USDA.

[3] Certification furnished by Livestock Division, AMS, USDA Grade to be based on the official U.S. standards for grades of feeder pigs. (See Appendix II.)

[4] Certification by breeder

[5] Certification or endorsement furnished by Veterinary Services, Animal and Plant Health Inspection Service, USDA.

[2] Free area means a radius of 5 miles within which no cholera has occurred within 3 months.

Animal and Plant Health Inspection Service

[9 CFR Part 92]

FOREIGN EMBARKATION QUARANTINE STATION FOR LIVESTOCK

Proposed Criteria and Standards for Establishment

• *Purpose.* The purpose of these proposed amendments is to provide standards for a foreign embarkation quarantine facility in which livestock proposed for importation into the United States through the Fleming Key Animal Import Center may be assembled and processed for exportation to the United States. •

Statement of considerations. Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that, pursuant to section 1 of the Act of May 6, 1970 (21 U.S.C. 135),

the Animal and Plant Health Inspection Service is considering amending Part 92, Title 9, Code of Federal Regulations, to provide standards for such a foreign embarkation quarantine facility. Section 1 of the Act of May 6, 1970 (Pub. L. 91-239, 84 Stat. 202 (21 U.S.C. 135)), provides authority for the Secretary of Agriculture to establish and maintain a maximum security international animal quarantine station within the territory of the United States, into which animals may be brought from any country, including but not limited to those countries in which the Secretary determines that rinderpest or foot-and-mouth disease (FMD) exists, and be subsequently moved into other parts of the United States, in accordance with such conditions as the Secretary shall determine are adequate to prevent the introduction into and dissemination within the United States of livestock or poultry diseases or pests.

In order to guard against the importation into the Fleming Key facility of animals infected with diseases such as rinderpest and foot-and-mouth disease, it appears necessary that such animals should be held in a foreign embarkation quarantine prior to shipment to Fleming Key. An embarkation quarantine would require frequent inspection and supervision by Department personnel and therefore would constitute an expense to the Department. Further, it appears that logistic problems would arise concerning the gathering of animals from different countries and placing them in an embarkation quarantine facility for subsequent shipment to Fleming Key. Accordingly, it appears that a single embarkation quarantine facility with a capacity of 450 animals would minimize the problems of supervision, expense, and coordination of movement of animals into Fleming Key, and would maximize the utilization of the Fleming Key facility and reduce the chance of the introduction of communicable diseases of livestock and poultry into this country. Therefore, the Department is proposing to establish standards of approval for such a facility.

Part 92, Title 9, Code of Federal Regulations, would be amended in the following respects:

A new § 92.4a would be added to read:

§ 92.4a Embarkation quarantine facility; criteria and standards for approval.

Criteria for the establishment of an approved embarkation quarantine facility outside the United States for the purpose of importing animals into the United States through the Fleming Key Animal Import Center are as follows:

(a) *Establishment.* (1) The Deputy Administrator, Veterinary Services, may enter into an agreement with one or more parties for the establishment of such a facility pursuant to the standards in paragraph (b) of this section.

(2) To quality for designation as an approved embarkation quarantine facility and to retain such approval, the physical facility, and its maintenance and operation, shall meet the minimum requirements of paragraph (b) of this section.

(3) All costs associated with the establishment and operation of such an approved embarkation quarantine facility shall be borne by the owner or operator of such facility.

(4) Requests for approval and plans for proposed facilities shall be submitted to the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782. Each request for approval will be considered on the basis of the date and time it is received by the Deputy Administrator, Veterinary Services. The first such application received which can comply with the standards and regulations established in this section shall be approved by the Deputy Administrator, Veterinary Services. If the approval of any approved facility is ever terminated or revoked, then the Deputy Administrator, Veterinary Services, shall approve another application in the same manner as set forth in this paragraph.

(5) Permission to place animals in the foreign embarkation quarantine facility shall be given to any person who has received permission to import animals through the Fleming Key Animal Import Center unless the Deputy Administrator, Veterinary Services, determines that sufficient grounds exist whereby such person may be denied such permission.

(6) Fees charged by the owner or operator for the use of such facility shall be provided in private agreements between the owner or operator of the facility and the owners of the animals proposed for importation. Such fees shall be nondiscriminatory and reasonable as determined by the Deputy Administrator, Veterinary Services.

(7) Approval of any approved quarantine facility may be withdrawn at any time by the Deputy Administrator, Veterinary Services, upon his determination that any requirement of this section is not being met. Before such action is taken, the operator of the facility will be informed of the reasons for the proposed action and afforded opportunity to present his views thereon. Upon withdrawal of approval, the operator, upon request, shall be afforded opportunity for a hearing with respect to the merits or validity of such withdrawal or refusal shall continue in effect unless otherwise ordered by the Deputy-Administrator, Veterinary Services.

(b) *Standards for approval of embarkation quarantine facilities*—(1) *Location.* (i) The embarkation quarantine facility shall be so located as to be isolated from all domestic ruminants, swine, and poultry and from all wild ruminants, swine, and poultry and shall be near docks from which international shipments may be made by ocean vessels.

(ii) The route of travel between the embarkation quarantine facility and the docks from which such animals are to be exported shall be through areas free of domestic and wild ruminants, swine and poultry.

(iii) The facility shall be so situated that there will be no contact between animals held in the facility with any other species of animals.

(iv) The facility shall be so situated that it will be free from contact with water and waste effluents from local livestock or poultry. Water and waste effluents from the facility shall be disposed of in a manner determined by the Deputy Administrator, Veterinary Services, to be adequate to insure no exposure to local livestock or poultry.

(2) *Building.* (i) The exterior of the building shall be of durable, low maintenance, waterproof type construction that will withstand repeated cleaning and disinfecting.

(ii) Roofs shall be watertight. The styling and configuration of the roof of the animal holding building shall provide for optimum air circulation throughout the facility.

(iii) The interior finish of the building shall be durable, washable, and of low maintenance type construction. The floor shall be concrete with no cracks or crevices.

(iv) All openings in the building shall be double screened, with such mesh as to preclude the entrance of small flying insects such as mosquitos into the animal hoding area.

(v) Stalls, pens, and runways shall be constructed of sufficient height and strength to confine and restrain all animals simultaneously for daily veterinary examinations.

(vi) at least 70-foot candle lighting shall be provided in the inspection area. A minimum light of 30-candle shall be available in all other areas of the facility.

(vii) A dipping vat of a concrete pit type with inspection chute, holding pen, dripping pen, and post-drip area similar to USDA Extension Plan 5940, revised, shall be provided.[1]

(viii) The waste management system shall be carefully designed to meet all applicable sanitation and quarantine requirements and the existing environmental standards of the country in which the embarkation quarantine facility is located.

(3) *Fencing.* (i) The outer perimeter of all facilities shall be surrounded by a fence which shall be of sufficiently small mesh as to preclude the entrance of small farm animals, including dogs, and of such height and strength as to prevent entrance of larger animals. This fence shall be located at least 200 feet from the building in which quarantined animals are to be held.

(ii) In areas affected by cattle fever ticks all such facilities shall be double fenced with the inner perimeter fence

[1] Copies of the USDA Extension Plan 5940, revised, may be obtained from the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Hyattsville, Maryland 20782.

located at least 15 feet from the outer perimeter fence. When double fencing is required, the space between the outer and inner perimeter fences shall be kept free from all foliage at all times.

(iii) The outer fence of the facility shall be posted with signs in appropriate language, which shall convey the following: Restricted Area—keep out, Quarantine Area—keep out, or Restricted Quarantine Area—keep out.

(4) *Other requirements.* (i) Access into the quarantine area shall be through a single door which shall lead into a walk through shower area with clothes change areas located on either side of the shower and adjacent thereto.

(ii) Toilet and lavatory facilities as determined by the Deputy Administrator, Veterinary Services, to be adequate to preclude transmission of livestock or poultry disease agents from the facility shall be located within the animal holding areas.

(iii) A sufficient supply of clean clothing including towels and footwear as determined by the Deputy Administrator shall be maintained within the quarantine area.

(iv) A continuous supply of hot and cold running water shall be provided which shall include potable water for personnel.

(v) If lunch is to be eaten within the facility, a lunch room must be provided and all food entered into the facility must be approved by the supervising United States government veterinarian.

(vi) A separate room containing the equipment for preparation and packaging of laboratory specimens with adequate office space as determined by the Deputy Administrator, Veterinary Services, to perform his duties shall be provided for the supervising veterinary official. All records, equipment, and other mtterials used in the facility, must be maintained within the quarantint facility for the entire quarantine period.

(vii) A separate area situated apart from the animal holding area shall be provided for necropsies and a means for the removal of the carcass of dead animals shall be provided without breaking quarantine security.

(viii) An animal receiving area and a chute or stocks for restraint during examination and veterinary inspection, as determined to be appropriate by the Deputy Administrator, Veterinary Services, to permit examination of the animal, shall be provided.

(ix) Feed shall be stored in such a manner that replenishment during the quarantine period does not require transporting vehicles to enter the quarantine area.

(x) Equipment necessary for the care, cleaning, feeding, waste disposal, and handling of the animals shall be provided and maintained within the quarantine area.

(xi) Additional requirements as to security, physical plant and facilities, and sanitation may be imposed by the Deputy Administrator, Veterinary Services, in each specific case in order to assure that the quarantine of the animals in such facility will be adequate to enable determination of their health status, prevent the spread of disease among animals in quarantine, and prevent escape of animal disease agents from the facility.

Any person who wishes to submit written data, views, or arguments concerning the proposed amendments may do so by filing them with the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Hyattsville, Maryland 20782, before March 22, 1977.

All written submissions made pursuant to this notice will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 821–A, Hyattsville, Maryland, during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

Comments submitted should bear a reference to the date and page number of this issue in the FEDERAL REGISTER.

Done at Washington, DC, this 17th day of January 1977.

NOTE.—The Animal and Plant Health Inspection Service 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.

PIERRE A. CHALOUX,
Acting Deputy Administrator,
Veterinary Services.

[FR Doc.77–1966 Filed 1–19–77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 76–PC–7]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the 700 feet transition area of Honolulu, Hawaii.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Pacific-Asia Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P.O. Box 4009, Honolulu, Hawaii 96813. All communications received on or before February 22, 1977, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC–24, 800 Independence Avenue, S.W., Washington, D.C. 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

Request for copies of this notice of proposed rulemaking should be addressed to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, S.W., Washington, D.C. 20591.

As part of this proposal relates to the navigable airspace outside the United States, this notice is submitted in consonance with the ICAO International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of and Annex 11 to the Convention on International Civil Aviation, which pertain to the establishment of air navigation facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to insure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices to civil aircraft in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

The proposed amendment would extend the 700 feet transition area southward by redesignating it to read as follows:

HONOLULU, HAWAII (HONOLULU INTERNATIONAL AIRPORT)

That airspace extending upward from 700 feet above the surface south and southeast of Honolulu beginning at Lat. 21°20'30" N., Long. 157°51'15" W., thence south to Lat. 21°15'30" N., Long. 157°49'15" W., thence east along the shoreline to and clockwise along the arc of a 15 NM radius circle centered on Honolulu International Airport (Lat. 21°19'35" N., Long. 157°55'45" W.) to Lat. 21°08'40" N., Long. 158°07'35" W.,

thence northwest to Lat. 21°10'10" N., Long. 158°11'55" W., thence northeast along a line 4.5 miles southeast of and parallel to the Honolulu VORTAC 242° radial to and counterclockwise along the arc of a 5-mile radius circle centered on NAS Barbers Point (Lat. 21°18'35" N., Long. 158°04'30" W.) to and counterclockwise along the arc of a 5-mile radius circle centered on Honolulu International Airport to the point of beginning, and within 3 miles northwest and 4.5 miles southeast of the Honolulu VORTAC 242° radial, extending from 13 miles to 14 miles southwest of the VORTAC.

The proposed extension of this transition area would provide controlled airspace for aircraft arriving from the east and southeast at the lower altitudes.

(Secs. 307(a) and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1510), Executive Order 10854 (24 FR 9565), sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Washington, D.C., on January 12, 1977.

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

[FR Doc.77-1621 Filed 1-19-77;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 76-PC-3]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would designate a Kaanapali, Hawaii, transition area.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Pacific Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P.O. Box 4009, Honolulu, Hawaii 96813. All communications received on or before March 7, 1977, wil be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue, S.W., Washington, D.C. 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

Request for copies of this notice of proposed rulemaking should be addressed to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-320, 800 Independence Avenue, S.W., Washington, D.C. 20591.

As part of this proposal relates to the navigable airspace outside the United States, this notice is submitted in consonance with the ICAO International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of and Annex 11 to the Convention on International Civil Aviation, which pertain to the establishment of air navigation facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to insure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices to civil aircraft in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

The proposed amendment would designate the following transition area:

KAANAPALI, HAWAII

That area extending upward from 700 feet above the surface within a 5-mile radius of Kaanapali Airport (Lat. 20°56'45" N., Long. 156°41'35" W.), within 3 miles each side of the Molokai VORTAC 114° T radial extending from the 5-mile radius to 7.5 miles northwest of the airport.

A transition area of sufficient dimension, which would contain IFR operations within controlled airspace between the base of the 700 foot transition area and the overlying 1,200 foot controlled airspace, is needed for a new instrument approach procedure to Kaanapali Airport, Maui, Hawaii.

(Sec. 307(a) and 1110 of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1510), Executive Order 10854 (24 FR 9565) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Washington, D.C., on January 12, 1977.

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

[FR Doc.77-1622 Filed 1-19-77;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 76-WE-25]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would provide additional controlled airspace to accommodate an instrument approach procedure for Catalina Airport, Avalon, Calif. (Santa Catalina Island).

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Western Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, P.O. Box 92007, Worldway Postal Center, Los Angeles, Calif. 90009. All communications received on or before February 22, 1977, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be avaialble for examination by interested persons at the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue, S.W., Washington, D.C. 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

Request for copies of this notice of proposed rulemaking should be addressed to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, S.W., Washington, D.C. 20591. The rule proposed herein has been reviewed in accordance with E.O. 11821 titled, Inflationary Impact Statements, (39 FR 41501, November 29, 1974), and it has been determined that the preparation of an Inflationary Impact Statement is not necessary.

As part of this proposal relates to the navigable airspace outside the United States, this notice is submitted in consonance with the ICAO International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of and Annex 11 to the Convention on International Civil Aviation, which pertain to the establishment of air navigation facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to in-

sure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices to civil aircraft in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

The proposed amendment would provide transition airspace extending upward from 700 feet above the surface within five miles each side of the 229°T (214°M) and 012°T (357°M) radials extending from six miles north to 12 miles southwest of the Santa Catalina VORTAC.

The proposed additional controlled airspace will upgrade the capability of Avalon Airport by providing airspace protection for its first instrument approach procedure. The instrument approach will enhance safety by providing a procedure during IFR weather and marginal VFR weather.

(Sec 307(a) and 1110 of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1510), Executive Order 10854 (24 FR 9565) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Washington, D.C., on January 12, 1977.

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

[FR Doc.77-1620 Filed 1-19-77;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 76-SO-108]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Camden, Tennessee, transition area.

Interested persons may submit such written data, views or arguments as they desire. Communications should be submitted to the Federal Aviation Administration, Southern Region, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. All communications received on or before March 7, 1977, will be considered before action is taken on this amendment. No hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become a part of the record for consideration. The proposal contained in this notice may be changed in light of comments received.

The official docket will be available for examination by interested persons at the Federal Aviation Administration, Southern Region, Room 645, 3400 Whipple Street, East Point, Ga.

The Camden transition area would be designated as:

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of the Benton County Airport (latitude 36°00'40" N., longitude 88°07'24" W.).

The proposed designation is required to provide controlled airspace protection for IFR operations at Benton County Airport. A prescribed instrument approach procedure to this airport, utilizing the Jacks Creek VORTAC, is proposed in conjunction with the designation of this transition area.

This amendment is proposed under the authority of sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and of sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

The FAA 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, Ga., on January 6, 1977.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.77-1619 Filed 1-19-77;8:45 am]

[14 CFR Part 91]

[Docket No. 16431; Notice 77-2]

REGULATORY REVIEW PROGRAM

Invitation to Submit Proposals for Consideration

The Federal Aviation Administration gives public notice of the Part 91, Subpart B Regulatory Review Program (herein called "program"). This program will be administered by the Airspace and Air Traffic Rules Division, Air Traffic Service. The program, a result of the Secretary of Transportation's regulatory reform policy statement of March 23, 1976, will be patterned on the airworthiness and operations review programs of 1974–76 and will proceed according to the schedule in Appendix A of this notice.

Proposals Invited. All interested persons are invited to submit any proposals to amend Part 91, Subpart B of the Federal Aviation Regulations that they deem appropriate. Proposals should be submitted in duplicate as soon as possible to the Federal Aviation Administration, Air Traffic Service, Airspace and Air Traffic Rules Division, AAT-200, 800 Independence Avenue, SW, Washington, D.C. 20591. To receive consideration, proposals must be within the scope of the program as set forth in this notice and must be received by the FAA not later than March 15, 1977. Proposals received after that date will be deferred for consideration during a future regulatory review. This is in addition to, and does not supersede, the processing of petitions for rulemaking under Part 11 of the Federal Aviation Regulations, where appropriate.

Scope. This program includes only Subpart B (Flight Rules) of Part 91 of the Federal Aviation Regulations (14 CFR Part 91).

Pending Notices. Appendix B to this notice identifies a number of currently outstanding notices of proposed rule making which affect Part 91, Subpart B. These notices will be pursued to a conclusion or withdrawn outside the program.

Status of the Rules. The last amendment to the Part is Amendment 91-136, "Phased Compliance with Part 36 Noise Limits by Certain Turbojets with Maximum Weights Greater than 75,000 Pounds, issued December 17, 1976, and effective on January 24, 1977 (see 41 FR 56046, December 23, 1976). There are no petitions for rule making pending concerning Subpart B of Part 91.

Required Format and Information. Based on experience gained during the Airworthiness and Operations Review Programs, the FAA has determined that use of a standard format and the inclusion of certain specific information for each proposal will greatly facilitate the processing, compilation and evaluation of the proposals received by the FAA. Appendix C of this notice contains a sample of the format that should be used. In addition, each proposal should include at least the following information:

1. The full name or title of the proponent or an acceptable acronym.
2. The FAR 91 section affected.
3. A short title identifying the subject of the proposal (in 10 words or less).
4. The specific regulatory language being proposed to achieve the desired objective, if at all possible.
5. The language of the existing rule that the proposal would change.
6. An explanation and justification of the proposal, including:
   a. Background, pertinent to proposed change.
   b. Why is the change necessary?
   c. How is aviation safety enhanced or the existing level of safety maintained?
   d. What are the environmental, economic (including inflationary) and cost/benefit consequenses, if any, of the proposal if adopted?

e. What other rules are affected (for example, parallel rules in other FAR Parts)?

f. What other proposals, if any, are directly related?

7. Additional data or references to publications.

When more than one proposal is submitted on an issue to achieve the desired result, the information required in item 6, above, should be stated in full on only one proposal and a cross-reference included in the other related proposals. Proponents may submit a precise statement of the objective sought instead of the information required under item 4 above.

Compilation of Proposals. Each proposal, received no later than March 15, 1977, will be evaluated. The FAA will then prepare a Compilation of Proposals for consideration during the Part 91, Subpart B Regulatory Review. In addition to proposals received from outside the agency, the FAA will consider in this compilation FAA proposals believed appropriate for the program.

Agenda and Conference. All proposals received will be considered in preparing the agenda for the Part 91, Subpart B Regulatory Review Conference. The agenda (including the Compilation of Proposals) will be distributed by July 1, 1977. At that time, a Notice of Availability of the Agenda will be published in the FEDERAL REGISTER. The conference will be held during the period August 1–4, 1977 in the Washington, D.C. area at a place to be announced. There will be no admission fee or other charge to attend and participate in the conference. All conference sessions will be open, on a space available basis, to all interested persons who register to attend. All meetings will be taped. Copies of the tapes may be purchased, at fees determined in accordance with 49 CFR 7.95(j), from the Office of the Chief Counsel, AGC–24, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, D.C. 20591.

Proposed and Final Rulemaking. The Conference tapes and related regulatory review documents will be used in developing notices of proposed rulemaking, where appropriate.

(Secs. 305, 307, 312, 313(a), and 601 of the Federal Aviation Act of 1958 (49 U.S.C. 1346, 1348, 1353, 1354(a), 1421).)

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 January 13, 1977.

GLEN D. TIGNER,
Acting Director,
Air Traffic Service.

APPENDIX A—SCHEDULE FOR PART 91, SUBPART B REGULATORY REVIEW PROGRAM

January 17, 1977—Notice initiating Part 91, Subpart B Regulatory Review Program and inviting proposals to amend the Federal Aviation Regulations.

March 15, 1977—Final date for delivering proposals to FAA.

July 1, 1977—Distribute agenda (including compilation of proposals) and related working documents for Part 91, Subpart B Regulatory Review Program and publish a Notice of Availability of the Agenda in the FEDERAL REGISTER.

August 1 to 4, 1977—Part 91, Subpart B Regulatory Review Program Conference.

APPENDIX B—PENDING NOTICES OF PROPOSED RULE MAKING EXCLUDED FROM THE PART 91, SUBPART B REGULATORY REVIEW PROGRAM

The FAA has issued a number of notices of proposed rule making proposing amendments to Part 91 of the Federal Aviation Regulations within the scope of this program. These notices will be pursued to a conclusion outside the program. They are identified below:

1. *Notice 71–22, VFR Flight Beneath Clouds.* This notice (36 FR 14659, August 7, 1971) proposed "amending § 91.105(c) by removing the ceiling as reported at the primary airport as the criterion for VFR flight in a control zone, and substituting the actual cloud condition prevailing at any given point in the control zone where VFR flight is being conducted." The comment period expired November 5, 1971.

2. *Notice 74–8, Two-Way Radio Communications During IFR Operations.* This notice (39 FR 7431, February 26, 1974) proposed "amending § 91.127(c)(4) of the Federal Aviation Regulations to provide that, when holding instructions have been received, a pilot who has lost two-way communications under IFR must either leave the holding fix at the expect-further-clearance time received or, if an expect-approach-clearance time has been received, commence the approach at the expect-approach-clearance time received." The comment period expired April 29, 1974.

3. *Notice 76–20, Operations Review Program, Proposed Airspace, Air Traffic and General Operating Rules.* This notice (41 FR 46875, October 26, 1976) proposes "amending Parts 71 and 91 of the Federal Aviation Regulations by removing all provisions for designating Group III TCAs, by removing the 200-knot restriction from terminal control areas, and by making other editorial and clarifying changes." The comment period expires January 24, 1977.

4. *Notice 76–26, Turbojet-Powered Air planes, Delayed Landing Flap Procedure.* This notice (41 FR 52396, November 29, 1976) proposes "amending Part 91 of the Federal Aviation Regulations (14 CFR Part 91) to add a new § 91.85(d) to require that the landing flap setting for turbojet-powered airplanes be delayed until at or below 1,000 feet above the airport elevation." The comment period expires January 28, 1977.

APPENDIX C—FORMAT FOR PART 91, SUBPART B REVIEW

The following format and guidelines should be followed in developing proposals for consideration during the Review.

Guidelines. Each proposal should be submitted on a separate page. The text should be within margins not more than 6½" wide and 9" long, so that it can be printed on paper 8" by 10½".

SAMPLE FORMAT

Proposal: (Leave Blank—for FAA use).
From: Ms. Jane Doe.
Index: (Leave Blank—for FAA use).
FAR: 91.83.
SUBJ: Flight plan; information required.

PROPOSAL

Amend 91.83(a)(10) to read as follows:

(a) Unless otherwise authorized by ATC, each person filing an IFR or VFR flight plan shall include in it the following information:

(10) The number of persons in the aircraft.

CURRENT RULE

91.83 Flight plan; information required.

(a) Unless otherwise authorized by ATC, each person filing an IFR or VFR flight plan shall include in it the following information:

(10) In the case of an international flight, the number of persons in the aircraft.

EXPLANATION AND JUSTIFICATION

Flight plan information should always contain information as to the number of persons aboard, etc. The environmental and economic impacts are none.

(Attach additional data, if any.)

[FR Doc.77–1614 Filed 1–19–77;8:45 am]

INDIAN CLAIMS COMMISSION

[25 CFR Part 504]

GOVERNMENT IN THE SUNSHINE ACT

Public Observation of Commission Meetings; Prohibition of Ex Parte Communications Relevant to Merits of Pending Commission Proceedings

For the purpose of implementing the provisions of the Government in the Sunshine Act, 5 U.S.C. 552b, 557(d), the Indian Claims Commission proposes to amend Chapter III of Title 25 of the Code of Federal Regulations by adding a new Part 504 to that chapter.

The Government in the Sunshine Act provides for opening agency meetings to public observation and prohibits ex parte communications between members or employees of an agency and interested persons outside the agency relevant to the merits of any proceeding before the agency.

These amendments to Title 25, Chapter III of the Code of Federal Regulations are made under the authority of section 3 of the Government in the Sunshine Act, 5 U.S.C. 552b(g) and sections 8 and 9 of the Indian Claims Commission Act, 60 Stat. 1051 (25 U.S.C. 70g, 70h).

It is proposed to make these regulations effective on March 12, 1977, the effective date of the Government in the Sunshine Act.

Written comments concerning these proposed regulations are invited from the public and other interested persons. Comments should be presented to the office of the Executive Director, Indian Claims Commission, 1730 K Street, NW., Washington, D.C. 20006. Where possible, nine copies should accompany the original of all comments. However, failure to submit copies will in no way affect the consideration given all comments. All comments must be received no later than February 28, 1977. Such comments will be available for inspection at the office of the Executive Director of the Commission between 8:00 a.m. and 4:00 p.m. on nomal Federal business days.

The proposed regulations are set forth in tentative form below:

PART 504—PUBLIC OBSERVATION OF COMMISSION MEETINGS; PROHIBITION OF EX PARTE COMMUNICATIONS RELEVANT TO MERITS OF PENDING COMMISSION PROCEEDINGS

Sec.
504.1 Scope and purpose.
504.2 Definitions.

Sec.
504.3 Public observation of commission hearings.
504.4 Public inspection of records in dockets.
504.5 Conduct of Commission business.
504.6 Public observation of meetings.
504.7 Closing of exempt meetings or portions thereof.
504.8 Procedure for announcing meetings.
504.9 Procedures for closing certain meetings or portions thereof.
504.10 Procedure for closing exempt meetings described in § 504.7(a)(2).
504.11 Chief Counsel's certification of closed meetings.
504.12 Maintenance of transcripts, recordings, or minutes.
504.13 Annual report to Congress.
504.14 *Ex Parte* Communications.

AUTHORITY: 5 U.S.C. 552b(g), unless otherwise noted.

§ 504.1 Scope and purpose.

It is hereby declared to be the policy of the Indian Claims Commission that the public is entitled to the fullest practicable information regarding its decisionmaking processes. It is the purpose of this part to provide the public with such information while protecting the rights of individuals and the ability of the Indian Claims Commission to carry out its responsibilities.

§ 504.2 Definitions.

For purposes of this part, (a) "Commission" means the Indian Claims Commission, which is a collegial body composed of five members appointed by the President with the advice and consent of the Senate. The President designates one member as Chairman.

(b) "Commissioner" means a member of the Commission, including the Chairman.

(c) "Meeting" means the deliberations of at least three Commissioners where such deliberations determine or result in the joint conduct or disposition of the Commission's business, but does not include deliberations required or permitted by §§ 504.8 and 504.9.

(d) "Earliest practicable time" means as soon as possible, including after the commencement of the meeting or portion thereof in question.

§ 504.3 Public observation of Commission hearings.

All hearings before the Commission shall be open to public observation. (Sec. 9, 60 Stat. 1051 (25 U.S.C. 70h).)

§ 504.4 Public inspection of records in dockets.

The complete record in each docket before the Commission shall be available for public inspection at the office of the Clerk of the Commission between 8:00 a.m. and 4:00 p.m. on normal Federal business days. (Sec. 8, 60 Stat. 1051 (25 U.S.C. 70g).)

§ 504.5 Conduct of Commission business.

Commissioners shall not jointly conduct or dispose of Commission business other than in accordance with this part.

§ 504.6 Public observation of meetings.

Every portion of every Commission meeting shall, except as otherwise provided in § 504.7, be open to public observation.

§ 504.7 Closing of exempt meetings or portions thereof.

(a) Notwithstanding the requirements of § 504.6, the Commission's meetings may be closed to the public, and information concerning said meetings may be withheld from the public, when the meeting is likely to:

(1) Relate solely to the internal personnel rules and practices of the Commission, or

(2) Concern the Commission's participation in a civil action or proceeding, or the conduct or disposition by the Commission of a particular case of formal adjudication involving a determination on the record after the opportunity for a hearing under § 503.22 of this chapter (section 22 of the Commission's general rules of procedure), or

(3) Involve any deliberations which fall within the exemptions contained in 5 U.S.C. 552b (c)(1) or (c)(3) through (c)(9).

(b) Notwithstanding the exemptions provided in paragraph (a) of this section, the Commissioners may vote to open such meetings when the public interest so demands.

§ 504.8 Procedure for announcing meetings.

(a) Except with respect to meetings or portions thereof which may be closed to public observation under § 504.7(a)(2), announcement of which is described in § 504.10(d), the Commission shall publicly announce its meetings as described in paragraphs (b), (c), (d), and (e) of this section.

(b) The Commission shall issue a public notice at least ten (10) days before each Commission meeting which notice shall (1) state the date, time, and place of the meeting, (2) list the subjects or agenda items to be discussed at such meetings, (3) state whether the meeting is to be open or closed to public observation, and (4) give the name and business telephone number of the Executive Director of the Commission to whom requests for information about the meeting should be directed. In the event that a majority of the full membership of the Commission determine by a recorded vote that Commission business requires that a meeting be held within ten (10) days of such determination, the public notice described in the immediately preceding sentence shall be issued at the earliest practicable time.

(c) The date, time, or place of a Commission meeting may be changed after issuance of the public notice described in paragraph (b) of this section only if the Commission gives public notice of any such change at the earliest practicable time. Subjects or agenda items to be discussed at a meeting or determinations by the Commission to open or close a meeting, or a portion of a meeting, to the public, after issuance of the public notice described in paragraph (b) of this section may be changed only if (1) a majority of the full membership of the Commission determine by a recorded vote that Commission business so requires and that no earlier public notice of the change or changes was possible, and (2) the Commission gives public notice of the change and the vote of each Commissioner upon such change or changes at the earliest practicable time.

(d) Immediately following the issuance of each public notice described in paragraphs (b) and (c) of this section, notice of the date, time, place, subjects or agenda items, whether the meeting or any portions thereof will be open or closed to public observation, any change in any of the preceding facts, and the name and business telephone number of the Executive Director of the Commission, shall be submitted for publication in the FEDERAL REGISTER.

(e) The Commission shall also promptly post all public notices described in paragraphs (b) and (c) of this section on a bulletin board maintained for this purpose at the offices of the Commission and shall mail copies to those who request that the Commission's Executive Director place their names on the Commission's general mailing list.

§ 504.9 Procedures for closing certain meetings or portions thereof.

(a) Except with respect to meetings or portions thereof which may be closed to public observation under § 504.7(a)(2), with respect to which the procedure described in § 504.10 applies, action by the Commission to close any meeting or portion thereof shall be governed by the procedures described in paragraphs (b), (c), and (d) of this section.

(b) Action to close a meeting or any portion thereof pursuant to paragraphs (a)(1) or (a)(3) of § 504.7 shall be taken only when a majority of the full membership of the Commission vote to do so. A separate vote of the Commissioners shall be taken with respect to each meeting a portion or portions of which are so proposed to be closed to public observation or with respect to any information which is proposed to be so withheld. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to public observation, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty (30) days after the initial meeting in the series. The vote of each participating Commissioner will be recorded and no proxies will be allowed. Each meeting in the series shall be subject to the requirements as to notice to the public described in § 504.8.

(c) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Commission close such portion to public observa-

tion for any of the reasons referred to in paragraphs (5), (6), or (7) of 5 U.S.C. 552b(c), any one Commissioner may request that a recorded vote of the Commissioners be taken to close such meeting.

(d) Within one day of any vote taken pursuant to paragraphs (b) or (c) of this § 504.9, the Executive Director of the Commission shall make available to the public a written copy thereof showing the vote of each Commissioner. If all or a portion of the meeting is to be closed to public observation, the Executive Director shall, within one day of the vote taken pursuant to paragraphs (b) or (c) of this section, make available to the public a full written explanation of the Commission's action closing the meeting or portion thereof, together with a list of all persons who are to attend the meeting and their affiliation. This information shall be made available in the same manner as described in paragraph (e) of § 504.8 to the extent that it is not exempt from disclosure under § 504.7.

§ 504.10 Procedure for closing exempt meetings described in § 504.7(a)(2).

(a) The Commission purposes are exclusively adjudicatory. They consist of trying claims permitted to be filed on behalf of Indian tribes, bands, and groups against the United States pursuant to section 2 of the Indian Claims Commission Act, 60 Stat. 1050 (25 U.S.C. 70a). The Commission has no regulatory or rulemaking functions, nor is it charged with administering any substantive legislation. To protect the integrity of its adjudicatory deliberations, Commission meetings have historically been closed to public observation. For these reasons the Commission has determined that a majority of its meetings may properly be closed to public observation pursuant to § 504.7(a)(2).

(b) In the case of any meeting, or portion thereof, which may be closed to public observation for the reasons described in paragraph (a) of this section, the Commission shall, by a recorded vote at the beginning of said meeting or portion thereof, vote on whether to close the meeting or portion thereof. If a majority of the full membership of the Commission vote to close the meeting or portion thereof, it shall be so closed. A copy of the vote, reflecting the vote of each Commissioner on the question, shall be made available to the public.

(c) In the case of meetings or portions thereof to which this § 504.10 applies, the provisions of §§ 504.8 and 504.9 shall not apply.

(d) Except to the extent that such information is exempt from disclosure under § 504.7, public announcement of the date, time, place, and subject matters and agenda items of a meeting, or portion thereof, to which this § 504.10 applies, shall be posted at the earliest practicable time on the bulletin board maintained for this purpose at the offices of the Commission.

§ 504.11 Chief Counsel's certification of closed meetings.

For every meeting closed pursuant to § 504.7, the Chief Counsel of the Commission shall publicly certify that, in his opinion, the meeting may be closed to the public and shall state which exemptions as set out in 5 U.S.C. 552b(c) are applicable. A copy of this certification, together with a statement from the presiding Commissioner setting forth the date, time, and place of the meeting, and the persons present shall be retained by the Commission.

§ 504.12 Maintenance of transcripts, recordings, or minutes.

(a) The Commission shall maintain a complete transcript, or electronic recording, adequate to record fully the proceedings, of each meeting or portion of a meeting closed to the public, except that, in the case of a meeting or portion thereof closed to the public under § 504.7(a)(2), the Commission may instead maintain a set of minutes.

(b) The minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any action taken, and the reasons, including a description of each of the views expressed on any items and the record of any roll call vote, reflecting the vote of each Commissioner on the question. All documents considered in connection with any action shall be identified in the minutes.

(c) The Commission shall make promptly available to the public, in the office of the Executive Director of the Commission, the transcript, electronic recording, or minutes of the discussion of any item on the agenda, except for those items or discussion which the Commission determines to contain information which may be withheld under § 504.7

(d) Subject to the exemptions in § 504.7, copies of the transcript, minutes, or the transcription of a recording disclosing the identity of each speaker, will be furnished to any person at the actual cost of duplication or transcription.

(e) The Chief Counsel shall be responsible for determining what information may be withheld and what standards are to be applied in making that determination. Should an individual be denied access to information by a decision of the Chief Counsel, that individual may file a written appeal with the Commission. The Commission shall issue an order granting or denying the petitioner's appeal. No hearing will be permitted under this appeal. (Sec. 9, 60 Stat. 1051 (25 U.S.C. 70h).)

(f) The Commission shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion thereof, closed to the public, for at least two years after the meeting, or until one year after the conclusion of any Commission proceeding with respect to which the meeting or portion thereof, was held, whichever occurs later.

§ 504.13 Annual report to Congress.

The Commission shall annually report to Congress regarding its compliance with the Government in the Sunshine Act, 5 U.S.C. 552b. The report must include a tabulation of the total number of Commission meetings open to the public, the total number of meetings closed to the public, the reasons for closing the meetings, and a description of any litigation brought against the Commission under the Act, including any costs assessed against the Commission in such litigation.

§ 504.14 Ex parte communications.

(a) No person outside the Commission shall make or knowingly cause to be made to any Commissioner, Chief Counsel, staff attorney, or other employee of the Commission, an *ex parte* communication relevant to the merits of any proceeding before the Commission.

(b) No Commissioner, Chief Counsel, staff attorney, or other employee of the Commission shall make or knowingly cause to be made to any person outside the Commission, an *ex parte* communication relevant to the merits of any proceeding before the Commission.

(c) Any Commissioner, Chief Counsel, staff attorney, or other employee of the Commission who receives, or who makes or knowingly causes to be made a communication prohibited by this section, shall place on the public record of the proceeding:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses, and memoranda stating the substance of all oral responses, to such communications.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party to the proceeding, or by counsel, in violation of this section, the Commission may, to the extent consistent with the interests of justice, require the offending party to show cause why its claim or interest in the proceeding should not be dismissed, denied, or otherwise adversely affected on account of such violation.

(e) A request for a status report on any matter currently before the Commission is not an *ex parte* communication within the meaning of this section. Questions regarding the status of a case shall be directed to the Clerk of the Commission. (Sec. 9, 60 Stat. 1051 (25 U.S.C. 70h).)

By order of the Commission dated January 13, 1977.

DAVID H. BIGELOW,
Executive Director.

[FR Doc.77-1833 Filed 1-19-77;8:45 am]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Corporate Separations

EDITORIAL NOTE: The Office of the FEDERAL REGISTER is reprinting below the full text of

FR Doc. 77-1173 which appeared at 42 FR 2694 of the issue of Thursday, January 13, 1977. This reprinting is necessary because the copy submitted for printing did not conform in all respects to the text of the original signed document. Due to this reprinting, the date for receipt of comments has been extended to March 5, 1977.

Notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by March 5, 1977. Pursuant to 26 CFR 601.601(b), designations of material as confidential or not to be disclosed, contained in such comments, will not be accepted. Thus, persons submitting written comments should not include therein material that they consider to be confidential or inappropriate for disclosure to the public. It will be presumed by the Internal Revenue Service that every written comments submitted to it in response to this notice of proposed rulemaking is intended by the person submitting it to be subject in its entirety to public inspection and copying in accordance with the procedures of 26 CFR 601.702(d)(9). Any person submitting written comments who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit a request, in writing, to the Commissioner by March 5, 1977. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER, unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the Federal Register. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

This document contains a proposed amendment to the Income Tax Regulations (26 CFR Part 1) under sections 355, relating to distribution of stock and securities of a controlled corporation, and 346, relating to partial liquidation defined, of the Internal Revenue Code of 1954.

Section 355 provides for the separation, without recognition of gain or loss to the shareholders and security holders, of one or more existing businesses formerly operated, directly or indirectly, by a single corporation. Section 355 applies only to the separation of existing businesses which have been in active operation for at least 5 years (or a business which has been in active operation for at least 5 years into separate businesses) and which, generally, have been owned for at least 5 years by the corporation making the distribution of stock or of stock and securities.

Section 355 provides nonrecognition of gain or loss on a distribution by a corporation of stock or securities of a controlled corporation to its shareholders with respect to its own stock or to its security holders in exchange for its own securities only if the distribution is carried out for real and substantial nontax reasons germane to the business of the corporations and only if there is a continuity of interest in all or a part of the business enterprise by those persons who were the owners of the enterprise before the distribution. In addition, section 355 does not apply to a transaction which has been used principally as a device for the distribution of earnings and profits of the distributing corporation, of the controlled corporation, or of both.

In order to qualify under section 355, the distributing corporation must distribute all of the stock of the controlled corporation which it owns, or at least an amount of the stock which constitutes control as defined in section 368(c). If a part of either the stock or securities is retained by the distributing corporation, it must be established to the satisfaction of the Commissioner that such retention was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax.

The proposed amendment contains two major changes to the current regulations. The rules under section 355(a)(1)(B), relating to a transaction which was used principally as a device for the distribution of earnings and profits, have been revised to describe factors which are to be taken into account in making the determination of whether a transaction was such a "device". The rules under section 355(b), relating to active conduct of a trade or business, have been revised to provide for the separation of a single business consistent with the holdings in *Coady v. Commissioner*, 289 F.2d 490 (6th Cir. 1961), and *United States v. Marett*, 325 F.2d 28 (5th Cir. 1963). *Proposed amendment to the regulations.*

The Income Tax Regulations (26 CFR Part 1) under section 355, relating to distribution of stock and securities of a controlled corporation, and 346, relating to partial liquidation defined, of the Internal Revenue Code of 1954 are amended as follows:

Paragraph 1. Sections 1.355-1 through 1.355-4 are amended to read as follows:

§ 1.355-1 Distribution of stock and securities of a controlled corporation.

(a) *Application of section.* Section 355 provides for the separation, without recognition of gain or loss to the shareholders and security holders, of one or more existing businesses formerly operated, directly or indirectly, by a single corporation. It applies only to the separation of existing businesses which have been in active operation for at least 5 years (or a business which has been in active operation for at least 5 years into separate businesses), and which, in general, have been owned, directly or indirectly, for at least 5 years by the corporation making the distribution of stock or of stock and securities. For the purpose of section 355, stock rights or stock warrants are not included in the term "stock and securities".

(b) *Type of separations.* Section 355 is concerned with two general types of separations. The first is the distribution of the stock of an existing corporation. The second is the distribution of the stock of a corporation holding assets of a business previously operated by the distributing corporation. In both cases, section 355 contemplates the continued operation of the business or businesses existing prior to the separation.

§ 1.355-2 Limitations.

(a) *Property distributed.* In order for section 355 to apply, the property distributed must consist solely of stock, or stock and securities, of a controlled corporation. If additional property (including an excess principal amount of securities received over securities surrendered) is received, see section 356.

(b) *Business purpose and continuity of interest*—(1) *In general.* A distribution by a corporation of stock or securities of a controlled corporation to its shareholders with respect to its own stock or to its security holders in exchange for its own securities will qualify under section 355 only if carried out for real and substantial nontax reasons germane to the business of the corporations. The principal reason for this requirement is to provide nonrecognition treatment only to those distributions or exchanges of stock or securities of the controlled corporation which are incident to such readjustment of corporate structures as is required by business exigencies and which effect only a readjustment of continuing interests in property under modified corporate forms. Depending upon the facts of a particular case, a shareholder purpose for a transaction may be so nearly coextensive with a corporate business purpose as to preclude any distinction between them. In such a case, the transaction is carried out for purposes germane to the business of the corporations. On the other hand, if a transaction is motivated solely by the personal reasons of a shareholder, for example, if a transaction is undertaken solely for the purpose of fulfilling the personal planning purposes of a shareholder, the distribution will not qualify under section 355 since it is not carried out for purposes germane to the business of the corporations. Section 355 contemplates a continuity of interest in all or part of the business enterprise on the part of those persons who, directly or indirectly, were the owners of the enterprise prior to the distribution or exchange. For rules with respect to the requirement of a business purpose for a transfer of assets to a controlled corporation in connection with a reorganization described in section 368(a)(1)(D), see § 1.368-1(b).

(2) *Examples.* The provisions of paragraph (b)(1) of this section may be illustrated by the following examples:

Example (1). Corporation P is engaged in the production, transportation, and refining of petroleum products. In 1962, P acquired all of the properties of corporation S, which was also engaged in the production, transportation, and refining of petroleum products. In 1968, as a result of anti-trust litigation, P was ordered to divest itself of all properties acquired from S. P proposes to transfer the assets acquired from S to a new corporation and to distribute the stock of such new corporation to its shareholders. In view of the divestiture order, the distribution of the stock of the new corporation to the shareholders of P will be considered to have been carried out for a real and substantial nontax reason germane to the business of the corporations.

Example (2). Corporation R owns and operates two men's retail clothing stores. The outstanding stock of R is owned equally by two brothers, A and B, and F, their father, who does not take an active part in the retail clothing business. A and B no longer can agree on major decisions affecting the operation of the corporation. Corporation R proposes to transfer one store to a new corporation and distribute 66.7 percent of the stock of such new corporation to one brother in exchange for all of his R stock. The other 33.3 percent of the stock of such new corporation will be exchanged for one-half of F's stock of corporation R. In view of the disagreement between managing shareholders, the distribution of the stock of the new corporation will be considered to have been carried out for a real and substantial nontax reason germane to the business of the corporations.

Example (3). Coporation T is engaged in the manufacture and sale of children's novelty toys. It also manufactures and sells candy and candy products. The shareholders wish to separate the candy business from the risks and vicissitudes of the novelty toy business. It is proposed that the assets and activities associated with the toy business be transferred to a new corporation, the stock of which would then be distributed to T's shareholders. The purpose of protecting the candy business from the risks of the novelty toy business, which is fulfilled when the novelty toy assets and activities are transferred to the new corporation, does not satisfy the requirement there be a substantial nontax reason, germane to the business of the corporation, for the distribution of the stock of the new corporation to the shareholders.

Example (4). The facts are the same as in example (3) except that T also requires outside financing in order to substantially expand its candy business. As a condition of the loan, in order to prevent the potential diversion of funds to the toy business, the lender requires the separation of the candy business and the novelty toy business and the distribution of the stock of the novelty toy corporation to the shareholders. The lender's requirements are based upon customary business practice. In this case, the distribution of the stock of the novelty toy corporation to the shareholders will be considered to have been carried out for a real and substantial nontax reason germane to the business of the corporations.

(c) *Device for distribution of earnings and profits*—(1) *In general.* Section 355 does not apply to a transaction which has been used principally as a device for the distribution of the earnings and profits of the distributing corporation, of the controlled corporation, or of both. The Code recognizes that a tax-free distribution of the stock of a controlled corporation presents an extraordinary potential for tax avoidance by placing the shareholders of the distributing corporation in a position whereby, as a consequence of the subsequent sale of stock or the liquidation of either the distributing corporation or the controlled corporation, they can avoid the dividend provisions of the Code. A distribution which is pro rata or substantially pro rata among the shareholders of the distributing corporation presents the greatest potential for the withdrawal of earnings and profits and is more likely to be undertaken principally as a device for the distribution of earnings and profits. Whether a transaction which has the potential for the distribution of earnings and profits was used principally as such a device shall be determined from all the facts and circumstances. Among the factors to be considered are those factors described in paragraph (c) (2) and (3) of this section. However, in any case in which a distribution with respect to each distributee would be treated as a redemption to which section 302(a) would apply if it were taxable, the transaction is ordinarily not considered to be a device for the distribution of earnings and profits. For purposes of the preceding sentence, section 302(c)(2)(A) shall be applied without regard to clauses (ii) and (iii). Further, if, on the date of the distribution, no part of a distribution of money by the distributing corporation, the controlled corporation, or any corporation controlled, directly or indirectly, by either of such corporations could have been taxable as a dividend as defined in section 316 because of the absence of earnings and profits, the transaction is ordinarily not considered to be such a device.

(2) *Subsequent sales of stock.* If, pursuant to an arrangement negotiated or agreed upon before the distribution, 20 percent or more of the stock of either the distributing corporation or the controlled corporation is to be sold or exchanged after the distribution, the distribution will be considered to have been used principally as a device for the distribution of earnings and profits of the distributing corporation, the controlled corporation, or both. If, pursuant to such an arrangement, part or all of the securities or less than 20 percent of the stock of either corporation is to be sold or exchanged after the distribution, this fact will be considered as substantial evidence that the transaction was used principally as such a device. For purposes of this subparagraph, the term "exchange" does not include an exchange of stock or securities pursuant to a plan of reorganization if no gain or loss is recognized on the exchange or an insubstantial amount of gain is recognized on the exchange. A sale is always pursuant to an arrangement negotiated or agreed upon before the distribution when enforceable rights to buy or sell exist before such distribution. If a sale was discussed by the buyer and the seller before the distribution and was reasonably to be anticipated by both parties, such sale shall ordinarily be considered as made pursuant to an arrangement negotiated or agreed upon before the distribution.

Whether or not a sale is negotiated or agreed upon prior to the distribution, the fact of any sale of stock or securities shall be taken into account with other evidence in determining whether a transaction was used principally as a device for the distribution of earnings and profits.

(3) *Nature and use of assets*—(i) *General.* In determining whether a transaction was used principally as a device for the distribution of earnings and profits of the distributing corporation, the controlled corporation, or both, consideration will be given to the nature, kind, and amount of the assets of both corporations (and corporations controlled by them) immediately after the transactions and to the use of such assets by such corporations.

(ii) *New trade or business.* If a substantial portion of the assets of any post-distribution corporation consists of a trade or business acquired within the 5-year period ending on the date of the distribution in a transaction in which the basis of such assets was not determined in whole or in part by reference to the transferor's basis, this will be considered as evidence that the transaction was used principally as a device for the distribution of earnings and profits.

(iii) *Liquid assets.* The transfer or retention of cash or liquid assets (for example, securities and accounts receivable) which is not related to the reasonable needs of the business of the transferee or retaining corporation will be considered as evidence that the transaction was used principally as a device for the distribution of earnings and profits.

(iv) *Related function.* In certain cases the relationship between the nature and use of the assets of the distributing corporation and the controlled corporation will be considered as evidence that a transaction was used principally as a device for the distribution of earnings and profits or example where the principal function of one corporation before the transaction is to perform services for or supply technical or research data to the other corporation and after the transaction that corporation continues to function on the same basis, this would be considered as evidence that the transaction was used principally as such a device. Thus, in example (9) of § 1.355-3(c), involving a controlled corporation operating a coal mine for the sole purpose of satisfying the requirements of the parent steel corporation before the transaction, if the coal mining business continued to operate on the same basis after the transaction, this fact would be considered as evidence that the distribution of the stock of the coal mining corporation in example (9) is principally a device for the distribution of earnings

and profits. Similarly, in a transaction which separates the manufacturing and sales operations, as in example (8) of § 1.355–3(c), if the sales corporation merely functions as the exclusive agent for the manufacturing corporation after the transaction, this fact would be considered as evidence that the transaction was principally a device for the distribution of earnings and profits.

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

Example (1). Corporation W has engaged in the commercial banking business in state N for 20 years. The stock of W is owned equally by individuals A, B, and C. Six years ago, W organized corporation X as a wholly-owned subsidiary to offer computerized bookkeeping services to the public. W and X have substantial accumulated earnings and profits. State N has recently amended its banking laws to provide that commercial banks operating in N may not offer computerized bookkeeping services directly or through a subsidiary. D, an individual, has offered to purchase the stock of X. At a stockholders' meeting the offer was rejected and it was decided to distribute the stock of X pro rata to A, B, and C. After the meeting and before the distribution, A, B, and C agreed to sell D one-half of X stock they were to receive in the distribution. Notwithstanding the existence of a real and substantial nontax reason for the distribution of the stock of X, the distribution will be considered to have been used principally as a device for the distribution of earnings and profits of W.

Example (2). Assume the same facts as in example (1) except that A, B, and C did not agree to sell any of the X stock they were to receive to D. At the shareholders' meeting it was decided to transfer cash to X before making the pro rata distribution. The amount of cash transferred substantially exceeded the reasonable business needs of X. After the distribution A and B agreed to sell to E, an individual, one-half of their X stock. Notwithstanding the existence of a real and substantial nontax reason for the distribution, the transaction will be considered to have been used principally as a device for the distribution of earnings and profits because of the transfer of cash to X and the subsequent sale of X stock by A and B.

(d) *Stock and securities distributed.* The distributing corporation must distribute:

(1) All of the stock and securities of the controlled corporation which it owns, or

(2) At least an amount of the stock which constitutes control as defined in section 368(c). In such case all, or any part, of the securities of the controlled corporation may be distributed.

Where a part of either the stock or securities is retained under paragraph (d)(2) of this section, it must be established to the satisfaction of the Commissioner that such retention was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax. Ordinarily, the business reasons (as distinguished from the desire to make a distribution of the earnings and profits) which support a distribution of stock and securities of a controlled corporation under paragraph (b) of this section will require the distribution of all of the stock and securities. If the distribution of all of the stock and securities of a controlled corporation would be treated to any extent as a distribution of "other property" under section 356, this fact does not tend to establish that the retention of any of such stock and securities is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax.

(e) *Principal amount of securities*—(1) *Securities received.* Section 355(a)(1) is not applicable if the principal amount of securities received exceeds the principal amount of securities surrendered or if securities are received and no securities are surrendered. In such cases, see section 356.

(2) *Only stock received.* If only stock is received in a transaction to which section 355 is applicable, the principal amount of securities surrendered, if any, and the par or stated value of stock are not relevant to the application of such section.

(f) *Period of ownership*—(1) *Other property.* For the purposes of determining whether gain or loss will be recognized upon a distribution, stock of a controlled corporation acquired in a transaction in which gain or loss is recognized, in whole or in part (other than a transaction described in § 1.355–3(b)(4)(ii)) within the 5-year period ending on the date of the distribution of such stock is treated as "other property." Section 355 does not apply to a transaction which includes a distribution of such stock. See section 356. The stock so acquired is "stock", however, for the purpose of the requirements respecting the distribution of stock of such controlled corporation provided in section 355(a)(1)(D).

(2) *Example.* Paragraph (f)(1) of this section may be illustrated by the following example:

Example. Corporation A has held 85 of the 100 outstanding shares of the stock of corporation B for more than 5 years on the date of distribution. Six months before such date, it purchased 10 shares of such stock. If all of the stock of the controlled corporation owned by A is distributed, section 355 is not applicable to such distribution since the 10 shares would represent "other property." See, however, section 356. If, however, for proper business reasons it is decided to retain some of the stock of B, then the determination of the amount of such stock which must be distributed under section 355(a)(1)(D) in order to constitute a distribution to which section 355 is applicable must be made by reference to all of the stock of the controlled corporation including the 10 shares acquired 6 months before such date and the 5 shares owned by others. Similarly, if, by the use of any agency, the distributing corporation acquires any stock of the controlled corporation within the 5-year period ending on the date of distribution in a transaction in which gain or loss is recognized in whole or in part, for example, where another subsidiary purchases such stock, such stock will be treated as "other property." If A had held only 75 of the 100 outstanding shares of stock of B for more than 5 years on the date of distribution and had purchased the remaining 25 shares 6 months before such date, neither section 355 nor section 356 would be applicable.

(g) *Active conduct of a trade or business.* The rules of section 355(b) and § 1.355–3 relating to the active conduct of a trade or business must be satisfied.

§ 1.355–3 Active conduct of a trade or business.

(a) *Requirements as to active business*—(1) *In general*—(i) *Application of section 355.* Under section 355(b)(1), a distribution of stock or securities of a controlled corporation is subject to section 355(a) only if—

(A) The distributing corporation and the controlled corporation are each engaged in the active conduct of a trade or business immediately after the distribution of stock or securities of the controlled corporation (section 355(b)(1)(A)), or

(B) Immediately before the distribution the distributing corporation had no assets other than stock or securities in the controlled corporations and each of the controlled corporations is engaged in the active conduct of a trade or business immediately after the distribution (section 355(b)(1)(B)). In connection with the requirement of "no assets" a de minimis rule is applicable.

(ii) *Examples.* Paragraph (a)(1)(i) of this section may be illustrated by the following examples:

Example (1). Corporation A, prior to the distribution, is engaged in the active conduct of a trade or business and owns all of the stock of corporation B which also is engaged in the active conduct of a business. A distributes all of the stock of B to its shareholders, and each corporation continues the active conduct of its business. The active business requirement of section 355(b)(1)(A) is satisfied.

Example (2). The facts are the same as in example (1), except that A transfers all of its assets except the stock of B to a new corporation in exchange for all of the new corporation's stock and transfers the stock of both controlled corporations to its shareholders. The active business requirement of section 355(b)(1)(B) is satisfied.

(b) *Active conduct of a trade or business defined*—(1) *In general.* Section 355(b)(2) provides rules for determining whether any corporation is treated as engaged in the active conduct of a trade or business for purposes of ascertaining whether the distributing corporation and the controlled corporation meet the requirements of section 355(b)(1). Under section 355(b)(2)(A), a corporation is treated as engaged in the active conduct of a trade or business if it is itself engaged in such a trade or business or if substantially all of its assets consist of the stock and securities of a corporation or corporations controlled by it (immediately after the distribution) each of which is engaged in the active conduct of a trade or business.

(2) *Active conduct of trade or business immediately after distribution*—(i) *General.* For purposes of section 355(b), a corporation shall be treated as engaged in the "active conduct of a trade or business" immediately after a distribution if the assets and activities of such corporation meet the tests and limitations de-

scribed in paragraph (b)(2) (ii), (iii) and (iv) of this section.

(ii) *Trade or business.* A corporation shall be treated as engaged in a trade or business immediately after a distribution of stock if a specific group of activities are being carried on by such corporation for the purpose of earning income or profit from such group of activities, and the activities included in such group include every operation which forms a part of, or a step in, the process of earning income or profit from such group. Such group of activities ordinarily must include the collection of income and the payment of expenses.

(iii) *Active conduct.* For purposes of section 355, the determination of whether a trade or business is actively conducted is a question of fact to be determined under all the facts and circumstances. In general, the corporation must perform active and substantial management and operational functions.

(iv) *Limitations.* The active conduct of a trade or business does not include—

(A) The holding for investment purposes of stock, securities, land, or other property, or

(B) The ownership and operation (including leasing) of real or personal property used in a trade or business, unless the owner performs significant services with respect to the operation and management of the property.

(3) *Active conduct for 5-year period preceding distribution.* Under section 355(b)(2)(B), a trade or business must have been actively conducted for the 5-year period ending on the date of distribution of the stock and securities of the controlled corporation. For this purpose, activities which constitute a trade or business under the tests described in paragraph (b)(2) of this section, shall be treated as meeting the test contained in the preceding sentence if such activities were actively conducted throughout such 5-year period. For the purpose of determining whether such trade or business has been actively conducted throughout the 5-year period described in section 355(b)(2), the fact that during such 5-year period such trade or business underwent change (for example, by the addition of new or the dropping of old products, changes in production capacity, and the like) shall be disregarded provided the changes are not of such a character as to constitute the acquisition of a new or different business.

(4) *Special rules for acquisition of a trade or business*—(i) *General.* For purposes of section 355(b), a trade or business which is relied upon to meet the requirements of such section must not have been acquired by the distributing corporation, the controlled corporation, or another member of the affiliated group during the 5-year period ending on the date of distribution of the stock and securities of the controlled corporation unless it was acquired in a transaction in which no gain or loss was recognized (section 355(b)(2)(C)). For purposes of this subparagraph (4), the term "affiliated group" means an affiliated group as defined in section 1504(a) (without regard to section 1504(b)) except that the term "stock" includes nonvoting stock which is limited and preferred as to dividends. In addition, under section 355(b)(2)(D), such trade or business must not have been indirectly acquired during such 5-year period in a transaction in which gain or loss was recognized in whole or in part by means of the acquisition of control of the corporation that was engaged in such trade or business or by means of an indirect acquisition of control of such corporation through another corporation or any of its predecessors in interest. A business acquired, directly or indirectly, within the 5-year period ending on the date of the distribution in a transaction in which the basis of the assets acquired is not determined in whole or in part by reference to the transferor's basis for such assets will not qualify under section 355(b)(2), even though no gain or loss was recognized by the transferor (for example, by reason of section 337).

(ii) *Gain or loss recognized in certain transactions.* The rules of section 355(b)(2)(C) and (D) are intended to prevent the direct or indirect acquisition of a trade or business by a corporation as a temporary investment of liquid assets in anticipation of a distribution by such corporation of such trade or business in a transaction to which section 355 would otherwise apply. A direct or indirect acquisition of a trade or business by one member of an affiliated group from another member of such group is not the type of transaction to which section 355(b)(2)(C) and (D) is intended to apply. Therefore, in applying section 355(b)(2)(C) or (D), such an acquisition, even though taxable, shall be disregarded.

(iii) *Example.* Paragraph (b)(4)(i) may be illustrated by the following example:

Example: In 1956, corporation B, having cash and other liquid assets, purchased all of the stock of corporation A which was engaged in an active business. Later, in the same year, B in a "downstream" statutory merger merges into A. In 1958, A places the assets formerly owned by B in a new subsidiary, corporation X. A's distribution of the stock of X to the stockholders of A is not within the terms of section 355, since the active business of A had, in effect, been purchased less than 5 years prior to the distribution.

(c) *Examples.* The following examples illustrate the application of the rules provided in section 355(b)(2)(A) and (B). However, a transaction which satisfies the active conduct of a trade or business requirement in these examples will qualify under section 355(a) only if the other requirements of that section are met.

Example (1). Corporation A is engaged in the manufacture and sale of soap and detergents and owns investment securities. It proposes to place the investment securities in a new corporation and distribute the stock of such new corporation to its shareholders. The new corporation's holding of investment securities does not qualify as the active conduct of a trade or business immediately after the distribution.

Example (2). Corporation B owns, manages, and derives rental income from an office building and also owns vacant land. It proposes to transfer the vacant land to a new corporation and distribute the stock of such new corporation to its shareholders. The new corporation's holding of the vacant land does not qualify as the active conduct of a trade or business immediately after the distribution.

Example (3). Corporation C owns land on which it engages in the ranching business. Oil has been discovered in the area and it is apparent that oil may be found under the land on which the ranching activities are conducted. Corporation C has engaged in no significant activities in connection with the mineral rights. It proposes to transfer the mineral rights to a new corporation and distribute the stock of the new corporation to its shareholders. The new corporation's holding of mineral rights does not qualify as the active conduct of a trade or business immediately after the distribution.

Example (4). Corporation D, a bank, has for the past 7 years owned an 11-story downtown office building, the ground floor of which has been occupied by it in the conduct of its banking business. The remaining 10 floors are rented to various tenants and the building is managed and maintained by employees of the bank. Corporation D proposes to transfer the building to a new corporation and to distribute the stock of such new corporation to the bank's shareholders. The new corporation will manage the building, negotiate leases, seek new tenants, and will repair and maintain the building. Immediately after the distribution the activities in connection with banking will constitute the active conduct of a trade or business, as will the activities in connection with the rental of the building.

Example (5). Corporation E, a bank, has for the past 9 years owned a 2-story building in a suburban area, the ground floor and one-half of the second floor of which are occupied by it in the conduct of its banking business. The other one-half of the second floor is rented as storage space to a neighboring retail merchant. Corporation E proposes to transfer the building to a new corporation and distribute the stock of the new corporation to its shareholders. Corporation E will lease the space formerly occupied by it in the bank building from the new corporation and, under the lease, will repair and maintain its portion of the building and pay property taxes and insurance. The new corporation will not be engaged in the active conduct of a trade or business immediately after the distribution.

Example (6). Corporation F is engaged in the retail grocery business and owns all of the stock of corporation G. Corporation G has for the past 10 years derived all of its gross income from the rental of its land and building to F, under a lease in which G's principal activity consists of the collection of rent from the building. Corporation F proposes to distribute the G stock to its shareholders. Corporation G will not be engaged in the active conduct of a trade or business immediately after the distribution, since it has not actively conducted a trade or business throughout the 5-year period ending on the date of the distribution.

Example (7). Corporation H has owned and operated a men's retail clothing store in the downtown area of the City of R for 7 years and has also owned and operated a men's retail clothing store in the suburban area of the City of R for 9 years. Corporation H proposes to transfer the store building, fixtures, inventory, and other assets related

to the suburban store's activity to a new corporation. However, the warehouses which formerly served both the downtown and suburban stores will be retained by H, and the new corporation will lease warehouse space from an unrelated public warehouse company. Moreover, the delivery trucks and employees which formerly served both stores will be transferred to the new corporation for its exclusive use, and corporation H will contract with a local public delivery organization to effect its deliveries. Corporation H proposes to distribute the stock of the new corporation to its shareholders. Immediately after the distribution the activities in connection with the downtown store will constitute the active conduct of a trade or business, as will the activities in connection with the suburban store.

Example (8). Corporation I has processed and sold meat products for 8 years. It has no other income. Corporation I proposes to separate the selling from the processing activities by forming a separate corporation, J to purchase for resale the meats processed by I. Corporation I will transfer to J certain physical assets pertaining to the sales function, plus cash for working capital, in exchange for the capital stock of J which will be distributed to the shareholders of I. Immediately after the distribution corporation I will be engaged in the active conduct of a meat products processing business and corporation J will be engaged in the active conduct of a meat distribution business. The business of each corporation is deemed to have been actively conducted from the date corporation I began its meat processing and sales business.

Example (9). For 8 years corporation K has been engaged in the manufacture and sale of steel and steel products. For 6 years K's wholly-owned subsidiary, corporation L, has owned and operated a coal mine for the sole purpose of supplying K's coal requirements in the manufacture of steel. It is proposed that the stock of L be distributed to the shareholders of K. Immediately after the distribution, the activities of L in connection with the operation of the coal mine constitute the active conduct of a trade or business. The activities of K in connection with the manufacture and sale of steel products immediately after the distribution also constitute the active conduct of a trade or business.

Example (10). Corporation M has for more than 5 years been engaged in the single business of contructing sewage disposal plants and other facilities. Corporation M proposes to transfer one-half of its assets to corporation N. These assets will include a contract for the construction of a sewage disposal plant in State X, construction equipment, cash, and other tangible assets. Corporation M will retain a contract for the construction of a sewage disposal plant in State Y, construction equipment, cash and other intangible assets. The N stock is then to be distributed to one of the M shareholders in exchange for all of his M stock. Both corporations will be engaged in the active conduct of the construction business immediately after the distribution.

Example (11). Corporation O has for the past 6 years owned three factories devoted to the production of edible pork skins. The entire output of two of the factories is sold to one customer. The third factory's output is sold to a number of different customers. Corporation O proposes to transfer the two factories which produce pork skins for the single customer, together with their related activities, to a new corporation and to distribute the stock of such new corporation to its shareholders. Immediately after the distribution the activities in connection with the production and sale of edible pork skins to the one customer will constitute the active conduct of a trade or business, as well the activities in connection with the production and sale of pork skins to the other customers.

Example (12). Corporation P has owned and operated a department store in the City of W for 9 years. Three years ago P acquired a parcel of land and constructed a branch store in a suburban area of the City of W. The two stores are operated as a single unit and have common advertising, bank accounts, billing, purchasing, and management. Corporation P proposes to transfer the suburban store, together with its related activities, to a new corporation and to distribute the stock of such new corporation to its shareholders. Each store will have its own manager and will be operated independently of the other store. Immediately after the distribution the activities in connection with each of the department stores constitute the active conduct of a trade or business since each store was an integrated part of the single department store business conducted by P for 9 years.

Example (13). Corporation Q is engaged in the business of manufacturing hats in its own factory building. It proposes to transfer the factory building to corporation R and distribute the stock of R to its shareholders. After the transfer, Q will lease the factory building under a long-term lease and will operate and maintain the building and the machinery in the building. The activities of R in connection with the leased factory building immediately after the distribution will not constitute the active conduct of a trade or business.

Example (14). Corporation S has been engaged in the manufacture and sale of household products for 8 years. Throughout this period, in connection with such manufacturing, it has maintained a research department for its own use. The research department has 30 employees actively engaged in the development of new products. Corporation S proposes to transfer the research department to a new corporation and to distribute the stock of the new corporation to its shareholders. After the distribution the new corporation will continue its research operations on a contractual basis with several corporations including S. Immediately after the distribution the activities of the new corporation in connection with research will constitute the active conduct of a trade or business, as will the activities of S in connection with manufacturing.

§ 1.355-4 Non pro rata distributions, etc.

Section 355 provides for nonrecognition of gain or loss with respect to a distribution whether or not (a) the distribution is pro rata with respect to all of the shareholders of the distributing corporation, (b) the distribution is pursuant to a plan of reorganization within the meaning of section 368(a)(1)(D)), or (c) the shareholder surrenders stock in the distributing corporation. Under section 355 the stock of a controlled corporation may consist of common or preferred. (See, however, section 306 and the regulations thereunder.) Section 355 does not apply, however, if the substance of a transaction is merely an exchange between shareholders or security holders of stock or securities in one corporation for stock and securities in another corporation. For example if two individuals, A and B, each own directly 50 percent of the stock of corporation M and 50 percent of the stock of corporation N, section 355 would not apply to a transaction in which A and B tranfser all of their stock of M and N to a new corporation P, for all of the stock of P, and P then distributes the stock of M to A and the stock of N to B.

PAR. 2. Section 1.346-1 is amended by deleting the last sentence of paragraph (c) and by inserting in lieu thereof "The term 'active conduct of a trade or business' shall have the same meaning in this section as in § 1.355-3(b)(2)."

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

[29 CFR Part 2550]

RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

Proposed Regulations Relating to the Acquisition and Holding of Employer Securities and Employer Real Property and the Requirement That Certain Employer Securities and Employer Real Property be Divested no Later Than December 31, 1979

Correction

In FR Doc. 76-38493, appearing at page 1618 in the issue for Friday, January 7, 1977, make the following changes:

1. On page 1618, in the first column, wherever the references to "section 401" appear, they should be changed to "section 407".

2. On page 1619, in the fourth line of the first column, "section 2550.401a-1" should be "§ 2550.407a-1".

3. In § 2550.407a-1(b)(2), the last line should read "section 414 (c)(2) of the Act".

4. In § 2550.407a-2(c)(3), the tenth line should read "shall be the fair market value of such * * *".

5. On page 1620, in § 2550.407a-4(c)(1)(i)(B), the fifth line should read "mate under paragraph (c)(1)(i)(B) must * * *".

6. In § 2550.407a-4(c)(1)(ii), the fourth line should read "divested pursuant to paragraph (c)(1)(i) * * *".

7. In §2550.407a-4(c)(2), on page 1621, first column, the first and second lines of the flush paragraph should read "For purposes of this paragraph (c)(2), the fair market value of plan as- * * *".

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 110]

[CGD 76-186]

ISLANDS OF HAWAII, KAUAI, AND OAHU, HAWAII

Proposed Special Anchorage Areas

The Coast Guard is considering amending the Anchorage Regulations by establishing special anchorages in the vicinity of the Islands of Hawaii, Kauai, and Oahu, Hawaii. These anchorages would be for the general use of the public. In special anchorage areas, vessels

under 65 feet in length, when at anchor, are not required to carry or exhibit anchor lights.

Interested persons may participate in this proposed rule-making by submitting written data, views, or arguments concerning the proposal to the Commander, Fourteenth Coast Guard District, Pacific International Building, 677 Ala Moana, Honolulu, Hawaii 96813. Each person submitting comments should include his name and address and organization, if any, identify the notice number (CGD 76-186), and give reasons for any recommended change in the proposal. Copies of all written comments will be available for examination by interested persons at the office of the Commander, Fourteenth Coast Guard District.

The commander, Fourteenth Coast Guard District will forward all comments received before, and his recommendations to the Chief, Office of Marine Environment and Systems, U.S. Coast Guard Headquarters, who will evaluate all communications received and take final action on the proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that new sections 110.128 b, c, and d, be added to Part 110 of Title 33 of the Code of Federal Regulations to read as follows:

§ 110.128b Island of Hawaii, Hawaii.

(a) *Hilo Bay.* The waters of Hilo Bay enclosed by a line beginning at 19°43'-55.5'' N. latitude, 155°03'30'' W. longitude; thence to 19°44'08'' N. latitude, 155°04'19'' W. longitude, thence to 19°-43'51'' N. latitude, 155°04'30'' W. longitude; thence to 19°44'10'' N. latitude, 155°05'29'' W. longitude; thence along the shoreline to the beginning point.

(b) *Kuhio Bay.* The waters of Kuhio Bay enclosed by a line beginning at 19°-44'13'' N. latitude, 155°03'25'' W. longitude; thence to 19°44'15'' N. latitude, 155°03'25'' W. longitude; thence along the shoreline to the beginning point.

(c) *Keauhou Bay.* The waters of Keauhou Bay enclosed by a line beginning at 19°34'01.2'' N. latitude 155°58'10'' W. longitude; thence to 19°33'46.4'' N. latitude, 155°58'6.9'' W. longitude; thence along the shoreline to the beginning point.

(d) *Kawaihae Bay.* The waters of Kawaihae Bay enclosed by a line beginning at 20°01'04'' N, latitude, 155°49'43'' W. longitude; thence to 20°02'16'' N. latitude, 155°50'12'' W. longitude, thence along the shoreline to the beginning point.

(e) *Kawaihae Bay.* The waters of Kawaihae Bay enclosed by a line beginning at 20°02'29'' N. latitude, 155°50'03'' W. longitude; thence to 20°02'35'' N. latitude, 155°50'15'' W. longitude; thence to 20°03'19.5'' N. latitude, 155°50'46'' W. longitude; thence along the shoreline to the beginning point.

(f) *Kealakekua Bay.* The waters of Kealakekua Bay enclosed by a line beginning at 19°28'23'' N. latitude, 155°55'32'' W. longitude; thence to 19°28'54'' N. latitude, 155°56'16'' W. longitude; thence to 19°28'50'' N. latitude, 155°55'22.5'' W. longitude; thence along the shoreline to the beginning point.

§ 110.128c Island of Kauai, Hawaii.

(a) *Nawiliwili Bay.* The waters of Nawiliwili Bay enclosed by a line beginning at 21°57'12.5'' N. latitude, 159°21'38'' W. longitude; thence to 21°57'26'' N. latitude, 159°21'39.5'' W. longitude; thence along the shoreline to the beginning point.

(b) *Hanalei Bay.* The waters of Hanalei Bay enclosed by a line beginning at 22°13'33'' N. latitude, 159°30'00'' W. longitude; thence to 22°13'07'' N. latitude, 159°31'19.5'' W. longitude; thence along the shoreline to the beginning point.

§ 110.128d Island of Oahu, Hawaii.

(a) *Kaneohe Bay.* The waters of Kaneohe Bay enclosed by a line beginning at 21°26'28'' N. latitude, 157°46'00'' W. longitude; thence to 21°26'00'' N. latitude, 157°46'14'' W. longitude; thence to 21°26'20'' N. latitude, 157°47'24'' W. longitude; thence to 21°27'00'' N. latitude, 157°48'25'' W. longitude; thence to 21°26'46'' N. latitude, 157°48'37'' W. longitude; thence along the shoreline to point.

(b) *Kanohe Bay.* The waters of Kaneohe Bay enclosed by a line beginning at 21°27'28'' N. latitude, 157°49'08'' W. longitude; thence to 21°28'10'' N. latitude, 157°50'03'' W. longitude; thence to 21°29'10'' N. latitude, 157°50'40'' W. longitude; thence to 21°30'43'' N. latitude, 157°49'57'' W. longitude; thence to 21°31'47'' N. latitude, 157°50'14'' W. longitude; thence along the shoreline to the beginning point.

(c) *Keehi Lagoon.* The waters of Keehi Lagoon enclosed by a line beginning at 21°19'41'' N. latitude, 157°53'51'' W. longitude; thence to 21°19'37'' N. latitude, 157°54'00'' W. longitude; thence to 21°19'06'' N. latitude, 157°53'44'' W. longitude; thence to 21°19'04'' N. latitude, 157°53'50'' W. longitude; thence to 21°18'44'' N. latitude, 157°53'53'' W. longitude; thence to 21°18'44'' N. latitude, 155°54'32'' W. longitude; thence along the shoreline to the beginning point.

(d) *Manalau Bay.* The waters of Manalau Bay enclosed by a line beginning at 21°16'00'' N. latitude 157°42'52'' W. longitude; thence to 21°16'55'' N. latitude, 157°42'55'' W. longitude; thence to 21°-17'01'' N. latitude, 157°42'50'' W. longitude; thence along the shoreline to the beginning point.

(e) *Pokai Bay.* The waters of Pokai Bay enclosed by a line beginning at 21°-26'46.5'' N. latitude, 158°11'39.4'' W. longitude; thence to 21°27'07'' N. latitude, 158°11'56.6'' W. longitude; thence along the shoreline to the beginning point.

(f) *Sans Souci Beach.* The waters of Sans Souci Beach enclosed by a line beginning at 21°15'50'' N. latitude, 157°49'-26'' W. longitude; thence to 21°15'49'' N. latitude, 157°49'31'' W. longitude; thence to 21°16'02'' N. latitude, 157°49'33'' W. longitude; thence to 21°16'02'' N. latitude, 157°49'30.5'' W. longitude; thence along the shoreline to the beginning point.

(g) *Aiea Bay.* The waters of Aiea Bay enclosed by a line beginning at 21°22'20'' N. latitude, 157°56'30'' W. longitude; thence to 21°22'27'' N. latitude, 157°56'-40.5'' W. longitude; thence to 21°22'30'' N. latitude, 157°56'40.5'' W. longitude; thence to 21°22'37'' N. latitude, 157°56'-19'' W. longitude; thence along the shoreline to the beginning point.

(h) *Iroquois Point Lagoon.* The waters of Iroquois Point Lagoon enclosed by a line beginning at 21°19'53'' N. latitude, 157°58'30'' W. longitude; thence to 21°-19'56'' N. latitude, 157°58'31'' W. longitude; thence along the shoreline to the beginning point.

(i) *Hickam AFB Marina.* The waters of Hickham AFB Marina enclosed by a line beginning at 21°19'14'' N. latitude, 157°57'40'' W. longitude; thence to 21°18'54'' N. latitude, 157°57'40'' W. longitude; thence to 21°18'54'' N. latitude, 157°57'00'' W. longitude; thence along the shoreline to the beginning point.

(Sec. 1, 30 Stat. 98, as amended, sec. 6(g)(1)(B), 80 Stat. 937; (33 U.S.C. 180, 49 U.S.C. 1655(g)(1)(B)), 49 CFR 1.46(c)(2).)

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

Dated: January 13, 1977.

A. F. FUGARO,
Rear Admiral U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.77-1875 Filed 1-19-77;8:45 am]

FOREIGN CLAIMS SETTLEMENT COMMISSION

[45 CFR Part 504]

GOVERNMENT IN THE SUNSHINE ACT

Meetings of the Foreign Claims Settlement Commission

Notice is hereby given that the Foreign Claims Settlement Commission has under consideration proposed additions to its regulations which would implement the provisions of the Government in the Sunshine Act (5 U.S.C. 552b). These proposed additions would (1) define terms used therein, (2) request notification from the public of intention to attend an open meeting, (3) clarify that this addition applies only to meetings of the Commission, (4) declare that, unless otherwise specified, every meeting of the Foreign Claims Settlement Commission shall be open to the public, (5) state the basis for closing a meeting to the public (6) provide for the announcement of meetings, (7) state how a meeting shall be closed, (8) require the keeping of records of closed meetings, (9) state to whom requests for information shall be addressed.

Prior to adoption of these proposed additions, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing (5 copies) no later than February 17, 1977, to J. Raymond Bell, Chairman, For-

eign Claims Settlement Commission, Washington, D.C. 20579. Copies of all communications received will be available for examination by interested persons in the Office of the Executive Director, Foreign Claims Settlement Commission.

Chapter V of Title 45 of the Code of Federal Regulations is proposed to be amended by changing the title "Part 504—Privacy Act Regulations" to "Part 504—Privacy Act and Government in the Sunshine Regulations", changing the title of § 504.1 from "General Policies" to "General Policies—Privacy Act", changing the title of § 504.2 from "Definitions" to "Definitions—Privacy Act", and adding the following sections:

PART 504—PRIVACY ACT AND GOVERNMENT IN THE SUNSHINE REGULATIONS

Sec.

504.20 Definitions—Government in the Sunshine Act (Meetings of the Foreign Claims Settlement Commission).
504.21 Notice of public observation.
504.22 Scope of application.
504.23 Open meetings.
504.24 Grounds for closing a meeting.
504.25 Announcement of meetings.
504.26 Procedure for closing of meetings.
504.27 Reconsideration of opening or closing, or rescheduling a meeting.
504.28 Record of closed meetings or closed portion of a meeting.
504.29 Requests for information.

AUTHORITY: 5 U.S.C. 552b.

§ 504.20 Definitions.

For the purposes of this part: (1) The term "agency" means any agency, as defined in 5 U.S.C. 552b(e), which includes the Foreign Claims Settlement Commission, headed by a collegial body composed of two or more individual members, a majority of whom are appointed by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency;

(2) The term "Commission" means the Foreign Claims Settlement Commission, which is a collegial body that functions as a unit composed of three individual members, appointed by the President with the advice and consent of the Senate;

(3) The term "member" means any one of the three members of the Commission;

(4) The term "meeting" means the deliberations of at least two (quorum) members of the Commission where such deliberations determine or result in joint conduct or disposition of official Commission business;

(5) The terms "closed meeting" and "closed portion of a meeting" means, respectively, a meeting or that part of a meeting designated as provided in § 504.26 as closed to the public by reason of one or more of the closure provisions listed in § 504.24;

(6) The term "open" meeting means a meeting or portion of a meeting which is not a closed meeting or a closed portion of a meeting; and

(7) The term "public observation" means the right of any member of the public to attend and observe, but not participate or interfere in any way in an open meeting of the Commission within the limits of reasonable and comfortable accommodations made available for such purpose by the Foreign Claims Settlement Commission.

§ 504.21 Notice of public observation.

(a) A member of the public is not required to give advance notice to the Commission of an intention to exercise the right of public observation of an open meeting of the Commission. However, in order to permit the Commission to determine the amount of space and number of seats which must be made available to accommodate individuals who desire to exercise the right of public observation, such individuals are requested to give notice to the Commission at least two business days before the start of the open meeting of the intention to exercise such right.

(b) Notice of intention to exercise the right of public observation may be given in writing, in person, or by telephone to the official designated in § 504.29.

(c) Individuals who have not given advance notice of intention to exercise the right of public observation will not be permitted to attend and observe the open meeting of the Commission if the available space and seating are necessary to accommodate individuals who gave advance notice of such intention to the Commission.

§ 504.22 Scope of application.

The provisions of this part 504, §§ 504.20 through 504.29, apply to meetings of the Commission, and do not apply to conferences or other gatherings of employees of the Foreign Claims Settlement Commission who meet or join with others, except at meetings of the Commission to deliberate on or conduct official agency business.

§ 504.23 Open meetings.

Every meeting of the Commission shall be open to public observation except as provided in § 504.24.

§ 504.24 Grounds for closing a meeting.

Except in a case where the Commission determines otherwise, a meeting or portion of a meeting may be closed to public observation where the Commission determines that the meeting or portion of the meeting is likely to:

(a) Disclose matters that are (1) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (2) in fact properly classified pursuant to such Executive order;

(b) Relate solely to the internal personnel rules and practices of the Commission;

(c) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552) provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (1) interfere with enforcement proceedings, (2) deprive a person of a right to a fair trial or an impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (5) disclose investigative techniques and procedures, or (6) endanger the life or physical safety of law enforcement personnel;

(h) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Foreign Claims Settlement Commission;

(i) Disclose information the premature disclosure of which would (1) significantly endanger the stability of any bank or association; or (2) be likely to significantly frustrate implementation of a proposed action of the Foreign Claims Settlement Commission, provided the Commission has not already disclosed to the public the content or nature of its proposed action, or is not required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(j) Specifically concern the Commission's issuance of a subpoena or the Commission's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Commission of a particular case of formal agency adjudication pursuant to the procedures in section 554, of Title V or otherwise involving a determination on the record after opportunity for a hearing.

§ 504.25 Announcement of meetings.

(a) The Commission meets beginning at 10:30 a.m. in the offices of the Foreign Claims Settlement Commission, 1111 20th Street, NW, Washington, DC, on each Wednesday, unless notice to the contrary is given.

(b) At any duly called meeting held previous to any meeting scheduled as provided in paragraph (a) of this section, the Commission may fix a different time and place for a subsequent meeting.

(c) For any meeting of the Commission which is fixed as provided in (b) of this section, the Foreign Claims Settlement Commission shall, at the earliest practicable time, make information available for public inspection in its offices, or pursuant to telephonic or written requests, concerning the time and place fixed for such subsequent meeting.

(d) At the earliest practicable time, which is estimated to be not later than eight days before the beginning of a meeting of the Commission the Foreign Claims Settlement Commission shall make available for public inspection in its offices, or pursuant to telephonic or written requests, the subject matter of the meeting except to the extent that such information is exempt from disclosure under the provisions of § 504.24.

§ 504.26 Procedures for closing of meetings.

(a) The closing of a meeting shall occur only when:

(1) A majority of the membership of the Commission votes to take such action. A separate vote of the Commission members shall be taken with respect to each Commission meeting a portion or portions of which are proposed to be closed to the public pursuant to § 504.24, or with respect to any information which is proposed to be withheld under § 504.24. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters anl is scheduled to be held no more than thirty days after the initial meeting is such series. The vote of each Commission member participating in such vote shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Commission close such portion to the public for any of the reasons referred to in § 504.24 (e), (f) or (g), the Commission upon request of any one of its Commission members, shall take a recorded vote, whether to close such portion of the meeting.

(b) Within one day of any vote taken, the Commission shall make publicly available a written copy of such vote reflecting the vote of each member on the question and full written explanation of its action closing the entire or portion of the meeting together with a list of all persons expected to attend the meeting and their affiliation.

(c) The Commission shall announce the time, place and subject matter of the meeting at least 8 days before the meeting.

(d) For every closed meeting, the General Counsel of the Commission shall publicly certify that, in his or her opinion, the meeting may be closed to the public, and shall state each relevant closure provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the Commission.

§ 504.27 Reconsideration of opening or closing, or rescheduling a meeting.

The time or place of a Commission meeting may be changed following the public announcement only if the Commission publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the determination of the Commission to open or close a meeting, or portion of meeting, to the public, may be changed following the public announcement only if a majority of the Commission members determines by a recorded vote that Commission business so requires and that no earlier announcement of the change was possible, and the Commission publicly announces such change and the vote of each member upon such change at the earliest practicable time.

§ 504.28 Record of closed meetings or closed portion of a meeting.

(a) The Foreign Claims Settlement Commission shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each closed meeting or closed portion of a meeting, except that in the case of a meeting or portion of a meeting closed to the public pursuant to § 504.24 (d), (h), (i) (1), or (j), the Foreign Claims Settlement Commission shall maintain either such transcript, recording, or a detailed set of minutes.

(b) Any minutes so maintained shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reason therefor, including a description of each of the views expressed on any item and the record of any roll call vote. All documents considered in connection with any action shall be identified in the minutes.

(c) The Foreign Claims Settlement Commission shall promptly make available to the public, in its offices, the transcript, electronic recording, or minutes, of the discussion of any item on the agenda of a closed meeting, or closed portion of a meeting, except for such item or items of discussion which the Foreign Claims Settlement Commission determines to contain information which may be withheld under § 504.24. Copies of such transcript or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(d) The Foreign Claims Settlement Commission shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each closed meeting or closed portion of a meeting for a period of two years after the date of such closed meeting or closed portion of a meeting.

(e) All actions required or permitted by this section to be undertaken by the Foreign Claims Settlement Commission shall be by or under the authority of the Chairman, Foreign Claims Settlement Commission.

§ 504.29 Requests for information.

Requests to the Foreign Claims Settlement Commission for information about the time, place, and subject matter of a meeting, whether it or any portion thereof is closed to the public, and any requests for copies of the transcript or minutes or of a transcript of an electronic recording of a closed meeting, or closed portion of a meeting, to the extent not exempt from disclosure by the provisions of § 504.24, shall be addressed to the Executive Director, Foreign Claims Settlement Commission, 1111 20th Street, NW, Washington, DC 20579, telephone 202/653-6156.

Dated at Washington, DC, on January 17, 1977.

J. RAYMOND BELL,
Chairman.

[FR Doc.77-1916 Filed 1-19-77;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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

MEETING

Notice is hereby given in accordance with the Advisory Council's Procedures for the Protection of Historic and Cultural Properties (36 CFR Part 800) that the regular meeting of the Advisory Council on Historic Preservation will be held on February 2–3, 1977, in Washington, D.C. and Baltimore, Maryland. The entire meeting is open to the public.

The Advisory Council was established by the National Historic Preservation Act of 1966 (Pub. L. 89–665, as amended, Pub. L. 94–422) to advise the President and Congress on matters relating to historic preservation and to comment upon Federal, federally assisted and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Secretaries of the Interior; Housing and Urban Development; Commerce; Treasury; Agriculture; Transportation; State; Defense; Health, Education, and Welfare; and Smithsonian Institution; the Administrator of the General Services Administration; the Attorney General; the Chairman of the Council on Environmental Quality; the Chairman of the Federal Council on the Arts and Humanities; the Architect of the Capitol; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; and twelve non-Federal members appointed by the President.

In accordance with Section 106 of the National Historic Preservation Act, the Advisory Council will meet to consider the proposed construction of Interstate Route 83 in Baltimore City, Baltimore, Maryland, to be assisted by the Federal Highway Administration. The meeting will begin on Wednesday, February 2, at 9:00 a.m., in Baltimore, Maryland, and will reconvene on Thursday, February 3, 9:00 a.m., in the Cash Room, Department of the Treasury, 15th & Pennsylvania Avenue, NW, Washington, D.C.

A summary of the meeting agenda follows:

I. Consideration of Proposed Construction of Interstate 83 in Baltimore City, to be assisted by Federal Highway Administration.
A. Report of Federal Highway Administration/Interstate Division for Baltimore City;
B. Report of the State Historic Preservation Officer;
C. Testimony by Maryland State Officials;
D. On Site Inspection of Proposed I-83 Corridor;
E. Public Testimony;
F. Report of the Executive Director; and
G. Deliberation by the Full Council.

II. Report of the Chairman's Task Force on Archeology.

III. Report of the Executive Director.

For reasons of security in Federal and State buildings, those wishing to attend must notify the Council by January 26 of their name, address, social security number, and date of birth. Either notify the Council at Suite 530, 1522 K Street, NW., Washington, D.C. 20005, or call (202) 254–7788.

Agenda and additional information concerning the meeting and the submission of oral and written statements to the Council are available from the Executive Director, Advisory Council on Historic Preservation, Suite 530, 1522 K Street, NW., Washington, D.C. 20005 (202) 254–3974.

Dated: January 14, 1977.

ROBERT R. GARVEY, Jr.,
Executive Director.

[FR Doc.77–1970 Filed 1–19–77;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. CP73–329 (PGA77–3)]

CHATTANOOGA GAS CO.

Proposed PGA Rate Adjustment

JANUARY 6, 1977.

Take notice that on December 16, 1976, Chattanooga Gas Company, A Division of Jupiter Industries, Inc., (Chattanooga) tendered for filing proposed changes to Original Volume No. 1 of its FPC Gas Tariff to be effective on January 1, 1977, consisting of the following revised tariff:

Twenty First Revised Sheet No. 6

Chattanooga states that the sole purpose of this Revised Tariff Sheet is to adjust Chattanooga's LNG rates pursuant to the PGA provision in Section 5 of the General Terms and Conditions of its FPC Tariff to reflect increased purchased gas costs resulting from PGA rate changes by its suppliers, East Tennessee Natural Gas Company, (East Tennessee) in Docket Nos. RP71–15 and RP75–28 and Southern Natural Gas Company (Southern) in Docket No. RP73–64 and Opinion No. 770–A (Special PGA Increase).

Chattanooga requests that its Twenty First Revised Sheet No. 6 be made effective on January 1, 1977, the proposed effective date of the underlying changes by East Tennessee and Southern.

Chattanooga states that copies of the filing have been mailed to all of its jurisdictional customers.

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 21, 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.77–1891 Filed 1–19–77;8:45 am]

[Docket No. CP77–89]

CITIES SERVICE GAS CO.

Application

JANUARY 6, 1977.

Take notice that on December 13, 1976, Cities Service Gas Company (Applicant), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP 77–89 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of unspecified pipeline taps, measuring, regulating and appurtenant facilities for the sale of natural gas, either directly or for resale through authorized local natural gas distribution companies, to customers pursuant to obligations contained in right-of-way easements or agreements, gas storage leases or similar agreements, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it is aware that authorizations of the kind requested have not been granted under current Commission interpretations of § 157.7(c) of the Commission's Regulations under the Natural Gas Act (18 C.F.R. 157.7(c)) since the Commission's Order No. 507 issued March 18, 1974, in Docket No. RM 74–6. However, Applicant states, the Commission's Opinion No. 773 issued August 13, 1976, in Docket No. CP75–333, *Northern Natural Gas Company*, holds that the certification of gas service such as presently proposed for right-of-way easement grantors and gas storage lessors is in the public interest. Applicant further states that in the last year it has made five applications for certificates of public convenience and necessity to serve a total of 83 customers; that it recently has filed an application for authority to serve an additional 28 customers; that all applications for such service, including those proposed in the instant application, involve sales to rural domestic or irrigation customers; that all such serv-

ice is made pursuant to virtually identical clauses in right-of-way easements or agreements or gas storage leases; and, that all such service represents private grants of service relied on in good faith as a definite part of negotiations for such easements, agreements or leases. It is stated in conclusion by the Applicant that all sales and installations proposed in the instant application would be made under right-of-way provisions or gas storage lease provisions of identical legal import and that the procedure of filing separate certificate applications for such proposed customers, or groups of such customers, not only results in delay for such customers but also that the procedure does not provide the Commission with relevant information upon which to determine to certify some of the sales and deny certification to others.

Applicant requests authority to install the necessary pipeline tap, measuring, regulating and appurtenant facilities, and to make sales of gas for domestic or irrigation purposes, either directly or for resale through authorized local gas distribution companies, to customers who hold right-of-way easements or agreements, gas storage leases or similar agreements where part of the consideration for the agreement was the receipt of gas from the Applicant. Applicant states that it could make up to 150 such installations and sales in any calendar year; that the cost of each installation would range from $400 to $1,500; and, that it estimates each domestic customer would use, on average, from 250 to 300 Mcf of natural gas annually, and an irrigation customer would use 3,800 to 5,000 Mcf annually.

Applicant states that if required by the Commission it would agree to submit an annual report containing the pertinent details of the sales and installations made within the preceding period. The annual report, it is stated, would serve to advise the Commission completely of the facilities installed and the service rendered as if individual applications were filed for each sale without the burden of handling and processing numerous applications and without the necessity to prepare and file numerous reports as to when each individual facility is placed in service or as to its cost.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 24, 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.77-1903 Filed 1-19-77;8:45 am]

[Docket No. RP76-135]

CITIES SERVICE GAS CO.

Proposed Revisions in Rate Increase

JANUARY 6, 1977.

Take notice that on December 18, 1976, Cities Service Gas Company (Cities Service) tendered for filing revised tariff sheets in Docket No. RP76-135. Such sheets are designated Substitute Seventeenth Revised Sheet PGA-1 and Substitute Fourth Revised Sheet No. 37D.

Cities Service states that the purpose of these tariff sheets is to incorporate the current purchase gas costs and the current deferred purchase gas cost balance in the rates currently under suspension in Docket No. RP76-135.

Cities Service states that copies of its filing were served on all jurisdictional customers, interested state commissions and all parties to the proceedings in Docket Nos. RP76-135 and RP72-142.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, Union Center Plaza Building, 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 18, 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.77-1889 Filed 1-19-77;8:45 am]

[Docket No. CP77-105]

COLUMBIA GAS TRANSMISSION CORP.

Application

JANUARY 6, 1977.

Take notice that on December 21, 1976, Columbia Gas Transmission Corporation (Applicant), P.O. Box 1273, Charleston, West Virginia 25325, filed in Docket No. CP77-105 an application pursuant to section 7(c) of the Natural Gas Act and § 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79) for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Glenshaw Glass Company, Inc. (Glenshaw), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport for Glenshaw up to 3,150 Mcf of natural gas per day for two years for use at Glenshaw's bottle manufacturing plant in Orangeburg, New York. It is stated that the subject gas would be received by Applicant at a mutually agreeable point on Applicant's Line O-133 in Center Township, Noble County, Ohio, from LNG Services, Inc. (Services), and redelivered by Applicant, for the account of Glenshaw, to Orange and Rockland Utilities, Inc. (Orange and Rockland), at an existing point of delivery in Rockland County, New York. Orange and Rockland is a wholesale customer of the Applicant and is the gas distribution company which serves Glenshaw. The volumes to be transported for Glenshaw under the proposed service would be subject to Applicant pipeline capacity and would be further limited by those volumes required to offset curtailments affecting the Glenshaw plant.

It is indicated that pursuant to a gas purchase agreement between Glenshaw and Services, dated November 15, 1976, Services agrees to sell up to 3,150 Mcf of natural gas per day to Glenshaw from the production of an existing well situated in Enoch Township, Noble County, Ohio, and known as the Pauline M. Crum Well No. 1. It is further stated that Glenshaw is required to purchase a minimum quantity of 1,000 Mcf of gas per day, such minimum quantity to be averaged over each calendar month. The sale price for the gas is $1.90 per Mcf at the point of delivery to the Applicant for the first three months of the agreement; thereafter, the price increases by $0.03 every three months for the two-year term of the agreement. It is indicated that to make delivery under the terms of the purchase agreement, Services would construct 15,800 feet of 3-inch diameter pipeline at a cost of $100,000.

Applicant states that it would retain 3.1 percent of the volume received for transportation as make-up for line loss and compressor fuel and that the initial transportation charge would be 22.21 cents per Mcf of natural gas. Applicant asserts that since the proposed transportation service would be provided only when sufficient capacity is available, the

proposal would have no impact on its ability to deliver to Priority 1 markets. Applicant indicates that the subject natural gas supply was not available to it by reason of Services's unwillingness to sell at interstate rates.

It is stated that Glenshaw manufactures glass bottles used to package a variety of products produced in the states of New York, Pennsylvania, Massachusetts, Maine and Vermont; that Glenshaw is the major employer in the Orangeburg, New York, area; that Glenshaw is anticipating curtailments of up to 100 percent from Orange and Rockland; and, that Glenshaw has been utilizing propane fuel as an alternative to natural gas. It is further stated that the continued use of propane would make Glenshaw's product noncompetitive and could result in the loss of employment for many of Glenshaw's employees.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 31, 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.77-1899 Filed 1-19-77;8:45 am]

[Docket No. RP71-15 (PGA77-3)]

EAST TENNESSEE NATURAL GAS CO.

Proposed PGA Rate Adjustment

JANUARY 6, 1977.

Take notice that on December 20, 1976, East Tennessee Natural Gas Company (East Tennessee) tendered for filing Nineteenth Revised Sheet No. 4 to Sixth Revised Volume No. 1 of its FPC Gas Tariff. The proposed effective date is February 1, 1977.

East Tennessee states that its filing reflects a general rate increase filed by Tennessee Gas Pipeline Company, a Division of Tenneco Inc., which will become effective February 1, 1977, in Docket No. RP76-137 pursuant to the Commission's order issued August 30, 1976.

East Tennessee further states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 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 21, 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; provided, however, that any person who has previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1896 Filed 1-19-77;8:45 am]

[Docket No. ES77-7]

EL PASO ELECTRIC CO.

Application

JANUARY 6, 1977.

Take notice that on December 22, 1976, the El Paso Electric Company (Applicant) filed an application pursuant to Section 204 of the Federal Power Act seeking authorization to negotiate with investment bankers, with respect to the issuance of $10,000,000 of cumulative Preferred Stock through a negotiated public sale or private placement. Applicant asserts that due to the relatively small size of the proposed Preferred Stock offering, market conditions at the time of the sale may enable it to receive more favorable terms through a negotiated public sale or private placement than through a competitive public sale.

Applicant is incorporated under the laws of the State of Texas, with its principal business office at El Paso, Texas and is engaged in the generation, transmission, distribution and sale of electrical energy in the States of Texas and New Mexico.

Any person desiring to be heard or to make any protest with reference to said application should, on or before January 19, 1977, file petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in a hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1892 Filed 1-19-77;8:45 am]

[Docket No. RP73-17 (PGA77-3)]

GRANITE STATE GAS TRANSMISSION, INC.

Proposed Changes in Rates Pursuant to Purchased Gas Adjustment Provision

JANUARY 6, 1977.

Take notice that Granite State Gas Transmission, Inc. (Granite State), 66 Market Street (P.O. Box 508), Portsmouth, New Hampshire 03801, on December 22, 1976, tendered for filing Sixteenth Revised Sheet No. 3A in its FPC Gas Tariff, Original Volume No. 1, containing proposed changes in rates for effectiveness on February 1, 1977.

According to Granite State, the instant filing tracks revised changes in its cost of gas purchased from Tennessee Gas Pipeline Company, a Division of Tenneco, Inc. (Tennessee) which Tennessee has proposed to make effective February 1, 1977, in Docket No. RP76-137. Granite State further avers that its filing is made pursuant to the purchased gas cost adjustment provision in its Tariff, previously approved by the Commission on December 14, 1972, in Docket No. RP 73-17.

Granite State further states that its revised purchased gas cost changes are applicable to its sales to Northern Utilities, Inc. (Northern) which is Granite State's sole jurisdictional customer. According to Granite State, the annual effect on Northern of the proposed rates contained on Sixteenth Revised Sheet No. 3A is $605,353. The estimate is based on purchases from Tennessee and sales to Northern for the twelve months ended November 30, 1976.

According to Granite State, copies of the filing were served upon Northern and the regulatory commissions of the States of Maine and New Hampshire.

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 21, 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.77-1893 Filed 1-19-77;8:45 am]

[Docket No. RM76-1]

HYDROELECTRIC PROJECT LICENSES

Reasonable Rate of Return

JANUARY 6, 1977.

Commission Order No. 550, Order Adopting Statement of Policy as to the Specified Reasonable Rate of Return, was issued June 24, 1976, in Docket No. RM76-1. In the order the Commission referred to the Treasury Department's 10-year constant maturity bond yield series in connection with determining the cost of equity capital component of specified reasonable rates.

On July 16, 1976, the Commission issued a notice providing the actual monthly observations and the yearly averages for the series for the period 1972 through May, 1976. The Commission stated at that time it would notice the information necessary for calculating the specified reasonable rate of return as soon as it became available each year.

The monthly observations of the constant maturity series for 1976 are provided here.

10-YEAR CONSTANT MATURITY BOND YIELDS—1976

January	7.74
February	7.79
March	7.73
April	7.56
May	7.90
June	7.86
July	7.83
August	7.77
September	7.59
October	7.41
November	7.29
December	6.87

For the calendar year 1976, a single specified reasonable rate should be used. This should be calculated on the basis of (1) six percent for the period prior to the effective date of the license amendment and (2) the rate determined by application of the formula specified in Order No. 550 for the remaining months. For purposes of the latter calculation, the average of the above bond yields for the months since the license amendment should be used. For example, a company that filed for amendment between October 15 and November 15 would use the average bond yield for November and December or 7.08.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1897 Filed 1-19-77;8:45 am]

[Docket No. ES77-5]

IOWA PUBLIC SERVICE CO.

Application

JANUARY 6, 1977.

Take notice that on December 20, 1976, Iowa Public Service Company (Applicant) filed an application, pursuant to section 204 of the Federal Power Act, for authorization for authority to negotiate privately with the City of Chillicothe, Iowa, for the purpose of financing the Company's individual interest in certain pollution control facilities at Unit No. 1 of the Ottumwa Generating Station through the issuance of the City's Pollution Control Revenue Bonds. An agreement between the City and the Applicant would commit the City to issue and sell to underwriters its Pollution Control Bonds in an aggregate amount equal to the cost of the Company's ownership interest in such facilities and to loan the proceeds from the sale of such Revenue Bonds to the Applicant. The repayment obligation of the Applicant would be evidenced by debt obligation bearing identical terms with, and pledged to support the payment of, such Revenue Bonds.

Applicant is incorporated under the laws of the State of Iowa, with its principal business office at Sioux City, Iowa and is engaged in the generation, transmission, distribution and sale of electrical energy in the states of Iowa, Nebraska and South Dakota.

Any person desiring to be heard or to make any protest with reference to the Application should on or before January 24, 1977, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8, 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 proceedings. Persons wishing to become parties 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. The application is on file and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1895 Filed 1-19-77;8:45 am]

[Docket No. RP73-43 (PGA77-2)]

MID LOUISIANA GAS CO.

Proposed Change in Rates

JANUARY 6, 1977.

Take notice that Mid Louisiana Gas Company (Mid Louisiana), on December 17, 1976, tendered for filing as a part of First Revised Volume No. 1 of its FPC Gas Tariff, Twenty-Fourth Revised Sheet No. 3a.

Mid Louisiana states that the purpose of the filing is to reflect a Purchased Gas Cost Current Adjustment to Mid Louisiana's Rate Schedules G-1, SG-1, I-1 and E-1, to be effective February 1, 1977, and that the filing is being made in accordance with Section 19 of Mid Louisiana's FPC Gas Tariff and in compliance with Commission Order Nos. 452 and 452-A; and that copies of the filing were served on interested customers and state commissions.

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 21, 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.77-1890 Filed 1-19-77;8:45 am]

[Docket Nos. RP71-16 and RP74-29 (PGA77-3) (DCA77-1)]

MIDWESTERN GAS TRANSMISSION CO.

Filing Pursuant to Tariff Rate Adjustment Provisions

JANUARY 6, 1977.

Take notice that on December 17, 1976, Midwestern Gas Transmission Company (Midwestern) tendered for filing Eighteenth Revised Sheet No. 5 and First Revised Sheet No. 5A to its FPC Gas Tariff, Third Revised Volume No. 1, to be effective February 1, 1977. Midwestern states that the sole purpose of the revised tariff sheets is to reflect adjustments to its rates pursuant to rate adjustment provisions in Articles XVII, XVIII, and XIX of the General Terms and Conditions of its tariff.

Midwestern states that as to the Southern System, Eighteenth Revised Sheet No. 5 reflects (1) a Current Purchased Cost Rate Adjustment pursuant to section 2 of Article XVII which is based on rate changes reflected in the revised filing by Tennessee Gas Pipeline Company, a Division of Tenneco Inc. on December 20, 1976, in Docket No. RP76-137 and (2) a revised Surcharge for Amortizing the Unrecovered Purchased Gas Cost Account for the Southern System of 0.53 cents per Mcf pursuant to section 3 of Article XVII. According to Midwestern, the revised tariff sheet also reflects a Current Rate Adjustment of 1.12 cents per Mcf to reflect curtailment credits applicable to the Southern System pursuant to Section 9 of Article XIX.

Midwestern states that as to the Northern System, First Revised Sheet No. 5A reflects a revised Surcharge for Amortizing the Unrecovered Purchased Gas Cost Account for the Northern System of 3.93 cents per Mcf as specified in section 3 of Article XVIII.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 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 21, 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; provided, however, that any person who has previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1888 Filed 1-19-77;8:45 am]

[Docket Nos. ER77-97 and ER77-75]

NEW ENGLAND POWER CO.

Order Accepting for Filing and Suspending Proposed Tariff Changes, Denying Waiver, Providing for Hearing and Consolidating Proceedings

JANUARY 5, 1977.

On December 6, 1976, New England Power Company (NEPCO) tendered for filing proposed changes in its FPC Electric Tariff,[1] constituting a new Rate R-11. For the reasons hereinafter stated, we shall accept the proposed changes for filing, suspend their effectiveness until February 1, 1977, and establish hearing procedures to determine their lawfulness.

The tariff changes proposed herein would decrease revenues by $3,173,517 (0.6%) for service to NNEPCO's 12 primary rate (full requirements) customers[2] and would increase revenues by $2,934,150[3] to its contract demand rate (partial requirements or CD) customers, based on the test year ending December 31, 1977. NEPCO requests waiver of the 30 day prior notice requirement so as to permit an effective date of January 1, 1977. Alternatively, NEPCO requests an effective date of February 1, 1977.

Public notice of the subject filing was issued on December 15, 1976, with protests or petitions to intervene due on or before December 31, 1976.

Our review indicates that the proposed tariff changes have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential or otherwise unlawful. Accordingly, we shall suspend the proposed tariff changes under February 1, 1977, and establish hearing procedures.

By order issued December 22, 1976, in Docket No. ER77-75, a proceeding concerning a proposed reduction in the credit permitted NEPCO's affiliate, Narragansett Electric Company, for NEPCO's use of Narragansett's generation and transmission facilities, we found:

It is noted that the purchased power costs to NEPCO presented by the G&T Credit to Narragansett is an item in the cost of service claimed by NEPCO in support of the "R-11" general rate change filed by NEPCO on December 6, 1976, in Docket No. ER77-97. Accordingly, with a view towards the possibility of consolidating these proceedings we shall defer establishing hearing procedures pending action on Docket No. ER77-97.

Finding common questions of law and fact, we deem it appropriate to consolidate Docket Nos. ER77-97 and ER77-75 for purposes of hearing and decision.

The Commission finds: (1) Good cause has not been shown to warrant waiver of the prior notice requirements so as to permit an effective date of January 1, 1977.

(2) Good cause exists to accept for filing the proposed tariff changes as designated in the Attachment and to suspend the use thereof until February 1, 1977, when they may become effective subject to refund.

(3) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Federal Power Act, that the Commission enter upon a hearing concerning the lawfulness of NEPCO's FPC Electric Tariff as proposed to be revised herein.

(4) Good cause exists to consolidate Docket Nos. ER77-97 and ER77-75 for purposes of hearing and decision.

The Commission orders: (A) NEPCO's request for waiver of the prior notice requirements is hereby denied.

(B) Pursuant to the authority of the Federal Power Act, particularly sections 205 and 206 thereof, and the Commissions' Rules and Regulations, a public hearing shall be held concerning the justness and reasonableness of the rates, charges, terms and conditions of service included in NEPCO's FPC Electric Tariff, particularly as proposed to be revised by the subject filing.

(C) Pending a hearing and a final decision thereon, NEPCO's proposed tariff changes are hereby accepted for filing as designated in the Attachment and suspended until February 1, 1977, when they may become effective subject to refund.

(D) The Staff shall prepare and serve top sheets on all parties for settlement purposes on or before April 15, 1977. (See Administrative Order No. 157).

(E) The proceedings in Docket Nos. ER77-97 and ER77-75 are hereby consolidated for hearing and decision.

(F) 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.

(G) NEPCO shall file monthly with the Commission a report on billing determinants and revenues collected under the presently effective R-10 rates and the proposed R-11 rates filed herein, such report to be in the format prescribed by § 35.19 of the Commission's Regulations, 18 CFR 35.19a.

(H) The Secretary shall cause the prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1905 Filed 1-19-77;8:45 am]

[Docket No. ER77-127]

OKLAHOMA GAS AND ELECTRIC CO.

Filing of Proposed Wholesale Electric Tariffs and Proposed Increase in Rates

JANUARY 6, 1977.

Take notice that on December 27, 1976, Oklahoma Gas and Electric Company (OG&E), P.O. Box 321, Oklahoma City, Oklahoma 73101, tendered for filing a proposed FPC Tariff Original Volume No. 1—Municipalities applicable, as the individual contracts expire, to Blackwell, Edmond, Geary, Kingfisher, Manchester, Mannford, Okeene, Orlando, Perry, Ponca City, Pond Creek, Prague, Purcell, Stillwater, Stroud, Tecumseh, Tonkawa, Watonga, Waynoka and Wynnewood, Oklahoma, and Clarksville, Arkansas, and a proposed FPC Tariff Original Volume No. 1—Cooperatives applicable, as the individual contracts expire, to Alfalfa Electric Cooperative, Inc., Arkansas Valley Electric Cooperative Corporation, Cimarron Electric Cooperative, Indian Electric Cooperative, Inc., KAMO Electric Cooperative, Inc., and Red River Valley Rural Electric Association. Each tariff is proposed to become effective February 1, 1977.

OG&E states that the tariffs provide for an increase in rates, and for changes in the rate design and would place service for each of the wholesale customers on a comparable basis. In addition, revised rate schedules have been filed for rate increases identical to those included in the tariffs, to be applicable, after approval by the Commission, to cover the period of time prior to applicability of the tariffs to the individual customers. OG&E alleges that it has experienced significant cost increases in all areas of its operations, including wages, fuel, materials and supplies, and particularly capital. OG&E further states that it has served notices of cancellation of the contracts on each of its municipal and cooperative customers.

OG&E states that copies of the tariff, rate schedules and of the entire filing have been delivered to its municipal and cooperative customers and to the Corporation Commission of the State of Oklahoma and mailed to the Arkansas Public Service Commission.

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[1] See Attachment for designations.
[2] Three of which are affiliates of NEPCO.
[3] On December 20, 1976, NEPCO revised its filing so as to reduce the rate increase to the CD customers from $2,934,150 (9.9%) to $2,720,418 (9.2%) reflecting an error in NEPCO's development of cost of service.

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, 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 21, 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.77-1904 Filed 1-19-77;8:45 a.m.]

[Docket No. CP77-91]

PANHANDLE EASTERN PIPE LINE CO.

Application

JANUARY 6, 1977.

Take notice that on December 15, 1976, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP77-91 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition by purchase of a natural gas pipeline system from Baca Gas Gathering System, Inc. (Baca), for a price of $400,000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it seeks authorization to purchase the following facilities located in Baca County, Colorado, and Morton County, Kansas:

1. All of Baca's plant and equipment, consisting of field pipelines, field compressor station equipment, field measuring and regulating equipment, miscellaneous equipment and intangible plant costs.

2. All of Baca's right, title and interest in and to fee simple interests, easements and rights-of-way surface leases incidental to the use of the aforementioned equipment and the operation of the natural gas pipeline system.

3. All of Baca's franchises and consents incidental to its conduct of the natural gas pipeline system.

4. All of Baca's interests in gas purchase contracts with producers, gas processing and conditioning agreements and other contracts and agreements.

Applicant states that the facilities include 58.1 miles of pipeline, consisting of 9.7 miles of 10-inch, 21.7 miles of 8-inch, 3.2 miles of 6-inch, 7.8 miles of 4-inch and 15.7 miles of 3-inch pipeline. In addition, Applicant indicates that it would purchase all of Baca's interest in gas purchase contracts covering 25,006.31 acres out of a total 50,146.81 acres dedicated to interstate markets in Baca County, Colorado, and any future producer contracts entered into by Baca.

Applicant states that the cost of acquisition would be $400,000, or an amount estimated to equal the book value of Baca's assets on the date of authorization by the Commission. Applicant states that it would finance this amount from general funds. Further, Applicant states that it plans to spend $185,000 to upgrade the subject facilities in order to bring them into compliance with the Natural Gas Pipeline Safety Act of 1968.

Applicant states that in recent years Baca has been relatively inactive in acquiring new gas supplies and that the prospect of Baca's acquiring additional gas supplies that will be sold to Applicant for resale appears minimal. It is further stated that the proposed extension of Applicant's system into southeastern Colorado will allow Applicant to acquire new reserves and stimulate additional drilling in the region.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 28, 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 interevne 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 adivsed, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1902 Filed 1-19-77;8:45 am]

[Docket Nos. CP77-100, CP77-101 and CP77-102]

TENNECO ATLANTIC PIPELINE CO.

Applications and Consolidation

JANUARY 6, 1977.

Take notice that on December 20, 1976, Tenneco Atlantic Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77001, filed applications in Docket Nos. CP77-100, CP77-101 and CP77-102 pursuant to provisions of the Natural Gas Act and Executive Order No. 10485 requesting appropriate authorization to construct, operate and maintain natural gas facilities at the international boundary between the United States and Canada and in the states of Maine, New Hampshire, Massachusetts, New York and Pennsylvania, to import natural gas from Canada, and to sell the subject imported gas to Tennessee Gas Pipeline Company, a Division of Tenneco, Inc. (Tennessee), all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Applicant requests the following: (1) In Docket No. CP77-102 authorization pursuant to Executive Order No. 10485 to construct, operate, connect and maintain natural gas facilities at the international boundary between the United States and Canada at a point near Calais, Maine, for the purpose of importing a maximum of 1,140,000 Mcf and an average of 971,672 Mcf of natural gas per day from Canada into the United States; (2) In Docket No. CP77-101 authorization pursuant to Section 3 of the Natural Gas Act to import the subject natural gas into the United States from Canada; and (3) In Docket No. CP77-100 a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act authorizing the construction of a 36-inch pipeline from a point near Calais, Maine, through the states of Maine, New Hampshire and Massachusetts to a point near Albany, New York, a 30-inch pipeline from a point near Albany, New York, to a point near Milford, Pennsylvania, six compressor stations, and metering and other appurtenant facilities to the pipeline and authorizing the transportation and sale of the imported natural gas to Tennessee at an estimated cost of $4.57 per Mcf in 1984.

Applicant states that Tenneco LNG Inc. (Tenneco LNG) has entered into a contract (LNG Contract) with Societe Nationale SONATRACH (Sonatrach), the national oil and gas company of Algeria, dated October 4, 1976, whereunder Tenneco LNG would purchase 100 billion thermies of liquefied natural gas (LNG) per year for a primary term of 20 years. Initial deliveries under the LNG Contract would begin in late 1981 and the 20 year term would commence when full delivery levels are reached, estimated to be mid-1983. The LNG to be purchased from Sonatrach would be produced from any and all Algerian gas fields, existing and future, and Sonatrach would gather and liquefy the natural gas and load the resulting LNG onto cyrogenic tankers. The price under the contract is the higher of the minimum price (defined to be $1.30 U.S. dollars per million Btu's as of July 1, 1975, subject to escalation to reflect devaluation of the U.S. dollar in relation to certain European currencies) and the invoicing price (determined by the average price of No. 2 and No. 6 fuel oil in New York Harbor).

Applicant states that the purchased LNG would be loaded aboard cyrogenic tankers at one or more Algerian ports and shipped to Saint John, New Brunswick, Canada. It is estimated that a total of eight tankers each with a capacity of 125,000 cubic meters would be required for the proposed shipments. Applicant indicates that arrangements for shipping would be shared equally by Tenneco LNG and Sonatrach so that each company would be responsible for four tankers. Applicant further indicates that Tenneco LNG has entered into a letter of intent with Canadian Pacific Ltd. for the construction and operation of facilities near Saint John for the terminalling and vaporization of the LNG for the 20-year term of the contract. It is indicated that after unloading into storage and vaporization at the planned Saint John terminal, the vaporized LNG would be delivered into pipeline facilities to be constructed, owned and operated by TransCanada Pipelines Limited (TransCanada), or its designee, and transported to the Canada-United States border near Calais, Maine, so as to interconnect with the facilities proposed in the instant applications.

Applicant, in Docket No. CP77-101, proposes to import 971,672 Mcf of natural gas on an average day from Canada. The volumes to be received and purchased at the border are estimated in the following manner: Pursuant to the LNG Contract Tenneco LNG would purchase 100 billion thermies or approximately 396.8 trillion Btu's. After cargo weathering, tanker heel and terminal fuel and losses, this volume is reduced to 382.3 trillion Btu's per year of natural gas available for sale at the tailgate of the planned LNG facility. Since the anticipated Btu content of the imported gas is 1,060 Btu's per Mcf, this volume is equal to 360,660,000 Mcf per year or 988,110 Mcf per day. Of this volume 83 percent or 820,131 Mcf per day would be sold to Applicant directly at the Canada-United States border. Seventeen percent of the volume would be sold to Canadian Lowell Gas, Ltd. (Lowell), on the high seas. Of this seventeen percent, or approximately 167,979 Mcf, approximately 16,438 Mcf of gas would be resold to New England LNG Inc., for transportation to various points by cyrogenic trunks and the other 151,541 Mcf would be resold to Applicant at the Canada-United States border. Therefore, it is indicated, a total average volume of 971,672 Mcf of natural gas per day would be sold to Applicant at the border. Applicant requests in Docket No. CP77-101 authorization to import up to 1,140,000 Mcf of natural gas per day so as to allow for operating flexibility. Applicant states that the price to be paid by both Lowell and Tenneco LNG would be determined on a cost-of-service basis.

In Docket No. CP77-102 Applicant requests authority to construct, operate, connect and maintain facilities on the Canada-United States border generally northwest of Calais, Maine. The proposed facilities include pipeline, a block valve, metering facilities and facilities appurtenant thereto. The purpose of the proposed border facilities would be to import natural gas proposed in Docket No. CP77-101.

In Docket No. CP77-100, Applicant proposes to construct and operate the following:

(a) Approximately 391 miles of 36-inch pipeline extending from the Maine-New Brunswick border near Calais, Maine, to a point near Albany, New York;

(b) Approximately 107 miles of 30-inch pipeline extending from the terminus of the 36-inch pipeline to a point near Milford, Pennsylvania;

(c) Four 17,000 HP compressor stations, one of which would be located one mile from the origin of the proposed 36-inch pipeline near Calais, Maine, and the others would be placed approximately every 92 miles along that pipeline;

(d) Two 7,000 HP compressor stations one to be located near the origin of the 30-inch pipeline near Albany, New York, and the other near the terminus of that pipeline near Milford, Pennsylvania;

(e) Three delivery points to be located at interconnections between Applicant's proposed pipeline and the facilities of Tennessee at Tennessee's (1) Concord Lateral near Concord, New Hampshire (2) Compressor Station No. 254 near Albany, New York, and (3) 300 Line near Main Line Valve 324 near Milford, Pennsylvania,

(f) Metering stations at each of the three delivery points; and

(g) Miscellaneous facilities appurtenant to the above.

In addition, Applicant proposes to sell the imported volumes, minus compressor fuel and line losses, or approximately 958,152 Mcf on average and a maximum of 1,123,666 Mcf per day, to Tennessee at the three proposed delivery points. The estimated cost of natural gas to Tennessee is $4.57 per Mcf as of 1984 expressed in 1984 dollars.

Applicant states that the cost of the proposed facilities would be $546,366,000 based on 1976 dollars. This price includes, it is stated, total direct costs including overheads, regulatory fees and engineering costs. Applicant states that it plans to construct the 36-inch pipeline and related facilities during 1980 and 1981 in order to accommodate the volumes expected to be delivered during the start-up period commencing in late 1981. The remaining facilities would be constructed during 1982, it is indicated, so that all facilities would be ready for service by mid-1983 when full deliveries under the LNG Contract are expected to begin. Applicant proposes to finance the facilities through three issues of long-term debt in the amounts of $175 million, $215 million and $100 million, all at an interest rate of 9.5 percent, to be issued and sold in October 1980, October 1981 and October 1982, respectively. Additional financing, it is stated, would be obtained from the sale of one-year term notes at an estimated cost of 8% per year and the issuance of common stock. It is estimated that $398,168,000 in short-term notes will be issued in the construction phase ending in mid-1981, and an additional $124,738,000 will be issued in the build-up period between October 1, 1981, and December 31, 1982, with minor amounts issued thereafter. Total common equity issued is expected to equal $206,577,000 by the end of 1982, it is indicated, and would be issued so as to maintain a capitalization of 70 percent debt and 30 common stock during the build-up and construction periods. All common stock would be sold to Tenneco, Inc.

Applicant indicates that the proposed importation of natural gas, the proposed facilities and the proposed sale of natural gas to Tennessee are needed to augment Tennessee's overall system gas supply to meet the base period requirements of its Priority 1 and 2 customers. It is indicated that Tennessee is presently curtailing service of Priority 2 customers and that it will be required to curtail Priority 1 customers beginning in the 1981-82 winter season unless the supplemental proposed gas service is made available.

Concurrently herewith a notice is being issued in Docket No. CP77-103 of an application filed by Tennessee pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities to receive the gas proposed to be sold by Applicant. Since the instant applications and the application in Docket No. CP77-103 may involve common questions of law or fact, the proceedings on all of said applications are consolidated for hearing.

Any person desiring to be heard or to make any protest with reference to the applications in Docket Nos. CP77-100, CP77-101 and CP77-102 should on or before January 31, 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 3, 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 these applications 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 and other authorizations 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.77-1906 Filed 1-19-77;8:45 am]

[Docket No. CP77-103]

TENNESSEE GAS PIPELINE CO., A DIVISION OF TENNECO INC.

Application

JANUARY 6, 1977.

Take notice that on December 20, 1976, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP77-103 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the modification of its existing pipeline system to enable it to receive natural gas, purchased from Tenneco Atlantic Pipeline Company (TAPCO), a wholly owned subsidiary of Tenneco Inc. at points near Concord, New Hampshire, Albany, New York, and Milford, Pennsylvania, and authorizing the delivery of the subject natural gas to its existing customers, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that the instant application is part of a comprehensive project for securing an additional gas supply to meet the high priority requirements of Applicant's existing customers. Applicant states that by a companion application filed pursuant to Section 3 of the Natural Gas Act in Docket No. CP77-101, TAPCO is requesting authorization to import from Canada up to 1,140,000 Mcf of natural gas per day and 971,672 Mcf of natural gas on an average day. Applicant further states that the gas so imported would be purchased by TAPCO from Tenneco LNG Inc. (Teneco LNG) and Canadian Lowell Gas Ltd. at the international boundary between the United States and Canada near Calais, Maine. The subject natural gas, it is indicated, would be purchased by Tenneco LNG from Societe Nationale SONATRACH, the national oil and gas company of Algeria, and shipped by cryogenic tankers from Algerian ports to a proposed liquefied natural gas (LNG) storage and vaporization facility on the east coast of Canada near Saint John, New Brunswick. From Saint John, it is stated, the subject gas would be transported in a vaporized state by TransCanada PipeLines Limited for delivery and sale to TAPCO at the international boundary. Applicant further states that by companion applications filed pursuant to Section 7(c) of the Natural Gas Act in Docket No. CP77-100 and pursuant to Executive Order No. 10845 in Docket No. CP77-102, TAPCO is requesting authorization to construct and maintain facilities and to transport and sell the subject natural gas volumes, minus transportation losses and compressor fuel, to applicant at three proposed points of delivery.

It is stated that the three points of delivery and interconnection would be (1) at Applicant's Concord Lateral, near Concord, New Hampshire (Concord Delivery Point); (2) at Applicant's Compressor Station No. 254 near Albany, New York (Albany Delivery Point); and (3) at a point on Applicant's 300 Line near Main Line Valve 324 near Milford, Pennsylvania (Milford Delivery Point). Pursuant to a sales contract between Applicant and TAPCO, dated December 15, 1976, TAPCO would sell and deliver to Applicant up to 1,123,666 Mcf of natural gas per day and an average of 958,152 Mcf of natural gas per day at these three points. Applicant further indicates that delivery of total contract quantities would not be attained until mid-1983 and that the delivery of partial contract volumes would begin with the "build-up" phase of TAPCO's construction in late 1981.

Applicant requests authorization for the construction or modification and the operation of the following: (a) Three delivery points as indicated above; (b) the replacement of approximately 2,000 feet of 24-inch pipeline between Applicant's Main Line Valve 236 and 237 for the purpose of obtaining an operating pressure of 760 psig; (c) the installation of pressure regulating equipment near the Albany Delivery Point for the protection of westerly flow at 760 psig and the secondary regulation of easterly flow; and, (d) station turnarounds, that is, the reversal of suction and discharge lines and piping alterations at Applicant's Compressor Station Nos. 237, 241, 245, 249 and 254 on the pipeline running from near Clifton Springs, New York, to a point near Albany, New York, and at Compressor Station Nos. 313, 315, 317 and 321 on the pipeline running from near Coudersport, Pennsylvania, to Milford, Pennsylvania.

Applicant estimates that the total cost of the proposed facilities and modifications would be $3,175,000 and states that this amount would be financed from the general funds of the company. Applicant indicates that a portion of the facilities proposed are scheduled for completion in 1981 to allow for partial deliveries during the build-up phase of TAPCO's pipeline construction and that completion of all facilities is scheduled for 1982 to correspond to the expected date of full natural gas deliveries from TAPCO.

Applicant states that the gas it proposes to purchase from TAPCO would be treated as an integral part of its overall system gas supply and would be sold to its existing customers under existing sales rate schedules and contracts and would be allocated among its customers under Applicant's curtailment plan. Applicant states that it is presently curtailing service to some Priority 2 customers and without the proposed supplemental gas supply it projects that it would be required to curtail service to some of its Priority 1 customers beginning in the 1981-82 winter season. Applicant further indicates that even if the proposed supplemental gas supply is available on schedule, it will be required to continue curtailments to some of its Priority 2 customers through at least 1986.

The application states that Applicant proposes to record its payments to TAPCO in Account No. 803 of the Uniform System of Accounts for Natural Gas Companies, and to reflect such payments in Applicant's purchased gas adjustment filings. Applicant believes that the inclusion of such payments is in accord with its tariff and § 154.38(d)(4) of the Regulations under the Natural Gas Act (18 CFR 154.38(d)(4)); however, if the Commission should deem a waiver of said regulation necessary for the inclusion of such payments, Applicant requests such a waiver.

Concurrently herewith a notice is being issued in Docket Nos. CP77-100, CP77-101, and CP77-102 of applications filed by TAPCO pursuant to Sections 7(c) and 3 of the Natural Gas Act and Executive Order No. 10485, respectively, for authorizations to construct and operate facilities and to import, transport, and sell natural gas. Since the instant application and those in Docket Nos. CP77-100, CP77-101, and CP77-102 may involve common questions of law or fact, the proceedings on all of said applications are consolidated for hearing by the notice issued concurrently herewith in Docket No. CP77-100, et al.

Any person desiring to be heard or to make any protest with reference to the application in Docket No. CP77-102 should on or before January 31, 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 pub-

lic 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.77-1898 Filed 1-19-77;8:45 am]

[Docket No. CP77-86]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Application

JANUARY 6, 1977.

Take notice that on December 13, 1976, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP77-86 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon natural gas pipeline facilities in Forsyth and Cherokee Counties, Georgia, by sale to Atlanta Gas Light Company (Atlanta), all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that it proposes to abandon facilities originally certificated by order of the Commission in Docket No. CP64-270. The subject facilities, it is stated, consist of approximately 9.68 miles of 16-inch and 17.628 miles of 12-inch pipeline running approximately from Applicant's Mile Post 27.09 of the Ball Ground Lateral of the Georgia Extension to Mile Post 54.398 near Ball Ground, Georgia. In addition, Applicant states that two measuring and regulating stations and appurtenant facilities would also be abandoned.

It is indicated that Applicant will sell subject facilities to Atlanta at the net book value of the facilities on the date of sale plus any related income tax liability that would accrue to Applicant and the cost associated with severing the facilities. The total selling price is estimated by the Applicant to be $1,418,000 on December 31, 1976.

It is stated that the subject facilities or duplicate facilities are required by Atlanta in order to distribute liquefied natural gas (LNG) to the Atlanta system from a planned LNG facility to be located adjacent to the Applicant's line in Cherokee County, Georgia. It is further indicated that Atlanta is the only customer of the Applicant that is served by the subject pipeline facilities and, therefore, that the abandonment can be accomplished without adverse effect upon Applicant's other customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 28, 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.77-1900 Filed 1-19-77;8:45 am]

[Docket No. RP75-24]

UNITED GAS PIPE LINE COMPANY (MONROE UTILITIES COMMISSION)

Settlement Agreement

JANUARY 6, 1977.

Take notice that on December 28, 1976 the Utilities Commission of the City of Monroe, Louisiana (Monroe) filed a proposed settlement agreement and a motion that it be approved. The provisions of the settlement agreement would effect a termination both of the instant proceeding and of a proceeding pending before the United States Court of Appeals for judicial review of the Commission's orders in this docket.

Pursuant to the emergency exemption from curtailment which was prescribed in Opinion No. 647, 49 FPC 179, Monroe received emergency deliveries of natural gas from United Gas Pipe Line Company (United) for two years. Such emergency takes were subject to a repayment obligation. By orders issued in this docket on July 20, 1976 and September 17, 1976, the Commission found that an emergency no longer existed, that the emergency deliveries should terminate, and that Monroe should repay the volumes taken pursuant to the emergency exemption. Subsequently, Monroe petitioned for judicial review of the Commission orders in the Court of Appeals for the Fifth Circuit.

The instant settlement proposal would resolve the repayment issue. Therein Monroe recognizes its payback obligation in the volume stated in the Commission's orders, and would undertake satisfaction of the obligation by waiver of that portion of its entitlement under United's curtailment plan designated for consumption in its power plant. Repayment at that rate would continue until the obligation has been satisfied, however, it would not require Monroe to reduce its takes below that portion of its curtailment entitlement designated for non-power-plant usage. Upon approval by the Commission of the settlement proposal, Monroe would withdraw its petition for judicial review and terminate the court proceeding.

Any person desiring to be heard or to make protest with reference to the said settlement proposal should, on or before January 21, 1977, file with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the proper action to be taken but will not serve to make the protestants parties to a 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 settlement proposal is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1894 Filed 1-19-77;8:45 am]

[Docket No. CP77-90]

UNITED GAS PIPE LINE CO.

Application

JANUARY 6, 1977.

Take notice that on December 15, 1976, United Gas Pipe Line Company (Applicant), 1500 Southwest Tower, Houston, Texas 77002, filed in Docket No. CP77-90 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing farm tap service to Arthur R. McElroy pursuant to the terms of a right-of-way easement entered into between Applicant and Mr. McElroy, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that Arthur R. McElroy granted Applicant an easement through his lands in Red River Parish, Louisiana, to facilitate the construction of Applicant's Agua Dulce-Perryville to Bistineau Storage 24-inch line. In partial consideration for said easement, it is indicated, Applicant agreed to deliver gas to grantor-landowner through a local gas

distribution company, Louisiana Gas Service Company (Louisiana Gas).

Applicant requests authorization to serve Mr. McElroy through Louisiana Gas. The application states that Louisiana Gas has advised Applicant of its ability to provide the service from within the seasonal volumetric limitation established by the Commission for its purchases from Applicant. Applicant further indicates that a tap is already in place and no new facilities need be constructed by Applicant. It is estimated that deliveries would be about 80 Mcf of natural gas per year.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 28, 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.77-1901 Filed 1-19-77;8:45 am]

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

[Notice of Designation Number A398]

ARKANSAS

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in the following Arkansas Counties as a result of drought during the 1976 crop year.

Johnson	Yell
Searcy	

Therefore, the Secretary has designated this area as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 94-68, and the provisions of 7 CFR 1832.3(b).

Applications for emergency loans must be received by this Department no later than February 3, 1977, for physical losses and September 6, 1977, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, D.C., this 13th day of January 1977.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.77-1842 Filed 1-19-77;8:45 am]

[Notice of Designation Number A365]

MINNESOTA

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in the following Minnesota Counties as a result of drought during the 1976 crop year.

Aitkin	Lac qui Parle
Becker	Lincoln
Beltrami	Lyon
Benton	Morrison
Big Stone	Otter Tail
Brown	Pope
Carlton	Redwood
Cass	Stearns
Chippewa	Stevens
Chisago	Swift
Clearwater	Todd
Crow Wing	Traverse
Douglas	Wadena
Hubbard	Yellow Medicine
Isanti	

Therefore, the Secretary has designated this area as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 94-68, and the provisions of 7 CFR 1832.3(b).

Applications for emergency loans must be received by this Department no later than March 7, 1977, for physical losses and October 5, 1977, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, DC, this 13th day of January 1977.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.77-1843 Filed 1-19-77;8:45 am]

[Notice of Designation Number A426]

NEW YORK

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in the following New York Counties as a result of excessive rainfall May 1 through October 31, 1976.

Jefferson	Ontario

Therefore, the Secretary has designated this area as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 94-68, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor Hugh L. Carey that such designation be made.

Applications for emergency loans must be received by this Department no later than March 10, 1977, for physical losses and October 7, 1977, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, DC, this 14th day of January 1977.

FRANK B. ELLIOTT,
Administrator, Farmers Home Administration.

[FR Doc.77-1963 Filed 1-19-77;8:45 am]

[Notice of Designation Number A368]

WISCONSIN

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in the following Wisconsin Counties as a result of drought during the 1976 crop year.

Ashland	Marathon
Bayfield	Oneida
Burnett	Price
Clark	Rusk
Douglas	Sawyer
Florence	Shawano
Forest	Taylor
Iron	Washburn
Langlade	Waushara
Lincoln	Wood

Therefore, the Secretary has designated this area as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 94-68, and the provisions of 7 CFR 1832.3(b).

Applications for emergency loans must be received by this Department no later than March 7, 1977, for physical losses and October 5, 1977, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for

loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, D.C., this 14th day of January 1977.

FRANK B. ELLIOTT,
Administrator, Farmers Home Administration.

[FR Doc.77-1964 Filed 1-9-77;8:45 am]

Food and Nutrition Service

CHILD CARE FOOD PROGRAM

Food Cost Factors for the Period January 1 through June 30, 1977

Pursuant to § 226.12(h) of the regulations governing the Child Care Food Program (7 CFR Part 226), notice is hereby given that food cost factors for meals served to children attending family and group day care homes whose sponsoring organizations participate in the Child Care Food Program during the period January 1–June 30, 1977, shall be as follows: (a) 42.25 cents for each lunch or supper; (b) 23.75 cents for each breakfast; and (c) 14.50 cents for each supplement.

The above factors may be used by sponsoring organizations for all family and group day care homes under their jurisdiction, in lieu of maintaining records on the actual cost of food used. These factors are adjusted semi-annually to reflect changes in the Consumer Price Index series for food away from home.

The above factors represent a 2.814 percent increase in the factors prescribed for the period ending December 31, 1976. This represents the percent increase during the six-month period June–November 1976 (from 184.8 in May 1976 to 190.0 in November 1976) in the series for food away from home of the Consumer Price Index, published by the Bureau of Labor Statistics of the Department of Labor.

Definitions. The terms used in this notice shall have the meanings ascribed to them in the regulations governing the Child Care Food Prograam (7 CFR Part 226).

(Catalog of Federal Domestic Assistance Program No. 10.558, National Archives Reference Service.)

Effective date: This notice shall be effective as of January 1, 1977.

Dated: January 18, 1977.

RICHARD L. FELTER,
Assistant Secretary.

[FR Doc.77-2048 Filed 1-19-77;8:45 am]

Forest Service

QUETICO-SUPERIOR COMMITTEE

Meeting

The President's Quetico-Superior Committee will meet beginning at 9:00 a.m., March 17, 1977, at the Radisson Hotel, Duluth, Minnesota to discuss management of Federal land along the Minnesota-Canadian border.

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor, Superior National Forest, P.O. Box 338, Duluth, Minnesota, 55801, phone number (218) 727-6692. Written statements may be filed with the committee before or after the meeting.

The committee has established the following rules for public participation: Public participation will be limited to a period designated for open discussion following completion of topics on the agenda. To the extent time permits, interested persons may be permitted by the committee chairman to present oral statements.

Dated: January 14, 1977.

STEVE YURICH,
Regional Forester.

[FR Doc.77-1878 Filed 1-19-77;8:45 am]

SUPERIOR NATIONAL FOREST ADVISORY COMMITTEE

Meeting

The Superior National Forest Advisory Committee will meet at 10:00 AM on February 24, 1977, in the Multi-Media Room, St. Louis County Heritage and Arts Center (Depot), Duluth, Minnesota.

The purpose of this meeting is to discuss current issues on the Superior National Forest, fire season "76" and predictions for 1977, plus planning for the next two meetings of the Advisory Committee.

The meeting will be open to the public. Persons who wish to attend should notify James F. Torrence, Forest Supervisor, Superior National Forest, P.O. Box 338, Duluth, Minnesota 55801. Written statements may be filed with the committee before or after the meeting.

JAMES F. TORRENCE,
Forest Supervisor.

JANUARY 12, 1977.

[FR Doc.77-1907 Filed 1-19-77;8:45 am]

Rural Electrification Administration

COLORADO-UTE ELECTRIC ASSOCIATION, INC.

Draft Environmental Statement

Notice is hereby given that the Rural Electrification Administration intends to prepare a Draft Environmental Impact Statement in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 in connection with a proposed project of Colorado-Ute Electric Association, Inc., P.O. Box 1149, Montrose, Colorado 81401, involving REA financing. The Statement covers a 115 kV transmission line between Lake City and Creede, Colorado, and a substation at Creede.

Interested persons are invited to submit comments which may be helpful in preparing the Draft EIS.

Comments should be forwarded to the Assistant Administrator, Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250, with a copy to the borrower whose address was given above. Additional information may be obtained at the borrower's office during regular business hours.

Dated: at Washington, D.C. this 13th day of January, 1977.

DAVID A. HAMIL,
Administrator, Rural Electricfication Administration.

[FR Doc.77-1845 Filed 1-19-77;8:45 am]

PACIFIC NORTHWEST GENERATING COMPANY

Draft Environmental Statement

Notice is hereby given that the Rural Electrification Administration intends to prepare a Draft Environmental Impact Statement in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 in connection with a proposed loan application from Pacific Northwest Generating Company (PNGE), P.O. Box 48, Hermiston, Oregon 97838. PNGC is a cooperative corporation with 14 members which are distribution-type cooperatives financed by REA. The Statement will cover participation by PNGC in a 500 NW coal-fired generating unit at the Boardman site in Oregon. The generating plant is to be constructed by Portland General Electric Company approximately 11 miles southwest of Boardman in Morrow County, Oregon. PNGC proposes to the a 10 percent participant in the project.

Interested persons are invited to submit comments which may be helpful in preparing the Draft EIS.

Comments should be forwarded to the Assistant Administrator-Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250, with a copy to the borrower whose address was given above. Additional information may be obtained at the borrower's office during regular business hours.

Dated: at Washington, D.C. this 13th day of January, 1977.

DAVID A. HAMIL,
Administrator, Rural Electricfication Administration.

[FR Doc.77-1846 Filed 1-19-77;8:45 am]

CIVIL RIGHTS COMMISSION

SOUTH CAROLINA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the South Carolina Advisory Committee (SAc) of the Commission will convene at 10:30 am. and end at 3:30 pm. on February 4, 1977, at the Mark I Motel, Private Dining Room, 515 S. Main, Marion, South Carolina 29571.

Persons wishing to attend this open meeting should contact the Committee

Chairperson, or the Southern Regional Office of the Commission, Citizens Trust Bank Bldg. Room 362, 75 Piedmont Avenue, NE., Atlanta, Georgia 30303.

The purpose of this meeting will be to make decision on target city of project on Public Facilities; tour of city; briefing on data of city; outline of additional data required, adoption of schedule of project.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 17, 1977.

ISAIAH T. CRESWELL, Jr.,
Advisory Committee Management Officer.

[FR Doc.77-2116 Filed 1-19-77;8:45 am]

CIVIL SERVICE COMMISSION

PRESIDENT'S COMMISSION ON WHITE HOUSE FELLOWSHIPS

Public Availability of Report of Activities

Pursuant to section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and OMB Circular A-63 of March 27, 1974, the President's Commission on White House Fellowships has prepared a report on its activities during fiscal year 1976.

The report is available for public inspection and copying at the following location:

U.S. Civil Service Commission
President's Commission on White House Fellowships
1900 E Street, N.W.
Washington, D.C. 20415

DONALD J. BIGLIN,
Advisory Committee Management Officer, United States Civil Service Commission.

[FR Doc.77-1931 Filed 1-19-77;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

MANAGEMENT-LABOR AND IMPORTERS TEXTILE ADVISORY COMMITTEES

Change of Dates and Times for Meetings

On December 23, 1976, there were published in the FEDERAL REGISTER (41 FR 55921) notices dated December 17, 1976 announcing meetings of the Management-Labor and Importers' Textile Advisory Committees in New York City on February 9 and 10, respectively.

The purpose of this notice is to announce that the dates and times of these two meetings have been changed to the following:

Importers Textile Advisory Committee, February 9, 1977, 2:00 p.m. Management-Labor Textile Advisory Committee, February 10, 1977, 10:30 a.m.

Both meetings will be held in Room 3105, Federal Office Building, 26 Federal Place, New York, New York 10007.

Dated: January 17, 1977.

ARTHUR GAREL,
Director, Office of Textiles.

[FR Doc.77-2065 Filed 1-19-77;8:45 am]

Maritime Administration

CONSTRUCTION OF FOUR LASH TYPE VESSELS MA DESIGN C9-S-81f

Computation of Foreign Cost; Intent

Notice is hereby given of the intent of the Maritime Subsidy Board, pursuant to the provisions of section 502(b) of the Merchant Marine Act, 1936, as amended, to compute the estimated foreign cost of the construction of four LASH type vessels, MA Design C9-S-81f.

Any person, firm or corporation having any interest (within the meaning of section 502(b)) in such computations may file written statements by the close of business on February 18, 1977, with the Secretary, Maritime Subsidy Board, Maritime Administration, Room 3099B, Department of Commerce Building, 14th & E Streets, N.W., Washington, D.C. 20230.

Dated: January 17, 1977.

By Order of the Maritime Subsidy Board, Maritime Administration.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.77-2090 Filed 1-19-77;8:45 am]

[Docket No. S-537]

STATES STEAMSHIP CO.

Application

Notice is hereby given that States Steamship Company (States) has filed an amendment dated December 28, 1976, to its application of May 10, 1974, as amended, for a new 20-year Operating-Differential Subsidy Contract to cover the operation of its vessels on Trade Route No. 29 U.S. Pacific ports/Far East). Notice of the original application was published in the FEDERAL REGISTER on April 30, 1975 (40 FR 18827), and a Notice of Amended Application was published on June 13, 1975 (40 FR 25242).

The amendment of December 28, 1976, proposes to change the service description relevant to the services to be performed by States by adding calls at ports in the Middle East on the Persian Gulf and the Gulf of Oman, including without limitation, ports in Saudi Arabia, Bahrain, Kuwait, Oman, Qatar, the United Arab Emirates, Iran, Iraq, and any other nation which henceforth may come into being in the areas extending from Bandar Abbas through the Persian Gulf to the southwestern tip of the Saudi Arabian peninsula. States intends, if the application is approved, to make approximately twelve to thirteen sailings annually to these ports with four Ro/Ro vessels and, if the cargo should dictate, additional sailings with the four Ro/Ro vessels as well as the mariner type vessels in States' fleet.

Interested parties may inspect this amendment in the Office of the Secretary, Maritime Subsidy Board, Room 3099-B, Department of Commerce Building, 14th and E Streets, N.W. Washington, D.C. 20230.

Any person, firm or corporation having an interest in such application who desires to offer views and comments thereon for consideration by the Maritime Subsidy Board should submit them in writing, in triplicate, to the Secretary, Maritime Subsidy Board, Washington, D.C. 20230, by the close of business on February 7, 1977.

The Maritime Subsidy Board will consider these views and comments, and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 11.504, Operating-Differential Subsidies (ODS)).

Dated: January 17, 1977.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.77-2091 Filed 1-19-77;8:45 am]

National Oceanic and Atmospheric Administration

[MMPAH-#2-1976]

RECOMMENDED DECISION ON INCIDENTAL TAKING OF MARINE MAMMALS IN THE COURSE OF YELLOWFIN TUNA PURSE SEINE FISHING OPERATIONS

Receipt

On October 14, 1976, the National Oceanic and Atmospheric Administration (NOAA) proposed regulations on the taking of marine mammals incidental to yellowfin tuna purse seining in 1977, and gave notice of a hearing thereon, 41 FR 45015-45019.

Following a period for public review, a hearing (Doc. MMPAH-#2-1976) commenced on November 15, 1976, and continued until December 22, 1976. The hearing was presided over by an Administrative Law Judge, the Honorable Frank W. Vanderheyden.

The Director, National Marine Fisheries Service, announces that on January 18, 1977, he received a recommended decision from Judge Vanderheyden.

The decision is available for review in the Office of the Director, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C. and the Office of the Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

JANUARY 17, 1977.

[FR Doc.77-2089 Filed 1-19-77;8:45 am]

MYSTIC MARINELIFE AQUARIUM

Receipt of Application for Public Display Permit

Notice is hereby given that the following Applicant has applied in due form for a Permit to take fur seals for public display as authorized by the Fur Seal Act of 1966 (16 U.S.C. 1151-1187), and the Regulations Governing the Taking of Fur Seals (50 CFR Part 215).

Mystic Marinelife Aquarium, Mystic, Connecticut 06355, has applied to take ten (10) Northern fur seals (*Callorhinus ursinus*) for public display.

The animals will be captured on St. Paul Island, Pribilof Islands, by National Marine Fisheries Service personnel.

The animals will be transported to the Mystic facility by commercial aircraft and truck.

The animals will be displayed in a new seal exhibit under construction at the facilities. The pool area is 2,050 square feet by 8 feet deep. The display will provide haul-out areas in the form of beaches, intertidal areas and islands totaling 905 square feet. In addition, there is an enclosed salt water holding pool, 100 square feet by 4 feet deep.

The facility is a profit making organization open daily to the public with an estimated 500,000 annual visitors.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Documents submitted in connection with the above application are available for review in the following offices:

Director, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Northwest Region, 1700 Westlake Avenue North, Seattle, Washington 91809;

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99801; and

Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930.

Concurrent with the publication of this notice in the FEDERAL REGISTER, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written views or data, or requests for a public hearing on this application should be submitted to the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, on or before February 22, 1977. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Director.

All statements and opinions contained in this notice in support of this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Dated: January 12, 1977.

ROBERT J. AYERS,
Acting Assistant Director for Fisheries Management, National Marine Fisheries Service.

[FR Doc.77-1825 Filed 1-19-77;8:45 am]

FISHERIES ADVISORY COMMITTEE

Public Meetings

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C., Appendix I, notice is hereby given of meetings of the Marine Fisheries Advisory Committee (MAFAC) and subcommittees.

The committee meeting (MAFAC XVI) will be held on Wednesday and Thursday, February 9 and 10, 1977, in Room 4830 of the Department of Commerce Building, 14th Street between E Street and Constitution Avenue, NW., Washington, D.C. The committee will meet at 8:30 a.m. on Wednesday, February 9, to consider the agenda items specified below. The Wednesday session is scheduled to conclude by 4:45 p.m. On Thursday, February 10, the committee will meet for its last session at 8:30 a.m. to consider the remaining agenda items. It is anticipated that the meeting will be adjourned at about noon on Thursday.

Two subcommittee meetings will be held in conjunction with the committee meeting. Both meetings will be held in Room 5230 of the Department of Commerce Building. On Tuesday morning, February 8, beginning at 10:00 a.m. the MAFAC National Plan for Marine Fisheries subcommittee will meet to consider elements of the Secretary's Program for Marine Fisheries. The subcommittee meeting should conclude by 4:00 p.m. It will be immediately followed by a meeting of the MAFAC Marine Recreational Fisheries subcommittee to consider current marine recreational fisheries issues. This meeting will run to 6:00 p.m. or longer if necessary.

Interested members of the public are also advised that there will not be a meeting of the MAFAC subcommittee on Extended Jurisdiction Planning. Ample time is provided on the agenda below for thorough discussion of extended jurisdiction matters and such matters are likely to pertain to items of interest to the committee of the whole.

Items proposed for discussion at the committee meeting are shown on the following agenda:

FEB. 8, 1977 (TUESDAY)

10 to 12 noon	National Plan for Marine Fisheries (NPMF) subcommittee meeting.
12 to 1:30 p.m.	Lunch.
1:30 to 4 p.m.	Reconvene NPMF subcommittee meeting.
4 to 6 p.m.	Marine Recreational Fisheries (MRF) subcommittee meeting.
6 p.m.	Adjourn for day.

FEB. 9, 1977 (WEDNESDAY)

8:30 a.m.	Convene MAFAC XVI.
8:30 to 8:40 a.m.	Introduction and announcements.
8:40 to 9:40 a.m.	Report on fiscal year 1977 and fiscal year 1978 NMFS budget actions.
9:40 to 11:10 a.m.	Extended Jurisdiction Status Report.
11:10 to 12 noon	Regional Fishery Management Councils Report (tentative).
12 noon	Lunch.
1:30 p.m.	Reconvene MAFAC.
1:30 to 2:10 p.m.	Report on NPMF subcommittee meeting.
2:10 to 3:00 p.m.	Report on results of the Eastland survey.
3 to 3:40 p.m.	Government Accounting Office Report on the U.S. Fishing Industry.
3:40 to 4:10 p.m.	Progress Report on NMFS Bauman Bill Actions.
4:10 to 4:45 p.m.	Update on the tuna/porpoise situation.
4:45	Adjourn for the day.

FEB. 10, 1977 (THURSDAY)

8:30 a.m.	Reconvene MAFAC XVI.
8:30 to 9:30 a.m.	Report on Multilateral Trade Negotiations.
9:30 to 10:30 a.m.	Report on Radio/TV Promotion of the Voluntary Fishery Products Inspection Program.
10:30 to 11:20 a.m.	Report on MRF subcommittee meeting.
11:20 to 11:40 a.m.	National Fisheries Policy Conference Report.
11:40 to 12 noon	Special items raised by committee for discussion.
12 noon	Adjourn MAFAC XVI.
Contingency item	NMFS fishery engineering policy.

The committee meeting and the subcommittee meetings are open to the public and there will be seating for approximately 20 public members available on a first come, first served basis. Members of the public having an interest in specific items for discussion are 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. Alfred J. Blik, Executive Secretary, Marine Fisheries Advisory Committee, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Washington, D.C. 20235, Telephone: Area Code 202-634-7270.

on or about February 1, 1977.

At the discretion of the Chairman, interested members of the public may be permitted to speak at times which will allow the orderly conduct of committee business, and a reasonable time relation between the committee's discussion of a given subject and an address to that same subject by a member of the public.

Interested members of the public who wish to submit written comments should do so by addressing the same to the Executive Secretary, as above. To receive due consideration and facilitate their inclusion in the record of the meeting, written statements should be received

within 10 days after the close of the committee meeting.

Dated January 18, 1977.

ROBERT M. WHITE,
Administrator, National Oceanic and Atmospheric Administration.

[FR Doc.77-2234 Filed 1-19-77;11:38 am]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED NUMBERS

Correlation of Textile and Apparel Categories; Correction

JANUARY 14, 1977.

In FR Doc. 76-38255 appearing on pages 56881, 56882 and 56883 in the issue of Thursday, December 30, 1976, the list of Tariff Schedules of the United States Annotated Numbers specifying changes in the arrangement of textile categories used by the United States in administering the textile trade agreements program should have included the changes listed below.

ROBERT E. SHEPHERD,
Acting Chairman, Committee for the Implementation of Textile Agreements, and Acting Deputy Assistant Secretary for Resources and Trade Assistance, U.S. Department of Commerce.

List of the tariff schedules of the U.S. annotated numbers specifying changes in the arrangement of textile categories used by the United States in administering the textile trade agreements program

Category	Old TSUS	New TSUS	Description
63			Wearing apparel, not knit, nes.
	376.5400(pt)		Garments designed for rainwear:
		376.5420	Other than coasts and jackets.
			Men's and boys' ornamented:
	380.0078	No change	Judo, Karate, Kung Fu, and other martial arts uniforms.
			Men's and boys' not ornamented:
	380.3982	do	Judo, Karate, Kung Fu, and other martial arts uniforms.
			Other wearing apparel ornamented:
	382.0092	do	Judo, Karate, Kung Fu, and other martial arts uniforms.
	382.0094		Other:
			Other:
		382.0095	Infants' sets up to and including 24 months.
		382.0096	Other.
			Other wearing apparel not ornamented:
	382.3383	No change	Judo, Karate, Kung Fu, and other martial arts uniforms.
	382.3387		Other:
			Other:
		382.3388	Infants' sets up to and including 24 months.
		372.3391	Other.
	702.1020	701.1220	Headwear of cotton, not knit.
200			Woven fabrics, other, wholly noncontinuous:
			Not bleached, not colored:
	338.3064		Polyamide.
		338.3067	Nylon.
	338.3065	338.3068	Polyester.
	338.3066	338.3070	Acrylic.
	338.3069	338.3071	Other.
			Other:
	338.3084		Polyamide.
		338.3087	Nylon.
	338.3085	338.3088	Polyester.
	338.3086	338.3090	Acrylic.
	338.3089	338.3091	Other.
210			Woven fabric, other:
			Not bleached, not colored:
	338.3074		Polyamide.
		338.3077	Nylon.
	338.3075	338.3078	Polyester.
	338.3076	338.3080	Acrylic.
	338.3079	338.3081	Other.
			Other:
	338.3094		Polyamide.
		338.3094	Nylon.
	338.3099	338.3098	Other.
221			Sweaters and cardigans:
			Women's, girls' and infants':
	382.0429		Ornamented:
		382.0427	Infants' sweaters.
		382.0430	Other.
	382.7875		Not ornamented:
		382.7870	Infants' sweaters.
		382.7875	Other.
226			Handkerchiefs:
	370.2020	370.2100	Lace handkerchiefs, ornamented.
229			Coats, not knit:
	376.5600 (pt)	376.5610	Coats, jackets, designed for hunting, fishing etc.

[FR Doc.77-1738 Filed 1-19-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 673-5]

AIR QUALITY STANDARDS; INTERPRETATIVE RULING

Notice of Public Hearings

On December 21, 1976, the Environmental Protection Agency published at 41 FR 55524 an Interpretative Ruling on the preconstruction review requirements for stationary sources of air pollution under 40 CFR 51.18. The Ruling provides that a major new source may locate in an area violating a national ambient air quality standard only if stringent conditions can be met. These conditions are designed to insure that the new source's emissions will be controlled to the greatest degree possible; that more than equivalent offsetting emission reductions ("emission offsets") will be obtained from existing sources; and that there will be progress toward achievement of such ambient standard.

In the preamble to the Ruling, EPA encouraged all interested parties and the public to comment on both the general policies and the detailed provisions of the Ruling. EPA asked for written comments by February 15, 1977, and noted that informal hearings would be held. While the Ruling is effective now, EPA may make adjustments to it as warranted by the public written and oral comment.

The purpose of today's notice is to announce the time and place of the hearings. The hearings are open to the general public, and all interested persons are invited to express their views. Hearings will be held as follows:

SAN FRANCISCO, CALIFORNIA: FEBRUARY 23, 1977

2nd Floor Conference Rooms, 100 California Street, 9:00 a.m.

DALLAS, TEXAS: MARCH 1, 1977

Baker Hotel, Terrace Room, 1400 Commerce Street, 10:00 a.m.

NEW YORK, NEW YORK: March, 10 1977

26 Federal Plaza, Room 305, Broadway & Duane Streets, 9:00 a.m.

CHICAGO, ILLINOIS: March 17, 1977

Room 1265, 230 S. Dearborn Street, 9:00 a.m.

The hearings will be of the informal, "legislative" type. Each speaker will present comments orally to Agency officials (a presiding officer and other members of the hearing panel) for the record. While members of the hearing panel may ask questions in order to seek clarification or amplification of a speaker's comments, there will be no sworn testimony or cross-examination. The presiding officer may at his or her discretion limit irrelevant or repetitious oral presentations, and may set time limits for each presentation.

In order to assist the Agency in scheduling presentations, persons desiring to speak are encouraged to notify the appropriate EPA office by mail (at the address noted below) no later than ten days prior to the applicable hearing date. The notification should identify the group or corporation (if any) on whose behalf the person wishes to speak. If a sufficient number of persons indicates a desire to speak, each hearing may be extended an extra day.

A verbatim transcript will be made of the proceedings. Speakers are nevertheless encouraged to bring extra copies of their presentations for the convenience of the hearing reporter, the press, the hearing panel, and other participants. Speakers will be permitted to enter into the record any additional written comments they do not present orally.

Notices of intent to speak at the hearings should be sent to the appropriate EPA Regional Counsel at the following address (envelopes should be marked "Emission Offset Hearing"):

SAN FRANCISCO: REGIONAL COUNSEL

U.S. Environmetal Protection Agency, 100 California Street, San Francisco, California 94111.

DALLAS: REGIONAL COUNSEL

U.S. Environmental Protection Agency, First International Building, 1201 Elm Street, Dallas, Texas 75270.

NEW YORK: REGIONAL COUNSEL

U.S. Environmental Protection Agency, 26 Federal Plaza, Room 430, New York, New York 10007.

CHICAGO: REGIONAL COUNSEL

U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

Dated: January 14, 1977.

ROGER STRELOW,
Assistant Administrator for Air and Waste Management.

[FR Doc.77-1818 Filed 1-19-77;8:45 am]

[FRL 674-7]

EXHAUST AND CRANKCASE REGULATIONS

Availability of Final Environmental Impact Statement

Pursuant to the EPA procedures for the Voluntary Preparation of Environmental Impact Statements (39 FR 37419), the Environmental Protection Agency has prepared a final environmental impact statement (FEIS) for the Exhaust and Crankcase Regulations for the 1978 and Later Model Year Motorcycles.

This action will impose exhaust and crankcase emissions standards on new street-legal motorcycles with displacements greater than 50 cc built after January 1, 1978. Motorcycles currently are not subject to federal emission control regulations.

This FEIS was transmitted to the Council on Environmental Quality (CEQ) on January 12, 1977. These standards became effective on February 4, 1977 pursuant to 42 FR 1122.

Copies of the FEIS are available for review from: Environmental Protection Agency, Public Information Center (PM-215), 401 M Street, SW, Washington, D.C. 20460 (telephone: 202-755-0707).

Copies of the FEIS are available for public inspection at the following location:

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

Information copies of the FEIS are available at cost (10 cents per page) from the Environmental Law Institute, 1346 Connecticut Avenue, NW., Washington, D.C. 20036. Please reference ELR No. 70038.

Copies of the FEIS have been sent to various Federal, State, and local agencies and interested individuals who made substantive comments on the draft EIS.

Dated: January 18, 1977.

REBECCA W. HANMER,
Director, Office of Federal Activities.

[FR Doc.77-2181 Filed 1-19-77;8:45 am]

(FRL 675-1)

NEW MILFORD, CONNECTICUT

Availability of Draft Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Environmental Protection Agency has prepared a draft environmental impact statement (DEIS) for the Wastewater Collection and Treatment Facilities, New Milford, Connecticut.

The subject DEIS is a proposal to develop a wastewater treatment and collection system to serve the towns of New Milford, Brookfield, New Fairfield and Washington, Connecticut. The recommended project involves federal financial assistance for the construction of a limited regional wastewater collection and treatment system. Included is the expansion of an existing system which currently serves only the downtown area of New Milford.

To receive additional public comments, the Environmental Protection Agency, Region I, will hold an open public hearing on this DEIS on February 15, 1977 at 7:30 pm at the Sunny Valley High Auditorium, New Milford, Connecticut. All interested persons are invited to express their views at this hearing. To ensure the accuracy of the record, oral statements should be accompanied by a written statement. Oral statements should summarize extensive written material to allow time for all interested persons to be heard.

This DEIS was transmitted to the Council of Environmental Quality (CEQ) on January 12, 1977. In accordance with CEQ's notice of availability, comments are due on March 7, 1977. Copies of the DEIS are available for review and comment from: Mr. Bob Mendoza, Environmental Policy Coordination Office, Region I, Room 2203, JFK Federal Building, Boston, Massachusetts 02203 (telephone: 617-223-4635).

Copies of the DEIS are available for public inspection at the following locations:

Environmental Protection Agency, Region I Library, 22nd Floor, JFK Federal Bldg., Boston, Massachusetts 02203.

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

Information copies of DEIS are available at cost (10 cents per page) from the Environmental Law Institute, 1346 Connecticut Avenue, NW., Washington, D.C. 20036. Please reference ELR No. 70048.

Copies of the DEIS have been sent to various Federal, State, and local agencies, and interested individuals as outlined in the CEQ Guidelines.

Dated: January 18, 1977.

REBECCA W. HANMER,
Director, Office of Federal Activities.

[FR Doc.77-2183 Filed 1-19-77;8:45 am]

[FRL 671-1; PP58]

PESTICIDE AND FOOD ADDITIVE PETITIONS

Filing

Correction

In FR Doc. 77-1319 appearing at page 3191 of the issue for Monday, January 17, 1977, in PP 7F1889 (BASF Wyandotte Corp.), in the last column of page 3191, the following should be inserted between the fifth and sixth lines: "cide bentazon (3-isopropyl-1*H*-2,1,3-ben-".

[FRL 674-8]

WESTERN CONTRA COSTA COUNTY WASTEWATER MANAGEMENT PROGRAM

Availability of Draft Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Environmental Protection Agency has prepared a draft environmental impact statement (DEIS) for the Western Contra Costa County Wastewater Management Program, California.

The wastewater management plan is being developed for the Western Contra Costa County area primarily to meet the needs of municipal wastewater dischargers. The objectives relate to upgrading the method of effluent disposal and providing adequate treatment, while enhancing the early reclamation and reuse of wastewater effluent.

The DEIS was transmitted to the Council on Environmental Quality on January 10, 1977. In accordance with CEQ's notice of availability, comments are due on February 28, 1977. Copies of the DEIS are available for review and comment from: Mr. Mark Zuckerman,

Environmental Protection Agency, Region 9, 100 California Street, San Francisco, California (telephone: 415–556–3668).

Copies of the DEIS are available for public inspection at the following locations:

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

Environmental Protection Agency, Region IX Library, 100 California Street, San Francisco, California 98101.

Information copies of the DEIS are available at cost (10 cents per page) from the Environmental Law Institute, 1346 Connecticut Avenue, NW, Washington, D.C. 20036. Please reference ELR No. 70032.

Copies of the DEIS have been sent to various Federal, State and local agencies, and interested individuals as outlined in the CEQ Guidelines.

Dated: January 18, 1977.

REBECCA W. HANMER,
Director, Office of Federal Activities.

[FR Doc.77-2182 Filed 1-19-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 21045, 21046; File Nos. 9088–CM–P–72, 1464–CM–P–73]

HILDRETH COMMUNICATIONS CO. AND A–R MICROWAVE CORP.

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: December 29, 1976.
Released: January 17, 1977.

In regard applications of Hildreth Communications Company, Docket No. 21045, File No. 9088–CM–P–72; and A–R Microwave Corporation, Docket No. 21046, File No. 1464–CM–P–73; for construction permits in the Multipoint Distribution Services for a new station at Portland, Maine.

1. The Commission has before it the above-referenced applications of Hildreth Communications Company (Hildreth) (File No. 9088–CM–P–72), filed on June 15, 1972 and A–R Microwave Corporation (A–R) (File No. 1464–CM–P–73), filed on August 31, 1973. Both applications propose Channel 1 operation in the Portland, Maine area, and thus are are mutually exclusive and require comparative consideration. Both applications have been amended as a result of informal requests of the Commission staff for additional information, and no petitions to deny or other objections to any of the applications have been received.

2. Hildreth, wholly-owned subsidiary of Diversified Communications, Inc. (formerly known as Media Diversified), has only the subject MDS application before the Commission. Diversified Communications, however, has controlling interest in various broadcasting, business radio and mobile stations in Maine. A–R, a wholly-owned subsidiary of Adams-Russell Company, Inc., likewise has only the subject construction permit application under Commission consideration. Adams-Russell, through its Aurovideo Division, has broadcasting and CATV interests in, among other places, Maine and New York.

3. Upon review of the captioned applications, we find that both applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

4. *Accordingly, it is hereby ordered,* That pursuant to section 309(e) of the Communications Act of 1934, as amended, and § 0.291 of the Commission's rules, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience, and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to service area and efficient frequency use;

(b) The nature of the services and facilities proposed, and whether they will satisfy service requirements known to exist or likely to exist in the Portland, Maine area;

(c) The anticipated quality and reliability of the service proposed, including selection of equipment, installation, subscriber security, and maintenance;

(d) The charges, regulations and conditions of the service to be rendered, and their relation to the nature, quality and costs of service; and

(e) The managerial and entrepreneurial qualifications of the applicants.

5. *It is further ordered,* That Hildreth Communications Company, A–R Microwave Corporation and the Chief, Common Carrier Bureau, are made parties to this proceeding.

6. *It is further ordered,* That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's rules.

JOSEPH A. MARINO,
Deputy Chief for Chief, Common Carrier Bureau.

[FR Doc.77-1927 Filed 1-19-77;8:45 am]

[1] Consideration of these factors shall be made in light of the Commission's discussion in Peabody Telephone Answering Service, et al., 55 F.C.C. 2d 626 (1975).

[Docket Nos. 21040–21042; File Nos. 4847–CM–P–72, etc.]

NEWHOUSE ALABAMA MICROWAVE, INC. ET AL.

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: December 29, 1976.

Released: January 14, 1977.

In reference to applications of Newhouse Alabama Microwave, Incorporated, Docket No. 21040, File No. 4847–CM–P–72; W. F. Glasscock d/b/a Radio Dispatch Service, Docket No. 21041, File No. 6380–CM–P–72; and Birmingham Signal Company, Docket No. 21042, File No. 6381–CM–P–72; for construction permits in the multipoint distribution service for a new station at Birmingham, Alabama.

1. The Commission has before it the above-referenced applications of Newhouse Alabama Microwave, Inc. (Newhouse) (File No. 4847–CM–P–72), filed on January 29, 1972; W. F. Glasscock d/b/a Radio Dispatch Service (Radio Dispatch) (File No. 6380–CM–P–72), filed on March 14, 1972; and Birmingham Signal Company (Signal) (File No. 6381–CM–P–72), filed on March 15, 1972. All three applications propose Channel 1 operation in the Birmingham, Alabama area, and thus are mutually exclusive and require comparative consideration. All three applications have been amended as a result of informal requests of the Commission staff for additional information, and no petitions to deny or other objections to any of the applications have been received.

2. Newhouse is a wholly-owned subsidiary of Newhouse Broadcasting Corporation, Newhouse has only this MDS application on file. Radio Dispatch also has only this application pending. Signal is owned equally by Signal Engineering and Sales, Inc., organized to engage in construction of communications facilities, and National Telecommunications Associates, Inc., which offers programming and organizational management, and John Williamson & Associates. Several of the principals of these entities have interests in MDS applications in other cities, including Mobile, Alabama.

3. Upon review of the captioned applications, we find that the three applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis which of these applications should be granted.

4. *Accordingly, it is hereby ordered,* That pursuant to section 309(e) of the Communications Act of 1934, as amended, and § 0.291 of the Commission's rules, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent

order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience, and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to service area and efficient frequency use;

(b) The nature of the services and facilities proposed, and whether they will satisfy service requirements known to exist or likely to exist in the Birmingham, Alabama area;

(c) The anticipated quality and reliability of the service proposed, including selection of equipment, installation, subscriber security, and maintenance;

(d) The charges, regulations and conditions of the service to be rendered, and their relation to the nature, quality and costs of service; and

(e) The managerial and entrepreneurial qualifications of the applicants.

5. *It is further ordered*, That Newhouse Alabama Microwave, Inc., W. F. Glasscock d/b/a Radio Dispatch Service, and Birmingham Signal Company and the Chief, Common Carrier Bureau, are made parties to this proceeding.

6. *It is further ordered*, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's rules.

JOSEPH A. MARINO,
Deputy Chief for Chief,
Common Carrier Bureau.

[FR Doc.77-1928 Filed 1-19-77;8:45 am]

[Docket No. 21021; File No. BRCT-531; FCC 76-1168]

WTWV, INC.

Memorandum Opinion and Order Designating Application for Hearing and Stated Issues

Adopted: December 16, 1976.

Released: January 14, 1977.

In reference to application of WTWV, Inc., Tupelo, Mississippi, Docket No. 21021, File No. BRCT-531; for renewal of license of Television Station WTWV.

1. The Commission has before it: (i) The above-captioned license renewal application, filed January 30, 1976 by WTWV, Inc. (licensee or WTWV); (ii) a petition to deny, filed May 3, 1976 by Malcolm Jackson, William Armstrong, Johnny Armstrong, Robert P. Reno and Frederick P. Grayson in their capacity as members of the North Mississippi Coalition for Better Broadcasting, on their own behalf and on behalf of the viewing audience of WTWV; (iii) a petition to deny, filed May 3, 1976 by Jack Benney, individually and as an officer of the Pollution and Consumers Protection Foundation and on behalf of the viewing audience of WTWV (Benney);[2] (iv) an opposition to the petition to deny, filed June 1, 1976 by WTWV; (v) a joint reply to the opposition, filed August 26, 1976;[3] (vi) a staff letter of inquiry addressed to WTWV, dated October 20, 1976; (vii) WTWV's reply letter, dated October 27, 1976 (supplemental pleading); and (viii) a response thereto, dated November 18, 1976 by Jackson et al. and Benney et al. (response).

PROCEDURAL MATTERS

2. All parties have filed extensive pleadings. To discuss every detailed allegation and response would unduly burden this Memorandum Opinion and Order. Accordingly, although we will not discuss every claim and counterclaim, we have summarized the portions of the pleadings necessary to fulfill our statutory mandate regarding petitions to deny. See 47 U.S.C. 309(d)(2). The remaining allegations either are unsupported by specifics, conclusory in nature or otherwise sufficiently refuted so as not to warrant separate discussion. Further, WTWV requests the Jackson petition be dismissed on the grounds that it fails to meet the specificity requirements of section 309(d)(1) of the Act, 47 U.S.C. 309(d)(1). Our review of each petition, however, reveals each is in substantial compliance with the requirements set forth in that Section. Accordingly, we will treat the instant pleadings as petitions to deny.

EQUAL EMPLOYMENT OPPORTUNITY

3. First, petitioners allege licensee's employment profile shows a pattern and practice of employment discrimination and violation of the Commission's rules.[3] They charge that although the percentage of Blacks in Lee County—in which Tupelo is located—is 21 percent, the percentage of WTWV's Black full-time employees for 1975 was only 13 percent, and that percentage in 1972 and 1974 was even lower with respect to both the full-time and upper four job categories. In opposition, WTWV argues petitioners fail to show any instances of discrimination or a policy of exclusion. It submits it is committed to a policy of nondiscrimination, as shown by Exhibit 7 to its renewal application (its Equal Employment Opportunity (EEO) program) and its 1976 employment record, which allegedly reflects that 16.7 percent of its full-time workforce is Black. It contends this percentage is a significant increase in comparison to its comparable 1975 statistics, as well as the "significantly lower" figures discussed in our grant of its 1973 renewal application, "WTWV, Inc.", 51 FCC 2d 1247 (1975). WTWV concludes its 1976 employment record, when looked upon as "a trend toward increased employment of Blacks", militates against a prima facie showing of discriminatory hiring practices.

4. According to the State of Mississippi Employment Security Commission statistics, of which we take official notice, the estimated total labor force for Lee County as of June 1975 was 27,280, of which 4,940 (18.1 percent) were Black,[4] and 11,390 (41.7 percent) were female. Annual Employment Reports (FCC Form 395) on file with the Commission reflect the following statistical data:

Year	Total minorities full Time	Total minorities upper 4 categories	Total women full Time	Total women upper 4 categories
1976..	16.7%	7.1%	22.2%	14.3%
	[1] (36/6)	(28/2)	(36/8)	(28/4)
1975..	13.2%	0%	13.2%	0%
	(38/5)	(18/0)	(38/5)	(18/0)
1974..	12.9%	0%	12.9%	11.1%
	(31/4)	(9/0)	(31/4)	(9/1)
1973..	14.8%	0%	14.8%	11.1%
	(27/4)	(9/0)	(27/4)	(9/1)
1972..	0%	0%	13.6%	0%
	(22/0)	(14/0)	(22/3)	(14/0)
1971..	4.3%	0%	13.0%	0%
	(23/1)	(14/0)	(23/3)	(14/0)

[1] The 1st number in each parenthesis represents total employees in the various categories; the 2d number refers to total minority or women employees in these categories.

5. A review of licensee's employment profile supports its contention that there has been a significant increase in the employment of minorities and women. In 1976, the percentage of minorities in full-time positions and in the upper four job categories rose, respectively, from 13.2 to 16.7 and from 0 to 7.1; and the percentages of women in full-time positions and in the upper four job categories rose, respectively, from 13.2 to 22.2 and from 0 to 14.3. These figures compare favorably to the percentage of minorities and women in the local labor force. It thus appears licensee is implementing effectively its affirmative action program, and petitioners have failed to establish a prima facie issue regarding employment discrimination. This determination is consistent with our conclusions in WTWV, Inc., supra at 1252, in which we observed that licensee had a viable, continuing training program, and had actively recruited every minority person on its payroll.

PROGRAMMING

6. Next, the Jackson petition charges WTWV has failed to uncover and report the many problems of poor and Black residents of Tupelo. In an accompanying affidavit, Jackson alleges, inter alia,

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[1] Consideration of these factors shall be made in light of the Commission's discussion in Peabody Telephone Answering Service, et. al., 55 F.C.C. 2d 626 (1975).

[2] Each petitioning group filed against the above-captioned renewal application and against the unrelated renewal application of Lee Broadcasting Corporation, licensee of standard broadcast station WTUP, Tupelo, Mississippi. To facilitate discussion, we will treat the application of WTUP as a separate matter.

[3] On August 26, 1976, petitioners filed a motion for leave to file a reply to WTWV's opposition, and the reply itself. As indicated at para. 21, infra, this late-filed motion is granted and the reply is accepted.

[3] The Commission's pertinent equal employment opportunity rule is set forth at 47 CFR 73.680.

[4] According to current U.S. Census data, of which we also take official notice, Lee County contains only 12 minority persons other than of the Black race.

that WTWV does not: adequately cover news items which are important to Blacks; cover Black sports events or worship services; publicize problems of the Black community; and allow fair comment to Blacks who are the focus of its reporting. The affidavits of Johnny Armstrong, Robert P. Reno and Frederick Grayson reiterate some of the allegations made in the Jackson affidavit, and further allege WTWV has aired an excessive amount of commercials and has purposely disrupted programs involving "black-white confrontations."

7. Benney et al. charge WTWV: consistently refused to run public service announcements (PSAs) for Black organizations; failed to give adequate coverage to problems of local pollution despite the fact it allegedly was among the problems ascertained by licensee in 1973; refused to broadcast civil rights cases and "* * * deliberately suppressed police brutality cases and other civil rights activities during the entire time it has been a Commission licensee";[5] did not air a local public affairs program from March 1975 through February 1976; and failed to broadcast a news report concerning a community meeting conducted by Benney on January 24, 1976, even though WTWV's news director was present at the meeting.

8. In opposition, WTWV maintains it does provide news coverage of issues important to the Black community, and provides examples of news stories concerning police brutality and deprivation of civil rights. Regarding the civil damage suit (see n. 6, supra), licensee states on March 27, 1975 it carried the story on its "Six O'clock News". Licensee further asserts its news reporters regularly cover community meetings, but reserves to itself as a news judgment the decision whether a particular story is sufficiently newsworthy to be broadcast. In this regard, licensee states that although its news director was present at the January 1976 community meeting, as alleged by Benney, it did not consider the meeting merited specific coverage. Next, WTWV submits fourteen allegedly typical PSAs of interest to the Black community which were broadcast during 1975–1976 (Amex B, opposition). Finally, it submits a list of local public affairs program segments allegedly broadcast between March 1975 and February 1976 (Amex C, opposition.[6]

9. The Benney petition also alleges that, in November 1974, Benney was asked by a leader of the National Association for the Advancement of Colored People (NAACP) who was invited to appear on WTWV, to substitute for him. Benney, a white person, alleges that when he arrived at the station, he was told by Jim Duke, WTWV's news director, the station had a policy of not allowing Blacks and whites to appear on the station together locally. He then allegedly was told, by direction of WTWV's program director and general manager, to leave the station. (Petition, p. 10 and Exhibit F.)

10. In opposition, WTWV flatly denies this accusation by stating it never has had a segregationist policy in local programs, but does not flatly deny Benney may have been prevented from appearing. It states it does broadcast programs involving appearances by Black guests exclusively, and it may well have been that Benney was informed on one occasion that he was not a qualified spokesman for a subject to be discussed by an all-Black panel. (Supp., p. 2.) Additionally, it informs the Commission that: (1) Blacks and whites regularly appear on programs produced by WTWV; (2) Blacks and whites work side by side at the station; (3) Blacks and whites appear on WTWV news programs; and (4) it broadcasts interviews with white newsmakers conducted by a Black newsman. (Opposition, pp. 7–8.) Additionally, licensee describes three programs which allegedly it has aired and which have included Black and white participants, including one program in which the local president of the NAACP appeared. (Annex C, opposition.)

11. In reply, petitioners acknowledge the local president of the NAACP appeared on the program listed in licensee's opposition, but charge he did not appear together with white newsmakers. They allege each person was interviewed and taped separately, and none of the participants appeared on the program together. (Reply, p. 30.) And, in response to licensee's supplemental pleading (see para 16, *infra*), petitioners contend licensee has not rebutted its allegation of not allowing Blacks and whites to appear together locally.

12. A principal ingredient of a licensee's obligation to operate in the public interest is a diligent, positive and continuing effort to discover the needs and interests of its service area, and provision of programming to meet those needs and intertests. "Stone v. FCC," 466 F. 2d 316, reh. den. 466 F. 2d 231 (D.C. Cir. 1972); "Commission en banc Programming Inquiry," 44 FCC 2303, 2312 (1960). However, a licensee is not required to program to meet every problem. "Hubbard Broadcasting, Inc.," 48 FCC 2d 517 (1974), "aff'd sub nom. Alianza Federal de Mercedes v. FCC," No. 74–1895 (D.C. Cir., decided April 27, 1976).

13. Benney's allegations that WTWV did not air the civil suit and community meeting news reports and devote adequate coverage to the problem of pollution do not of themselves raise any substantial and material issue. Aside from WTWV's representation that it did broadcast a news story concerning the civil suit in question, we will not question its news judgment in this regard. A licensee assumes a nondelegable responsibility for control of the material broadcast over its station. Inherent in this responsibility is the prerogative to decide what particular news events merit broadcast coverage. Here, the record indicates licensee apparently has provided news coverage of issues important to Blacks and poor people; and, further, has not ignored public affairs programming of interest to Blacks and poor people. (See n. 7, supra.)

14. Likewise, the allegations concerning Black sports coverage and PSAs for Black organizations do not of themselves raise any substantial and material questions. Benney's unsupported, conclusory allegation that WTWV has refused to run PSAs of interest to Blacks is squarely rebutted by licensee's specific announcements it states were broadcast. (See para. 8, supra.) And, although Jackson et al. contend WTWV never gives scores or coverage of predominately Black colleges' sports events, they fail to show a policy of exclusion in light of licensee's averment that it has no "scoreboard" permitting the carriage of scores of numerous schools, Black or white, and did not originate any weekend sports programming. (Supp., p. 1.) In sum, a review of the record indicates that, overall, licensee has provided coverage addressed to the needs and interests of its service area, and, except for the programming allegation discussed infra, apparently has met the needs and interests of that area. The remaining allegations not explored herein are too general or too vague to warrant discussion, and accordingly are dismissed for want of specificity or as being not of decisional significance.

15. The programming allegation concerning licensee's policy of not allowing Blacks and whites to appear together on local shows is, however, troubling. As discused supra, the record indicates that licensee has provided coverage of needs and interests addressed to its community, including problems of interest to Blacks, e.g., police brutality and civil rights. Moreover, it is undisputed that Blacks have appeared on local programs produced by WTWV. However, still unresolved is the question of whether WTWV allows Blacks and whites physically to appear together on local shows. On the face of the record now before us, we must conclude sufficient specific factual allegations have been adduced in this regard which raise substantial and ma-

[5] As an example of WTWV's allegedly deficient news coverage, Benney et al. submit what appears to be an undated newspaper clipping (Exhibit D, petition) and an affidavit signed by Benney (Exhibit F, petition). The clipping is identified only with the by-line "By Joe Rutherford, Journal Staff Writer," and concerns a civil suit filed by six Blacks against certain local law enforcement officials seeking damages for illegal arrest, brutality, malicious prosecution and racial discrimination.

[6] The following topics were covered during this period on licensee's program Focus: Visit by Rumanian choir; plight of northern Mississippi cities; regional olympics for handicapped children; visit to Mississippi by Moshe Dayan; airport master plan; drug abuse; candidates for public office; city budget; revenue sharing; and emergency medical services. Additional topics that were covered during the 1973–1976 license term included cotton farming; lack of vocational training; lack of industrial expansion; crowding of Blacks and urban renewal; interview with Black student leaders; and lack of recreational facilities (Exhibit 9, renewal application).

terial questions of fact bearing on WTWV's fitness to continue as a licensee of this Commission.

16. Licensee denies it has such a policy, but, in the face of this allegation, has not brought to the Commission's attention even one locally produced show in which Blacks and whites physically have appeared together. Its contentions that some programs have had Black and white participants and that a Black member of its news staff interviews white newsmakers, are insufficient to rebut this allegation in the absence of any information as to whether Blacks and whites actually are seen together by licensee's audience. This is especially true in light of licensee's response to our staff letter of inquiry, dated October 20, 1976. In that letter, license was appraised, inter alia, that this allegation had not been fully answered, and accordingly its comments were requested. Licensee's response, however, did not address the matter further, other than providing another flat denial.[7]

17. We think WTWV has not satisfactorily responded to this allegation. Although a licensee is afforded wide discretion in its choice of newsmakers and public affairs guests, as well as in the format in which they are presented to the viewing public, a practice of nonintegrated programming would raise a serious question concerning WTWV's good faith exercise of that discretion. As we have stated, "(A licensee's discretion) * * * is, of course, limited by the necessity to act under policies consistent with the public interest * * * Refusal to present members of (an ethnic group), either as such or in integrated situations with members of other groups, would constitute discrimination in programming." "Letter to Albert H. Kramer, Esq.," FCC 70-594, dated June 4, 1970, 20 RR 2d 19, 21 (1970). (Critical issue was whether television licensee had a policy of not presenting material involving interpersonal relationships between the races. Id. at 22.) See also "Letter to Mr. William R. Smith, Jr.," FCC 70-648, dated June 17, 1970, 19 RR 2d 372 (1970). Accordingly, in view of this unanswered question, an issue will be designated as set forth below for exploration in an evidentiary hearing. Further, a substantial and material question a priori is raised whether a licensee's programming allegedly infused with such a policy or practice of nonintegration can adequately meet the needs and interests of its community. Accordingly, an appropriate issue in this regard will be specified as well.

FAIRNESS DOCTRINE

18. Finally, Benney et al. claim on November 3, 1975, licensee broadcast a half-hour program concerning a forthcoming referendum on the issuance of a 1.9 million dollar bond to expand a local airport. They allege the "sole purpose" of the program was to advocate approval, and that an organization opposing the bond, Citizens for the Best Possible Location (CBPL), was not afforded time to present its opposing views. In opposition, WTWV denies it violated the Fairness Doctrine, and states that all proponents and opponents of the bond were afforded opportunities to air their views. In support, it appends a letter from Dwayne Spencer, Chairman of CBPL (Annex A, opposition), which states WTWV allowed his organization to express fully its views in the weeks before the referendum, and those views were presented together with proponents' views on a half-hour program broadcast November 2, 1975. In reply, petitioners contend the Spencer letter was unilaterally prepared and not authorized by CBPL.

19. The Fairness Doctrine requires, inter alia, that when a broadcast station presents one side of a controversial issue of public importance, it must afford a reasonable opportunity for the presentation of contrasting viewpoints. Both sides need not be given in the same broadcast or series of broadcasts and no particular person or group is entitled to appear on the station, since the Doctrine is designed to protect the public's right to be informed rather than the right of any particular entity to broadcast its view. In order for the Commission to act in this area, the complainant must submit certain information, including: (a) The specific issue or issues of a controversial nature of public importance presented by the station; (b) the date and time when the issue or issues were broadcast; (c) the basis for the claim that the issue or issues were controversial issues of public importance; (d) the basis for the claim that the station broadcast only one side of the issue or issues in its overall programming; and (e) whether the station has afforded or has expressed an intention to afford a reasonable opportunity for the presentation of contrasting views. To prevent unwarranted government interference in programming, the licensee is given initial and primary responsibility in making the decision as to the adequacy with which it has presented contrasting views on the issue in question. This wide discretion must be respected in the absence of demonstrated unreasonableness or bad faith, even though this agency's views might be contrary to the licensee's. "Applicability of Fairness Doctrine," 40 FCC 598, 599-600 (1964).

20. In light of the analysis set forth above and after a thorough review of the allegations, it is clear licensee has not unreasonably exercised its good faith discretion in determining it has met its Fairness Doctrine obligation. In this regard, Benney's assertion that Spencer's letter represented merely his personal view rather than that of CBPL, is totally unsupported by the record. Further, Benney's reliance on the "equal time" requirements of the Act and our rules is misplaced. Although the bond issue was on the public ballot, the Commission has consistently held that a discussion of such issues involves only the general Fairness Doctrine requirements discussed above, not the more detailed "equal time" requirements applicable to political candidates.[8] "Fairness Report," 48 FCC 2d 1, 31-33, recon. den. 58 FCC 2d 691 (1976). Further, we note Benney et al. failed to raise their complaint prior to the filing of the instant petition. Id.

21. *Accordingly, it is ordered*, That the motion for leave to file reply to the opposition of WTWV, filed August 26, 1976 by Malcolm Jackson et al. and Jack Benney et al., is granted, and the reply to the opposition of WTWV, filed August 26, 1976, is accepted for filing, nunc pro tunc.

22. *It is further ordered*, That pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e), the above-captioned application is designated for hearing at a time and place to be specified in a subsequent Order upon the following issues:

(1) To determine the facts and circumstances surrounding Station WTWV-TV's policies or practices regarding the appearance of minority group members in the station's programming, and whether, in light of the evidence adduced, the station engaged in racially discriminatory programming;

(2) To determine, in the event licensee fails to meet its burden of proof under issue (1) above, whether WTWV, Inc., has served the needs and interests of its service area during the license term 1973-1976; and

(3) To determine, in light of the evidence adduced under the above issues, whether the applicant has the requisite qualifications to remain a Commission licensee, and whether a grant of the ap-

[7] An additional, unsolicited letter—signed by licensee's counsel—and attachments thereto were filed by licensee on December 13, 1976. Since this pleading was filed well after the close of the last authorized pleading cycle (viz., November 18, 1976), and since § 1.45 of the rules, 47 CFR 1.45, disallows additional pleadings unless specifically requested or authorized by the Commission, we are under no obligation to consider the subject pleading. See Federal Broadcasting System, Inc., 59 FCC 2d 356 (1976). However, due to the subject matter of the pleading, we will, in this particular instance, consider its merits in order for us to be apprised fully of the entire record. The attachments consist of the following: (1) affidavit of Ed Bishop, program director; (2) affidavit of Jim Duke, former news director; (3) a list of Focus programs; and (4) a list of six news stories. Bishop says he has no recollection of telling Benney of any policy of programming exclusion and Duke's recollection is in direct conflict with Benney's. Significantly, all the Focus programs listed were aired subsequent to the filing of the petitions to deny—all but two of which were aired after the license period expired (June 1, 1976)—and all the news stories listed were broadcast several months after the past license period expired. We note further that the assertion by licensee's counsel in the cover letter that Blacks and whites "appeared together" on the Focus programs, supra, is not corroborated in either Bishop's or Duke's appended affidavits.

[8] The "equal time" requirement applies to the use of a broadcast station by a legally qualified candidate for public office. With certain exemptions, a licensee is required to afford all other candidates for that office equal opportunities to use the station's facilities. See 47 U.S.C. 315.

plication would serve the public interest, convenience and necessity.

23. *It is further ordered*, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the burden of proceeding with the introduction of evidence under issue (1) above shall be upon petitioners, since information regarding WTWV's alleged discriminatory programming is peculiarly within their knowledge; that the burden of proceeding with the introduction of evidence under issue (2) above shall be upon WTWV, Inc.; and that the burden of proof with respect to all issues shall be on WTWV, Inc.

24. *It is further ordered*, That the petitions to deny filed by Malcolm Jackson et al. and Jack Benney et al. are granted to the extent indicated herein and are denied in all other respects,[9] and that Malcolm Jackson et al. and Jack Benney et al. are made parties to the hearing ordered herein.

25. *It is further ordered*, That to avail themselves of the opportunity to be heard, WTWV, Inc., and petitioners, pursuant to § 1.221(c) of the Commission's rules in person or by attorney, shall within twenty (20) days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and present evidence on the issues specified in this order.

26. *It is further ordered*, That WTWV, Inc., shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing within the time and in the manner prescribed in such rules, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

27. *It is also ordered*, That if it is determined that the record adduced pursuant to the above issues does not warrant denial of the above-captioned renewal application, the licensee of WTWV's satellite television station, WHTV-TV, is required to maintain operating local studio facilities in Meridian, Mississippi.[10]

28. *It is further ordered*, That the Secretary of the Commission shall send a copy of this Memorandum Opinion and Order, by Certified Mail—Return Receipt Requested, to each of the parties to this proceeding.

FEDERAL COMMUNICATIONS COMMISSION,[11]
VINCENT J. MULLINS,
Secretary.

[FR Doc.77-1929 Filed 1-19-77;8:45 am]

[9] Jackson et al. have presented no substantive evidence in support of their request for an areawide Commission investigation of broadcast stations in and around Tupelo on the grounds of alleged wrongdoing, to include continuing employment discrimination practices. Accordingly, this request is denied. See, e.g., 1972 License Renewal Applications for 28 Broadcast Facilities Licensed to the Philadelphia, Pennsylvania Area, 53 FCC 2d 104 (1975); 1972 License Renewal Applications for 17 Broadcast Facilities Licensed to the Richmond, Virginia Area, 54 FCC 2d 953 (1975).

[10] A principal of WTWV, Inc., is also a principal of Central Television, Inc., licensee of WHTV-TV, which is operated as a satellite of WTWV. See WTWV, Inc., supra, at 1262.

[11] Commissioner Lee absent.

[Docket No. 20654]

MOTOR VEHICLES

Interference From Spark-Type Ignition Systems: Order Extending Time for Filing of Comments and Reply Comments

Adopted: December 28, 1976.

Released: January 12, 1977.

In the matter of Interference from Spark-Type Ignition Systems in Motor Vehicles, Docket No. 20654.

1. The Land Mobile Communications Section of the Communications Division of the Electronics Industries Association (EIA) has requested an extension of time for the filing of comments in this proceeding (see 41 FR 1323, Jan. 7, 1976; 41 FR 11880, Mar. 22, 1976; 41 FR 29746, July 19, 1976).

2. In so requesting, EIA has pointed out that the additional time (180 days) would enable research to be initiated, the results of which would aid in the development of a quantitative grading scale for determining the degree of degradation to signal quality caused by ignition systems. Such information and data it appears would be of assistance to the Commission in resolving the matters under consideration in this proceeding.

3. Accordingly, under the authority granted by § 0.241(d) of the Commission's rules, EIA's petition is granted; and the date for filing of Comments is extended to June 17, 1977; and the date for filing of Reply Comments is extended to August 5, 1977.

RAYMOND E. SPENCE,
Chief Engineer.

[FR Doc.77-1926 Filed 1-19-77;8:45 am]

FEDERAL HOME LOAN BANK BOARD

[H. C. No. 220]

HICKORY INVESTMENTS, INC.

Receipt of Application for Permission To Retain Control of Investors Savings and Loan Association

JANUARY 17, 1977.

Notice is hereby given that the Federal Savings and Loan Insurance Corporation has received an application from Hickory Investments, Inc., Nashville, Tennessee, for permission, pursuant to the provisions of section 408(e) of the National Housing Act, as amended (12 U.S.C. 1730(e)), and § 584.4 of the Regulations for Savings and Loan Holding Companies, to retain control of Investors Savings and Loan Association, Hendersonville, Tennessee, an institution that has submitted an application for insurance of accounts pursuant to section 403(b) of the National Housing Act, as amended (12 U.S.C. 1726(b)). Comments on the proposed retention of control should be submitted to the Director, Office of Examinations and Supervision, Federal Home Loan Bank Board, Washington, D.C. 20552, on or before February 7, 1977.

RONALD A. SNIDER,
Assistant Secretary,
Federal Home Loan Bank Board.

[FR Doc.77-1937 Filed 1-19-77;8:45 am]

FEDERAL RESERVE SYSTEM

AMERICAN NATIONAL BANCSHARES, INC.

Order Denying Formation of Bank Holding Company

American National Bancshares, Inc., Midwest City, Oklahoma, 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)) of formation of a bank holding through acquisition of 80 per cent (or more) of the voting shares of American National Bank of Midwest City, Midwest City, Oklahoma ("Bank").

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received, including those of the Comptroller of the Currency, in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant is a nonoperating corporation organized for the purpose of becoming a bank holding company through acquisition of Bank. Bank, with deposits of $23 million,[1] representing .22 per cent of the total commercial bank deposits in Oklahoma, is the 19th largest of 43 banking organizations within the relevant banking market.[2] Bank holds 1.0 per cent of the total commercial bank deposits in this market. Inasmuch as the proposal represents merely a restructuring of Bank's ownership into corporate form and Applicant has no other banking interests, the acquisition of Bank by Applicant would have no adverse effects on existing or potential competiton within the relevant banking market and would not increase the concentration of banking resources in the relevant market. Accordingly, competitive considerations are consistent with approval of the application.

The Board has indicated on previous occasions that it believes that a holding company should constitute a source of financial and managerial strength to its subsidiary bank(s), and that the Board

[1] All banking data are as of December 31, 1975.

[2] The relevant market is approximated by Oklahoma County.

will closely examine the condition of an applicant in each case with this consideration in mind. The financial and managerial resources and prospects of the newly formed Applicant are generally dependent upon these considerations as they relate to Bank. While the Board considers the financial and managerial resources of Bank to be generally satisfactory, it appears that Bank is in need of some additional capital. Although Applicant would initially increase Bank's capital, the Board notes that Applicant would borrow the funds to make such a capital injection and that such borrowing, coupled with the acquisition debt Applicant would incur in connection with the proposed transaction, would increase the demands on Bank's earnings to service such debt, thus counteracting to a significant extent the benefits of any capital contributions by Applicant. In the Board's view, besides straining Bank's capital adequacy, the debt servicing obligations to be incurred by Applicant would also significantly limit Applicant's ability to meet any unforeseen financial problems that might arise.

In addition, it appears that Applicant's principal shareholder may not be in a sufficiently strong financial position because of his personal debt to provide meaningful assistance to Applicant in the event problems arise in the servicing of Applicant's debt or in meeting other unforeseen financial needs. Moreover, if Applicant is called upon to assist in the servicing and retirement of its principal shareholder's personal debt, further strains would be placed on Bank's capital position.

Finally, the Board notes that a covenant in the loan agreement between representatives of Applicant and the lending institution from which Applicant would borrow the funds to acquire Bank's stock involves the use of Bank's examination reports to monitor the value of Bank's stock pledged as collateral on the loan.[2] The Board does not view such a covenant as an appropriate use of examination reports and is of the view that such a practice may threaten the integrity of the examination process by providing a bank's management an incentive to provide less than complete and candid disclosure of information to the examiner. In addition, the examiner would be subjected to extraneous outside pressures by the knowledge that if he classifies a large percentage of a bank's assets it may result in a default on the loan and increase the likelihood of a change of ownership of the bank that could further weaken the bank's condition.[4] The Board is of the opinion that an accurate assessment of the value of bank stock as collateral on a loan can be developed without reference to confidential examination reports.

In view of the substantial debt to be incurred by Applicant in connecion with this proposal, the strain that could be placed on Bank's capital position as a result of Applicant's debt servicing requirements, the limited financial flexibility of Applicant and its principal shareholder, and the fact that the terms of the loan agreement may accelerate any difficulties that might occur in Bank's operations, the Board is of the opinion that considerations relating to financial resources and future prospects weigh against approval of the application.

Applicant indicates that banking services currently rendered in the community served by Bank will remain unchanged upon consummation of the proposal. Accordingly, considerations relating to the convenience and needs of the community to be served do not outweigh the adverse findings with respect to the financial factors involved in Applicant's proposal.

On the basis of the circumstances concerning this application, the Board concludes that the banking considerations involved in this proposal present adverse factors bearing upon the financial resources and future prospects of both Applicant and Bank. Such adverse factors are not outweighed by any procompetitive effects, managerial resources, or by benefits that would result in serving the convenience and needs of the community. Accordingly, it is the Board's judgment that approval of the application to become a bank holding company would not be in the public interest and that the application should be denied.

On the basis of the facts of record, the application is denied for the reasons summarized above.

By order of the Board of Governors,[5] effective January 10, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-1829 Filed 1-18-77;8:45 am]

[2] The loan agreement provides for default and immediate payment of all outstanding indebtedness: (d) *Sound Condition of Bank.* In the event the applicable governmental agency bank examiners should, in the course of an official examination, classify assets of Bank as substandard, doubtful or as a loss, to the extent that said classified assets equal or exceed 30 per cent of the total capital structure of Bank, the indebtedness to which this Loan Agreement relates shall become due and payable immediately, unless such default shall have been cured within 90 days after receipt by Debtor of notice of such classification.

[4] In commenting on this application, the Comptroller of the Currency expressed concern over this particular provision of the loan agreement. The Board notes that such a provision appears to be inconsistent with the Comptroller's regulation relating to disclosure of examination reports to financial institutions (12 CFR 4.18(c)).

[5] Voting for this action: Vice Chairman Gardner and Governors Wallich, Jackson, and Lilly. Absent and not voting: Chairman Burns and Governors Coldwell and Partee.

FARMERS BANCSHARES, INC.

Formation of Bank Holding Company

Farmers Bancshares, Inc., Hardinsburg, Kentucky, 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 The Farmers Bank, Hardinsburg, Kentucky. 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)).

Farmers Bancshares, Inc., Hardinsburg, Kentucky has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Bennett Insurance Agency, Hardinsburg, Kentucky. Notice of the application was published on December 23, 1976 in the Breckinridge County Herald-News, a newspaper circulated in Hardinsburg, Kentucky.

Applicant states that the proposed subsidiary would engage in the activities of acting as agent for the sale of credit life, credit accident and health and hazard insurance directly related to extensions of credit by the subsidiary bank. Such activities have been specified by the Board in § 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 § 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 St. Louis.

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 February 7, 1977.

Board of Governors of the Federal Reserve System, January 11, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-1827 Filed 1-18-77;8:45 am]

FIRST CITY BANCORPORATION OF TEXAS, INC.

Acquisition of Bank

First City Bancorporation of Texas, Inc., Houston, 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 per cent of the voting shares (less directors' qualifying shares) of East Dallas Bank, Dallas, Texas. 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 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 February 10, 1977.

Board of Governors of the Federal Reserve System, January 12, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-1831 Filed 1-18-77;8:45 am]

INDIANA NATIONAL CORP.

Order Approving Retention of Bank Shares

Indiana National Corporation, Indianapolis, Indiana, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to retain, through its wholly-owned subsidiary, The Indiana National Bank, Indianapolis, Indiana ("Indiana Bank"), 8.16 per cent of the outstanding voting shares of Gary National Bank, Gary, Indiana ("Bank").

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

On March 1, 1976, Indiana Bank received 8.16 per cent (48,960) of the outstanding voting shares of Bank from a predecessor trustee pursuant to a revocable inter vivos trust agreement between Mildred C. Gasser and Bank. In that agreement, Indiana Bank, a wholly-owned subsidiary of Applicant, was named successor trustee and was granted sole discretionary voting power over the 48,960 shares and is required by the terms of the trust to vote the shares in the best interest of the immediate beneficiaries of the trust, members of the Gasser family, who control an additional 29.12 percent of the outstanding voting shares.

Bank, with deposits of $367.8 million, is the fifth largest commercial bank in Indian, controlling 2.1 percent of the total deposits in commercial banks in the State.[1] Indiana Bank, with deposits of $1.3 billion, is the second largest commercial bank in Indiana, controlling 7.3 percent of the total commercial bank deposits in the State. Indiana Bank and Bank are located in separate, non-adjacent banking markets, approximately 200 miles apart. Each bank derives from the service area of the other less than 0.5 percent of its loans to, and deposits from, individuals, partnerships, and corporations. Hence, the proposed retention of shares would not eliminate any significant existing competition between the two banks nor would it increase concentration of banking resources in any local banking market. Furthermore, the proposal would not eliminate any significant future competition since Indiana law prohibits either bank from operating a branch office outside its home office county and prohibits Applicant from acquiring an additional bank for its own account. Hence, competitive considerations are consistent with approval of the application, particularly in that it does not appear Applicant will be capable of controlling the management or policies of Bank by virtue of the instant acquisition.

The financial and managerial resources and future prospects of Applicant, Indiana Bank, and Bank are satisfactory. Accordingly, banking factors are consistent with approval. There is no indication that the convenience and needs of the community to be served are not currently being met. Although there will be no immediate increase in the services offered by Bank, convenience and needs considerations are consistent with approval. Therefore, it is the Board's judgment that the retention of the shares of Bank would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above.

By order of the Board of Governors,[2] effective January 12, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-1832 Filed 1-18-77;8:45 am]

[1] Unless otherwise indicated, all banking data are as of December 31, 1975.

[2] Voting for this action: Vice Chairman Gardner and Governors Wallich, Coldwell, Jackson, Partee, and Lilly. Absent and not voting: Chairman Burns.

MAHASKA INVESTMENT CO.

Formation of Bank Holding

Mahaska Investment Company, Oskaloosa, Iowa, has applied for the Board's approval under § 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 51.47 per cent of the voting shares of Farmers Savings Bank, Fremont, 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)).

Mahaska Investment Company, Oskaloosa, Iowa has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to continue to engage in certain real and personal property leasing activities. Notices of the application were published on December 9 and 10, 1976 in the Oskaloosa Daily Herald, a newspaper circulated in Oskaloosa, Iowa.

Applicant states that it proposes to continue to engage (1) directly in the activity of leasing real property or acting as agent, broker or advisor in leasing such real property, and (2) indirectly, through its wholly-owned subsidiary, MIC Leasing Co., Oskaloosa, Iowa, in the activity of leasing personal property or acting as agent, broker or advisor in leasing such personal property. These activities will be conducted from offices in Oskaloosa, Iowa. Applicant states that such activities have been specified by the Board in § 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 § 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 outweight 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 applications 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 February 9, 1977.

Board of Governors of the Federal Reserve System, January 11, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-1828 Filed 1-18-77;8:45 am]

ELLIS BANKING CORP.

Acquisition of Bank

Ellis Banking Corporation, Bradenton, Florida, 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 50.1 per cent or more of the voting shares of Citizens Bank of Bunnell, Bunnell, Florida. 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 Atlanta. 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 February 14, 1977.

Board of Governors of the Federal Reserve System, January 14, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-1913 Filed 1-19-77;8:45 am]

ROYAL TRUST CO.

Acquisition of Bank

The Royal Trust Company, Montreal, Quebec, Canada, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 per cent or more of the voting shares of Baymeadows Bank, Jacksonville, Florida. 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 Atlanta. 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 February 11, 1977.

Board of Governors of the Federal Reserve System, January 13, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-1914 Filed 1-19-77;8:45 am]

[H.2, 1977 No. 1]

ACTIONS OF THE BOARD

Applications and Reports Received During the Week Ending January 1, 1977

ACTIONS OF THE BOARD

Regulation B amendments to implement the 1976 amendments to the Equal Credit Opportunity Act; the revised Act and the revised Regulation will become effective March 23, 1977.

Over-the-counter stocks, the Board published a revised list of OTC stocks that are subject to its margin regulations, effective immediately.

Regulation Z, the Board issued for public comment a proposed amendment to its Truth in Lending regulation to clarify provisions that permit discounts for cash customers; comment should be received by February 4, 1977 (Docket No. R-0072).

Regulation Z, technical amendment, the Board announced adoption of a technical amendment correcting an error in the Fair Credit Billing section of the regulation (Docket No. R-0073).

Regulation Z, proposal to amend Board's Truth in Lending regulation to require disclosure of a dealer participation in a consumer credit contract; comment should be received by the Board by February 4, 1977 (Docket No. R-0053).

Regulation T, temporary suspension of uniform margin requirements for option specialists (Docket No. R-0004).

Regulations K, M and Y, interpretation of the regulations regarding the use of a foreign subsidiary to sell long-term debt abroad and use the proceeds for domestic purposes.

Regulation Y, interpretation concerning a proposal by several bank holding companies to acquire interests in a credit related insurance company under section 4(c)(6) of the Bank Holding Company Act.

Survey of foreign claims of certain member banks and U.S. offices of foreign banks; this survey is a part of a joint effort with other central banks and the Bank for International Settlements to obtain information on the amounts and maturity distribution of credits by banks.

Brookline Trust Company, Brookline, Massachusetts, proposed merger with Metrobank and Trust Co./Norfolk, Milton, Massachusetts, report to the Federal Deposit Insurance Corporation.

Iowa State Bank, Stockport, Iowa, proposed acquisition by The State Central Savings Bank, Keokuk, Iowa, report to the Federal Deposit Insurance Corporation on competitive factors.

Issuance of subordinated capital notes by The Farmers Bank of Lincoln, Lincoln, Missouri.

Issuance of subordinated capital notes by The Bank of Woodward, Woodward, Oklahoma.

Cameron Bancshares, Inc., Cameron, Missouri, extension of time to January 25, 1977, within which to file its registration statement.[1]

Citizens and Southern Holding Company, Atlanta, Georgia, extension of time to March 30, 1977, within which to open for business the offices of Citizens and Southern Mortgage Company located in Albany, Columbus and Rome, Georgia.[1]

Deregistration under the provisions of Regulation G for the Youngstown Sheet and Tube Company, Youngstown, Ohio; Marathon Finance Company, Findlay, Ohio; and Wheeling-Pittsburgh Steel Corporation, Pittsburgh, Pennsylvania.[1]

Citizens Bank of Hattiesburg, Hattiesburg, Mississippi, to make an investment in bank premises.[1]

Connecticut Bank and Trust Company, Hartford, Connecticut, extension of time to June 30, 1977, within which to establish a branch at 629-633 Campbell Avenue, West Haven, Connecticut.[1]

Jackson State Bank, Jackson, Wyoming, extension of time to April 30, 1977, within which to complete the sale of subordinated capital notes.[1]

Citibank Overseas Investment Corporation, New York, New York, extension of time within which to (1) purchase and hold additional shares of HMF; (2) purchase and hold all the shares of AMF; (3) continue to hold the shares of HMF after HMF purchases additional shares of SPAARKAS and (4) acquires the balance of the outstanding shares of CREDIVIT.[1]

Crocker International Bank, amends Article THIRD of its Articles of Association to read: "The home office of this corporation shall be located in the United States at New York City, New York".[1]

Independent Bankers Trust Company, San Rafael, California, extension of time to February 24, 1977, within which to accomplish admission to membership in Federal Reserve System.[1]

[1] Application processed on behalf of the Board of Governors under delegated authority.

To Establish a Domestic Branch Pursuant to Section 9 of the Federal Reserve Act.

APPROVED

Union Trust Company of Wildwood, New Jersey, Wildwood, Cape May County, New Jersey. Branch to be established at the Southwest corner of 5th Avenue and New Jersey Avenue, North Wildwood, Cape May County.[2]

* * * * *

International Investments and Other Actions Pursuant to Sections 25 and 25 (a) of the Federal Reserve Act and Sections 4(c)(9) and 4(c)(13) of the Bank Holding Company Act of 1956, as amended.

APPROVED

Bankers International Corporation: Investment—additional in Bankers Trustee and Executor Co., Ltd., London.

Chase Manhattan Bank N.A.: Investment—additional shares of Banco del Comercio (Panama) S.A.

Chase Manhattan Bank N.A.: Investment—additional in Familienbank A. G., Germany.

Morgan Guaranty Trust Company of New York: An extension of time to establish a Shell Branch in George Town, Cayman Islands.

Mellon International Finance Corporation: Investment—to acquire 24.55 per cent of Network Finance Limited, Australia.

Continental International Finance Corporation: Investment—additional in Singapore International Merchant Bankers Limited.

First Chicago International Finance Corporation: Investment—addition in First Chicago Australia Limited, Australia.

Bamerical International Financial Corporation: Investment—additional in Bamerical Mortgage & Finance Co., Inc., Hato Rey, Puerto Rico.

* * * * *

International Investments and Other Actions Pursuant to Sections 25 and 25 (a) of the Federal Reserve Act and Sections 4(c)(9) and 4(c)(13) of the Bank Holding Company Act of 1956, as amended.

APPROVED

Bank of America N.T. and S.A.: Investment—additional in European Brazilian Bank Limited, London.

Bank of America N.T. and S.A.: Investment—to acquire 80 percent interest in Banco Colombo-Americano, a commercial bank to be established in Bogota, Columbia.

Wells Fargo Bank N.A.: An extension of time to establish a Shell Branch in George Town, Cayman Islands.

* * * * *

On H. 2 No. 50, 1976 the following was typed in error, below is the correct listing.

International Investments and Other Actions Pursuant to Sections 25 and 25 (a) of the Federal Reserve Act and Sections 4(c)(9) and 4(c)(13) of the Bank Holding Company Act of 1956, as amended.

APPROVED

Crocker International Bank: To amend Articles of Association by changing its name to Crocker Bank International (New York).

[2] Application processed by the Reserve Bank on behalf of the Board of Governors under delegated authority.

To Form a Bank Holding Company Pursuant to Section 3(a)(1) of the Bank Holding Company Act of 1956.

APPROVED

Banco Union, C.A., Caracas, Venezuela, for approval to acquire indirectly 25 per cent of the voting shares of Union Chelsea National Bank, New York, New York, the successor by absorption to Chelsea National Bank, New York, New York.

Consorcio Financiero Union, S.A., Caracas, Venezuela, for approval to acquire indirectly 75 per cent of the voting shares of Union Chelsea National Bank, New York, New York, the successor by absorption to Chelsea National Bank, New York, New York.

Union International Corporation, Wilmington, Delaware, for approval to acquire directly 100 per cent of the voting shares of Union Chelsea National Bank, New York, New York, the successor by absorption to Chelsea National Bank, New York, New York.

Putnam National Corporation, Greencastle, Indiana, for approval to acquire between 50.9 and 99.3 per cent of the voting shares of The Central National Bank of Greencastle, Greencastle, Indiana.[3]

* * * * *

To Expand a Bank Holding Company Pursuant to Section 3(a)(3) of the Bank Holding Company Act of 1956.

SUSPENDED

First National Holding Corp., Atlanta, Georgia, for approval to acquire 100 per cent of the voting shares of First Bank of Savannah, Savannah, Georgia.

First National Holding Corp., Atlanta, Georgia, for approval to acquire 39.28 per cent of the voting shares of The First National Bank of Dalton, Dalton, Georgia.

First National Holding Corp., Atlanta, Georgia, for approval to acquire The Bank of Dalton, Dalton, Georgia indirectly through acquisition of The First National Bank of Dalton, Dalton, Georgia and National Loan Company, Dalton, Georgia.

APPROVED

First Maryland Bancorp, Baltimore, Maryland, for approval to acquire 51 per cent of the voting shares of The Hancock Bank, Hancock, Maryland.

Royal Trust Bank Corp., Miami, Florida, for approval to acquire 51 per cent or more of the voting shares of Royal Trust Eank of St. Petersburg, Gulfport, Florida.[3]

Royal Trust Bank Corp., Miami, Florida, for approval to acquire 51 per cent or more of the voting shares of Royal Trust Bank of Tampa, Tampa, Florida.[3]

Manufacturers National Corporation, Detroit, Michigan, for approval to acquire 100 per cent of the voting shares (less directors' qualifying shares) of National Bank of Southfield, Southfield, Michigan.

Northwest Bancorporation, Minneapolis, Minnesota, for approval to acquire 90 per cent or more of the voting shares of First National Bank of Ottumwa, Ottumwa, Iowa.

To Expand a Bank Holding Company Pursuant to Section 4(c)(8) of the Bank Holding Company Act of 1956.

DELAYED

Flagship Banks, Inc., Miami Beach, Florida, notification of intent to engage in *de novo* activities (acting as agent for the sale of credit life and credit accident and health insurance and other credit related insurance that is directly related to extensions of credit by the bank holding company and/or its banking and non-banking subsidiaries) at offices in Tallahassee, Melbourne, Orlando, Tavares, Sanford, Kissimmee, Titusville, Ormond Beach, Crescent City, Arcadia, Tampa, Lutz, Mulberry, Zephyrhills, Fort Meade, Hialeah, Miami, Coral Gables, St. Petersburg, Jacksonville, Boynton Beach, West Palm Beach, Fort Myers, Punta Gorda, all located in Florida, through a subsidiary, Seaforth, Inc., 5401 West Kennedy Blvd., Tampa, Florida (listed on H.2 No. 50, 1976 as Received) and at West Bay Street, Davenport, 120 South Lake Shore Way, Lake Alfred, and Jones Avenue at 6th Street, Haines City, all located in Florida, through a subsidiary, Seaforth, Inc. (listed on H.2 No. 51, 1976 as Received) (12/30/76) [3]

PERMITTED

First Pennsylvania Corporation, Philadelphia, Pennsylvania, notification of intent to engage in *de novo* activities (making, acquiring, or servicing for its own account or for the account of others, loans or other extensions of credit in particular commerical lending related to lease transactions and conditional sales financing) at Center Square West, 16th and Market Streets, Philadelphia, Pennsylvania, through its subsidiary, First Pennsylvania Leasing, Inc. (12/30/76) [3]

NBC Co., Lincoln, Nebraska, notification of intent to continue to engage in *de novo* activities (conducting the business of an industrial loan and investment company including issuance of interest bearing savings certificates and the making of loans, including consumer loans, commercial loans, and real estate mortgage loans) through a subsidiary, Mutual Savings Company and (acting as an insurance agent in the sale of credit life and accident insurance directly related to extensions of credit by company's subsidiary, Mutual Savings Company for the purposes of assuring the repayment of extensions of credit in the event of death or disability of the borrower) through a subsidiary, NBC Credit Insurance Agency, Inc. Such activities will be conducted at the southwest corner of 40th & South Streets, Lincoln, Nebraska (12/31/76) [3]

Mercantile Texas Corporation, Dallas, Texas, notification of intent to engage in *de novo* activities (making or acquiring, for its own account or for the account of others, loans, or extensions of credit including the following: "consumer credit" loans; accounts receivable of a bank in connection with purchases made by holders of credit cards issued by that bank; loans secured by liens on improved real estate and payable in a lump sum at maturity; interim loans to finance the construction of industrial, commercial, residential, or farm building; short-term commercial loans made for business or commercial purposes generally payable within 90 days; loans made to finance the acquisition or carrying of accounts receivable or inventory by merchants and dealers; retail installment paper originated by dealers or other sellers of goods or services and purchased by a bank; equipment leases executed in financing transactions in which a bank's property has been purchased for the purpose of leasing it to a customer; certificates of deposit issued by a bank having maturities ranging from 30 to 270 days; mortgage warehousing loans generally secured by pledges of the mortgage notes and ordinarily held for one year or less; equipment financing loans made by businesses secured by personal property and generally repayable in installments over a one-to-five year period; income-producing mineral interest loans secured by income-producing mineral interest generally repayable in installments over a three-to-seven year period; repurchase agreements with financial institutions involving money-market and other investments in short-term securities either on a direct investment or on a repurchase basis) at 1704 Main Street, Dallas, Texas (12/30/76) [3]

Fremont Bancorporation, Fremont, California, notification of intent to engage in *de novo* activities (acting as investment or financial adviser including providing portfolio and investment advice to any person) at 39150 Fremont Boulevard, Fremont, California (12/30/76) [3]

Security Pacific Corporation, Los Angeles, California, notification of intent to engage in *de novo* activities (the financing of personal property and equipment and real property and the leasing of such property or the acting as an agent, broker, or adviser in the leasing and/or financing of such property where at the inception of the initial lease the effect of the transaction (and, with respect to governmental entities only, reasonably anticipated future transactions) will yield a return that will compensate the lessor for not less than the lessor's full investment in the property plus the estimated total cost of financing the property over the term of the lease and the servicing of such financing and/or leases) at Suite 206, The Weber Building, 9420 Annapolis Road, Lanham, Maryland, through its subsidiary, Security Pacific Leasing Corporation (12/30/76) [3]

Security Pacific Corporation, Los Angeles, California, notification of intent to engage in *de novo* activities (the origination and acquisition of mortgage loans including development and construction loans on multi-family and commercial properties, for its own account or for the sale to others and servicing of such loans for others) at 20370 Tower Center Lane, Cupertino, California, through its subsidiary, Security Pacific Mortgage Corporation (12/27/76) [3]

Security Pacific Corporation, Los Angeles, California, notification of intent to engage in *de novo* activities (the origination and acquisition of mortgage loans including development and construction loans on multi-family and commercial properties, for its own account or for the sale to others and the servicing of such loans for others) at 3735 Main Street, Riverside, California, through its subsidiary, Security Pacific Mortgage Corporation (12/27/76) [3]

* * * * *

To Expand a Bank Holding Company Pursuant to Section 4(c)(12) of the Bank Holding Company Act of 1956.

RETURNED

Chicago Helicopter Industries, Inc., Chicago, Illinois, notification of intent to acquire through a wholly-owned subsidiary to be formed the operating division known as "Steel Packaging Division—St. Louis Region", of N.L. Industries, Inc., New York (12/28/76) [3]

Applications Received

To Establish a Domestic Branch Pursuant to Section 9 of the Federal Reserve Act.

Dutchess Bank and Trust Company, Poughkeepsie, New York. Branch to be established at the Southwest corner of Mill and Garden Streets, City of Poughkeepsie, County of Dutchess.

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[3] 4(c)(8) and 4(c)(12) notifications processed by Reserve Bank on behalf of the Board of Governors under delegated authority.

The Provident Bank, Cincinnati, Ohio. Branch to be established at Madison and Michigan Avenue, Cincinnati, Hamilton County.

The Central Trust Company of Canal Winchester, Canal Winchester, Ohio. Branch to be established at 8 South High Street, Canal Winchester, Franklin County.

First Virginia Bank, Falls Church, Virginia. Branch to be established at Braddock and Twinbrooke Roads, Fairfax County.

The De Kalb Bank, De Kalb, Illinois. Branch to be established at 1602 Sycamore Road, De Kalb.

* * * * *

To Establish an Overseas Branch of a Member Bank Pursuant to Section 25 of the Federal Reserve Act.

Manufacturers Hanover Trust Company, New York, New York: Branch—Milan, Italy.

* * * * *

To Form a Bank Holding Company Pursuant to Section 3(a)(1) of the Bank Holding Company Act of 1956.

Banco Union, C.A., Caracas, Venezuela, for approval to acquire indirectly 25 percent of the voting shares of Union Chelsea National Bank, New York, New York, the successor by absorption to Chelsea National Bank, New York, New York.

Consorcio Financiero Union, S.A., Carcaras, Venezuela, for approval to acquire indirectly 75 per cent of the voting shares of Union Chelsea National Bank, New York, New York, the successor by absorption to Chelsea National Bank, New York, New York.

Union International Corporation, Wilmington, Delaware, for approval to acquire directly 100 per cent of the voting shares of Union Chelsea National Bank, New York, New York, the successor by absorption to Chelsea National Bank, New York, New York.

Farmers Bancshares, Inc., Hardinsburg, Kentucky, for approval to acquire 80 per cent of the voting shares of The Farmers Bank, Hardinsburg, Kentucky.

* * * * *

To expand a Bank Holding Company Pursuant to Section 3(a)(3) of the Bank Holding Company Act of 1956.

Republic of Texas Corporation, Dallas Texas, for approval to acquire 100 per cent of the voting shares (less directors' qualifying shares) of Dallas National Bank in Dallas, Dallas, Texas.

* * * * *

To Expand a Bank Holding Company Pursuant to Section 4(c)(8) of the Bank Holding Company Act of 1956.

Chemical New York Corporation, New York, New York, notification of intent to engage in *de novo* activities (operating as an industrial bank in the manner authorized by the laws of the State of Colorado including: making direct loans, purchasing sales finance contracts and such other extensions of credit as would be made or acquired by an industrial bank; providing, at the election of debtors of said industrial bank, group credit life and group accident and health insurance directly related to such extensions of credit; and receiving time savings deposits) at 2779 Canyon Boulevard, Boulder, Colorado, 116 East Foothills Parkway, Fort Collins, Colorado, and 1005 29th Avenue Court, Greeley, Colorado, through its subsidiary, Sunamerica Corporation and its subsidiary, Sun Finance and Loan Company (12/31/76).[3]

Citicorp, New York, New York, notification of intent to relocate *de novo* activities (the purchasing and servicing for its own account consumer installment sales finance contracts; and acting as broker for the sale of consumer credit related life/accident and health insurance and consumer credit related property and casualty insurance on purchased consumer installment sales finance contracts, said insurance will only be offered when such transactions are the equivalent of direct extensions of consumer credit by the subsidiary; if this proposal is effected, the subsidiary will offer to sell insurance as follows: group credit life/accident and health insurance to cover the outstanding balances on consumer installment sales finance contracts to obligators, singly or jointly, with their spouses or cosigners in the case of life coverage in the event of death, or, to make the contractual monthly payments on consumer installment sales finance transactions in the event of the obligators' disability to the extent permissible under applicable State insurance laws and regulations; individual casualty insurance on personal property subject to security agreements) from 11950 Airline Drive, Houston, Texas to 12400 I–45 at Greens Road, Houston, Texas, through its subsidiary, Nationwide Financial Corporation (12/28/76).[3]

Fidelity Union Bancorporation, Newark, New Jersey, notification of intent to engage in *de novo* activities (the business of making loans in the present maximum amount of $5,000.00 or less under the provisions of the Pennsylvania Consumer Discount Company Act; and making available to customers, credit life insurance and disability insurance covering the unpaid balance of loans outstanding and fire and theft insurance to protect household goods held as collateral during the periods of credit extensions) at Valmont Shopping Center, Route 93, West Hazelton, Luzerne County, Pennsylvania, through its subsidiary, Suburban Finance Company and its subsidiary, Sentry Consumer Discount Company (12/29/76).[3]

Financial Services Corporation of the Midwest, Rock Island, Illinois, notification of intent to engage in *de novo* activities (making or acquiring, for its own account secured and unsecured installment loans and other extensions of credit including through acceptance of drafts primarily to individuals, and selling participations in but not acting as underwriter, agent, or broker with respect thereto group credit life and credit health and accident insurance coverage directly related to such loans and other extensions of credits) at 821 15th Avenue, East Moline, Illinois, through its subsidiary, F.S.C. Money Shops, Inc. (12/22/76)[3]

National Detroit Corporation, Detroit, Michigan, notification of intent to engage in *de novo* activities (making, acquiring, and servicing for its own account and for the account of others, mortgage loans and other extensions of credit in connection with the purchase, development and/or improvement of real property and all activities incidental thereto) at 715 East Front Street, Traverse City, Michigan, through its subsidiary, NBD Mortgage Company (12/10/76)[3]

Northern States Bancorporation, Inc., Detroit, Michigan, notification of intent to relocate *de novo* activities (mortgage banking activities by originating residential, commercial and industrial mortgage loans for its own account but principally for sale to others, servicing such loans for others, and acting as an investment or a financial adviser to the extent of serving as the advisory company for a mortgage or real estate investment trust) from 717 South Grand Traverse Street, Flint, Michigan to G 3306 W. Corunna Road, Flint, Michigan, through its subsidiary, Kelly Mortgage Investment Company (12/28/76)[3]

Farmers Bancshares, Inc., Hardinsburg, Kentucky, for approval to acquire the assets of Farmers Insurance Agency (previously operated as the Bennett Insurance Agency), Hardinsburg, Kentucky.

* * * * *

REPORTS RECEIVED

Proxy Statement (Special Meeting) Filed Pursuant to Section 14(a) of the Securities Exchange Act.

Union Trust Company of Wildwood, Wildwood, New Jersey.

PETITIONS FOR RULEMAKING

None.

Board of Governors of the Federal Reserve System, January 14, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-1915 Filed 1-19-77;8:45 am]

[3] 4(c)(8) and 4(c)(12) notifications processed by Reserve Bank on behalf of the Board of Governors under delegated authority.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Federal Council on the Aging

COMMITTEE ON THE ECONOMICS OF AGING

Meeting

The Federal Council an the Aging was established by the 1973 amendments to the Older Americans Act of 1965 (Pub. L. 93–29) for the purpose of advising the President, the Secretary of Health, Education, and Welfare, the Commissioner on Aging, and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to Pub. L. 92–463 that the FCA Committee on the Economics of Aging will meet on February 14, 1977 from 1 p.m. to 5 p.m., and on February 15, 1977 from 9:00 a.m. to 3 p.m., in Room 3131 HEW North Building, 330 Independence Ave., S.W. Washington, D.C. 20201. The agenda will consist of: Status of Asset Project; Update on Access of Minorities to Subsidized Housing; Discussion of Establishment of Social Security Advisory Committee; Review of FCA Actions on Health Care for the Elderly and Review of 1977 FCA Work Plan and approximate completion date.

This meeting will be open for public observation. Further information on the Council may be obtained from: Cleonice Tavani, Executive Director, Federal Council on the Aging, Washington, D.C. 20201, telephone: (202) 245–0441.

CLEONICE TAVANI,
Executive Director,
Federal Council on the Aging.

JANUARY 13, 1977.

[FR Doc.77-1836 Filed 1-19-77;8:45 am]

SENIOR SERVICES COMMITTEE

Meeting

The Federal Council on the Aging was established by the 1973 amendments to the Older Americans Act of 1965 (Pub. L. 93-29) for the purpose of advising the President, the Secretary of Health, Education, and Welfare, the Commissioner on Aging, and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to Pub. L. 92-463 that the FCA Senior Services Committee will meet on February 15-16, 1977, from 9:00 a.m. to 5 p.m. in Room 3131 HEW—North Building, 330 Independence Ave., S.W. Washington, D.C. 20201. The agenda will consist of: Review of FCA Actions on Health Care for the Elderly; Development of FCA Activities on Systematizing Federal Services and Benefits for the Elderly; Review of Aspects of FCA Frail Elderly Project; Status of National Meals on Wheels Legislation and Review of 1977 FCA Work Plan.

This meeting will be open for public observation.

Further information on the Council may be obtained from: Cleonice Tavani, Executive Director, Federal Council on the Aging, Washington, D.C. 20201, telephone: (202) 245-0441.

JANUARY 13, 1977.

CLEONICE TAVANI,
Executive Director,
Federal Council on the Aging.

[FR Doc.77-1837 Filed 1-19-77;8:45 am]

Office of Education

EMERGENCY SCHOOL AID ACT

Interpretation Regarding Desegregation Plans

The purpose of this notice is to clarify for local educational agencies ("LEA's") seeking financial assistance under the Emergency School Aid Act ("ESAA"; Title VII of Pub. L. 92-318, as amended (20 U.S.C. 1601-1619)) with respect to the characteristics of plans for "desegregation" as that term is used in section 706(a)(1)(A) of the statute.

BACKGROUND

Section 706(a)(1)(A) authorizes financial assistance to a local educational agency which is implementing a plan—

(i) Which has been undertaken pursuant to a final order issued by a court of the United States or a cout of any State, or any other State agency or official of competent jurisdiction, and which requires the *desegregation of minority group segregated children or faculty* in the elementary and secondary schools of such agency * * *; or

(ii) Which has been approved by the Secretary (of HEW) as adequate under Title VI of the Civil Rights Act of 1964 for the *desegregation of minority group segregated children or faculty* in such schools * * * (Italic supplied.)

Program regulations adopted under the ESAA define "desegregation", at 45 CFR 185.02, as follows:

(k) The term "desegregation" means the assignment of children or faculty to public schools and within such schools without regard to their membership in a minority group, but "desegregation" does not mean the assignment of such persons to or within public schools in order to overcome racial imbalance.

Information sought by local educational agencies indicates that there remains some uncertainty as to whether particular plans are "desegregation" plans within the meaning of these statutory and regulatory provisions. Questions have arisen as to the applicability of these provisions in the case of LEA's implementing plans to improve the quality of educational services to minority group children where no finding of illegal conduct respecting those children has been made, or plans undertaken in response to a finding of illegal conduct (particularly violations of Title VI of the Civil Rights Act of 1964) other than the illegal separation of minority group children or faculty from their nonminority group counterparts. Therefore, the Commissioner has determined that publication of an interpretation of section 706(a)(1)(A) will aid LEA's in assessing their eligibility for ESAA assistance, and will help to ensure the uniform administration of programs under the ESAA throughout the country.

INTERPRETATION

1. It is the Commissioner's interpretation that a plan for the "desegregation of minority group segregated children or faculty" under section 706(a)(1)(A), unlike other qualifying plans described in section 706(a), must arise out of a legal obligation to remedy illegal conduct. This reading of the statute is in accord with the distinction, in the above-quoted regulatory definition of "desegregation", between assignments without regard to minority group membership ("desegregation") and assignments to overcome racial imbalance (not "desegregation"). It is, furthermore, consistent with the legislative history of the statute. The House Report on the bill which became the ESAA (H.R. 2266, 92nd Cong.) states as follows regarding categories of eligibility:

The first category of eligibility includes those districts implementing plans to desegregate or integrate *under mandate* from Federal or State courts or from the Department of Health, Education, and Welfare (under authority of title VI of the Civil Rights Act of 1964). (H.R. Rep. No. 92-576, 92nd Cong., 1st Sess. 12 (1971); Italics supplied.)

The report on the Senate counterpart to the same bill (S. 1557, 92nd Cong.) also makes that point in the following language:

In ascertaining the eligibility of any local educational agency on the basis of its implementation of a plan in compliance with the categories provided in [clauses (i) and (ii) of section 706(a)(1)(A)], the end requirement of the plan and *the origin of the requirement must be considered.* (Sen. Rep. No. 92-61, 92nd Cong., 1st Sess. 35 (1971); Italics supplied.)

For these reasons, the Commissioner will consider as a "desegregation" plan under section 706(a)(1)(A) (i) or (ii) only a plan which is premised on a finding of illegal conduct, and which consists of the steps required by the pertinent court, agency, or official to remedy that illegal conduct. In particular, a plan under clause (ii) of that section, relating to title VI of the Civil Rights Act of 1964, will be deemed to include only steps approved as adequate to remedy a violation of that statute. Where an LEA has not violated title VI, it must look to other provisions of section 706(a) as a basis for its eligibility for ESAA assistance. (20 U.S.C. 1605(a)(1)(A))

2. In addition, the Commissioner interprets the phrase "desegregation of minority group segregated children or faculty" in section 706(a)(1)(A) to refer to the reassignment of children or faculty in order to overcome the illegal separation of minority group children or faculty from their nonminority group counterparts in a local educational agency's schools. Under this interpretation the terms "desegregation" and "segregated" in the quoted phrase are given the meanings they are understood to have in ordinary usage, and meanings which are in accord with the regulatory definition of "desegregation" set out at 45 CFR 185.02(k). This interpretation is also consistent with expressions of the Congressional purpose in enacting the statute. The House report on H.R. 2266 states as follows:

The rationale for the reported bill is best expressed in the President's words: "This Act deals specifically with problems which arise from racial separation, whether deliberate or not, and whether past or present."

(H.R. Rep. No. 92-576, 92d Cong., 1st Sess. 3 (1971); emphasis supplied.)

(Undeliberate separation is treated in this bill, and in the statute as enacted, in provisions dealing with plans affecting "minority group isolation".)

The Senate report on S. 1557 indicates that a similar need was addressed by that bill:

Whether or not it is deliberate, racial, ethnic, and socio-economic separation in our schools and school systems have serious and often irreparable adverse effects on the education of all children, be they from deprived or from advantaged backgrounds. (Sen. Rep. No. 92-61, 92d Cong., 1st Sess. 6 (1971); emphasis supplied.)

In the light of this legislative history, as well as the language of the statute, the Commissioner will consider as a "desegregation" plan under section 706(a)(1)(A)(i) or (ii) only those plans, or parts of plans, which provide for the reassignment of illegally separated children or faculty to or within the schools of a local educational agency.

(20 U.S.C. 1605(a)(1)(A))

EFFECTIVE DATE

Pursuant to section 431(d) of the General Education Provisions Act, as amended (20 U.S.C. 1232(d)), this document has been transmitted to the Congress concurrently with its publication in

the FEDERAL REGISTER, and becomes effective on the forty-fifth day following transmission, subject to the provision in section 431(d) concerning Congressional action and adjournment.

Dated: January 17, 1977.

EDWARD AGUIRRE,
United States Commissioner of Education.

Approved:

VIRGINIA Y. TROTTER,
Assistant Secretary for Education.

[FR Doc.77-1871 Filed 1-19-77;8:45 am]

Public Health Service

QUALIFIED HEALTH MAINTENANCE ORGANIZATIONS

Listing

Notice is hereby given, pursuant to 42 CFR 110.605, that in the month of December 1976 the following entities have been determined to be qualified health maintenance organizations under section 1310(d) of the Public Health Service Act (42 U.S.C. 300e-9(d)).

LIST OF QUALIFIED HEALTH MAINTENANCE ORGANIZATIONS

Name, address, service area, and date of qualification (Preoperational qualified health maintenance organizations: 42 CFR 110.603 (c))

1. Capital Area Community Health Plan, Inc., Box 1894, 146 State Street, Albany, New York 12201. Service area as follows:

Albany County

Albany City	Guilderland Town
Berne Town	Knox Town
Bethlehem Town	New Scotland Town
Coeymans Town	Rensselaerville Town
Cohoes City	Watervliet City
Colonie Town	Westerlo Town
Green Island Town	

Rensselaer County

Brunswick Town	Pittstown Town
East Greenbush Town	Poestenkill Town
Grafton Town	Rensselaer City
Nassau Town	Sand Lake Town
North Greenbush Town	Schaghticoke Town
	Schodack Town
	Troy City

Saratoga County

Ballston Town	Milton Town
Charlton Town	Saratoga Town
Clifton Park Town	Saratoga Springs City
Galway Town	Stillwater Town
Halfmoon Town	Waterford Town
Malta Town	
Mechanicville City	

Schenectady County

Duanesburg Town	Princetown Town
Glenville Town	Rotterdam Town
Niskayuna Town	Schenectady City

Date of Qualification: December 6, 1976.

2. Central Essex Health Plan, 715 Park Avenue, East Orange, New Jersey 07017. Service area: Essex County communities of:

Belleville	East Orange
Bloomfield	Essex Fells
Caldwell	Fairfield
Cedar Grove	Glen Ridge
Irvington	Orange
Livingston	Roseland
Maplewood	South Orange
Millburn	Verona
Montclair	West Caldwell
North Caldwell	West Orange
Nutley	

Date of Qualification: December 28, 1976.

Files containing detailed information regarding the qualified health maintenance organizations will be available for public inspection between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, at the Office of Quality Standards, Office of the Assistant Secretary for Health, Department of Health, Education and Welfare, Room 14A-27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Questions about the review process or requests for information about qualified health maintenance organizations should be sent to the same office.

Dated: January 11, 1977.

JOHN A. O'ROURKE,
Acting Director,
Office of Quality Standards.

JANUARY 12, 1977.

[FR Doc.77-1821 Filed 1-19-77;8:45 am]

Social Security Administration

SECRETARY OF HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Redelegations of Authority Pertaining to the Reimbursement of Suppliers of End-Stage Renal Disease Services Under the Medicare Program, and to the Withdrawal of Approval of Medicare Coverage of Such Suppliers of Services

Correction

In FR Doc. 37112, appearing at page 55242 in the issue of Friday, December 17, 1976, on page 52243, in the ninth line, in the first column, following the words "subsection (g)", delete the words "of section (g)".

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

CHIEFS, LANDS SECTION AND MINERALS SECTION, BRANCH OF LANDS AND MINERALS OPERATIONS, CALIFORNIA

Redelegation of Authority

1. Pursuant to the authority contained in Section 2.1 and Part IIA of BLM Order No. 701 (29 FR 10526, July 29, 1964), as amended, the following authority is hereby delegated to the Chief, Lands Section, and Chief, Minerals Section, to take action on the following matters:

A. *Chief, Lands Section.* Section 2.2(b), 2.2(k), 2.3(a) authority limited to Section 1.3(a)(1) of Part I of BLM Order No. 701, 2.3(c). Subject to receipt of report from the State Director: 2.5(b) and 2.5(c). Subject to classification action by the State Director where necessary: 2.9(a), 2.9(b), 2.9(c), subject to approval of color-of-title or claim of right by the Regional Solicitor, 2.9(d) subject to title approval by the Regional Solicitor and subject to Part 1.0(b)(4) where the selected lands appraised value exceeds $250,000, 2.9(e), 2.9(f), 2.9 (h) through (n), inclusive, 2.9 (p) through (s), inclusive, 2.9(u), 2.9(x), 2.9(y).

B. *Chief, Minerals Section.* Sections 2.2(b), 2.3(a) authority limited to Section 1.3(a)(1) of Part I of BLM Order No. 701, 2.3(c), 2.6(a) through (l), inclusive, 2.6(n) authority does not include (1) functions pertaining to geothermal deposits that involve approval or execution of unit or cooperative agreements, communitizating agreements, operating, drilling, or development contracts, and (2) functions relating to the grant, approval, or termination of the waiver, suspension, or reduction of rental or minimum royalty, the reduction of royalty, suspension of operations, or production under a lease.

2. The Chief, Branch of Lands and Minerals Operations, may, at his discretion, personally exercise any authority hereby delegated to the Chief, Lands Section, and the Chief, Minerals Section.

3. The authority delegated in paragraph 1 above may not be redelegated, but the Chief of each section may, by written order, designate any qualified employee of that section to perform the functions of the position in an acting capacity, in the Chief's absence. Such order will be approved by the Chief, Branch of Lands and Minerals Operations.

4. *Effective date.* This redelegation will become effective immediately January 21, 1977.

CHARLES R. KNIGHT,
Chief, Division of Technical Services.

Approved: January 13, 1977.

ED HASTEY,
State Director.

[FR Doc.77-1930 Filed 1-19-77;8:45 am]

NEVADA

Airport Lease Applications

JANUARY 13, 1977.

1. Notice is hereby given that pursuant to the Act of May 24, 1928 (49 U.S.C. 211-214), Max D. Pierson, has applied for airport leases on the following lands:

MOUNT DIABLO MERIDIAN, NEVADA

T. 16 N., R. 21 E.,
Sec. 22, SW¼NW¼, S½;
Sec. 27, N½NE¼;
T. 16 N., R. 22 E. (partially unsurveyed),
Sec. 16, NE¼, S½;
Sec. 20, N½, SW¼, N½SE¼, SW¼SE¼, SW¼SE¼SE¼, N½SE¼SE¼;
Sec. 29, N½, W½SW¼;
Sec. 30, N½, S½SW¼, NE¼SW¼, SE¼.

2. The purpose of this notice is to inform the public that the filing of these applications segregate the described public lands from all other forms of appropriation under the public land laws.

3. Interested persons desiring to express their views should promptly send their comments together with their name and address to the District Manager, 1050 E. Williams, Carson City, Nevada 89701.

CHARLES HANCOCK,
Acting Chief,
Division of Technical Services.

[FR Doc.77-1908 Filed 1-19-77;8:45 am]

NEVADA

Airport Lease Application

JANUARY 13, 1977.

1. Notice is hereby given that pursuant to the Act of May 24, 1928 (49 U.S.C. 211–214), Chester Oxborrow has applied for an airport lease on the following land:

MOUNT DIABLO MERIDIAN, NEVADA

T. 1 N., R. 68 E.,
Sec. 36, SE¼NE¼SE¼.

2. The purpose of this notice is to inform the public that the filing of this application segregates the described land from all other forms of appropriation under the public land laws.

3. Interested persons desiring to express their views should promptly send their comments together with their name and address to the District Manager, Bureau of Land Management, 4765 West Vegas Drive, Box 5400, Las Vegas, Nevada 89102.

CHARLES HANCOCK,
Acting Chief,
Division of Technical Services.

[FR Doc.77-1920 Filed 1-19-77;8:45 am]

[NM 29478 and 29539]

NEW MEXICO

Applications

JANUARY 11, 1977.

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 4½-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 20 S., R. 27 E.,
Sec. 28, S½SW¼ and SW¼SE¼;
Sec. 29, SE¼SW¼ and SE¼SE¼;
Sec. 33, NW¼NE¼.
T. 21 S., R. 27 E.,
Sec. 33, N½NE¼;
Sec. 34, NW¼NW¼.

These pipelines will convey natural gas across 1.956 miles of national resource lands in Eddy 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 1397, Roswell, New Mexico 88201.

FRED E. PADILLA,
Chief, Branch of
Lands and Minerals Operations.

[FR Doc.77-1909 Filed 1-19-77;8:45 am]

[NM 29304]

NEW MEXICO

Applications

JANUARY 11, 1977.

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 twelve 2, 4, and 6-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 30 N., R. 11 W.,
Sec. 1, lots 12, 13, 15, and 16;
Sec. 2, lots 5 and 6;
Sec. 11, lots 2, 3, and 4;
Sec. 12, lots 2, 3, 4, 5, 7, and 11;
Sec. 13, lots 3, 4, and 7;
Sec. 14, lots 2, 5, and 6.

This pipeline will convey natural gas across 4.998 miles of national resource land 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.

FRED E. PADILLA,
Branch of
Lands and Minerals Operations.

[FR Doc.77-1910 Filed 1-19-77;8:45 am]

[NM 29535 and 29536]

NEW MEXICO

Applications

JANUARY 11, 1977.

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), Continental Oil Company has applied for two 4-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 18 S., R. 31 E.,
Sec. 20, SE¼SW¼ and SW¼SE¼;
T. 19 S., R. 31 E.,
Sec. 1, lot 3 and S½NW¼.

These pipelines will convey natural gas across 0.695 miles of national resource lands in Eddy 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 Monoger, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

FRED E. PADILLA,
Chief, Branch of
Lands and Minerals Operations.

[FR Doc.77-1911 Filed 1-19-77;8:45 am]

[NM 29548]

NEW MEXICO

Application

JANUARY 13, 1977.

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), Norhern Natural Gas Company has applied for one 4-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 20 S., R. 37 E.,
Sec. 6, E½SW¼.

This pipeline will convey natural gas across 0.287 miles of natural 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 Mineral Operations.

[FR Doc.77-1919 Filed 1-19-77;8:45 am]

[OR 10458-B]

OREGON

Order Providing for Opening of Public Land

JANUARY 12, 1977.

1. In an exchange of lands made under the provisions of the Act of July 31, 1939, 53 Stat. 1144, the following land has been reconveyed to the United States:

WILLAMETTE MERIDIAN

T. 2 S., R. 6 E.,
Sec. 36, S½SE¼.

The area described contains 80 acres in Clackamas County and is administered under the policy of sustained-yield forest management which governs the administration of the revested Oregon and California Railroad lands.

2. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of law applicable to revested Oregon and California Railroad lands, the land described in paragraph 1

hereof is hereby open to operation of the public land laws, including the mining laws (Ch. 2, Title 30 U.S.C.), and the mineral leasing laws. All valid applications received at or prior to 10:00 a.m., February 17, 1977, shall be considered as simultaneously filed at that time. These received thereafter shall be considered in the order of filing.

3. Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

HAROLD A. BERENDS,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-1921 Filed 1-19-77;8:45 am]

[Colorado 436]

PARTIAL TERMINATION OF PROPOSED WITHDRAWAL AND RESERVATION OF LANDS

JANUARY 10, 1976.

Notice of a Forest Service, U.S. Department of Agriculture application, Colorado 4436, for withdrawal and reservation of lands for public purposes was published as FR Doc. 68-9371, on page 11181 of the issue of August 7, 1968. The applicant agency has cancelled its application insofar as it affects the following described lands:

SIXTH PRINCIPAL MERIDIAN

T. 8 S., R. 78 W.,
Sec. 26: Lot 1;
Lot 2, North 15 chains of east 10 chains;
Lot 8, South 5 chains;
Lot 9, East 10 chains of South 5 chains;
W½SE¼.

The above area aggregates 150 acres.

Therefore, pursuant to the regulations contained in 43 CFR, Part 2311, such lands will be relieved of the segregative effect of the above-mentioned application 30 days from the date of this notice.

ALAN D. CAMPBELL,
Acting Chief, Branch of Land Operations.

[FR Doc.77-1879 Filed 1-19-77;8:45 am]

PACIFIC OUTER CONTINENTAL SHELF OFFICE

Approval of Outer Continental Shelf Official Protraction Diagram

1. Notice is hereby given that, effective January 21, 1977, the following OCS Official Protraction Diagram approved on the date indicated, is available, for information only, in the Pacific Outer Continental Shelf Office, Bureau of Land Management, Los Angeles, CA. In accordance with Title 43, Code of Federal Regulations, this protraction diagram is the basic record for the description of mineral and oil and gas lease offers in the geographic area it represents.

OUTER CONTINENTAL SHELF OFFICIAL PROTRACTION DIAGRAM

Description:	*Approval date*
NI 10-12	Dec. 6, 1976

2. Copies of this diagram are for sale at two dollars ($2.00) per sheet by the Manager, Pacific Outer Continental Shelf Office, Bureau of Land Management, 300 N. Los Angeles St., Rm. 7127, Los Angeles, CA 90012. Checks or money orders should be made payable to the Bureau of Land Management.

WILLIAM E. GRANT,
Manager, Pacific Outer Continental Shelf Office.

[FR Doc. 77-1883 Filed 1-19-77;8:45 am]

Geological Survey

KNOWN GEOTHERMAL RESOURCES AREA

Land Description; Lake City-Surprise Valley, California; Correction

The following is a correction to the land description for the Lake City-Surprise Valley Known Geothermal Resources Area FR Doc. 75-5605 which appeared on page 8972 of the Tuesday, March 4, 1975 issue. The description of the portion of the known geothermal resources area lying in T. 41 N., R. 17 E., MDM should read as follows:

T. 41 N., R. 17 E.,
Secs. 3, 4;
Sec. 5, projected;
Secs. 6, 7, all protracted lands as per Calif. Protraction Diagram 166;
Sec. 8, projected;
Secs. 9, 10, 15;
Sec. 16, all protracted lands as per Calif. Protraction Diagram 166;
Sec. 21, projected;
Secs. 22, 27;
Sec. 28, all protracted lands as per Calif. Protraction Diagram 166.

Dated: January 7, 1977.

WILLARD C. GERE,
Acting Conservation Manager, Western Region.

[FR Doc.77-1881 Filed 1-19-77;8:45 am]

Office of the Secretary

CENTRAL VALLEY PROJECT

Rates for Sale of Power to Pacific Gas and Electric Company

On February 20, 1976, the Department of the Interior announced a proposed rate adjustment to PG&E for Northwest power. Subsequently, written comments were made by interested parties and meetings were held in Washington, D.C., and in Sacramento and San Francisco, California, with interested parties. PG&E has agreed that the rate ultimately decided upon will be retroactive to April 1, 1976.

Attached are copies of letters regarding the final rate offered PG&E by the Department and subsequent acceptance of that rate by PG&E.

The final position of the Department of the Interior in this matter is presented in the statement set forth below.

Dated: January 12, 1977.

DENNIS N. SACHS,
Deputy Assistant Secretary of the Interior.

FINAL POSITION ON AN ADJUSTMENT IN RATES TO THE PACIFIC GAS AND ELECTRIC COMPANY FOR NORTHWEST CAPACITY AND ENERGY

DECEMBER 14, 1976.

The purpose of this statement is to announce the final decision regarding power rates to PG&E for capacity and energy imported from the Northwest under Contract No. 14-06-200-2948A, in connection with the Central Valley Project in California.

On February 20, 1976, the Assistant Secretary Land and Water Resources issued a statement setting forth our "Proposed Adjustment in Rates to the Pacific Gas and Electric Company for Northwest Capacity and Energy" under Contract No. 14-06-200-2948A, noting that comments would be received until March 24, 1976. This announced that the Department proposed to support a "pass-through" rate reflecting the actual cost of thermal power. The rate stated was initially to be $4.28 per kilowatt month for capacity and 9.03 mills per kilowatthour for energy and was subject to annual adjustment.

I have examined the record regarding the February 20, 1976, proposed decision on PG&E power rates, reviewed both oral and written comments presented by the preference customers and PG&E, considered internal staff documents concerning the proposed rate adjustment, and have concluded that the "split" rate is the appropriate rate for PG&E to pay for Northwest power.

The initial charge for April through December 1976 for capacity with energy will now be $4.12 per kilowatt month and 7.70 mills per kilowatthour for energy. These rates which are different from those shown in our February 20, 1976 announcement are based on more recent cost data. The charge for capacity without energy would be the Central Valley Project rate for capacity.

The method of determining the charges to PG&E for this rate is shown in Exhibit A.

Under this rate PG&E will be charged the "pass-through" or-cost-of service rate for energy actually received but will pay the pass-through capacity charge for only that portion of capacity associated with energy at a 60 percent load factor. The balance of the Northwest capacity delivered to PG&E will be charged at the Central Valley Project rate.

The value of Northwest capacity that PG&E purchases is directly related to the amount of energy that accompanies that capacity. Since PG&E is expected to receive Northwest power at an annual load factor decreasing from about 35 percent during 1976 to 12 percent during 1980, as opposed to their system load factor of about 60 percent, the value of the capacity that PG&E will receive under the contract will be less. Therefore, the capacity sold to PG&E should be sold at a lesser price than that purchased with a high capacity factor.

The preference customers contended in support of the imposition of full "pass-through" rate that the cost to PG&E of alternative sources of generation was considerably more expensive than Northwest power. Alternative costs are, in the view of the Departments Solicitor, an appropriate consideration in the determination of "fair and equitable" rates under Article 32 of the Contract.

Data developed by the Department indicate that the average cost of capacity under the "split" rate would be somewhat above the cost of 20 percent load factor peaking facility and somewhat below the cost of a base load facility operated at 80 percent load factor which the company presumably would have built in lieu of the purchase of Northwest imports.

Analyses prepared by the Department indicate that the appropriate alternative would be either an oil fired baseload plant with an 80 percent load factor or a peaking plant with a 20 percent load factor. The baseload alterative would cost the company approximately 25 mills per kilowatthour for power while the peaking alternative would approach 44 mills per kilowatthour. The "split" rate as developed by the Department at 20 percent load factor would cost PG&E approximately 27 mills per kilowatthour, slightly more than the baseload alternative.

Moreover, the weight of the evidence supports the "split" rate, in that there can be no guarantee that energy accompanying Northwest power will actually be available to PG&E at any load factor. Since there can be no guarantee of any Northwest energy, it is reasonable that it costs less than firm power available to PG&E.

Over the next five years preference customers demands for power are anticipated to be such that the amount of energy sold to PG&E will decrease annually at a much greater rate than the decrease in capacity sold to PG&E. It would therefore be unfair and inequitable to require PG&E and its customers to pay a high baseload rate with no assurance that the company could purchase high quality baseload energy. While the "split" rate accords no assurance that baseload energy will be supplied from Northwest sources to the company, it does assure that the costs which the company incurs and passes through to its customers will more truly reflect the value of energy actually delivered to the company for its use.

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

Dated: December 14, 1976.

KENT FRIZZELL,
Under Secretary of the Interior.

EXHIBIT A

RATE FOR NORTHWEST POWER UNDER ARTICLE 22(b)(2) AFTER APRIL 1, 1976

PG and E would be charged for Northwest power sold to it by the USBR after April 1, 1976, as follows:

(1) For capacity and energy from the Northwest:

(A) *Capacity with Energy.* For the Northwest capacity accompanied by energy, PG and E will pay the Bureau the cost of Northwest capacity as determined by Exhibit B. The amount of capacity paid for at this rate, in any month, shall be that amount of capacity, not to exceed Contract Dependable Capacity, accompanied by energy at 60 percent load factor.

(B) *Capacity without Energy.* For any remaining capacity not purchased under (A), PG and E will pay the CVP (Project) capacity rate, provided that the total amount of capacity purchased under A) and B) shall not exceed Contract Dependable Capacity.

(C) *Energy.* PG and E will pay for Northwest energy at rates as determined by Exhibit B.

EXHIBIT B

METHODOLOGY FOR CALCULATING CAPACITY AND ENERGY CHARGES FOR NORTHWEST POWER SOLD TO PACIFIC GAS AND ELECTRIC COMPANY

The annual cost of capacity will be calculated as the sum of:

a. 100 percent of annual fixed cost of the Centralia facilities.

b. 65 percent of the annual O&M cost of the Centralia facilities.

c. 10 percent of the annual fuel cost for the Centralia facilities.

d. That part of wheeling and capacity reserve annual cost paid to BPA proportional to the capacity component of the total capacity and energy cost of Centralia.

The monthly capacity charge per kilowatt will be the total annual cost for Northwest capacity divided by 12 and then by 382,000 kilowatts, the Northwest capacity delivered to the CVP load center at Tracy.

The annual cost of energy, up to 7,050 kWh/kW/year, will be calculated as the sum of:

a. 35 percent of the annual O&M cost of the Centralia facilities.

b. 90 percent of the annual fuel cost of the Centralia facilities.

c. That part of the wheeling and capacity reserve annual cost paid to BPA proportional to the energy component of the total capacity and energy cost of Centralia.

d. Estimated annual energy support purchased from the Northwest.

The energy charge per kilowatthour will be the total energy cost divided by the Northwest energy delivered to the CVP load center at Tracy.

Not later than October 1 of each year, Reclamation will prepare and furnish to PG&E estimated energy and capacity charges for Northwest power determined on this basis. These charges will apply to sales to PG&E during the following year. Annually, during January, the billing to PG&E for the previous year will be adjusted, as necessary, based on actual billing of Northwest power cost to CVP.

The rate for Northwest energy in excess of 7,050 kWh/kW/yr will be determined by the cost as purchased from the Northwest and adjusted upward for losses to the CVP load center at Tracy.

DECEMBER 14, 1976.

Mr. JOHN F. BONNER,
President, Pacific Gas and Electric Company, 77 Beale Street, San Francisco, California 94106.

DEAR MR. BONNER: Enclosed is a statement giving the final position of the Secretary of the Interior on the rate to your company for the sale of capacity and energy delivered to you by the Central Valley Project (CVP) under Contract No. 14-06-200-2948A, Article 22(b)(2).

In your March 22, 1976, letter, you pointed out that this rate should not apply to "non-Centralia" energy imported from the Northwest. We agree with your contention on that point. This rate will not apply to imported Northwest energy in excess of 7,050 kWh/kW/yr in accordance with Article 19(d) of that contract. The rate for energy imported in excess of 7,050 kWh/kW from the Northwest will be the cost to the CVP of such energy as adjusted upward for losses to the CVP load center.

If you do agree to accept this rate, please advise us of your concurrence within 10 days. If you do not agree to accept the rate, we would also need to know this within 10 days so that we can prepare the necessary material to submit the matter to the Federal Power Commission for the decision as provided for in Article 32 of the contract.

Sincerely yours,

KENT FRIZZELL,
Under Secretary of the Interior.

CENTRAL VALLEY

DECEMBER 20, 1976.

The Honorable KENT FRIZZELL,
Under Secretary of the Interior, U.S. Department of the Interior, Washington, D.C. 20240.

DEAR MR. FRIZZELL: We have received your letter of December 14, 1976, stating the final position of the Secretary of the Interior on the rates for capacity and energy sold to Pacific Gas and Electric Company under Article 22(b)(2) of the Contract 14-06-200-2948A ("Contract"). We note that your proposal includes the rates for both Centralia power and other energy imported from the Northwest by the Central Valley Project. By this letter Pacific Gas and Electric Company accepts and agrees to the rates proposed in your December 14, 1976, letter and described in the Secretary of the Interior's December 14, 1976, "Final Position on an Adjustment in Rates to the Pacific Gas and Electric Company for Northwest Capacity and Energy" and Exhibits A and B, attached thereto. Accordingly, pursuant to Article 32 of the Contract the rates for the five year period commencing on April 1, 1976, shall be determined as set forth in said Exhibits A and B.

Sincerely yours,

JOHN F. BONNER.

[FR Doc.77-1884 Filed 1-19-77;8:45 am]

HEARINGS

Procedural Suggestions for Implementation of Sec. 106 of the Energy Policy and Conservation Act

Section 160(a)(1) of the Energy Policy and Conservation Act of December 22, 1975 (42 USC 6214, Supp. V), provides that "The Secretary of the Interior, by rule on the record after an opportunity for hearing, shall, to the greatest extent practicable, determine the maximum efficient rate of production and, if any, the temporary emergency production rate for each field on Federal lands which produces, or is determined to be capable of producing, significant volumes of crude oil or natural gas, or both." Section 106(e)(1) states that "The term 'maximum efficient rate of production' means the maximum rate of production of crude oil or natural gas, or both, which may be sustained without loss of ultimate recovery of crude oil or natural gas, or both, under sound engineering and economic principles."

The Geological Survey proposes to implement section 106 by providing regulations to determine the Maximum Efficient Rate (MER) and the Temporary Emergency Production Rate (TEPR). However, because the MER definition in Section 106 and the existing MER definition under OCS Order No. 11 issued under the Outer Continental Shelf Lands Act (namely "The maximum sustainable daily oil or gas withdrawal rate

from a reservoir which will permit economic development and depletion of that reservoir without detriment to ultimate recovery"), although phrased in similar terms, were designed to meet different purposes, the definitions and procedures for implementing section 106 must be developed. Consideration will be given to the definitions in section 106, OCS Order No. 11, the possible definition that maximum efficient rate (MER) represents that rate of production which maximizes net value to the producer based on discounted cash flow, and any other definitions that may be proposed. Background documents include Section 106, OCS Order No. 11, and a report from Resources for the Future on "The use of maximum efficent rate (MER) as a regulatory tool," available on request from the Chief, Conservation Division, U.S. Geological Survey, Reston, Va. 22092.

Interested persons may submit written comments on the proposed definitions and procedures thereunder, which will be considered in formulating an agenda for open hearings to obtain suggestions as to a working definition of MER and TEPR and appropriate procedures for implementing Section 106. The hearings will be held within 45 to 60 days at Washington, D.C., New Orleans, Louisiana, and Denver, Colorado.

Interested persons who wish to submit comments or to appear and present a statement may write to the Chief, Conservation Division, U.S. Geological Survey, Reston, Va. 22092, by February 22, 1977. An exact schedule of the hearings is being prepared and will be published soon.

WILLIAM L. FISHER,
Assistant Secretary
Energy and Minerals.

JANUARY 13, 1977.

[FR Doc.77-1882 Filed 1-19-77;8:45 am]

INTERNATIONAL TRADE COMMISSION

[USITC SE-77-3B]

GOVERNMENT IN THE SUNSHINE

Closed Portion of Meeting

At its meeting of January 17, 1977, the Commission voted to hold the discussion under the following agenda item for its meeting of January 17, 1977, in closed session:

4. GSP (Inv. 503(a)-3 and 332-81)—consideration of draft report.

Pursuant to the specific exemptions of 5 U.S.C. 552b(c)(4) and (9)(A) and (B), on the authority of 19 U.S.C. 1335, and in conformity with proposed 19 CFR 201.-37, Commissioners Parker, Moore, Bedell, and Ablondi voted to hold the portion of the January 17, 1977, meeting pertaining to item No. 4 in closed session. Commissioners Minchew and Leonard voted against closing this portion to the public.

A majority of the entire membership of the Commission felt that this portion of the meeting should be closed to the public since information to be discussed in such portion is: (1) Likely to disclose commercial or financial information obtained from a person and privileged or confidential; (2) information the premature disclosure of which would lead to significant financial speculation in affected commodities; and (3) information which would be likely to significantly frustrate implementation of a proposed agency action.

Those persons reasonably expected to be present at this closed portion and their corresponding affiliations are listed as follows:

Daniel Minchew, Chairman
Joseph O. Parker, Vice Chairman
Will E. Leonard, Commissioner
George M. Moore, Commissioner
Catherine Bedell, Commissioner
Italo H. Ablondi, Commissioner
Kenneth R. Mason, Secretary
Al Sparks, Court Reporter
Edward P. Furlow, Acting Deputy Director, Operations
Charles Katlin, Commodity Analyst
E. William Fry, Supervisory Investigator
Nicholas C. Tolerico, Commodity Analyst
Robert T. Roeder, Commodity Analyst
Charles W. Dalker, Acting Chief, Machinery & Equipment
Leonard Jensen, Acting Chief, Agriculture, Fisheries, and Forest Products
Alvin Z. Macomber, Commodity Analyst
James S. Chase, Commodity Analyst
Thomas C. Lopp, Commodity Analyst
Clyde Gumbmann, Commodity Analyst
John G. Reeder, Commodity Analyst
David E. Ludwick, Commodity Analyst
Bruce N. Hatton, Assistant to Commissioner Leonard
F. David Foster, Assistant to Commissioner Leonard
Claude L. Gingrich, Assistant to Commissioner Parker
Edward R. Easton, Attorney-Advisor
George N. Ecklund, Acing Director, Office of Economic Research
Robert A. Cornell, Acting Director, Office of Industries
J. Frederick Warren, Commodity Analyst
Lowell Grant, Commodity Analyst
Russell N. Shewmaker, General Counsel
Charles R. Ramsdale, Acting Director, Personnel

The General Counsel to the Commission certified that it is his opinion that the Commission's action in closing this portion of its meeting of January 17, 1977, was properly taken by a vote of a majority of the entire membership of the Commission pursuant to 5 U.S.C. 552b(d)(1) and in conformity with proposed 19 CFR 201.37(d). The discussion to be held in closed session is within the specific exemptions of 5 U.S.C. 552b (c)(4) and (9)(A) and (B).

Issued: January 17, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

RUSSELL N. SHEWMAKER,
General Counsel.

[FR Doc.77-1968 Filed 1-19-77;8:45 am]

NATIONAL SCIENCE FOUNDATION

ADVISORY COMMITTEE FOR RESEARCH—TASK GROUP 15

Amendment to Meeting

Task Group 15 of the Advisory Committee for Research is meeting on January 27 and 28, 1977. The meeting was originally scheduled to be held in Rm. 405, 5225 Wisconsin Avenue, NW.

The meeting will now be held at two different locations as follows:

January 27—Rm.405 at 5225 Wisconsin Avenue NW.; and
January 28—Rm. 511, 1800 G St. NW.

There are no other changes in the meeting notice.

The notice of this meeting appeared in the FEDERAL REGISTER on Thursday, December 20, 1976, Vol. 41, No. 252, FR Doc. 76-38336, page 56873.

M. REBECCA WINKLER,
Acting Committee
Management Officer.

JANUARY 17, 1977.

[FR Doc. 77-1975 Filed 1-19-77;8:45 am]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

Proposed Meetings

In order to provide advance information regarding proposed meetings of ACRS Subcommittees and Working Groups and of the full Committee, the following preliminary schedule is being published. This preliminary schedule reflects the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published in FR Vol. 41, December 20, 1976, page 55395. Those meetings that are definitely scheduled have had, or will have, an individual notice published in the FR approximately 15 days (or more) prior to the meeting. Those Subcommittee and Working Group meetings for which it is anticipated that there will be a portion or all of the meeting open to the public are indicated by an asterisk (*). It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. Information as to whether a meeting has been firmly scheduled, cancelled or rescheduled, or whether changes have been made in the agenda for the February 10-12, 1977 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 202/634-1374, Attn: Mary E. Vanderholt) between 8:15 a.m. and 5:00 p.m., EST.

SUBCOMMITTEE AND WORKING GROUP MEETINGS

**Cherokee Nuclear Station, Units 1, 2, and 3, and Perkins Nuclear Station, Units 1, 2, and 3*, January 19, 1977, Charlotte, NC; POSTPONED to March 1, 1977, Charlotte, NC.

**Transportation of Radioactive Materials*, January 25, 1977, Chicago, IL POSTPONED to February 24, 1977, Atlanta, GA.

**Enrico Fermi Atomic Power Plant, Unit No. 2*, January 27, 1977, Detroit, MI., POSTPONED INDEFINITELY.

**Blue Hills Station, Units 1 and 2*, January 28, 1977, Jasper, TX to review the application of Gulf States Utility Company for an early site review.

Emergency Core Cooling System, January 29, 1977, Washington, DC to review Exxon Nuclear Company, Inc. integrated ECCS evaluation model for nonjet-pump boiling water reactors.

Assessment of Selected Light-Water Reactor Safety Matters, February 1, 1977, Washington, DC to review selected matters related to light water reactor safety referred to the ACRS by the NRC.

Resolution of Generic Items, February 2, 1977, Washington, DC to review the status of generic items identified by the ACRS and to determine if any new items should be added to the list.

Siting Evaluation, February 2, 1977, Washington, DC to discuss nuclear facility siting.

Emergency Core Cooling System, February 5, 1977, Washington, DC to discuss experimentation concerning core bypass of emergency core coolant.

Seismic Activity, February 8–9, 1977, Washington, DC to discuss recent seismic related developments, ground motion for seismic design, soil-structure interaction, and to review seismic related matters referred to the ACRS by the NRC.

Regulatory Activities, February 9, 1977, Washington, DC to review working papers, future Regulatory Guides, and proposed changes to existing Regulatory Guides; also, to discuss pertinent activities which affect the current licensing process and/or reactor operations, including practices and procedures for correction of ECCS errors for operating plants.

Sundesert Nuclear Power Plant, Units 1 and 2, February 18, 1977, Blythe, CA to review the application of the San Diego Gas and Electric Company for a site review.

Transportation of Radioactive Materials, February 24, 1977, Atlanta, GA to review public comments on NUREG–034, "Draft Environmental Statement on the Transportation of Radioactive Material by Air and Other Modes."

Cherokee Nuclear Station, Units 1, 2, and 3, and Perkins Nuclear Station, Units 1, 2, and 3, March 1, 1977, Charlotte, NC to review the application of the Duke Power Company for a permit to construct these Units.

Phipps Bend Nuclear Power Plant, Units 1 and 2, March 3 or 4, 1977, Tentative—Washington, DC to review the application of the Tennessee Valley Authority for a permit to construct Units 1 and 2.

Fort Calhoun Station, Unit 2, March 8, 1977, Omaha, NE to review the application of the Omaha Public Power District for a permit to construct Unit 2.

Regulatory Activities, March 9, 1977, Washington, DC to review working papers, future Regulatory Guides, and proposed changes to existing Regulatory Guides; also, to discuss pertinent activities which affect the current licensing process and/or reactor operations.

FULL COMMITTEE MEETINGS

February 10–12, 1977:

A. *Blue Hills Station, Units 1 and 2—Construction Permit Review.

B. *Exxon Nuclear Company, Inc. Replacement Fuel—ECCS evaluation models for PWR plants with low pressure containments and nonjet-pump BWRs.

March 10–12, 1977:

Agenda to be announced.

Dated: January 17, 1977.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc.77-2016 Filed 1-19-77;8:45 am]

ADVISORY COMMITTTE ON REACTOR SAFEGUARDS; SUBCOMMITTEE ON EMERGENCY CORE COOLING SYSTEMS

Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the ACRS Subcommittee on Emergency Core Cooling Systems (ECCS) will hold an open meeting on February 5, 1977 in Room 1046, 1717 H Street, N.W., Washington, DC 20555. The purpose of this meeting is to discuss experimentation concerning core bypass of emergency core coolant.

The agenda for subject meeting shall be as follows:

SATURDAY, FEBRUARY 5, 1977, 8:30 A.M. UNTIL THE CONCLUSION OF BUSINESS

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a Subcommittee report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, and its consultants, pertinent to selected matters relating to experimentation concerning core bypass of emergency core coolant.

The Subcommittee may then caucus to determine whether the matters have been adequately covered and whether the project is ready for review by the full Committee.

Practical considerations may dictate alterations in the above agenda or schedule. The Chairman of the Subcommittee is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incompleted open session from one day to the next.

The Advisory Committee on Reactor Safeguards is an independent group established by Congress to review and report on each application for a construction permit and on each application for an operating license for a reactor facility and on certain other nuclear safety matters. The Committee's reports become a part of the public record. Although ACRS meetings are ordinarily open to the public and provide for oral or written statements to be considered as a part of the Committee's information gathering procedure concerning the health and safety of the public, they are not adjudicatory type hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety and Licensing Board as part of the Commission's licensing process. ACRS meetings do not normally treat matter pertaining to environmental impacts outside the safety area.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda may do so by providing a readily reproducible copy to the Subcommittee at the beginning of the meeting. Comments should be limited to safety related areas within the Committee's purview.

Persons desiring to mail written comments may do so by sending a readily reproducible copy thereof in time for consideration at this meeting. Comments postmarked no later than January 29, 1977 to Mr. Thomas G. McCreless, ACRS, NRC, Washington, DC 20555, will normally be received in time to be considered at this meeting.

Background information concerning items to be considered at this meeting regarding the Oyster Creek Nuclear Power Plant can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H St., N.W., Washington, DC 20555 and at the Ocean Country Library, 15 Hooper Avenue, Toms River, NJ 08753.

(b) Persons desiring to make an oral statement at the meeting should make a written request to do so, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Subcommittee will receive oral statements on topics relevant to its purview at an appropriate time chosen by the Chairman.

(c) Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call on January 28, 1977 to the Office of the Executive Director of the Committee (telephone 202/634–1374, Attn: Mr. Thomas G. McCreless) between 8:15 a.m. and 5:00 p.m., EST.

(d) Questions may be propounded only by members of the Subcommittee and its consultants.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(f) A copy of the transcript of the meeting where factual information is presented and a copy of the minutes of the meeting will be available for inspection on or after February 14, 1977 and May 5, 1977, respectively, at the NRC Public Document Room, 1717 H St., N.W., Washington, DC 20555.

Copies may be obtained upon payment of appropriate charges.

Dated: January 17, 1977.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc.77-2017 Filed 1-19-77;8:45 am]

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 77-3]

CIVIL AVIATION SAFETY STATISTICS, 1976; CORRESPONDENCE CONCERNING NTSB RECOMMENDATIONS

Availability and Receipt

U.S. civil aviation—air carriers and general aviation alike—achieved a generally excellent safety record in 1976, according to press release No. SB-77-2, issued January 13 by the National Transportation Safety Board. As reflected in the 13 preliminary accident statistical tables attached to the press release, air carriers last year recorded the lowest accident total in commercial aviation history, and the fewest fatalities in more than 20 years. In general aviation—all non-air carrier flying—fatal accident rates were at record lows, and the fatal accident total was the lowest in 9 years.

In all operations, the certificated route air carriers, supplemental carriers, and commercial operators of large aircraft had only 28 accidents in 1976, four of them fatal. The passenger and crew fatality total was 45. The same carriers and operators in 1975 had 45 accidents, three of which were fatal, and a fatality total of 124. The certificated route and supplemental carriers' fatality toll of 42 in three fatal accidents was the lowest since the same carriers recorded 40 fatalities in 1954. These carriers flew nearly 2.5 billion aircraft miles last year.

Statistics specific to general aviation accidents indicate that, although total accidents increased by 8 percent to 4,567 last year, the fatal accident total of 636 was a decrease of 6 percent from 1975 and 13 percent from 1974; 1976 was the second successive year in which fatal general aviation accidents decreased.

According to the press release, general aviation accident exposure increased, in terms of both aircraft hours and miles flown. In air taxi operations, which are part of general aviation, commuter and on-demand air taxies combined to record 195 total accidents, five fewer than in 1975. Commuter air carriers accounted for 36 accidents in all operations last year; 12 were fatal, causing 32 fatalities.

Final civil aviation statistics for 1976 will be available later this year in the Safety Board's "Annual Review of Aircraft Accident Data."

Response to Safety Board Recommendations.—In acknowledging receipt of recommendations R-76-56 and R-76-57, the Association of American Railroads by letter dated December 27 indicates that the recommendations are being referred to appropriate groups within the AAR for consideration and comment. The recommendations were issued as a result of investigation of the autotrain derailment last May 5 at Jarratt, Virginia. (See 41 FR 52116, November 26, 1976.)

Commenting specifically on recommendation R-76-56, which recommended that AAR establish a system to insure that wheels exposed to critical temperatures are removed from service before failure occurs, AAR states that it does have in place a very good system which has proven to be very reliable. AAR states, "It is not possible to 'insure' that the possibility of failure can be completely eliminated." There is no precise "critical temperature" and time of exposure that apply uniformly to all wheels, according to AAR; the time and temperature at which dangerous overheating occurs varies with wheel design and composition. AAR's present definition of overheated wheel depends upon visual observation (metal discoloration) and was revised two years ago to reflect current technology.

Safety Board Replies to Recommendation Responses—Board letter of January 13 to the Federal Aviation Administration concerns recommendations A-74-75 through A-74-17 issued March 1, 1974, regarding expanded parameter flight data recording systems. The Board notes that FAA in response to these recommendations issued a notice of proposed rulemaking to amend 14 CFR 121.343 (40 FR 23058, May 27, 1975). The Board now expresses concern that no action has been taken by the FAA to implement this proposal in the 18 months since it was published, and believes that this important regulation should be adopted as soon as possible.

Board letter of December 29 concerning recommendations A-76-20 through A-76-28 is in reply to FAA's letter of August 2, 1976. The recommendations were issued last April 29 as a result of the Board's special study, "Chemically Generated Supplemental Oxygen Systems in 18730, May 6, 1976, and 41 FR 35090, August 19, 1976.)

Re A-76-23, the Board takes note of FAA's decision to establish a service life and periodic inspection requirements for supplemental oxygen equipment. In its commentary on FAA's implementation of recommendations A-76-24 through A-76-26 by issuance of Air Carrier Operations Bulletin No. 76-4, the Board states that while the brief description of required actions on the part of Principal Operations Inspectors may satisfy the intent of these recommendations, the Bulletin does not provide guidelines for improved passenger briefings or for improved printed instructions for the use of chemical supplemental oxygen systems, as recommended in A-76-25. Board intent was that FAA provide criteria to operators, as well as Operations Inspectors, by which they could measure the adequacy of briefings and printed instructions.

Re A-76-20, which recommended that passenger supplemental oxygen systems have a means to indicate oxygen flow when the system is operating, the Board is aware that a variety of sensitive, reliable, and simple flow-indicating devices are available today to perform this function. However, as cited in the Board's special study, passengers discard their oxygen equipment where there is no flow indication. FAA's response suggested an alternative to this problem—an expanded briefing for passengers. The Board cites FAA for not providing guidelines as to what constitutes an adequate briefing.

With reference to recommendations A-76-21 and 22, which asked that adjustment tabs be installed on oxygen mask headbands, the Board disagrees that such a modification would not be cost effective. The Board believes that a tab-equipped adjustable strap can easily be retrofitted to existing masks as a field modification. The FAA stated that better passenger briefings may be the more realistic approach to this end; but the Board believes that this may be suitable material for inclusion in an Advisory Circular, as recommended in A-76-25.

In commenting on A-76-27, which recommended development of design standards for passenger supplemental oxygen systems which would include accepted human factors engineering principles and system design concepts for use by designers of these systems, the Board notes that its special study clearly identified the supplemental oxygen system in the DC-10 aircraft as having user-equipment interface problems which could have been avoided if guidance material had been available to the designer to point out some of these compatibility problems and means to avoid them. "That these human factors considerations were not initially recognized was clearly demonstrated by the Douglas Aircraft Company in 1974 when a study, initiated to evaluate illustrated instruction placards for the seatback-installed oxygen systems, concluded that less than 25 percent of the test subjects performed the necessary tasks to obtain oxygen when presented with the oxygen system without further instructions," the Board stated.

Re A-76-28, which asked for standards for type certification demonstration tests of passenger supplemental oxygen systems, the Board notes that the intent of this recommendation is a logical follow-up to any system design when it is so closely related to passenger safety. The Board believes that systems which must be used in an emergency situation by the untrained must be tested in the early design stages to show that the user is able to perform the required actions with minimal difficulty and in sufficient time to avoid unconsciousness. According to the Board, the DC-10 supplemental oxygen system was not so tested, either in its early design stage or during aircraft certification. The Board believes that if the FAA can require demonstration tests for evacuation systems, it should also consider such tests for supplemental oxygen systems.

The Board urges that FAA reconsider recommendations A-76-20 through A-76-22, A-76-25, and A-76-27 through A-76-28.

Board letter, also dated December 29, concerning recommendations A-76-67 through A-76-20 is in reply to FAA's response of July 0, 1976. The recommendations were issued last May 13 in connection with the Trans World Airlines

Boeing 707 accident near Milan, Italy, on December 22, 1975. The recommendations concerned the practice by some U.S.-flag air carriers of conducting "look-see" approaches at foreign airports. (See 41 FR 20747, May 20, 1976, and 41 FR 34125, August 12, 1976.)

The Board does not concur with FAA's analysis of these recommendations nor its proposed alternate action for the following reasons:

1. The Board believes that safety is compromised by the fact that U.S.-flag air carriers are permitted to conduct "look-see" approaches in foreign countries while such practices are not permitted in the United States, except under provisions of 14 CFR 121.651(c). Also, supplemental air carriers and commercial operators are prohibited by Federal Aviation Regulations from conducting "look-see" approaches at all times. Thus, a higher level of safety has been provided for this class air carrier than for U.S.-flag and domestic air carriers. Such an inconsistency is not in the interest of safety.

2. Only three air carriers—TWA, Northwest Airlines, and Pan American—allow their pilots to initiate an approach at foreign airports regardless of the reported weather, if the rules of that foreign country contain no other restrictions. All other companies have adopted the U.S. rule (14 CFR 121.651 (c)) in foreign operations, the rule requiring an operative instrument landing system and precision approach radar and requiring that both of these facilities be used for an approach when the weather is reported to be below minimum conditions. This regulation effectively eliminates "look-see" approaches in the 48 contiguous States, since precision approach radar is virtually nonexistent at civil airports in the United States. The Board believes that many foreign weather facilities are now of a quality comparable to those in the United States and that reports emanating from these facilities should be acceptable for controlling approaches and landings at those airports. The same safety criteria governing "look-see" approaches in the United States should apply at foreign airports.

3. There may be instances in operating U.S.-flag air carriers when restrictions to "look-see" approaches would seriously hinder a viable operation into some foreign airports. However, this is not a reason to retain the current blanket authority for "look-see" approaches in foreign operations since other means can be employed to allow reasonably efficient service into such airports. Retaining the "look-see" authority until ICAO standards are revised is not considered to be in the best public interest and is not in keeping with the role of leadership which FAA has exhibited in the past, according to the Safety Board.

4. The alternate action proposed by FAA and expressed in Air Carrier Operations Bulletin No. 76-5 serves as further encouragement to pilots to execute approaches at foreign airports regardless of the reported weather. To caution pilots not to execute an approach if the reported weather is well below their landing minimums is tantamount to condoning an approach attempt when the visibility is reported to be zero; it depends on the pilot's interpretation of the term "well below." The Safety Board objects to such advice.

In view of the above, the Board urges FAA to reconsider recommendations A-76-67 through A-67-70 in the interest of safety.

The press release is available to the general public; single copies may be obtained without charge. Copies of correspondence relating to safety recommendations 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 notice in the FEDERAL REGISTER. Address inquiries to: Publications Unit, National Transportation Safety Board, Washington, D.C. 20594.

(Sec. 307 of the Independent Safety Board Act of 1974 (Pub. L. 93-633, 88 Stat. 2172 (49 U.S.C. 1906)).)

MARGARET L. FISHER,
Federal Register Liaison Officer.

JANUARY 17, 1977.

[FR Doc.77-1954 Filed 1-19-77;8:45 am]

OFFICE OF THE FEDERAL REGISTER

EDUCATIONAL WORKSHOPS ON HOW TO USE THE FEDERAL REGISTER

Region IX Workshops in Los Angeles and San Francisco, California

The Office of the Federal Register (OFR) will hold six separate workshops on "The Federal Register—What It Is and How To Use It" in Los Angeles and San Francisco, California, as part of the General Services Administration's Consumer Representation Plan.

LOS ANGELES WORKSHOPS

Workshop dates: Wednesday, February 23, 9:30 a.m.; Thursday, February 24, 9:30 a.m.; Friday, February 25, 9:30 a.m. (Reservations required for each session). Location: Room 8544, Federal Building, 300 North Los Angeles Street, Los Angeles, CA. Reservations: Cornelia Born, 213-688-3210

SAN FRANCISCO WORKSHOPS

Workshop dates: Tuesday, March 1, 9:30 a.m.; Wednesday, March 2, 9:30 a.m.; Thursday, March 3, 9:30 a.m. (Reservations required for each session). Location: Room 2575, Tishman Building, 525 Market Street, San Francisco, CA. Reservations: Velma Anlew, 415-556-2786

AGENDA

The content of each workshop session will be identical. Each workshop will last for approximately three hours and will cover the following areas:

1. A brief history of the FEDERAL REGISTER.

2. The difference between legislation and regulations.

3. The relationship of the FEDERAL REGISTER and the Code of Federal Regulations.

4. Important elements of a typical FEDERAL REGISTER document.

5. An introduction to the finding aids of the OFR and a practical exercise using those finding aids.

The OFR does not interpret specific agency regulations and the workshops will not provide a forum for the discussion of substantitive questions. Rather, the workshops are designed as an introduction for the person who discovers that he or she must use FEDERAL REGISTER publications to keep track and to gain an understanding of Federal regulations.

Dated: January 19, 1977.

FRED J. EMERY,
Director of the Federal Register.

[FR Doc.77-2194 Filed 1-19-77;10:34 a.m.]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on January 13, 1977 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice thru this release.

Further information about the items on this daily list may be obtained from the clearance office, Office of Management and Budget, Washington, D.C. 20503 (202-395-4529), or from the reviewer listed.

NEW FORMS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health:

Survey of the Use of Videotechnology to Teach Interpersonal Skills, single time, users of videotechnology to teach skills to health profession, Richard Eisinger, 395-6140.

Pathology Questionnaire, single time, University Hospital Departments, Richard Eisinger, 395-6140.

Social and Rehabilitation Service, 1977 Recipient Characteristics Survey, SRS-NCSS-127, single time, case workers Sunderhauf, M.B., 395-6140.

Office of the Secretary, National Head Start Parent Involvement Evaluation, single time, parent-child pairs of HS & non-HS in 40 States, Human Resources Division, Reese B. F.

REVISIONS

SELECTIVE SERVICE SYSTEM

Employer's Statement of Availability of Job as Alternate Service, SSS-156, on occasion, employers, Marsha Traynham, 395-4529.

VETERANS ADMINISTRATION

Insurance Deduction Authorization, 29-888, on occasion, insured veteran, Caywood, D. P., 395-3443.

DEPARTMENT OF COMMERCE

Bureau of Census, Construction Machinery—Manufacturer's Quarterly Report, M&-35D, quarterly, manufacturing establishments, Peterson, M. O., 395-5631.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration, Statements of Person with Whom Beneficiary Is Living, SSA-780A, on occasion, Ind. In conjunction with applications for SS benefits, Caywood, D. P., 395-3443.

EXTENSIONS

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service, Animal Welfare Regulations, other (see SF-83), dealers, research facilities, exhibitors, Marsha Traynham, 395-4529.

DEPARTMENT OF COMMERCE

Bureau of Census, Shipper's Summary Export Declaration, 7525M, monthly, exporters, Marsha Traynham, 395-4529.

DEPARTMENT OF DEFENSE

Department of the Army (excl. Def Civil Preparedness Agcy), Inventory of U.S. Property held by Civilian Rifle Clubs, DA 1375, annually, custodian of each club, Warren Topelius, 395-5873.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration, Registration of Cosmetic Product Establishment, FD 2511, on occasion, cosmetic product manufacturers and repackers, Marsha Traynham, 395-4529.

Social Security Administration:
- Social Security Disability Beneficiary Report, SSA-454A, on occasion, Beneficiaries Whose Disability is Expected to Improve, Caywood, D. P., 395-3443.
- Third Party Premium Billing Request, SSA-2384, on occasion, enrollees, Marsha Traynham, 395-4529.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service:
- Application for Exception from the Classification of Alien Enemy, N-436, on occasion, alien enemies, Marsha Traynham, 395-4529.
- Verification of Record of Naturalization, N-25, on occasion, clerks of court, Marsha Traynham, 395-4529.
- Letter to Alien Relative to Cancellation of Public Charge Bond, I-356, on occasion, aliens, Marsha Traynham, 395-4529.

Certificate of Eligibility (For Non-Immigrant F-1 Student Status), I-20AB, on occasion, students, Marsha Traynham, 395-4529.

DEPARTMENT OF THE INTERIOR

Mining Enforcement and Safety Administration:
- Employment and Production Report, 3000-2, monthly, all coal mine operations, Marsha Traynham, 395-4529.
- Metal-Nonmetal Quarterly Employment Report, MESA 3000-4, on occasion, all metal-nonmetal mine operations, Marsha Traynham, 395-4529.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.77-2114 Filed 1-19-77;8:45 am]

PRIVACY ACT OF 1974

Reports on New Systems

The purpose of this notice is to list reports on new systems filed with the Office of Management and Budget to give members of the public the opportunity to make inquiries about them and to comment on them.

The Privacy Act of 1974 requires that agencies give advance notice to the Congress and the Office of Management and Budget of their intent to establish or modify systems of records subject to the Act (5 U.S.C. 552a(o)). During the period December 27, 1976 through January 7, 1977 the Office of Management and Budget received the following reports on new (or revised) systems of records.

DEPARTMENT OF JUSTICE

System Names:

(1) Public Safety Officers' Benefits Systems.
(2) Consumer Inquiry Index.
(3) Criminal Case Files.

Report Date:

December 27, 1976

Point of Contact:

Mr. Harry L. Gastley, Administration Counsel, Office of Management and Finance, Department of Justice, Washington, D.C. 20240.

VELMA N. BALDWIN,
Assistant to the Director for Administration.

[FR Doc.77-1938 Filed 1-19-77;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-13126; File No. SR-Amex-76-27]

AMERICAN STOCK EXCHANGE INC.

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on December 8, 1976, the American Stock Exchange, Inc. (the "Amex") filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

Provisions regarding the determination of margin maintenance requirements pertaining to options specialists and registered options traders are deleted from Rule 940, and are reestablished in a revised form, complying with recent amendments to the uniform net capital rule, under a new subsection "I" to Rule 462(d)(2).

STATEMENT OF BASIS AND PURPOSE

The purpose of the proposed rule change is to conform Amex maintenance margin requirements for specialists in options and registered options traders to the amendments to the uniform net capital rules, dealing with the accounts of options market makers, which were recently promulgated by the Commission and become effective January 1, 1977.

Rule 940(b) and Commentaries .01 and .03 thereto, apply solely to the margining of call option contracts, and are proposed to be deleted. The substance of such provisions, however, is proposed to be incorporated into a new subsection "I" to Rule 462(d)(2).

The proposed amendments are based upon section 6(b)(1) of the Securities Exchange Act of 1934, as amended by the Securities Acts Amendments of 1975, and relate to the Amex's capacity to enforce compliance by Amex members and persons associated with members to the margin maintenance provisions of the uniform net capital rules to the Act. (Item 4(a)(i)).

No comments were solicited or received with respect to the proposed rule changes.

The Amex has determined that the proposed rule changes will not impose any burden on competition.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6, and the rules and regulations thereunder.

Further, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. Approval of the proposed rule change at this time is necessary and appropriate to enable the Exchange's rules to accommodate revisions to the Commission's financial responsibility requirements pertaining to transactions in options, which become effective on January 1, 1977.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, That the proposed rule change referenced above be, and it hereby is, approved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number referenced in the caption above and should be submitted by February 11, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

DECEMBER 30, 1976.

[FR Doc.77-1811 Filed 1-19-77;8:45 am]

[Release No. 34-13159; File No. SR-CBOE-76-26]

CHICAGO BOARD OPTIONS EXCHANGE, INC.

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15

U.S.C. 78s(b)(1) as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on December 22, 1976 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Additions *italicized*, deletions bracketed

EXCHANGE'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

PRIORITY OF BIDS AND OFFERS

Rule 6.45. Except as provided by Rule 6.47 below, the following Rules of priority shall be observed with respect to bids and offers:

(a) (No change)

(b) (No change)

(c) Openings. Notwithstanding anything in paragraphs (a) and (b) to the contrary, where necessary to achieve a single-price opening, [the Board Broker may give] market orders *in which no member or any non-member broker/dealer has an interest* [, entitled to participate in the opening] *shall have* priority over limit orders at the same opening price on the Board Broker's book. [The Floor Procedure Committee shall establish] *The* cut-off time for orders entitled to participate in the opening [,] *is set forth in Interpretation .02 to Rule 7.4.*

* * * *Interpretations and Policies:*

.01 (No change)

.02 (No change)

CROSSING ORDERS

Rule 6.74. (a) A Floor Broker who holds orders to buy and sell the same option contract may cross such orders, provided that he proceeds in the following manner:

(i) [He must request that the Board Broker, in accordance with Rule 7.5, call upon Market-Makers assigned to such option contract to make bids and/or offers] *In accordance with his responsibilities for due diligence, a Floor Broker shall request a quotation and make all persons in the trading crowd, including the Board Broker, aware of his request for a quotation.*

(ii) After providing an opportunity for such bids and offers to be made, he [may] *must* bid above the highest bid in the market [and] *or* offer below the lowest offer in the market at the same price or at prices differing by the minimum fraction.

(iii) If neither his bid nor his offer is taken he may cross the orders [(or any untaken parts thereof)] by announcing by public outcry that he is crossing and giving the quantity and price.

(b) *During the opening rotation for a class of option contracts, in the interests of achieving a single price opening, an exception may be made to the requirements of subparagraphs (ii) and (iii) of paragraph (a) above, and the Floor Brokers may proceed as follows:*

(i) *A Floor Broker may match all market orders in his possession in which no member or non-member broker/dealer has an interest;*

(ii) *The Floor Broker shall then announce by public outcry the number and price of all orders that he has matched and is crossing; and*

(iii) *The Floor Broker may then continue to bid or offer the remaining unmatched and unexecuted orders he has in his possession for execution during the opening rotation.*

DISCRETIONARY TRANSACTIONS

Rule 6.75. No Floor Broker shall execute or cause to be executed any [transaction] *order or orders* on this Exchange with respect to which [transaction] such Floor Broker is vested with discretion as to: (1) the choice of the class of options to be bought or sold, (2) the number of contracts to be bought or sold, or (3) whether any such transaction shall be one of purchase or sale; however, the provisions of this paragraph shall not apply to any discretionary transaction executed by a Market-Maker for an account in which he has an interest.

* * * Interpretations and Policies:

.01 The Floor Procedure Committee has determined that no Floor Broker shall hold "not held" market orders (buy and sell) or orders which have the effect of "not held" market orders (buy and sell) in the same series of options for the same account or the accounts of the same beneficial owner. Holding such orders can be interpreted as allowing the Floor Broker discretion as to the purchase or sale of such options.

OBLIGATIONS FOR ORDERS

Rule 7.4. (a) Acceptance. A Board Broker shall ordinarily be expected, for all option contracts of the class or classes to which his appointment extends, to accept and maintain a written record of orders that are placed in his custody. Such orders shall include market orders (as defined in Rule 6.53(a)), limit orders (as defined in Rule 6.53(b)), and such other orders as may be designated by the Floor Procedure Committee. A Board Broker shall not accept orders of any other type or from any source other than a member. No member shall place, or permit to be placed, an order with a Board Broker for an account in which such member , [or] any other member , *or any non-member broker/dealer* has an interest.

(b) (No change)

(c) (No change)

Interpretations and Policies:

.01 (No change)

[.02 Pursuant to Rule 7.4, the Floor Procedure Committee has designated Stop (Stop-Loss) Orders (as defined in Rule 6.53(c)(ii) and Stop-Limit Orders (as defined in Rule 6.53(c)(ii)) as orders that a Board Broker shall ordinarily be expected, for all option contracts of the class or classes to which his appointment extends, to accept and maintain a written record.

The Floor Procedure Committee has made the above designation with the following restrictions:

1. That Stop (Stop-Loss) Orders and Stop-Limit Orders for six or more option contracts shall not be considered designated orders that a Board Broker shall be permitted to accept.

2. That the Floor Procedure Committee reserves the right to review this policy at a later date.]

[.03] *.02* Board Brokers shall accept orders, including cancels and changes, at the opening on the same time sequence basis as pertains during the balance of the day. However, a Board Broker shall not be held for orders accepted during a time interval from five (5) minutes prior to the first report of a transaction in an underlying security through the end of the opening rotation in that class of option contracts for execution of such orders at the opening.

.03 A Board Broker must maintain one "order shoe" for each type of option in each class of option contracts traded at his post, and these order shoes shall be the depository for all orders.

OBLIGATION FOR FAIR AND ORDERLY MARKET

Rule 7.5. At the request of a Floor Broker who holds an order for a particular option contract, [or before any crossing transaction is effected in accordance with Rule 6.74], or whenever in the Board Broker's opinion the interests of a fair, orderly and competitive market are best served by such action, a Board Broker shall call upon those Market-Makers with Principal Appointments and, whenever it is requested or in his opinion it is needed, Supplemental Appointments in that class of option contracts to make bids and/or offers that contribute to meeting the standards set forth in Rule 8.7. To the extent practicable, and in a form prescribed by the Exchange, the Board Broker shall keep a record of the responses of Market-Makers that provide or improve upon a market commensurate with these standards. If satisfactory responses are not forthcoming promptly, the Board Broker shall make a record of this fact. Copies of all records kept in accordance with this Rule shall be forwarded to the Department of Compliance.

* * * *Interpretations and Policies:*

.01 (No change)

EXCHANGE'S STATEMENT OF BASIS AND PURPOSE

Rule 6.45. The purpose of this rule change is to ensure fair and orderly markets through the use of single price openings. Therefore in an effort to standardize the opening rotation procedures utilized by each Board Broker to achieve this goal, it is proposed that this rule be amended to require, rather than permit, market orders to be given priority over limit orders held by the Board Broker. It should be noted that only market orders for those other than members and non-member broker/dealers shall be afforded priority treatment in order to effect single price openings. This provision maintains the priority afforded orders of public customers. Furthermore, the proposed amendment also cross-references to relevant amendments recently approved by the Securities and Exchange Commission to Rule 7.4.

Rule 6.74. The language of subparagraph (i) of paragraph (a) is proposed to be deleted in recognition of the ample number of Market-Makers which presently comprise every trading crowd. This negates the need to utilize a Board Broker to call for Market-Makers in an order crossing situation. Concurrently, however, it is believed appropriate to reiterate a Floor Broker's obligation to exercise due diligence in the execution of orders, and to specify what one of such Floor Broker's duties would be in crossing an order.

The purpose of the proposed amendments to subparagraphs (ii) and (iii) of paragraph (a) is to conform the language of the rule to those trading procedures which have been followed in a crossing situation.

The provisions of proposed new paragraph (b) will standardize the procedures to be implemented by a Floor Broker who wishes to cross public customer orders during an opening rotation. The proposal will also ensure that all members of the trading crowd are made aware of the volume and price of the orders to be crossed.

Rule 6.75. The purpose of the proposed amendment is to interpret clause (3) of the rule by describing certain order combinations which if used by a Floor Broker would find him in violation of the rule. This proposal specifically proscribes the use of certain orders, the effect of which would be to imbue the Floor Broker with discretion as to the purchase or sale of an option. Such discretion belies the Floor Broker's agency function and enables him to operate like a Market-Maker.

Rule 7.4. The purpose of the proposed revision to paragraph (a) of the rule is to clarify that Board Brokers shall accept only public customer orders. This provision will effectively preclude all broker/dealers from transmitting proprietary orders to the Board Broker. This proposed amendment is consistent with the Exchange's intent and long standing policy to afford the Board Broker's limit order priority only to public customers.

Section .02 to Rule 7.4 is proposed to be deleted, for it has been found that a Board Broker's handling of contingency orders, such as Stop-Loss and Stop-Limit orders, creates undue clerical burdens, and detracts from a Board Broker's ability to carry out his primary responsibilities regarding limit and market orders and trading crowd control. It has also been found that considerable confusion among members of a trading crowd can arise when a number of Stop orders held by a Board Broker become market orders due to a movement in the stock, and the Board Broker's book display suddenly changes. Such a proposed change will contribute to the maintenance of a fair and orderly market.

The purpose of new section .03 to Rule 7.4 is to standardize the manner in which one of the devices located at a Board Broker's post must be used in order to transmit an order to the Board Broker. A Floor Broker shall place an order with the Board Broker by inserting the order card into the metal "order shoe" which is designated for that class and type of option. The use of this "shoe" enables the Board Broker to properly segregate and place into sequence all new orders transmitted to him.

Rule 7.5. The purpose of this amendment is to conform the provisions of this Rule to the revisions proposed for Rule 6.74.

The amendments proposed herein are in accordance with section 6(b)(5) of the Act which provides, inter alia, that rules of the Exchange promote just and equitable principles of trade and protect investors and the public interest.

Comments were not solicited, nor have comments been received from members of the Exchange.

No burden will be imposed upon competition by virtue of the implementation of these rules changes.

On or before February 25, 1977, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before February 22, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 13, 1977.

[FR Doc.77-1812 Filed 1-19-77;8:45 am]

[Release No. 34-13160; File No. SR-CBOE-76-27]

CHICAGO BOARD OPTIONS EXCHANGE, INC.

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on December 22, 1976 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

EXCHANGE'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The Chicago Board Options Exchange, Incorporated ("the Exchange"), hereby requests that it be permitted over the next few months to expand the number of securities which provide the basis for its trading activities from the present authorized level of 100 to 125. As can be seen, it is intended that such request represent only a short-term growth program which will be followed, in the near future, by a longer range Exchange expansion plan. In order that interested persons may be afforded an opportunity for formal notice of and to comment on its request, CBOE hereby elects pursuant to clause (ii) of paragraph (a) of Rule 19 b-4 to treat its request for expansion of the number of securities which provide the basis for its trading activity as a "proposed rule change" under said Rule and to file such proposed rule change in accordance with the provisions of section 19(b)(2) of the Securities Exchange Act of 1934, as amended.

EXCHANGE'S STATEMENT OF BASIS AND PURPOSE

The proposed rule change will enable the Exchange to plan for and implement a moderate expansion of the number of securities on which its trading activity is based. Such expansion will enable the Exchange to efficiently utilize its present facilities which will comfortably accommodate the peak volume of trading which it is anticipated would result from Commission approval of the proposed securities expansion.

It is the Exchange's view that the Commission's approval of the expansion program set forth above would be entirely consistent with the protection of investors and the public interest. Through such an Exchange expansion, the Commission would enable the Exchange to utilize its present capabilities to the fullest extent, while at the same time permitting the Exchange to respond to competitive pressures to improve the current level of Exchange service to the investing public and the member community, and to introduce innovative trading concepts which offer greater investment opportunities to those same groups. This kind of Exchange activity would be responsive to the statutory mandate that national securities exchanges perfect the mechanism of free and open markets.

In order to accurately assess the Exchange's capacity to operate efficiently in the face of the increased trading volume which would result from realization of the Exchange's proposed expansion program, there are three key areas which must be measured—communication systems, floor facilities and regulatory ca-

pability. Over the past twelve months, the Exchange has labored successfully to improve the timeliness and efficiency of its last sale and bid/ask quote dissemination. In addition, the Exchange's trading support communications ability has been significantly increased since October, 1975. During this same period of time, the Exchange floor communications abilities of member firms have also been greatly enhanced.

With respect to the Exchange's trading floor facilities, the Exchange has completed construction on a number of additional trading posts and has provided member firms with a larger number of communications booths. The Exchange has also built a communications room adjacent to the Exchange floor specifically for use by member firms during peak periods if their respective booth facilities are unable to efficiently handle the volume of orders.

The Exchange's Department of Compliance and Department of Trading Procedures have continued to add qualified, highly educated personnel to their respective investigative and analytical staffs. In the area of market surveillance, especially, the Exchange has significantly expanded its capability not only through the acquisition of experienced, well educated data and market analysts, but also through the introduction of on-line market analysis with computerized support.

Comments were not, and are not intended to be, solicited with respect to the proposed rule change.

The Exchange believes that its ability to expand the number of securities upon which its trading activity is based will enable it to compete more effectively without in any way imposing any burdens upon competition.

On or before February 25, 1977, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above mentioned self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and all written submission will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before February 22, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 13, 1977.

[FR Doc.77-1813 Filed 1-19-77;8:45 am]

[Rel. No. 19852, 70-5791]

GENERAL PUBLIC UTILITIES CORP.

Proposed Amendment of Articles of Incorporation and Solicitation of Proxies

JANUARY 13, 1977.

Notice is hereby given That General Public Utilities Corporation ("GPU"), 80 Pine Street, New York, New York 10005, a registered holding company, has filed a post-effective amendment to its declaration, previously filed with this Commission, pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating sections 6(a), 7 and 12(e) of the Act and Rule 62 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, as amended by said post-effective amendment, for a complete statement of the proposed transactions.

By order dated February 20, 1976 (HCAR No. 19396) issued in this proceeding, GPU was authorized, among other things, to amend its Articles of Incorporation ("Charter"), subject to the obtaining of necessary stockholder approval, to eliminate the preemptive rights of common stockholders of GPU. GPU obtained the necessary stockholder approval for this Charter amendment on April 5, 1976 and the Charter was accordingly amended on April 6, 1976.

After the February 20, 1976 order was issued, GPU undertook with this Commission that unless otherwise authorized by the Commission, GPU would not sell additional shares of common stock except pursuant to a public offering for cash or an employee stock option plan or in connection with a merger or consolidation or for consideration other than cash, without first offering such shares to its stockholders. GPU now desires to incorporate, subject to the obtaining of favorable action by its stockholders at its annual meeting to be held on April 4, 1977, the substance of this undertaking in its Charter, as amended.

It is specifically proposed to amend Article 9 of the Charter to provide that stockholders shall have preemptive rights to purchase GPU common stock offered for sale other than through: (i) A public offering; or (ii) an offering through underwriters or dealers who agree to make a prompt public offering thereof; or (iii) operation of a common stock cash dividend reinvestment program (including the right to invest additional amounts in additional shares of common stock); or (iv) operation of an employee stock ownership plan; or (v) any other offering which shall have been authorized at a meeting of stockholders by the affirmative vote of a majority of all outstanding shares entitled to vote thereon, or shall be consistent with a plan authorized or approved by such a vote of the holders of a majority of all outstanding shares entitled to vote thereon.

The proposed Charter amendment further provides that the preemptive rights provision shall entitle stockholders having such rights to purchase shares of GPU's common stock as nearly a practicable in such proportion as would, if such preemptive rights were exercised, preserve the relative holdings of such stockholders. The price for stock purchased pursuant to preemptive rights will have a price or prices not less than the price or prices at which such shares are proposed to be offered for sale to others (before giving effect to any reduction in the amount realized by GPU by expenses, including underwriters' and dealers' compensation, incurred in connection with the sale). It is further provided that GPU shall not be obligated to offer or issue any fractional interest in a full share of its common stock pursuant to preemptive rights. The Charter amendment will also provide that at any time within a period expiring not more than one year after the granting of preemptive rights, shares which have been offered to stockholders and which have not been subscribed for or purchased may be issued or sold to such persons (including stockholders) at such prices and at such times as may be fixed by the Board of Directors, provided that the price will not be less than the price at which such shares were obtainable upon the exercise of preemptive rights granted in connection with the offering.

GPU proposes to solicit proxies from its stockholders in connection with the proposed Charter amendment for use at the GPU annual meeting on April 4, 1977. Adoption of the proposed Charter amendment requires the affirmative vote of the holders of a majority of the outstanding shares of GPU common stock.

Fees and expenses to be incurred in connection with the proposed transaction will be supplied by amendment. The cost to GPU for reimbursement to stockholders who hold stock for others for forwarding copies of proxy material to them is estimated at $25,000. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given That any interested person may, not later than February 7, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration, as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any

time after said date, the declaration, as amended by said post-effective amendment, or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from its rules under the Act as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1805 Filed 1-19-77;8:45 am]

[Rel. No. 19851, 70-5951]

JERSEY CENTRAL POWER & LIGHT CO., ET AL.

Proposed Sale of Utility Assets Between Affiliates

JANUARY 13, 1977.

Notice is hereby given That Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punchbowl Road, Morristown, New Jersey 07960, Metropolitan Edison Company ("Met-Ed"), 2800 Pottsville Pike, Reading, Pennsylvania 19603, and Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, electric utility subsidiary companies of General Public Utilities Corporation, a registered holding company, have filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating sections 12(d) and 12(f) of the Act and Rule 43 promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

The declarants are currently engaged in the construction of Unit No. 2 of the Three Mile Island nuclear generating station ("TMHI No. 2"). The declarants now own the unit as tenants in common (without rights of partition) in the following proportions: JCP&L: 25%, Met-Ed: 50% and Penelec: 25%.

It is proposed that Met-Ed sell JCP&L an additional 25% undivided interest and that Penelec sell JCP&L an additional 15% undivided interest in TMI No. 2. The resulting ownership proportions would then be: JCP&L: 65%, Met-Ed: 25% and Penelec: 10%.

It is proposed that the sales of the interests in TMI No. 2 be made in a series of installments (which will not necessarily be pro rata as between Met-Ed and Penelec) geared to JCP&L's ability to make payments and the ability of Met-Ed and Penelec to make use of the sales proceeds. The sales will be completed by the time TMI No. 2 is placed in commercial service, such time now being estimated to be in the Spring of 1978. The sales price of the interests will be the book cost, including allowance for funds used during construction ("AFC"), of the interests conveyed by the sellers, adjusted in order to retain for the respective customers of the sellers the net benefit of certain tax allocations.

It is also proposed that JCP&L sell Met-Ed and Penelec 25% undivided interests in the Forked River nuclear generating station which is presently owned 100% by JCP&L. After the proposed sales, the Forked River station would be owned 50% by JCP&L and 25% each by Met-Ed and Penelec. The sales will be made in one or more installments but will also be completed by the time TMI No. 2 is in commercial service. The sale will be made for the book cost of the interests conveyed by JCP&L, including AFC, adjusted to retain for JCP&L's customers the net benefit of (i) certain tax allocations and (ii) the inclusion of a portion of JCP&L's investment in Forked River in rate base.

The declarants own undivided interests in Unit No. 1 of the Three Mile Island generating station ("TMI No. 1") in the following proportions: JCP&L: 25%; Met-Ed 50% and Penelec: 25%. The proposed transactions will not affect these ownership interests. However, there are certain facilities which are to be used in common for TMI No. 1 and No. 2. The original cost of such common facilities at the time TMI No. 1 was placed in commercial service was approximately $14 million, of which Met-Ed's share was approximately $7 million and the Penelec and JCP&L shares were approximately $3.5 million. It is stated that the Pennsylvania Public Utilities Commission has excluded from rate base one-half of Penelec's and Met-Ed's investment in these common facilities as being assignable to TMI No. 2. Therefore, one-half of their cost of such common facilities will be regarded by Met-Ed and Penelec as assignable to TMI No. 2 and the interests in TMI No. 2 to be conveyed by those companies will include proportionate interests in such facilities.

JCP&L owns 100% of the Oyster Creek nuclear generating station which was placed in commercial service in 1969. Some of the Oyster Creek facilities will be used in common for Forked River, which is immediately adjacent to Oyster Creek. These common facilities will be equitably allocated between Oyster Creek and Forked River and the undivided interests in Forked River conveyed by JCP&L to Met-Ed and Penelec will include proportionate interests in the common facilities.

It is stated that various events, including an oil embargo, fuel price increases, a pause in the rate of increase of the consumption of electricity and the deferral of the completion dates for TMI No. 2 and Forked River have made it appropriate to reallocate participation in the units among the declarants.

It is stated that the New Jersey and Pennsylvania Public Utilities Commissions have jurisdiction over various aspects of the proposed transactions and that the consummation of certain of the proposed transactions may require amendment of the construction permits issued by the United States Nuclear Regulatory Commission. It is stated that no other state or federal commission, other than this Commission, has jurisdiction over the proposed transactions. Fees and expenses to be incurred in connection with the proposed transactions are to be supplied by amendment.

Notice is further given, That any interested person may, not later than February 7, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated addresses, and proof of service (by affidavit or, in case an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exception from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1806 Filed 1-19-77;8:45 am]

[Release No. 13162; SR-NASD-76-8]

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Order Approving Proposed Rule Change

JANUARY 13, 1977.

On September 20, 1976, the National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, N.W., Washington, D.C. 20006, filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975) (the "Act"), and Rule 19b-4 thereunder, copies of a proposal (the "Proposal") to amend NASD's Rules of Fair Practice by adding new section 33 ("section 33") to Article III thereof.

Section 33 would authorize the NASD's Board of Governors to adopt rules, regulations and procedures relating to transactions in options contracts, including options displayed on the NASDAQ system, for purposes specified therein. Rules, regulations and procedures so adopted would be incorporated into Appendix E to be attached to and made a part of NASD's Rules of Fair Practice.

Notice of the Proposal together with the terms of substance thereof was given by publication of a Commission Release (Securities Exchange Act Release No. 12830, September 24, 1976) and by publication in the FEDERAL REGISTER (41 FR 43481, October 1, 1976).

The Commission finds that the Proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered securities associations, and, in particular, the requirements of Section 15A of the Act and the rules and regulations thereunder.

This Order is not intended to authorize commencement of an NASD option program such as the program referred to in a letter dated September 24, 1976 from this Commission to the NASD which would involve, *inter alia*, use of NASD facilities to display quotations in standardized options issued by The Options Clearing Corporation. Such authorization would depend, at a minimum, on Commission approval of rules adopted by the Board of Governors under Section 33 and the fulfillment of certain conditions such as those set forth preliminarily in that letter.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, That the Proposal be, and it hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1807 Filed 1-19-77;8:45 am]

[Release No. 13155; File No. SR-OCC-76-10]

OPTIONS CLEARING CORP.

Automatic Exercise Procedure for Certain Expiring Option Contracts

JANUARY 12, 1977.

On November 4, 1976, The Options Clearing Corporation ("OCC"), 6150 Sears Tower, Chicago, Illinois 60606, submitted, pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 (the "Act"), a proposed rule change to permit expiring in-the-money options to be exercised via an automatic exercise procedure. The proposed rule change purports to apply to both call option and put option contracts as well as to option contracts for securities traded in the over-the-counter market.

In accordance with section 19(b) of the Act and Rule 19b-4 thereunder, the proposed rule change was published in the FEDERAL REGISTER (41 FR 51157, November 19, 1976), and the public was invited to submit comments until December 10, 1976. Notice of the filing and an invitation for comments also appeared in Securities Exchange Act Release No. 12979, November 15, 1976. No letters of comment were received.

Since exchange trading is listed put option contracts has not been approved by the Commission, the Commission is not at this time making any determination with respect to the proposed rule change insofar as it relates to put option contracts. Also, the provisions of the proposed rule change which relate to option contracts for securities traded in the over-the-counter market shall not be effective until the Commission permits option markets to trade listed option contracts for such securities. The Commission has reviewed the OCC submission and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies insofar as the proposed rule change relates to call option contracts.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, That the proposed rule change contained in File No. SR-OCC-76-10 be, and hereby is, approved insofar as it relates to call option contracts.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1808 Filed 1-19-77;8:45 am]

[Release No. 34-13161; File No. SR-PSE-76-40]

PACIFIC STOCK EXCHANGE INC.

Self-Regulatory Organizations, Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on December 23, 1976, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

EXCHANGE'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

Pacific Stock Exchange Incorporated ("PSE") hereby requests permission to expand by twenty the number of underlying listed stocks in which it may approve trading in call options. The accomplishment of such a proposed change in current PSE procedures would expand to a total of fifty the current number of call options which PSE would be authorized to trade. The underlying stocks on which PSE would be authorized to trade options would meet PSE's new listing standards contained in File No. SR-PSE-76-37 which became effective on December 9, 1976.

EXCHANGE'S STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the proposed rule change is to permit an expansion in PSE's program of trading call options.

The proposed rule change will enable PSE to increase the number of underlying stocks on which PSE trades call options. PSE believes it consistent with the protection of investors and the public interest that it be permitted to expand the number of call options it trades. PSE is presently trading call options in twenty-six of the thirty underlying stocks for which it has authorization, and accordingly, further progress in PSE's efforts to establish a viable regional options trading facility necessitates the proposed increase in the number of classes of call options traded on PSE.

PSE believes that the experience it has gained in its current options trading program, as well as the capabilities it has developed in the areas of data collection, communication systems and surveillance procedures are more than sufficient to accommodate the increased volume of trading which would result from the approval of the requested additional call options classes. PSE has recently expanded its floor capacity and trading posts, and its physical facilities are consequently able to accommodate this increased volume.

PSE believes that the granting of this request to expand the number of options classes traded on its floor will contribute to its growth as a viable competitive options trading facility. Moreover, PSE believes that the additional authorization sought herein is especially appropriate in light of the changed listing standards recently approved by the Commission for options exchanges.

Comments were not, and are not intended to be, solicited with respect to the proposed rule change.

The proposed rule change will not impose any burden on competition. Rather, it will encourage competition by contributing to PSE's viability as a competitive options trading facility.

On or before February 25, 1977, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington

D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before February 22, 1977. For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 13, 1977.

[FR Doc.77-1814 Filed 1-19-77;8:45 am]

[Release No. 34-13158; File No. SR-PHLX 76-20]

PHILADELPHIA STOCK EXCHANGE, INC.

Self-Regulatory Organization; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on December 22, 1976, the above mentioned self-regulatory organization filed with the Securities and Exchange Commission proposed rules changes as follows:

EXCHANGE'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULES CHANGES

Pursuant to Rule 19b-4A, the Philadelphia Stock Exchange (PHLX) proposes to rescind Rules 1042 and 1050 concerning the obligation of members to file certain reports in respect to option contracts which are listed and traded on the Exchange.

The Board of Governors of PHLX approved the amendment to Rules 1042 and 1050 on December 15, 1976.

Rule 1042 requires every member and member organization of PHLX who buys or sells 5 or more option contracts of one class for his or its account in one trading session pursuant to an order entered from off-the-floor, to report such activity to the Exchange.

In the case of PHLX, member organizations that are clearing members of The Options Clearing Corporation (OCC) the filing of reports pursuant to the Rule is duplicative of information available to the Exchange from OCC.

In the case of PHLX member organizations that are not clearing members of the OCC, proprietary positions are reported in the same manner as non-member customers' positions. Thus, the firm reports its long or short positions in excess of 100 contracts per class and any subsequent changes in such positions. The Exchange has concluded that the information provided by non-clearing member firms is adequate for surveillance purposes.

Rule 1050 states that member organizations are to file with the Exchange a monthly report of all open exercise positions.

An open exercise position is defined as one firm's failure to deliver shares of stock it owes to another firm as a result of the latter's having exercised an option contract.

Currently, the exercise of options issued by the OCC are settled on a continuous net settlement (CNS) system through the facilities of the Midwest Security Trust Company. It is expected that this settlement procedure will soon be extended to the Securities Industry Automation Corporation, Pacific Clearporation of Philadelphia, also on a CNS basis. Moreover, all unsettled exercise positions are marked to the market on a daily basis beginning on the settlement date of each exercise and continuing until the required stock has been delivered. The PHLX has concluded that OCC procedures make the original rule unnecessary.

EXCHANGE'S STATEMENT OF BASIS AND PURPOSE

Section 6(b)(5) of the Securities Exchange Act of 1934 ("the Act"), in part, requires that the Exchange rules be designed to protect investors and the public interest. The Exchange believes that it is consistent with this section of the Act to rescind Rules 1042 and 1050 because the information produced pursuant to these rules is available to the Exchange from other sources.

Comments were not solicited nor were comments received.

The Exchange does not believe any burden on competition will be imposed by these rules changes.

On or before February 25, 1977, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rules changes, or

(b) Institute proceedings to determine whether the proposed rules changes should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six (6) copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 "L" Street, N.W., Washington, D.C. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before February 22, 1977.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 13, 1977.

[FR Doc.77-1815 Filed 1-19-77;8:45 a.m.]

PHILADELPHIA STOCK EXCHANGE, INC.

Application for Unlisted Trading Privileges and Opportunity for Hearing

JANUARY 13, 1977.

In the matter of an application of Philadelphia Stock Exchange, Inc. for unlisted trading privileges in a certain security.

The above named national securities exchange has filed an application with the the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the security of the company as set forth below, which security is listed and registered on one or more other national securities exchanges:

Varian Associates, File No. 7-4905, Common Stock—$1 Par Value

Upon receipt of a request, on or before January 29, 1977 from any interested person, the Commission will determine whether the application with respect to the company named shall be set down for hearing. Any such request should state briefly the title of the security in which that person is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no request for a hearing with respect to the particular application is made, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1809 Filed 1-19-77;8:45 a.m.]

[Release No. 9603, 811-1833]

SCHUSTER SPECTRUM FUND, INC.

Application for a Order Declaring That Company has Ceased to be an Investment Company

JANUARY 12, 1977.

Notice is hereby given That Schuster Spectrum Fund, Inc. ("Applicant"), 245 Park Avenue, New York, New York 10017, an open-end, non-diversified, management investment company registered under the Investment Company Act of 1940 (the "Act"), has filed an application pursuant to section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant, a Maryland corporation, registered under the Act in 1969. Applicant states that on November 6, 1974, its shareholders approved a Plan of Reorganization and Agreement of Merger whereby the Applicant would be merged into Schuster Fund, Inc., an open-end, diversified, management investment company registered under the Act. Applicant further states that the merger became effective when Articles of Merger were filed with the State of Maryland Department of Assessments and Taxation on November 6, 1974, and the separate corporate existence of Applicant ceased to exist.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the taking effect of such order, the registration of such company shall cease to be in effect.

Notice is further given, That any interested person may, not later than February 7, 1977, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1810 Filed 1-19-77;8:45 am]

[File No. 600-15]

NATIONAL SECURITIES CLEARING CORP.

Order Granting Registration and Statement of Reasons

JANUARY 13, 1977.

These are proceedings pursuant to section 19(a)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(a)(1) (1975), as amended by the Securities Acts Amendments of 1975 (the "1975 Amendments"),[1] to determine whether to grant or deny the application of the National Securities Clearing Corporation ("NSCC") for registration as a clearing agency[2] pursuant to section 17A of the Act, 15 U.S.C. 78q-1 (1975), and Rule 17Ab2-1 thereunder, 17 CFR 240.17Ab2-1. NSCC's application contemplates the performance by NSCC of the clearing and settlement operations currently performed by the American Stock Exchange Clearing Corporation ("ASECC"), National Clearing Corporation ("NCC") and Stock Clearing Corporation ("SCC").

Section 19(a)(1) of the Act provides that, upon the filing of an application for registration as a registered clearing agency pursuant to section 17A of the Act, the Commission shall publish notice of the filing and afford interested persons an opportunity to submit written data, views and arguments concerning the application. Thereafter, the Commission either grants the registration or institutes further proceedings to determine whether registration should be granted or denied.

On March 29, 1976, the Commission gave notice of the filing of NSCC's application for registration.[3] The importance of the application to the Commission's efforts to perfect the mechanisms of a national market system for securities[4] and to facilitate the establishment of a safe and efficient national system for the clearance and settlement of transactions in securities,[5] the complexity of the technical, legal and economic issues raised by the application, and the written data, views and arguments concerning the application submitted in response to the Commission's March 29, 1976, announcement led the Commission to conclude that further exploration of the issues raised by the application was desirable. Accordingly, on May 28, 1976, the Commission instituted these proceedings and provided an opportunity for oral presentation of data, views and arguments on June 16-18, 1976.[6] On November 3, 1976, the Commission announced it was considering approving the NSCC application subject to four proposed conditions, requested public comment on the proposed conditions, and extended the time for concluding the proceedings in connection with the application to November 29, 1976.[7]

In the light of its experience in regulating securities markets, clearing corporations, securities depositories, transfer agents and brokers and dealers, the Commission reviewed and analyzed the many technical, legal and economic issues raised by NSCC's application, submissions made in response to the application, and other presentations of data, views and arguments made in connection with these proceedings and in response to the Commission's request for comment on the proposed conditions to approval of the application. Thereafter, the Commission made specific determinations required by the Act and, in accordance with the Act's directive to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities, evaluated the application against the statutory findings and objectives of safety, efficiency, the use of new data processing and communications techniques, the linking of clearance and settlement facilities, the development of uniform standards and procedures, and reductions in unnecessary costs.[8] In addition, and as required by the Act, the Commission considered the effects which the exercise of its authority to grant or deny NSCC's application for registration would have on the public interest, the protection of investors, the safeguarding of funds and securities and the maintenance of fair competition.[9] On the basis of its review, analysis and evaluation of the NSCC application and a balancing of the concerns which the Commission must consider in using its authority under the Act to facilitate the establishment of a national clearing and settlement system,[10] the Commission has concluded these proceedings and has determined to grant registration to NSCC subject to the terms of this order and to the four conditions and the directives set forth herein.[11]

NSCC will be required to comply with those conditions to the satisfaction of the Commission before NSCC may begin operating, as a single integrated system, the clearing and settlement systems currently operated by ASECC, NCC and SCC. In the interim, NSCC must submit for Commission approval any proposed changes in the rules, operating procedures and facilities management arrangements of NSCC or any of its operating divisions which are in effect immediately following the issuance of this order.

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[1] Pub. L. No. 94-29, section 16, 89 Stat. 146 (1975).

[2] Section 3(a)(23) of the Act, 15 U.S.C. 78(c)(a)(23) (1975), defines "clearing agencies" to include, inter alia, clearing corporations and securities depositories. See also N.Y. Uniform Commercial Code, Sections 8-102(3) and 8-320 (McKinney Supp. 1975-76). For a description of clearing corporation and depository functions, see discussion under "Characteristics of a National System" infra.

[3] Securities Exchange Act Release No. 12274 (March 29, 1976), 41 FR 14455 (April 5, 1976).

[4] The Act, Section 2, 15 U.S.C. 78(b) (1975).

[5] The Act, Sections 2 and 17A.

[6] Securities Exchange Act Release No. 12489 (May 28, 1976), 41 FR 23255 (June 9, 1976).

[7] Securities Exchange Act Release No. 12954 (November 3, 1976), 41 FR 49721 (November 10, 1976). NSCC subsequently consented to an extension of time for concluding these proceedings to January 13, 1977.

[8] The Act, Section 17A(a)(1).

[9] The Act, Section 17A(a)(2).

[10] *Id.*

[11] The determinations the Commission is making under the Act and the duration of, conditions to and directives issued in connection with NSCC's registration are set forth below under "Determinations, Conditions and Directives."

In the Commission's view, establishment of the national system for the prompt and accurate clearance and settlement of transactions in securities contemplated by Section 17A of the Act requires that brokers and dealers located in New York City and elsewhere throughout the country have access, at a reasonable cost, to one or more entities through each of which brokers and dealers can efficiently and safely compare, clear and settle transactions in securities regardless of the market in which the transactions occur or the location of the other parties to the transactions. The Commission's determination to grant NSCC's registration is based on the Commission's conclusion that NSCC's registration, subject to the conditions contained in this order, is an essential step toward the establishment, at an early date, of a comprehensive network of linked clearance and settlement systems and branch facilities with the national scope, efficiencies and safeguards envisioned by Congress in enacting the 1975 Amendments.

The remainder of this order is organized as follows:

THE STATUTORY FRAMEWORK

The Paperwork Crisis
Commission and Congressional Reaction
The 1975 Amendments
Characteristics of a National System:
  Book Entry Clearing
  Non-Book Entry Clearing
  Comparison, Accounting and Settlement
  Depository Capabilities
Statutory Determinations to be Made in Connection with NSCC's Registration

THE NSCC APPLICATION

Background to the Application
The Application:
  Facilities Management
  User-Control
  Payments to the Amex, NASD and NYSE
  Services to be Provided
  Relationship to Securities Depositories
  Trade Comparison
  Participant Qualifications
  Cost Savings

DETERMINATIONS WITH RESPECT TO NSCC

Scope of Consideration
Reaffirmation of Determinations Made Previously:
  Safeguards and Fixing Rates or Fees
  Protection of Investors
Determinations Not Involving Conflicting Data, Views and Arguments:
  Capacity to Facilitate and Promote the Prompt and Accurate Clearance and Settlement of Securities Transactions
  Capacity to Take Advantage of New Data Processing and Communications techniques
Determinations Involving Conflicting Data, Views and Arguments:
  Capacity to Reduce Unnecessary Costs
  Capacity to Achieve the Linking of Clear and Settlement Systems and Facilitate the Establishment of a National Sytem
Competitive Considerations:
  Effects on Competition Among Brokers and Dealers
  Effects on Competition Among Clearing Agencies
  Effects on Competition Among Transfer Agents
  Effects on Competition Among Securities Exchanges
  Payments to the Amex, NASD and NYSE
  The NSCC-SIAC Facilities Management Agreement
Alternative Approaches Considered

IMPLEMENTATION AND MONITORING DETERMINATIONS, CONDITIONS AND DIRECTIVES

THE STATUTORY FRAMEWORK

THE PAPERWORK CRISIS

The Commission's action today is taken against the background of a severe operational and financial crisis of the late 1960's and the subsequent efforts of Congress, the Commission and the securities industry to diagnose and resolve the many serious problems in securities transaction processing that brought about the crisis.

During the late 1960's the securities industry experienced an explosion in trading volume. With some exceptions, the financial community lacked the systems, procedures, equipment and qualified back-office personnel necessary to handle the increased business.[12] Because the problems confronting the industry were industry-wide and could not be tackled in isolation, few immediate solutions were available. The ensuing breakdown of securities processing arrangements resulted in the near chaos described in the following excerpt from the Commission's "Study of Unsafe and Unsound Practices":

> Apart from the inability of broker-dealers to keep their records current, the number of errors in the handling and recording of transactions multiplied. The back offices of many a broker-dealer resembled a trackless forest. Since the broker-dealer industry is a highly interdependent community the problems of the less efficient firms had a rippling effect on the entire broker-dealer community; and inter-dealer clearing systems, as well as the transfer facilities of banks, were similarly taxed beyond their capacities. The entire machinery for the delivery and transfer of securities and the concomitant remittance of funds became clogged. Even those broker-dealers who attempted belatedly to stem the tide by computerizing their operations or augmenting their back office personnel could not keep pace with the volume; in fact, they were caught on a worse treadmill in that, by the time they were able to research their errors of a given date, they were confronted with a greater number of errors to contend with. The expensive computerized hardware which was thrown into the breach malfunctioned; and, since parallel manual records were often not maintained during a reasonable trial period, the use of the computer increased the already existing confusion. Moreover, the employment of newly recruited and untrained or inadequately trained individuals who were put to work in the back offices resulted in a further increase in the number of errors. The combination of all of these factors culminated in such a critical predicament for some firms that they not only lost control of their records, but experienced a new phenomenon—the loss of control over the securities which were or were supposed to be in their possession for delivery, custody or safekeeping. The efforts by the Commission and the self-regulatory organizations to build a dike against this torrent proved of little avail [footnote omitted].[13]

During the paperwork crisis, the level of "fails to deliver" and "fails to receive" was freqeuntly cited as a measure of the securities industry's operational problems.[14] In December 1968, member firms of the New York Stock Exchange, Inc. ("NYSE") had $4.4 billion in "fails to deliver" and $4.7 billion in "fails to receive." [15] Brokers and dealers with fails to receive risks the possibility that the brokers and dealers failing to deliver would become insolvent and not complete the open deliveries; accordingly, even sound brokers and dealers became exposed to the risk of loss as a result of the operational and financial difficulties of the brokers and dealers with which they were obliged to do business.[16]

The confusion and delays in the back offices of brokers and dealers were magnified by inadequate clearance and settlement facilities, particularly in the over-the-counter ("OTC") area, and clogged transfer agent facilities.[17] Systems designed for the three million share days of 1960 proved incapable of dealing with the thirteen million share days of the late 1960's, and, as trading volume rose, so did the fails and unresolved dif-

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[12] Securities and Exchange Commission, "Study of Unsafe and Unsound Practices of Brokers and Dealers", H.R. Doc. No. 231, 92d Cong., 1st Sess. 13 (1971) (hereinafter cited as "Study of Unsafe and Unsound Practices"); see also "Securities Industry Study", Report of the Subcomm. on Commerce and Finance of the House Comm. on Interstate and Foreign Commerce, H.R. Rep. No. 92-1519, 92d Cong., 2d Sess. (1972) (hereinafter cited as "1972 House Securities Industry Study"); "Securities Industry Study", Report of the Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs for the Period Ended February 4, 1972, 92d Cong., 2d Sess. (Comm. Print 1972) (hereinafter cited as "1972 Senate Securities Industry Study"); "Securities Industry Study", Report of the Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs, 93d Cong., 1st Sess. (Comm. Print 1973) (hereinafter cited as "1973 Senate Securities Industry Study").

[13] "Study of Unsafe and Unsound Practices," supra note 12, at 13–14.

[14] A "fail to deliver" represents the obligation of a broker or dealer to deliver securities to another broker or dealer beyond the conventional five business day settlement period. A "fail to receive," the converse of a "fail to deliver," represents the obligation of a broker or dealer to pay money to another broker or dealer against receipt of a security after the settlement period has passed.

[15] Clearance and Settlement of Securities Transactions, Hearings on S. 3412, S. 3297 and S. 2551 Before the Subcom. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs, 92d Cong., 2d Sess., 95–96 (1972) (hereinafter cited as "Clearance and Settlement Hearings").

[16] *Id.* at 96; Securities Processing Act, Hearings on H.R. 14567, H.R. 14826 and S. 3876 Before the Subcomm. on Commerce and Finance of the House Comm. on Interstate and Foreign Commerce, 92nd Cong., 2d Sess., 100 (1972) (hereinafter cited as "Securities Processing Act Hearings").

[17] "Study of Unsafe and Unsound Practices", *supra* note 12, at 13 and 14, 165–168; 1972 Senate Securities Industry Study, supra note 12, at 16–17; 1972 House Securities Industry Study, supra note 12, at 4–6.

ferences of brokers and dealers.[18] These developments so reduced the supply of securities available for delivery that lengthy delays were not uncommon and many record differences were never resolved.[19] Although the Commission and the self-regulatory organizations attempted remedial measures, the fundamental nature of the industry's problems coupled with the absence of a pervasive regulatory authority over entities engaged in securities processing made these efforts generally unavailing.

During this period it was difficult, and in some cases impossible, for brokers and dealers to ascertain their own financial condition.[20] Those with regulatory responsibility over brokers and dealers were at an even greater disadvantage. Stock record differences and unresolved dividend receivables had grown to record levels.[21] Yet, brokers and dealers found it difficult to obtain confirmation of their transfer positions from transfer agents and the Commission lacked the authority to impose a requirement for prompt confirmations by transfer agents.[22]

As the industry struggled with operational difficulties, a different but equally critical problem evolved. In late 1969 the securities markets experienced a sharp decline in prices. Although the accompanying decline in trading volume eased some of the pressure on securities processing operations, the reduced volume also reduced commission revenues and the decline in market prices reduced the value of securities held in firm and proprietary accounts.[23] Broker and dealer liquidations became common and, through the exposures represented by open fails, threatened the survival of otherwise sound firms which had dealt with the insolvents. The result of that operational and financial crisis was a massive collapse within the securities industry. More than 100 brokerage firms were forced into liquidation, causing financial loss to the investing public.[24]

COMMISSION AND CONGRESSIONAL REACTION

The Commission responded to the paperwork crisis by restructing the regulatory framework governing the back-office operations of brokers and dealers. The Commission established new standards for the maintenance of books and records by brokers and dealers, imposed requirements for the custody, and limited use, of their customers' funds and securities, and tightened net capital requirements applicable to them.[25] The Commission reviewed changes in the securities processing operations conducted by subsidiaries of the national securities exchanges and the National Association of Securities Dealers, Inc. (the "NASD") to ensure that progress in processing was not achieved at the expense of investor protection; in particular, the Commission sought to ensure that funds and securities handled by clearing corporations and securities depositories were adequately safeguarded. In addition, through its review of exchange and NASD rule submission pertaining to clearing and settlement, the Commission fostered expanded to clearing corporations and depositories and the establishment of interfaces and links between securities processing entities.

Congress responded by enacting the Securities Investor Protection Act of 1970 (the "SIPC Act")[26] to protect customers from the consequences of broker and dealer solvency. Under the SIPC Act, the accounts of broker and dealer customers are protected for up to $50,000 for securities and cash, with a limitation of $20,000 for cash, by a fund established from industry revenues and backed by drawing rights on the United States Treasury of up to $1 billion. Concerned that there might be a recurrence of the widespread incidence of broker and dealer failures which led to passage of the SIPC Act, Congress directed the Commission to compile a list of unsafe and unsound practices employed by brokers and dealers in conducting their business, report to Congress on the steps being taken under existing laws to eliminate these practices, and submit recommendations on additional legislation which might be needed to eliminate these unsafe and unsound practices.[27]

In December 1971, the Commission submitted its "Study of Unsafe and Unsound Practices" to Congress. The Study stated that

> There is no area of the securities business which offers more opportunity for reducing costs as well as exposure to the kind of disruption which resulted in loss to customers during the 1969–70 period, than the improvement and modernization of the systems for clearing, settlement, delivery and transfer of securities. It was the archaic method of achieving this simple objective which nearly drowned the financial community in a tidal wave of uncontrolled paper. It is clear that modern communications and computer technology have now advanced to a point where the transfer of stock ownership, the payment therefor, and the documents controlling and recording the transfer of ownership and payment can be dramatically simplified.[28]

The Study noted that to ensure against future breakdowns from the significantly increased volume of securities transactions which would be necessary if the nation's capital needs were to be met in the years ahead, a modernized nationwide system for securities transactions should be created.[29] The Study recommended, among other things, that the Commission be given additional authority over the processing of securities transactions.[30]

Concurrently with the Commission's preparation of its "Study on Unsafe and Unsound Practices," the House and the Senate conducted extensive studies and hearings regarding the paperwork crisis and its aftermath which reached general agreement on the pressing need for improved securities processing systems.[31] These studies and hearings demonstrated that, although broker and dealer front-office sales activities had increased extensively, back-office operations often relied on manual processing operations which had been conducted in the same manner for many years. In a typical brokerage house at least 30 different documents had to be prepared in executing and processing a single transaction, and in the case of one large brokerage firm at least 210 pieces of paper had been prepared in connection with a single transaction.[32] In the absence of a nationwide clearing and settlement mechanism enabling them to participate in a single system, brokers and dealers were required to participate in several systems and thereby to incur increased costs of doing business. The lack of uniform methods of doing business and the failure of clearing and settlement entities to coordinate their various systems increased the brokers' and dealers' costs and their accounting and control problems. The fundamental weakness discerned by Congress was the absence of a mechanism to give direction to, and ensure cooperation and coordination among, the entities engaged in securities processing—clearing corporations, securities depositories, transfer agents and corporate issuers.

THE 1975 AMENDMENTS

In March 1972, the Commission submitted to Congress the "Securities Transaction Processing Act of 1972," a bill intended to provide a basis for the development of an efficient national system for clearance and settlement of securities transactions under the Commission's guidance.[33] In addition to the Commission's bill, various bills designed to provide a basis for the development of an efficient nationwide system of clearance and settlement were introduced in both Houses of Congress in 1972, 1973 and 1975, culminating with the enactment of

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[18] "Study of Unsafe and Unsound Practices", supra note 12, at 11–20; Clearance and Settlement Hearings, supra note 15, at 97.

[19] "1972 House Securities Industry Study", supra note 12, at 6, 10.

[20] Clearance and Settlement Hearings, supra note 15, at 97.

[21] *Id.*

[22] *Id.*

[23] "1972 House Securities Industry Study", supra note 12, at 9–10; "Study of Unsafe and Unsound Practices", supra note 12 at 14.

[24] "Improved National Securities Transfer System, Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S. 3876", S. Rep. No. 92-1009, 92d Cong., 2d Sess. 1 (1972).

[25] *See, e.g.*, Securities Exchange Act Release Nos. 9376 (November 8, 1971), 9504 (May 12, 1972), 9633 (June 14, 1972), 9856 (November 10, 1972), and 11497 (June 26, 1975).

[26] Pub. L. No. 91-598, 84 Stat. 1636 (1970).

[27] Section 11(h) of the SIPC Act, 15 U.S.C. 78 KKK(h) (1970).

[28] "Study of Unsafe and Unsound Practices," *supra* note 12 at 35–36.

[29] *Id.* at 1.

[30] *Id.* at 5–6, 39.

[31] *See, e.g.*, "1972 House Securities Industry Study", *supra* note 12; "1972 Senate Securities Industry Study", *supra* note 12; "1973 Senate Securities Industry Study", *supra* note 12.

[32] "1972 House Securities Industry Study", *supra* note 12, at 66.

[33] S. 3412 and H.R. 14567 (92d Cong., 2d Sess. (1972)).

the 1975 Amendments, which were signed into law on June 4, 1975.[24]

As expanded by the 1975 Amendments, one of the purposes of the Act is "to remove impediments to and perfect the mechanisms of * * * a national system for the clearance and settlement of securities transactions and the safeguarding of securities and funds related thereto * * * ."[25] The 1975 Amendments added a new Section 17A to the Act in which Congress set forth its findings that the linking of all clearance and settlement facilities, the use of new data processing and communications techniques and the development of uniform standards and procedures for clearance and settlement would reduce unnecessary costs and increase the protection of investors and persons acting on their behalf.[26]

Section 17A(a)(2) of the Act requires the Commission "to use its authority under [the Act] to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities * * * in accordance with the findings and to carry out the objectives set forth in [17A(a)(1)]." In using its authority, the Commission is to have "due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies and transfer agents * * * ."

Section 17A(b)(3) of the Act provides that the Commission shall not grant registration as a clearing agency to an applicant unless the Commission determines, among other things, that (i) the applicant is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions, to safeguard securities and funds, and to carry out the purposes of Section 17A of the Act; (ii) the applicant's rules are designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds, to foster cooperation and coordination with persons engaged in securities processing and to remove the impediments to and perfect the mechanisms of a national system for the clearance and settlement of securities transactions; and (iii) the applicant's rules do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Two basic themes which recur throughout the legislative history underlying the securities processing provisions of the 1975 Amendments are (i) the prevention of another paperwork crisis in the securities industry and (ii) the establishment of a safe, efficient and modern national clearing and settlement system.

The Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, the Senate version of the 1975 Amendments, describes the need for greater coordination among processing entities and standardization of forms and states that "[d]espite considerable progress in operational matters since the debacle of the late 1960's, the paperwork processing problems facing the securities industry remain extremely complex."[27] The Senate Report on S. 249 leaves to the Commission's expertise and experience in securities processing the task of shaping a national system to alleviate the problems of excessive processing costs and poor service to investors.

> Without addressing the merits of any particular system or the shape a national clearing and settlement system should take, the Committee is persuaded that the present uncoordinated state of affairs with respect to securities processing should not be allowed to continue.[28]

The Senate Report on S. 249 characterizes the accompanying bill as legislation designed to provide a comprehensive regulatory framework for the resolution of securities processing problems and the establishment of a national system.[29] The Report states "[t]he Committee expects the Commission to use the broad powers provided in the bill in a bold and effective manner to facilitate the rapid development of a nationwide system for processing securities transactions * * *."[30] In discussing the broad rulemaking authority over clearing corporations, securities depositories and transfer agents vested in the Commission under S. 249, the Report states that "[t]he Commission is expected to use this authority in order to facilitate the prompt development of an integrated national system for the clearance and settlement of securities transactions and the elimination or consolidation of duplicative facilities and procedures."[31]

The Senate Committee believed that reductions in processing expenses would be in the public interest because, by increasing brokers' and dealers' profits, the reductions would result in a healthier securities industry. The Senate Committee assumed that investors would benefit from reduced processing costs.[32]

In discussing the Senate and House bills, the Conference Committee Report accompanying the 1975 Amendments observed:

> To assure the development of a modern, nationwide system for the safe and efficient handling of securities transactions in a manner which best serves the financial community and the investing public, the Senate bill and the House Amendment directed the Commission to facilitate the establishment of the [national] system and centralized in the Commission the authority and responsibility to regulate, coordinate and direct the operations of all persons involved in the securities handling process.[33]

Under Section 17A of the Act, the Commission has an obligation to consider the competitive implications of its actions.[34] The Commission is not required to justify that its actions be the least anticompetitive manner of achieving a regulatory ob-

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[24] See S. 2551, S. 3297, S. 3876, H.R. 14826 and H.R. 16946 (92d Cong., 2d Sess. (1972)); S. 2058 and H.R. 5050 (93d Cong., 1st Sess. (1973)); S. 249 and H.R. 4111 (94th Cong., 1st Sess. (1975)).

[25] The Act, Section 2.

[26] The Act, Section 17A(a)(1).

[27] "Securities Acts Amendments of 1975, Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S. 249", S. Rep. No. 94-75, 94th Cong., 1st Sess. 4 (1975) [hereinafter cited as "Senate Report on S. 249"]. The Senate Report on S. 249 summarizes the Committee's concerns about securities processing as follows: Processing economies, the public interest in protecting investors against loss of securities and cash, the financial and operational responsibilities of broker-dealers, the need for greater public confidence in the market system, and the expectation that the markets of the future will be required to handle higher volume, all require a modernized national system for consummating securities transactions. The need for legislation is clear. *Id.* at 6.

[28] *Id.* at 5.

[29] The Senate Report on S. 249 stated: S. 249 would facilitate the creation of a system of centralized regulation and decisionmaking which extends to every facet of the securities handling process involving securities transactions within the United States—clearing agencies, depositories, corporate issuers and transfer agents. Only by the creation of a central authority in operational matters can paper-handling problems be squarely addressed; only the creation of such authority can assure the prompt development of a national clearing system. * * * *Id.* at 55.

[30] *Id.* 55.

[31] *Id.* at 126.

[32] Specifically, the Senate Report on S. 249 stated: Securities processing costs are necessarily passed on to investors in the form of the commission rates they are charged. Investor participation in the market, particularly the patricipation of the small investor, is in part related to the costs of investing. The Committee is convinced that one of the most important steps that can be taken to assure that commission charges are reasonable and fair is to foster cost savings in the processing end of the securities business. S. 249 is intended to do that. *Id.* at 5-6.

[33] "Securities Acts Amendments of 1975, Conference Report to Accompany S. 249, Joint Explanatory Statement of the Comm. of Conference," H.R. Rep. No. 229, 94th Cong., 1st Sess. 102 (1975) [hereinafter cited as "Conference Report"].

[34] For example, in its report on H.R. 4111 (the House version of the 1975 Amendments), the House Committee on Interstate and Foreign Commerce, after stressing the projected efficiencies of a national clearing and settlement system, stated:

> It should be made clear that the statutory charge to develop a unified system for the clearance and settlement of securities transactions does not carry with it the call—nor does it grant the authority—to eliminate competition among separate entities in the performance of these functions. Many of the innovations and improvements in clearance and settlement of the last several years have been the product of vigorous and healthy competition among different service entities. Often new market entrants have been responsible for the most significant advances. The Committee believes, therefore, that a national system, through [sic] fully integrated, must make full allowance for the continuance and future entry of separate service entities. (*Securities Reform Act of 1975, Report of the House Comm. on Interstate and Foreign Commerce to Accompany H.R. 4111*, H.R. Rep. No. 94-123, 94th Cong., 1st Sess. 51 (1975)).

jective.[45] Rather, in exercising its authority, the Commission must balance the maintenance of fair competition and a number of other equally important express purposes of the Act. Indeed, Section 17A specifically recognizes that need and directs the Commission, in exercising its mandate to facilitate the establishment of a national clearing and settlement system, to perform that balancing function "having due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents * * *."

CHARACTERISTICS OF A NATIONAL SYSTEM[46]

The directive of the 1975 Amendments that the Commission use its authority to facilitate the establishment of a national system animates the review, analysis, evaluation and balancing required of the Commission in determining whether to grant or deny NSCC's application for registration as a clearing agency. Consistent with that directive, the Commission must be attuned to the dynamic growth process of the nation's securities markets and the concomitant need for a national clearing and settlement system with the capacity to service, and the flexibility to adapt to changes in, the nation's capital-raising mechanisms. In response to those needs, the Commission has formulated the characteristics of a national clearing and settlement system which will advance the Act's several objectives by drawing on expertise acquired through experience in regulating the activities of clearing corporations, securities depositories, transfer agents, brokers and dealers, securities information processors and securities markets. In its formulation, the Commission has sought to reconcile the directives of Section 17A with the requirements of such diverse areas as trade comparison,[47] transfer agent operations,[48] other Congressionally-mandated programs for safeguarding securities processing activities[49] and the allocation of regulatory responsibilities.[50] The Commission has sought also to ensure that its formulation will be compatible with new technological developments.

The Commission believes that to satisfy the requirements of Section 17A of the Act and the other concerns affected by the operation of a national clearing and settlement system the system should: (i) process securities transactions by means, including book entry movement,[51] suitable to the character of the issues processed;[52] (ii) provide access, either directly or indirectly, to all brokers and dealers and financial institutions;[53] (iii) enable participants to compare,[54] account for[55] and settle[56] through one entity all trades in securities included in the system, regardless of the location of the other party to the trade or the market in which the trade is executed ("one account processing");[57] (iv) enable participants to deposit and maintain their securities in a custodial account at the depository level which makes possible book entry movements between participants, to settle participants' clearing obligations, to effect pledges and to perform other functions which may be effected by book entry;[58] (v) enable participants to make a single daily money settlement, for both clearing obligations and depository-related movements;[59] and (vi) provide, in a book entry environment, same-day turnaround[60] at both the clearing corporation and depository levels.[61]

BOOK ENTRY CLEARING

The book entry clearing portion of the national system should have the following characteristics: (i) an accounting function which nets participants' securities positions daily and permits netted positions to be carried forward and netted against positions established on subsequent days ("continuous netting"); (ii) a trade guarantee as of settlement date;[62] (iii) mark-to-the-market protection from settlement date onward;[63] (iv) one daily clearing position per issue for each participant; (v) a link between the continuous netting system and a depository to make possible automatic book entry delivery to satisfy short-valued positions[64] in the continuous netting sys-

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[45] It had been suggested that, adopting the 1975 Amendments, Congress should require the Commission to cleave to a "least anticompetitive" standard in making rules and regulations under the Act, but Congress determined instead to grant broader discretion to the Commission and to view the need for competition in the context of the Act as a whole and its several objectives so that burdens on competition could be accepted where necessary or appropriate in furtherance of the purposes of the Act. See Statement of Donald I. Baker, Deputy Assistant Attorney General, Antitrust Division, Department of Justice, in "Hearings on S. 249 Before the Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs," 94th Cong., 1st Sess. 244–252, 257–262 (1975); *see also* Securities Exchange Act Release No. 12737 (August 25, 1976) at 59–60, 41 FR 36847 (September 13, 1976).

[46] The characteristics of a national clearing and settlement system and the benefits which the Commission believes such a system would provide were discussed in detail in Securities Exchange Act Release No. 12954 (November 3, 1976), 41 FR 49721 (November 10, 1976).

[47] Trade comparison procedures vary depending on the trading mechanisms used, the kinds of securities traded and trading volume and are likely to present further variations as the nature of the securities markets changes.

[48] Transfer agent operations vary greatly in degree of automation and volume of transfers processed and are rapidly changing in response to new technologies.

[49] Pursuant to Section 17(f)(2) of the Act, 15 U.S.C. 78q(f)(2) (1975), the Commission has adopted a rule relating to fingerprinting requirements for, among others, clearing agencies and transfer agents. Securities Exchange Act Release No. 12214 (March 16, 1976), 41 FR 13594 (March 31, 1976), announced a lost and stolen securities program and adopted a rule regarding reporting and inquiry with respect to missing, lost and stolen securities. Securities Exchange Act Release No. 13053 (December 10, 1976), 41 FR 54923 (December 16, 1976).

[50] Pursuant to Sections 17(d)(1) and 19(g)(2) of the Act and Section 9(c) of the SIPC Act, 15 U.S.C. 78lll(c) (1975), the Commission has adopted and proposed rules for the allocation of responsibilities among "self-regulatory organizations," a term which Section 3(a)(26) of the Act defines to include registered clearing agencies. Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18879 (May 7, 1976).

[51] "Book entry movement" occurs when a clearing agency credits and debits participants' accounts to effect transfers between participants of securities registered in the name of the clearing agency and held for its participants.

[52] *See* subparagraph 17A(a)(1)(A) of the Act.

[53] The term "financial institutions" includes banks, insurance companies, investment companies, clearing agencies and any other entities which receive, deliver or hold securities. *See* subparagraph 17A(b)(3)(B) of the Act.

[54] Comparison, the process by which participants in the securities markets reach agreement on the existence and terms of trades made in the marketplace, culminates in the production and submission to the accounting operation of contract lists representing transactions which have been confirmed by both parties.

[55] The accounting process generates the money and securities settlement obligations of participants in clearing corporations. Continuous netting and daily balance order accounting systems generate net positions to be received or delivered and thereby minimize the required number of securities settlements; other accounting systems, such as trade-by-trade systems, do not net obligations.

[56] Obligations generated by the accounting function are satisfied through the settlement process by the delivery and receipt of funds and securities.

[57] Although the national system would include a number of entities through which one account processing would be available, a participant should not be required to belong, or relate directly, to more than one entity. *See* subparagraphs 17A(a)(1)(A) and (D) of the Act.

[58] *See* subparagraphs 17A(a)(1)(A), (C) and (D) of the Act.

[59] *See* subparagraphs 17A(a)(1)(B) and (D) of the Act.

[60] "Same-day turnaround" is the ability of a participant to redeliver securities to another participant on the day on which they are received.

[61] *See* subparagraph 17A(a)(1)(B), (C) and (D).

[62] Currently, most clearing corporations guarantee transactions from and after settlement date by interposing the corporation between the parties to the transactions.

[63] A "mark-to-the-market" payment is the amount required by a clearing system from any party to a trade guaranteed by the system who becomes a potential net obligor of the system because the market price of the securities involved in the clearing transactions moves away from the contract price for the clearing transaction.

In the future it may be appropriate for clearing corporations to guarantee trades as of trade date and provide mark-to-the-market protection from trade date onward.

[64] In a continuous netting system, settlement obligations run primarily between each participant and the system which, on settlement day, generates net obligations to deliver securities to the system against payment ("short-valued positions") or to receive securities from the system and make payment for them ("long-valued positions").

tem and to permit deliveries to, and receipts from, the continuous netting system at various remote locations; and (vi) a same-day turnaround capability for both securities received by a participant from the continuous netting system and securities delivered to a participant which the participant wishes to redeliver to the continuous netting system.

NON-BOOK ENTRY CLEARING

The non-book entry clearing portion of the national system, which could include low-volume clearing operations,[65] should guarantee transactions as of, and mark them to the market from, settlement date. In addition, subject to the limitations of certificate as opposed to book entry settlement,[66] same-day turnaround should be available for securities settled throug the non-book entry portion of the system.

COMPARISON, ACCOUNTING AND SETTLEMENT

The national system should permit participants to elect to use all, or only a portion of, the system's clearing and settlement services. Accordingly, while a participant should be able to obtain one account processing through one clearing entity, the participant should be able also (i) to compare trades through the clearing entity affiliated with the marketplace in which the trade was executed and direct delivery of the compared trade to the clearing entity the participant selects to perform the accounting operation and (ii) to direct delivery of the securities settlement instructions generated by the accounting operation to the depository entity the participant elects to use for securities settlement. It does not appear necessary at this time for the national system to provide participants with an ability to direct delivery of securities settlement instruction to a depository other than the one linked to the clearing entity which generated the instructions.[67] Nonetheless, because of the possibility of competitive innovation at the depository level—including development of transfer agent depository ("TAD") systems[68]—the national system should not preclude developments which would permit a participant to direct delivery of securities settlement instructions to any depository entity.

DEPOSITORY CAPABILITIES

The depository portion of the national system should provide the following services: (i) ability of a participant to make valued and free securities deliveries by book entry;[69] (ii) dividend and proxy protection for securities left on deposit; (iii) facilities for the deposit and withdrawal of securities at locations remote from central depositories;[70] and (iv) same-day turnaround for (A) free or valued book entry deliveries to a participant's depository account from the clearing portion of the system, (B) free or valued book entry deliveries to a participant's depository account through the depository, and (C) deposits to a participant's depository account.

The depository portion of the system should be able to perform all securities processing functions which may be effected by book entry. Currently, these functions include free and valued movements of securities and movements to effect pledges and loans of securities. The depository portion of the system should permit withdrawals of certificates in street name[71] and in registered form and expedited withdrawals of certificates. Also, the depository portion of the national system should be designed to be compatible with TAD programs, transfer agent custodian ("TAC") programs,[72] and other developments in the transfer agent area which reduce certificate movement.

The Commission believes that a national system with the foregoing characteristics would protect investors by providing prompt and accurate clearance and settlement of securities transactions and by safeguarding securities and funds.[73] In addition, by using advanced data processing and communications techniques, linking clearance and settlement facilities and establishing uniform standards and procedures, the system would reduce the unnecessary costs imposed on investors by inefficient clearance and settlement procedures and would increase the protection of investors.[74] Specifically, the system would (i) reduce the cost to participants of relating to present clearing, settlement and depository systems;[75] (ii) reduce the average delivery time for the settlement of securities transactions and the carrying costs associated with settlement activity; (iii) simplify recordkeeping; (iv) enhance the ability of clearing agencies and other self-regulatory organizations to monitor the clearing positions of participants who are becoming overextended;[76] (v) increase insulation of participants (and their customers) from the effects of another participant's insolvency; and (vi) reduce the number of lost or stolen certificates.[77]

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[65] The non-book entry clearing components of the national system could use continuous netting, daily balance order, trade-by-trade or any other clearing system which would produce, receive and deliver instructions.

[66] In the case of certificate settlement, the same-day turnaround capacity of the national system would be limited by the location at which deposits and withdrawals are made and by transfer agent turnaround times. Accordingly, turnaround time could vary depending on whether the deposit or withdrawal were in-town or at a remote location and on whether the transfer agent involved were in-town or out-of-town.

[67] The alternative—a link between each clearing entity and each depository in the system—would appear, at the present time, to pose significant communications problems. However, as long as all depositories are interfaced, a participant would be able to relate to the entire depository network by relating to one depository and would not necessarily require direct access to more than one depository.

[68] In its ultimate form, the TAD concept would replace the stock certificate with computerized stockholder lists, maintained by TAD's, which would serve both as the issuers' stock records and as stockholders' ownership records. The lists would be updated continuously. Communications between TAD's and institutional customers, brokers and dealers, banks and others would be effected through instruction routing entities located in various financial centers throughout the United States. The instructions would direct the TAD's (i) to effect book entry transfers and pledges between participants by debiting and crediting the TAD's records and (ii), if necessary, to issue and deliver physical certificates.

[69] A valued delivery is made against payment for the securities delivered; a free delivery is not made against payment.

[70] Each central depository presumably would have to have a network of deposit and withdrawal facilities.

[71] Currently, the time necessary to complete the transfer process has led to the practice of withdrawing from a depository certificates registered in the name of the depository or of a depositing broker and executed in a form or accompanied by documents ments which make the certificates negotiable. This practice is necessary to permit delivery on a same-day basis to institutions and others which make payment only against receipt of certificates. Presumably, participation of more institutions in depositories will reduce the importance of an expedited certificate withdrawal capability.

[72] In a TAC arrangement the depository maintains all but a working supply of certificates of an issue with the transfer agent custodian in the form of a balance certificate. As the need for certificates in the depository changes, the depository adjusts its in-house inventory by increasing or decreasing the number of shares held in-house in nominee name and correspondingly decreasing or increasing the number of shares held by the transfer agent. Appropriate shipments of certificates between the depository and transfer agent are made in connection with the adjustments.

[73] The Act, subparagraph 17A(a)(1)(A).

[74] The Act, subparagraph 17A(a)(1) (B), (C) and (D).

[75] Reductions in the costs of relating to present systems would result primarily from such advantages of the account processing as (i) the ability of participants' back-office personnel to be familiar with one set of procedures and to use one set of forms in processing securities transactions, (ii) the ability of participants to make one daily money settlement (rather than multiple and possibly offsetting money settlements) and (iii) reductions in the facilities and personnel in participants' back offices associated with the delivery, receipt and handling of certificates.

[76] Because currently a participant may have clearing positions settling in more than one system, individual clearing agencies may not become aware of more than a normal exposure even though the participant's combined exposure in all clearing systems is abnormally large.

[77] The Department of Justice has recommended the retention of securities in depositories as a means of reducing securities thefts. "Suggestions by the Department of Justice for Safe Handling of Marketable Securities by Financial Institutions, Including Hints for Detecting Counterfeit, Forged, Worthless and Spurious Securities." Department of Justice announcement (December 23, 1974) at p. 1.

STATUTARY DETERMINATIONS TO BE MADE IN CONNECTION WITH NSCC'S REGISTRATION

The general mandate contained in Section 17A(a) of the Act is implemented by, among other things, Section 17A(b), which provides for the registration of clearing agencies. Paragraph (3) of Section 17A(b) provides that the Commission may not register a clearing agency unless the Commission makes the determinations contained in subparagraphs (A)–(I) of paragraph (3) which, in general, require the Commission to determine that the clearing agency is organized and has the capacity, and its rules are designed, to carry out the purposes of Section 17A of the Act.

Pursuant to Rule 17Ab2–1 under the Act,[78] an applicant for registration as a clearing agency may apply for full registration under the Act, in which case the Commission must make all the determinations called for by subparagraphs (A) through (I) of section 17A(b)(3) in order to register the applicant. Alternatively, pursuant to paragraph (c)(1) of the Rule, an applicant can apply for a limited registration which terminates 18 months from the date on which it becomes effective in which case the Commission may register the applicant while making fewer than all the determinations called for by subparagraphs (A) through (I). In accordance with paragraph (c)(2) of the Rule, at the expiration of the first nine months of an 18-month registration pursuant to paragraph (c)(1) of the Rule, the Commission must either grant registration without exempting the registrant from one or more of the subparagraphs (A) through (I) determinations or institute proceedings to determine whether registration should be denied at the expiration of the 18-month registration.[79]

In granting NSCC's application for registration as a clearing agency for a period of 18 months the Commission is determining, in accordance with section 17A(b) of the Act and Rule 17Ab2–1 thereunder, that: (i) NSCC is "so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions * * * to safeguard securities and funds in its custody or control * * * to comply with the provisions of [the Act] and the rules and regulations thereunder * * * and to carry out the purposes of (Section 17A of the Act)," [80] (ii) NSCC's rules "do not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants," [81] (iii) NSCC's rules are designed "to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds * * * in (its) custody or control * * * to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions (and) to remove impediments to and perfect the mechanism of a (national clearing and settlement system), and, in general, to protect investors and the public interest * * *," [82] and (iv) NSCC's rules do not "impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act.]" [83]

In accordance with the requirements of sections 17A (a) and (b) of the Act, the Commission is considering also whether NSCC is so organized and has the capacity to (i) protect investors and those facilitating transactions on behalf of investors, (ii) reduce unnecessary costs resulting from inefficient clearing and settlement procedures, (iii) take advantage of the efficiencies and safety made available by new data processing and communications techniques and (iv) provide for the linking of all clearing and settlement facilities and the development of uniform standards and procedures.[84]

The Commission's determinations concerning such matters as safeguards, efficiencies, cost reductions and effects on competition, are being made in the context of the Commission's statutory responsibility to facilitate the establishment of a national clearing and settlement system which will have the characteristics called for by the Act, be compatible with future developments in the structure of the nation's securities markets and have the operational capability to avoid a future paperwork crisis.

THE NSCC APPLICATION

BACKGROUND TO THE APPLICATION

The Commission's review of NSCC's application has been made in the context of the progress in clearing and settlement achieved during the last decade and the efforts of entities engaged in securities processing—brokers and dealers, clearing corporations, securities depositories, transfer agents, institutional investors, securities exchanges and the National Association of Securities Dealers, Inc. (the "NASD")—to establish clearing and settlement systems and to integrate them into a national system. The importance of NSCC's establishment to that progress and the significance of the accords and compromises on which NSCC's establishment is based can be gauged only against the backdrop of a decade of industry effort.

Efforts to establish clearing and settlement systems were conceived and initiated before and during the paperwork crisis by the exchanges and the NASD, which organized and funded separate subsidiaries to perform clearing, settlement and depository functions. The securities processing subsidiaries were closely linked to their parent organizations and, in addition to performing processing functions, provided a variety of other services for their participants and parent organizations. Establishment of the processing entities entailed substantial expenditures for the development of systems and computer programs, the purchase or lease of computers, peripheral equipment and working space and the retention and training of personnel. Generally, the expenditures were funded by contributions from the parent organizations and clearing fees paid by the entities' participants.

Although the severity of the paperwork crisis might have been tempered had the exchanges and the NASD taken initiatives earlier, the continually growing paper onslaught of the late 1960's was unaffected by the systems then being considered and developed and was little deterred by the untested systems then being implemented. Against the stark background of confusion, loss of confidence, and broker and dealer liquidations left by the paperwork crisis, the entities engaged in securities processing began a program of reconstruction designed to build on the initiatives taken already and to advance securities processing beyond the possibility of a recurrence of that crisis.

During the early 1970's those processing entities developed and implemented substantial improvements in their securities processing operations, including the automation of manual functions, the establishment of new and more efficient clearing and settlement systems, a rapid expansion in the number and use of securities depositories, and an intensification of efforts to establish interfaces among previously unrelated clearing and settlement systems. The extent of the improvements was highlighted in January and February 1976 when securities

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[78] Adopted in Securities Exchange Act Release No. 11787 (November 3, 1975), 41 FR 52356 (November 10, 1975).

[79] On December 1, 1975, the Commission granted registration pursuant to paragraph (c)(1) of the Rule to 13 clearing agencies: ASECC, Boston Stock Exchange Clearing Corporation ("BSECC"), Bradford Securities Processing Services, Inc. ("SPS"), The Depository Trust Company ("DTC"), Midwest Clearing Corporation ("MCC"), Midwest Securities Trust Company ("MSTC"), NCC, The Options Clearing Corporation ("OCC"), Pacific Clearing Corporation ("PCC"), Pacific Securities Depository Trust Company ("PSDTC"), SCC, Stock Clearing Corporation of Philadelphia ("SCCP") and TAD Depository Corporation ("TADDC"). Subsequently, pursuant to paragraph (c)(1) of the Rule, the Commission registered the New England Securities Depository Trust Company ("NESDTC"), a wholly-owned subsidiary of the Boston Stock Exchange, upon the same findings made in connection with the December 1, 1975, registrations.

[80] The Act, subparagraph 17A(b)(3)(A).

[81] The Act, subparagraph 17A(b)(3)(E).

[82] The Act, subparagraph 17A(b)(3)(F).

[83] The Act, subparagraph 17A(b)(3)(I). In accordance with Rule 17Ab2–1 under the Act, the Commission has not made any determinations with respect to the following portions of subparagraphs (A)–(I) of Section 17A(b)(3) of the Act: the portion of subparagraph (A) pertaining to NSCC's ability to enforce compliance by its participants with its rules; any of subparagraphs (B), (C) or (D); the portions of subparagraph (F) prohibiting NSCC's rules from permitting unfair discrimination among participants or regulating matters not related to the purposes of Section 17A of the Act or the administration of NSCC; or any of subparagraphs (G) and (H). These determinations will be made prior to the expiration of NSCC's 18-month registration.

[84] The Act, Section 17A(a).

processing systems successfully handled average daily trading volume on the NYSE of 31 million shares compared with the average daily volume on the NYSE of 12 to 13 million shares which had overwhelmed the securities industry in the late 1960's.

Despite these improvements, only modest progress was made toward the establishment of a comprehensive national clearing and settlement system. In part, the lack of progress was attributable to the absence of a centralized, decision-making authority in the securitis processing area and a consequent tendency for processing entities to seek immediate solutions to their individual problems rather than industry-wide solutions to the larger problems which confronted all the entities. The lack of progress was attributable also to the close operational and financial relationships between securities processing subsidiaries and their parent organizations which made them initially reluctant to participate in plans to establish a national system which, the organizations recognized, would entail a diminution in their control over the services and revenue streams provided by the processing subsidiaries.

An ambitious effort to establish a national system was begun in December 1973 when the NASD and the NYSE submitted to the Commission a memorandum of understanding providing, among other things, for the establishment of the National Securities Processing Committee, which was to develop a plan for a single national facility for clearing and settling securities transactions.[85] Although the Committee was organized by, and its membership included representatives of, the NYSE, the NASD and other self-regulatory organizations and their processing subsidiaries, a majority of the Committee's members were brokers and dealers. The Committee met a number of times during 1974 and early 1975 but was unable to reach agreement on a program for the establishment of a national clearing and settlement system. Nevertheless, the Committee's deliberations were instrumental in improving cooperation among existing clearing and settlement entities and in developing a consensus on the operating characteristics of a national clearing and settlement system.

Much of the Committee's effort was directed toward eliminating what its members viewed as the inefficiencies represented by the location and operation, within several blocks of each other in downtown Manhattan, of three high-volume clearing and settlement entities with essentially similar systems and substantial membership overlaps: ASECC, NCC and SCC.[86] The members believed these inefficiencies created costs for brokers and dealers by requiring their back-office operations to interact and reconcile end of day balances with multiple clearing corporations and by subjecting them to clearing and settlement fees which supported the operational and administrative redundancies of three clearing corporations. After the Committee disbanded, its former members and other participants in securities processing operations continued their efforts to establish a national clearing and settlement system, including the elimination of perceived inefficiencies in securities processing in New York City.

During 1973 and 1974, low OTC transaction volume caused NCC, the NASD's securities processing subsidiary, to experience significant operating losses. Since NCC was making substantial equipment lease payments as its own facilities manager, NCC and the NASD approached the Securities Industry Automation Corporation ("SIAC") [87] and Bradford National Corporation ("Bradford") to determine the feasibility of having NCC's processing performed by an outside facilities manager under an arrangement which would avoid further loss to NCC. On October 1, 1974, following submission of bids by SIAC and Bradford and comparison of the bids with each other and with an internal cost reduction program proposed by NCC's operating staff, the NASD and NCC entered into a processing agreement with Bradford National Clearing Corporation ("BNCC"), a Bradford-guaranteed subsidiary established to perform NCC's processing. Under the agreement, NCC was entitled to terminate BNCC as its processor before the expiration of the agreement's five-year term upon payment of an early termination penalty.[88]

In April 1975, SIAC submitted a formal proposal to NCC to perform all of NCC's processing functions. NCC initially rejected the proposal. Subsequently, NCC's parent organization, the NASD, and SIAC's parent organizations, the Amex and the NYSE, sponsored the establishment of committees to negotiate an agreement for combining the processing functions of ASECC, NCC and SCC.[89] The committee sponsored by the NASD was composed of NASD members who used NCC's services, and the committee sponsored by the Amex and the NYSE was composed of members of the two exchanges who, through ASECC and SCC, used SIAC's clearing and settlement services. In July 1975, the two user committees reached a nine-point "agreement in principle" providing for the merger of ASECC, NCC and SCC into a single, New York-based clearing and settlement facility.[90]

Under the agreement in principle, the Amex, the NASD and the NYSE agreed to transfer the operations of their wholly-owned subsidiary clearing corporations, ASECC, NCC and SCC, to a new entity which would be controlled by its participants rather than by the parent self-regulatory organizations. The agreement in principle specified that transfer should be accomplished in a way which "would avoid any loss to the respective parent companies of the clearing corporations" and that SIAC would be the processor for the new entity. Thereafter, the NCC and SIAC user committees formed a number of specialized subcommittees which, during late 1975 and early 1976, worked out the details of NSCC's establishment in accordance with the nine-point agreement. NSCC was incorporated on March 17, 1976, and on March 29, 1976, filed its application for registration as a clearing agency.

THE APPLICATION

NSCC's application for registration comprises 25 documents filed on 12 different occasions between March 29, 1976, and September 27, 1976, and is supplemented by information contained in related correspondence and developed during the course of the oral presentations of data, views and arguments.[91] Much of NSCC's application consists of documents necessary to transform the assortment of corporate arrangements under which the Amex, NASD and NYSE have in the past provided clearance and settlement services to their members into a single clearance and settlement corporation controlled by the users of those services.

In legal structure the clearance and settlement operations of the Amex, NASD and NYSE are separate wholly-

[85] In response to the memorandum of understanding, the Commission released a letter addressed to the NASD and the NYSE in which the Commission recognized the need to develop a national system and recommended criteria for the Committee to consider in connection with its deliberations. Securities Exchange Act Release No. 10631 (February 7, 1974).

[86] In general, ASEC clears American Stock Exchange, Inc. ("Amex") transactions; NCC clears OTC transactions; and SCC clears NYSE transactions.

[87] SIAC is a communications, service and securities processing entity, owned ⅔ by the NYSE and ⅓ by the Amex, which performs all securities processing operations for both SCC and ASECC.

[88] The termination penalty was $250,000 if BNCC were terminated between October 1, 1974, and September 30, 1976, and $125,000 if BNCC were terminated between October 1, 1976, and September 30, 1977. There was no penalty for termination after October 1, 1977.

[89] On April 23, 1975, Peter Del Col, Chairman of the Board of Bradford, wrote to the Amex, the NASD and the NYSE offering to bid competitively against SIAC for a contract to perform securities processing for ASECC, NCC and SCC and requesting the NYSE and the Amex to make available to Bradford information on which to base its bid. By letter dated May 6, 1975, Chairman James J. Needham of the NYSE informed Bradford that it would be premature for the NYSE to consider Bradford's proposal and request for information before completion of the discussions then under way between the NASD and SIAC user committees.

[90] "A Plan for Consolidation of Clearance and Settlement Activities for Listed and Over-the-Counter Stocks," July 15, 1975.

[91] The documents filed by NSCC, related correspondence, memoranda of meetings, transcripts of the oral presentations of data, views and arguments and comment letters on the application and on Commission releases issued in connection with the application are contained in Securities and Exchange Commission File No. 600–15 and are available for inspection at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

owned subsidiaries, ASECC, NCC and SCC; each clearing corporation is, however, essentially a shell corporation with relatively limited assets and a small number of administrative employees. The extensive data processing and clerical operations required to accomplish clearance and settlement are housed in or furnished by other corporate entities. As a result, combining the three clearing operations is not merely a matter of transferring control over three corporate shells but requires, in addition, recasting the separately housed processing and clerical functions which provide the underlying services.

In the case of the Amex and the NYSE, data processing and clerical operations are performed for the clearance and settlement subsidiaries, ASECC and SCC, by SIAC, a jointly-owned Amex and NYSE subsidiary which leases computers, peripheral equipment and space under long-term agreements and employs a large clerical staff dedicated in substantial part to the performance of clearance and settlement operations. Unlike ASECC and SCC, NCC initially operated its clearance and settlement operations, employing its own clerical and related personnel and itself entering into the necessary equipment and space lease arrangements. In 1974, however, NCC retained BNCC as securities processor, transferred to BNCC or terminated most non-administrative personnel and became a shell subsidiary of the NASD. Unlike ASECC and SCC, however, NCC did not use a corporate affiliate to conduct its clearance and settlement operation.

The description of NSCC's application contained in this order outlines the steps of a transformation essentially intended to accomplish four results. First, the corporate structures of, and the operations performed for, ASECC, NCC and SCC are to be combined into a single administrative and operational structure. Second, ownership of the new clearing corporation is to be structured in a manner which will preserve NSCC's status as a "clearing corporation" under the applicable Uniform Commercial Code provisions.[32] Third, the current users of ASECC, NCC and SCC are to exercise direction over the management and operations of NSCC. And, fourth, the combination is to be effected in a manner which will ensure that the Amex, NASD and NYSE are compensated to their satisfaction for the operations over which control is being ceded to NSCC's user board. The summary does not describe changes which would result from NSCC's satisfaction of the conditions to its registration contained in this order.

Following the grant of NSCC's registration, ASECC, NCC and SCC will each transfer to NSCC their clearing agency operations, including the future revenues generated by the operations. In addition, ASECC and SCC will each transfer $300,000 in cash to NSCC in exchange for 10,000 shares of NSCC common stock, and NCC will transfer to NSCC assets valued at $900,000 in exchange for 10,000 shares of NSCC common stock and a $600,000 promissory note of NSCC. The 30,000 shares of NSCC common stock to be issued to ASECC, NCC and SCC will constitute all NSCC's outstanding common stock and will be subject to restrictions on transfer designed, among other things, to preserve NSCC's status as a "clearing corporation" under the applicable Uniform Commercial Code provision. In addition, the rights and obligations among each of the combining clearing agencies and its participants will be assigned to and assumed by NSCC. The clearing funds of the combining entities will be transferred to NSCC, and NSCC will assume certain other liabilities of the combining entities.

Following transfer to NSCC of the clearing agency operations of ASECC, NCC and SCC and their contributions of cash and assets, NSCC will operate the business of each transferor clearing agency as a separate NSCC division, i.e., the ASECC Division, the NCC Division and the SCC Division. Each division will operate under substantially the same rules, procedures and agreements used by the division's predecessor clearing agency.

Operation under the divisional structure, which NSCC has estimated would last approximately 120 days, is referred to as "Phase I" of the merger. SIAC prepared much of the technical portions of NSCC's application. During Phase I, SIAC will continue its current role as processor for ASECC and SCC. In addition, building in part on the work done already in preparing the technical portions of the application, SIAC will develop a plan to convert the ASECC–SCC and NCC systems into a single system combining desirable aspects of both. Operating rules and procedures for the combined system will be prepared by NSCC and SIAC and submitted to the Commission for review and approval before they could be implemented. Following Commission approval of the combined system's rules and procedures, NSCC and SIAC will begin to operate the combined system, thereby initiating "Phase II" of the merger plan.

FACILITIES MANAGEMENT

Pursuant to a facilities management agreement between NSCC and SIAC (the "Management Agreement"), all NSCC securities processing functions, including those performed currently for NCC by BNCC, will be performed by SIAC.[33] Under the Management Agreement, SIAC will be obligated to charge NSCC no more than SIAC's costs for providing the services covered by the Management Agreement. NSCC will have the right to monitor all phases of SIAC's NSCC operation in order to ensure that the operation was adequate and in compliance with statutory criteria. Furthermore, NSCC will have the right, either itself or through its agents (including its independent public accountants), to review SIAC's operation and evaluate the accuracy and appropriateness of the cost allocations made by SIAC in determining its cost of performing processing for NSCC.

The Management Agreement will have a term of five years, at the expiration of which NSCC will have no further obligation to SIAC and SIAC will be obligated to facilitate the transfer of the NSCC operations to any processor selected by NSCC. Any time after the second year of the Management Agreement, NSCC will have the right to terminate the agreement upon six months written notice, which may be given during the second year, and upon NSCC's agreement to pay SIAC a monthly fee of $225,000 from the termination date to the end of the Management Agreement's term. The amount of NSCC's monthly payment will be reduced by $100,000 if NSCC assumes responsibility for SIAC's lease of space used for the NSCC operation and by an additional $25,000 if NSCC assumes SIACs' severance obligations to employees engaged in the performance of the NSCC operations.

USER-CONTROL

NSCC will operate under the governance of a 16-member Board of Directors, 12 members of which will be NSCC participants ("participant directors"). ASECC, NCC and SCC each will have one representative on the Board ("shareholder directors"). The sixteenth member will be the president of NSCC (the "management director").

Annually after the first year of NSCC's operation, one shareholder director's seat and four participant directors' seats will be open for election. The shareholder director's seat will be filled with the nominee of the shareholder whose seat has become vacant. An annually elected nominating committee will select four participant director candidates and also will select the nominating committee for the following year.[34]

[32] N.Y. Uniform Commercial Code, Sections 8–102(3) and 8–320, supra note 2. The agreement contemplates that the Amex, NASD and NYSE, the parent corporations of ASECC, NCC and SCC, may become transferees of the stock of NSCC received by the subsidiary clearing and settlement entities.

[33] During the Commission's review of rules proposed by NSCC for combined systems operations, NSCC, as NCC's assignee under the NCC–BNCC facilities management, will exercise NCC's termination right by paying BNCC a $125,000 early termination penalty. Thereafter, NSCC will direct SIAC to perform the NCC processing functions performed currently by BNCC in addition to the ASECC–SCC processing functions SIAC performs currently.

[34] Sixty days before the election, the nominating committee's slate of candidates for the participant directors' seats and for the following year's nominating committee will be circulated to NSCC's membership. The membership will be able to propose alternative nominees upon the filing of a petition by the lesser of five percent of NSCC's participants or 15 participants. If any alternative nominees are proposed, a vote will be held in which the participants, voting cumulatively under a formula based on usage of NSCC, will select the nominees to be elected to the NSCC board and the nominating committee. NSCC's shareholders will vote for the slate selected by the nominating committee, if no opposing nominees are proposed, or for the nominees who received a majority of the participants' votes, if opposing candidates are proposed and an election is held.

After the second year of NSCC's operation participant directors will be elected for three-year terms. No participant director will be permitted to serve as a director for more than five consecutive years or to serve on the nominating committee while a director or during the year following the expiration of the director's term of office. No member of a nominating committee can be included in the slate of director nominees selected by that nominating committee and no member of a nominating committee can serve consecutive terms. Neither a shareholder director nor the management director will be permitted to be a member of either the NSCC board's audit committee or the board's operations committee; the latter will, among other things, review the performance of SIAC as NSCC's facilities manager.

The Amex, the NASD and the NYSE will have a veto over NSCC's adoption of new rules, other than those which NSCC would be required to adopt pursuant to statutes, ordinances, rules or regulations applicable to NSCC. The veto can be exercised only if the proposed NSCC rule would affect the ability of the party exercising the veto to meet any statutory responsibilities it might have for the settlement of securities contracts.

PAYMENTS TO THE AMEX, NASD AND NYSE

The NSCC application contains a shareholders' agreement among the ASECC, NCC and SCC, to which the Amex, NASD, NYSE and NSCC are parties. The agreement provides that, for a period of five years from the date of the agreement's execution, the Amex, the NASD and the NYSE will receive $0.12 for each buy and sell side of trades in equity securities, or warrants to purchase equity securities, executed on their respective markets and compared through NSCC. The $0.12 fee will not apply to trades cleared through NSCC but executed on exchanges other than the Amex or NYSE nor will it apply to OTC transaction not compared through NSCC. The total payments to be received by the self-regulators in any one year will be limited to $550,000 for the Amex, $1,000,000 for the NASD and $3,000,000 for the NYSE.[36]

The amount of the fee ($0.12) was derived by determining that per-side charge which would yield to NYSE $3,000,000 annually based on a projected NYSE daily transaction volume of 17 million shares. The $3,000,000 was based on the average annual revenues which the NYSE has derived from SCC for the past ten years. That amount was established as the ceiling for the NYSE, and the ceilings on the amounts to be received by the Amex and the NASD were derived by applying the $0.12 per-side fee to their projected annual transaction volume.

[36] The ceiling on payments to be received by a self-regulator would be subject to the proviso that any amounts in excess of its ceiling for a given year would be paid to the self-regulator to the extent that in prior years the fees were less than the ceiling.

The agreement states that the payments will be made in return for furnishing certain regulatory services to NSCC consisting of conducting periodic examinations of the books, records and operations of NSCC participants; monitoring the financial and operational condition of NSCC participants; investigating the financial and operational condition of entities which apply for participation in NSCC; and apprising NSCC of any unusual market conditions which affect securities cleared by NSCC. Each of the self-regulators will examine those NSCC participants for which the self-regulator has been designated by the Commission to conduct examinations for compliance with the applicable financial responsibility rules, as well as such participants as NSCC might direct for which none of the three self-regulators has been designated.

The shareholders' agreement provides that after two years the self-regulators and NSCC shall "review the provisions of [the contract] as to the [s]ervices and the payments therefor in order to determine whether such provisions should be amended or modified. * * *" The agreement does not permit renegotiation of the level of payment or the level of services at any time during the agreement's five-year term, except by mutual agreement of the parties.

SERVICES TO BE PROVIDED

During Phase I, NSCC plans to offer all services now offered by either ASECC–SCC or NCC. During Phase II, duplicative services will be combined so as to insure that no participant in either organization will experience a reducation in the kinds and levels of service currently available. NSCC's services will be available, either directly or indirectly, to all current participants in ASECC–SCC and in NCC and access to NSCC's services will be available to all qualified entities. NSCC's application states that fees to participants will be set by NSCC's board of directors and will be based on the cost to NSCC of providing its services.[36] NSCC will attempt to establish a contingency fund from its revenues but, in general, does not propose to earn profits and will not pay dividends on its shares.

RELATIONSHIP TO SECURITIES DEPOSITORIES

Because NSCC's application envisions NSCC's use of the current ASECC–SCC system, securities settlement [37] for NSCC transactions will have to be made in DTC and all NSCC participants will be required to be participants in DTC.[38] In order to provide access to DTC for those participants in NCC who are not currently DTC participants and who do not believe their clearing volume warrants DTC participation, NSCC will provide sponsored accounts in DTC.[39] Although securities settlement for transactions cleared through NSCC will occur in DTC, money settlement for the transactions will occur in NSCC. In anticipation of the ASECC–SCC and NCC operational combination, DTC has initiated a program for expanding the list of securities eligible for deposit to include all issues currently eligible for deposit in NCC's system. NSCC does not plan to begin Phase II until the DTC expansion is complete.

TADDC, a securities depository which ultimately intends to serve as the bridge for the implementation of the TAD concept, currently has an interface with NCC through which NCC participants deliver and receive securities through TADDC in settlement of NCC obligations. NSCC intends to work out an arrangement with TADDC before the start of Phase II operations under which NSCC users will be permitted to receive from or to deliver to NSCC securities on deposit with TADDC.

TRADE COMPARISON

NSCC will continue to perform comparison for Amex and NYSE transactions and will perform comparison for OTC transactions between NSCC participants. OTC transactions between participants in a clearing corporation other than NSCC will be compared by the other clearing corporation or by a clearing corporation retained by it to perform the OTC comparisons. OTC transactions between participants in two different clearing corporations will be compared by a clearing corporation other than NSCC.

From the beginning of Phase II operations, NSCC will enable its participants located in New York City to submit Amex, NYSE and OTC transactions to NSCC for comparison. In the plan described in NSCC's application, NSCC participants located outside New York City, and relating to NSCC through the former NCC regional network, will be able, as they are currently, to submit OTC transactions for comparison during Phase I but will not be able to submit Amex and NYSE transactions for comparison until some time after the initiation of Phase II.

PARTICIPANT QUALIFICATIONS

Any entity will be able to participate in NSCC, subject to qualification standards based on financial and operational ability.

[36] Not all NSCC's fees will be based on cost, however; NSCC has indicated its fee structure will be designed to enable NSCC participants located outside New York City and relating to NSCC through the former NCC branch network to pay the same clearing fees as NSCC participants located in New York City.

[37] Settlement is the process through which securities trading obligations are satisfied by delivery and receipt of funds and securities.

[38] All current clearing members of ASECC–SCC are participants in DTC.

[39] Sponsored accounts in DTC will be guaranteed by NSCC and, for participants with low clearing volume, will make that form of participation less expensive than direct participation. In order to encourage direct participation in DTC by any sponsored participant whose clearing volume increases to a point at which direct participation becomes economically justifiable, a participant's sponsored account fees will graduate with increases in its clearing volume.

COST SAVINGS

In its application, NSCC identified two categories of cost savings which will result from the initiation of Phase II operations: (i) cost savings from combining the operations of ASECC NCC and SCC, including the elimination of duplicate personnel, operations and equipment; and (ii) cost savings to current participants in either or both ASECC–SCC and NCC through, among other things, combining back-office functions, reducing interest costs and delivery fees and standardizing forms and schedules. NSCC estimated that in Phase II the annual combined savings from both categories will be between $12.4 million (assuming low transaction volume) and $17.4 million (assuming high transaction volume).

At the request of the Commission's staff, NSCC included a comparison of the savings anticipated from consolidation of ASECC–SCC and NCC ("Model I") with the savings which could be anticipated were ASECC–SCC and NCC to compete and interface with one another, each establish and maintain a network of regional facilites comparable to the existing NCC network and each offer its participants the ability to clear and settle through it all Amex, NYSE and OTC transactions ("Model II"). After comparing the clearing corporation operation savings of Model I and Model II, NSCC concluded that Model I would be less expensive than Model II by $7.2 to $9.4 million a year, depending on the volume of transactions processed.

DETERMINATIONS WITH RESPECT TO NSCC

SCOPE OF CONSIDERATION

As noted above, the Commission's decision to grant registration to NSCC grows out of the Commission's landmark study of the problems that precipitated the paperwork crisis in the late 1960's and the Commission's subsequent extensive experience in regulating the securities markets and their securities processing adjuncts. In view of the Commission's expertise as the agency charged with overseeing the Nation's securities markets, Congress directed the Commission to use its pervasive authority under the Act to facilitate the establishment of a national system in accordance with broadly stated objectives. As the Senate made clear, that new authority conferred on the Commission "is designed to eliminate any possible ambiguity and thereby avoid any delay in achieving comprehensive regulation of the processing of securities transactions." [100]

In exercising the plenary power conferred on it by Congress, the Commission is guided not only by the specific Congressional findings in Section 17A of the Act but also by the overall objectives of the Act to establish and maintain a comprehensive pattern of regulation and control of transactions in securities as commonly conducted upon securities exchanges and in the OTC markets, and of practices and matters related thereto, as well as to remove impediments to and perfect the mechanisms of a national market system for securities and a national system for the clearance and settlement of securities transactions and the safeguarding of securities and funds related thereto.[101]

The Commission is guided also by the general need to consider the impact of its actions on competition and to balance the need for full and effective competition against the other Congressional purposes set forth in the Act. In adopting the 1975 Amendments, Congress recognized that competition is itself an effective regulator and that the Commission's pattern of regulation should give appropriate attention to ways of maintaining competition among brokers and dealers as well as among market centers, clearing agencies and transfer agents. As indicated previously, in adopting the 1975 Amendments, Congress declined to require the Commission to cleave to a "least anticompetitive" standard in making rules and regulations under the Act. Instead, Congress determined to grant broader discretion to the Commission and to view the need for competition in the context of the Act as a whole and its several objectives so that burdens on competition could be accepted where necessary or appropriate in furtherance of the purposes of the Act. Indeed, section 17A itself directs the Commission, in exercising its authority over the securities processing area, to balance the maintenance of fair competition against the other statutory objectives of "the public interest, the protection of investors [and] the safeguarding of securities and funds * * *." [102]

The Commission's action today is consistent not only with the specific directives of section 17A but also with the broader pattern of the Act,[103] including the establishment of a national market system affording professionals engaged in securities transactions access to multiple market centers. The effective operation of such a market system is dependent in part on the existence of a national clearance and settlement system capable of receiving input from multiple market centers, identifying the input to individual participants in the market system and generating settlement instructions which net offsetting securities and money settlement obligations. Accordingly, early achievement of a national market system is dependent, in large measure, on prior or at least contemporaneous establishment of a national clearance and settlement system.

In making the determinations set forth in this order, the Commission has carefully considered all the data, views and arguments submitted and presented orally [104] during the course of its extensive deliberations on this matter and in response to the Commission's release of the proposed conditions to NSCC's registration. The Commission has reached its own judgments as to the conditions under which the application should be granted after considering the comments expressing a concern about NSCC's potential effects on competition among clearing agencies, securities exchanges and facilities managers. The Commission's focus, however, has been on the several purposes of the Act and in particular the need to avoid the delay in the establishment of a national market system which would result from the absence of an efficient national system for clearance and settlement. The Commission did not, and indeed could not, limit the scope of its consideration to section 17A; rather the Commission has considered NSCC's application in terms of the overall pattern of progress and change that is now occurring in response to the 1975 Amendments.

In order to make the basis of its policy determinations clear, the Commission has set forth in some detail the various considerations that have shaped its decision. While the need to keep this order to a reasonable length precludes detailed explanation of each facet of the matters considered by the Commission, an attempt has been made to furnish wherever appropriate a statement of the reasons supporting the Commission's determinations.[105]

REAFFIRMATION OF DETERMINATIONS MADE PREVIOUSLY

Since NSCC will assume the functions of existing clearing agencies whose reg-

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[100] Senate Report on S. 249, supra note 37, at 58. The Conference Committee observed, in resolving the differences between the Senate and House bills that preceded the 1975 Amendments, that those bills were both in agreement and would amend the Act "to establish a system for effective regulation and centralized decision-making extending to every facet of the securities handling process in the United States—clearing agencies, securities depositories, corporate issuers, and transfer agents." Conference Report, supra note 43, at 102.

[101] See Section 2 of the Act.

[102] Section 17A(a)(2) of the Act.

[103] In establishing the requirements for passing on applications for registration of, among other things, clearing agencies, Section 19(a)(1) of the Act directs the Commission to expand the scope of its concern beyond Section 17A by providing that "[t]he Commission shall grant such registration if it finds that the requirements of [the Act] and the rules and regulations thereunder with respect to the applicant are satisfied."

[104] Transcript In the Matter of Application for Registration of National Securities Clearing Corporation, Commission File No. 600–15 ("Proceeding Transcript"). During the course of the oral presentation of data, views and arguments, the Commission received presentations from 23 individuals representing the following organizations: ASECC, Amex, Boston Stock Exchange ("BSE"), BSECC, Legg Mason, Division First Regional Securities, Inc. ("Legg Mason"), MCC, MSTC, Midwest Stock Exchange, Inc. ("MSE"), NASD, NCC, NSCC, NYSE, PSDTC, Pacific Stock Exchange, Inc. ("PSE"), Philadelphia Stock Exchange, Inc. ("Phlx"), Securities Industry Association ("SIA"), Securities Operating Division of the SIA ("SOD"), SCC, SCCP and Wedbush, Noble Cooke, Inc. ("Wedbush"). In excess of 500 pages of oral presentations were recorded and the Commission received over 300 pages of additional materials supplementing those presentations.

[105] *See* Section 23(c) of the Act, 15 U.S.C. 78w(c) (1975); see also 17 CFR 201.27.

istrations have already been granted under the Act, the Commission's reaffirmation today of the determinations made earlier with respect to those separate registrations is being made against the background of the Commission's experience with operations of those registered entities. In addition, the Commission has decided to make additional determinations under section 17A of the Act with respect to NSCC. Both the reaffirmed determinations and the new determinations are discussed below.

SAFEGUARDS AND FIXING RATES OR FEES

On December 1, 1975, in registering ASECC, NCC and SCC—the clearing corporations whose operations are to be performed by NSCC—the Commission determined with respect to each that (i) it is so organized and has the capacity to safeguard securities and funds in its control or for which it is responsible; (ii) its rules do not impose any schedule of prices or fix rates or other fees for services rendered by participants; and (iii) its rules assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

Those determinations, in each case, required a full review of the registrant's rules, procedures and operating capacity and a determination that the registrant's physical security, procedures for handling and safeguarding funds and securities, reconciliation procedures, insurance program, operating systems, backup facilities, credit policies and mark-to-the-market and participants' fund policies were adequate for the safeguarding of funds and securities. Since December 1, 1975, the Commission has monitored the operations of ASECC, NCC and SCC and, pursuant to Sections 17A and 19(b) of the Act, has reviewed and approved the rule changes each has put into effect.

The NSCC application contemplates that each of the systems reviewed by the Commission in December and found to satisfy the foregoing determinations will continue to operate under its current rules and in the manner it currently operates until NSCC submits, and the Commission approves, rule changes for the operation of the Phase II integrated system. Accordingly, the Commission reaffirms the determinations made previously with respect to ASECC, NCC and SCC in now finding that (i) NSCC is so organized and has the capacity to safeguard securities and funds in its control or for which it is responsible; (ii) NSCC's rules do not impose any schedule of prices or fix rates or other fees for services rendered by participants; and (iii) NSCC's rules assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

PROTECTION OF INVESTORS

While broader than the findings concerning safeguards, the determination that NSCC's rules are designed to protect investors and the public interest is based on the determination that NSCC's rules are designed to assure the safeguarding of funds and securities entrusted to NSCC by its participants. The protection of NSCC's participant brokers and dealers, bank and financial institutions inures to the benefit of those who invest through NSCC's participants. Having reaffirmed its previous determinations with respect to the safeguards of ASECC, NCC and SCC and based on its analysis of and experience with the operations of those entities since December 1, 1975, the Commission has determined that NSCC's rules are designed to protect investors and the public interest.

In reaffirming its earlier determinations, the Commission recognizes, as it did in making the original determinations with respect to ASECC, NCC and SCC, that the development of a national clearance and settlement system is an evolving and dynamic process. While the Commission has reached certain conclusions concerning the likely effects of NSCC's registration based on the Commission's experience and evaluation of current trends, the Commission has been aware of the difficulties of attempting to predict the future in a changing environment which involves the expanding use of new technologies. Recognizing its responsibility to remain alert to shifting trends in the markets as well as in the clearing agencies serving those markets, the Commission expects to monitor the operations of ASECC, NCC and SCC in their capacity as divisions of NSCC and to reconsider, as appropriate, the determinations which it has made today.[106]

DETERMINATIONS NOT INVOLVING CONFLICTING DATA, VIEWS AND ARGUMENTS

Capacity to facilitate and promote the prompt and accurate clearance and settlement of securities transactions. The Commission has determined that NSCC has the organization and capacity to facilitate, and that NSCC's rules are designed to promote, the prompt and accurate clearance and settlement of securities transactions. During Phase I, NSCC's operations and rules will be the current operations and rules of ASECC, NCC and SCC; accordingly, at this time, the Commission's findings are made with respect to those operations and rules.

The rules of ASECC and SCC and their combined operations, which are run by SIAC, provide participants with prompt and accurate service. The efficiencies and cost savings afforded today by ASECC, NCC and SCC have taken years to develop.[107] While the registration of NSCC is only a first step toward the ultimate development of the national system envisioned by the Congress, it is an important step. The technical achievements realized thus far, and now to be augmented by the establishment of NSCC, hold out important promise for the future and impel the Commission toward the conclusion that approval of the registration is critical to the achievement of the national system.

Both the ASECC and SCC systems operate in a continuous netting mode, are interfaced with three other clearing systems and enable participants to make all settlements in DTC by book entry. Those advances enable participants in the systems to reduce significantly the number of settlements which must be made by physical delivery of securities certificates and anticipate the statutory goal of immobilization of the securities certificate in connection with the settlement of securities transactions among brokers and dealers.[108] In addition, the ASECC and SCC systems provide a local envelope delivery service which simplifies the settlement of transactions not completed by book entry. NCC's rules and operations also provide prompt and accurate service. Like ASECC and SCC, NCC's system operates in a continuous netting mode, is interfaced with PCC's OTC clearing operation, provides local and regional envelope delivery services and has a "free position" (a depository-equivalent account included in NCC's clearing operation) which is interfaced with both DTC and TADDC for book entry settlement of continuous netting transactions.

As noted above, the Commission's determinations made today relate to Phase I of the proposed NSCC operation. Before the commencement of Phase II, the Commission will consider the same determinations with respect to the envisioned NSCC integrated system as it is then to be constituted. The Commission expects to be able to assess at that time the extent to which NSCC can implement its plans for an integrated system to (i) combine the best features of both the ASECC–SCC and NCC systems by including, among other things, the current same-day turnaround features of the ASECC–SCC system and the NCC regional delivery network; and (ii) provide advantages not available in either of the current systems, such as one account processing [109] for Amex, NYSE and OTC transactions of all NSCC participants.

Capacity to take advantage of new data processing and communications techniques. Because the equipment and techniques employed by clearing agencies—computers, peripheral equipment and communications systems—are developed in a wider arena than securities processing, they usually are developed without specific reference to the needs

[106] See discussion under "Implementation and Monitoring" infra.

[107] See discussion under "Background to the Application" supra.

[108] Section 17A(e) of the Act directs the Commission to "use its authority under [the Act] to end the physical movement of securities certificates in connection with the settlement among brokers and dealers of transactions in securities consummated by means of the mails or any means or instrumentalities of interstate commerce."

[109] See discussion *supra* under "Characteristics of a National System" with respect to the capabilities which the Commission believes a national clearing and settlement system should have in order to satisfy the requirements of Section 17A of the Act.

of or developments in securities processing. Accordingly, a high degree of technical proficency is often needed to evaluate new systems and new technologies for, and to envision their possible use in, the clearance and settlement of securities transactions. In their achievements to date, ASECC, SCC and NCC have demonstrated an ability to adapt new systems to their needs; the existing efficiencies they have accomplished, as well as those realized by the proposed facilities manager SIAC, argue strongly that NSCC too will exhibit the requisite proficiency.

Accordingly, on the basis of the data, views and arguments presented to the Commission, which did not contest NSCC's abilities in this regard,[110] as well as its own familiarity with developments to date,[111] the Commission has determined that ASECC–SCC and NCC have, and NSCC will have, the ability to analyze the need for and take advantage of new data processing and communications equipment.

DETERMINATIONS INVOLVING CONFLICTING DATA, VIEWS AND ARGUMENTS

As a major initiative for linking the nation's securities market centers which holds out the promise of an early realization of the Congressional goal of a nationwide clearing and settlement system, the NSCC application has received a thorough examination from the Commission and from numerous commenters.

The efficiencies and cost savings envisioned by NSCC's application have the potential for improving the efficiency of the markets in handling an expanding trading volume. Also, they establish a setting in which existing competitive and operational relationships will be significantly altered. As a consequence, the NSCC application presents a number of complex and often conflicting considerations, not the least of which is its probable effect on competition among clearing agencies and facilities managers as well as competition among securities markets and brokers and dealers.

Many commenters have presented their own data, views and arguments on the NSCC application. Perhaps reflecting differences in perspective, as well as concern about the effect of NSCC's registration on their own processing operations, the commenters have differed sharply in expressing views on the application. It has, accordingly, been necessary for the Commission to devote substantial effort, both in its own time and in that of its staff, to identify, categorize and resolve the issues presented. In that endeavor, the Commission has reviewed all the data, views and arguments presented and has formed its judgments in the light of of its regulatory experience and the Acts objectives.

Throughout its consideration of NSCC's application, the Commission has recognized that, in an area as dynamic and complex as securities processing, there may not be any permanent resolution of the problem which the NSCC application addresses and the issues which it raises. As the Commission indicated once before,

> [A]s conditions change, existing problems may be superseded by new problems, and existing "solutions" may be rendered obsolete * * *. But the very purpose and nature of administrative agencies demands that current industry problems be faced and dealt with as expeditiously as possible and that the administrative authority not abdicate its clearly-defined obligation to act.[112]

In discussing the issues raised, the Commission has undertaken to present its own analysis of the problems involved and the reasons for, and the intended effects of, the conditions imposed on NSCC's registration. Of necessity, the Commission has limited detailed recitation of the voluminous data, views and arguments presented by commenters, in order to attempt a clear presentation in this order of the bases on which the Commission has made its determinations as well as the reasons supporting those determinations.

CAPACITY TO REDUCE UNNECESSARY COSTS

From the financial difficulties which beset brokers and dealers during the paperwork crisis and from the Congressional concern that a national clearing and settlement system take advantage of available economies, the Commission has concluded that both the national system and its components, such as NSCC, should have the capability to reduce unnecessary costs and, to the extent possible, to take advantage of savings which may be achieved through the combination of compatible operations and the discontinuation of unnecessary operations.

The cost information submitted by NSCC during the proceedings tended to show that, depending on the volume of transactions processed, the combined systems operations planned for Phase II would generate annual industry cost reductions of $12.4 to $17.4 million, comprising reductions of $10.0 to $13.3 million in the costs incurred by present participants in relating to ASECC, NCC and SCC, and annual reductions of $2.4 to $4.1 million in the current costs of operating the three clearing corporations.[113] At the request of the Commission's staff, NSCC prepared estimates comparing the cost of Phase II operations ("Model I") with the cost of the most likely possible alternatives to NSCC's establishment—operation of ASECC–SCC and NCC as two interfaced and competing systems ("Model II").[114] That comparison showed that, depending on volume, the annual cost of clearing corporation operations under Model II would be $7.2 million to $9.4 million higher than under Model I.[115]

Portions of the data submitted by NSCC were questioned by commenters and NSCC's data were analyzed by the Commission. As a result of its analysis, the Commission concluded that, while the cost reductions estimated for Model I appeared to be reasonable, the estimates comparing the costs of Model I and Model II overstated the estimated annual costs of Model II by approximately $1 million and consequently overstated by a like amount the excess of Model II annual costs over those of Model I.[116] Notwithstanding that conclusion, the Commission is persuaded that NSCC's Phase II operations would generate annual reductions in current clearing corporation operating costs and, allowing for the revised estimate, would have a lower operating cost than Model II operations. Even though annual clearing corporation cost reductions (from $2.4 to 4.1 million) would represent between 13 and 18 percent of combined current ASECC, NCC ad SCC operating costs[117] the Commission has not accorded substantial weight to those reductions in granting NSCC's registration because of the Commission's belief that most, although not necessarily all,[118] of the

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[110] Proceeding Transcript, *supra* note 104, and related documents.

[111] *See* "Background to the Application" and discussions under "Safeguards and Fixing Rates or Fees" and "Capacity to Facilitate and Promote the Prompt and Accurate Clearance and Settlement of Securities Transactions *supra*.

[112] Securities Exchange Act Release No. 9950 (Jan. 16, 1973) at 3–4, 38 FR 3902 (Feb. 8, 1973). [Footnote omitted.] *See also* PBW Stock Exchange v. Securities and Exchange Commission, 485 F. 2d 718 (3d Cir. 1973), *cert. denied*, 416 U.S. 969 (1974).

[113] Justification For A Consolidation of New York Clearing Facilities, [hereinafter cited as "Justification"] at 2, 10, 12.

[114] *See* discussion under "Cost Savings" *supra*.

[115] The comparison estimated that improvements necessary under Model II to enable both the ASECC–SCC and NCC systems to provide Phase II levels of service would increase annual clearing corporation operating costs from the current $18.8 to $21.8 million range to the $23.6 to $27.1 million range, a net increase of from $4.8 to $5.3 million. Because participants would experience estimated annual savings of from $10.0 to $13.3 million, however, operations under Model II would generate net annual industry savings of $5.2 to $8.0 million. Justification *supra* note 113, at 17.

[116] The NSCC estimates are based on comparisons of projected costs under the general categories of "Manpower," "Data Processing," "Branch Network," "Facilities," "General" and "DTC Cost Increase." After reviewing the components of those categories, the Commission concluded that the Model II estimates for the "Manpower," "Data Processing," "Facilities" and "DTC Cost Increase" categories were overstated in an aggregate amount of $1 million. Justification *supra* note 113 Exhibit I.

[117] The current annual operating costs of ASECC, NCC and SCC are $18.8 to $21.8 million, depending on volume.

[118] The Commission's staff requested NSCC to assume, in comparing Model I and Model II clearing corporation operating costs, that participant savings would be the same under Model I and Model II. The assumption that Model I and Model II could provide identical services is open to question, however, and it is possible that participant savings under Model II could be higher or lower than under Model I.

more significant $10.0 to $13.3 million participant cost savings could be achieved in either a Model I or a Model II environment.

CAPACITY TO ACHIEVE THE LINKING OF CLEARING AND SETTLEMENT SYSTEMS AND FACILITATE THE ESTABLISHMENT OF A NATIONAL SYSTEM

The Commission has determined that the existing operations of ASECC, NCC and SCC, which will be NSCC's operations during Phase I, and the planned operations of NSCC following implementation of Phase II, as modified by the conditions to this order, have the capacity to achieve the important statutory objectives of linking clearing and settlement systems, fostering cooperation and coordination among persons engaged in the clearance and settlement of securities transactions and facilitating the establishment of a national system for the clearance and settlement of transactions in securities. The Commission's determinations that NSCC has the capacity to make these substantial contributions to the establishment of a national system are based on uncontroverted data, views and arguments submitted by NSCC, written views and arguments of brokers and dealers located both in and outside of New York City and the Commission's belief that the conditions imposed by this order will counter the negative consequences which might otherwise result from NSCC's establishment.[119]

A number of registered clearing agencies located outside New York City expressed concern that NSCC would discourage, rather than use its capacity to achieve, links between clearing and settlement systems and the establishment of a national system by engaging in delaying tactics, failing to cooperate with other registered clearing agencies and establishing prohibitive interface fees.[120]

The first condition to which the Commission is subjecting NSCC's registration responds to those concerns by requiring NSCC to offer to establish full interfaces[121] with continuous netting systems and appropriate links with certain other clearing and settlement operations, without interface charges, before it may initiate Phase II operations (the "Free Interface Condition").[122] In addition, during Phase I, NSCC may not make any changes in the existing rules, operating procedures or facilities management agreements of NSCC or any of its operating divisions without prior Commission approval. As a result of the Free Interface Condition, NSCC will not be able to offer services other than those offered presently by its operating divisions until each of the clearing corporations which must establish links with NSCC in order to provide the accounting and settlement component of one account processing[123] has, in the judgment of the Commission, completed or had an adequate opportunity to complete arrangements with NSCC necessary to enable it to provide services comparable to those which NSCC intends to provide.

Also the Commission is directing NSCC to establish coordinating groups to identify and resolve any matters which are delaying completion of linking. Moreover, if there are delays in achieving the implementation of Phase II operations, the Commission would consider taking steps to suspend or revoke NSCC's registration and to explore other approaches to facilitating the prompt establishment of a national clearing and settlement system.

Assuming satisfaction of the conditions imposed in connection with NSCC's registration, the Commission believes that NSCC will further the linking of clearing systems and the establishment of a national system. In particular, through the expansion of the ASECC–SCC Regional Interface Operation ("RIO") developed by SIAC, NSCC will have in place by the start of Phase II clearing interfaces for OTC and listed transactions with each of MCC, PCC and SCCP and appropriate links with BSECC and TADDC. By providing interfaces without interface charges,[124] the initiation of Phase II integrated operations will facilitate the establishment of a national clearing and settlement system of interfaced entities in which brokers and dealers will be able to choose the marketplace for a transaction on the basis of the best price obtainable and brokers and dealers, banks and other financial institutions[125] will be able to process the transaction through the clearing corporation of their choice.[126]

NCC's operation includes in its book entry system approximately 10,300 issues, including issues listed on exchanges and issues traded only OTC. The ASECC and SCC book entry systems do not include issues which are not listed on an exchange. At present, NCC clears only OTC transaction and, although through existing interfaces ASECC and SCC clear some transactions in issues listed on exchanges other than the Amex and NYSE, esentially, ASECC clears only transactions in Amex-listed issues and SCC clears only transactions in NYSE-listed issues. As a result, brokers and dealers with Amex, NYSE and OTC transactions to clear and settle must currently participate in all three entities, either directly or through a correspondent. If the multiple clearing corporation participation is direct, after January 2, 1977, the broker or dealer may be required to deliver securities of the same issue to, or receive them from, more than one clearing corporation on a given settlement day and, in some cases, may have to make multiple securities settlements which would be offsetting (and therefore would not have required separate settlements) if they had been made with or through a single clearing corporation.[127] Also, as a result of multiple clearing corporation membership, a broker or dealer could be required to make multiple daily money settlements which would offset each other if they could be made through one clearing corporation.[128] The Commission believes the Act calls for a national system which provides one daily securities settlement per issue and one daily money settlement.[129]

Under the Phase II operations, NSCC would include in its book entry system all issues currently included in the ASECC, NCC and SCC book entry sys-

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[119] *See, e.g.*, Proceeding Transcript, *supra* note 104, at 6–15 (NSCC), NSCC memorandum, filed June 4, 1976, containing a narrative description of the proposed merger and NSCC's responses to a variety of questions posed by the staff, and letters of Bache Halsey Stuart Inc., August 23, 1976, and Bosworth Sullivan & Company, Inc., August 20, 1976.

[120] *See, e.g.*, Proceeding Transcript, *supra* note 104, at 119–122 (SCCP), 151–154 (PSE) and 257 (MSE).

[121] A "full interface" is one through which any participant in either of the interfacing clearing corporations can move all its transactions in issues eligible for comparison, clearing and settlement at both clearing corporations.

[122] The conditions to NSCC's registration are set forth under "DETERMINATIONS, CONDITIONS AND DIRECTIVES" *infra*.

[123] *See* discussion of one account processing under "Characteristics of a National System" *supra*.

[124] While the absence of interface charges will have the effect of spreading the costs of interfaces among all participants in a clearing corporation, the Commission believes it is appropriate for all clearing corporation participants to defray the costs of the national system's interface network. Current trading practices obligate the selling side of a transaction to make delivery to the buying side of the transaction. Once interfaces are in place, a party to a transaction effected on an exchange or through use of an OTC trading mechanism usually will not know the location at which the other party to the transaction has elected to clear and settle securities transactions. As a result, all parties to exchange and OTC transactions would have an equal likelihood of entering into sale transactions which would occasion the use of interfaces.

[125] NSCC would provide for participation by qualified brokers, dealers and financial institutions; *see* subparagraph 17A(b)(3)(B) of the Act.

[126] *See* Characteristics of a National System" *supra*.

[127] On December 19, 1975, the Commission adopted Rule 19c–1 under the Act. Pursuant to that Rule, after January 2, 1977, exchange rules may not prevent exchange members, acting as agents, from effecting transactions in listed securities on other exchanges or OTC, with a third market maker or nonmember block positioner. Securities Exchange Act Release No. 11942 (December 19, 1975) 41 FR 4507 (January 30, 1976). Accordingly, after January 2, 1977, a broker or dealer which, during the course of a trading day, executes sales of 1,000 shares of X Company on the NYSE and executes purchases of 1,000 shares of X Company OTC with third market makers may have two settling positions in X Company shares, one at SCC and one at NCC.

[128] Under existing arrangements participants in ASECC and SCC may make one daily money settlement for obligations to the two clearing corporations.

[129] *See* discussion under "Characteristics of a National System" *supra; see also* subparagraphs 17A(a)(1)(A), (C) and (D) of the Act.

tems and would clear all transactions currently cleared by ASECC, NCC and SCC.[130] Accordingly, through NSCC, former ASECC, NCC and SCC participants would have one daily settling position in each issue cleared and one daily money settlement.

Neither ASECC, nor NCC, nor SCC provides its participants with the ability to compare through the clearing corporation transactions other than those effected in the marketplaces for which the clearing corporation performs the comparison function. Consequently, participants in ASECC, NCC and SCC currently must maintain an ability to perform a separate daily comparison with each of the three clearing corporations. In a national system, a participant should be able to compare all its transactions through a single clearing and settlement entity.[131]

Beginning with Phase II of NSCC's plan, NSCC participants located in New York City would be able to effect trade comparison through NSCC for Amex, NYSE and OTC transactions. The second condition to NSCC's registration (the "Remote Comparison Condition") requires NSCC, by the beginning of Phase II, to provide the same comparison capability through the NSCC branch network and, at cost, to provide facilities through which NSCC participants located outside New York City and participants in other clearing corporations, wherever located, will be able to compare Amex, NYSE and OTC transactions eligible for comparison by NSCC.[132]

The combination of accounting and settlement functions for Amex, NYSE and OTC transactions which would occur in Phase II and the availability in Phase II of comparison for Amex, NYSE and OTC transactions through NSCC would provide for NSCC participants the benefits of one account processing for the bulk of their securities transactions. The Commission believes that by providing one account processing for Amex, NYSE and OTC transactions NSCC's Phase II operations would provide the most important element of a national system.[133]

ASECC and SCC currently operate a common envelope delivery system and NCC currently operates its own envelope delivery system. Because the two systems have different although overlapping membership, many brokers and dealers belong to both systems in order to complete deliveries to other brokers and dealers. In Phase II, NSCC would provide a single envelope settlement system servicing all existing ASECC, NCC and SCC envelope routes. Also, the ability to use a single envelope system at NSCC would permit NSCC participants to combine their daily envelope system and book entry system money settlements.[134]

Because DTC does not accept many OTC issues for deposit, participants in ASECC and SCC currently are required to maintain these OTC securities either outside the book entry environment or in another depository. NCC participants may maintain virtually all listed equity issues and many OTC equity issues in NCC's depository-equivalent free position. By the beginning of Phase II, participants in NSCC will be able to maintain on deposit in a book entry environment all issues currently included in the ASECC, NCC and SCC book entry systems. Accordingly, consistent with the capabilities which the Commission believes a clearing entity participating in the national system should have, NSCC would enable its participants to deliver securities to, and receive securities from, NSCC and other participants and clearing corporations by book entry and to take advantage of the other functions which may be performed by book entry.[135]

At present, participants in ASECC and SCC are able to achieve sameday turnaround of Amex and NYSE listed issues on both the clearing and depository levels. The same ability is not available in NCC and consequently is not available at all for the OTC issues which are cleared only by NCC. In Phase II, NSCC would make available same-day turnaround at the clearing and depository levels for Amex, NYSE, OTC and other listed transactions. By permitting rapid redelivery of OTC issues, Phase II operations would both alleviate delays which have arisen in the past due to the unavailability of certificate inventory for OTC issues and provide a significant component of a national system.[136]

COMPETITIVE CONSIDERATIONS

Effects on competition among brokers and dealers. Brokers and dealers located outside major financial centers have incurred higher costs in relating to and comparing, clearing and settling transactions through clearing corporations located in those centers than brokers and dealers located in the major financial centers.[137] The difference in those costs has been particularly evident in New York City because of its importance as a financial center and because of the high cost to a broker or dealer located outside New York City of comparing, clearing and settling Amex and NYSE transactions through ASECC and SCC.[138] Through the planned expansion and upgrading of the existing NCC branch network and NSCC's proposed policy of charging the same fees for transactions compared, cleared and settled through the branch network as for transactions compared, cleared and settled in New York City ("geographic price mutualization") NSCC promises to make available to brokers and dealers located outside New York City the full range of processing operations currently available to brokers and dealers located in New York City at the same fees paid by New York City brokers and dealers.[139]

A number of NSCC's potential clearing corporation competitors and the United States Department of Justice expressed the view that NSCC's activities should be restricted to New York City, either indefinitely or for a fixed period, in order to protect clearing corporations operating outside New York City from the dangers of competition with NSCC.[140] The Commission has concluded, for the reasons discussed under "Competition Among Clearing Agencies," that NSCC's operation of the branch network subject to the conditions contained in this order would not adversely affect competition among clearing agencies. Even if the Commission had not reached that conclusion, however, the Commission believes that the encouragement of competition among brokers and dealers is a paramount concern of the Act and represents a direct benefit for the investing public.

The effects of competition among brokers and dealers are reflected in services provided to, and commissions charged, individual and institutional customers. While the levels of those services and commissions are affected by clearing and settlement fees, they constitute a relatively small component of the services individual customers receive and the commissions individual and institutional customers pay. The levels of those services and commissions tend to be affected more significantly and more directly by competition among brokers and dealers. Accordingly, although the maintenance of competition among clearing agencies is an important statutory objective, when balanced against

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[130] The NCC depository-equivalent free account currently includes most issues included in securities depositories and existing interfaces between SCC and MCC. PCC and SCCP permit transactions in issues listed on those exchanges to be accounted for and settled through SCC.

[131] *See* discussion under "Characteristics of a National System" *supra*.

[132] The second conditions to NSCC's registration is set forth under "Determinations, Conditions and Directives" *infra*. Through participation in NSCC, a competing clearing corporation presumably would be able to effect comparison as agent for its participants.

[133] *See* discussion of one account processing under "Characteristics of a National System" *supra; see also* subparagraphs 17A(a)(1)(A), (C) and (D) of the Act.

[134] Justification, *supra* note 113, Exhibit II at 10–11, 18–19.

[135] *See* discussion of "Characteristics of a National System" *supra; see also* subparagraphs 17A(a)(1) (A), (C) and (D) of the Act.

[136] *See* discussion under "The Paperwork Crisis" and under "Characteristics of a National System" *supra*.

[137] The components of those costs are drafting charges, interest expense, messenger fees, correspondent fees and direct clearing fees.

[138] *See, e.g.*, Proceeding Transcript, *supra* note 104, at 37 (NSCC), 348–350 (Legg Mason), letters of Wayne Hummer & Co., June 11, 1976, and Robinson-Humphrey Co., Inc., June 17, 1976.

[139] Proceeding Transcript, *supra* note 104, at 436 (NSCC). *See also* letters of Prescott, Ball & Turben, June 16, 1976, and Wayne Hummer & Co., June 11, 1976.

[140] *See, e.g.*, Proceeding Transcript, *supra* note 104, at 190–194 (BSECC), letters of SCCP, July 23, 1976, C. A. Mathews & Co., July 2, 1976, and United States Department of Justice, July 23, 1976, and November 19, 1976.

the facilitation of competition among brokers and dealers, clearing agency competition must give way to the public interest in maintaining the form of competition which most directly influences the levels of services received and commissions paid by individual and institutional customers.

Based on the information developed during the proceedings and the Commission's experience in regulating clearing agencies and brokers and dealers, the Commission believes that by narrowing the difference between the clearing and settlement costs of brokers and dealers located outside New York City and the costs of brokers and dealers located in New York City, Phase II operations will significantly facilitate competition among brokers and dealers.[141] Accordingly, the Commission has concluded that Phase II operations provide a comprehensive and practicable plan by a major segment of the securities industry for establishing a setting in which competition among brokers and dealers will be able to occur.

Effects on competition among clearing agencies. During the proceedings, conflicting claims were made concerning the effect which NSCC's registration would have on competition among clearing corporations and securities depositories both during the interim between the grant of NSCC's registration and the implementation of Phase II and following implementation of Phase II.

Implicit in the views and arguments pertaining to the adverse effects of NSCC's registration during the interim was the concern that the registration's possible anticompetitive effects could not be reversed if, as a result of NSCC's failure to satisfy the conditions, its registration ceased to be effective. Concern was expressed also that NSCC would obtain a competitive advantage over other clearing corporations during the interim by offering to provide prospective NSCC participants the advantages of one account processing at the start of Phase II operations while suggesting that competing clearing corporations would be unable to offer comparable services or to offer them as soon as NSCC.[142] The Commission believes that the potential for implementation of Phase II operations to achieve the objectives of the Act, including making possible the early establishment of a national system and facilitating competition among brokers and dealers,[143] outweighs any possible effects which NSCC's registration may have on competition during the interim preceding implementation of Phase II.

Currently, ASECC, NCC and SCC do not compete for accounting and settlement business.[144] The Commission recognizes that competition between ASECC–SCC and NCC for the accounting and settlement business of brokers and dealers located in New York City could occur if ASECC and SCC were to combine their operations, offer clearance and settlement for OTC transactions and establish a full interface with NCC. If ASECC–SCC were to establish a branch network comparable to NCC's, ASECC–SCC and NCC presumably would compete for the business of brokers and dealers located outside New York City.

ASEC–SC and NC memberships,[145] coupled with the NASD's belief that NCC could not compete successfully with ASECC–SCC,[146] suggest that, regardless of the theoretical possibility of competition between ASECC–SCC and NCC, NCC might choose not to compete. Assuming competition would occur, however, it would merely be delayed during the interim preceding implementation of Phase II while ASECC, NCC and SCC devise a definitive plan to combine their systems. During that interim, the Commission will monitor the impact of NSCC's registration on brokers and dealers and clearing agencies and, pursuant to the conditions to NSCC's registration contained in this order, will review each step NSCC takes toward implementing Phase II. If Phase II does not come to pass as planned, the Commission will consider revoking NSCC's registration. Undoing the limited combination which would be effected during Phase I by NSCC's registration would not be without difficulty, and would delay briefly the realization of any potential which exists for competition between ASECC–SCC and NCC. However, the requirement that Phase II operations not be initiated until the conditions are satisfied is intended to insure that no irreversible steps are taken before the installation of mechanisms which the Commission believes will prevent Phase II operations from imposing unnecessary or inappropriate burdens on competition. And the Commission's monitoring will ensure that exploration of possible alternatives such as competition between ASECC–SCC and NCC will not be delayed unduly by an inappropriate prolongation of Phase I.

The conditions to NSCC's registration contained in this order are intended to ensure, among other things, that NSCC will not prevent competing clearing corporations which must interact and cooperate with it from providing, contemporaneously with NSCC, services similar to those it will provide in Phase II. Even if the conditions themselves prove to be deficient in deterring NSCC from engaging in delaying tactics, the monitoring which the Commission intends to carry out,[147] coupled with its broad authority under the Act, should ensure NSCC's compliance with the spirit of the 1975 Amendments. In view of the conditions contained in this order and the Commission's expressed intention to exercise its authority under the Act to ensure that NSCC does not make inappropriate use of its pivotal position, the Commission does not believe that, during the interim before implementation of Phase II, competing clearing corporations will be disadvantaged in their efforts to market the kinds of services which NSCC intends to provide in Phase II.

NSCC and supporters of its application maintained that if ASECC and SCC, using SIAC, and NCC, using BNCC or another processor, were permitted to clear and settle all securities transactions and compete with each other, the current eight-to-one clearing volume advantage which ASECC and SCC have over NCC would drive NCC out of business.[148] In view of the supposed impossibility of effective competition between ASECC–SCC and NCC, NSCC and its supporters argued that establishment of NSCC would have no effect on potential competition between a combined ASECC–SCC operation and NCC.[149] Other clearing corporations and opponents of NSCC's application maintained that NCC could compete successfully with ASECC–SCC and that, therefore, NSCC's establishment would eliminate the possibility of competition among clearing corporations in New York City.[150]

While there are serious questions whether successful competition between ASECC–SCC and NCC would be possible

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[141] While one commenter on the Commission's proposed conditions implied that NSCC's proposed geographic price mutualization would artificially restrict competition with NSCC's branch network by correspondent brokers and dealers, the Commission believes it is not inappropriate that services which have developed in the absence of a national system, be curtailed or modified in the processing environment which a national system will foster. *See* letter of Pershing & Co., Inc., November 19, 1976.

[142] See, e.g., Proceeding Transcript, supra note 104, at 188–189 (BSECC), and July 23, 1976, letter of United States Department of Justice.

[143] See discussion under "Effects on Competition Among Brokers and Dealers" supra.

[144] See discussion under "Capacity to Achieve the Linking of Clearing and Settlement Systems and Facilitate the Establishment of a National System" supra.

[145] As of the date of NSCC's application there was a 100 percent membership overlap between ASECC and SCC, and 59 percent of NCC's members, accounting for 82 percent of its volume, were ASECC–SCC members. NSCC memorandum, filed June 4, 1976, containing a narrative description of NSCC's plans and responses to questions of the Commission's staff, p. 9.

[146] Proceeding Transcript, supra note 104, at 90, 98–99 (NASD).

[147] The Commission's monitoring measures are described under "Implementation and Monitoring" infra.

[148] Gordon S. Macklin, President of the NASD and Chairman of the Board of NCC, advised the Commission "[w]e are concerned that the result of a complete interfacing with two clearing corporations would mean that we would die." See Proceeding Transcript, supra note 104, at 98. See also Proceeding Transcript, supra note 104, at 233 (SIA) and 319 (SOD).

[149] See, e.g., Proceeding Transcript, supra note 104, at 18–21, 497–498 (NSCC), and 90 (NASD).

[150] Id. at 137 (SCCP), 155 (PSE), 384 (Jerome Shuman of Georgetown University Law Center); letters of United States Department of Justice, July 23 and November 19, 1976.

and strong indications that it could occur only if NCC's competitive posture were bolstered by the imposition of restrictions delaying or prohibiting ASECC–SCC from offering one account processing and offering its services outside New York City,[151] the Commission does not have a sufficient factual basis to conclude that NCC could not compete. Accordingly, the Commission has not assumed that NCC would be unable to survive in competition with ASECC–SCC and has recognized that approval of NSCC's application forecloses the potential for that competition. Having weighed the probable effects of that foreclosure against the benefits NSCC will provide through fostering competition among brokers and dealers,[152] providing cost savings [153] and facilitating the establishment of a national system with the capabilities envisioned by the 1975 Amendments,[154] the Commission has concluded that it is essential, in this instance, for the potential competition between ASECC–SCC and NCC to be subordinated to the Act's other objections.

The Commission believes that a combination of the ASECC, NCC and SCC clearing volume and the NCC branch network is necessary to make available to brokers and dealers located outside New York City, at the earliest possible date, the processing advantages which NSCC will provide in Phase II. The revenues generated by NSCC's New York City clearing volume coupled with NSCC's intention to pursue a policy of geographic price mutualization,[155] are likely to make possible the maintenance of an extensive branch network through which brokers and dealers located outside New York City will enjoy the efficiencies and economies of one-account processing,[156] book entry movement,[157] same-day turnaround [158] and lower per unit clearing fees.[159] As discussed previously,[160] the Commission believes that the availability of those processing advantages will foster competition among brokers and dealers.

Also, the existence of ASECC–SCC and NCC as separate entities would delay the attainment of important objectives of the Act by (i) creating unnecessary costs from the operation in New York City of two clearing systems with duplicate facilities and administrative overhead, (ii) impeding the linking of clearing systems by requiring other clearing agencies to establish interfaces with two clearing systems, rather than one, and (iii) complicating reconciliation procedures and creating additional costs by requiring the establishment and operation of a high-volume comparison and clearing interface between ASECC–SCC and NCC.[161]

A number of clearing corporations and other commenters argued that NSCC's policy of geographic price mutualization would adversely affect their competitive posture. They maintained that, coupled with the revenues NSCC would derive from its large New York City-based clearing volume, NSCC's operation of the NCC branch network pursuant to a policy of geographic price mutualization would enable NSCC to offer its services through the network at prices below the cost of providing those services and, possibly, below the lowest prices the competing clearing corporations could offer.[162] Those clearing corporations and the United States Department of Justice and others included suggestions that NSCC's registration be conditioned on restriction of NSCC's operation to New York City either indefinitely or for some fixed period following the grant of NSCC's registration.[163] This argument assumes that NSCC's large processing volume, coupled with geographic price mutualization, will enable NSCC to offer clearing services through the branch network at prices competing clearing corporations will be unable to meet.

NSCC and supporters of its application maintained that NSCC should be free to pursue a policy of geographic price mutualization in order to enable NSCC participants located outside New York City to obtain NSCC's services on the same basis as participants located in New York City and to benefit from any lower unit costs which NSCC's volume will provide.[164] They maintained also that through geographic price mutualization NSCC will be able to facilitate the establishment of a national system by maintaining a more extensive branch network than would be possible under a non-mutualized pricing policy. As discussed previously, preclusion of NSCC from operating a branch network would deny these benefiits to brokers and dealers located outside New York City and would perpetuate the current disadvantages which brokers and dealers located outside New York City experience through incurring higher clearing and settlement costs than brokers and dealers whose operations are located in New York City.

The Commission believes that, by permitting competing clearing corporations to participate in the NSCC branch network by paying a proportionate share of the branches' operating overhead,[165] the third condition (the "Common Branch Facility Condition") to NSCC's registration will enable other clearing corporations to compete with NSCC in offering services to brokers and dealers located outside New York City.[166] Participation in branch facilities maintained by NSCC presumably would enable a competing clearing corporation to do business in locations at which its own clearing volume would not justify the maintenance of a separate branch facility. At the same time, NSCC's operation of the network would ensure that brokers and dealers located outside New York City for whose business other clearing corporations might not attempt to compete would receive the benefits which participation in NSCC will provide. Restricting NSCC's activities could deprive brokers and dealers located outside New York City of the benefits of Phase II operations and, by, in effect, geographically allocating clearing and settlement territories, would deprive brokers and dealers of the benefits of dealing with competing clearing corporations. The Commission believes, therefore, that restriction of NSCC's operations to New York City would eliminate one of the most important benefits promised by NSCC's Phase II operations, would be inconsistent with the establishment of a national system and would retard the development of competition among brokers and dealers and clearing agencies.

Several clearing corporations argued that NSCC could obtain a competitive advantage by charging interface fees, or fees which act as interface fees, designed to encourage brokers and dealers located

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[151] See, e.g., June 15, 1976, letter from the Commission's staff to BNCC and June 15, 1976, response of BNCC.

[152] The Act, Section 17A(a)(2).

[153] The Act, subparagraph 17A(a)(1)(D).

[154] The Act, Section 17A(a)(2).

[155] Geographic price mutualization is discussed under "Effects on Competition Among Brokers and Dealers" supra.

[156] See discussion under "Comparison, Accounting and Settlement" supra.

[157] See discussion under "Book Entry Clearing" supra.

[158] Id.

[159] See discussion under "Cost Savings" supra.

[160] See discussion under "Effects on Competition Among Brokers and Dealers" supra.

[161] In subparagraph 17A(a)(1)(D) of the Act Congress finds that the linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors.

[162] See, e.g., Proceeding Transcript, supra note 104, at 118–119, 131–132 (SCCP), 188 (BSECC), and July 23, 1976, and November 19, 1976, letters of United States Department of Justice.

[163] See, e.g., Proceeding Transcript, supra note 104, at 190–192 (BSE), and letters of C. A. Mathews & Co., July 2, 1976, and United States Department of Justice, July 23, 1976.

[164] See e.g., Proceeding Transcript, supra note 104, at 38–39, 76, 436–437 (NSCC), 350–354 (Legg Mason).

[165] The cost of establishing a link between an NSCC branch facility and another registered clearing corporation would be borne by the registered clearing corporation. Of course, since no clearing corporation would be obligated to use any given facility, any clearing corporation which believed that NSCC's provision of services was inadequate could establish its own facility. Moreover, while NSCC could determine to discontinue a branch facility, NSCC could not re-open the facility without providing access to other registered clearing agencies.

[166] In commenting on the "Common Branch Facility Condition," clearing corporations which would be competitors of NSCC expressed concern that NSCC's management of the facilities might result in discrimination in favor of NSCC in the operation of those facilities. The measures the Commission is taking in implementing and monitoring this order and the directive to NSCC to establish coordinating groups in connection with the implementation of interfaces and branch facilities are intended to reduce the likelihood of any such abuse and its durtaion should it arise. The third condition to NSCC's registration and the directive for the establishment of coordinating groups are set forth under "Determinations, Conditions and Directives" infra.

outside New York City to use the NSCC network rather than another clearing corporation.[107] If not restricted, they maintained, NSCC theoretically could induce a broker or dealer located outside New York City with large transaction volumes on the Amex or the NYSE to use NSCC's branch network by forcing a choice between (i) moving Amex and NYSE transactions compared by NSCC to competing clearing corporations through interfaces and paying an interface charge or (ii) clearing and settling the transactions through the branch network without an interface charge. They believe a broker or dealer confronted with that choice would perceive any interface charge imposed by NSCC as an additional cost of clearing Amex and NYSE transactions through a competing clearing corporation. Accordingly, depending on the level of the interface fee, the competing clearing corporation's other costs and the geographically mutualized price of NSCC's services through its branch network, NSCC's interface charges could raise the cost of using another clearing corporation to clear and settle Amex and NYSE transactions to a level at which NSCC's branch network, or a correspondent relationship, would be the only realistic alternatives for brokers and dealers with substantial Amex and NYSE volume.

The Free Interface Condition to NSCC's registration is intended to meet this concern. By requiring NSCC to offer to establish interfaces with competing clearing corporations under which neither they nor NSCC can charge an interface fee, the Free Interface Condition would enable competing clearing corporations to restrict NSCC from using interface fees to obtain a competitive advantage.[108] Moreover, through its review of the fees of registered clearing corporations pursuant to Rule 19b–4 under the Act, 17 CFR 240.19b–4, and the program the Commission will implement to monitor the effect of NSCC's establishment,[109] the Commission believes it will be able to identify and evaluate the effects of NSCC's pricing policies on competition among clearing agencies and brokers and dealers. If, as a result of its monitoring and evaluation, the Commission determines that, notwithstanding the conditions imposed on NSCC's registration, NSCC's pricing policies are having unanticipated or inappropriate effects, the Commission will be able at that time to use its authority under the Act, including the authority to rescind or modify this order for non-compliance with its conditions, to take whatever remedial measures may be appropriate to carry out its objectives.[110]

As a result of its analysis of NSCC's application, the Commission was concerned that, if registered without conditions, NSCC would discourage brokers and dealers located outside New York City from using other clearing corporations by denying brokers and dealers the ability, as a practical matter, to effect comparison of Amex and NYSE transactions other than through the NSCC branch network, an NSCC equivalent of SCC's direct clearing or a correspondent broker or dealer participating in NSCC.[111] The Remote Comparison Condition attempts to obviate this concern by requiring NSCC to provide, at cost, efficient facilities through which a broker or dealer can, either directly or through an agent, including a registered clearing corporation, compare Amex, NYSE and OTC transactions eligible for comparison at NSCC.[112]

The Free Interface Condition and the Remote Comparison Condition are intended also to play a critical role in undoing operational relationships which in the past have impeded competition among brokers and dealers and clearing corporations. Currently, brokers and dealers are unable to compare Amex and NYSE transactions other than by participating in ASECC and SCC through an office maintained in New York City or through SCC's direct clearing service or by using a correspondent broker or dealer. Compared transactions can be transmitted to other clearing corporations for accounting and settlement, but ASECC and SCC charge the same fee for comparing a transaction and transmitting it through an interface as for comparing a transaction and accounting for and settling it in ASECC or SCC. Consequently, a broker or dealer which transmits an Amex or NYSE transaction through an interface pays both the standard comparison, accounting and settlement charge which would be payable for a transaction retained by ASECC and SCC and the accounting and settlement charge of the clearing corporation

[107] If an interface charge were imposed on movements from NSCC, a participant in another clearing corporation would have to pay NSCC's comparison charge, an interface charge and the other clearing corporation's accounting and settlement charge in order to compare, clear and settle a transaction. The same broker or dealer using NSCC's regional network would have to pay NSCC's comparison charge, NSCC's accounting and settlement charge and, assuming the cost of operating the network were not geographically mutualized, an additional charge for network operations and communications. Since it is NSCC's intention to engage in geographic price mutualization of the operating cost of the regional network, a broker or dealer using the regional network will pay the same comparison, accounting and settlement charge as a broker or dealer located in New York. If NSCC imposes an interface charge whose effect is to make the combined charges paid by a broker or dealer of moving compared trades, from NSCC through an interface with another clearing corporation higher than the charges of moving compared trades through NSCC's branch network, the broker or dealer could be compelled to use the branch network. Similarly, NSCC participants which send compared trades to another clearing corporation for accounting and settlement would pay a hidden interface fee if NSCC imposed an inflated comparison charge defraying part of the cost of NSCC's accounting and settlement function and charged NSCC participants less than cost for performing the accounting and settlement function.

[108] The terms and arrangements pursuant to which registered clearing agencies not mentioned specifically in this order will be able to participate in or interface with NSCC during the interim preceding initiation of Phase II operations and thereafter would be subject to the requirements of the Act, including those of subparagraphs 17A(b)(3)(B) and (F) which, among other things, require that the rules of registered clearing agencies permit participation by other registered clearing agencies, not permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency's facilities, foster cooperation among persons engaged in the clearance and settlement of securities transactions and remove impediments to attainment of a national clearing system.

[109] The Commission's monitoring program is discussed under "Implementation and Monitoring" infra.

[110] The arrangements between interfacing clearing corporations contemplated by the Free Interface Condition would not preclude NSCC or another interfacing clearing corporation from charging trade recording or comparison fees or from charging the costs of interface operations to other clearing operations in ways which do not have the effect of establishing an interface fee. The Commission recognizes that a policy disfavoring interface charges may be inappropriate for interfaces between entities other than clearing corporations, and for certain links between clearing corporations and entities performing operations other than comparison and accounting and may prove inappropriate for the interfaces and links affected by the Free Interface Condition.

[111] For example, even though an NSCC participant could clear and settle Amex, MSE, NYSE and OTC transactions through NSCC, the participant could compare only NYSE, Amex and OTC transactions through NSCC and would have to maintain a separate presence at, or communications with, MCC in order to compare MSE transactions. Conversely, a participant in MCC would be able to clear and settle Amex, MSE, NYSE and OTC trades through MCC but would have to maintain a separate presence at, or communications with, NSCC for the comparison of Amex and NYSE transactions. Because for most brokers and dealers regional exchange volume is a relatively small percentage of their total transactions and because the regional exchanges use a "floor derived" or "locked-in" trade procedure which streamlines the comparison function, the inability of an NSCC participant to compare MCC transactions through NSCC probably would not be sufficiently serious to require maintenance of a presence in Chicago. On the other hand, in order to compare transactions on the Amex and NYSE which, because of high transaction volume, have not implemented "locked-in" trade procedures, a participant in MCC probably would be required to maintain a presence in New York or to use a correspondent or direct clearing. In such a case it seems likely that the broker or dealer would either direct its comparison, clearing and settlement flow to NSCC or have a correspondent perform all its comparison, clearing and settlement functions.

[112] The standards for determining cost pursuant to the second condition to NSCC's registration would be developed during the interim before implementation of Phase II in conjunction with the Commission's monitoring of clearing agency costs and revenues.

to which the transaction is transmitted. Together, the costs of maintaining an office in New York City or making other arrangements necessary to effect comparison and the added cost of an interface fee make it virtually impossible for a broker or dealer located outside New York City which does a substantial Amex and NYSE business to avoid either belonging to ASECC and SCC (and using SCC's direct clearing service or maintaining an office in New York City) or using a correspondent broker or dealer for comparing, clearing and settling Amex and NYSE transactions.

The combined effect of existing Amex, ASECC, NYSE and SCC rules, procedures and restrictive operational links, which are not unique to those entities, has been to impede competition between brokers and dealers located outside major financial centers and brokers and dealers located in those centers and virtually to preclude competition between clearing corporations for the business of clearing and settling transactions compared by other clearing corporations. Those effects have been particularly pronounced in the case of transactions executed on the Amex and the NYSE, the two securities markets with the highest trading volume. In conjunction with the Commission's ongoing review of the rules of clearing agencies [115] and securities markets in connection with the Commission's implementation of the 1975 Amendments,[116] including the rules of NSCC and the Amex, NYSE and NASD, imposition of the Free Interface and Remote Comparison Conditions will sever the restrictive operational links which in the past have impeded competition among registered clearing agencies and among brokers and dealers and will enable brokers and dealers to effect one account processing, including processing of Amex and NYSE transactions, through another clearing corporation, a correspondent broker or dealer, or the NSCC branch network.

The fourth condition to NSCC's registration (the "OTC Comparison Condition") requires NSCC to make its computer programs for the performance of OTC comparison available upon request to any registered clearing agency prior to the start of Phase II operations in order to perform comparison of OTC transactions between its participants.[117] The OTC Comparison Condition provides also that comparison of all OTC transactions between participants in two different clearing agencies will be performed by a single clearing agency free of charge to other clearing agencies.[118]

The Commission believes that the effect of NSCC's registration on competition among securities depositories will be similar to its effect on competition among clearing corporations.

Securities depositories provide services related integrally to clearing corporation operations and custodial and book entry delivery services used by banks and other financial institutions which do not participate in cleaving corporations. Accordingly, the effect of NSCC's registration on securities depositories is limited to those depository services, such as the ability to effect securities settlements with clearing corporations by automatic book entry movement, which enable or facilitate participation in the clearing corporations. Currently, both MSTC and PSDTC are linked integrally to the clearing operations of MCC and PCC in much the same way as DTC will be linked to NSCC, and SCCP's depository and NESDTC currently are operationally dependent on SCCP and BSECC. To the extent that the relationship of those depositories and clearing corporations would affect the depositories' competitive posture, the Commission believes that the depositories would experience the same effects from NSCC's registration as their related clearing corporations, which the Commission believes will be able to compete with each other and with NSCC more effectively than they have competed with ASECC and SCC in the past. Also, the Free Interface Condition is designed to preserve TADDC's competitive position and the processing efficiencies provided by its existing relationship with NCC.

In response to expressions of concern that NSCC's registration would have adverse effects on competition among clearing agencies and in order to address concerns identified through the Commission's analysis of NSCC's application and facilitate the establishment of a national system, the Commission has imposed four conditions on NSCC's registration. The Commission believes that those conditions, which have been modified in the light of responses to the Commission's request for comments, will provide a setting in which clearing agencies will be able to compete across the country in offering one account processing to brokers and dealers.

Effects on competition among transfer agents. During the proceedings the Commission received no data, views or arguments concerning the effect of NSCC's registration on the maintenance of competition among transfer agents. Based on its experience in registering and regulating transfer agents and on the absence of comment by transfer agents during the proceedings, the Commission believes that NSCC's registration will have no effect on competition among transfer agents.

Effects on competition among securities exchanges. During these proceedings, several regional securities exchanges stated that, while they were becoming increasingly independent of their clearing corporation subsidiaries, historically regional securities exchanges had shared facilities with their subsidiary clearing corporations and had relied on them for revenues and the provision of specialized services to exchange members.[177] The representatives of three securties exchanges expressed concern that NSCC's establishment might have an adverse impact on regional exchanges by impairing the viability of their subsidiary clearing corporations.[178] The representatives of two of those exchanges advised the Commission that their viability was dependent on the visibility of their subsidiary clearing corporations.[179] In granting NSCC's registration, the Commission has imposed conditions which it believes will remove constraints which in the past have disadvantaged clearing agencies located outside New York City in their efforts to account for and settle Amex and NYSE transactions and have prevented those clearing agencies from competing effectively with ASECC and SCC. Accordingly, the Commission does not believe that NSCC's establishment will threaten the viability of other clearing corporations or, through them, adversely affect the competitive posture of their affiliated securities exchanges. Nevertheless, the Commission will monitor the effect of NSCC's establishment on clearing agencies, and, in connection with its responsibilities under the Act, will continue its current monitoring of the competitive posture of securities exchanges.

Payments to the Amex, NASD and NYSE. A number of commenters maintained that the $0.12 fee which NSCC participants would pay and which NSCC, in turn, would pay to the Amex, NASD and NYSE to help defray their

[115] *See* discussion of the Commission's current program for the registration of clearing agencies under "Statutory Determinations to be Made in Connection with NSCC's Registration" supra. In connection with that program, the Commission will be seeking to insure that the rules of registered clearing agencies permit appropriate interfacing and participation by other registered clearing agencies and do not discriminate among registered clearing agencies or otherwise impede competition among registered clearing agencies.

[116] Section 31(b) of the 1975 Amendments provides a statutory mechanism for the Commission to review the rules or national securities exchanges and registered securities associations for compliance with the Act. On December 1, 1976, pursuant to that subsection, the Commission mailed letters to the exchanges and the NASD notifying them that, and specifying the respect in which, certain of their rules may not be in compliance with the Act. Among the rules cited in the Commission's letters were approximately 160 rules pertaining to securities processing, many of which concerned restrictive operational links between securities markets and their securities processing subsidiaries. Securities Exchange Act Release No. 13027 (December 1, 1976) 41 F.R. 53567 (December 7, 1976).

[117] The OTC Comparison Condition contemplates that registered clearing agencies which do not elect to perform comparison for OTC transactions between their participants will contract with another registered clearing agency for performance of the function at a price determined by negotiation between the parties. The condition contemplates also that NSCC will provide relevant documentation and error maintenance information.

[118] The OTC Comparison Condition is set forth under "Determinations, Conditions and Directives" infra.

[177] *See, e.g.*, Proceeding Transcript, supra note 104, at 123–124, 139–141 (Phlx and SCCP) and 170–171 (PSE).

[178] *Id.* at 112–113 (Phlx), 189 (BSE) and 247 (MSE).

[179] *Id.* at 112–113 (Phlx) and 197–198 (BSE).

self-regulatory costs is inappropriate.[186] NSCC and the three self-regulators maintained that imposition of the $0.12 fee was a method of replacing a revenue stream which the self-regulators would forego as a result of transferring the clearing agency operations of their wholly-owned subsidiaries to the NSCC. The three self-regulators added that the fee is intended to provide those revenues until alternative revenue sources are developed or until diminished regulatory responsibilities reduce the need for the revenues.[187]

During the past ten years, the NYSE derived from SCC approximately the same annual revenue which the $0.12 fee would generate. It used those revenues, together with the other revenues it received, to defray the costs of its self-regulatory program.[188] During the same period, the Amex received virtually no payments from ASECC.[189] The NASD did not receive payments from NCC until October 1, 1975, when NCC began paying the NASD a fee of $0.12 per side for transactions processed by NCC.[190] The Amex, NASD and NYSE represented[191] (and financial data periodically filed with the Commission by the self-regulators confirms)[192] that the cost of their self-regulatory activities substantially exceeds the revenue which the $0.12 fee will generate and that all their revenues are used in carrying out self-regulatory functions.

Brokers and dealers effecting OTC transactions can avoid the charge by comparing the transactions at another clearing corporation and clearing and settling the transactions either there or through NSCC. Brokers and dealers effecting Amex and NYSE transactions are unable to avoid the $0.12 fee since those transactions are compared by NSCC, and representatives of the Amex and the NYSE maintained that were the fee not charged through NSCC it would be imposed as an exchange transaction fee or a comparison fee and would have to be paid by brokers and dealers effecting transactions on the Amex and the NYSE, regardless of the clearing corporation through which the transactions were cleared and settled.

Pursuant to Section 17(d)(1) of the Act, the Commission is exploring with the national securities exchanges and the NASD alternative approaches to the allocation of self-regulatory responsibilities among the existing self-regulatory organizations.[193] Pending the resolution of the issues currently under consideration, the Commission believes it is not inappropriate for the Amex, NASD and NYSE to continue their existing revenue arrangements, including the $0.12 fee to the collected through NSCC.

The Commission will monitor the effect of the $0.12 fee on brokers and dealers, clearing agencies and securities exchanges and, in addition to its continuing authority under the Act, reserves the right to review the appropriateness of the fee in general or with respect to any of the Amex, NASD and NYSE. In determining whether NSCC's collection, and the self-regulators' receipt, of the $0.12 fee continues to be appropriate, the Commission will consider the results of its monitoring and any new allocations of self-regulatory responsibilities effected pursuant to Section 17(d)(1) of the Act. The Commission's consideration may include the appropriateness of the fee in light of the obligations and costs related to NSCC's establishment and performance of clearing and settlement functions and in light of the regulatory and other responsibilities of the three self-regulators, the contribution their regulation makes to NSCC's operation and the alternative sources of revenue available to support that regulation. Depending on its conclusion, the Commission may determine to use its authority under the Act to make such modifications in the fee arrangements as appear to be necessary of appropriate in furtherance of the purposes of the Act.

The NSCC–SIAC facilities management agreement. As part of the restructuring of the corporate arrangements through which the Amex, NASD and NYSE have provided their members clearing and settlement services, the NSCC application provides that the clerical and processing functions underlying those services are to be combined in SIAC and provided to NSCC at cost. During Phase I, NSCC, as assignee of NCC's rights under its facilities management agreement with BNCC, will exercise NCC's right to terminate BNCC's services by paying BNCC the early termination penalty contemplated by the agreement. Thereafter, pursuant to the Management Agreement, SIAC will begin performing the processing functions currently performed for NCC by BNCC and will continue performing the processing functions SIAC currently performs for ASECC and SCC.

The five-year Management Agreement included in NSCC's application was amended several times during these proceedings. The amendments, among other things, added a clause acknowledging the parties' right to terminate the Agreement upon breach, added buy-out provisions under which NSCC may replace SIAC as facilities manager and expanded NSCC's right to monitor SIAC's performance of NSCC clearing and settlement operations and the cost allocations made by SIAC in determining its charges to NSCC.

Under the buy-out provisions of the Management Agreement, NSCC may replace SIAC after the second year upon NSCC's assumption of a decreasing portion of the liabilities with which SIAC would be left as a result of the termination. The liabilities which NSCC would have to assume are less than the $14.7 million in liabilities which SIAC and its parent corporations (the Amex and the NYSE) and its affiliates (SCC and ASECC) estimate they have incurred in providing clearing and settlement services to the Amex and NYSE membership and which they would have to absorb in the absence of offsetting clearing revenues. After the second year of the Agreement, NSCC would have to assume liabilities of $8.1 million, after the third year $5.4 million, and after the fourth year $2.7 million.[194] At the expiration of the Management Agreement, NSCC would have no further obligations to SIAC, and SIAC would be left with approximately $7.7 million of lease obligations for space used for clearing and settlement operations.

To provide facilities for the clearing and settlement of their members' exchange transactions, the Amex and NYSE had the corporations in which the clearing functions were housed—ASECC, SCC and SIAC—enter into space and equipment leases, hire personnel, develop clearing and settlement systems and program computers to operate as part of the systems. In so doing, the Amex and the NYSE directly, and through or on behalf of their subsidiaries, incurred liabilities attributable solely to clearing and settlement operations and liabilities attributable to space, equipment and personnel used for both clearing and settlement and other ex-

[186] See, e.g., letter of Pershing & Co., Inc., November 19, 1976.

[187] See, e.g., Proceeding Transcript, supra note 104, at 72 (NSCC), 92–93, 95 (NYSE) and 93–94 (NASD).

[188] Letter dated June 15, 1976, from Francis J. Palamara (NYSE) and letter dated June 15, 1976, from Richard N. Priest (NYSE).

[189] Letter dated June 16, 1976, from Joseph J. Gulick (ASECC).

[190] Letter dated June 14, 1976, from C. Richard Justice (NCC).

[191] See, e.g., Proceeding Transcript, supra note 104, at 95 (NYSE).

[192] National securities exchanges file financial information with the Commission in connection with the Commission's Survey of Self-Regulatory Organizations and Subsidiaries.

[193] In Securities Exchange Act Rel. No. 12935 (October 28, 1976), 41 FR 4991 (November 8, 1976), the Commission announced the adoption of Rule 17d–2 under the Act, 17 CFR 240.17d–2, which, among other things, invites self-regulatory organizations to propose to the Commission plans for allocating among themselves specified statutory responsibilities on or before March 15, 1977. In the release the Commission ordered oral hearings on the issues raised by the allocation of self-regulatory responsibilities; the hearings were held during the week of December 20, 1976.

[194] If the NSCC facilities management package had been submitted to competitive bid, the NYSE and the Amex presumably would have insisted on specifications requiring the successful bidder to assume the $14.7 million in liabilities for space and equipment leases, accrued vacation and severance pay and reprogramming obligations which are reflected in the buy-out provisions of the current Management Agreement. To the extent that the amounts payable under the buy-out provision would have been assumed by a successful bidder, after the second year of the Management Agreement's term a processor retained by NSCC in connection with a buy-out of SIAC probably would have to assume roughly the same portion of the $14.7 million as an initial successful bidder would have been left with at the end of the second year.

change-related operations. The decision that SIAC act as NSCC's facilities manager resulted from negotiations among the Amex, the NASD and the NYSE concerning the terms on which each self-regulator would relinquish control over its clearing and settlement operations and transform them and their related assets and revenues to a single clearing operation which would be controlled by its users rather than by the self-regulators. In those negotiations the self-regulators agreed that for the first five years of NSCC's operations SIAC would act as facilities manager and charge NSCC, and indirectly its participants, SIAC's cost of providing NSCC's clearing and settlement services.

During the proceedings opponents of NSCC's registration and the United States Department of Justice maintained that the Management Agreement was anticompetitive and recommended that any grant of registration to NSCC be conditioned on exposure of NSCC's facilities management contract to competitive bidding.[104] NSCC, the Amex, NASD, NYSE and supporters of NSCC's registration maintained that the decision to retain SIAC as NSCC's processor is an appropriate exercise of business judgment made in connection with a realignment of their clearing and settlement operations and is intended to match clearing-related liabilities with the revenues necessary to offset them.[105] They maintained also that NSCC's retention of SIAC would avoid possible disruptions entailed in transferring existing ASECC and SCC clearing operations to a new processor and would take maximum advantage of the planning and other work performed by SIAC in connection with the submission of NSCC's application.[106]

The Commission has not been persuaded that NSCC should be required to expose its facilities management contract to competitive bidding. The Act does not compel registered clearing agencies to submit such agreements to competitive bidding and the circumstances of the decision for NSCC to retain SIAC do not appear to require the Commission to substitute its business judgment for that of the NSCC board of directors. When, as in this case, the Commission has no cause to believe that the processor will be unable to provide the safeguards and efficiencies required by the Act, a clearing agency's decision to terminate the services of a processor and retain another processor, act as its own processor or use a subsidiary or affiliated entity as its processor, is an appropriate exercise of business judgment, with or without resort to competitive bidding.[107]

In its application NSCC indicated that it would exercise NCC's rights under the five-year NCC–BNCC facilities management agreement to terminate BNCC by paying the early termination penalty applicable to a termination during the agreement's third year.[108] NSCC's termination of BNCC pursuant to the NCC–BNCC agreement is not central to the broad regulatory decisions which the Commission is making today. Moreover, the Commission does not believe that BNCC's termination requires the Commission to treat NSCC's judgment to retain SIAC without competitive bidding differently from other business judgments by engaging in the questionable exercise of revisiting a determination involving complex operational and financial matters.

In view of the flexibility NSCC will have under the Management Agreement, the continuity provided by SIAC's retention and the importance of NSCC's retention of SIAC to the accords which have made possible the initiative represented by NSCC's establishment, NSCC's failure to resort to competitive bidding does not, in the Commission's opinion, warrant disapproval of NSCC's application or imposition of the substantial delay in achieving the advantages of Phase II operations which would be entailed in resorting to competitive bidding at this time.

ALTERNATIVE APPROACH CONSIDERED

In order to determine whether there were any alternatives to the registration of NSCC which arguably had less anticompetitive impact and an equal potential for achieving the Act's objectives, the Commission evaluated three theoretical alternatives, each of which presupposed denial of NSCC's registration and the Commission's adoption of rules which would require all registered clearing agencies, including NSCC, to provide the levels of service necessary for the establishment of a national system.[109] The three alternatives were: (i) Competition among fully interfaced entities, including NCC; and (ii) merger of NCC with a clearing agency other than ASECC or SCC; and (iii) NCC's discontinuation of clearing and settlement operations and retention of OTC comparison operations.[110] Each of the alternatives was compared with the plan outlined in NSCCs' application to determine relative implementation times, operating costs, ability to facilitate the establishment of a national system and effects on competition among brokers and dealers.

The following assumptions were made regarding the impact of the alternatives on competition: (i) Operation of NCC as a fully-competitive entity was assumed to be possible and to have less of an adverse impact on competition among clearing agencies in New York City than NSCC's establishment; (ii) merger of NCC with a clearing agency other than ASECC or SCC was assumed to be financially and operationally feasible and to result in less concentration of clearing and settlement volume in one entity than NSCC's establishment; and (iii) NCC's discontinuation of clearing and settlement activities was assumed to be financially and operationally feasible and to result in the same dispersion of NCC's discontinued clearing and settlement volume among other clearing agencies as NSCC's establishment while withholding from NSCC the ability to perform comparison for OTC transactions.

Because NSCC's establishment would require fewer comparison and clearing interfaces than any alternative except NCC's merger with another clearing agency, would entail less disruption of existing clearing and settlement arrangements than any alternative except operation of NCC as a fully competitive entity and already has been the subject of a year's planning and development, the Commission believes NSCC's plans could be implemented significantly sooner than any of the alternatives. Comparison of the alternatives' theoretical operating costs suggested that, except for NCC's merger with another registered clearing agency, which arguably could provide the same operating cost savings as NSCC's establishment, none of the alternatives would reduce administrative overhead or duplicative facilities, and consequently operating costs, as much as NSCC's establishment.[116]

Because none of the alternatives would have NSCC's potential for maintaining and expanding the NCC branch network and the services available through that network,[117] no alternative would foster competition between brokers and dealers located in New York City and brokers and dealers located outside New York City to the same extent as NSCC's establishment and no alternative would be likely to provide an extensive branch net-

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[104] *See, e.g.*, letters of United States Department of Justice, July 23 and November 19, 1976, and letter dated December 3, 1976 from Allen Karron to George A. Fitzsimmons.

[105] *See, e.g.*, Proceeding Transcript, *supra* note 104, at 52–53 (NSCC), 87–89 (Amex and NASD).

[106] *Id.*, NSCC written response to June 2, 1976, letter from the Commission's staff.

[107] For example, except for NCC, each of the 14 clearing agencies currently registered with the Commission either performs its own processing operations or has them performed by an operations subsidiary of its parent corporation.

[108] See NSCC written submission to the Commission filed on June 4, 1976, containing a narrative description of the proposed merger and NSCC's responses to a variety of questions posed by the staff.

[109] *See* discussion under "Characteristics of a National System" *supra*.

[110] For the purposes of analysis it was assumed that the decisions to compete, merge or discontinue clearing and settlement operations would be made by NCC and the NASD. It was assumed also that each registered clearing agency would have the financial and operational capability to comply with the Commission's rules requiring clearing agencies to provide the levels of service necessary for the establishment of a national system.

[116] Because the Commission's analysis assumed that each of the alternatives would provide the same levels of service as NSCC's Phase II operations pursuant to the conditions, participant savings were assumed to be the same for each alternative.

[117] While ASECC and SCC theoretically could establish their own branch network under each of the alternatives, establishment and operation of more than one branch network would entail duplicative implementation and operational costs and would not necessarily be used to provide access to registered clearing agencies without branch networks of their own.

work through which the business of brokers and dealers located outside major financial centers could become the object of competition among a number of registered clearing agencies. As a result of its comparative analysis, the Commission concluded that none of the alternatives could be implemented as soon as NSCC's Phase II operations, only the merger of NCC with another clearing agency would have the potential of providing the same operating cost savings as Phase II operations and none of the alternatives would permit increased competition among brokers and dealers to the same extent as NSCC's Phase II operations.

In the absence of evidence that would warrant predicating regulatory action on the assumption that clearing and settlement is a natural monopoly,[188] the Commission did not explore in depth alternatives to NSCC's registration requiring allocation of territories or issues among NSCC and other registered clearing agencies or other kinds of restraints fundamentally affecting free competition among clearing agencies. Based on its experience in regulating securities markets, clearing agencies, brokers and dealers, transfer agents and securities information processors and the knowledge of the dynamics of competition among securities markets and clearing agencies acquired in the course of efforts to structure a national market system and an accompanying national clearing and settlement system, the Commission has concluded that the benefits and economic discipline of competition can be attained in the clearing and settlement area. Accordingly, rather than adopting approaches appropriate to a natural monopoly, the Commission has sought to free the competitive potential present in the clearing and settlement area by imposing conditions on NSCC's registration designed to sever existing restrictive ties between clearing agencies and their affiliated securities markets.[189]

The legislative history of the 1975 Amendments stresses the need for the Commission to facilitate the establishment of a national clearing and settlement system at the earliest possible date.[190] For this mandate to be carried out and a national clearing and settlement system to be in place in time to receive the transactions of a national market system, initiatives which moved toward national solutions to processing problems and which accord with the purposes of the Act must be encouraged and carried forward. If the Commission is to discharge in a timely manner its statutory obligations to foster national market and clearing systems, it must in large measure base its decisions in those highly technical and complex areas on concrete proposals submitted to it such as NSCC's application for registration. Recognizing the urgency of its task, the Commission has reviewed, analyzed and evaluated NSCC's application for registration and has considered the three alternatives described previously. The Commission has not considered other possible alternatives which, in the absence of definitive plans, would be at best theoretical constructs.

Examples of such cooperative organizations include local clearing house associations through which banks clear checks drawn on local banks and the federal reserve bank clearing system through which banks clear checks drawn on banks in other localities. The existence of the clearing house associations and the federal reserve system has not adversely affected competition among banks. Members of clearing house associations are not precluded from direct presentment to local banks or from by-passing the federal reserve system by presenting checks to non-local banks through correspondent banks.

Implementation and Monitoring

In granting NSCC's registration the Commission has reviewed and analyzed NSCC's application, evaluated NSCC's projected Phase II operations in accordance with the criteria of section 17A(a)(1) of the Act, weighed the results of its evaluation against the concerns of Section 17A(a)(2) of the Act and made the determinations pursuant to Section 17A(b)(3) of the Act which the Commission is making at this time. The Commission believes that by contributing to the establishment of a national clearing system with the characteristics envisioned by the Act at the earliest possible date, the determination to grant NSCC's registration will be instrumental in ensuring that the development of a national market system is not delayed for want of a national clearing system. Although in light of the information available at this time the Commission believes that its decision is correct and represents the most likely avenue for reaching the Act's objectives at an early date, the Commission recognizes it is engaged in a complex and dynamic regulatory endeavor whose parameters and objectives necessarily must change in response to new technological advances and new developments in the nation's securities markets. Accordingly, the Commission intends to monitor closely the effects of the decision it is making today.

Although the Commission believes the decision made today is fully consistent with the objectives of the Act, the Commission is comforted by the realization that it may, if necessary, substantially modify or reverse that decision. Should the results of the Commission's monitoring disclose the evolution of relationships among clearing and settlement entities and participants in the clearing and settlement process which indicate the need for new or different approaches to the registration of clearing agencies, the Commission will undertake appropriate action pursuant to its authority under the Act.

In addition to the Commission's continuing jurisdiction under the Act and oversight of NSCC as a registered clearing agency,[191] the registration granted by this order is conditional and may be withdrawn if the conditions contained in this order are not satisfied or if it appears to the Commission that delays in satisfying the conditions warrant the exploration of other approaches to facilitate the prompt establishment of a national clearing and settlement system. The Commission may modify any part of the conditions prior to the initiation of Phase II operations if the Commission determines that NSCC's satisfaction of the conditions is being delayed by other persons or that such action is necessary or appropriate to carry out the purposes of the Act.

This order directs NSCC to establish coordinating groups during Phase I to facilitate the establishment and operation of interfaces and NSCC branch facilities in which one or more other clearing corporations elect to participate. The Commission believes that these groups will serve as forums in which difficulties and lapses in cooperation encountered by NSCC and other registered clearing agencies in their joint efforts to establish interfaces and branch facilities can be identified and either resolved or brought to the attention of, and resolved by, user boards. Before implementation of Phase II operations, the Commission will determine, on the basis of the coordinating groups performance during Phase I, whether it is necessary or appropriate to continue their existence during Phase II.

Currently, the Commission is conducting proceedings in connection with continuing the registration of 13 clearing agencies registered on December 1, 1975.[192] As part of those proceedings and

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[188] If the clearing agency function were shown to be a natural monopoly, the Commission would have to consider whether the artificial measures necessary to keep several clearing agencies in existence would inappropriately raise the costs of clearing and settlement to brokers and dealers and investors. Moreover, even in the absence of a determination that clearing and settlement operations are a natural monopoly, the Commission recognizes that at a future date new developments in clearing and settlement operations may warrant the performance of all or discreet portions of those operations by a single, cooperative organization.

[189] See discussions under "Effects on Competition Among Brokers and Dealers" and "Effects on Competition Among Clearing Agencies" *infra*.

[190] Senate Report on S. 249, *supra* note 37, at 126.

[191] *See, e.g.*, Sections 6, 11A, 15A, 17, 17A, 19 and 21 of the Act.

[192] In Securities Exchange Act Release No. 12759 (September 1, 1976), 41 FR 38841 (September 13, 1976) the Commission announced the institution of proceedings to determine whether to grant or deny the registration of the 13 clearing agencies registered on December 1, 1975, at the expiration of the registrations previously granted to the registrants pursuant to paragraph (c) of Rule 17Ab2-1. The Commission instituted these proceedings in order to obtain data, views and arguments concerning the appropriateness of fully registering each of the registrants, with particular reference to the compliance of their organization and rules with the objectives of Section 17A of the Act, including the determinations called for by subparagraphs (A)-(I) of Section 17A(b)(3) of the Act.

in connection with the determinations with respect to NSCC's registration not made in this order, the Commission will consider, during the period before the implementation of Phase II and thereafter, such matters as (i) the issues which should be included in the book entry portion of a national clearing and settlement system, (ii) the appropriateness and parameters of interface fees for movements between securities depositories, (iii) the bases on which and arrangements under which registered clearing agencies should participate in other registered clearing agencies,[203] (iv) the extent to and manner in which registered clearing agency operations should facilitate settlements between brokers and dealers and their institutional customers, (v) the size and nature of the clearing fund contributions and other membership requirements to which participants in registered clearing agencies should be subject in general and as participants in more than one registered clearing agency and (vi) the extent to which clearing agencies should be obligated to discolse cost and revenue data to participants and owners. At the same time, the Commission will be considering areas in which it should exercise its rulemaking authority with respect to registered clearing agencies. In the discharge of this broad range of regulatory responsibilities the Commission will seek to harmonize the Act's objective of developing a national clearing and settlement system with NSCC's initiation of Phase II operations.

While NSCC will operate in the context of the continuing oversight conducted by the Commission in discharging its regulatory responsibilities with respect to securities markets, clearing agencies, brokers and dealers, transfer agents and securities information processors, the Commission will implement measures uniquely intended to isolate, identify and evaluate the effects of NSCC's establishment on each of those entities.

In addition to meetings with registered clearing agencies and their participants to determine the rate of NSCC's progress toward the implementation of Phase II and the effects of its pricing policies, the Commission plans to establish a program for the receipt of regular reports from registered clearing agencies covering such matters as (i) price and service data, (ii) aggregate clearing volume and number of participants, (iii) volume in either direction through each interface or link (detailed) as to each participant, (iv) names of participants withdrawing from registered clearing agencies, (v) the history of clearing volume generated by withdrawing participants, (vi) clearing volume generated by participants joining registered clearing agencies during the six months before their joining and (vii) cost and revenue data for the clearance and settlement operations (detailed as to, among other things, comparison, interface and branch facility operations). The Commission will also monitor the effects and appropriateness of the $0.12 fee imposed pursuant to the NSCC shareholders' agreement in connection with the Commission's survey of Self-Regulatory Organizations and Subsidiaries.[204]

In appropriate instances, the Commission may determine that cost data obtained from registered clearing agencies with respect to matters such as interface, comparison and branch facility operations should be furnished to other clearing agencies participating in the interfaces or branch facility operations.

Determinations, Conditions and Directives

NSCC having made application for registration as a clearing agency pursuant to sections 17A(b)and 19(a)(1) of the Act and, pursuant to Rule 17Ab2–1 under the Act, having requested the Commission to exempt NSCC from one or more of the requirements as to which the Commission is directed to make determinations pursuant to subparagraphs (A)–(I) at section 17A(b)(3) of the Act;

And the Commission having determined: that NSCC is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible, to safeguard securities and funds in its custody or control or for which it is responsible, to comply with the provisions of the Act and the rules and regulations thereunder and to carry out the purposes of section 17A of the Act; that the rules of NSCC do not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants; that the rules of NSCC are designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in NSCC's custody or control or for which it is responsible, to foster cooperation and coordination with persons engaged in clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest; and that the rules of NSCC do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act;

It is ordered, That NSCC's registration be and it hereby is granted, subject to the terms contained in this order and to the following conditions and directions, this 13th day of January 1977, to be effective for not more than 18 months, implementation thereof by NSCC to occur not earlier than January 20, 1977; and

Further ordered, That NSCC may not begin operating, as an integrated system, the clearing and settlement systems currently operated by the American Stock Exchange Clearing Corporation ("ASECC"), the National Clearing Corporation ("NCC") and Stock Clearing Corporation ("SCC") or make, without prior Commission approval, any changes in the rules, operating procedures or facilities management arrangements of NSCC or any of its operating divisions in effect immediately following issuance of its order unless NSCC shall have first:

(i) Established full interfaces with each of the Midwest Clearing Corporation ("MCC"); Pacific Clearing Corporation ("PCC"); and Stock Clearing Corporation of Philadelphia ("SCCP") and appropriate links with Boston Stock Exchange Clearing Corporation ("BSECC") and TAD Depository Corporation ("TADDC") and offered to operate each interface and link under agreements which would provide that the parties to the interface or link would not charge each other for interface movements or charge their participants either an interface fee or any fee which would operate as an interface fee;

(ii) Provided, at cost, efficient facilities, and cooperated with brokers and dealers and other registered clearing agencies in the development of alternative means, through which brokers and dealers may compare, either directly or through an agent, transactions eligible for comparison at NSCC, and enabled its participants to effect comparison, clearance and settlement of New York Stock Exchange, Inc. ("NYSE"), American Stock Exchange, Inc. ("Amex") and over-the-counter ("OTC") transactions through the NSCC branch network;

(iii) Begun operating existing NCC branch facilities so that those facilities, and any other branch facilities established by NSCC, provide, at a minimum, the same level of service provided through the facilities to NSCC participants to participants in any other registered clearing agency which agrees to use any of the facilities and to defray a portion of any such facility's operating costs equal to such clearing agency's proportionate use of the facility; and

(iv) Furnished without charge to any registered clearing agency which requested them computer programs for the performance of trade comparison for OTC transactions between the registered clearing agency's participants and made arrangements for any other registered clearing agency which is willing to do so to compare all OTC transactions between participants in different registered clearing agencies, without charge to such registered clearing agencies, or, if no other registered clearing agency is willing to do so, undertaken to compare all such transactions without charge to registered clearing agencies; and

Further ordered, That in order to facilitate establishment of the interfaces and links referred to in the first condition and the shared operation of branch facilities referred to in the third condition, NSCC be and it hereby is directed to offer to constitute a coordinating group for each interface or link which NSCC establishes and each branch facility in which one or more registered clearing agencies other than NSCC elect to participate. The composition of the coordinating groups is to be as follows: In the case of an interface or link, (i) a representative of NSCC, (ii) a representative of an NSCC participant designated by NSCC that intends to use the interface or link, (iii) a representative of the other clearing agency participat-

[203] *See* note 168 *supra*.

[204] *See* discussions under "Payments to the Amex, NASD and NYSE" in "THE NSCC APPLICATION" and "DETERMINATIONS WITH RESPECT TO NSCC" *supra*.

ing in the interface or link and (iv) a representative of a participant in the other clearing agency designated by it which participant intends to use the interface or link; and, in the case of a branch facility in which one or more registered clearing agencies other than NSCC elect to participate, (i) a representative of NSCC, (ii) a representative of an NSCC participant that uses the branch facility, (iii) a representative of each other registered clearing agency that elects to participate in the branch facility and (iv) a representative of a participant in each other registered clearing agency designated by it which participant intends to use the branch facility. During the period preceding implementation of integrated systems operations each coordinating group shall meet periodically and upon the call of two or more of its members and, not less frequently than once a month during this period, shall report to NSCC and to the other registered clearing agency or agencies represented in the group on the progress made in establishing the interface, link or branch facility and on any difficulties encountered in its establishment.

By the Commission (Chairman Hills and Commissioners Loomis, Evans and Pollack).

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1945 Filed 1-19-77;8:45 am]

BOSTON STOCK EXCHANGE

Application for Unlisted Trading Privileges and of Opportunity for Hearing

JANUARY 13, 1977.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the security of the company as set forth below, which security is listed and registered on one or more other national securities exchanges:

IROP Corp. File No. 7-4906. Common stock—$1 par value.

Upon receipt of a request, on or before January 29, 1977 from any interested person, the Commission will determine whether the application with respect to the company named shall be set down for hearing. Any such request should state briefly the title of the security in which that person is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no request for a hearing with respect to the particular application is made, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1939 Filed 1-19-77;8:45 am]

[Release No. 9606; 811-2525]

CNA MONEY INSTRUMENTS, INC.

Filing of Application for an Order Declaring That Company Has Ceased To Be an Investment Company

JANUARY 14, 1977.

Notice is hereby given that CNA Money Instruments, Inc. ("Applicant"), 245 Park Avenue, New York, New York 10017, an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), has filed an application pursuant to section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant is a corporation organized under the laws of the State of Maryland in September, 1974. A notification of registration and registration statement pursuant to section 8 of the Act and a registration statement under the Securities Act of 1933 were filed with the Commission on September 20, 1974.

Applicant states that due to economic conditions, business operations of Applicant were never commenced. No capital was ever invested in Applicant and Applicant's registration statement under the Securities Act of 1933 has been withdrawn.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the taking effect of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than February 8, 1977, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address set forth above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notice and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1940 Filed 1-19-77;8:45 am]

[Rel. No. 9607; 811-2526]

KEOGH-SMATHERS FUND, INC.

Filing of Application for an Order Declaring That Company Has Ceased to be an Investment Company

JANUARY 14, 1977.

Notice is hereby given that the Keogh-Smathers Fund, Inc. ("Applicant"), 245 Park Avenue, New York, New York 10017, an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), has filed an application pursuant to section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant was organized under the laws of the State of Maryland on September 19, 1974. A notification of registration was filed with the Commission on September 20, 1974, and registration statements pursuant to section 8 of the Act and under the Securities Act of 1933 were filed in October 1974.

Applicant states that due to changes in economic conditions, business operations of Applicant were never commenced. No capital has been invested in Applicant and Applicant's registration statement under the Securities Act of 1933 was declared abandoned by order of the Commission on October 28, 1975.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the taking effect of such order the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than Feb-

ruary 7, 1977, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address set forth above. Proof of such service (by affidavit, or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1941 Filed 1-19-77;8:45 a.m.]

MIDWEST STOCK EXCHANGE, INC.

Application for Unlisted Trading Privileges and of Opportunity for Hearing

JANUARY 13, 1977.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the security of the company as set forth below, which security is listed and registered on one or more other national securities exchanges:

Varian Associates, File No. 7-4904, Common Stock—$1 Par Value.

Upon receipt of a request, on or before January 29, 1977 from any interested person, the Commission will determine whether the application with respect to the company named shall be set down for hearing. Any such request should state briefly the title of the security in which that person is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no request for a hearing with respect to the particular application is made, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1942 Filed 1-19-77;8:45 a.m.]

[Rel. No. 9608; 812-4040]

STEPHENS ARKANSAS TAX-EXEMPT BOND FUND, SERIES ONE (AND SUBSEQUENT SERIES) AND STEPHENS, INC.

Filing of Application Pursuant to Section 6(c) of the Act for an Order of Exemption

JANUARY 14, 1977.

Notice is hereby given that Stephens Arkansas Tax-Exempt Bond Fund, Series One and Subsequent Series ("Fund"), a unit investment trust registered under the Investment Company Act of 1940 ("Act") and its sponsor, Stephens, Inc. ("Sponsor"), 114 East Capital Avenue, Little Rock, Arkansas 72201, (hereinafter the Sponsor and the Fund are referred to collectively as "Applicants"), have filed an application on October 12, 1976 and amendments thereto on December 29, 1976, and January 13, 1977, pursuant to section 6(c) of the Act for an order of the Commission exempting the Fund from the provisions of Section 14(a) of the Act, exempting the frequency of capital gains distributions of the Fund from the provisions of Rule 19b-1 and exempting the secondary market operations of the Sponsor from the provisions of Rule 22c-1 under the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The Fund will be comprised of a series of trusts, each of which will be governed by a separate Trust Indenture and Agreement ("Indenture") (hereinafter Series One of the Fund is referred to as "Series One"; all subsequent series are collectively referred to as the "Series"; and Series and Series One are collectively referred to as the "Funds" and severally referred to as the "Fund"). The Sponsor has filed a Form S-6 Registration Statement under the Securities Act of 1933 ("1933 Act") for Series One. A similar registration statement will be filed for each subsequent series. Each Indenture will be executed on or about the time the registration statement under the 1933 Act for each such Series becomes effective. Each Indenture will have the Sponsor acting as such, the Union National Bank, Little Rock, as Trustee, and Robert P. Lindsey, Little Rock, Arkansas, as Evaluator. Each Indenture will contain substantially identical terms and conditions. Pursuant to the Indenture, the Sponsor will deposit with the Trustee bonds ("Bonds") which the Sponsor shall have accumulated for such purpose in an amount at least equal to the aggregate principal amount of units to be offered. Simultaneously with such deposit the Trustee will deliver to the Sponsor registered certificates for the units which will represent the entire ownership of the respective Fund. These units will in turn be offered for sale to the public by the Sponsor. The 1933 Act registration statement for Series One covers a maximum of 28,000 units of fractional undivided interest in Series One to be offered to investors at the public offering price set forth in the prospectus included in the 1933 Act registration statement, including 5,250 units registered for secondary market purposes. The 1933 Act registration statement for Series One has not yet become effective.

Applicants state that the Bonds deposited in each Series will not be pledged or be in any other way subjected to any debt at any time after the bonds are deposited in the Fund except for the lien of the Trustee as security for certain liabilities set forth in the Indenture. All such Bonds will be interest-bearing obligations issued by or on behalf of the State of Arkansas or cities, counties, municipalities, school districts, and authorities and political subdivisions thereof, the interest on which will be, in the opinion of counsel, exempt from all Federal income tax, and under certain conditions Arkansas income tax under existing law.

The assets of each Series will consist of the Bonds initially deposited, such other bonds as any continue to be held from time to time in exchange or substitution for any of the Bonds upon certain refundings, accrued and undistributed interest, and undistributed cash. Certain of these Bonds may from time to time be sold under the special circumstances set forth in the Indenture with respect to such Series or may be redeemed or may mature in accordance with their terms. The proceeds from such disposition will be distributed to Unitholders and not reinvested. There is no provision in the Indenture for the sale of Bonds and the reinvestment of proceeds thereof, and such activity will not take place.

Each Unit of the Fund will represent a fractional undivided interest, the numerator of the fractional interest represented will be 1 and the denominator will be the number of Units issued and outstanding in any particular Series. Units are redeemable, and in the event that any Units are redeemed, the fractional undivided interest represented by each Unit will be increased accordingly. Units will remain outstanding until redeemed or until the termination of the Indenture. The Indenture may be terminated with respect to any Series upon approval by 66⅔ percent of the Unitholders of such Series or, in the event that the value of the bonds in such Series shall fall below 40 percent of the principal amount of the bonds initially deposited in such Series, upon direction of the Sponsor to the Trustee. There is no provision in the Indenture for the issuance of any units after the initial offering of units and such activity will not take place (except to the

extent that the secondary trading by the Sponsor in the Units is deemed the issuance of Units under the Act).

The Sponsor, while under no obligation to do so, intends to maintain a market for Units of the Fund and to offer to purchase such Units at prices based on the most recent evaluation by the Evaluator or Sponsor, which prices will be based upon the offering prices of the underlying Bonds. The Sponsor will not purchase any Units at a price less than a price based on the aggregate offering price of the underlying Bonds. Resales of such Units will be made by the Sponsor at the public offering price set forth in the then currently effective Prospectus.

SECTION 14(a)

Section 14(a) of the Act requires that a registered investment company, prior to making a public offering of its securities: (a) Have a net worth of $100,000, (b) have previously made a public offering and at that time have had a net worth of $100,000, or (c) have made arrangements for at least $100,000 to be paid in by 25 or fewer persons before acceptance of public subscriptions.

Applicants assert that section 14(a) of the Act is intended to limit the formation of undercapitalized investment companies. Applicants state that it is intended that each Series, at the date of deposit and before any Unit is offered to the public, will have a net worth far in excess of $100,000, and that the Sponsor intends to sell all Units to the public at offering prices disclosed in the Prospectus for each such Series, and that other applicable information concerning the underlying Bonds will be disclosed in the Prospectus. Applicants seek an exemption from the provisions of section 14(a), in order that a public offering of units of the Funds as described above may be made.

In connection with the requested exemption from section 14(a), the Sponsor agrees: (i) To refund on demand and without deduction all sales charges to purchasers of Units of a Series if, within 90 days from the time that the registration statement under the 1933 Act relating to such Series becomes effective, the net worth of such Series shall be reduced to less than $100,000, or if such Series is terminated; (ii) to instruct the Trustee on the date the bonds are deposited in each such Series that in the event that redemption by the Sponsor of Units constituting a part of the unsold Units of any Series shall result in that Series having a net worth less than 40 percent of the principal amount of Bonds initially deposited in such Series, that the Trustee shall terminate such Series in the manner provided in the Indenture, and distribute any bonds or other assets deposited with the Trustee pursuant to the Indenture as provided therein; and (iii) in the event of termination for the reasons described in (ii) above, to refund any sales load to any purchasers of units purchased from the Sponsor on demand and without any deduction.

RULE 19b–1

Rule 19b–1(a) provides, in substance, that no registered investment company which is a "regulated investment company" as defined in section 851 of the Internal Revenue Code shall make more than one distribution of long term capital gains in any one taxable year of such investment company. Paragraph (b) of said Rule contains a similar prohibition for a company not a "regulated investment company" but permits a unit investment trust to distribute capital gain dividends received from a "regulated investment company" within a reasonable time after receipt.

The Fund proposes to make quarterly distributions of principal and interest to Unitholders of a Series. Distributions of principal constituting capital gains to Unitholders may arise in two instances: (1) If an issuing authority calls or redeems an issue held in the portfolio, the sums received by the Fund will be distributed to a Unitholder on the next distribution date; and (2) if units are redeemed by the Trustee and bonds from the portfolio are sold to provide the funds necessary for such redemption, each Unitholder will receive his pro rata portion of the proceeds from the bonds sold over the amount required to satisfy such redemption distribution. In such instances, a Unitholder may receive in his distribution funds which constitute capital gains, since in some cases the value of the portfolio bonds redeemed or sold may have increased since the date of initial deposit.

Applicants state that the dangers against which Rule 19b–1 is intended to guard will not exist in connection with any Series of the Fund, because neither the Fund nor the Sponsor has control over the events which would trigger capital gains, i.e., the tendering of units for redemption and the prepayment of portfolio bonds by the issuing authorities. The Fund seeks to make a combined distribution of principal, including capital gains, and interest each quarter, and states that any capital gains in such distribution will be clearly indicated as such in accompanying reports to Unitholders. In addition, it is alleged that the amounts involved in the normal distribution of principal will be relatively small in comparison to the normal interest distribution.

As noted above, paragraph (b) of Rule 19b–1 provides that a unit investment trust may distribute capital gain dividends received from a "regulated investment company" within a reasonable time after receipt. Applicants assert that the purpose behind such provision is to avoid forcing unit investment trusts to accumulate valid distributions received throughout the year and distribute them only at year end. Applicants further allege that the situation presented by them places the Fund squarely within the purpose of such provision. However, in order to comply with the literal requirements of the Rule, the respective Series of the Fund would be forced to hold any moneys which would constitute capital gains upon distribution until the end of their taxable years. The Applicants contend that such a practice would clearly be detrimental to the Unitholders.

RULE 22c–1

Rule 22c–1 provides, in relevant part, that redeemable securites of registered investment companies may not be sold, redeemed or repurchased except at a price based on the current net asset value (computed on each day during which the New York Stock Exchange is open for trading not less frequently than once daily as of the time of the close of trading on such exchange) which is next computed after receipt of a tender of such security for redemption, or of an order to purchase or sell such security.

Applicants state that Rule 22c–1 has two purposes: (1) To eliminate or to reduce so far as reasonably practicable any dilution of the value of outstanding redeemable securities of registered investment companies which might occur through the sale, redemption or repurchase of such securities at prices other than their current net asset values; and (2) to minimize speculative trading practices in the securites of registered investment companies.

Applicants contend that Rule 22c–1 is intended to guard against the danger of excessive speculation in investment company securities. Applicants allege that as a practical matter, this danger does not exist with respect to the Fund since the whole appeal of the Fund is to investors seeking income and conservation of capital (the stated objectives of the Fund) rather than capital appreciation.

The following pricing procedures for the purpose of effecting redemption, repurchase, sale and resale transactions will be followed by the Fund:

During the initial public offering period, the public offering price will be based upon the offering prices of the underlying Bonds plus a sales charge not to exceed 5 percent of the public offering price per unit. During the initial public offering period, the Sponsor may repurchase Units at a price based upon the offering price of the underlying Bonds.

On the date of deposit, the Evaluator will make an evaluation of the underlying Bonds based upon both the bid and offering prices of such Bonds. Thereafter during the initial public offering period, the Evaluator will make a similar evaluation on each Friday, or on the preceding Thursday if Friday is a legal holiday recognized as such by the New York Stock Exchange, such evaluations being made as of the close of trading on the New York Stock Exchange. During the initial public offering period, on each business day, other than the date of deposit and other than each date on which the evaluator will make his weekly evaluation, the Sponsor will make a daily evaluation of the bid and offering prices of the underlying Bonds, such evaluations being made as of the close of trading on the New York Stock Exchange.

During the initial public offering period, redemption of Units will be based

upon the bid prices of the underlying Bonds. The Trustee will utilize such bid price evaluation, as described herein, to daily determine the Unit Value of the Units of the Fund, which Unit Value will be the redemption price for Units tendered for redemption before the close of trading on the New York Stock Exchange on any business day. Business day is defined to mean each day on which the New York Stock Exchange is open for trading.

The public offering price, the repurchase price, and the redemption price during the initial public offering period will be readjusted daily in accordance with the evaluations by the Evaluator and Sponsor, such readjusted prices to be effective for all Units tendered for redemption, Units sold, or Units repurchased before the close of trading on the New York Stock Exchange on such day of adjustment. For all Units tendered for redemption, repurchase or sale after the close of trading on the New York Exchange, the relevant prices will be computed as of the next time for evaluation as described herein.

During the secondary market period, which is the period subsequent to the termination of the initial offering period, the Sponsor, while not obligated to do so, intends to offer to purchase units at prices based on the offering side evaluation of the bonds in the Fund. During the secondary market period the Sponsor may also sell Units based upon the offering prices of the underlying Bonds plus a sales charge not to exceed 5 percent of the secondary market offering price per unit. During the secondary market period, redemption of Units will continue to be made on the basis of the bid prices of the underlying Bonds.

During the secondary market period, the Evaluator will make an evaluation of the underlying Bonds on each Friday, Thursday if Friday is a legal holiday, as of the close of trading on the New York Stock Exchange, such evaluation to be both for the bid and offering prices of the underlying Bonds. The bid evaluation will be used by the Trustee for purposes of redemption during the week following the evaluation. The offering evaluations will be used by the Sponsor in determining its repurchase and sale prices during the following week.

Applicants state that the Sponsor has undertaken to adopt a procedure whereby it will review on each business day, except on days when the Evaluator makes his Evaluation, the underlying bid and offering prices of the Bonds in the Fund. In the case of a repurchase, if the Sponsor cannot state that the current bid price is not higher than the offering side evaluation, computed as of the last business day of the previous week, the Sponsor will make a full evaluation. The Sponsor has agreed that, in case of the resale of Units in the secondary market, if the Sponsor cannot state that the offering side evaluation computed as of the last business day of the previous week is not more than one-half point greater than the current offering side evaluation, a full evalutaion will be made, which evaluation will then be utilized for the purpose of effecting redemption, repurchase and sale transactions of Units until the next weekly evaluation by the Evaluator or until such evaluations have to be re-evaluated in accordance with the daily review by the Sponsor.

Unit Value is defined to be the pro rata share of each Unit in the Fund determined on the basis of (1) cash on hand in the Fund or monies in the process of being collected, (2) the value on the bid side of the market as reported by the Evaluator of the underlying Bonds in the Fund, and (3) interest accrued thereon but not subject to collection, less (1) amounts representing taxes or governmental charges payable out of the Fund, (2) accrued expenses of the Fund, and (3) cash held for distribution to Unitholders as of a record date prior to the Unit Value determination then being made.

The secondary market activities of the Sponsor and the manner for the acquisition by investors of new Units, may be deemed to violate Rule 22c–1 because of the absence of daily pricing. Applicants contend, however, that the purposes of Rule 22c–1 will not be offended by the Sponsor's secondary market activities. Applicants assert that the pricing of Units by the Sponsor in the secondary market will in no way dilute the assets of the Fund, and that Unitholders will benefit from the Sponsor's pricing procedure in the secondary market since they will normally receive a higher repurchase price for their Units than they could be redeeming their Units at the current net asset value and that this will be accomplished without the cost burden to the Fund of daily evaluations of the unit redemption value.

Applicants also contend that speculation in Units of any Series is unlikely because price changes are limited in respect to the kind of bonds which will be held by such Series.

Applicants therefore request an exemption from the provisions of Rule 22c–1 for Series 1 and for all subsequently created Series insofar as the Rule may apply after completion of the primary distribution of Units of such Series.

Section 6(c) of the Act provides, in part, that the Commission may, upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provisions of the Act or of any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than February 7, 1977, at 12:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission orders a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Applicants at the address stated above. Proof of such service (by affidavit, or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons, who request a hearing or advice as to whether a hearing is ordered, will receive any notices and orders issued in the matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77–1943 Filed 1–19–77; 8:45 am]

[Release No. 9609; 812–4053]

SoGEN INTERNATIONAL FUND, INC.

Filing of Application for Exemption From Section 2(a)(19) of the Act

JANUARY 14, 1977.

Notice is hereby given that SoGen International Fund, Inc. ("Applicant"), 20 Broad Street, New York, New York 10005, a Delaware corporation registered under the Investment Company Act of 1940 ("Act") as a diversified, open-end, management investment company, filed an application on November 12, 1976, pursuant to section 6(c) of the Act, for an order declaring that Richard M. Bressler ("Bressler") shall not be deemed to be an "interested person" of the Applicant, or SoGen-Swiss International Corporation ("Adviser"), the investment adviser to and principal underwriter of the Applicant, or Smith Barney, Harris Upham & Co., Incorporated ("Subinvestment Adviser"), the sub-investment adviser to the Applicant, within the meaning of section 2(a)(19) of the Act solely by reason of his being a director of Union Mutual Life Insurance Company ("Union Mutual Life"), a Maine life insurance company, and Unionmutual Corporation ("Unionmutual") a wholly-owned subsidiary of Union Mutual Life. All interestered persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Bressler is currently a director of Applicant, and at the same time is a director of both Union Mutual Life and Unionmutual. According to the application, Unionmutual Sales Corporation ("Unionmutual Sales"), a wholly-owned subsidiary of Unionmutual Equity Cor-

poration, which in turn is a wholly-owned subsidiary of Unionmutual, is registered as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act"). It is represented that Unionmutual also holds a 12.5 percent interest in Linsco Corporation ("Linsco") of Washington, D.C., a registered broker-dealer under the Exchange Act.

Sections 2(a)(19)(A)(v) and (B)(v) of the Act define an "interested person" of an investment company and of an investment adviser of an investment company to include any broker or dealer registered under the Exchange Act or any affiliated person of such broker or dealer. Section 2(a)(3) of the Act includes in the definition of an "affiliated person" any person directly or indirectly controlling, controlled by or under common control with such other person.

Applicant states that because of Bressler's position as a director of Unionmutual Life and Unionmutual, Bressler might be considered for purposes of section 2(a)(19) of the Act, to be an affiliated person of Unionmutual Sales and/or Linsco and, thus, an interested person of the Applicant, the Adviser and the Sub-investment Adviser.

Applicant states that Unionmutual Sales has been inactive since June 25, 1976, prior to which time its sole function was to act as principal underwriter for Lighthouse Fund B, Inc. ("Lighthouse") a registered, open-end management investment company organized by Union Mutual Life. It is further stated that on June 25, 1976, Lighthouse sold substantially all of its assets to Sigma Capital Shares, Inc. ("Sigma"), a registered, open-end management investment company, in return for shares of Sigma. Lighthouse subsequently distributed the Sigma shares to its shareholders, and it is in the process of dissolving. On September 7, 1976, the Commission issued an order (Investment Company Act Release No. 9428) pursuant to an application of Lighthouse declaring that Lighthouse had ceased to be an investment company as defined in the Act. Applicant states that Unionmutual Sales has not otherwise acted as a broker-dealer and that Union Mutual Life has advised Applicant that no definite plans have been formed concerning the future activities of Unionmutual Sales.

Applicant states that Linsco was formed by eight insurance companies (one being unionmutual), each of which owns 12.5 percent of its shares, in order to share the costs of establishing and operating a broker-dealer which would be licensed in most states for the retail sale of mutual fund shares and variable annuities. Insurance agents of the eight life insurance companies who desire to offer these products to their clients may register with the National Association of Securities Dealers as registered representatives of Linsco. In addition, it is stated that Linsco occasionally arranges private placements and real estate syndications and may otherwise act as a broker-dealer. Applicant represents that neither Unionmutual Sales nor Linsco has ever engaged in securities transactions on behalf of Applicant or has ever participated in the sale of Applicant's shares.

According to the application, Bressler lives in Los Angeles, and his principal occupation is his position as Senior Vice President-Finance of Atlantic Richfield Company. It is represented that Bressler, as a director of Union Mutual Life and Unionmutual, shares in the general responsibility of the directors of both companies for the management of their affairs, but does not participate in the day-to-day operations of either company; that he is neither a director nor an officer of Unionmutual Sales or Linsco or in any other way a participant in the day-to-day operations of said broker-dealers; that other than his fees as a director of Union Mutual Life and Unionmutual, which comprises an insignificant portion of his total income, Bressler receives no remuneration from Union Mutual Life, its subsidiaries or Linsco; and that Bressler has no personal interest in the operations of Union Mutual Life, its subsidiaries or Linsco.

Applicant represents and warrants to the Commission that, so long as Bressler remains one of its directors, Applicant will not knowingly purchase any securities from or through or sell any securities to or through, Union Mutual Life, its subsidiaries or Linsco, and that neither Union Mutual Life nor Linsco will be permitted to participate in the distribution of Applicant's shares.

Applicant requests that an order be issued, pursuant to section 6(c) of the Act declaring that Bressler shall not be deemed an interested person of Applicant, the Adviser or the Sub-investment Adviser within the meaning of section 2(a)(19) of the Act solely by reason of his being a director of Union Mutual Life and Unionmutual.

Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person or transaction from any provision of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than February 9, 1977, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule O-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-1944 Filed 1-19-77;8:45 am]

SMALL BUSINESS ADMINISTRATION

[License No. 06/10-0088]

ADMIRAL INVESTMENT COMPANY, INC.

Application for Transfer of Control of Licensed Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA), pursuant to § 107.701 of the regulations governing small business investment companies (13 CFR 107.701 (1976)), for transfer of control of Admiral Investment Company, Inc., (Admiral), 2200 West Loop South, Suite 210, Houston, Texas 77027, a Federal Licensee under the Small Business Investment Act of 1958, as amended (The Act), (15 U.S.C. 661 et seq.), and the rules and regulations promulgated thereunder.

Admiral was licensed on December 28, 1961, and its present capitalization is $500,000. It is proposed that MMC Investors Services, Inc., (MMCIS), 75 Rockefeller Plaza, New York, N.Y. 10019, purchase all of the 500,000 shares of Admiral's issued and outstanding common stock. This is the only class of stock authorized. MMCIS is an Oklahoma corporation organized in 1974 and is engaged in providing financial and investment consulting services to corporate clients, and will provide such services to the Licensee. Mr. William N. Vitalis and his wife own 50 percent of MMCIS. The remaining 50 percent is owned by Ollie Development Co., Inc., located in Midland Center, Oklahoma City, Oklahoma 73126, an Oklahoma corporation primarily engaged in real estate, Mr. George J. Records and his wife, together with members of and trusts for the benefit of their family, own all of the outstanding capital stock of Ollie Development Co., Inc.

Mr. Records and his family also control Midland Mortgage Co., an Oklahoma City based mortgage banking firm. Admiral should benefit from its relationship to Midland Mortgage Co., because of their branch offices in Oklahoma City, Lawton and Tulsa, Oklahoma; Phoenix, Prescott and Tucson, Arizona; Houston, Texas; Colorado Springs, Denver and

Pueblo, Colorado; and Tustin, California.

The proposed transfer of control is subject to the approval of SBA. If such approval is given, the new officers and directors of Admiral will be:

George Jeffrey Records, Chairman of the Board, 1510 Guilford Lane, Oklahoma City, Oklahoma 73120.

William Nelson Vitalis, President, Director, Dibble Hill Road, West Cornwall, Connecticut 06796.

Mrs. Ada B. Jones, Secretary, Treasurer, Route #3, Box 343, Edmond, Oklahoma 73034.

Caroline Seeger, Assistant Secretary, 170-12 Pidgeon Meadow Rd., Flushing, New York 11365.

Betty L. Rodgers, Assistant Secretary, 2701 S.W. 53rd Street, Oklahoma City, Oklahoma 73110.

Paul Donnelly Paganucci, Director, 33 Rope Ferry Road, Hanover, New Hampshire 03755.

There will be no significant change in Admiral's charter and bylaws; however, its name will be changed to Activest Capital Corporation and its principal office will be moved to Suite 101, 1501 Classen Boulevard, Oklahoma City, Oklahoma 73106. The Licensee will continue to conduct its operations in the State of Texas and to expand its activities to the States of Oklahoma, Arizona, California, Colorado and Connecticut.

Admiral is considered to be a real estate specialist and is permitted by SBA to have up to 100 percent of its portfolio invested in small business concerns primarily engaged in real estate. The proposed new owners plan to retain this real estate exemption.

Matters involved in SBA's consideration of the application include the general business reputation and character of management and shareholders, and the probability of successful operations of Admiral under their management in accordance with the Act and Regulations.

Notice is further given that any person may, not later than February 7, 1977, submit to SBA in writing, comments on the proposed transfer of control of this company. Any such comments should be addressed to: Associate Administrator for Finance and Investment, Small Business Administration, 1441 "L" Street, N.W., Washington D.C. 20416.

A copy of this notice will be published by Admiral in a newspaper of general circulation in Houston, Texas and Oklahoma City, Oklahoma.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: January 12, 1977.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc.77-1823 Filed 1-19-77;8:45 am]

[License No. 04/04-0047]

Proposed Transfer of Control

CAMERON-BROWN CAPITAL CORP.

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.701 of the SBA regulations governing small business investment companies (13 CFR 107.701 (1976)) for the Transfer of Control of Cameron-Brown Capital Corporation, 4300 Six Forks Road, Raleigh, North Carolina 27609, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act).

Cameron-Brown Capital Corporation (Cameron-Brown) was licensed on October 20, 1961. Its present combined paid-in capital and surplus is $1,250,265. The proposed transfer of control is subject to and contingent upon the approval of SBA.

The Applicant, R. S. Dickson & Company, 2000 Jefferson First Union Plaza, Charlotte, North Carolina 28282, trading as Ruddick Investment Company (RIC) is a wholly-owned subsidiary of Ruddick Corporation, a holding company organized under the laws of North Carolina.

RIC is proposing to puchase from Cameron-Brown, a North Carolina Corporation, (a wholly-owned subsidiary of First Union Corporation) all of the issued and outstanding capital stock of Cameron-Brown consisting of up to 1,185,364 shares of common stock.

The proposed officers and directors of the applicant are as follows:

Chairman of the Board and Director, R. Stuart Dickson, 2235 Pinewood Circle, Charlotte, North Carolina 28211.

President, Director, H. B. McManaway, Jr., 3427 Seward Place, Charlotte, North Carolina 28211.

Vice President, Director, J. Alex McMillan, III, 754 Museum Drive, Charlotte, North Carolina 28207.

Vice President, Director, Alan T. Dickson, 512 Museum Drive, Charlotte, North Carolina 28207.

Treasurer, Joseph L. Overton, 5500 Sardis Road, Charlotte, North Carolina 28211.

Secretary, Donald B. Williford, 16 Hamilton Ferry Road, River Hills Plantation, Clover, South Carolina 29710.

Assistant Secretary, James O. Stephens, 1910 Birchcrest Drive, Charlotte, North Carolina 28205.

Subsequent to final approval from the SBA, the Applicant intends to change the name of the Licensee to Heritage Capital Corporation.

Matter involved in SBA's consideration of the Applicant include the general business reputation and character of the new owners and management, and the probability of successful operations of the Licensee under their management and control, including adequate profitability and financial soundness, in accordance with the Act and regulations.

Notice is hereby given that any person may, not later than February 7, 1977 submit to SBA, in writing comments on the Transfer of Control.

Any such communications should be addressed to the Deputy Associate Administrator for Investment, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Charlotte and Raleigh, North Carolina.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 12, 1977.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc.77-1824 Filed 1-19-77;8:45 am]

[Declaration of Disaster Loan Area No. 1281]

MINNESOTA

Declaration of Disaster Area

St. Louis County and adjacent Counties within the State of Minnesota constitute a disaster area because of physical damage to wells resulting from drought which occurred in the calendar year 1976.

Eligible persons, firms and organizations may file applications for loans for physical damage as a result of drought until the close of business on March 14, 1977, and for economic injury until the close of business on October 14, 1977, at:

Small Business Administration, District Office, Plymouth Building, Room 530, 12 South Sixth Street, Minneapolis, Minnesota 55402.

or other locally announced locations.

Dated: January 12, 1977.

MITCHELL P. KOSELINSKI,
Administrator.

[FR Doc.77-1822 Filed 1-19-77;8:45 am]

DEPARTMENT OF STATE

[Public Notice CM-7/19]

OCEAN AFFAIRS ADVISORY COMMITTEE

Rescheduling of Meeting

The meeting of the Ocean Affairs Advisory Committee scheduled for January 25-26, 1977, and announced in the FEDERAL REGISTER of Thursday, December 30, 1976, Vol. 41, No. 252 (41 FR 56893) has been rescheduled for March 15-16, 1977. The rescheduling is due to scheduling conflicts on the original dates.

Dated: January 12, 1977.

WILLIAM L. SULLIVAN, JR.,
Acting Deputy Assistant Secretary for Oceans and Fisheries Affairs.

[FR Doc.77-1887 Filed 1-19-77;8:45 am]

[Public Notice OM-7/18]

SECRETARY OF STATE'S ADVISORY COMMITTEE ON PRIVATE INTERNATIONAL LAW STUDY GROUP ON HOTELKEEPERS' LIABILITY

Meeting

A meeting of the Study Group on Hotelkeepers' Liability, a subgroup of the Secretary of State's Advisory Committee on Private International Law, will be held at 10:00 a.m. on Thursday, February 17, 1977, in room 5519 of the Department of State. Members of the general public may attend up to the limits of the capacity of the meeting room and participate in the discussion subject to instructions of the Chairman.

The meeting will consider the positions which should be taken by the United States representative at the first session of the committee of governmental experts on the hotelkeeper's contract to be held by the International Institute for the Unification of Private Law in Rome March 28–April 1, 1977.

Entrance to the Department of State building is controlled, and members of the general public should use the C Street entrance. Entry will be facilitated if arrangements are made in advance, and it is requested that members of the general public who plan to attend the meeting inform their name, affiliation, and address to Miss Dorothy Fagan, Office of the Legal Adviser, Department of State, prior to February 17, 1977. The telephone number is area code 202, 632–8134.

RICHARD D. KEARNEY,
Chairman.

JANUARY 12, 1977.

[FR Doc.77-1886 Filed 1-19-77; 8:45 am]

[Public Notice CM-7/17]

SHIPPING COORDINATING COMMITTEE SUBCOMMITTEE ON SAFETY OF LIFE AT SEA

Meeting

The working group on radiocommunications of the Subcommittee on Safety of Life at Sea, a subcommittee of the Shipping Coordinating Committee, will hold an open meeting at 2:00 p.m. on Thursday, February 17, 1977, in Room 7426 of the Department of Transportation, 400 Seventh Street, S.W., Washington, D.C.

The purpose of the meeting is to prepare position documents for the Seventeenth Session of the Subcommittee on Radiocommunications of the Intergovernmental Maritime Consultative Organization (IMOC), to be held in London February 21–25, 1977. In particular, the working group will discuss the following topics:

Promulgation of navigational warnings to shipping;

Operational standards for shipboard radio equipment;

Operational requirements for emergency position-indicating radio beacons and portable radio apparatus for survival craft; and

Matters resulting from the World Maritime Administrative Radio Conference, 1974, and the work of the International Radio Consultative Committee.

Requests for further information on the meeting should be directed to LT. F. N. Wilder, United States Coast Guard. He may be reached by telephone on (area code 202) 426–1345.

The Chairman will entertain comments from the public as time permits.

RICHARD K. BANK,
Chairman,
Shipping Coordinating Committee.

JANUARY 11, 1977.

[FR Doc.77-1885 Filed 1-19-77;8:45 am]

Agency for International Development

BOARD FOR INTERNATIONAL FOOD AND AGRICULTURAL DEVELOPMENT

Meeting

Pursuant to Executive Order 11769 and the provisions of section 10(a), (2), Pub. L. 92–463, Federal Advisory Committee Act, notice is hereby given of the fifth meeting of the Board for International Food and Agricultural Development on February 14 and 15, 1977. The purpose of the meeting is to begin review of the Annual Report, to receive briefings on sectoral strategies for agriculture, Mission Guidelines, and to review nominees for the Joint Committees.

The meeting will begin at 9:00 a.m. and adjourn at 5:30 p.m., and will meet in Room 5951, U.S. Department of State, 21st and Virginia Avenue on both days. The meeting is open to the public. Dr. Erven J. Long, Associate Assistant Administrator, is designated as the Federal Officer at the meeting. It is suggested that those desiring more specific information contact him at 21st and Virginia Avenue, NW., Washington, D.C., 20523 or call area code 202–632–3800.

Dated: January 12, 1977.

ERVEN J. LONG,
Federal Officer, Board for International Food and Agricultural Development.

[FR Doc.77-1840 Filed 1-19-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 77-005]

ADVISORY COMMITTEES

Applicants for Membership

The Coast Guard is seeking applicants who are interested in being appointed as a member on one of the following advisory committees:

1. Towing industry advisory committee (TIAC). TIAC advises the Marine Safety Council, an internal Coast Guard Council which advises the Commandant on the safe operation of towing vessels and barges on rivers, inland waters, along the coasts, and upon the oceans.

2. National offshore operations industry advisory committee (NOOIAC). NOOIAC advises the Marine Safety Council on offshore operations and the coastal environment, including offshore oil and mineral exploitation, transmission of energy resources, and support facilities.

3. Chemical transportation industry advisory committee (CTIAC). CTIAC advises the Marine Safety Council on the water transportation of hazardous materials.

4. Rules of the road advisory committee (RRAC). RRAC advises the Marine Safety Council on proposals that affect the Rules of the Road.

Each applicant should clearly indicate which of the committees he is interested in. Additional information will be mailed to each applicant. Selection will be based upon expertise and leadership within the field of interest of the committee. Membership is open to all qualified persons. Environmental and public interest representatives who are knowledgeable in the area of interest of a comimttee are encouraged to apply for membership upon that committee. Applications for membership will be accepted until February 11, 1977.

Each committee meets once or twice a year at a location that is selected by the Committee Sponsor. Members serve at their own expense and receive neither travel nor per diem allowances.

Interested parties should write to: Commandant (G–CMC/81), U.S. Coast Guard, Washington, D.C. 20590.

G. H. PATRICK BURSLEY,
Rear Admiral, U.S. Coast Guard,
Chairman, Marine Safety Council.

JANUARY 13, 1977.

[FR Doc.77-1876 Filed 1-19-77;8:45 am]

[CGD 77-610]

PROPOSED PALMETTO PARK ROAD BRIDGE ACROSS THE ATLANTIC INTRACOASTAL WATERWAY (LAKE BOCA RATON) BOCA RATON, PALM BEACH COUNTY, FLORIDA

Public Hearing

The Commandant has authorized a public hearing to be held by the Commander, Seventh Coast Guard District. The hearing will be on Monday, February 28, 1977, at 7:00 p.m. at Boca Raton City Council Chambers, 201 West Palmetto Park Road, Boca Raton, Florida.

This hearing is being held under the provision of § 115.60(c) of Title 33 Code of Federal Regulations which provides that public hearings will be held in those cases which are of special importance or where significant differences of opinion have not been resolved.

On February 21, 1975 the State of Florida, Department of Transportation made application on behalf of Palm Beach County for Coast Guard approval of the location and plans for a single leaf four lane bascule bridge across the Intracoastal Waterway, mile 330.5 at Palmetto Park Road, Boca Raton, Florida. The proposed bridge would provide a vertical clearance at mid channel of 15.5 feet (MHW) in the closed position. The proposed bridge is to replace the existing two lane single leaf bascule bridge which provides a vertical clearance at mid channel of 7.0 feet (MHW) in the closed position.

In February 1976 the Coast Guard denied the application for the reason that the proposed bridge would not provide for the reasonable needs of navigation. The bridge did not provide adequate vertical clearance in the closed position. The Coast Guard indicated that a bridge providing a vertical clearance at mid channel of 21.0 feet (MHW) would most likely provide for the reasonable needs of navigation. Data available to the Coast Guard indicated the proposed 15.5 foot vertical clearance would reduce bridge openings by about 25–30 percent. A bridge providing a vertical clearance of 21 feet would reduce bridge openings by about 70–75 percent and a bridge providing a vertical clearance of 25 feet would reduce bridge openings by a slightly higher percentage of about 75–80 percent. The Coast Guard has not issued a bridge permit for a drawbridge across the Intracoastal Waterway of less than 20 feet in the closed position since 1971.

Palm Beach County has petitioned the Coast Guard for reconsideration of the denial of the application citing financial hardship as the principal basis. Palm Beach County in support of their petition has agreed to not request drawbridge regulations regardless of future highway traffic increases. The bridge would always be opened on signal.

Previous objectors to the proposed bridge consulted in the course of reconsideration, have reiterated their objections that the bridge will not provide for the reasonable needs of navigation and a restriction against future drawbridge regulations is unrealistic. These objectors consist of 20 member yacht clubs of the Florida Council of Yacht Clubs, with a total membership of about 17,000 individual members. There are unresolved differences of opinion.

Interested persons may present comments orally or in writing concerning any matter relevant to the proposed bridge. Information is desired concerning short and long range projections of marine and highway traffic, potential development and projected population densities for the Boca Raton beach area, projected increases of recreational use of the public beaches and associated highway traffic, prospective significant impacts on the human environment and the adequacy of the proposed bridge, opening on signal at all times, for accommodating future marine and highway traffic.

The hearing will be informal. A Coast Guard representative will preside at the hearing, will make a brief opening statement describing the proposed bridge, and will announce the procedures for the hearing. Each person who wishes to make an oral statement should notify the Commander (oan) Seventh Coast Guard District, Federal Building, 51 SW First Avenue, Miami, Florida 33130, by February 21, 1977. This notification should include the approximate time required to make the presentation. A transcript of the hearing may be purchased by the public. Interested persons who are unable to attend this hearing may also participate in the consideration of this petition by submitting their comments in writing before March 28, 1977 to the Commander (oan), Seventh Coast Guard District. Each comment should state the reasons for any objections, comments, or proposed changes to the plans and the name and address of the person or organization submitting the comment.

Copies of all written communications will be available for examination by interested persons at the office of the Commander (oan), Seventh Coast Guard District. All comments received will be considered before final action is taken on the petition for reconsideration. After the time period for the submission of comments, the Commander, Seventh Coast Guard District, will forward the record, including all written comments and his recommendations, to the Commandant, U.S. Coast Guard, Washington, D.C. 20590.

(Sec. 502, 60 Stat. 847, as amended; (33 U.S.C. 525, 49 U.S.C. 1655(g)(6)(C)); 33 CFR 115, 60(c) 49 CFR 1.46(c)(10).)

Dated: January 12, 1977.

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

[FR Doc.77-1877 Filed 1-19-77;8:45 a.m.]

Federal Aviation Administration

GENERAL AVIATION AIRPORT DEVELOPMENT

State Demonstration Programs; Notice of Policy

The purpose of this notice is to set forth the policy of the Federal Aviation

Administration with respect to the implementation and operation of the state demonstration program for general aviation airport development established under section 28 of the 1976 amendments to the Airport and Airway Development Act of 1970, as amended (AADA), Pub. L. 94-353 (90 Stat. 871).

Under the state demonstration program which will include only four states and which must be initiated prior to January 1, 1977, the FAA is authorized to make grants to each state in the demonstration program for use by that state in making grants to sponsors of general aviation airports. Pursuant to the authority contained in section 28, the FAA has selected the following four states for participation in the state demonstration program: Arizona, Michigan, Pennsylvania, and South Dakota. These four states were selected from the twenty states that applied on the basis of several factors, including: geographic location; the relative significance of general aviation in the state; the size and scope of its general aviation development program; and the degree to which the selected state is representative of a group of states.

Although the state demonstration program involves Federal grants for the development of general aviation airports, Part 152 of the Federal Aviation Regulations is not applicable to the program. Part 152 prescribes the FAA policies and procedures for administering the Airport Development Aid Program (ADAP) for airport development and planning grant projects under the AADA. In implementing the ADAP, the FAA, except in cases where states act as sponsors or co-sponsors or supplement Federal funds, makes direct grants to local sponsors without state participation in the grant agreements. Consequently, Part 152 is neither meant to be nor is it applicable to the state demonstration program where grants are made by the states.

However, under section 28, grants by the participating states of program funds must be made in the same manner and subject to the same statutory requirements and conditions as grants made by the FAA to airport sponsors. Furthermore, demonstration program grants made by the FAA to participating states will contain appropriate substantive requirements of Part 152, and, as a condition of demonstration program grants, those states must include the applicable requirements of Part 152 in subsequent grants to airport sponsors.

It should be noted that the purpose of the state demonstration program is to enable the FAA to evaluate whether state administration of the general aviation portion of the ADAP is practicable and feasible and can be carried out in an efficient and economical manner.

(Sec. 11 through 30, Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1711 through 1730), and § 1.47(g) of the Regulations of the Office of the Secretary of Transportation (49 CFR 1.47(g)).)

Issued in Washington, D.C., on January 10, 1977.

JOHN L. MCLUCAS,
Administrator.

[FR Doc.77-1623 Filed 1-19-77;8:45 am]

MICROWAVE LANDING SYSTEM ADVISORY COMMITTEE

Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Microwave Landing System (MLS) Advisory Committee to be held February 3, 1977, at 9:30 a.m. in Room 9A/B/C, Federal Office Building 10A, 800 Independence Avenue, S.W., Washington, D.C. The agenda for the meeting is as follows: Review of program progess over the past year, plans for future work including ongoing procurement of military and civil prototype hardware, and status of the current international program to select an MLS for standardization.

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 meeting. 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, Gene Jensen, Executive Director, MLS Advisory Committee, Room 3100, Transportation Building, 2100 2nd Street, S.W., Washington, D.C., telephone (202) 426-2072. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C., on January 14, 1977.

FRANK L. FRISBIE,
Chief, Approach and Landing Division, Federal Aviation Administration.

[FR Doc.77-1873 Filed 1-18-77;8:45 am]

Office of the Secretary

[CGD 76-010; CGD 76-011]

DEEPWATER PORT LICENSES

Issuance To LOOP and Seadock

Notice is hereby given that on January 17, 1977, in accordance with his decisions announced on December 17, 1976, the Secretary of Transportation issued to LOOP INC. and Seadock, Inc., licenses to own, construct, and operate deepwater ports.

Copies of the licenses are available for public inspection in the offices of the Commandant, U.S. Coast Guard (G-WDWP/61) Room 6125, 400 Seventh Street, S.W., Washington, D.C. 20590.

Issued in Washington, D.C., on January 17, 1977.

J. E. LESCROART,
Director, Office of Deepwater Ports.

[FR Doc.77-2002 Filed 1-18-77;1:22 pm]

INTERSTATE COMMERCE COMMISSION

[Notice No. 308]

ASSIGNMENT OF HEARINGS

JANUARY 17, 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.

MC 117119 (Sub-No. 600), Willis Shaw Frozen Express, Inc., now being assigned March 4, 1977 (1 day) at Dallas, Texas, in a hearing room to be later designated.

MC 9859 Sub 3, Kane Transfer Company, now being assigned March 8, 1977 (3 days), at Salisburg, Maryland, in a hearing room to be later designated.

MC 114569 Sub 145, Shaffer Trucking, Inc., now being assigned February 14, 1977 (2 days), at Kansas City, Missouri, will be held in Room 609, Federal Office Bldg., 911 Walnut Street.

No. W 370 Sub 3, Albert Bernert, Inc. now being assigned March 15, 1977 (4 days) at Portland, Oregon in a hearing room to be later designated.

MC 140612 Sub 10, Robert F. Kazimour, an Individual, now being assigned March 21, 1977 (1 day) at Portland, Oregon in a hearing room to be later designated.

MC 142469, Jerry Lee Bullock, d.b.a. Bullock Towing now being assigned March 22, 1977 (2 days) at Portland, Oregon in a hearing room to be later designated.

MC 83539 Sub 436, C & H Transportation Co., Inc. now being assigned March 24, 1977 (2 days) at Portland, Oregon in a hearing room to be later designated.

MC-F 12952, Navajo Freight Lines, Inc.—Control and Merger—Exley Express, Inc. and FD 28274, Navajo Freight Lines, Inc. now being assigned March 28, 1977 (1 week) at Portland, Oregon in a hearing room to be later designated.

AB-28 Sub-1, Central of Georgia Railroad Company, Abandonment of Operation Between Clayton and Ozark in Barbour and Dale Counties, Alabama, now assigned February 23, 1977 at Ozark, Alabama, will be held in Judge Borom's Small Court Room, Dale County Court House.

MC-F-12939, K Deaton, Inc.—Investigation of Control-H. S. Anderson Trucking Company, now assigned March 2, 1977 at Birmingham, Alabama will be held in the GSA Conference Room No. 345, Federal Building, 1800 5th Avenue, North.

MC-F-12753, Whitfield Transportation, Inc.-Purchase-Haywood L. Washum, d.b.a. Los Angeles-Yuma Freight Lines and MC 108461 (Sub-No. 126), Whitfield Transportation, Inc., now assigned February 28, 1977 at Phoenix, Arizona; will be held in the Camelback Sahara Motor Hotel, 502 W. Camelback Road.

MC 2900 (Sub-No. 293), Ryder Truck Lines, Inc., now assigned February 7, 1977 at Atlanta, Georgia, is postponed to February 28, 1977, at the Atlanta American Motor Hotel, Carnegie Way and Spring Street, Atlanta, Georgia.

MC 59856 (Sub-No. 64), Salt Creek Freightways, now assigned March 7, 1977, at Boise, Idaho is canceled and reassigned for March 7, 1977 (1 week), at Idaho Falls, Idaho, Room 122, Ramada Inn, 850 Lindsay Boulevard.

MC 11207 (Sub-367), Deaton, Inc.; MC 73165 (Sub-384), Eagle Motor Lines, Inc.; MC 106644 (Sub-221), Superior Trucking Company, Inc.; MC 111545 (Sub-221), Home Transportation Company, Inc. and MC 136828 (Sub-8), Cox & Shay, Inc., now assigned February 28, 1977, at Birmingham, Alabama; will be held in The GSA Conference Room No. 345 Federal Building, 1800 5th Avenue, North.

MC 142170, Jersey Best, Inc. now being assigned April 18, 1977 (1 day) at New York, New York in a hearing room to be designated.

MC 136343 Sub 92, Milton Transportation, Inc. now being assigned April 19, 1977 (1 day) at New York, New York in a hearing room to be later designated.

MC 134477 Sub 123, Schanno Transportation, Inc. now being assigned April 20, 1977 (1 day) at New York, New York in a hearing room to be later designated.

MC 142008 Sub 2, William C. Thomas now being assigned April 21, 1977 (1 day) at New York, New York in a hearing room to be later designated.

MC 60430 Sub 22, Friedman's Express, Inc. now being assigned April 22, 1977 (1 day) at New York, New York in a hearing room to be later designated.

F.D. 28255 Chesapeake and Ohio Railroad Company—Lease and Operate—The Baltimore and Ohio Railroad Company Between Clendenin and Charleston in Kanawha County, West Virginia, now being assigned March 8, 1977 (2 days), at Charleston, West Virginia, in a hearing room to be later designated.

MC 82841 (Sub-No. 170), Hunt Transportation, Inc., now assigned January 27, 1977 at Chicago, Illinois, hearing canceled and the application is dismissed.

MC 107012 Sub 229, North American Van Lines, Inc. now being assigned March 23, 1977 (3 days) at Chicago, Illinois in a hearing room to be later designated.

MC 103066 Sub 41, Stone Trucking Company now being assigned March 21, 1977 (2 days) at Chicago, Illinois in a hearing room to be later designated.

MC-F 12808, BN Transport, Inc.—Purchase (Portion)—Joliet Warehouse and Transfer Company and MC 63562 Sub 54, BN Transport, Inc. now being assigned March 15, 1977 (4 days) for continued hearing in a hearing room to be later designated.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1959 Filed 1-19-77;8:45 am]

[Fourth Revised Exemption No. 129]

ATCHISON, TOPEKA AND SANTA FE RAILWAY, CO., ET AL.

Exemption Under Provision of Rule 19 of the Mandatory Car Service Rules Ordered in Ex Parte No. 241

It appearing, that the railroads named herein own numerous 40-ft. plain boxcars; that under present conditions, there is virtually no demand for these cars on the lines of the car owners; that return of these cars to the car owners would result in their being stored idle on these lines; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of plain boxcars owned by the railroads listed herein, resulting in unnecessary loss of utilization of such cars.

It is ordered, that, pursuant to the authority vested in me by Car Service Rule 19, plain boxcars described in the Official Railway Equipment Register, I.C.C.–R.E.R. No. 401 issued by W. J. Treziese, or successive issues thereof, as having mechanical designation "XM", with inside length 44-ft. 6 in. or less, regardless of door width and bearing reporting marks assigned to the railroads named below, shall be exempt from the provisions of Car Service Rules 1(a), 2(a), and 2(b).

The Atchison, Topeka and Santa Fe Railway Company, Reporting Marks: ATSF.
Bessemer and Lake Erie Railroad Company, Reporting Marks: BLE.
The Baltimore and Ohio Railroad Company, Reporting Marks: BO.
Burlington Northern Inc., Reporting Marks: BN–CBQ–GN–NP–SPS.
The Chesapeake and Ohio Railway Company, Reporting Marks: CO–PM.
Chicago Rock Island and Pacific Railroad Company, Reporting Marks: RI–ROCK.
Chicago, West Pullman & Southern Railroad Company, Reporting Marks: CWP.
The Denver and Rio Grande Western Railroad Company, Reporting Marks: DRGW.
Detroit and Mackinac Railway Company, Reporting Marks: D&M–DM.
Elgin, Joliet and Eastern Railway Company, Reporting Marks: EJE.
Illinois Terminal Railroad Company, Reporting Marks: ITC.
Louisville and Nashville Railroad Company, Reporting Marks: CIL–L&N–MON–NC.
Louisville, New Albany & Corydon Railroad Company, Reporting Marks: LNAC.
Missouri-Kansas-Texas Railroad Company, Reporting Marks: MKT.
Missouri Pacific Railroad Company, Reporting Marks: CEI–MI–MP–TP.
New Hope and Ivyland Railroad Company, Reporting Marks: NHIR.[1]
Southern Railroad Company, Reporting Marks: CG–NS–SA–SOU.
St. Louis-San Francisco Railway Company, Reporting Marks: SLSF.
SOO Line Railroad Company, Reporting Marks: SOO.
Union Pacific Railroad Company, Reporting Marks: UP.
Western Maryland Railway Company, Reporting Marks: WM.

Effective 12:01 a.m., January 15, 1977, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., January 10, 1977.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc.77-1957 Filed 1-19-77;8:45 am]

[Twenty-fifth Revised Exemption No. 12]

ATLANTA AND SAINT ANDREWS BAY RAILWAY CO., ET AL.

Exemption Under Provision of Rule 19 of the Mandatory Car Service Rules Ordered in Ex Parte No. 241

It appearing, that the railroads named herein own numerous plain boxcars; that under present conditions there is

[1] Addition.

virtually no demand for these cars on the lines of the car owners; that return of these cars to the car owners would result in their being stored idle on these lines; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of plain boxcars owned by the railroads listed herein, resulting in unnecessary loss of utilization of such cars.

It is ordered, that pursuant to the authority vested in me by Car Service Rule 19, plain boxcars described in the Official Railway Equipment Register, I.C.C.–R.E.R. No. 401, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM", and bearing reporting marks assigned to the railroads named below, shall be exempt from the provisions of Car Service Rules 1(a), 2(a), and 2(b).

Atlanta & Saint Andrews Bay Railway Company, Reporting Marks: ASAB.
Atlantic and Western Railway, Reporting Marks: ATW.
Chicago & Illinois Midland Railway Company, Reporting Marks: CIM.
Fonda, Johnstown and Gloversville Railroad Company, Reporting Marks: FJG.
Hartford and Slocomb Railroad Company, Reporting Marks: HS.
Louisiana Midland Railway Company, Reporting Marks: LOAM.
Manufacturers Railway Company, Reporting Marks: MRS.
Maryland and Pennsylvania Railroad Company, Reporting Marks: MPA.
Minneapolis, Northfield and Southern Railway, Reporting Marks: MNS.[1]
Pickens Railroad Company, Reporting Marks: PICK.
Roscoe, Snyder and Pacific Railway Company, Reporting Marks: RSP.
Wellsville, Addison & Galeton Railroad Corporation, Reporting Marks: WAG.

Effective January 15, 1977, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., January 10, 1977.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc.77-1956 Filed 1-19-77;8:45 am]

[AB 2 (Sub-No. 12)]

LOUISVILLE AND NASHVILLE RAILROAD CO.

Abandonment Between Otter Creek Junction and Brazil, in Vigo and Clay Counties, Indiana

JANUARY 10, 1977.

The Interstate Commerce Commission hereby gives notice that its Section of Energy and Environment has concluded that the proposed abandonment by the Louisville and Nashville Railroad Company (L&N) of its line of railroad between Milepost 171.4 near Otter Creek Junction, to the end of the line at Milepost 184 near Brazil, a distance of 12.66 miles, all in Vigo and Clay Counties, Ind., if approved by the Commission, does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321, et seq., and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(C) of the NEPA.

It was concluded, among other things, that the environmental impacts of the proposed action are considered insignificant because of the light density of traffic involved and the absence of any major historic, safety, or ecological consequences associated with the proposed abandonment. Highways in the vicinity of the subject line are able to accommodate the resultant slight diversion to truck transportation. One major industrial site and several industries exist in the area adjacent to the rail line and abandonment would make these tracts less desirable for future development. However, since ConRail will continue service to the city of Brazil, the proposed abandonment should not have a serious adverse impact on rural and community development.

This conclusion is contained in a staff-prepared environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202–275–7011.

Interested persons may comment on this matter by filing their statments in writing with the Interstate Commerce Commission, Washington, D.C. 20423, on or before February 21, 1977.

It should be emphasized that the environmental threshold assessment survey represents an evaluation of the environmental issues in the proceeding and does not purport to resolve the issue of whether the present or future public convenience and necessity permit discontinuance of the line proposed for abandonment. Consequently, comments on the environmental study should be limited to discussion of the presence or absence of environmental impacts and reasonable alternatives.

ROBERT J. OSWALD,
Secretary.

[FR Doc.77-1955 Filed 1-19-77;8:45 am]

[Notice No. 6]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JANUARY 12, 1977.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 95084 (Sub-No. 116TA), filed December 22, 1976. Applicant: HOVE TRUCK LINE, Stanhope, Iowa 52046. Applicant's representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, Iowa 52501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, 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 hides and commodities in bulk), between the facilities of Sioux City Cold Storage, located at or near Sioux City, Iowa, on the one hand, and, on the other, points in Alabama, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee Texas, Washington, West Virginia, Wisconsin and the District of Columbia, for 180 days. Supporting Shipper: Sioux City Cold Storage Company, 1000 Cunningham Drive, Sioux City, Iowa 51107. Send protests to: Herbert W. Allen, Distsict Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Bldg., Des Moines, Iowa 50309.

No. MC 107403 (Sub-No. 995TA), filed January 4, 1977. Applicant: MATLACK, INC., Ten W. Baltimore Ave., Lansdowne, Pa. 19050. Applicant's representative: Martin C. Hynes, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (a) *Liquid sugar*, in bulk, in tank vehicles, from Reserve, La., to Cincinnati, Ohio; Louisville, Ky.; Atlanta and Forest Park, Ga.; and (b) *Dry sugar*, in bulk, in tank vehicles, from Reserve, La., to Cincinnati, Ohio and Atlanta and Forest Park, Ga.,

[1] New Hope and Ivyland Railroad deleted.

for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Godchaux-Henderson Sugar Co., Inc., P.O. Box 17169, Denver, Colo. 80217. Send protests to: Monica A. Blodgett, Interstate Commerce Commission, 600 Arch St., Room 3238, Philadelphia, Pa. 19106.

No. MC 107496 (Sub-No. 1058TA), filed January 3, 1977. Applicant: RUAN TRANSPORT CORPORATION, 3200 Ruan Center, 666 Grand Ave., Des Moines, Iowa 50309. Applicant's representative: E. Check (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *LPG*, in bulk, from Memphis, Tenn., to points in Missouri, Arkansas, Mississippi and Alabama, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Union Texas Petroleum, P.O. Box 2120, Houston, Tex. 77001. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Bldg., Des Moines, Iowa 50309.

No. MC 111729 (Sub-No. 691TA), filed January 3, 1977. Applicant: PUROLATOR COURIER CORP., 3333 New Hyde Park Road, New Hyde Park, N.Y. 11040. Applicant's representative: Elizabeth L. Henoch (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Business papers, records, audit and accounting media of all kinds;* (a) between Lincoln and Omaha, Nebr., on traffic having an immediately prior or subsequent movement by air; (b) between points in Illinois, Missouri and Texas, on traffic having an immediately prior or subsequent movement by air; and (c) between Lincoln, Nebr., on the one hand, and, on the other, points in Iowa and Minnesota; and (2) *Replacement parts* related to the telephone industry, restricted against the transportation of packages or articles exceeding 50 pounds per shipment or 100 pounds in the aggregate from one consignor to one consignee on any one day; (a) between Lincoln and Omaha, Nebr., on traffic having an immediately prior or subsequent movement by air; (b) between points in Florida, Illinois, Missouri, North Carolina, Virginia and Texas, on traffic having an immediately prior or subsequent movement by air; and (c) between Lincoln, Nebr., on the one hand, and, on the other, points in Iowa and Minnesota, for 180 days. Supporting shipper: Central Telephone Company, 1201 N St., Lincoln, Nebr. 68501. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 113024 (Sub-No. 148TA), filed January 3, 1977. Applicant: ARLINGTON J. WILLIAMS, INC., 1398 S. Du Pont Highway, Smyrna, Del. 19977. Applicant's representative: Samuel W. Earnshaw, 833 Washington Bldg., Washington, D.C. 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Manufactured fertilizer* (except in bulk), from points in Louisiana and Missouri, to Burlington, N.J., under a continuing contract with Hercules Incorporated, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Matthew C. Minker, District Traffic Manager, Hercules Incorporated, 910 Market St., Wilmington, Del. 19899. Send protests to: William L. Hughes, District Supervisor, Interstate Commerce Commission, 814-B Federal Bldg., Baltimore, Md.

No. MC 112750 (Sub-No. 334TA), filed December 27, 1976. Applicant: PUROLATOR COURIER CORP., 3333 New Hyde Park Road, New Hyde Park, N.Y. 11040. Applicant's representative: Elizabeth L. Henoch (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Microfilm, microfiche, microforms and related items*, used in the business of banks and banking institutions; (1) between Metairie, La., on the one hand, and, on the other, points in Mississippi; (2) between Baltimore, Md., on the one hand, and, on the other, points in Virginia and West Virginia; (3) between Framingham, Mass., on the one hand, and, on the other, points in Maine, New Hampshire and Rhode Island; (4) between Minneapolis, Minn., on the one hand, and, on the other, points in Wisconsin; (5) between Cincinnati, Ohio, on the one hand, and, on the other, points in Indiana, Kentucky and West Virginia; (6) between Ft. Washington, Pa., on the one hand, and, on the other, points in New Jersey; and (7) between Parkersburg, W. Va., on the one hand, and, on the other, points in Ohio, under a continuing contract with Banks and Banking Institutions, for 90 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately 60 statements of support attached to the application, which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 114045 (Sub-No. 453 TA), filed January 3, 1977. Applicant: TRANS-COLD EXPRESS, INC., P.O. Box 61228, D/FW Airport, Tex. 75261. Applicant's representative: J. B. Stuart (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cleaning or polishing compound; scale preventing or scale removing compound; thermal or acoustical insulating or vehicle body sealer or sound deadener compound; anti-freeze, engine coolant preparation or de-icing preparation; oils*, other than petroleum, lubricating; petroleum oils; radiator cement; carbon, gum or sludge removing compound; electrode joint or electrical contact compound; engine starting fluid; belt dressing, in vehicles equipped with mechanical refrigeration, restricted against the transportation of commodities in bulk, from Newark, N.J., to point in Texas, Louisiana, Oklahoma and California, for 180 days. Supporting Shipper: Siloo Incorporated, 393 Seventh Ave., New York, N.Y. 10001. Send Protests To: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce St., Room 13C12, Dallas, Tex. 75242.

No. MC 114632 (Sub-No. 90 TA), filed December 30, 1976. Applicant: APPLE LINES, INC., 212 S.W. Second St., P.O. Box 287, Madison, S. Dak. 57042. Applicant's representative: Andrew Clark, 1000 1st National Bank Bldg., Minneapolis, Minn. 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat* packinghouses, 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 hides and commodities in bulk), (1) from the facilities of Farmland Foods, at Denison, Iowa Falls and Carroll, Iowa, to points in Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin, and (2) from the facilities of Farmland Foods, at Crete, Nebr., to points in Illinois, Indiana, Michigan and Ohio, for 180 days. Supporting Shipper: Farmland Foods, Inc., P.O. Box 403, Denison, Iowa 51442. Send Protests To: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 369, Federal Bldg., Pierre, S. Dak. 57501.

No. MC 115092 (Sub-No. 54 TA), filed January 3, 1977. Applicant: TOMAHAWK TRUCKING, INC., P.O. Box 0, Vernal, Utah 84078. Applicant's representative: Walter Kobos, 1016 Kehoe Drive, St. Charles, Ill. 60174. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber mill products*, from points in Butte, Custer, Fall River, Harding, Lawrence, Meade, Pennington, Perkins and Shannon Counties, S. Dak., to points in New Mexico, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting Shipper: Kaibab Industries, Inc., P.O. Box 20506, Phoenix, Ariz. 85036. Send Protests To: Lyle D. Helfer, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 5301 Federal Bldg., 125 S. State St., Salt Lake City, Utah 94138.

No. MC 118989 (Sub-No. 151 TA), filed January 3, 1977. Applicant: CONTAINER TRANSIT, INC., 5223 S. 9th St., Milwaukee, Wis. 53221. Applicant's representative: Albert A. Andrin, 180 N. LaSalle St., Chicago, Ill. 60601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes,

transporting: *Fibreboard cans*, with or without metal ends, from Whiting, Ind., to Cincinnati, Ohio, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting Shipper: Boise Cascade Corporation, P.O. Box 7747, Boise, Idaho 83707. Send Protests To: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Bldg., & Courthouse, 517 E. Wisconsin Ave., Room 619, Milwaukee, Wis. 53202.

No. MC 121437 (Sub-No. 2 TA), filed December 30, 1976. Applicant: CARROLL E. FLYNN, doing business as A–1 MOBILE HOME MOVERS, 2923 W. Montebello, Phoenix, Ariz. 85017. Applicant's representative: Phil B. Hammond, 10th Floor, 111 W. Monroe, Phoenix, Ariz. 85003. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (a) *Mobile homes and trailers* designed to be drawn by passenger automobiles in initial and/or secondary movements; and (b) Buildings, knocked down, completed, or in sections, mounted on wheeled undercarriages equipped with hitchball connectors, in initial and/or secondary movements, between points in Arizona, on the one hand, and, on the other, points in Nevada and New Mexico, for 180 days. Supporting shippers: Modulaire Leasing Company, 3171 W. Osborn Road, Phoenix, Ariz. 85017. National Homes, 309 S. Perry Lane, Tempe, Ariz. 85281. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Room 3427 Federal Bldg., 230 N. First Ave., Phoenix, Ariz. 85025.

No. MC 121437 (Sub-No. 3 TA), filed December 30, 1976. Applicant: CARROLL E. FLYNN, doing business as A–1 MOBILE HOME MOVERS, 2923 W. Montebello, Phoenix, Ariz. 85017. Applicant's representative: Phil B. Hammond, 10th Floor, 111 W. Monroe, Phoenix, Ariz. 85003. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (a) *Mobile homes and trailers* designed to be drawn by passenger automobiles in initial and/or secondary movements; and (b) *Buildings*, knocked down, completed, or in sections, mounted on wheeled undercarriages, equipped with hitchball connectors in initial and/or secondary movements, between points in Arizona on the one hand, and, on the other, points in Nevada and New Mexico, for 180 days. Supporting shippers: (1) Modulaire Leasing Company, 3171 W. Osborn Road, Phoenix, Ariz. 85017. (2) National Homes, 309 S. Perry Lane, Tempe, Ariz. 85281. (3) Fuqua Homes, Inc., 802 S. 59th Ave., Phoenix, Ariz. 85034. (4) Kaufman & Broad Home Systems, Incorporated, 5530 W. Bethany Home Road, Glendale, Ariz. 85301. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Room 3427, Federal Bldg., 230 N. First Ave., Phoenix, Ariz. 85025.

No. MC 126118 (Sub-No. 27 TA), filed January 3, 1977. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, Nebr. 68501. Applicant's representative: Duane W. Acklie (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, in containers, moving in trailers equipped with temperature control, from Monroe, Wis., and Chicago, Ill., and their commercial zones, to points in South Carolina, North Carolina, Tennessee, Missouri, Texas and Kansas City, Kans., and its commercial zone, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Fred Huber, President of Peter Hand Brewing Co., Vice President, Sales, Jos. J. Huber Brewing Co., 1000 W. North Ave., Chicago, Ill. 60622. Send protests to: Max H. Johnsoon, District Supervisor, 285 Federal Bldg., & Courthouse.

No. MC 133095 (Sub-No. 127 TA), filed January 3, 1977. Applicant: TEXAS-CONTINENTAL EXPRESS, INC., P.O. Box 434, 2603 W. Euless Blvd., Euless, Tex. 76039. Applicant's representative: Kim G. Meyer, 1600 First Federal Bldg., Atlanta, Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper articles*, from the facilities of the Scott Paper Company, at or near Mobile, Ala., to points in Pennsylvania, Maryland, Virginia, New Jersey, New York, Connecticut, Massachusetts, West Virginia, Rhode Island and the District of Columbia, for 180 days. Supporting shipper: Scott Paper Company, Scott Plaza, Philadelphia, Pa. 19113. Send protests to: Robert J. Kirspel, District Supervisor, Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, Tex. 76102.

No. MC 133095 (Sub-No. 128TA), filed January 3, 1977. Applicant: TEXAS-CONTINENTAL EXPRESS, INC., P.O. Box 434, 2603 W. Euless Blvd., Euless, Tex. 76039. Applicant's representative: Kim G. Meyer, 1600 First Federal Bldg., Atlanta, Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Drugs and intravenous solutions;* (2) *glass containers;* (3) *stopper enclosures, aluminum seals, aluminum and plastic seals*, from points in Erie County, N.Y., to points in the United States in and west of Michigan, Ohio, Kentucky, Tennessee, Georgia, Florida (except Alaska and Hawaii); (2) from Millville, N.J.; and Chicago Heights, Ill.; to points in Erie County, N.Y.; and (3) from St. Petersburg, Fla., to points in Erie County, N.Y., for 180 days. Supporting shipper: Invenex Pharmaceuticals, 3175 Staley Road, Grand Island, N.Y. 14072. Send protests to: Robert J. Kirspel, District Supervisor, Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, Tex. 76102.

No. MC 133097 (Sub-No. 17 TA), filed December 29, 1976. Applicant: SYSTEM REEFER SERVICE INC., 4614 Lincoln Ave., Cypress, Calif. 90630. Applicant's representative: Charles A. Creager, 1329 Pennsylvania Ave., Hagerstown, Md. 21740. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Foods; foodstuffs; food-treating compounds; chemicals and additives; and advertising paraphernalia; and materials, equipment and supplies* used in the manufacture, preparation, sale and distribution of spices, extracts, convenience foods, confectionery products, food products, salad dressing, and foodstuffs; and (2) *Commodities*, the transportation of which is exempt or partially exempt from regulation under the provisions of section 203(b)(6) of the Interstate Commerce Act, in mixed loads with the commodities described in (1) above: (a) between Salinas, Gilroy, San Francisco and Vacaville, Calif., including their respective commercial zones, on the one hand, and, on the other, points in Alabama, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Michigan, Minnesota, Missouri, New Jersey, New York, Ohio, Oregon, South Carolina, Tennessee, Texas, Utah, Virginia and Wisconsin; (b) between Baltimore, Md., including its commercial zone, on the one hand, and, on the other, points in Alabama, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Ohio, South Carolina, Tennessee, Virginia and Wisconsin; (c) between South Bend and Bremen, Ind., including their respective commercial zones, on the one hand, and, on the other, points in Arizona, Arkansas, California, Colorado, Connecticut, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Massachusetts, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Tennessee, Utah, Washington, West Virginia, Wisconsin and Wyoming; and (d) from Atlanta, Ga., and its commercial zone to points in New Jersey, New York, Pennsylvania and Virginia, under a continuing contract with McCormick & Co., Inc., Hunt Valley, Md., for 180 days. Supporting shipper: McCormick & Co., Inc., William M. Pappas, Manager, Distribution Services, 11100 McCormick Road, Hunt Valley, Md. 21031. Send protests to: Mary Alice Francy, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Bldg., 300 N. Los Angeles St., Los Angeles, Calif. 90012.

No. MC 136704 (Sub-No. 2 TA), filed January 4, 1977. Applicant: KENNETH FRANKLIN WAGNON, LILLIAN ANN WAGNON, AND KENNETH DAVID WAGNON, doing business as, KENNETH F. WAGNON TRUCKING CONTRACTOR, 84774 N. Cloverdale Road, Creswell, Oreg. 97426. Applicant's representative: James C. Gee, (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Rough lumber handles*, from Everett, Wash., to Eugene, Oreg., for 180 days. Supporting Shipper: Cascade Handle Co., Inc., P.O. Box 364, Senaca Road, Eugene, Oreg. 97401. Send Protests to: A. E. Odoms, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, 555 S.W. Yamhill St., Portland, Oreg. 97204.

No. MC 142196 (Sub-No. 3 TA), filed January 4, 1977. Applicant: THREE-B'S TRANSPORTATION, INC., 230 S. 30th St., Philadelphia, Pa. 19104. Applicant's representative: J. Michael Farrell, 1725 K St., N.E., Suite 814, Washington, D.C. 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such foods, commodities and equipment* as are used in connection with the operation of hotels, restaurants and others engaged in food operations, from the facilities of Buff-Henley Paper Company, at Baltimore and Columbia, Md.; Wood Ridge, N.J.; and Philadelphia, Pa., to the District of Columbia, under a continuing contract with Buff-Henley Paper Company, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting Shipper: Buff-Henley Paper Company, 230 S. 30th St., Philadelphia, Pa. 19104. Send Protests to: Monica A. Blodgett, Transportation Assistant, Interstate Commerce Commission, Room 3238, Philadelphia, Pa. 19106.

No. MC 142386 (Sub-No. 2 TA), filed December 30, 1976. Applicant: HEDLEY BENNETT TRUCKING LIMITED, 1681 Pension Lane, London, Ontario, Canada. Applicant's representative: Jeremy Kahn, Suite 733 Investment Bldg., Washington, D.C. 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wet brewers' grain*, in bulk, in sealed, dump vehicles, from ports of entry on the International boundary line between the United States and Canada located on the Detroit and St. Clair Rivers, to points in Genesee and Lapeer Counties, Mich. Restrictions: (1) The transportation authorized herein is restricted to transportation in foreign commerce; (2) The transportation authorized herein is restricted to transportation performed under a continuing contract with Miracle Feeds, a Division of Ogilvie Mills Ltd., Ontario, Canada; and (3) The transportation authorized herein is restricted to traffic originating at the facilities of LaBatt, Breweries Ontario Limited, Toronto, Ontario, Canada, and London, Ontario, Canada, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting Shipper: Miracle Foods, a Division of The Oglivie Mills, Ltd., Sales Manager Peter Brewer, 1620 Sun Life Bldg., Montreal, Quebec, Canada. Send Protests To: James A. Augustyn, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1110 Broderick Tower, 10 Witherell Ave., Detroit, Mich. 48226.

No. MC 142634 (Sub-No. 1TA), filed December 28, 1976. Applicant: FRANK'S PARCEL SERVICE, INC., Foot of Babcock Place at Alexander St., Yonkers, N.Y. 10701. Applicant's representative: Larsh B. Mewhinney, 235 Mamaroneck Ave., White Plains, N.Y. 10605. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Finished pharmaceutical products, raw materials* used in the production thereof, and packaging components therefor, between points in the New York, N.Y. Commercial Zone as defined in 49 CFR 1(b) (1) and (2) on the one hand, and, on the other, Totowa, N.J., under a continuing contract with Bard Pharmaceutical Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Bard Pharmaceutical Co., 00–101 Saw Mill River Road, Yonkers, N.Y. 10701. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 142667 TA, filed December 29, 1976. Applicant: JACK DARWIN, doing business as JACK DARWIN TRUCKING, 7009 Alondra, Paramount, Calif. 90723. Applicant's representative: Jack Darwin (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Truck body beds*, uncrated and the return of *empty truck bed racks*, from Long Beach, Calif., to Portland, Oreg., and Houston, Tex., under a continuing contract with Toyota Motor Sales, U.S.A., Inc., for 180 days. Supporting shipper: Toyota Motor Sales, U.S.A., Inc., Robert L. Miller, National Vehicle Traffic Manager, 2055 W. 190th St., Torrance, Calif. 90504. Send protests to: Mary Alice Francy, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Bldg., 300 N. Los Angeles St., Los Angeles, Calif. 90012.

No. MC 142683 (Sub-No. 1 TA), filed December 30, 1976. Applicant: K.N.K. TRANSCO, INC., P.O. Box 1433, Spencer, Iowa 51301. Applicant's representative: Arlyn L. Westergren, Suite 530, Univac Bldg., 7100 W. Center Road, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats and packinghouses products*, from the facilities of Hygrade Food Products, Inc., at Storm Lake and Cherokee, Iowa, to points in Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, and West Virginia, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Donald M. Montgomery, Assistant General Traffic Manager, Hygrade Food Products, P.O. Box 4771, Detroit, Mich. 48219. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 N. 14th St., Omaha, Nebr. 68102.

No. MC 142725 (Sub-No. 1 TA), filed January 3, 1977. Applicant: NEVADA WESTERN CONCRETE, INC., 2600 Akron Way, Carson City, Nev. 89701. Applicant's representative: Lee Fanter (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Natural, crushed, gypsum*, in bulk, in end dump type equipment, from the Minesite of Western States Gypsum Co., and/or at Art Wilson Co., in Lyon County, Nev., on the one hand, to points in California north of Fresno, Calif., to points in Oregon south of Interstate 20; and to points in Idaho south of a line extending from the Oregon border to the Utah border and intersecting Weiser, Idaho, on the west and St. Anthony, Idaho, on the east, on the other, under a continuing contract with Western States Gypsum Co. and/or Art Wilson Company, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: W. J. Heetig, District Supervisor, Interstate Commerce Commission, 203 Federal Bldg., 705 N. Plaza St., Carson City, Nev. 89701.

No. MC 142774 TA, filed December 30, 1976. Applicant: A NU TRANSFER, INC., 2929 N.W. 73rd St., Miami, Fla. 33178. Applicant's representative: Richard B. Austin, 214 Palm Coast II Bldg., 5255 N.W. 87th Ave., Miami, Fla. 33178. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except household goods as defined by the Commission, Classes A and B explosives; cement; motor vehicles, articles of unusual value of which are injurious or contaminating to other ladings; and articles which because of their size or weight require specialized handling and equipment), and trailers or containers, with or without wheels, loaded or empty, between points in the City of Miami and its Commercial Zone, restricted to shipments having a prior or subsequent movement in interstate or foreign commerce by water, under a continuing contract with Econocaribe Consolidators Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Econocaribe Consolidators Inc., 2929 N.W. 73rd St., Miami, Fla. 33147. Send protests to: Joseph B. Teichert, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Monterey Bldg., Suite 101, 8410 N.W. 53rd Terrace, Miami, Fla. 33166.

No. MC 142775 TA, filed January 3, 1977. Applicant: GEORGE W. STANFORD, doing business as STANFORD TRUCKING CO., 14218 N. 1 Highway, Woodbridge, Va. 22191. Applicant's representative: Henry U. Snavely, 410 Pine St., Vienna, Va. 22180. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Sand and stone*, in dump vehicles, from points in Anne Arundel, Montgomery and Prince Georges Counties, Md., and from points in the commercial zones of Fredericksburg, Va.; Marriottsville and Texas, Md.; Friendsville, Tenn.; and Mt. Airy, N.C., to the facilities of Arban & Carosi, Inc., at Woodbridge, Va., and of American Stone, Inc., at Newington, Va., and (2) *Precast architectural concrete*, from the facilities of Arban & Carosi, Inc., at Woodbridge, Va., to points in the District of Columbia, and to points in Maryland and Virginia, under a continuing contract with Arban & Carosi, Inc., of Woodbridge, Va., and American Stone, Inc., of Newington, Va., for 180 days. Supporting shipper: American Stone, Inc., 7901 Cinder Bed Road, Newington, Va. 22122. Arban & Carosi, Inc.

13800 Dawson Beach Road, Woodbridge, Va. 22191. Send protests to: W. C. Hersman, District Supervisor, Interstate Commerce Commission, Room 1413, 12th & Constitution Ave., N.W., Washington, D.C. 20423.

No. MC 142777 TA, filed December 30, 1976. Applicant: ROAD AMERICA FREIGHT SYSTEMS, INC., P.O. Box 3756, Ontario, Calif. 91761. Applicant's representative: Kenneth F. Dudley, P.O. Box 279, 611 Church St., Ottumwa, Iowa 52501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pressure sensitive tape, tape, tape products and materials, and materials, equipment and supplies* used in the manufacture of pressure sensitive tape, tape and tape products; (1) from Beacon, N.Y., to Carbondale, Ill.; Phoenix and Tucson, Ariz.; and points in California and Nevada; and (2) from Carbondale, Ill., to Phoenix and Tucson, Ariz., and points in California and Nevada, for 180 days. Supporting shipper: Technical Tape Inc. & Tuck Industries, 248 Tioranda Ave., Beacon, N.Y. 12508. Send protests to: Mary A. Francy, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, Room 1321 Federal Bldg., 300 N. Los Angeles St., Los Angeles, Calif. 90012.

No. MC 142779 TA, filed January 3, 1977. Applicant: WEIER AIR FREIGHT, INC., 5785 Rochelle Drive, Greendale, Wis. 53129. Applicant's representative: Wayne Wilson, P.O. Box 8004, Madison, Wis. 53708. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Materials, equipment, supplies and parts*, used or useful in the manufacture, sale, distribution of production of agricultural, industrial and construction, *machinery and equipment*, and *printed matter*, between Racine and Sturtevant, Wis., on the one hand, and, on the other, General Mitchell Field, Milwaukee, Wis., and O'Hare International Airport, Cook County, Ill., restricted to traffic originating at or destined to the plantsites, warehouses and facilities of J. I. Case, at Racine and Sturtevant, Wis., and further restricted to shipments having a prior or subsequent movement by air, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: J. I. Case, 700 State St., Racine, Wis. 53404. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Bldg., & Courthouse, 517 E. Wisconsin Ave., Room 619, Milwaukee, Wis. 53202.

No. MC 142780 TA, filed January 4, 1977. Applicant: MARINE DISTRIBUTORS OF VIRGINIA, INC., 1505 Sherbrook Road, Chesapeake, Va. 23323. Applicant's representative: Blair P. Wakefield, Suite 1001 First and Merchants Bank Bldg., Norfolk, Va. 23510. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Boats*, in straight loads or in mixed loads with their parts, equipment and supplies therefor, from the plantsite of Columbia Yacht, A Division of Whittaker Corporation, in Chesapeake, Va., and the plantsite of Seahorse Plastics Corporation, in Suffolk, Va., to points in Alabama, Arkansas, Connecticut, Florida, Georgia, Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont and Virginia, under a continuing contract with Columbia Yacht, a Division of Whittaker Corporation; and Seahorse Plastics Corporation, for 180 days. Supporting shippers: Columbia Yacht, a Division of Whittaker Corporation, Larry R. Engholm, 2600 Yacht Drive, Chesapeake, Va. 23320. Seahorse Plastics Corporation, Jeremy C. Lotz, President, 4680 Shoulders Hillroad, Suffolk, Va. 23435. Send protests to: Paul D. Collins, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 10-502 Federal Bldg., 400 N. 8th St., Richmond, Va. 23240.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1958 Filed 1-19-77;8:45 am]

[Vol. No. 66]

PETITIONS FOR MODIFICATIONS, INTERPRETATION OR REINSTATEMENT OF OPERATING RIGHTS AUTHORITY

JANUARY 14, 1977.

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 22, 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 3717 (Notice of Filing of Petition To Modify Commodity Description), filed December 20, 1976. Petitioner: SERVICE WAREHOUSE COMPANY, INC., 112 Poinier St., Newark, N.J. 07114. Petitioner's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Petitioner holds a motor *common carrier* Certificate in No. MC 3717, issued November 2, 1971, authorizing transportation, as pertinent, over irregular routes, of (1) *frosted foods, and machinery, equipment and supplies* used or useful in the frosting thereof, (a) between Boston, Gloucester and Cambridge, Mass., Jersey City, Newark, and Bridgetown, N.J., Philadelphia, Pa., New York, Waterport, Mt. Morris, Syracuse, and Sayville, N.Y., and Baltimore, Md.; and (b) from Boston, Mass., and Jersey City, N.J., to Albany, N.Y.; and (2) *frozen foods*, between Boston and Gloucester, Mass., on the one hand, and, on the other, Westbury, Long Island, N.Y.

By the instant petition, petitioner seeks to modify the commodity descriptions in the authority above by substituting "refrigerated foods" in lieu of "frosted foods" in (1) above, and in lieu of "frozen foods" in (2) above.

No. MC 106920 (Sub-No. 2), (Notice of Filing a Petition To Modify Petition), filed December 6, 1976. Petitioner: RIGGS FOOD EXPRESS, INC., West Monroe Street, P.O. Box 26, New Bremen, Ohio 45869. Petitioner's representative: E. Stephen Heisley, 666 11th Street, N.W., Suite 805, Washington, D.C. 20001. Petitioner holds a motor *common carrier* certificate in No. MC 106920 (Sub-No. 2), issued October 31, 1950, authorizing transportation, by motor vehicle, over irregular routes, of (1) *Liquid sugar*, in bulk in tank vehicles, from New York, N.Y., to Portland, Ind.; and (2) *sugar* (non-fluid), from Boston, Mass., New York, N.Y., Baltimore, Md., and Philadelphia, Pa., to points in Indiana.

By the instant petition, petitioner seeks to (a) delete the phrase "non-fluid" from the commodity description in (2) above; and (b) to add an additional commodity and territorial to its present authority which would read as follows: *Sugar* (except in bulk), from points in the New York, N.Y., Commercial Zone as defined in *Commercial Zones and Terminal Areas*, 53 M.C.C. 451, within which local operations may be conducted pursuant to the partial exemption of Section 203(b)(9) of the Interstate Commerce Act (the "exempt" zone), and those points in New Jersey within 5 miles of New York, N.Y., and all of any municipality in New Jersey, any part of which is within 5 miles of New York, N.Y. (except New York, N.Y.), to points in Indiana.

No. MC 116702 (Sub-No. 37), (Notice of Filing of Petition To Modify Permit), filed December 15, 1976. Petitioner: THADDEAUS A. GORSKI, doing business as, GORSKI BULK TRANSPORT, Box 700, Harrow, Ontario, Canada. Petitioner's representative: William B. Elmer, 21635 East Nine Mile Road, St. Clair Shores, Mich. 48080. Petitioner holds a motor *contract carrier* permit in No. MC 116702 (Sub-No. 37), issued April 5, 1973, authorizing transportation, by motor vehicle, over irregular routes, as pertinent, of *alcoholic beverages*, in bulk, in tank vehicles, from ports of entry on the International Boundary line between the United States and Canada located at or near Champlain, Rouses Point and Trout River, N.Y., Derby Line and Newport, Vt., and located on the Niagara and St. Lawrence Rivers, to

[1] Copies of Special Rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

Hartford, Conn., under a continuing contract, or contracts, with Heublin, Inc.

By the instant petition, petitioner seeks to broaden the above described authority (1) by adding Allen Park, Mich., as a destination point on bulk commodities; and (2) by including St. Clair and Detroit Rivers, Mich. as additional ports of entry.

No. MC 129600 (Sub-No. 13), (Notice of Filing of Petition to Modify Territorial Description), filed December 8, 1976. Petitioner: POLAR TRANSPORT, INC., 176 King Street, P.O. Box 44, Hanover, Mass. 02339. Petitioner's representative: Frank J. Weiner, 15 Court Square, Boston, Mass. 02108. Petitioner holds a motor *contract carrier* permit in No. MC 129600, (Sub-No. 13), issued April 18, 1974, authorizing transportation, as pertinent, over irregular routes, of *Ice cream, ice cream confections, ice water confections, and sherbert,* from Suffield, Conn., to points in Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Maryland, Maine, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia and the District of Columbia, under a continuing contract, or contracts, with H. P. Hood, Inc., located at Charleston, Mass.

By the instant petition, petitioner seeks to add Portland, Maine as an additional origin point in the above described authority.

No. MC 138225 and (Sub-No. 2), (Notice of Filing of Petition to Modify Permits), filed December 15, 1976. Petitioner: HEDRICK ASSOCIATES, INC., R.R. 2, Box 10A2, Douglas Rd., Far Hills, N.J. 07931. Petitioner's representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1267, Arlington, Va. 22210. Petitioner holds motor *contract carrier* Permits in No. MC 138225 and (Sub-No. 2), issued July 12, 1974, and October 17, 1974 respectively, authorizing transportation over irregular routes, (1) in MC 138225, of (a) *swimming pools;* (b) *swimming pool parts;* and (c) *materials, supplies, and equipment* used in connection with swimming pools (except commodities in bulk), from Garfield and East Paterson, N.J., to points in the United States (except Alaska and Hawaii), under a continuing contract, or contracts, with Heldor Associates, Inc., of Hamden, Conn.; and (2) in MC 138225 (Sub-No. 2), of *materials, equipment and supplies* (except commodities in bulk, the transportation of which because of size or weight requires the use of special equipment) used in the manufacture or installation of swimming pools, from points in the United States (except Alaska and Hawaii), to the facilities of Heldor Associates, Inc., located at or near Garfield and East Paterson, N.J., restricted to the transportation of traffic destined to the facilities of Heldor Associates, located at or near Garfield and East Paterson, N.J., under a continuing contract, or contracts, with Heldor Associates, Inc., of Hamden, Conn.

By the instant petition, petitioner seeks (I) in MC 138225, to modify the territorial description above by the addition of Trenton, N.J. as an additional origin point; and (II) in MC 138225 (Sub-No. 2), to modify the territorial description above by the addition of the facilities of Heldor Associates, Inc., located at or near Trenton, N.J. as an additional destination point, and to modify the restriction above to correspond, through the addition of the facilities of Heldor Associates, located at or near Trenton, N.J.

No. MC 138412 (notice of filing of petition to add an additional contracting shipper), filed December 2, 1976. Petitioner: MAR-CHELLE, INC., No. 6 Mintert Manor, St. Louis, Mo. 63135. Petitioner's representative: Joseph Flynn, 76 Bellerive Acres, St. Louis, Mo. 63135. Petitioner holds a motor *contract carrier* Permit in No. MC 138412, issued June 18, 1974, authorizing transportation over irregular routes, of (1) *household appliances;* (2) *new furniture* (uncrated); (3) *kitchen equipment;* and (4) *electrical appliances, equipment and parts,* as described respectively in (2), (3), and (4), in Appendices II, IV and VII to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209, between St. Louis, Mo., and points in Bond, Calhoun, Clinton, Greene, Jersey, Macoupin, Madison, Monroe, Montgomery, Randolph, St. Clair, and Washington Counties, Ill., under a continuing contract, or contracts, with the following shippers: Rothman Stores, Inc., of St. Louis, Mo.; M. C. Distributors, of St. Louis, Mo.; Independent Merchants Corp., of St. Louis, Mo. By the instant petition, petitioner seeks to add Ideal Home Furnishings Co., Inc., as an additional contracting shipper to the authority above.

Republications of Grants of Operating Rights Authority Prior to Certification

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the Federal Register.

An original and one copy of protests to the granting of the authority must be filed with the Commission within 30 days after the date of this Federal Register notice. Such protest shall comply with Special Rule 247(d) of the Commission's General Rules of Practice (49 CFR 1100.247) addressing specifically the issue(s) indicated as the purpose for republication, and including a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition shall not be tendered at this time. A copy of the protest shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

No. MC 107129 (Sub-No. 9) (republication), filed September 20, 1972, published in the FR issue of December 21, 1972, and republished this issue. Applicant: E. K. Motor Service, Inc., 2005 North Broadway, Joliet, Ill., 60435. Applicant's representative: Tom B. Kretsinger, 450 Professional Building, Kansas City, Mo. 64106. A Decision and Order of the Commission, Division 1, dated December 6, 1976, and served December 9, 1976, authorizes operation by applicant, in interestate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, of *roofing and building materials* (except commodities in bulk), and *commodities* used in the manufacture, distribution, and shipping of roofing and building materials (except commodities in bulk), from Joliet, Ill., to points in Iowa, Ohio, and Wisconsin, restricted to the transportation of traffic originating at Joliet, Ill., and destined to the above-named destinations. The purpose of this republication is to indicate applicant's grant of authority as a common carrier rather than as a contract carrier.

No. MC 110563 (Sub-No. 161) (republication), filed September 18, 1975, published in the FR issue of October 9, 1975, and republished this issue. Applicant: COLDWAY FOOD EXPRESS, INC., P.O. Box 747, Sidney, Ohio 45365. Applicant's representative: Joseph M. Scanlan, 111 W. Washington Ave., Chicago, Ill. 60602. An Order of the Commission, Review Board Number 1, dated January 3, 1977, and served January 6, 1977, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, in the transportation of *meat, meat products, meat byproducts, and articles distributed by meat-packing houses,* 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 hides and commodities in bulk), from Booker, Tex., to points in Kentucky, Pennsylvania, West Virginia, Virginia, Maryland, Delaware, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, Maine, and the District of Columbia, restricted to the transportation of shipments originating at the named origin; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. The purpose of this republication is to indicate the addition of Virginia as a destination state in applicant's grant of authority.

No. MC 111729, (Sub-No. 560) (Republication), filed July 8, 1975, published in the FR issue of August 7, 1975, and republished this issue. Applicant: PUROLATOR COURIER CORP., 2 Nevada Drive, Lake Success, N.Y. 11040. Applicant's representative: Russell S. Bernhard, 1625 K Street, N.W., Washington, D.C. 20006. An order of the Commission, Review Board Number 3, dated December 6, 1976, and served January 10, 1977, finds that the present and future public convenience and necessity require opera-

tion by applicant, in interstate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, in the transportation of (1) *household cleaning compounds and brushes*, from Seattle, Wash., to points in Washington and points in Benton, Clackamas, Clatsop, Columbia, Douglas, Lane, Lincoln, Linn, Marion, Multnomah, Tillamook, Washington, and Yamhill Counties, Oreg., restricted to the transportation of shipments having an immediately prior movement by air, rail, or motor vehicle, and to shipments moving from or to the facilities of The Fuller Brush Company; and (2) *toiletries and cosmetics*, from Seattle, Wash., and Portland, Oreg., to points in Washington and points in Benton, Clackamas, Clatsop, Columbia, Douglas, Lane, Lincoln, Linn, Marion, Multnomah, Tillamook, Washington, and Yamhill Counties, Oreg., restricted to the transportation of shipments having an immediately prior movement by motor vehicle and to shipments moving from or to the facilities of Avon Products, Inc., restricted further in (1) and (2) above as follows: (a) restricted against providing service from or to the premises of banks and banking institutions; (2) restricted against providing service from or to the premises of persons, other than agencies of the United States Government, who or which have entered into contracts with applicant or its affiliates and are served by them pursuant to permits issued by the Commission; and (3) restricted against the transportation of shipments weighing in excess of 150 pounds; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. The purpose of this republication is to (I) indicate the addition of *household cleaning compounds and brushes* to applicant's grant of authority; and (II) indicate the modification of the territorial description in applicant's grant of authority.

No. MC 127647 (Sub-No. 3) (republication), filed March 1, 1976, published in the FR issue of April 1, 1976, and republished this issue. Applicant: RALPH H. LARSEN, 195 Roundtoft Drive, Salt Lake City, Utah 84123. Applicant's representative: Harry D. Pugsley, Suite 400, 315 East 2nd Street, Salt Lake City, Utah 84111. An order of the Commission, Review Board Number 3, dated December 13, 1976, and served January 10, 1977, finds that the present and future public convenience and necessity require operation by applicant in interstate or foreign commerce, as a *common carrier* by motor vehicle over irregular routes, in the transportation of (1) (a) *bananas* and (b) *fresh fruits and vegetables*, which are otherwise exempt under section 203 (b)(6) of the Interstate Commerce Act, in mixed loads with bananas, from Long Beach, Calif., to Salinas and Indio, Calif.; (2) *bananas* in mixed loads with the commodities described in (3); and (3) *fresh fruits and vegetables*, which are otherwise exempt from economic regulation under section 203(b)(6) of the Interstate Commerce Act, in mixed loads with bananas, from Salinas and Indio, Calif., to points in Montana; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. The purpose of this republication is to indicate the modification of the commodity and territorial description in applicant's grant of authority.

No. MC 133119 (Sub-No. 89) (Republication) filed February 9, 1976, published in the FR issue of March 18, 1976, and republished this issue. Applicant: HEYL TRUCK LINES, INC., 200 Norka Drive, Akron, Iowa 51001. Applicant's representative: A. J. Swanson, 521 South 14th St., P.O. Box 81849, Lincoln, Nebr. 68501. An order of the Commission, Review Board Number 2, dated December 9, 1976, and served January 10, 1977, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, in the transportation of *frozen foods*, from Minneapolis, Minn., to points in Alabama, Arkansas, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and points in Missouri on and east of U.S. Highway 67, restricted to the transportation of traffic originating at the facilities of The Pillsbury Company, located at Minneapolis, Minn.; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. The purpose of this republication is to indicate the substitution of *frozen foods* in lieu of *frozen pizza* in applicant's grant of authority.

Motor Carrier, Broker, Water Carrier and Freight Forwarder Operating Rights Applications

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 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.

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 720 (Sub-No. 23), filed December 13, 1976. Applicant: BIRD TRUCKING COMPANY, INC., P.O. Box 227, Waupun, Wis. 53963. Applicant's representative: Michael J. Wyngaard, 329 West Wilson Street, P.O. Box 8004, Madison, Wis. 53708. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Frozen foodstuffs* (except commodities in bulk, in tank vehicles); and (2) *frozen meats and meat by-products*, unfit for human consumption (except commodities in bulk, in tank vehicles), from the facilities of Wiscold, Inc., located at or near Beaver Dam and Milwaukee, Wis., to Alabama, Connecticut, Delaware, Florida, Georgia, Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Rhode Island, South Carolina, Tennesee, Vermont, Virginia, West Virginia, and the District of Columbia.

Note.—If a hearing is deemed necessary, the applicant requests it be held at Milwaukee, or Madison, Wis.

No. MC 2900 (Sub-No. 296), filed December 20, 1976. Applicant: RYDER TRUCK LINES, INC., 2050 Kings Road, Jacksonville, Fla. 32209. Applicant's representative: S. E. Somers, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment). Serving points in West Virginia and those points in that part of Kentucky on and

east of Interstate Highway 75 including Lexington, Ky., as off-route points in connection with applicant presently authorized regular route operations.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Pittsburgh, Pa., Charleston, W. Va., or Cincinnati, Ohio.

No. MC 4405 (Sub-No. 542), filed December 10, 1976. Applicant: DEALERS TRANSIT, INC., 522 South 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: *Tanks and heat exchangers*, and *materials, parts, and equipment used in* the installation of the above-named commodities, from St. Louis, Mo., to points in the United States (except Alaska and Hawaii).

NOTE.—Common control may be involved. If a hearing is deemed necessary, the appplicant requests it be held at Chicago, Ill.

No. MC 5623 (Sub-No. 29), filed December 14, 1976. Applicant: ARROW TRUCKINS CO., a Corporation, P.O. Box 7280, Tulsa, Okla. 74105. Applicant's representative: J. G. Dail, Jr., P.O. Box 567, McLean, Va. 22101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *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, and *machinery, materials, equipment, and supplies* used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof; and (2) *earth drilling machinery and equipment*, and *machinery, equipment, materials, supplies, and pipe* incidental to, used in, or in connection with (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and (d) the injection or removal of commodities into or from holes or wells, (A) between points in Connecticut, Delaware, Florida, Georgia, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Virginia, Vermont, West Virginia, and the District of Columbia; and (B) between points named in (A) above, on the one hand, and, on the other, points in Arkansas, Colorado, Illinois, Kansas, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Mexico, Oklahoma, Texas, Utah and Wyoming.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Tulsa, Okla.; Houston, Tex.; or Washington, D.C.

No. MC 8964 (Sub-No. 32), filed December 17, 1976. Applicant: WITTE TRANSPORTATION COMPANY, a Corporation, 2481 Cleveland Avenue North, St. Paul, Minn. 55113. Applicant's representative: William S. Rosen, 630 Osborn Building, St. Paul, Minn. 55102. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), Between Kansas City, Mo. and Spring Valley, Minn., serving the intermediate and off-route points of Albert Lea, Austin, Plymouth, Eden Prairie, Brooklyn Park and North Oaks, Minn.; (a) From Kansas City over Interstate Highway 35 to Albert Lea, Minn., thence over Interstate Highway 90 to Austin, Minn., thence over Interstate Highway 90 to junction U.S. Highway 16, thence over U.S. Highway 16 to Spring Valley, and return over the same route; (b) From Kansas City over U.S. Highway 69 to Albert Lea, Minn., thence over U.S. Highway 16 to Austin, Minn., thence over U.S. Highway 16 to Spring Valley, and return over the same route; and (c) From Kansas City over Interstate Highway 35 (also over U.S. Highway 69) to Des Moines, Iowa thence over Interstate Highway 80 (also over U.S. Highway 6) to junction U.S. Highway 63, thence over U.S. Highway 63 to Spring Valley, 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 St. Paul, Minn. and Kansas City, Mo.

No. MC 16872 (Sub-No. 16), filed December 9, 1976. Applicant: WILLIAM MIRRER, doing business as MIRRER'S TRUCKING CO., 38 Alan Avenue, Glen Rock, N.J. 07452. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic granules* (except in bulk), (1) from the facilities of Rexene Polyolefins Company, a Division of Dart Industries, Inc., Chemical Group located at Holyoke, Ludlow and Springfield, Mass., to Chicago and Joliet, Ill., New York and Syosset, N.Y., and Paterson, N.J.; and (2) from the facilities of Rexene Polyolefins Company, a Division of Dart Industries, Inc., Chemical Group located at Chicago and Joliet, Ill., to Elizabeth, Paterson and Plainfield, N.J. and New York, N.Y., restricted to shipments having an origin at the above named points and destined to above named points.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either New York, N.Y. or Washington, D.C.

No. MC 19157 (Sub-No. 22), filed December 17, 1976. Applicant: McCORMACK'S HIGHWAY TRANSPORTATION, INC., Route 3, Box 4 Campbell Road, Schenectady, N.Y. 12306. Applicant's representative: Clem Tomlins (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Electrical appliances equipment and parts, and materials* used in the manufacture thereof (except commodities in bulk and those requiring special equipment), between Plantersville, Miss., and Cedar Bluff, Ky., on the one hand, and, on the other, points in Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Schenectady, N.Y. or Atlanta, Ga.

No. MC 19778 (Sub-No. 92), filed December 6, 1976. Applicant: THE MILWAUKEE MOTOR TRANSPORTATION COMPANY, a Corporation, 516 W. Jackson Blvd., Suite 508, Chicago, Ill. 60606. Applicant's representative: Robert F. Munsell (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers*, in truckaway service, between the plant site of Great Dane Trailers—Indiana, Inc., at or near Brazil, Ind., and points in Illinois, Iowa, Minnesota, Nebraska, Ohio, and Wisconsin.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 20783 (Sub-No. 110) filed December 17, 1976. Applicant: TOMPKINS MOTOR LINES, INC., P.O. Box 1830, Highway 77 North, Gadsden, Ala. 35902. Applicant's representative: Larry Smith (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products and articles distributed by meat packing houses* as described in Section A of Appendix I to the report in *Description in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plantsite and/or storage facilities of Stark Wetzel Food located at Indianapolis, Ind., to points in Alabama, Georgia, Kentucky, North Carolina, South Carolina and Tennessee (except Memphis).

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Waterloo, Iowa or Washington, D.C.

No. MC 22229 (Sub-No. 111), filed December 13, 1976. Applicant: TERMINAL TRANSPORT COMPANY, INC., 248 Chester Avenue, S.E., Atlanta, Ga. 30316. Applicant's representative: Harold H. Clokey, 1740 The Equitable Building, Atlanta, Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment): Serving the plantsite and warehouse facilities of Rheem Manufacturing Com-

pany, located at or near Milledgeville, Ga., as an off-route point in connection with carriers authorized regular-route operation between Atlanta, and Savannah, Ga., and between Baldwin, Fla. and Atlanta, Ga.

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 33641 (Sub-No. 128), filed December 20, 1976. Applicant: IML FREIGHT, INC., 2175 South 3270 West, P.O. Box 2277, Salt Lake City, Utah 84110. Applicant's representative: William S. Richards, 1515 Walker Bank Bldg., P.O. Box 2465, Salt Lake City, Utah 84110. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), (1) Between Weiser, Idaho and Spokane, Wash., (a) From Weiser over U.S. Highway 95 to junction U.S. Highway 195 near Lewiston, Idaho, thence over U.S. Highway 195 to Spokane, and return over the same route, serving the intermediate point of Lewiston, Idaho, and the off-route points of Spokane County, Wash.; and (b) From Weiser over U.S. Highway 95 to junction Idaho Highway 58 near Worley, Idaho, thence over Idaho Highway 58 to the Idaho-Washington boundary line, thence continuing on unnumbered Washington Highway to junction Washington Highway 27, thence over Washington Highway 27 to junction Interstate Highway 90, thence over Interstate Highway 90 to Spokane, and return over the same route, serving the intermediate points of Moscow, Desmet, Tensed, Plummer, Worley, Idaho; Opportunity, Washington; and the off-route points of Potlatch, Harrison, St. Maries, St. Joe, Santa, Clarkia, Bovill, Fernwood, Calder, Avery and Emida, Idaho; (2) Between Ketchum, Idaho, and Wells, Nev.: From Ketchum over U.S. Highway 93 to Wells, and return over the same route, serving all intermediate points, and the off-route point of Sun Valley, Idaho; (3) Between Pocatello, Idaho and West Yellowstone, Mont.: From Pocatello over U.S. Highway 91 to Idaho Falls, Idaho, thence over U.S. Highway 191 to West Yellowstone, and return over the same route, serving all intermediate points.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Salt Lake City, Utah and Spokane, Wash.

No. MC 42011 (Sub-No. 29) filed November 30, 1976. Applicant: D. Q. WISE & CO., INC., P.O. Box 15125, Tulsa, Okla. 74115. Applicant's representative: J. G. Dail, Jr., P.O. Box 567, McLean, Va. 22101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Castings, empty shipping containers, scrap metal, variable speed drives, electrical cable, switch boards, transformers, motors, pumps, motor and pump parts and accessories;* and (2) *equipment, materials, and supplies*, used in, or in connection with, the transportation, installation, operation, removal, repair, manufacture, and maintenance of the commodities described in (1) above, between the facilities of Byron Jackson Pump Division and Centrilift Division, Borg-Warner Corporation located at or near Ardmore, Healdton, and Tulsa County, Okla., Casper and Cody, Wyo., Glendive, Mont., Huntington Beach and Los Angeles, Calif., Rangely, Colo., and Conroe, Midland, Plainview and Tyler, Tex., on the one hand, and, on the other, points in the United States, including Alaska, but excluding Hawaii, restricted against the transportation of (a) variable speed drives, electrical cable, switch boards, motors, pumps, pump parts and accessories, and (b) equipment, material, and supplies used in connection with the transportation, installation, operation, removal, repair, manufacture, and maintenance of the commodities described in (a) above, between the facilities of Byron Jackson Pump Division, Borg-Warner Corporation located at Healdton and Tulsa, Okla., Midland, Tex., Great Bend, Kans., and Rangley, Colo., on the one hand, and, on the other, points in Colorado Illinois, Kansas, Louisiana, Mississippi, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 49368 (Sub-No. 100), filed December 17, 1976. Applicant: COMPLETE AUTO TRANSIT, INC., E. 4111 Andover Road, Bloomfield Hills, Mich. 48013. Applicant's representative: Eugene C. Ewald, 100 West Long Lake Road, Suite 102, Bloomfield Hills, Mich. 48013. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Motor vehicles*, in initial movements, in truckaway service, (1) from the plantsites of General Motors Corporation located at Atlanta and Doraville, Ga., to points in Iowa and Kansas; and (2) from the plantsite of General Motors Corporation located at St. Louis, Mo., to points in Florida, Georgia, North Carolina and South Carolina, under a continuing contract or contracts with General Motors Corporation.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 54847 (Sub-No. 12), filed December 9, 1976. Applicant: INTRACOASTAL TRUCK LINE, INC., P.O. Box 354, 1200 Peters Road, Harvey, La. 70058. Applicant's representative: Daniel Lund, 806 First National Bank of Commerce Bldg., New Orleans, La. 70112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *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; and (2) *machinery, materials, equipment 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 picking up or stringing of pipe in connection with main pipe lines), between points in Alabama, Florida, Louisiana, Mississippi and Texas, on the one hand, and, on the other, points in Connecticut, Delaware, Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Virginia and West Virginia.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either New Orleans, La. or Houston, Tex.

No. MC 58923 (Sub-No. 45), filed December 10, 1976. Applicant: GEORGIA HIGHWAY EXPRESS, INC., 2090 Jonesboro Road, S.E., P.O. Box 6944, Atlanta, Ga. 30315. Applicant's representative: Bates Block, 33rd Floor, First National Bank Tower, Atlanta, Ga. 30303. 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), (1) between Rossville, Ga., and the junction of the Tennessee-Kentucky State line near Westmoreland, Tenn., serving all intermediate points: From Rossville over U.S. Highway 27 to junction U.S. Highway 41, thence over U.S. Highway 41 to junction of U.S. Highway 231, thence over U.S. Highway 231 to Westmoreland, and return over the same route; (2) between Murfreesboro, Tenn., and the junction of the Tennessee-Kentucky state line near Clarksville, Tenn., serving all intermediate points: From Murfreesboro over U.S. Highway 41 to Nashville, thence over Alternate U.S. Highway 41 to Kentucky-Tennessee state line at or near Clarksville, Tenn. and return over the same route; (3) between Lebanon, Tenn. and Memphis, Tenn., serving all intermediate points: From Lebanon over U.S. Highway 70 to Memphis and return over the same route; (4) between Jackson, Tenn. and junction U.S. Highway 72 and U.S. Highway 41 near Kimball, Tenn., serving all intermediate points: From Jackson over U.S. Highway 45 to junction U.S. Highway 72, thence over U.S. Highway 72, also 72A to Huntsville, Ala., thence over U.S. Highway 72 to junction U.S. Highway 72 and U.S. Highway 41, near Kimball, Tenn., and return over the same routes; (5) between the junction of the Tennessee-Kentucky state line near Mitchell, Tenn. and Mobile, Ala., serving all intermediate points.

From Mitchell over U.S. Highway 31W to U.S. Highway 31, thence over U.S. Highway 31 to Mobile and return over the same route; (6) between the junction of the Tennessee-Kentucky state line near Jellico, Tenn. and Mobile, Ala.,

serving all intermediate points: From Jellico over U.S. Highway 25W, also Interstate Highway 75 to junction U.S. Highway 70 and Tennessee Highway 61, thence over U.S. Highway 70 to junction of U.S. Highway 27, and from junction U.S. Highway 70 to Tennessee Highway 61 over Tennessee Highway 61 to junction U.S. Highway 27, thence over U.S. Highway 27 to junction U.S. Highway 11, thence over U.S. Highway 11 to junction U.S. Highway 43, thence over U.S. Highway 43 to Mobile and return over these same routes; (7) between Murfreesboro, Tenn., and Mobile, Ala., serving all intermediate points: From Murfreesboro over U.S. Highway 231 to junction U.S. Highway 431, thence over U.S. Highway 431 to junction U.S. Highway 231 and U.S. Highway 84, thence over U.S. Highway 84 to junction U.S. Highway 29, thence over U.S. Highway 29 to junction U.S. Highway 90, thence over U.S. Highway 90 to Mobile, also, from the junction of U.S. Highway 84 and U.S. Highway 231 over U.S. Highway 231 to junction U.S. Highway 90, thence over U.S. Highway 90 to Mobile and return over the same routes; (8) between Memphis, Tenn. and Savannah, Ga., serving all intermediate points.

From Memphis over U.S. Highway 78 to junction U.S. Highway 278, thence over U.S. Highway 78, also U.S. Highway 278 to junction U.S. Highway 25, thence over U.S. Highway 25 to junction U.S. Highway 80, thence over U.S. Highway 80 to Savannah, Ga., also over U.S. Highway 78 to junction U.S. Highway 301, thence over U.S. Highway 301 to junction U.S. Highway 321, thence over U.S. Highway 321 to junction U.S. Highway 17, also over U.S. Highway 278 to junction U.S. Highway 17, thence over U.S. Highway 17 to Savannah, Ga., and return over the same routes; (9) between the junction of the Tennessee-Kentucky state line near South Fulton, Tenn. and Pensacola, Fla., serving all intermediate points: From South Fulton over U.S. Highway 45 (U.S. Highway 45E, also U.S. Highway 45W) to junction U.S. Highway 82, thence over U.S. Highway 82 to junction U.S. Highway 319 and U.S. Highway 41, thence over U.S. Highway 319 to junction U.S. Highway 90, also over U.S. Highway 41 to junction Georgia Highway 31, thence over Georgia Highway 31 to junction Florida Highway 145, thence over Florida Highway 145 to junction U.S. Highway 90, thence over U.S. Highway 90 to junction U.S. Highway 231, thence over U.S. Highway 231 to junction U.S. Highway 98, thence over U.S. Highway 98 to Pensacola, Fla., and return over the same routes; (10) between Memphis, Tenn., and Anderson, S.C., serving all intermediate points: From Memphis over U.S. Highway 64, also U.S. Highway 72 to junction U.S. Highway 431, thence over U.S. Highway 431 to junction U.S. Highway 411, thence over U.S. Highway 411 to junction U.S. Highway 41, thence over U.S. Highway 41 to junction U.S. Highway 29 and Interstate Highway 85, thence over Interstate Highway 85 to junction U.S. Highway 76, thence over U.S. Highway 76 to Anderson, also over U.S. Highway 29 to Anderson, and return over the same routes; (11) between Dalton, Ga., and Knoxville, Tenn., serving all intermediate points: From Dalton over U.S. Highway 76 to junction of U.S. Highway 411, thence over U.S. Highway 411 to junction U.S. Highway 129 and Tennessee Highway 73, thence over U.S. Highway 129 to Knoxville, Tenn.; also over Tennessee Highway 33 to Knoxville and return over the same routes.

(12) Between Royston, Ga., and Washington, Ga., serving all intermediate points: From Royston over Georgia State Highway 17 to Washington, and return over the same route; (13) between Anderson, S.C., and Augusta, Ga., serving all intermediate points: From Anderson over South Carolina State Highway 28 to South Carolina-Georgia State line, thence over Georgia State Highway 82 to Augusta or over U.S. Highway 178 to junction U.S. Highway 25, thence over U.S. Highway 25 to Augusta and return over the same route; (14) serving all points in Florida not intermediate on the above routes located in and west of Madison, Hamilton and Taylor Counties as off-route points; (15) serving all points in Tennessee not intermediate on the above routes on and west of a line running along U.S. Highway 411 from the Georgia-Tennessee state line, northeast to the junction of Tennessee Highway 33, thence along Tennessee Highway 33 to junction U.S. Highway 441, thence along U.S. Highway 441 to junction U.S. Highway 25W, thence along U.S. Highway 25W to the Kentucky-Tennessee state line as off-route points; (16) serving all points in Alabama not intermediate on the above routes as off-route points; (17) between points in the commercial zone of Birmingham, Ala.; (18) between points in the commercial zone of Memphis, Tenn.; (19) between points in the commercial zone of Mobile, Ala.; (20) between points in the commercial zone of Nashville, Tenn.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Atlanta, Ga.; Memphis or Nashville, Tenn.; or Washington, D.C.

No. MC 59457 (Sub-No. 35), filed December 8, 1976. Applicant: SORENSEN TRANSPORTATION COMPANY, INC., Old Amity Road, Bethany, Conn. 06525. Applicant's representative: Thomas W. Murrett, 342 North Main Street, West Hartford, Conn. 06525. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Materials and supplies* used in the manufacture and preparation of dated, printed publications and parts thereof, (1) between the District of Columbia, on the one hand, and, on the other Albany, Hauppauge, and Carle Place, N.Y., and points in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont; and (2) between Buffalo, N.Y., on the one hand, and, on the other points in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Hartford, Conn.

No. MC 59583 (Sub-No. 157), filed December 7, 1976. Applicant: THE MASON AND DIXON LINES, INC., P.O. Box 969, Kingsport, Tenn. 37662. Applicant's representative: Ronald R. Tiller, P.O. Box 343, Kingsport, Tenn. 37662. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Tractors*, excavating, grading, loading or road making and *attachments and/or parts* thereof, from the plant sites of Clark Equipment Company located at Skyland, N.C., to points in Alabama, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Mississippi, North Carolina, New Jersey, New York, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia and the District of Columbia; and (2) *materials, equipment and supplies* used in the manufacture and sale of the commodities above, from the destination states named above, to the plant site of Clark Equipment Company located at Skyland, N.C.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Washington, D.C. or Detroit, Mich.

No. MC 64932 (Sub-No. 569), filed December 14, 1976. Applicant: ROGERS CARTAGE COMPANY, a corporation, 10735 South Cicero Avenue, Oak Lawn, Ill. 60453. 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: *Alcohol*, in bulk, in tank vehicles, from the plant site and storage facilities of Archer Daniels Midland Company located at Decature, Ill., to points in the United States (except Alaska and Hawaii).

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Hartford, Ill.

No. MC 66746 (Sub-No. 19), filed November 22, 1976. Applicant: JOHN L. KERR AND G. O. KERR, JR., a partnership, doing business as SHIPPERS EXPRESS, 1651 Kerr Drive, Jackson, Miss. 39204. Applicant's representative: Harold D. Miller, Jr., P.O. Box 22567, 1700 Deposit Guaranty Plaza, Jackson, Miss. 39205. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) Between Jackson and Walnut, Miss.: From Jackson over U.S. Highway 51 (also portion of Interstate Highway 55) to Canton, Miss., thence over Mississippi Highway 16 to Carthage, thence over Mississippi Highway 35 to Kosciusko, thence over Missis-

sippi Highway 12 to Ackerman, thence over Mississippi Highway 15 to Walnut, Miss., and return over the same route; (2) Between Ackerman and Newton, Miss.: From Ackerman over Mississippi Highway 15 to Newton and return over the same route; (3) Between Corinth and the junction of U.S. Highway 45 and Interstate Highway 20 at or near Meridian: From Corinth over U.S. Highway 45 to the junction of U.S. Highway 45 and Interstate Highway 20 at or near Meridian and return over the same route.

(4) Between the junction of U.S. Highway 45 and U.S. Alternate 45 at or near Shannon and the junction of U.S. Highway 45 and U.S. Alternate 45 at or near Brooksville, Miss.: From the junction of U.S. Highway 45 and U.S. Alternate 45 at or near Brooksville, Miss., and return 45 to its junction with U.S. Highway 45 at or near Brooksville, Miss., and return over the same route; (5) Between Tupelo and the Mississippi-Tennessee State Line: From Tupelo over U.S. Highway 78 to the Mississippi State Line and return over the same route; (6) Between Jackson and the Mississippi-Tennessee State Line: From Jackson over U.S. Highway 51 and/or Interstate Highway 55 to the Mississippi-Tennessee State Line and return over the same route; (7) Between Senatobia and the junction of Mississippi Highway 25 and Mississippi Highway 30: From Senatobia over Mississippi Highway 4 to Booneville, thence over Mississippi Highway 30 to the junction of Mississippi Highway 25 and Mississippi Highway 30 at or near Tishomingo, Miss., and return over the same route; (8) Between Batesville and Tremont, Miss.: From Batesville over Mississippi Highway 6 to Tupelo, thence over U.S. Highway 78 to Tremont, Miss., and return over the same route. (9) Between Grenada and Gattman, Miss.: From Grenada over Mississippi Highway 8 to its junction with U.S. Highway 278, thence over U.S. Highway 278 to Gattman, Miss., and return over the same route; (10) Between Winona and the Mississippi-Alabama State Line: From Winona over U.S. Highway 82 to the Mississippi-Alabama State Line and return over the same route; (11) Between Durant and the Mississippi-Alabama State Line: From Durant over Mississippi Highway 12 to Kosciusko, thence over Mississippi Highway 19 to its junction with Mississippi Highway 14, thence over Mississippi Highway 14 to the Mississippi-Alabama State Line and return over the same route.

(12) Between Canton and the Mississippi-Alabama State Line: From Canton over Mississippi Highway 16 to the Mississippi-Alabama State Line and return over the same route; and (13) Between Jackson and the Mississippi-Alabama State Line: From Jackson over U.S. Highway 80 and Interstate Highway 20 to the Mississippi-Alabama State Line and return over the same route. Serving all intermediate points in (1) thru (13) above, and all other points in Mississippi on and east of Interstate Highway 55 and/or U.S. Highway 51 and on and north of Interstate Highway 20 and/or U.S. Highway 80 as off-route points. Service is restricted to those portions of the commercial zones, as defined by the Commission, physically located in the State of Mississippi.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Tupelo, Miss. and New Orleans, La.

No. MC 81908 (Sub-No. 8), filed December 6, 1976. Applicant: GARNER TRUCKING, INC., Route No. 4, Findlay, Ohio 45840. Applicant's representative: Michael M. Briley, 300 Madison Avenue, Toledo, Ohio 43603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *House trailers and preassembled house trailer sections* on their own under-carriage, in tow-away service and initial movements, from Bowling Green and Greewich, Ohio and the plantsite and facilities of Mobile Home Estates, Inc., located at or near Bryan, Ohio to points in Illinois, Indiana, Kentucky, Michigan, Missouri, Pennsylvania, Virginia and West Virginia.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Toledo, Ohio or Washington, D.C.

No. MC 82063 (Sub-No. 72), filed December 9, 1976. Applicant: KLIPSCH HAULING CO., a Corporation, 10795 Watson Road, St. Louis, Mo. 63127. Applicant's representative: W. E. Klipsch (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 point in Pulaski County, Ark., to points in the United States (except Alaska and Hawaii); and (2) *liquid chemicals, and materials and supplies*, used in the manufacture, processing and sale of liquid chemicals, in bulk, in tank vehicles, from points in the United States (except Alaska and Hawaii), to points in Pulaski County, Ark.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Little Rock, Ark.

No. MC 83539 (Sub-No. 449), filed December 15, 1976. Applicant: C & H TRANSPORTATION CO., INC., 1936–2010 West Commerce Street, 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: *Aluminum, aluminum products, and supplies, materials and equipment*, used in the manufacture of aluminum and aluminum products (except in bulk), between the plantsites of Alumax, Inc. located at Decatur, Ala.; Casa Grande, Ariz.; Long Beach, Riverside, Visalia, Perris Valley and Woodland, Calif.; Loveland, Colo.; Ocala and Plant City, Fla.; Peachtree City and Jonesboro, Ga.; Twin Falls, Idaho; Chicago and Morris, Ill.; Lebanon, Bristol and Franklin, Ind.; McPherson, Kans.; Frederick, Md.; Montevideo, Minn.; St. Louis, Mo.; Hernando, Miss.; Reidsville, N.C.; Cleveland, Ohio; Tulsa and Checotah, Okla.; Stayton, Oreg.; Bloomsburg, Pa.; Mansfield, Tex.; Harrisonburg, Va.; Spokane and Ferndale, Wash.; and Marshfield, Wis., 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 in Washington, D.C.

No. MC 94350 (Sub-No. 373), filed December 15, 1976. Applicant: TRANSIT HOMES, INC., P.O. Box 1628, Greenville, S.C. 29602. Applicant's representative: Mitchell King, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Double-wide mobile homes*, from points in Rockingham County, N.C., to points in Kentucky, Maryland, South Carolina, Tennessee, Virginia, and West Virginia.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Charlotte, N.C.

No. MC 94350 (Sub-No. 374), filed December 15, 1976. Applicant: TRANSIT HOMES, INC., P.O. Box 1628, Greenville, S.C. 29602. Applicant's representative: Mitchell King, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Singlewide mobile homes and double-wide mobile homes*, in secondary movements, (1) from points in Indiana to points in the United States, including Alaska but excluding Hawaii; and (2) from points in Alabama, California, Florida, Georgia, Kansas, Louisiana, Mississippi, North Carolina, Oregon, South Carolina, and Texas to points in Indiana.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Indianapolis, Ind.

No. MC 95376 (Sub-No. 14), filed December 6, 1976. Applicant: MCVEY TRUCKING, INC., Rt. No. 1, Oakwood, Ill. 61858. Applicant's representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, Ill. 62701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (a) *Dry weed killing compounds*, (except in bulk), *dry insecticides and fungicides*, (except in bulk); *and hand operated fertilizer spreaders*, from the facilities of Lebanon Chemical Corp., located at Danville, Ill., to points in Indiana, Iowa, Kansas, Kentucky, Ohio, Michigan, Minnesota, Missouri and Wisconsin; (b) *dry bagged fertilizer* from the facilities of Lebanon Chemical Corp. located at Danville, Ill., to points in Kansas, Iowa, Missouri, Minnesota and Tennessee; (c) *dry fertilizer ingredients*, from points in Indiana and Ohio to Danville, Ill.; (d) *dry corn and soybean products and dry feed ingredients*, in bulk, from Danville, Ill., to points in Indiana, Iowa, Kentucky, Michigan, Missouri, Ohio and Wisconsin; (e) *dry*

animal and poultry feed; dry mineral mixtures for animals *and poultry feeds, animal and poultry tonics, insecticides* (except agricultural), *and premiums and advertising matter* relating to such products, from Danville, Ill., to points in Iowa, Kentucky and Missouri; (f) *dry mineral mixtures* for animal and *poultry feeds, animal and poultry tonics, insecticides* (except agricultural), *and premiums and advertising matter* relating to such products, from Danville, Ill., to points in Indiana, Ohio, Michigan and Wisconsin; and (g) *dry feed ingredients* from points in Indiana, Iowa, Minnesota, Ohio and Wisconsin to Danville, Ill.

NOTE.—Applicant holds contract carrier authority in MC 128990 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Chicago, Ill., or St. Louis, Mo.

No. MC 95540 (Sub-No. 966), filed December 13, 1976. Applicant: WATKINS MOTOR LINES, INC., P.O. Box 1636, 1144 West Griffin Road, Lakeland, Fla. 33802. Applicant's representative: Benjy W. Fincher (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except commodities in bulk, in tank vehicles), from Kansas City, Mo., and Kansas City, Kans., to points in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Virginia and West Virginia.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Kansas City, Kans., Kansas City, Mo., Washington, D.C. or Tampa, Fla.

No. MC 106074 (Sub-No. 29), filed December 10, 1976. Applicant: B AND P MOTOR LINES, INC., P.O. Box 741, Forest City, N.C. 28043. Applicant's representative: Charles G. Dennis, Suite 101, 10205 Oasis Street, P.O. Box 32948, San Antonio, Tex. 78216. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt liquor beverages* (except in bulk), and *advertising and promotional equipment, materials and supplies* used in connection therewith, from San Antonio, Tex., to points in Arizona, California, Colorado, Idaho, Montana, Nevada, Oregon, Utah, Washington and Wyoming.

NOTE.—Applicant holds contract carrier authority in MC 140842 (Sub-No. 1), therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at either San Antonio, Tex. or Charlotte, N.C.

No. MC 106398 (Sub-No. 764), filed December 13, 1976. Applicant: NATIONAL TRAILER CONVOY, INC., P.O. Box 3329, 525 South Main, Tulsa, Okla. 74101. Applicant's representative: Irvin Tull (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers* designed *to be drawn by* passenger automobiles, in initial movements, from points in Union County, Ill., 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 Chicago, Ill.

No. MC 106603 (Sub-No. 151), filed December 10, 1976. Applicant: DIRECT TRANSIT LINES, INC., 200 Colrain Street, SW, Grand Rapids, Mich. 49508. Applicant's representative: Martin J. Leavitt, 22375 Haggerty Road, P.O. Box 400, Northville, Mich. 48167. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Refractories and refractory products*, from the plantsite of North American Refractories Co., at White Cloud, Mich., to points in Alabama, Illinois, Indiana, Iowa, Kansas, Kentucky, Minnesota, Mississippi, Missouri, Tennessee and Wisconsin; and (2) *materials and supplies*, used in the manufacture of refractories, from Alabama, Illinois, Indiana, Iowa, Kansas, Kentucky, Minnesota, Mississippi, Missouri, Tennessee, and Wisconsin, to the plantsite of North American Refractories Co., at White Cloud, Mich.

NOTE.—Applicant holds contract carrier authority in MC 46240 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.; Detroit, Mich.; or Washington, D.C.

No. MC 106644 (Sub-No. 228), filed December 17, 1976. Applicant: SUPERIOR TRUCKING COMPANY, INC., 2770 Peyton Road, NW., Atlanta, Ga. 30318. Applicant's representative: Hubert Johnson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aircraft loading/unloading and maintenance equipment*, from Monterey County, Calif., to points in the United States (except Alaska and Hawaii).

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either San Francisco, Calif., or Washington, D.C.

No. MC 106644 (Sub-No. 229), filed December 17, 1976. Applicant: SUPERIOR TRUCKING COMPANY, INC., 2770 Peyton Road NW., Atlanta, Ga. 30318. Applicant's representative: Hubert Johnson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aircraft loading/unloading and maintenance equipment*, from Monterey County, Calif., to points in the United States (except Alaska and Hawaii).

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either San Francisco, Calif., or Washington, D.C.

No. MC 106644 (Sub-No. 230), filed December 17, 1976. Applicant: SUPERIOR TRUCKING COMPANY, INC., 2770 Peyton Road, NW., Atlanta, Ga. 30318. Applicant's representative: Hubert Johnson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Self-propelled utility graders*, not exceeding 10,000 pounds, and *parts thereof*, from Gwinnett County, Ga., to points in the United States (except Alaska and Hawaii).

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Atlanta, Ga. or Washington, D.C.

No. MC 106674 (Sub-No. 221), filed December 10, 1976. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, Ind. 47977. Applicant's representative: Jerry L. Johnson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Propane*, in bulk, in tank vehicles, from West Kankakee, Ill., and Middletown, Ohio, to points in Indiana.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Chicago, Ill. or Indianapolis, Ind.

No. MC 107496 (Sub-No. 1057), filed December 15, 1976. Applicant: RUAN TRANSPORT CORPORATION, 3200 RUAN Center, 666 Grand Avenue, Des Moines, Iowa 50309. Applicant's representative: E. Check, P.O. Box 855, Des Moines, Iowa 50304. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Caustic soda*, in bulk, from the facilities of the Cargill, Inc. plantsite located at or near Buffalo, Iowa, to points in Illinois, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota and Wisconsin.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Kansas City, Mo. or Chicago, Ill.

No. MC 108341 (Sub-No. 55), filed December 8, 1976. Applicant: MOSS TRUCKING COMPANY, INC., P.O. Box 8409, Charlotte, N.C. 28208. 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: *Vinyl or plastic covered plywood, gypsumboard, hardboard, composition board, fibreboar, particleboard*, and *materials, accessories, moldings, and supplies* used in the installation and distribution of the aforementioned commodities (except in bulk), from the facilities of Sioux Veneer Company located at or near Hanahan, S.C., to points in the United States in and east of Arkansas, Iowa, Louisiana, Minnesota and Missouri.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 110410 (Sub-No. 20), filed December 16, 1976. Applicant: BENTON BROTHERS FILM EXPRESS, INC., 168 Baker Street, N.W., Atlanta, Ga. 30313. Applicant's representative: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, Tenn. 38137. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Motion picture film, supplies and accessories*, between those points in that part of Georgia south of

U.S. Highway 278 (except points located on U.S. Highway 278 between Atlanta and Warrenton), but including Atlanta and Warrenton, and east of U.S. Highway 19, and points in Florida.

NOTE. Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Atlanta, Ga.

No. MC 111310 (Sub-No. 22), (Partial Correction), filed November 24, 1976, published in FEDERAL REGISTER issue of December 23, 1976, as MC 111310 (Sub-No. 21), and republished as corrected this issue. Applicant: BEER TRANSIT, INC., P.O. Box 352, Black River Falls, Wis. 54615. The purpose of this partial republication is to indicate the correct docket number, which was published incorrectly in the FEDERAL REGISTER issue of December 23, 1976, as 111310 (Sub-No. 21) in lieu of 111310 (Sub-No. 22).

No. MC 111729 (Sub-No. 690), filed December 8, 1976. Applicant: PUROLATOR COURIER CORP., 3333 New Hyde Park Road, New Hyde Park, N.Y. 11040. Applicant's representative: Elizabeth L. Henoch, (Same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Drugs, narcotics, pharmaceuticals, toiletries, sundries, proprietaries*, and other *items related to drug stores and hospitals*, (1) between Nashville, Tenn., on the one hand, and, on the other, Bloomington, Bolingbrook, Bridge View, Decatur, Des Plaines, Dolton, Elgin, Franklin Park, Hanover Park, Joliet, Lansing, Lores Park, Melrose Park, Mundelein, N. Aurora, Pekin, Peoria, Peru, Rockford, Schaumburg, and Tinley Park, Ill., Cadiz, Central City, Lexington, Marion, Mayfield, Murray, Paducah, Priceton, Providence, Salem, and Smith Groves, Ky., Baltimore, Hagerstown, and Posodera, Md., Charlottesville, Danville, Hampton, Lynchburg, Newport News, Norfolk, Petersburg, Richmond, and Roanoke, Va., Charleston, Parkersburg, St. Albans and Vienna, W. Va.; and (2) between Huntsville, Ala., on the one hand, and, on the other, Pensacola, Fla., Alexandria, Baton Rouge, and Lafayette, La., Balch Springs, Dallas, Houston, McAllen, S. Houston, and Temple, Tex., restricted in (1) and (2) above against the transportation of articles or packages weighing more than 50 pounds per shipment or 100 pounds in the aggregate, from one consignor to one consignee on any one day.

NOTE.—Applicant holds contract carrier authority in MC 112750 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 112520 (Sub-No. 328), filed December 13, 1976. Applicant: McKENZIE TANK LINES, INC., P.O. Box 1200, Tallahassee, Fla. 32302. Applicant's representative: Thomas F. Panebianco (same address as applicant). Authority sought to operate a *common carrier*, by motor vehicle, over irregular routes, transporting: *D'limonene* (citrus stripper oil), in bulk, in tank vehicles, from points in Hillsborough, Manatee and Polk Counties, Fla., to Brunswick, Ga.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Atlanta, Ga. or Washington, D.C.

No. MC 112801 (Sub-No. 190), filed December 14, 1976. Applicant: TRANSPORT SERVICE CO., a Corporation, 2 Salt Creek Lane, Hinsdale, Ill. 60521. 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: *Alcohol*, in bulk, from the plant and storage facilities of Archer Daniels Midland Company located at Decatur, Ill., 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 113624 (Sub-No. 77), filed December 10, 1976. Applicant: WARD TRANSPORT, INC., P.O. Box 735, Pueblo, Colo. 81001. Applicant's representative: Marion F. Jones, 1660 Lincoln Street, Denver, Colo. 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal tar products, toluene, toluol, and xylene*, in bulk, in tank vehicles, from Denver and Pueblo, Colo., to points in Montana.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Denver, Colo., or Billings, Mont.

No. MC 114211 (Sub-No. 293), filed December 13, 1976. Applicant: WARREN TRANSPORT, INC., 324 Manhard St., P.O. Box 420, Waterloo, Iowa 50704. Applicant's representative: Daniel Sullivan, 327 South La Salle Street, Chicago, Ill. 60604. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber products, particle board* (except in bulk and tank vehicles), from Huttig, Ark., and Lillie and Winnfield, La., to points in Arkansas, Kansas, Missouri, Nebraska and Oklahoma.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Little Rock, Ark.; New Orleans, La.; or Dallas, Tex.

No. MC 114273 (Sub-No. 276), filed December 13, 1976. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, Iowa 52406. Applicant's representative: Robert E. Konchar, Suite 315 Commerce Exchange Building, 2720 First Avenue 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: *Chilled shot*, from Howell, Mich., and Cleveland and Toledo, Ohio, to points in Texas and Wisconsin.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 114632 (Sub-No. 89), filed December 9, 1976. Applicant: APPLE LINES, INC., 212 S.W. Second St., Madison, S. Dak. 57042. Applicant's representative: Andrew Clark; 1000 First National Bank Bldg., Minneapolis, Minn. 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, and meat by-products*, 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), in vehicles equipped with mechanical refrigeration, (1) from points in Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota and South Dakota, to the plantsite of Landy of Wisconsin, at or near Eau Claire, Wis.; and (2) from the plantsite of Landy of Wisconsin, at or near Eau Claire, Wis., to points in Illinois, Indiana, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota and South Dakota.

NOTE.—Applicant holds contract carrier authority in MC 129706, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn., or Chicago, Ill.

No. MC 114829 (Sub-No. 12), filed December 8, 1976. Applicant: GENERAL CARTAGE COMPANY, INC., West U.S. Route 30, Rock Falls, Ill. 61071. Applicant's representative: Daniel C. Sullivan, 327 South LaSalle Street, Chicago, Ill. 60604. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron and steel, and iron and steel articles*, from Sterling, Ill., to points in that part of Iowa on and north of U.S. Highway 34 and on and east of Interstate Highway 35, points in that part of Wisconsin on and south of U.S. Highway 10, points in that part of Indiana on and north of U.S. Highway 40, and points in that part of Michigan on and south of Interstate Highway 96 and on and west of U.S. Highway 27; and (2) *equipment, materials and supplies*, from the destination points named in (1) above to Sterling, Ill., under a continuing contract or contracts, in (1) and (2) above, with Northwestern Steel and Wire Company.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Sterling or Chicago, Ill.

No. MC 115162 (Sub-No. 344), filed December 15, 1976. Applicant: POOLE TRUCK LINE, INC., Post Office Drawer 500, Evergreen, Ala. 36401. Applicant's representative: Robert E. Tate (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products, paper bags, wrapping paper, and pulpboard*, from St. Marys, Ga., to points in Illinois, Indiana, Iowa, Maine, Michigan, Minnesota, Missouri, New Hampshire, New York, Ohio, Pennsylvania, Vermont, and Wisconsin.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Jacksonville, Fla., or Atlanta, Ga.

No. MC 115494 (Sub-No. 5), filed December 8, 1976. Applicant: J. D. LEWIS CORPORATION, Route No. 3, Box 15, Cordele, Ga. 31015. Applicant's repre-

resentative: Paul M. Daniell, P.O. Box 872, Atlanta, Ga. 30301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sawdust* and *bark*, when transported in mixed loads with sawdust, in bulk, from Cordele, Ga., to points in Florida.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Atlanta, Ga or Jacksonville, Fla.

No. MC 11564 (Sub-No. 60), filed December 10, 1976. Applicant: TENNESSEE CARTAGE CO., INC., Candy Lane, P.O. Box 23193, Nashville, Tenn. 37202. Applicant's representative: Walter Harwood, P.O. Box 15214, Nashville, Tenn. 37215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products and packinghouse products* (except in bulk), from Searcy, Ark., to points in Alabama, Georgia, Illinois, Indiana, Mississippi, Missouri, Ohio and Tennessee.

NOTE.—If a hearing is deemed necessary, the applicant reqeusts it be held at either Memphis or Nashville, Tenn.

No. MC 116077 (Sub-No. 376), filed December 15, 1976. Applicant: ROBERTSON TANK LINES, INC., 2000 West Loop South, Suite 1800, Houston, Tex. 77027. Applicant's representative: Pat H. Robertson, P.O. Box 1945, 500 West Sixteenth Street, Austin, Tex. 78767. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Titanium dioxide*, in bulk, from Hamilton, Miss., to points in California, Delaware, Georgia, Illinois, Indiana, Maryland, North Carolina, New Jersey, Ohio, Pennsylvania, Texas and Wisconsin.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at New Orlean, La., or Dallas, Tex.

No. MC 116077 (Sub-No. 377), filed December 16, 1976. Applicant: ROBERTSON TANK LINES, INC., 2000 West Loop South, Suite 1800, Houston, Tex. 77027. Applicant's representative: Pat H. Robertson, P.O. Box 1945, 500 West Sixteenth Street, Austin, Tex. 78767. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Nodular pulp*, in bulk, Evadale, Tex., to Ashdown, Ark.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Washington, D.C. or Atlanta, Ga.

No. MC 116254 (Sub-No. 171), filed December 13, 1976. Applicant: CHEM-HAULERS, INC., P.O. Box 339, Florence, Ala. 35630. Applicant's representative: Hampton M. Mills (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum ingots*, in dump vehicles, from the plantsite of Texas Reduction Corporation located at or near Manvel, Tex., to points in Colbert, Franklin, and Lauderdale Counties, Ala.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Houston, Tex., or Washington, D.C.

No. MC 116254 (Sub-No. 172), filed December 13, 1976. Applicant: CHEM-HAULERS, INC., P.O. Box 339, Florence, Ala. 35630. Applicant's representative: Hampton M. Mills (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alloys*, in dump vehicles, from Selma (Dallas County), Ala., to points in Texas.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Birmingham, Ala., or Washington, D.C.

No. MC 116254 (Sub-No. 173), filed December 13, 1976. Applicant: CHEM-HAULERS, INC., P.O. Box 339, Florence, Ala. 35630. Applicant's representative: Hampton M. Mills (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over 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.—If a hearing is deemed necessary, the applicant requests it be held at either Birmingham, Ala., or Washington, D.C.

No. MC 119226 (Sub-No. 97), filed December 10, 1976. Applicant: LIQUID TRANSPORT CORP., 3901 Madison Avenue, Indianapolis, Ind. 46227. Applicant's representative: Robert W. Loser, 1009 Chamber of Commerce Bldg., Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alcohol*, in bulk, from the plant and storage facilities of Archer Daniels Midland Company located at Decatur, Ill., 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 Indianapolis, Ind.; Chicago, Ill.; or Washington, D.C.

No. MC 121739 (Sub-No. 3), filed December 10, 1976. Applicant: BURK MOTOR FREIGHT, INC., P.O. Box 387, 512 Magnolia St., Burkburnett, Tex. 76354. Applicant's representative: T. M. Brown, 223 Ciudad Building, Oklahoma City, Okla. 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except Classes A and B explosives, articles of unusual value, those requiring special equipment, and commodities in bulk), between Wichita Falls, Tex., and Frederick, Okla.: From Wichita Falls, Tex., over U.S. Highway 277 to junction U.S. Highway 70, thence over U.S. Highway 70 to junction U.S. Highway 183, thence over U.S. Highway 183 to Frederick, Okla., and return over the same route serving all intermediate and off-route points.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Wichita Falls, Tex.

No. MC 124821 (Sub-No. 22), filed December 6, 1976. Applicant: WILLIAM GILCHRIST, 105 North Keyser Avenue, Old Forge, Pa. 18518. Applicant's representative: William J. Boyd, 600 Enterprise Drive, Suite 222, Oak Brook, Ill. 60521. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foods, food products, food ingredients, animal foods, animal food ingredients and meat by-products* (except in bulk), (1) from the warehouses of Beatrice Foods Co., located at Scranton, Pa., and located at or near Allentown, Pa., to points in Connecticut, Delaware, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Virginia, Vermont, West Virginia and the District of Columbia, restricted to the transportation of traffic originating at the warehouse of Beatrice Foods Co., located at Scranton, Pa., and located at or near Allentown, Pa., and destined to the named destination states; and (2) from points in Connecticut, Delaware, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Vermont, Rhode Island, Virginia, West Virginia and the District of Columbia, to the warehouses of Beatrice Foods Co., located at Scranton, Pa., and located at or near Allentown, Pa., restricted to the movement of traffic originating in the named origin states and destined to the warehouses of Beatrice Foods Co., located at Scranton, Pa., and located at or near Allentown, Pa.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Washington, D.C., or Philadelphia, Pa.

No. MC 124896 (Sub-No. 19), filed December 16, 1976. Applicant: WILLIAMSON TRUCK LINES, INC., Thorne and Ralson Streets, P.O. Box 3485, Wilson, N.C. 27893. Applicant's representative: Jack H. Blanshan, Suite 200, 205 West Touhy Avenue, Park Ridge, Ill. 60068. 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 hides and commodities in bulk), from the plantsites and storage facilities of Farmland Foods, Inc. located at or near Carroll, Denison and Iowa Falls, Iowa, to points in Alabama, Delaware, Florida, Georgia, Kentucky, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia and West Virginia, restricted to the transportation of traffic originating at the above named origins and destined to the above named destinations.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Sioux City, Iowa; Omaha, Nebr.; or Des Moines, Iowa.

No. MC 125777 (Sub-No. 183), filed December 13, 1976. Applicant: JACK GRAY TRANSPORT, INC., 4600 East 15th Avenue, Gary, Ind. 46406. Applicant's 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: *Spent alumina catalyst*, in dump vehicles, from points in the United States (except Alaska and Hawaii), to Canon City, Colo.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Chicago, Ill.

No. MC 128662 (Sub-No. 2), filed December 10, 1976. Applicant: STICKLEY'S GARAGE, INC., doing business as STICKLEY'S TRUCKING, 1043 Millwood Avenue, Winchester, Va. 22601. Applicant's representative: Charles E. Creager, 1329 Pennsylvania Avenue, P.O. Box 1417, Hagerstown, Md. 21740. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen fruit*, between the plantsite, warehouses, shipping and receiving facilities of The Zeropack Company located in Winchester, Va., on the one hand, and, on the other, points in Connecticut, Delaware, Florida, Georgia, Maryland, Massachusetts, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, West Virginia, and the District of Columbia.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 128883 (Sub-No. 2), filed December 15, 1976. Applicant: NORTH IOWA EXPRESS, INC., 1921 NE 58th Avenue, Des Moines, Iowa 50313. Applicant's representative: William L. Fairbank, 1980 Financial Center, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving points in Iowa located in Dallas County and on and west of U.S. Highway 69 located in Polk County, as off route points in connection with carrier's regular route operations proposed herein: (1) Between Des Moines and Granger, Iowa: from Des Moines over Interstate Highway 35 to junction Iowa Highway 141, thence over Iowa Highway 141 to Granger, and return over same routes; and (2) Between Des Moines, and Redfield, Iowa: from Des Moines over U.S. Highway 6 to Redfield, and return over the same route.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Des Moines, Iowa.

No. MC 129328 (Sub-No. 6), filed December 10, 1976. Applicant: PAL TEX TRANSPORT CO., a Corporation, P.O. Box 296, Palestine, Tex. 75801. Applicant's representative: Kenneth R. Hoffman, 1100 Milam Bldg., Suite 3300, Houston, Tex. 77002. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper and paper products*, from the plantsite and storage facilities of Clevepak Corporation, at or near Dallas, Tex., to points in Alabama, Illinois, Indiana, Kentucky, Ohio and Wisconsin; and (2) *materials, equipment, and supplies*, used in the manufacture, sale, or distribution of the commodities in (1) above, from points in Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Ohio, Oklahoma, and Wisconsin, to the facilities of Clevepak Corporation, at or near Dallas, Tex., restricted in (1) and (2) above, against the transportation of commodities in bulk, and restricted to a transportation service to be performed under a continuing contract, or contracts, with Clevepak Corporation.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Dallas or Houston, Tex.

No. MC 129537 (Sub-No. 19), filed December 13, 1976. Applicant: REEVES TRANSPORTATION COMPANY, a Corporation, Route 5, Dew's Pond Road, Calhoun, Ga. 30701. Applicant's representative: John C. Vogt, Jr., 406 N. Morgan Street, Tampa, Fla. 33602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Carpets and rugs*, from points in Bartow, Catoosa, Chattooga, Floyd, Gordon, Murray, Muscogee, Troup, Walker and Whitfield Counties, Ga., to points in Mississippi.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Atlanta, Ga.

No. MC 129903 (Sub-No. 7), filed December 8, 1976. Applicant: EMPORIA MOTOR FREIGHT, INC., Route No. 5, Box 1103, Emporia, Kans. 66801. Applicant's representative: John L. Richeson, P.O. Box 7, Ottawa, Kans. 66067. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Emporia, Kans. and Kansas City, Mo.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Topeka or Wichita, Kans. or Kansas City, Mo.

No. MC 133095 (Sub-No. 125), filed December 9, 1976. Applicant: TEXAS CONTINENTAL EXPRESS, INC., P.O. Box 434, 2603 W. Euless Blvd., Euless, Tex. 76039. Applicant's representative: Hugh T. Matthews, 2340 Fidelity Union Tower, Dallas, Tex. 75201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods*, from Athens, Tex., to points in the United States (except Alaska and Hawaii).

NOTE.—Applicant holds contract carrier authority in MC 136032 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at Dallas, Tex.

No. MC 133892 (Sub-No. 6), filed December 7, 1976. Applicant: B & W SERVICE, INC., 25 Littlefield Street, Avon, Mass. 02322. Applicant's representative: Frank J. Weiner, 15 Court Square, Boston, Mass. 02108. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Such merchandise* as is dealt in by retail department stores, and (2) *equipment, materials*, and *supplies* used in the operation of retail department stores, (except liquid commodities in bulk), between Obetz, Ohio, on the one hand, and, on the other, points in Indiana, Missouri, New York and Pennsylvania, under a continuing contract or contracts with Child World, Inc.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Boston, Mass.

No. MC 134922 (Sub-No. 212), filed December 13, 1976. Applicant: B. J. MCADAMS, INC., Route 6, Box 15, North Little Rock, Ark. 72118. Applicant's representative: Bob McAdams (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tile and such commodities* as are manufactured or distributed by manufacturers or distributors of tile, and *materials and supplies* used in the manufacture of tile (except commodities in bulk and those which because of size or weight require the use of special equipment), between Chicago, Ill., on the one hand, and, on the other, points in the United States in and west of New Mexico, Utah, Wyoming and Montana.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Little Rock, Ark., or New York, N.Y.

No. MC 134922 (Sub-No. 213), filed December 13, 1976. Applicant: B. J. MCADAMS, INC., Route 6, Box 15, North Little Rock, Ark. 72118. Applicant's representative: Bob McAdams (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic bottles*, from the plantsite and storage facilities of Georgia Pacific Corporation, in Los Angeles County, Calif., to Humboldt, Tenn.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Los Angeles, Calif., or Little Rock, Ark.

No. MC 134922 (Sub-No. 214), filed December 13, 1976. Applicant: B. J. MCADAMS, INC., Route 6, Box 15, North Little Rock, Ark. 72118. Applicant's representative: Bob McAdams (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, having a prior

or subsequent movement by rail (except in bulk), between Rhinehart and Zion, La., on the one hand, and, on the other, points in the United States including Alaska and Hawaii.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Little Rock, Ark., or Memphis, Tenn.

No. MC 135231 (Sub-No. 22), filed December 6, 1976. Applicant: NORTH STAR TRANSPORT, INC., Route 1 Highway 1 and 59 West, Thief River Falls, Minn. 56701. Applicant's representative: Anthony C. Vance, 1300 Old Chain Bridge Road, McLean, Va. 22170. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (I) *Snowmobiles, motorbikes, boats, parts and accessories, and sound reproducing equipment*, from Roseau, Thief River Falls, Karlstad, Rochester and Minneapolis, Minn., and Omaha, Nebr., to points in the United States including Anchorage, Alaska (excepting service to unnamed Alaska points and Hawaii), restricted (a) to traffic originating at the plant sites or facilities utilized by Polaris E–Z–Go Division of Textron, Inc., Arctic Enterprises, Inc., and Telex Communications, Inc., at the origin points specified, and (b) against tacking or joining the authority proposed with any other authority concurrently proposed or presently held; (II) (1) *agricultural implements and parts thereof*, from Thief River Falls and Minneapolis, Minn., to points in the United States (except Alaska and Hawaii) and (2) *parts, supplies, materials, accessories and equipment* named in (1) above, from points in the United States (except Alaska and Hawaii) to Thief River Falls and Minneapolis, Minn., (1) and (2).

(a) Restricted to traffic originating at or destined to the plantsites or facilities utilized by Arctic Enterprises, Inc. at the origin or destination points specified, and (b) restricted against tacking or joining the authority proposed with any other authority concurrently proposed or presently held; (III) *such merchandise*, as is dealt in by lawn and garden dealers, from the plantsites, warehouse facilities and experimental farms of Deere & Company in Dodge County, Wis., to points in Connecticut, Delaware, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia, restricted against tacking or joining the authority proposed with any other authority concurrently proposed or presently held; (IV) *three-wheeled utility trucks*, self-propelled, weighing less than 1500 pounds, from the plantsite of Polaris E–Z–Go Division of Textron, Inc., located at or near Roseau, Minn., to Lake Zurich, Ill., Augusta, Ga., Sarasota and Fort Lauderdale, Fla., Norton, Grove City and North Royalton, Ohio, Lansing, Mich., Olathe, Kans., Houston, Arlington and Dallas, Tex., Plainview, N.Y., New Kensington and Bethlehem, Pa., Bordentown, N.J., Falmouth, Mass., Spokane, Wash., Santa Anna, Calif., Gaithersburg, Md., and Fuquay Varina, N.C., restricted against tacking or joining the authority proposed with any other authority concurrently proposed or presently held; (V) *buildings, complete, knocked down, or in sections and component parts, materials and supplies* used in the erection thereof, from Terre Haute, Ind., to points in Beltrami, Clearwater, Kittson, Lake of the Woods, Marshall, Pennington, Red Lake and Roseau Counties, Minn., Cavalier, Grand Forks, Pembina, Steele, Traill, and Walsh Counties, N. Dak., restricted (a) to traffic destined to job sites or facilities of Prichard Brothers, Inc. at the destination points specified and (b) against tacking or joining the authority proposed with any other authority concurrently proposed with any other authority concurrently proposed or presently held.

(VI) *Materials, supplies, parts and equipment* (except commodities in bulk) used in the manufacture or sale of snowmobiles, motorbikes, sound reproducing equipment, and boats from points in the United States (except Alaska and Hawaii), to plant sites and facilities utilized by Polaris E–Z–Go Division of Textron, Inc., Arctic Enterprises, Inc., and Telex Communications, Inc., at Thief River Falls, Roseau, Karlstad, Moorhead, Clearbrook, Rochester and Minneapolis, Minn., and Omaha, Nebr., restricted against tacking or joining the authority proposed with any other authority concurrently proposed or presently held;

(VII) *Snowmobile clothing*, from Seattle, Wash., to Lansing, Mich., St. Paul and Thief River Falls, Minn., and Neenah, Wis., restricted (a) to traffic originating at the plantsite or facilities utilized by Arctic Enterprises, Inc., at the origin point specified above, and (b) against tacking or joining the authority proposed with any other authority concurrently proposed or presently held. The authority proposed above is subject to the following conditions: (1) upon the granting of the proposed authority above applicant states it will request the coincidental cancellation of its permits in No. MC 134145; Sub Nos. 1, 3, 5, 6, 7, 13, 14, 19, 21, 22, 27, 28, 30, 31, 32, 36, 48, 50, and 55; (2) the proposed authority in this application if granted, and existing authority that it duplicates shall be construed as conferring only a single operating right; (3) all of the foregoing converted authority and applicant's previously issued certificates shall be restricted so that no shipping or delivery service shall be provided to and from the premises of Control Data Corp. and/or Computer Peripherals, Inc., applicant's only retained contract shippers if this conversion application is approved.

NOTE.—Applicant states the purpose of this application is to convert its Permits in No. MC 134145 (Sub-Nos. 1, 3, 5, 6, 7, 13, 14, 19, 22, 27, 30, 31, 32, 36, 48, 55), and the proposed authority in No. MC 134145 (Sub-No. 64), to a Certificate of Public Convenience and Necessity. If a hearing is deemed necessary, the applicant requests it be held at St. Paul, Minn.

No. MC 135384 (Sub-No. 23), filed December 14, 1976. Applicant: SPECIALIZED TRUCK SERVICE, INC., Highway 81 and I–75, McDonough, Ga. 30253. Applicant's representative: Frank D. Hall, 3384 Peachtree Rd., N.E., Suite 713, Atlanta, Ga. 30326. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages, related advertising materials, and empty malt beverage containers*, from Fort Worth, Tex., to Panama City, Fla.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Atlanta, Ga., or Washington, D.C.

No. MC 136008 (Sub-No. 79), filed December 15, 1976. Applicant: JOE BROWN COMPANY, INC., P.O. Box 1669, 20 Third Street, N.E., Ardmore, Okla. 73401. Applicant's representative: G. Timothy Armstrong, Suite 200, Timbergate Office Gardens, 6161 North May Avenue, Oklahoma City, Okla. 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sand, gravel, rock, caliche, ore, ready mix asphalt, aggregate, clinker, gypsum, clay, cement mixed with aggregate, and coal*, (1) between points in New Mexico, on the one hand, and, on the other, points in Colorado, Kansas, Oklahoma and Texas; and (2) between points in Texas (except points in Camp, Cass, Collin, Bowie, Fannin, Grayson, Harrison, Hopkins, Hunt, Lamar, Marion, Morris, Panola, Red River and Titus Counties, Tex.), on the one hand, and, on the other, points in Louisiana (except points in Bossier, Caddo, DeSoto and Webster Parishes, La.), restricted against the transportation of sand from points in McCulloch County, Tex.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Oklahoma City, Okla., or Albuquerque, N. Mex.

No. MC 136222 (Sub-No. 3), filed December 10, 1976. Applicant: MOVERS PORT SERVICE, INCORPORATED, 7035 Convoy Court, San Diego, Calif. 92138. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Empty household goods shipping containers*, set up or knocked down, between points in Arizona, California and New Mexico.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests a consolidated hearing with other similar applications at San Diego, Calif.

No. MC 136343 (Sub-No. 97), filed December 13, 1976. Applicant: MILTON TRANSPORTATION, INC., P.O. Box 355, Milton, Pa. 17847. Applicant's representative: George A. Olsen, 69 Tonnele Ave., Jersey City, N.J. 07306 Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) (a) *Salt in packages;* (b) *pepper in packages* in mixed loads with salt in

packages; (c) *materials and supplies* used in the agricultural, water treatment, food processing, wholesale grocery and institutional supply industries (except commodities in bulk), in mixed loads with salt in packages, from the facilities of Morton Salt Co., located at or near Rittman, Ohio, to points in Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont and Virginia; and (2) *salt, salt products, calcium chloride, and mixture of salt, salt products, and calcium chloride*, from the facilities of Morton Salt Co., located at or near Fairport Harbor, Ohio, to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont and Virginia.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Columbus, Ohio or Washington, D.C.

No. MC 138807 (Sub-No. 16), filed December 8, 1976. Applicant: ZIP TRUCKING, INC., P.O. Box 5717, Jackson, Miss. 39208. Applicant's representative: K. Edward Wolcott, 1600 First Federal Bldg., Atlanta, Ga. 30303. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Cooper wire and fluorescent lamp ballasts*, from Mendenhall, Miss., to points in Florida and Texas, under contract with Universal Manufacturing Company.

NOTE.—Applicant holds common carrier authority in MC 141652 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at New York, N.Y., or Washington, D.C.

No. MC 138869 (Sub-No. 9), filed December 13, 1976. Applicant: W. T. MYLES TRANSPORTATION CO., a Corporation, P.O. Box 321, 4481 Moreland Ave., Conley, Ga. 30027. Applicant's representative: Archie B. Culbreth, Suite 246, 1252 West Peachtree St., N.W., Atlanta, Ga. 30309. Authority sought to operate as a *contract carrier*, by motor vehicle over irregular routes, transporting: (1) *Newsprint, groundwood papers, printing paper and woodpulp*, from the plantsite of Bowater Southern Paper Corporation located at Calhoun, Tenn., to points in Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky (points east of a line beginning at the Tennessee-Kentucky State Boundary line and extending along U.S. Highway 25E to junction U.S. Highway 25 near Corbin, Ky., thence along U.S. Highway 25 to Georgetown, Ky., thence north of a line extending from Georgetown, Ky., along U.S. Highway 62 to Nortonville, Ky., and thence west of a line extending from Nortonville, Ky., along U.S. Highway 41 to the Kentucky-Tennessee State Boundary line), Maryland, Michigan (points on and south of Michigan Highway 21), Minnesota, Missouri, Nebraska, New Jersey, Ohio, Pennsylvania, South Dakota, West Virginia and Wisconsin; and (2) *paper core tubes, materials, and supplies* used in the manufacture of the commodities described in (1) above, (except in bulk), from points in the destination states named in (1) above, to the plantsite of Bowater Southern Paper Corporation located at Calhoun, Tenn., under a continuing contract or contracts with Bowater Southern Paper Corporation.

NOTE.—Applicant holds common carrier authority in MC 140563 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at Atlanta, Ga.

No. MC 138875 (Sub-No. 41), filed December 10, 1976. Applicant: SHOEMAKER TRUCKING COMPANY, a Corporation, 11900 Franklin Road, Boise, Idaho 83705. Applicant's representative: F. L. Sigloh (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Diatomaceous earth* and *materials and supplies* used in the mining, manufacturing and distribution thereof (except commodities in bulk, in tank vehicles), between the plantsite of Witco Chemical Company, located at or near Quincy, Wash., on the one hand, and on the other, points in California, Colorado, Idaho, Montana, Oregon, Utah, Washington and Wyoming. NOTE.—Applicant seeks to tack this sought authority with its present authority in MC 138875 (Sub-No. 25), at Westfall (Malheur County), Oreg., to provide a through service to points in Arizona, Arkansas, Colorado, California, Idaho, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, Washington and Wyoming.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Boise, Idaho or Quincy, Wash.

No. MC 139381 (Sub-No. 7), filed December 13, 1976. Applicant: SPIRIT OF '76 OVERLAND EXPRESS, INC., 5320 Industrial Road, Fort Wayne, Ind. 46825. Applicant's representative: Anthony E. Young, 327 South LaSalle Street, Chicago, Ill. 60604. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in, or used by, manufacturers and distributors of crusher, breaker and grinding parts, between the facilities of The Frog, Switch and Manufacturing Company located at Carlisle, Pa., on the one hand, and, on the other, points in Arizona, California, Colorado, Idaho, Nevada, New Mexico, Texas, Utah, and Wyoming, under a continuing contract or contracts with The Frog, Switch and Manufacturing Company of Carlisle, Pa.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Chicago, Ill.

No. MC 139482 (Sub-No. 9), filed December 17, 1976. Applicant: NEW ULM FREIGHT LINES, INC., County Road 29 West, New Ulm, Minn. 56073. Applicant's representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, Minn. 55403. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by retail and wholesale department and hardware stores (except commodities in bulk), from points in that part of the United States in and east of Alabama, Illinois, Missouri, Tennessee and Wisconsin, to Brookings, S. Dak., restricted to traffic destined to Coast to Coast Stores Central Organization, Inc., located at or near Brookings, S. Dak.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Minneapolis or St. Paul, Minn.

No. MC 139495 (Sub-No. 184), filed December 9, 1976. Applicant: NATIONAL CARRIERS, INC., 1501 East 8th Street, P.O. Box 1258, Liberal, Kans. 67901. Applicant's representative: Frederick J. Coffman, 521 South 14th Street, P.O. Box 81849, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Petroleum products and lubricating oils* in containers, from the plantsite and warehouses of Mobile Oil Corporation located at or near Kansas City, Kans., to points in Colorado; and (2) *returned empty containers*, from points in Colorado to Kansas city, Kans.

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 Dallas or Kansas City, Kans.

No. MC 140645 (Sub-No. 5), filed December 10, 1976. Applicant: UNITED TRUKING, INC., 100 Stoffel Drive, Tallapoosa, Ga. 30176. Applicant's representative: Clyde W. Carver, Suite 212, 5299 Roswell Road, N.E., Atlanta, Ga. 30342. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Metal containers and metal container ends*; and (2) *machinery, materials, and supplies*, used in the manufacture and distribution of metal containers, between points in Montgomery County, Pa., on the one hand, and, on the other, points in Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin and the District of Columbia, restricted to a transportation service to be performed under a continuing contract, or contracts, with Southern Can Company, at Tallapoosa, Ga.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 140849 (Sub-No. 5), filed December 10, 1976. Applicant: ROBERTS TRUCKING CO., INC., U.S. Highway 271 South, Poteau, Okla. 74953. Applicant's representative: Prentiss Shelley, P.O. Drawer G., Poteau, Okla. 74953. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular

routes, transporting: *Fabrics, piece goods and materials and supplies* used in the manufacture of clothing (except commodities in bulk in tank vehicles), from points in Virginia to Idabel, Pauls Valley and Frederick, Okla., under a continuing contract or contracts with Kellwood Company.

NOTE.—Applicant holds common carrier authority in MC 126243 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Oklahoma City, or Tulsa, Okla., or Washington, D.C.

No. MC 140883 (Sub-No. 10), filed December 13, 1976. Applicant: DOWNS TRANSPORTATION CO., INC., 2705 Canna Ridge Circle, N.E., Atlanta, Ga. 30345. Applicant's representative: Paul M. Daniell, P.O. Box 872, Atlanta, Ga. 30301. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic articles* (except in bulk), from Jacksonville and Springfield, Ill., to points in Georgia and New Jersey, under a continuing contract, or contracts, with Mobil Chemical Company, Plastics Division.

NOTE.—If a hearing is deemed necessary the applicant requests it be held at Atlanta, Ga.

No. MC 141071 (Sub-No. 7), filed December 13, 1976. Applicant: LARANETA TRUCKING COMPANY, INC., 870 West 9th Street, San Pedro, Calif. 90731. Applicant's representative: William J. Monheim, 15942 Whittier Blvd., P.O. Box 1756, Whittier, Calif. 90609. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Pet food and canned tuna*, from Terminal Island, Calif., to points in Idaho and Utah, under contract with Star-Kist Foods, Inc.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Los Angeles, Calif.

No. MC 141084 (Sub-No. 6), filed December 6, 1976. Applicant: NATIONAL FREIGHT LINES, INC., 6069 Maywood Avenue, Huntington Park, Calif. 90058. Applicant's representative: Daniel C. Sullivan, 327 South La Salle Street, Chicago, Ill. 60604. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals, materials and supplies* used in the manufacturing and transportation of chemicals, (except commodities in bulk), between the facilities of FMC Corporation located at Baltimore, Md.; Middleport and Tonawanda, N.Y.; Carteret and Lyndhurst, N.J.; Newark, Del., South Charleston and Nitro, W. Va.; Lawrence, Kans.; Newark, Calif.; Green River, Wyo.; Lewistown, Pa.; and Jacksonville, Fla.; on the one hand, and, on the other, points in Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, Utah, Washington, Wisconsin and Wyoming, under a continuing contract or contracts with FMC Corporation.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Philadelphia, Pa., or Washington, D.C.

No. MC 141152 (Sub-No. 2), filed December 15, 1976. Applicant: JAMES H. FUNCH, doing business as JAMES FUNCH TRUCKING, 2750 North Polk Avenue, Fresno, Calif. 93705. Applicant's representative: Eldon M. Johnson, 650 California Street, Suite 2808, San Francisco, Calif. 94108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Shingles, shakes and ridge*, from points in Clallam, Grays Harbor, Jefferson, Skagit and Whatcom Counties, Wash., to points in Arizona, restricted to movements in van equipment.

NOTE.—Applicant holds contract carrier authority in MC 141152 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Seattle, Wash., or San Francisco, Calif.

No MC 141774 (Sub-No. 2), filed December 10, 1976. Applicant: R & L TRUCKING CO., INC., 105 Rocket Avenue, Opelika, Ala. 36801. Applicant's representative: Robert E. Tate, P.O. Box 517, Evergreen, Ala. 36401. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Seats, baby carriers and tubing*, from Opelika, Ala., and Moscow, Tenn., to points in Arkansas, Florida, Georgia, Kentucky, Missouri and Tennessee; and (2) *materials and supplies* used in the manufacture of seats, baby carriers and tubing (except commodities in bulk, in tank vehicles), from points in Arkansas, Florida, Georgia, Kentucky, Missouri and Tennessee, to Opelika, Ala. and Moscow, Tenn.

NOTE.—Applicant holds contract carrier authority in MC 136378 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Memphis, Tenn. or Birmingham, Ala.

No. MC 142080 (Sub-No. 1), filed December 7, 1976. Applicant: LITE TRANSPORT, INC., 135 State Street, Suite 200, Springfield, Mass. 01103. Applicant's representative: David M. Marshall (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Building materials* (except commodities in bulk, in tank trucks), between the facilities of Allied International, Inc., located in the United States, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii), under a continuing contract or contracts with Allied International, Inc.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Boston, Mass.; Providence, R.I., or Washington, D.C.

No. MC 142082 (Sub-No. 3), filed December 2, 1976. Applicant: OLIVER BROWN TRUCKING CO., INC., Raritan Center, Building 529, Edison, N.J. 08817. Applicant's representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, N.J. 08904. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Polyurethane foam* (except in bulk), from Irvington, N.J., to points in Connecticut, Delaware, New York, and Pennsylvania; and (2) *materials and supplies*, used in the manufacturing, distribution and packaging thereof (except in bulk), from points in Connecticut, Delaware, New York, and Pennsylvania, to Irvington, N.J., under a continuing contract or contracts, with Reeves Brothers, Inc., Curon Division, Metro Plant, at Irvington, N.J.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Newark, N.J., or New York, N.Y.

No. MC 142558 (correction), filed October 12, 1976, published in the FR Issue of November 11, 1976, republished as corrected this issue. Applicant: DIRECT AIR FREIGHT, INC., 564 Valley Street, Orange, N.J. 07050. Applicant's representative: Ronald I. Shapss, 450 Seventh Avenue, New York, N.Y. 10001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except Classes A and B explosives, commodities in bulk, household goods as defined by the Commission and commodities requiring special equipment), between ports of entry on the International Boundary line between the United States and Canada, located at or near Champlain, N.Y. and Highgate Springs, Vt., on the one hand, and, on the other Tweed-New Haven Airport, located at New Haven, Conn., and Newark Airport, located at Newark, N.J., restricted to the transportation of shipments having an immediately prior or subsequent movement by air.

NOTE.—The purpose of this republication is to indicate Newark Airport being located at Newark, N.J. in lieu of Newark, N.Y. If a hearing is deemed necessary, the applicant requests it be held at New York, N.Y.

No. MC 142567 (Sub-No. 1), filed December 9, 1976. Applicant: GREENVILLE TRANSIT, INC., Route 1, Box 452, Scuffletown Road, Simpsonville, S.C. 29681. Applicant's representative: Mitchell King Jr., P.O. Box 1628, Greenville, S.C. 29602. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, between the facilities of South Carolina Steel Corporation located in Greenville County, S.C., on the one hand, and, on the other, points east of Kansas, Nebraska, North Dakota, Oklahoma, South Dakota and Texas, under a continuing contract or contracts with South Carolina Steel Corporation.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Charlotte, N.C.

No. MC 142681 (Sub-No. 1), filed December 13, 1976. Applicant: JOHN L. BRADY, doing business as J & M ENTERPRIZE, 48 North 1 West, Hyde Park,

Utah 84318. Applicant's representative: Irene Warr, 430 Judge Building, Salt Lake City, Utah 84111. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Flour and bran*, in bags, from the plantsite of Gilt Edge Flour Mill, located at or near Richmond, Utah, to points in California, under contract with Gilt Edge Flour Mill.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Salt Lake City, Utah.

No. MC 142747, filed December 22, 1976. Applicant: DAVID L. TATE, HAMER L. TATE, ALICIA L. TATE, WILLIAM H. TATE, BERYL E. TATE AND GERALD ROSS, a Partnership, doing business as TATE CHEESE COMPANY, No. 1 Cheddar Lane, Valley City, Ill. 62340. Applicant's representative: Tom B. Kretsinger, 910 Brookfield Building, 101 West Eleventh St., Kansas City, Mo. 64105. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Processed and natural cheese, meat and meat products, poultry parts, dairy products and derivatives, baking products ingredients, chemicals, packaging materials, manufacturing equipment, grain products, processed and containerized fruits and vegetables*, and *commodities* exempt under Section 203(b)(6) when transported in connection with the commodities listed above, between Valley City, Ill., on the one hand, and on the other, points in the United States (except Alaska and Hawaii), under a continuing contract or contracts with Tate Cheese Company.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Chicago, Ill. or Kansas City, Mo.

No. MC 142755, filed December 13, 1976. Applicant: W. E. HAMILTON, doing business as W. E. HAMILTON TRUCKING COMPANY, 107 North Cedar Street, Pecos, Tex. 79772. Applicant's representative: Mike Cotten, P.O. Box 1148, Austin, Tex. 78767. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Dry fertilizer*, in bulk and in sacks or bags, and *fungicides, herbicides and insecticides*, in containers, in mixed loads with dry fertilizer in sacks or bags, from points in Reeves County, Tex., to points in New Mexico; and (2) *empty pallets*, from points in New Mexico, to points in Reeves County, Tex.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Dallas, Tex.; Albuquerque, N. Mex.; or Washington, D.C.

No. MC 142757, filed December 9, 1976. Applicant: WAYNE H. ROBERTSON, doing business as ROBERTSON TANK SERVICE, Box 100, Elkhart, Kans. 67950. Applicant's representative: Wilburn L. Williamson, 280 National Foundation Life Bldg., 3535 N.W. 58th Street, Oklahoma City, Okla. 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia, nitrogen fertilizer solutions, and urea liquor*, from the plantsites of Oklahoma Nitrogen Corporation and Bison Chemical Company located at or near Woodward, Okla., to points in Arkansas, Colorado, Kansas, Iowa, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, South Dakota and Texas.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Oklahoma City, Okla.

No. MC 142758, filed December 6, 1976. Applicant: OHIO DELIVERY, INC., 85 East Gay Street, Columbus, Ohio 43215. Applicant's representative: Earl N. Merwin, (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except commodities in bulk), between Cincinnati, Ohio, on the one hand, and, on the other, points in West Virginia, under a continuing contract, or contracts, with Union Oil Company of California.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Columbus, Ohio.

No. MC 142759, filed December 9, 1976. Applicant: S. J. WURMNEST, doing business as WURMNEST TRUCKING, Rural Route 1, Sibley, Ill. 61773. Applicant's representative: Albert A. Andrin, 180 North La Salle Street, Chicago, Ill. 60601. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural chemicals and fertilizer*, (1) from points in Arkansas, Indiana, Iowa, Kansas, Kentucky, Minnesota, Missouri and Wisconsin, to Sibley, Ill., and (2) from Sibley, Ill., to points in Arkansas, Indiana, Iowa, Kansas, Kentucky, Minnesota, Missouri and Wisconsin, under a continuing contract, or contracts, with Ag Supply, Inc., Meyerousch, Inc., Helena Chemical Co., and Terra Illinois, Inc.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Chicago, Ill.

PASSENGER APPLICATIONS

No. MC 1515 (Sub-No. 221), filed December 13, 1976. Applicant: GREYHOUND LINES, INC., Greyhound Tower, Phoenix, Ariz. 85077. Applicant's representative: W. L. McCracken, (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage, express and newspapers* in the same vehicle with passengers, (1) Between Cleveland, Ohio and the junction of New Ohio Highway 2 and old Ohio Highway 2 west of Port Clinton, Ohio, serving all intermediate points: From Cleveland over New Ohio Highway 2 (portions of which are also designated Interstate Highway 90) to junction old Ohio Highway 2 and return over the same route; and (2) Between the junction of Interstate Highway 90 and Ohio Highway 2 and the junction of Interstate Highway 90 and Interstate Highway 80, serving no intermediate points: From the junction of Interstate Highway 90 and Ohio Highway 2 over Interstate Highway 90 to junction Interstate Highway 80 and return over the same route; and (3) Between Lorain, Ohio and the junction of Ohio Highway 58 and New Ohio Highway 2 serving all intermediate points: From Lorain over Ohio Highway 58 to junction New Ohio Highway 2 and return over the same route.

NOTE.—Applicant states that in conjunction with the above requested authority, it proposes to abandon that portion of its current authority over old Ohio Highway 2 between its junction with U.S. Highway 6 west of Sandusky, Ohio and its junction with New Ohio Highway 2 near Danbury, Ohio as contained in Certificate of Public Convenience and Necessity No. MC 1515 (Sub-No. 6), Sheet No. 13, Route 42B. Common control may be involved. If a hearing is deemed necessary, the applicant requests that it be held at Cleveland, Ohio.

No. MC 2661 (Sub-No. 15), filed December 9, 1976. Applicant: INDIAN TRAILS, INC., 109 East Comstock, Owosso, Mich. 48867. Applicant's representative: Robert D. Schuler, 100 West Long Lake Road, Suite 102, Bloomfield Hills, Mich. 48013. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage* in the same vehicle with passengers in round-trip and one-way sightseeing and pleasure tours in special operations between points in Berrien, Cass, St. Joseph, Branch, Hillsdale, Lenawee, Monroe, Van Buren, Kalamazoo, Calhoun, Jackson, Washtenaw, Wayne, Allegan, Barry, Eton, Ingham, Livingston, Oakland, Macomb, Ionia, Clinton, Shiawassee, Genessee, Lapeer, St. Clair, Montcalm, Gratiot, Saginaw, Tuscola, Sanilac, Mecosta, Isabella, Midland, Bay, and Huron Counties, Mich., on the one hand, and, on the other, points in the United States, including Alaska but excluding Hawaii; the one-way operations requested immediately above are restricted to the transportation of passengers and their baggage having a prior or subsequent movement by air, rail, or water from or to one of the above-named counties in Michigan.

NOTE.—Applicant offers to surrender partially duplicating authority in Docket No. MC 2661 (Sub-No. 14), if this application is granted substantially as filed. If a hearing is deemed necessary, the applicant requests that it be held at Lansing, Mich.

No. MC 109897 (Sub-No. 2), filed December 6, 1976. Applicant: GRAY LINE NEW YORK TOURS CORP., 254 West 54th Street, New York, N.Y. 10019. Applicant's representative: W. L. McCracken, Greyhound Tower, Phoenix, Ariz. 85077. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in special operations, beginning and ending at New York, N.Y., and extending to Great Adventure Amusement Park, Jackson, N.J.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the appli-

cant requests it be held at either New York, N.Y., or Philadelphia, Pa.

No. MC 115521 (Sub-No. 4), filed December 9, 1976. Applicant: MC DERMOTT BUS CORP., 2164 Caton Avenue, Brooklyn, N.Y. 11226. Applicant's representative: Sidney J. Leshin, 575 Madison Avenue, New York, N.Y. 10022. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers*, in special round trip operations, beginning and ending in the Boroughs of Brooklyn and Queens, New York, N.Y., and extending to the Meadowland Sporting Complex, at East Rutherford, N.J.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at New York, N.Y.

No. MC 141465 (Sub-No. 3), filed December 8, 1976. Applicant: GENEVA LAKE AREA JOINT TRANSIT COMMISSION, 623 Main Street, Lake Geneva, Wis. 53147. Applicant's representative: Anthony E. Young, 327 South LaSalle Street, Chicago, Ill. 60604. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers, and their baggage* moving in the same vehicle with passengers, (1) Between Delavan, Wis. and Richmond, Ill., serving all intermediate points: From Delavan over Wisconsin Highway 50 to junction County Highway F, thence over County Highway F to junction Wisconsin Highway 67, thence over Wisconsin Highway 67 to junction Wisconsin Highway 50, thence over Wisconsin Highway 50 to junction County Highway H, thence over County Highway H, to junction U.S. Highway 12, thence over U.S. Highway 12 to Richmond, Ill., and return over the same route; (2) Between Whitewater, Wis., and Crystal Lake, Ill., serving all intermediate points: From Whitewater, Wis., over U.S. Highway 12 to junction Wisconsin Highway 11, thence over Wisconsin Highway 11 to Delavan, thence over Wisconsin Highway 50 to junction of County Highway F, thence over County Highway F to junction Wisconsin Highway 67, thence over Wisconsin Highway 67 to junction Wisconsin Highway 50, thence over Wisconsin Highway 50 to junction County Highway H, thence over County Highway H, to junction U.S. Highway 12, thence over U.S. Highway 12 to junction Illinois Highway 31, thence over Illinois Highway 31 to junction Ringwood Road, thence over Ringwood Road to junction Illinois Highway 120, thence over Illinois Highway 120 to the junction of Crystal Lake Blacktop Road, thence over Crystal Lake Blacktop Road to Crystal Lake, Ill., and return over the same route.

(3) Between Elkhorn, Wis. and Chicago-O'Hare International Airport, located at or near Chicago, Ill. serving all intermediate points: From Elkhorn, Wis., over U.S. Highway 11 to junction Wisconsin Highway 50, thence over Wisconsin Highway 50 to junction County Highway F, thence over County Highway F, to junction Wisconsin Highway 67, thence over Wisconsin Highway 67 to Fontana, Wis., return on Wisconsin High Highway 67 to junction Wisconsin Highway 50 thence over Wisconsin Highway 50 to junction U.S. Highway 12, thence over U.S. Highway 12 to junction Illinois Highway 68, thence over Illinois Highway 68 to junction Illinois Highway 53, thence over Illinois Highway 53 to junction Illinois Highway 194, thence over Illinois Highway 194 to junction Illinois Highway 594, thence over Illinois Highway 594 to the Chicago-O'Hare International Airport, located at or near Chicago, Ill., and return over the same route, and (4) Between Delavan, Wis. and the Chicago-O'Hare International Airport, located at or near Chicago, Ill., serving all intermediate points: From Delavan, Wis., over Wisconsin Highway 15 to junction U.S. Highway 12, thence over U.S. Highway 12 to junction Wisconsin Highway 50, thence over Wisconsin Highway 50 to junction Wisconsin Highway 67, thence over Wisconsin Highway 67 to junction U.S. Highway 14, thence over U.S. Highway 14 to junction Virginia Road, thence over Virginia Road to junction Illinois Highway 31, thence over Illinois Highway 31 to junction Illinois Highway 62, thence over Illinois Highway 62 to junction Barrington Road, thence over Barrington Road to junction U.S. Highway 90, thence over U.S. Highway 90 to junction Illinois Highway 194, and thence over Illinois Highway 194 to junction Illinois Highway 594, thence over Illinois Highway 594 to the Chicago-O'Hare International Airport, located at or near Chicago, Ill., and return over the same route.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Lake Geneva, Wis.

No. MC 142153 (Sub-No. 3), filed December 9, 1976. Applicant: DANNER'S INCORPORATED, 102 Bedford, Houston, Tex. 77012. Applicant's representative: John W. Carlisle, 4100 Greenbriar, Suite 215, Houston, Tex. 77098. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Passengers*, restricted to ship's officers, crew members, Company personnel and representatives engaged in and responsible for the operation, maintenance, repair and safety of ocean going ships or vessels, *and their baggage*; and (2) *detained persons*, including stowaways when moving under guard or in custody of applicant, *and their baggage*, (a) between Intercontinental Airport, located at Houston, Tex., Gulfport-Biloxi Municipal Airport, located at Gulfport-Biloxi, Miss., Ryan Airport, located at Baton Rouge, La., Greenville Municipal Airport, located at Greenville, Miss., Rio Grande Valley Airport, located at Brownsville, Tex., Moisant Airport, located at Metairie, La., Corpus Christi International Airport, located at Corpus Christi, Tex., Lake Charles Municipal Airport, located at Lake Charles, La., Jefferson County Airport, located at Beaumont, Tex., and Scholes Field, located at Galveston, Tex., on the one hand, and, on the other, the Gulfports of Houston Navigation District, Baytown-LaPorte, Galveston, Corpus Christi, Port Lavaca, Orange, Brownsville, Port Arthur, Beaumont, Freeport, Port Neches and Texas City, Tex.; Lake Charles, Baton Rouge and New Orleans, La.; Biloxi, Gulfport, Pascagoula and Greenville, Miss.; and (b) between the Gulfports of Houston Navigation District, Baytown-LaPorte, Galveston, Corpus Christi, Port Lavaca, Orange, Brownsville, Port Arthur, Beaumont, Freeport, Port Neches and Texas City, Tex.; Lake Charles, Baton Rouge and New Orleans, La.; Biloxi, Gulfport, Pascagoula and Greenville, Miss.

NOTE.—If a hearing is deemed necessary, the applicant does not specify a location.

BROKER APPLICATIONS

No. MC 130427, filed December 13, 1976. Applicant: WILLIAM V. AND GREGORY S. KITLEY, a Partnership, doing business as KITLEY BROTHERS EXCURSIONS, P.O. Box 14230, Opportunity, Wash. 99214. Applicant's representative: George R. LaBissoniere, 1100 Norton Building, Seattle, Wash. 98104. Authority sought to engage in operation, in interstate or foreign commerce, as a *broker* at Opportunity and Spokane, Wash., to sell or offer to sell the transportation of *passengers and their baggage*, in round trip, sightseeing and pleasure tours, by motor, rail, water, and air carriers, beginning and ending at points in Spokane County, Wash., and extending to points in the United States, including Alaska and Hawaii.

NOTE.—If a hearing is deemed necessary, the applicant requests that it be held at Spokane, Wash.

No. MC 130428, filed December 6, 1976. Applicant: FOUR SEASONS TRAVEL SERVICE, INC., 845 North Clinton, Defiance, Ohio 43512. Applicant's representative: A. Charles Tell, 100 East Broad Street, Columbus, Ohio 43215. Authority sought to engage in operation, in interstate or foreign commerce, as a *broker* at Defiance, Ohio, to sell or offer to sell the transportation of *individual passengers and groups of passengers, and their baggage*, in special and charter operations, in round-trip, all-expense tours, beginning and ending at points in Defiance, Henry, Paulding, Putnam and Williams Counties, Ohio, 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 Defiance, Ohio.

No. MC 130429, filed December 14, 1976. Applicant: CHARLES W. ALBERTSON, Route 2, Box 141-E, Beulaville, N.C., 28518. Applicant's representative: Charles W. Albertson (same address as applicant). Authority sought to engage in operation, in interstate or foreign commerce, as a *broker* at Beulaville, N.C., to sell or offer to sell the transportation of *passengers and their baggage* in the same vehicle with passengers, by motor,

rail, water, and air carriers, beginning and ending at points in Duplin County, N.C., and extending to points in the United States (except Alaska and Hawaii).

NOTE.—If a hearing is deemed necessary, the applicant requests that it be held at either Raleigh or Charlotte, N.C.

FINANCE APPLICATIONS

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 Sections 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 by February 22, 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-12938. (Amendment). (Cooper-Jarrett, Inc.—purchase—Sherer Freight Lines, Inc., Associated Transport, Inc., Thomas J. Cahill, trustee in bankruptcy), published in the August 26, 1976, FEDERAL REGISTER. Prior notice should have included: "Service is authorized to and from all intermediate points."

No. MC-F-13050. (Amendment) (J. B. Williams Express, Inc.—Purchase (portion)—National Transportation Co., d.b.a. National Transport 101, published in the December 23, 1976, FEDERAL REGISTER. Prior notice should exclude all authority except as follows: General commodities, with exceptions as a common carrier over regular routes between New Freedom, Pa., and junction U.S. Highways 1 and 9 near Woodbridge, N.J., serving all intermediate points in Pennsylvania with restrictions; General commodities with exceptions as common carrier over regular routes serving the plant site of P. H. Glatfelter Company at Spring Grove, Pa., as an off-route points in connection with carrier's otherwise authorized regular route operations between New Freedom, Pa., and junction U.S. Highways 1 and 9 near Woodbridge, N.J.

Alternate route operating convenience only; General commodities, except those of unusual value, those requiring special equipment, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those injurious or contaminating to other lading, between Newark, N.J., and Lancaster, Pa., in connection with carrier's presently authorized regular route operations between Lancaster, Pa., and Newark, N.J., over U.S. Highway 30, 1, and 9, serving no intermediate points: From Newark over U.S. Highway 22 to Allentown, Pa., thence over U.S. Highway 222 to Lancaster, and return over the same route, with restrictions; General commodities with exceptions as a common carrier over irregular routes between points in Middlesex, Somerset, and Union Counties, N.J., 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., with restrictions; no service may be performed between points in Rockland County, N.Y., on the one hand, and, on the other, points in Fairfield, Hartford, Middlesex, and New Haven Counties, Conn.; General commodities with exceptions as a common carrier over irregular routes between New York, N.Y., Philadelphia, Pa., and Camden, N.J., on the one hand, and, on the other, points in Union, Essex, Hudson, Bergen, Middlesex, Passaic, Mercer, Morris, and Somerset Counties, N.J., between Newark, N.J., on the one hand, and, on the other, points in Middlesex County, N.J.

No. MC-F-13065. Authority sought for purchase by Rio Grande Motor Way, Inc., 1400 West 52nd Avenue, Denver, Colo., 80221, of a portion of the operating rights and property of Arrow Auto Line, Inc., d.b.a. Arrow Auto Line, 3700 North First West, Price, Utah, 84501 and for acquisition by the Denver and Rio Grande Western Railroad Company, 1515 Arapahoe Street, One Park Central, P.O. Box 5482, Denver, Colo., 80217, of control of such rights through the purchase. Applicants' attorney: John S. Walker, Jr., P.O. Box 5482, Denver, Colo., 80217. Operating rights sought to be transferred: General commodities, with exceptions as a common carrier over regular routes between Price, Utah, and Sunnyside, Utah, service is authorized to and from all intermediate points, and the off-route points of Columbia and Horse Canyon, Utah; between Price, Utah, and Mohrland, Utah, service is authorized to and from all intermediate points. Vendee is authorized to operate as a *common carrier* in Utah and Colorado. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-13068. Authority sought for purchase by McVey Trucking, Inc., Rural Route 1, Oakwood, Ill. 61858, of the operating rights of Harry J. Patton and Carlos E. Brewer, a Partnership, d.b.a. Patton Trucking Co., Homer Ill. 61849, and for acquisition by Lloyd McVey and Norma McVey, both of Oakwood, Ill., 61858, of control of such rights through the purchase. Applicants' attorney: Clyde Meachum, 41 On The Mall, Danville, Ill., 61832. Operating rights sought to be transferred: *Sand and Gravel* as a *common carrier* over irregular routes from Vermillion and Warren Counties, Indiana to points in Champaign County, Ill.; *Gravel* from points in Fountain and Parke Counties, Indiana, to points in Champaign County, Ill; *Tile and Clay Products* from points in Morgan County, Indiana, to points in Champaign County, Ill.; *Coal*, from points in Clay County, Indiana, to points in Champaign County, Illinois; and *Livestock*, from points in Champaign and Vermilion Counties, Illinois, to Indianapolis and Terre Haute, Indiana; *Sand* and *Gravel*, from points in Fountain and Warren Counties, Indiana, to points in Piatt and DeWitt Counties, Illinois; *Building Brick*, from Cayuga, Montezuma and Brazil, Indiana, to points in Champaign County, Ill.; *Building Brick*, from points in Jefferson County, Kentucky, Polk, Warren, Dallas and Wapello Counties, Iowa, Jackson, Greene, and Lake Counties, Indiana, and St. Louis County, Missouri, to points in Ford, Iroquois, Champaign, Vermilion, Piatt, Douglas, Edgar, DeWitt and McLean Counties, Ill. Vendee is authorized to operate as a *contract carrier* in Illinois, Indiana, Iowa, Wisconsin, Ohio, Kentucky, Tennessee, Michigan, Missouri, Minnesota, Florida, New York and Texas and as a *common carrier* in Illinois, Indiana, Wisconsin, Ohio, Michigan, Minnesota, Iowa, Kentucky, Missouri, Tennessee, Florida, New York, and Texas. Application has been filed for temporary authority under Section 210a (b).

No. MC-F-13071. Authority sought for purchase by Gateway Transportation Co., Inc., 455 Park Plaza Drive, La Crosse, Wisc., 54601, of a portion of the operating rights of Roadway Express, Inc., 1077 George Boulevard, P.O. Box 471, Akron, Ohio, 44309, and for acquisition by estate of W. Leo Murphy, Eugene W. Murphy, John A. Murphy, and Michael P. Murphy, 1st Wisconsin Trust Co., Milwaukee, Wis., 300 Ocean Blvd., Palm Beach, Fla., 455 Park Plaza Dr., La Crosse, Wisc., and 10301 S. Harlem Avenue, Chicago, Ill., 60415 respectively, of control of such rights through the purchase. Applicants' attorneys: William O'Neill Turney, Suite 1010, 7101 Wisconsin Avenue, Washington, D.C., 20014 and F. Neil Aschemeyer, Vice President-Law and General Counsel, 455 Park Plaza Drive, La Crosse, Wisc., 54601. Operating rights sought to be transferred: General commodities, with exception as a common carrier over regular routes between Buffalo, N.Y., and Syracuse, N.Y., serving the intermediate point of Rochester, N.Y.; serving the intermediate point of Albany, N.Y., in connection with carrier's regular route operations presently authorized between Cleveland, Ohio, and New York, N.Y., serving all intermediate points in Ohio and those between Peekskill and New York, N.Y.; between junction U.S. Highways 62 and 20 at or near Big Tree, N.Y., and Crittenden, N.Y., serving all intermediate points; between Buffalo, N.Y., and Syracuse, N.Y., serving all intermediate points; between New York points, serving all intermediate points, as follows: from junction U.S. Highway 20 and New York Highway 78 at or near Depew, N.Y., over New York Highway 78 to Lockport, and return over the same route. From Buffalo over New York Highway 263 to Millersport, and return over the same route. From Buffalo over New York Highway 384 to Niagara Falls, and return over the same route. From Buffalo

over U.S. Highway 62 to Niagara Falls, and return over the same route.

From Le Roy over New York Highway 19 to Bergen, and return over the same. From Rochester over U.S. Highway 15 to East Avon, and return over the same route. From Rochester over New York Highway 31 (formerly portion New York Highway 2) to junction New York Highway 96 (formerly portion New York Highway 2), thence over New York Highway 96 to Waterloo, and return over the same route. From Rochester over New York Highway 31F (formerly portions New York Highways 33 and 33B) to Fairport, N.Y., thence over New York Highway 250 to junction New York Highway 96 (formerly New York Highway 2), and return over the same route. From Manchester over New York Highway 21 to Canandaigua, N.Y., thence over New York Highway 332 to junction New York Highway 96 (formerly New York Highway 2), and return over the same route. From Lyons over New York Highway 14 to Geneva, N.Y., thence over New York Highway 96A (formerly New York Highway 2A) to Ovid, N.Y., thence over New York Highway 96 (formerly New York Highway 2) to Interlaken, and return over the same route. From Port Byron over New York Highway 38 to Auburn, N.Y., thence over New York Highway 5 to junction New York Highway 31B, and return over the same route. From Syracuse over New York Highway 57 to Oswego (also from Syracuse over New York Highway 48 to Oswego) and return over the same route. From Syracuse over New York Highway 5 to junction New York Highway 365, thence over New York Highway 365 to Rome (also from Syracuse over New York Highway 48 to Oswego) and return over the same routes. From Syracuse over New York Highway 5 to junction New York Highway 365, thence over New York Highway 365 to Rome (also from Syracuse over New York Highway 298 to junction New York Highway 31, thence over New York Highway 31 to junction New York Highway 365, thence over New York Highway 365 to Rome), and return over the same routes.

Between Niagara Falls, N.Y., and Rochester, N.Y., serving the intermediate point of Lockport, N.Y.: from Niagara Falls over New York Highway 31 to Rochester, and return over the same route. Between Albany and Syracuse, N.Y., serving all intermediate points including off-route points within ten miles of the described routes, and those within ten miles of Syracuse, except points on New York Highway 5 west of Syracuse: From Albany over U.S. Highway 20 via Cazenovia, N.Y., to junction New York Highway 92, thence over New York Highway 92 to Syracuse, and return over the same route. From Albany over New York Highway 5 via Vernon, N.Y., to Syracuse, and return over the same route. From Vernon over New York Highway 234 to junction New York Highway 31, thence over New York Highway 31 to Cicero, N.Y., thence U.S. Highway 11 to Syracuse, and return over the same route. 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 not been filed for temporary authority under section 210a(b).

No. MC–F–13074. Authority sought for purchase by K. G. Moore, Inc., 16 Progress Avenue, Nashua, N.H., 03060, of the operating rights of Forest City Express Company, Brewery Street, P.O. Box 2572, Waterbury, Conn., 06720, and for acquisition by Robert F. Anderson, Jr., and Walter Anderson, both of 16 Progress Ave., Nashua, N.H., and James J. Anderson, of 583 Main St., Walpole, Mass., of control of such rights through the purchase. Applicants' attorneys: Robert G. Parks, 189 Neholden St., Needham, Mass., 02192 and Thomas W. Murrett, 342 N. Main St., W. Hartford, Conn., 06117. Operating rights sought to be transferred: Under a certificate of registration in Docket No. MC–15405 (Sub–No. 2), General commodities, as a common carrier beween all points in the State of Connecticut, over irregular routes and over described regular routes. Vendee is authorized to operate as a common carrier in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, and New Jersey. Application has been filed for temporary authority under section 210a(b).

NOTE.—MC–22988 (Sub-No. 10) is a directly related matter.

No. MC–F–13079. Authority sought for purchase by Matson Truck Lines, Inc., P.O. Box 328, 1407 St. John Avenue, Albert Lea, Minn., 56007, of a portion of the operating rights of Johnsrud Transport, Inc., Highway 9 West, P.O. Box 447, Cresco, Iowa, 52136, of control of such rights through the purchase. Applicants' attorneys: Val M. Higgins, 1000 First National Bank Building, Minneapolis, Minn., 55402 and Patrick E. Quinn, P.O. Box 82028, Lincoln, Neb., 68051. Operating rights sought to be transferred: *Steel sheets, steel coils, and steel blanks*, as a *common carrier* over irregular routes from Chicago, Ill.; and Milwaukee, Wis., to the facilities of Donaldson Company, Inc., at Cresco and Oelwein, Iowa; *butter and cheese*, except in bulk, from Cresco, Decorah, and Schley, Iowa, to points in Minnesota (except those in the Minneapolis-St. Paul commercial zone as defined by the Commission) and Sioux Falls, S. Dak., with restrictions. Vendee is authorized to operate as a common carrier in all the States in the United States including Alaska, (excluding Hawaii). Application has been filed for temporary authority under section 210a(b).

WATER CARRIER APPLICATION

Docket No. W–101 (Exemption Section 303(e)(2)). Authority sought for cancellation of the above-noted exemption in the name of Raymond International, Inc., P.O. Box 22718, Houston, Tex. 77027, and reissuance of same to Hoffman International Inc. (formerly Hoffman Rigging & Crane Service, Inc.), a motor carrier, 560 Cortland St., Belleville, N.J., 07109, controlled by Hary L. Hoffman, Jr., also of Belleville, N.J., 07109. Applicant's attorney: Morton E. Kiel, 5 World Trade Center, Suite 6193, New York, N.Y., 10048. Exemption sought to be cancelled and reissued: Transportation, in interstate or foreign commerce, as a water contract carrier (1) by derricks and/or barges and tugs from and to ports on the Atlantic and Gulf coasts of heavy or bulky articles such as tanks, boilers, airplanes, cracking chambers, machinery and similar pieces of freight, and (2) by towing vessels and derrick lighters of contractors' equipment and materials, consisting of steam shovels, pile driving rigs, trucks, bulldozers, ditching machines, caterpillar cranes, compressors, dredges, derrick lighters, and other miscellaneous heavy and bulky materials used in construction work between construction sites, along the Atlantic coast, on Long Island, N.Y., and along Long Island Sound, Block Island Sound, and their tributary waterways, Narrangansett Bay, Providence River, and in the area defined in the order of March 26, 1941, in Ex Parte No. 140, *Determination of the Limits of New York Harbor and Harbors Contiguous Thereto*.

NOTE (1): This transaction is related to the purchase transaction previously described on November 8, 1972 in the Federal Register at No. MC–11701 wherein Hoffman International, Inc. (formerly Hoffman Rigging & Crane Service, Inc.), a motor carrier, proposed to purchase the certificated water carrier operating rights and certain other property of Raymond International Inc. Authority to acquire the said certificated rights and property was granted by order of the Commission, Division 3, acting as an Appellate Division, served November 8, 1973.

NOTE (2): To facilitate processing of this proceeding, copies of all protests should be served upon applicants and their representatives.

NOTE (3): (a) The transaction proposed in No. W–101 will be processed under the modified procedure. Applicants have been directed to file opening verified statements in support of the application within 30 days or less of the date of this notice. Protestants must file their verified statements in opposition to the application within 50 days or less of the date of this notice. Applicants must file verified statements in reply within 65 days or less of the date of this notice.

(b) All protesting parties as well as applicants must comply with applicable provisions of section 1100.45(b), 1100.46(b), and 1100.47–1100.54, inclusive of the Commission's General Rules of Practice, relating to modified procedure, except that the original and one copy of any statement made pursuant to section 1100.51 shall be filed with the Commission.

(c) Copies of any verified statements in opposition must be served upon applicants and their representative, and a copy of each statement filed with the Commission shall so certify. Similarly, applicants have been directed to serve copies of their verified statements upon protestants.

(d) Except for good cause shown, preliminary motions and requests for cross-

examination of witnesses or for other relief will not be acted upon prior to the date on or before which all verified statements are required to be filed.

ABANDONMENT APPLICATIONS

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 30 days after this FEDERAL REGISTER publication unless the instructions set forth in the notices are followed.

[Docket No. AB-1 (Sub-No. 7)]

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY—ABANDONMENT BETWEEN STANWOOD AND TIPTON, IOWA

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 October 28, 1976, a finding, which is administratively final, was made by the Commission, Division 3, 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 Chicago and North Western Transportation Company of its branch line beginning at milepost 0.34 at Stanwood, Iowa, and extending in a southerly direction to the end of the line at milepost 9.14 at Tipton, Iowa, a distance of approximately 8.2 miles, all in Cedar County, Iowa. A certificate of abandonment will be issued to the Chicago and North Western Transportation Company based on the above-described finding of abandonment, 30 days after publication of this notice, unless within 30 days from the date of publication, 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 certficate 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 as 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-2 (Sub-No. 5)]

LOUISVILLE AND NASHVILLE RAILROAD COMPANY ABANDONMENT BETWEEN COLESBURG AND HOHENWALD, IN DICKSON, HICKMAN AND LEWIS COUNTIES, TENNESSEE

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 May 17, 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 May 17, 1976, a finding, which is administratively final, was made stating that, subject to the conditions for the protection of railway employees prescribed by the Commisison in *Chicago, B. & Q. R. Co., Abandonment*, 257 I.C.C. 700, and for public use as set forth in said order, the present and future public convenience and necessity permit the abandonment by the Louisville and Nashville Railroad Company of the line of railroad which turns out of the Louisville and Nashville's main line at Colesburg, Dickson County, Tennessee, and extends from milepost 2 to just south of milepost 52 near Hohenwald, Lewis County, Tennessee, a distance of about 50.5 miles. A certificate of abandonment will be issued to the Louisville and Nashville Railroad Company based on the above-described finding of abandonment, 30 days after publication of this notice, unless within 30 days from the date of publication, 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-2 (Sub-No. 9)]

LOUISVILLE AND NASHVILLE RAILROAD COMPANY ABANDONMENT BETWEEN FRIENDSVILLE AND GREENBACK, IN BLOUNT AND LOUDON COUNTIES, TENNESSEE

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 November 15, 1976, a finding, which is administratively final, was made by the Commission, Review Board Number 5, 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 Louisville and Nashville Railroad Company of the line of railroad extending from railroad milepost KT296 near Friendsville, Tennessee, in a south southwesterly direction to milepost KT304.5 near Greenback, Tennessee, a distance of 8.5 miles, in Blount and Loudon Counties, Tennessee. A certificate of abandonment will be issued to the Louisville and Nashville Railroad Company based on the above-described finding of abandonment, 30 days after publication of this notice, unless within 30 days from the date of publication, 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-18 (Sub-No. 23)]

CHESAPEAKE AND OHIO RAILWAY COMPANY ABANDONMENT BETWEEN FOREST AND MCVEY IN RALEIGH COUNTY, WEST VIRGINIA

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 November 16, 1976, a finding, which is administratively final, was made by the Commission, Commissioner Brown, 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 Chesapeake and Ohio Railway Company of a portion of its Raleigh and Southwestern Subdivision from Valuation Station 280+80.5 at or near Forest to Valuation Station 328+55 at end of line at or near McVey, a distance of approximately 0.90 mile, all in Raleigh County, West Virginia. A certificate of abandonment will be issued to the Chesapeake and Ohio Railway Company based on the above-described finding of abandonment, 30 days after publication of this notice, unless within 30 days from the date of publication, 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-42 (Sub-No. 1)]

AROOSTOOK VALLEY RAILROAD COMPANY—ABANDONMENT BETWEEN CARSON SIDING AND SWEDEN SIDING, IN AROOSTOOK COUNTY, MAINE

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 November 15, 1976, a finding, which is administratively final, was made by the Commission, Review Board Number 5, 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, and for public use as set forth in said order, the present and future public convenience and necessity permit the abandonment by the Aroostook Valley Railroad Company of the line of railroad extending from milepost 15.9 near Carson Siding, Maine, in a northerly direction to the end of line at Sweden Siding, Maine, a distance of approximately 7.2 miles. A certificate of abandonment will be issued to the Aroostook Valley Railroad Company based on the above-described finding of abandonment, 30 days after publication of this notice, unless within 30 days from the date of publication, 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.

OPERATING RIGHTS APPLICATION(S) DIRECTLY RELATED TO FINANCE PROCEEDINGS

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 by February 22, 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 60430 (Sub-No. 23), filed December 9, 1976. Applicant: FRIEDMAN'S EXPRESS, INC., P.O. Box 480, Wilkes Barre (Dorrance), Pa. 18703. Applicant's representative: George A. Olsen, 69 Tonnele Ave., Jersey City, N.J. 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *General com-*

modities (except household goods as defined by the Commission, commodities in bulk, those of unusual value, Classes A and B explosives, and those requiring special equipment), from points in Schuylkill County, Pa., to Reading, Pa., restricted against the transportation of shipments destined to Reading, Pa.; and (2) *general commodities* (except Classes A and B explosives, commodities in bulk, and those requiring special equipment), (a) between Orwigsburg, Pa., on the one hand, and, on the other, Landingville, Adamsdale, and Auburn, Pa., and points in Pennsylvania within 10 miles of Orwigsburg; and (b) between Landingville, Pa., on the one hand, and, on the other, points within 10 miles of Orwigsburg; and (3) between Schuylkill Haven, Pa., and Orwigsburg, Pa.

NOTE.—The purpose of this filing is to eliminate the gateway of Schuylkill Haven, Pa. and to indicate applicant's intent to tack at that point to provide a through service to Reading, Pa. This matter is directly related to a Section 5(2) finance proceeding in MC–F–13056, published in the FEDERAL REGISTER issue of December 23, 1976. If a hearing is deemed necessary, the applicant requests it be held at Wilkes Barre, or Harrisburg, Pa.

No. MC 68860 (Sub-No. 24), filed December 10, 1976. Applicant: RUSSELL TRANSFER, INCORPORATED, 444 Glenmore Drive, Salem, Va. 24153. Applicant's representative Daniel B. Johnson, Suite 1123 Munsey Bldg., 1329 E St., N.W., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages in truckload lots, empty malt beverage containers, farm products, farm machinery, such bulk commodities* as sand, gravel, coal, and coke, and *building construction, mining and road machinery materials, and equipment*, between points in Meigs, Gallia and Lawrence Counties, Ohio, and Wayne, Cabell, Mason, Jackson, Putnam, and Kanawha Counties, W. Va., on the one hand, and, on the other, points in Ohio, West Virginia, and those points in that part of Kentucky east of a line beginning at Covington, Ky., and extending along U.S. Highway 25 to Lexington, Ky., thence along U.S. Highway 27 to the Kentucky-Tennessee State line, including points on the indicated portions of the Highway specified.

NOTE.—The purpose of this application is to tack applicant's lead Certificate in No. MC 68860 and its Sub-No. 7 with the authority sought above, at Charleston, W. Va., and concurrently eliminate the gateway there, so as to provide a through service of the commodities requested above between South Carolina, on the one hand, and, on the other, the above described radial territory. This is a matter directly related to a Section 5(2) finance proceeding in MC–F–13054 published in the FEDERAL REGISTER issue of December 23, 1976. If a hearing is deemed necessary, the applicant requests it be held at either Roanoke, Va.; Charleston, W. Va.; or Washington, D.C.

No. MC 120679 (Sub-No. 2), filed December 7, 1976. Applicant: JOHN A. JUNGERMANN & SON, INC., 215 West Hoffman Ave., P.O. Box 428, Lindenhurst, N.Y. 11757. Applicant's representative: Martin Werner, 2 West 45 Street, New York, N.Y. 10036. 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 New York City, N.Y., on the one hand, and, on the other, points in Nassau and Suffolk Counties, N.Y.; and (b) between points in Nassau and Suffolk Counties, N.Y. The purpose of this filing is to convert applicant's Certificate of Registration to a Certificate of Public Convenience and Necessity; (2) *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in Nassau and Suffolk Counties, N.Y., on the one hand, and, on the other, points in Passaic, Bergen, Essex, Union and Hudson Counties, N.J. The purpose of this filing is to indicate applicant's intent to tack at and eliminate the gateway of New York City, N.Y. to provide a through service to Passaic, Bergen, Essex, Union and Hudson Counties, N.J.

NOTE.—This is a matter directly related to a Section 5(2) finance proceeding in MC–F–13058 published in the FEDERAL REGISTER issue of January 6, 1977. If a hearing is deemed necessary, the applicant requests it be held at New York, N.Y.

No. MC 142761, filed November 8, 1976. Applicant: HEMMINGS MOVING & STORAGE CO., INC., P.O. Box 96, Chester, N.J. 07930. Applicant's representative: Edward F. Bowes, P.O. Box 1409, 167 Fairfield Road, Fairfield, N.J. 07006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, (1) between points in Virginia and West Virginia, on the one hand, and, on the other, points in Connecticut, Massachusetts, New Hampshire, Rhode Island, Vermont, and points in New York on and east of Interstate Highway 81; and (2) between points in Michigan, Ohio and Pennsylvania, on the one hand, and, on the other, points in Connecticut, Massachusetts, New Hampshire, Rhode Island and Vermont.

NOTE.—The purpose of this filing is to eliminate the gateway of Washington, N.J., and points within 25 miles thereof. This matter is related to a Section 212(b) transfer proceeding in MC–FC–76807, published in the FEDERAL REGISTER issue of January 6, 1977. Common control may be involved. If a hearing is deemed necessary, the applicant does not specify a location.

MOTOR CARRIER ALTERNATE ROUTE DEVIATIONS

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 by February 22, 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–2900 (Deviation No. 32), RYDER TRUCK LINES, INC., 2050 Kings Road, Jacksonville, Fla., filed January 4, 1977. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, (with certain exceptions) over a deviation route as follows, From Kansas City, Mo., over U.S. Highway 50 to junction U.S. Highway 65, thence over U.S. Highway 65 to junction U.S. Highway 60, thence over U.S. Highway 60 to junction U.S. Highway 63, thence over U.S. Highway 63 to Memphis, Tenn., 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 Kansas City, Mo., over U.S. Highway 40 to St. Louis, Mo., thence over Illinois Highway 3 to junction U.S. Highway 51, thence over U.S. Highway 51 to Memphis, Tenn., and return over the same route.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc. 7–1792 Filed 1–19–77; 8:45 a.m.]

federal register

FRIDAY, JANUARY 21, 1977

PART II



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

■

HEALTH PLANNING

Capital Expenditure Review, Certificate of Need, and Review of New Institutional Health Services

Title 42—Public Health

CHAPTER 1—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

HEALTH PLANNING

Capital Expenditure Review, Certificate of Need, and Review of New Institutional Health Services

On March 19, 1976, a Notice of Proposed Rulemaking was published in the FEDERAL REGISTER (41 FR 11688) proposing to amend Title 42, Code of Federal Regulations, as follows:

1. To add to Part 122 thereof a new Subpart D, entitled "Procedures and Criteria for Review of New Institutional Health Services".

2. To add to Subchapter K thereof a new Part 123, entitled "State Health Planning and Development Agencies", and to add to such new Part 123 the following new subparts: Subpart A, entitled "Definitions"; Subpart B, entitled "Designation of State Health Planning and Development Agencies"; Subpart C, entitled "Grants to State Health Planning and Development Agencies"; Subpart D, entitled "Statewide Health Coordinating Councils"; and Subpart E, entitled "Certificate of Need and Review of New Institutional Health Services."

3. To revise Part 100 thereof, entitled "Limitation on Federal Participation for Capital Expenditures".

The regulations under items 1 and 2 above were proposed as part of the Secretary's implementation of Title XV of the Public Health Service Act ("the Act"), added by Pub. L. 93-641. The revision of Part 100 is in part made necessary by Pub. L. 93-641, and in part results from the Secretary's experience in carrying out his responsibilities under section 1122 of the Social Security Act.

Interested persons were afforded the opportunity to participate in the rulemaking process by submitting written comments concerning the proposed regulations no later than May 3, 1976. More than 3,000 comments were received during the comment period.

Because of the large number of comments, and the complex issues raised therein, an extended period was needed to analyze the comments and revise all of the proposed regulations accordingly. The Secretary determined, however, for the reasons set forth in the FEDERAL REGISTER of June 3, 1976, (41 FR 22524), that it was neither necessary nor wise to delay the implementation of Title XV as it related to the designation and funding of State Health Planning and Development Agencies (hereinafter "State Agencies") until such time as the comments received in response to the notice of proposed rulemaking of March 19, 1976, could be analyzed. Therefore, on June 3, 1976, the Secretary issued interim regulations which constituted the bare minimum necessary under the statute to enable the Secretary to go forward with the designation and funding of the State Agencies. Only Subparts A, B, C and D of Part 123 were made effective in this manner.

The Department's analysis of the comments made pursuant to the proposed rulemaking on March 19, 1976, continues with respect to Subparts A, B, C, and D of Part 123 and Part 100, although it has been completed with respect to Subpart E of Part 123 and Subpart D of Part 122. A summary of the comments and recommendations, and the Secretary's conclusions in light of them, as well as a description of other changes made in these two subparts which result from further Departmental consideration, are set forth below.

A few comments were received expressing general dissatisfaction with Pub. L. 93-641, which added Titles XV and XVI to the Public Health Service Act (hereinafter, the Act) or with the proposed regulations; the commenters, however, were not specific in their opposition. The Secretary notes that repeal or amendment of any Federal statute is a matter for the Congress to consider. The Secretary has the responsibility to carry out the Act and cannot change or delete any of the requirements therein.

Because of the similarity in the content and structure of Subpart D, Part 122, and Subpart E, Part 123, many individual comments addressed points included in both subparts or raised questions regarding aspects of one subpart which affected aspects of the other subpart. Therefore, this Preamble is organized to reflect this situation. A Table of Contents is set forth below to facilitate the reader's understanding of this organization. The Table should alert the reader to look for information on subsections in more than one location under the appropriate main subpart heading. Also, commenters did not address every section or subsection of the proposed regulations; therefore, not every numbered section of the regulations will be found in the Preamble's Table of Contents.

ORGANIZED TABLE OF CONTENTS TO PREAMBLE

Comments of a General Nature.

Comments on Specific Portions of the Regulations.

§ 122.301 and § 123.401 Definitions.

§ 122.303 and §123.403 General.

§ 122.304 and § 123.404 New institutional health services subject to review.

§ 123.405 Enforcement.

§ 122.305 and § 123.406 Adoption and public notice of review procedures and criteria by health systems agencies and State Agencies.

§ 122.305 Adoption and public notice by health systems agencies.

§ 123.406 Adoption and public notice by State Agencies.

§ 122.306 Procedures for health systems agency review; general comments.

§ 123.407 Procedures for State Agency review; general comments.

§ 122.306(a) and § 123.407(a) Procedures for health systems agency and State Agency review; general comments.

§ 123.407(a) Procedures for State Agency review; delegation of functions.

§ 122.306(a)(1) and § 123.407(a)(1) Notification of the beginning of a review by health systems agencies and State Agencies.

§ 122.306(a)(1) Notification of the beginning of a review by health systems agencies and State Agencies.

§ 122.306(a)(2) and § 123.407(a)(2) Health systems agency and State Agency schedules for reviews.

§ 122.407(a)(2) State Agency schedules for reviews.

§ 123.306(a)(2)(i) Health systems agency schedules for reviews.

§ 123.306(a)(3) and § 123.407(a)(3) Submission of information by persons subject to review to health systems agencies and State Agencies.

§ 123.306(a)(3) Submission of information to health systems agencies.

§ 123.407(a)(3) Submission of information to State Agencies.

§ 122.306(a)(4) and § 123.407(a)(4) Submission of periodic reports by persons subject to review to health systems agencies and State Agencies.

§ 122.306(a)(5) and § 123.407(a)(5) Provision for written findings by health systems agencies and State Agencies.

§ 122.306(a)(5) Provision for written findings by health systems agencies.

§ 122.306(a)(7) and § 123.407(a)(7) Provision for public hearing in the course of agency review by health systems agencies and State Agencies.

§ 122.306(a)(7) Provision for public hearing in the course of agency review by health systems agencies.

§ 122.407(a)(7) Provision for public hearing in the course of agency review by State Agencies.

§ 122.306(a)(8) and § 123.407(a)(8) Provision for public hearing for review of health systems agency and State Agency decisions.

§ 122.306(a)(8) Provision for public hearing for review of health systems agency decisions.

§ 123.407(a)(8) Provision for public hearing for review of State Agency decisions.

§ 123.407(a)(9) Appeal of State Agency decisions requested by health systems agencies.

§ 123.407(a)(9) and (10) Appeals of State Agency decisions.

§ 123.407(a)(10) Appeal of State Agency decisions requested by proponent.

§ 123.407(a)(11) State Agency decisions inconsistent with health systems agency plans.

§ 123.407(a)(12) State Agency reports of reviews.

§ 122.306(a)(9) Health systems agency reports of reviews.

§ 122.306(a)(10) Public access to health systems agency material.

§ 123.407(a)(13) Public access to State Agency material.

§ 122.306(a)(11) and § 123.407(a)(14) Letters of intent for construction projects.

§ 122.306(b) and § 123.407(b) Procedures for different types of reviews.

§ 122.307 and § 123.408 Exceptions to the use of procedures.

§ 122.307 Exceptions to the use of procedures for health systems agencies.

§ 122.308 and § 123.409 Criteria for health systems agency and State Agency reviews: general comments.

§ 122.308(a)(1) and § 123.409(a)(1) Relationship of services reviewed to plans.

§ 122.308(a)(2) and § 123.409(a)(2) Relationship of services reviewed to long range development plans.

§ 122.308(a)(3) and § 123.409(a)(3) Need for such services.

§ 122.308(a)(4) and § 123.409(a)(4) Availability of alternatives.

§ 122.308(a)(5) and § 123.409(a)(5) Financial feasibility.

§ 122.308(a)(6) and § 123.409(a)(6) Relationship of proposed services to existing system.

§ 122.308(a)(7) and § 123.409(a)(7) Availability of resources.
§ 122.308(a)(8) and § 123.409(a)(8) Relationship of proposed services to ancillary services.
§ 122.308(a)(9) and § 123.409(a)(9) Special needs of providers serving more than one health service area.
§ 122.309(a)(10) and § 123.409(a)(10) Special needs of HMOs.
§ 122.308(a)(11), and § 123.409(a)(11) Special needs of research projects.
§ 122.308(a)(12) and § 123.409(a)(12) Construction projects.
§ 122.308(a)(12)(i) and § 123.409(a)(12)(i) Costs and methods of proposed construction.
§ 122.308(b) and § 123.409(b) Criteria for different types of reviews.
§ 122.309 and § 123.410 Inpatient facilities, required findings; general comments.
§ 122.309(a) and § 123.410(a) Alternatives to inpatient services.
§ 122.309(b) and § 123.410(b) Alternatives to new construction.
§ 122.309(c) and § 123.410(c) Problems in obtaining proposed types of service.
§ 122.309(d) and § 123.410(d) Consistency with other State plans for long term care.

COMMENTS OF A GENERAL NATURE

One commenter questioned both the constitutionality and legality of the vesting of "regulatory" authority in a nongovernmental entity such as a private, nonprofit health systems agency. However, with respect to the review of new institutional health services, each HSA is obliged to serve in an advisory capacity to the State Agency by making recommendations to it. It does not make final decisions of a regulatory nature.

Many comments were received with respect to the scope of coverage of a State's certificate of need program (required by section 1523(a)(4)(B) of the Act) and program of review of new institutional health services (required by section 1523(a)(5) of the Act). Both programs are required to provide for the review of new institutional health services, which are defined in section 1531(5) of the Act as the health services provided in or through health care facilities or HMOs. The principal difference is that § 123.405, *Enforcement*, applies only to the certificate of need programs.

One commenter felt that a State Agency could not perform the review of new institutional health services as required in the proposed regulations without also being required to perform functions relating to the establishment of the State certificate of need program. Several commenters suggested that State Agency review of new institutional health services should be deleted as a mandated function.

It is anticipated that in the final regulation of Part 123, Subpart B, the Secretary will require that the State Agency begin its review of new institutional health services (section 1523(a)(5) of the Act) during the period of conditional designation. While the scope of this review function is the same as that for the certificate of need program (section 1523(a)(4)(B) of the Act), this function is essentially a planning function, not requiring any sanction where there is a finding that a proposed new institutional health service is not needed, whereas the certificate of need function is essentially regulatory, requiring that the State have sanctions which prevent the offering or development of proposed new institutional health services found not to be needed. Thus, in keeping with the legislative history of section 1523(a)(5), it is anticipated that the Secretary will require that State Agencies assume this function as soon as possible.

The Secretary does not intend, however, that the States be required to seek State statutory authority to assume this function. The Secretary believes that the conduct of reviews under section 1523(a)(5), as a planning and sanctionless function, will not require additional State legislative authority. The Secretary is aware that some State Agencies will not have authority to enforce a requirement that health care facilities and HMOs submit their proposed new institutional health services for review; accordingly, the Secretary will accept as adequate performance of this function a State program which calls for the filing of appropriate applications and which enforces such a requirement to the extent that it may do so under existing statutory and administrative authority.

The Secretary notes that in many States, reviews within the scope of section 1523(a)(5) are already being performed; for example, reviews under section 1122 of the Social Security Act and under existing certificate of need programs, and reviews pursuant to Office of Management and Budget Circular A-95. However, if the procedures used in conducting these review programs are inconsistent with the procedures required by § 123.407, they must, to the extent that the reviews are to fulfill the requirements of section 1523(a)(5), be modified so as to be consistent, or an exception must be sought and received from the Secretary under § 123.408; if the procedures used in conducting these reviews do not include all the procedural steps required by § 123.407, then either the missing steps must be added, or equivalent steps added and an exception sought and received from the Secretary under § 123.408.

Several commenters expressed the opinion that the regulation was too detailed and burdensome for an HSA to implement without detracting substantially from its required planning function. In developing this regulation, the Secretary has added to the language found in the statute only in those cases where clarification was found to be necessary or where substance needed to be given to a minimum requirement. The Secretary has taken cognizance of the fact that the planning function is initially of primary importance through the development of schedules for the gradual assumption of functions which emphasize the planning function early in this process. The functions of review of proposed new institutional health services are, however, important functions in the health planning and resources development process and cannot be delayed indefinitely.

A comment suggested that the definitions pertaining to Title XV should be consolidated in one place. This may happen at a later time. However, since the regulations which implement Title XV are not all being published at one time, and since some readers may have interest only in a particular Part or Subpart of the regulations, the definitions appear with the Part or Subpart where they are used and are repeated when necessary for ease of reference.

Many commenters requested a clarification of the roles and relationships of the HSA and State Agency, particularly with respect to the development of procedures and criteria for the conduct of reviews of new institutional health services as required by § 122.305, § 122.306, § 123.407. The commenters were divided in their opinion as to which agency, the HSA or State Agency, should be the controlling one. The roles of these respective agencies are defined by the functions which they are required by the statute to perform. In the case of the review of new institutional health services, the relationship is also a consequence of function: the HSA is to recommend (§ 122.302), and the State Agency is to decide (§ 123.402(a)(2)). With respect to the development of procedures and criteria, section 1532 of the Act (and § 122.305 and § 123.406 of these regulations) directs each agency separately to follow procedures and apply criteria developed and published by that agency. The Secretary is sympathetic to the opinions of those commenters who have urged that the development process, particularly with respect to the procedures to be used, should be a coordinated one. However, the Secretary has chosen not to mandate such coordination in these regulations. It should be noted, however, that final regulations for HSAs (at § 122.107(c)(14)) provide that HSAs shall make recommendations "in accordance with procedural requirements developed by the State Agency."

The Secretary's support of efforts at coordination between HSAs and State Agencies has led him to delete from § 122.305(a) and § 123.406(a) of the proposed regulations the requirement that these agencies adopt procedures and criteria for review within three months of designation. The regulation now simply requires that HSAs and State Agencies adopt such procedures and criteria prior to the time they begin their review of new institutional health services. It is expected that this flexibility will be used by HSAs and State Agencies to establish the necessary coordinative arrangements.

A commenter requested that language be added such that the provision of public notice and use by an HSA of review procedures and criteria be in accordance not only with the appropriate sections of the regulation, but also be "In accordance with applicable State law not inconsistent with this subpart." This addition has not been made since HSAs are, in any case, bound by applicable State law which is not inconsistent with Federal law and regulations.

A few comments were received stating that the amount of Federal funds which HSA will receive is inadequate to perform these (and other) functions. The Secretary is aware that the level of funding as set forth in the FEDERAL REGISTER, September 21, 1976 (41 FR 41089) is short of what many regard as desirable, and the Secretary will be carefully monitoring the ability of these agencies to perform their functions adequately within the limitations of the available resources.

Many commenters expressed the opinion that execution of the functions required of an HSA, particularly with respect to the application of the review criteria found at § 122.308, would not be possible without extensive technical assistance to these agencies. The Secretary realizes that all agencies will not begin operations at the same level of expertise, and, therefore, some will not be able to perform this function as well or with the same thoroughness as others. The Secretary is required by section 1533 of the Act to provide agencies with the assistance necessary to perform their functions properly, and is committed to providing this assistance in a timely and useful manner. This will occur both through the provision of materials developed or otherwise made available by the Secretary and through the funding of the centers for health planning, required by section 1534 of the Act; in each of the Department's ten regions. In addition, the HSAs have expertise available to them through such other mechanisms as surveying the published literature, contracting for special expertise, utilizing the experience and training of members of their governing bodies and other persons in the community who may volunteer their services to the HSA, and making use of services available through the National Health Planning Information Center.

Many comments were received requesting clarification or further definition of various terms and expressions used in the regulation. It is important to make clear that where terms are used either in these regulations, or the related regulations regarding HSAs (42 CFR 122) they can, as needed, be given further definition by State Agencies and HSAs. These explications must, however, be consistent with the statute and Federal regulation.

Two commenters contended that the scope of coverage of new institutional health services review, §§ 122.304 and 123.404, exceeded statutory authority. One contended that the definition of "health care facility" in these regulations is required to be identical with that in the section 1122 regulation as it was at the time of enactment of Pub. L. 93-641 and the other contended that review is limited to only those cases where a capital expenditure is proposed. These interpretations are contrary to both the language of the statute and the written record of Congressional intent. Section 1531(5) of the Act defines the term institutional health services as

> Health services provided through health care facilities and health maintenance organizations (as such facilities and organizations are defined in regulations prescribed under section 1122 of the Social Security Act) and includes the entities through which such services are provided.

If the Congress had intended simply to adopt the definitions of the terms contained in the section 1122 regulation in effect at the time of enactment, it could have done so by repeating these definitions verbatim, rather than referring generally to the definitions. Moreover, the legislative history of section 1531(5) indicates the Congressional intent that the definition of these terms for purposes of Title XV be subject to future revisions of the regulations under section 1122. As stated in the Report of the House Committee on Interstate and Foreign Commerce on this legislation

> The committee has chosen to key the definitions of "institutional health service" to the definition in regulations of facilities and organizations reviewable under section 1122 of the Social Security Act and to allow a measure of flexibility in the definition of institutional health services.

The stated Congressional intent is to allow flexibility in the definitions, as well as to assure their consistency. The Secretary has concluded that the definition of "health care facility" in § 100.102 of the section 1122 regulations may be amended and that this amended definition, as set forth in § 122.301(b) and § 123.401(b), is applicable to the review of new institutional health services. Accordingly, while a full analysis of comments on the March 19, 1976, proposed amendments to the regulations under section 1122 (Part 100) has not been completed, the Secretary hereby amends 42 CFR 100.102(e), the definition of "health care facility."

With respect to whether the review of new institutional health services must be limited to the review of capital expenditures as under the section 1122 program, it is pointed out, that the only statutory link to the section 1122 review program is through the definitions of health care facility and health maintenance organization (HMO). The term "institutional health services," as defined in section 1531(5) of the Act, is in no way limited to capital expenditures.

One commenter asked for clarification of the Secretary's position with respect to a State charging fees for the processing of certificate of need applications. The commenter argued that a fee would be inappropriate since Federal funds will be used to support the review function. Nothing in these regulations prohibits the charging of an application fee, although the Secretary encourages any State which chooses to do so to set the amount of the fee at a level which will not impede market entry. However, the regulation does specifically prohibit the imposition of fees specifically for public hearings during the course of, or after, agency reviews (see § 122.306(a) (7) and (8) and § 123.407(a) (7) and (8)). The Secretary also notes that revenues or projected revenues from such application fees must be reported to him by the State Agency.

A few commenters questioned the required use, as set forth at § 122.308(a) (1) and § 123.409(a) (1), of the Health System Plan (HSP) and Annual Implementation Plan (AIP) in the review of new institutional health services. Some noted that there may not exist an HSP and an AIP at the time the review of new institutional health services begins, and two commenters claimed that it would be improper to conduct these reviews in the absence of such plans. The Secretary notes that section 1532 of the statute and § 123.409 of the regulation specify that the relationship of a proposed new institutional health service to the HSP and AIP is only one of several criteria to be used in conducting these reviews. Although it would be inconsistent with the purpose of the statute for a State to permit the unrestricted development of new institutional health services within that State pending development of HSPs or AIPs, plans and criteria with respect to the need for health services and facilities already exist in many States and communities. The Secretary encourages the State Agencies and HSAs for this purpose to adopt as appropriate, and utilize as necessary, the plans and criteria of their predecessor agencies, i.e., comprehensive health planning agencies.

Another commenter suggested amending the regulation to require the State Agency to develop plans and criteria which pertain to a specific health service prior to undertaking a review of a proposal to provide that health service. The Secretary points out that the existence of specific plans and criteria for each type of proposal may be desirable, but may not be possible. The important consideration is that the proponent of a new health service should have access in advance to the standards by which his proposed health service will be judged, not that those standards be so specific as to apply only to his proposed type of health service.

One commenter requested the addition of language which would require that State Agency procedures and criteria (§ 123.407 and § 123.409 respectively) be "in conformance with State law not inconsistent with Federal law." The commenter's reason for requesting this addition was not stated. If the purpose was to clarify that the State Agency is bound by State law, the addition of such language to the regulation is not necessary, since this is indisputably the case. If, however, the purpose of the proposed language is to nullify those requirements of the Federal regulation which add to the language of the statute but which may be contrary to State law, the Secretary notes that there is already in the regulation, at § 123.408, a process for the State to request exceptions to the required procedures when there is sufficient reason to do so. Incompatability of the requirement with present State law may be a reason that a State would wish to initiate the process set forth in § 123.408.

One commenter suggested requiring that Professional Standards Review Organizations (PSROs) be consulted on all

decisions which require medical judgment. The Secretary is not requiring that those organizations be so consulted, since the responsibility for making the decision with respect to a proposed new institutional health service rests with the State Agency, and the responsibility for making recommendations to the State Agency is with the HSA. The utilization of the PSRO for advice in this area of expertise, however, is a proper subject for the agreement required by 42 CFR § 122.107(c)(10) between the HSA and each appropriate PSRO.

One respondent felt that the emphasis in these subparts on the review of "new" services appears to preclude review of existing services and, thus, impairs the capability of the HSA and State Agency to have a constructive impact on the health care delivery system. These subparts, however, are issued to implement only the sections of the Act pertaining to "reviews of new institutional health services" (section 1513(f) of the Act for HSAs and sections 1523(a)(4) and 1523(a)(5) of the Act for State Agencies and to "other reviews" of proposed health services conducted by HSAs (see section 1532(a) of the Act and § 122.302). In fact, HSAs will necessarily review existing health services in the course of analyzing data pursuant to section 1513(b)(1), and developing the HSP and AIP required in sections 1513(b)(2) and 1513(b)(3). State Agencies are likely to find a review of existing health services crucial to obtaining the information needed to prepare a preliminary State Health Plan and to make determinations of need pursuant to sections 1523(a)(4) and 1523(a)(5) of the Act. In addition, the Act requires HSAs (in section 1513(g)) and State Agencies (in section 1523(a)(6)) periodically to review existing services for appropriateness; this function will be addressed in future regulations.

A commenter suggested that the Secretary should develop a comprehensive study to evaluate the effectiveness of certificate of need review and its effect on the health care system. The commenter requested that undue reliance not be placed on the certificate of need process until the results of the study were available. The Secretary has previously sponsored limited studies of the effects of existing State certificate of need programs and will continue to analyze the effectiveness of these programs as they are modified by the States to meet Federal requirements. Additionally, the Secretary does not agree that undue reliance is being placed on this regulatory approach to improvement of the health care system, which is one of several regulatory mechanisms required by Title XV of the Act.

A commenter asked that the Secretary define the term "plan," since apparently there is some confusion as to the type of plan which would be needed for the review of new institutional health services. Section 1532(c)(1) of the statute and § 122.308(a)(1) and § 123.409(a)(1) of the regulations require that both the HSA and the State Agency consider the relationships of the proposed new institutional health service to the appropriate HSP and AIP, if any. The Secretary published in the FEDERAL REGISTER of July 8, 1976 (41 FR 27996), a Notice asking for public comments on proposed guidelines for the HSP and AIP. It is these guidelines which will elaborate on the structure and content of these plans.

One comment proposed several additions to the language contained in these subparts for the purpose of addressing more directly the concerns of minority groups. Specifically, additions were recommended for the sections concerning public notice of review procedures and criteria (§ 122.305, § 123.406), notice of the beginning of review (§ 122.306(a)(1) and § 123.407(a)(1)), criteria to be used in conducting reviews (§ 122.308, § 123.409), and enforcement of certificate of need decisions by the State Agency (§ 123.405). Many of these suggested additions have merit, and the Secretary plans to consider them in preparing guideline materials to assist these agencies in performing their review functions. However, these additions are not incorporated into the final regulations because to do so would have greatly and unnecessarily complicated the regulations.

COMMENTS ON SPECIFIC PORTIONS OF THE REGULATIONS

§ 122.301 and § 123.401 Definitions.

This section includes definitions of the terms "health care facility" and "health maintenance organization," which are required to be covered in State certificate of need programs. The entities referred to in these definitions, together with the definition of "new institutional health services" in § 122.304 and § 123.404, in effect, constitute the minimum scope of coverage for State certificate of need programs.

Many commenters questioned the scope of coverage of State certificate of need programs (and reviews of new institutional health services); they contrasted the coverage of these programs to the coverage required under 42 CFR § 100.103, which implements section 1122 of the Social Security Act. Section 1531(5) requires that the definition of "health care facility" and "health maintenance organization" be the same as their definition in the section 1122 regulation. However, the program authorized by section 1122 is limited to review of certain capital expenditures, whereas State certificate of need programs and reviews of new institutional health services mandated in sections 1523(a)(4)(B) and 1523(a)(5) of the Act require a broader scope to cover all new institutional health services, not just those involving capital expenditures.

It was also suggested that the definitions for the components of the term "health care facility" set forth in sections 1861 and 1905 of the Social Security Act be used for the certificate of need regulations. These components were defined therein for the section 1122 program in order to assure certain standards of quality in facilities receiving reimbursement under the Social Security Act. The Secretary has decided that, for purposes of certificate of need programs, coverage is better expressed in terms more general than the Social Security Act definitions. Therefore, while the proposed definitions have been based on the Social Security Act definitions, they have also been broadened. It is important to include all such facilities, whether or not they meet standards of quality required by the Social Security Act definitions, to prevent a facility from circumventing certificate of need review by not meeting Social Security Act standards.

It was specifically recommended that the term "psychiatric hospital" in § 122.301(b)(2) and § 123.401(b)(2) be expanded to include reference to the mentally retarded. Insufficient rationale was presented by the commenter to warrant altering the definition, although States are free to make the addition if they so choose. Further, one commenter recommended eliminating the separate definition for "psychiatric hospital" and including the term as a component of the term "hospital." This recommendation was not followed because the Secretary feels that a definition of "psychiatric hospital" should be presented in the regulations in order to make clear that such hospitals are to be covered in State certificate of need programs.

Some commenters asked that the definitions of "skilled nursing facility" (§ 122.301(b)(4) and § 123.401(b)(4)) and "intermediate care facility" (§ 122.301(b)(5) and § 123.401(b)(5)) be expanded, but offered no suggested language or rationale for doing so. However, one commenter did suggest deletion of the final clause of the definition of "intermediate care facility" because the stipulation that health care and services "can be made available to them only through institutional facilities" was inappropriate. The commenter pointed out that "intermediate care facilities" do offer health services which could be provided in other than an institutional context, e.g., home health services; however, these might not be procured due to family and social preferences, home health care program restrictions or unavailability of home health care. The Secretary agrees that this change would result in a more accurate definition of "intermediate care facilities," and the suggested deletion has been made in § 122.301(b)(5) and § 123.401(b)(5).

Again with respect to the definition of "intermediate care facility," one commenter suggested that there are facilities offering a level of care above the level of room and board, but which does not yet constitute a form of health care that should be regulated through certificate of need. Section 1523(a)(4)(B) and section 1523(a)(5) of the Public Health Service Act apply to "health care facilities," and no authority exists to extend coverage to facilities which are non-health care facilities. The Secretary also notes that there may be borderline cases, and that in all cases, States must apply the definition of "health care facility"

(§ 122.301(b) and § 123.401(b)) to individual cases and judge whether an institution provides health services in such a way, or to such an extent that it falls under the definition and is thus subject to review. Further, States are free to extend certificate of need programs beyond these minimum requirements and include facilities such as these in their coverage.

It was further suggested that the definition of the term "intermediate care facility" be clarified to specify the kind of care and services required by patients of such facilities. The term "health related" has therefore, been inserted in the definition at § 122.301(b)(5) and § 123.401(b)(5) to make this clarification.

In addition, a large number of comments were received concerning the proposed deletion of the terms "home health agencies, providers of outpatient physical therapy services," and "organized ambulatory health care facilities," from the definition of "health care facility" in the section 1122 regulation at § 100.-102(e) and in these regulations. The commenters felt that the definition of facilities covered should remain as inclusive as possible, and they argued that there is need both to plan and to regulate the entire range of "health care facilities" providing health services. Further, they saw improved standards of care, integrated system-wide planning, the prevention of overdevelopment and duplication of effort in the health care industry, and an even-handed approach to both institution-based and free-standing providers of home health care, outpatient physical therapy, and ambulatory care services as by-products of certificate of need reviews.

In the case of home health agencies, the Secretary has decided not to include such agencies in the definition of "health care facilities." He has decided to omit, for the sake of uniformity, home health services from coverage under certificate of need regardless of whether these services are free standing or institutionally based. However, it should be noted that capital expenditures by a covered health care facility or HMO for home health service programs (and their supporting administrative services, etc.) are subject to certificate of need review in the same manner as other capital expenditures by facilities or HMOs. It should be noted, however, that the Secretary is sensitive to the concerns expressed by the commenters that home health agencies might appropriately be subject to such reviews. As stated in the preamble to the proposed regulations, the Department intends to monitor closely the growth and expansion of such agencies in order to evaluate their impact on the health care system.

With respect to "organized ambulatory health care facilities," with Preamble to the proposed regulations noted that the variety of forms in which these facilities manifest themselves resulted in "serious definitional difficulties" of these facilities throughout the States, the Secretary proposed to forego establishing a uniform national method for dealing with this issue; the Preamble to the proposed regulations encouraged States "to undertake various aproaches" toward "organized ambulatory health care facilities."

The comments on the proposed rules generally supported the Secretary's statement in the Preamble to the proposed regulation that "the practice of medicine in ambulatory facilities constitutes an important means for the delivery of health care" and that "unnecessary acquisitions of expensive items of capital equipment by such facilities might adversely affect health care costs," and favored including "organized ambulatory health care facilities" in the definition of "health care facility." Although several commenters offered definitions for organized ambulatory facilities to be used for specific facilities covered under this term, no definition was offered, or has been formulated, which is both workable and within the limits of the statute. Therefore, the Secretary has chosen not to include organized ambulatory health care facilities in the definition of health care facilities at this time. He will, however, follow closely the effect of this regulation on the sources and objects of capital expenditures in the health area and on health care costs.

In addition, it is important to note that several commenters have expressed confusion concerning whether home health care and ambulatory care services would require review regardless of the institutional setting which they are offered. Ambulatory health care services are required to be covered only when they are based in a covered institution (a health care facility or health maintenance organization as defined in the regulations (§ 122.301(b) and § 123.401(b)). When they are freestanding, they are subject to review only if covered by a provision of a State program which goes beyond the Federal minimum requirements. As noted previously, home health services are not required to be covered under minimum Federal certificate of need regulations. They would be subject to certificate of need review only if covered by a State program which goes beyond the Federal minimum requirements.

Several commenters also requested deletion of "health maintenance organizations" from those institutions whose proposed new institutional health services must be included in a State certificate of need program. This recommendation cannot be accepted because inclusion of health maintenance organizations is a statutory requirement (section 1531(5) of the Act). Some commenters also questioned whether certain types or activities of health maintenance organizations are required to be included in a State certificate of need program. Specifically, questions were raised with respect to inclusion of health maintenance organizations not qualified under Title XIII of the Public Health Service Act ("Health Maintenance Organizations"), physician services obtained through contractural arrangements, the administrative and insuring entities of health maintenance organizations which do not provide hospital care, and Blue Cross/Blue Shield plans. Further, one commenter questioned the meaning of the phrase "health services . . . offered in or through a . . . health maintenance organization" (see § 122.304(d) of the proposed regulations and § 122.304(a)(4) and § 123.404(a)(4) of the final regulation).

In answer to these questions, § 122.301(c) and § 123.401(c) of the regulations define "health maintenance organizations" broadly. Any public or private organization or entity which is organized under State laws and which meets the criteria set forth in the regulations is included within the term "health maintenance organization" as defined. It pertains to both those health maintenance organizations which are qualified under Title XIII of the Act and those which are not so qualified, but which meet the other definitional requirements of the regulations for inclusion of health maintenance organizations. This definition also states that a "health maintenance organization" subject to review is one which "provides or otherwise makes available" certain health services. This means that an entity which makes available health services through contract or other formal arrangement with health care providers is not exempt from certificate of need review merely because it does not itself provide the services. However, this does not mean that individual providers of health care necessarily become subject to certificate of need review because they have contracted with a health maintenance organization to provide health services. Rather, it is the health maintenance organization proposing a new health service as set forth in § 122.304 and § 123.404 which is subject to review. State law must determine whether the individual provider who has contracted with the health maintenance organization is to be considered a part of the health maintenance organization entity, and, thus, subject to review if he or she seeks to offer or develop a new institutional health service.

Clarification was also sought concerning whether the benefit package payment arrangements, insurance aspects, and so forth of "health maintenance organizations" are subect to review. To the extent that such characteristics of health maintenance organizations meet the definition of new institutional health services contained in the regulation (§ 122.304 and § 123.404) or are within the coverage of the certificate of need program as expanded upon by the State, they are subject to review. Where confusion or uncertainty persists concerning which entities or organizations do, in fact, meet the definition of "health maintenance organization" as set forth in the regulations, States will be obliged to interpret individual State laws under which a "health maintenance organization" is organized, and clarify the term as it is applied in that State.

Numerous alternatives were offered to § 122.301(d) and § 123.401(d), the proposed definition of "health services." The Secretary has substituted the term "treatment" for "curative" as a type of clinically related health service in these

sections, because "treatment" connotes a broader range of health activities than does "curative," including for example ameliorative or maintenance health services.

It was further recommended that "health services" be specifically defined to include nutrition, health education, environmental and occupational health, or what could be termed generally "preventive health services." The "promotion of activities for the prevention of disease" is a national health priority set out in the Act; support for this goal is evidenced in the guidelines for development of Health Systems Plans and State Health Plans. The Secretary does not feel that mandatory coverage in State certificate of need programs is the appropriate mechanism for emphasizing the importance of, and need for, preventive health services. Rather, it is hoped that certificate of need programs will promote the reallocation of limited resources to the most appropriate areas, including appropriate preventive care services and programs.

The Secretary does not agree with a comment that the definition of "health services" is so vague as to include certain social service agencies, schools, and so forth, because of counseling services they provide. Only new health services offered in or through "health care facilities" and "health maintenance organizations," as these institutions are defined in § 122.301 and § 123.401, are required by this regulation to be subject to review for certificate of need. However, the definition of "health services" as it now stands in § 122.301(d) and § 123.401(d) is only a minimal one, and States may expand the term in ways suitable to their individual needs.

Several comments were also received concerning the definition of the term "modernization" in § 122.301(f) and § 123.401(f). One respondent asked that the term be clarified to indicate whether or not it includes replacement of a structure at a different site. Other respondents considered the term too broadly defined and inconsistent with the definition of modernization in Section 1633 (11) of the Public Health Service Act, and suggested it be deleted. Since the term "modernization" itself is used only as an example in the body of the regulations, the definition has been deleted.

For the purpose of establishing which new institutional health services are covered by certificate of need, it was suggested that the definition of "person" in § 122.301(g) and § 123.401(g) of the final regulation (§ 122.301(h), § 123.401 (h) of the proposed regulations) be expanded to include the Federal Government and its instrumentalities. The Secretary has concluded that a requirement for coverage of Federal facilities in State programs for review of new institutional health services has no basis in the Act. Nonetheless, voluntary participation of Veterans Administration facilities in State and local health planning is encouraged through the statutory provision for *ex officio* membership on the HSA governing body (section 1512(b)(3)(C)(iii)(III)) and the SHCC (section 1524(b)(1)(D)).

Miscellaneous other comments were received suggesting changes in phraseology which, because they did not change the meaning of the terms addressed, have not been accepted.

Two commenters recommended the exclusion of States and their agencies and instrumentalities from the definition of "person." These comments were not accepted, since section 1523(a)(4)(B) mandates that certificate of need reviews apply to all proposed new institutional health services and State-owned facilities are not exempted. Further, such facilities constitute an important part of the health care system; to exclude them would severely limit the effectiveness of any new institutional health services review program. In fact, several State certificate of need programs currently cover State-owned facilities and this provision has proved to be workable and effective.

§ 122.304 and § 123.404 New institutional health services subject to review.

These provisions have been renumbered due to the transfer to these sections of language regarding coverage. New § 122.304(b) and § 123.404(b) concern certificate of need review with respect to predevelopment activities, and include an amended definition of such activities. Because this definition was located at § 123.405(a), *Enforcement*, in the proposed regulation, the discussion of the comments received regarding this provision will be found in the portion of the Preamble where § 123.405(a) is discussed.

With respect to the new institutional health services subject to review, one commenter argued that the proposed thresholds are too low in view of the cost involved in regulating through certificate of need. The Secretary has reviewed the thresholds in the section 1122 program and the existing State certificate of need programs. The thresholds set forth at § 123.404 were developed in light of this experience. However, States are provided some flexibility in applying the thresholds for certificate of need review. For example, § 123.404(a)(3) leaves it to States to define bed capacity and bed categories and, hence, determine when an increase in bed capacity is reviewable or when redistribution of beds crosses these category lines and becomes reviewable; § 123.404(b) of the proposed regulations (now § 123.404(c) of the final regulations) allows the States to extend the scope of review coverage beyond that of § 123.404(a).

Two commenters noted that the thresholds might be so low as to discourage health maintenance organizations and health care facilities from making positive modifications in their programs. If such modifications are found by a State Agency to be needed, however, the requested certificates of need will be granted. The very purpose of the certificate of need program is to enable the State to make these determinations so as to ensure that only needed services and facilities are offered. Further, if the State wishes to expedite consideration of certain types of bed changes, certain types of capital expenditures or certain types of health services by using procedures not in conformance with the minimal procedures set forth at § 122.306 and § 123.407, it may (under provisions of § 122.307 and § 123.408) apply to the Secretary for an exception to the use of the required procedures for review in these instances. It was also suggested that States be allowed further to define conditions activating certificate of need review. Here, as in any other aspect of the certificate of need program, States are permitted to go beyond the Federally required minimum, as long as the additional requirements of the State program are not inconsistent with the Federal statute or regulations.

Several respondents also favored requiring that the first condition necessary for any review must be a capital expenditure of at least $150,000 (either alone or with one of the other three thresholds). This is inconsistent with the requirement in section 1523 of the Act that the program apply to "new institutional health services," which includes new services not requiring capital expenditures.

In addition, several respondents have favored applying the second threshold ($150,000 capital expenditure, § 122.304(a)(2) and § 123.404(a)(2)) only to those cases where the offering or development of a health service is being proposed, instead of covering expenditures made for both health and nonhealth purposes by "health care facilities" and "health maintenance organizations." One commenter asserted that the Act does not provide for reviews of capital expenditures, but only for reviews of new institutional health services. This would have the effect of eliminating the coverage of large capital expenditures for administrative support functions (e.g., computers, parking garages, staff residences, and employee restaurants). The Secretary disagrees with this interpretation because one important goal of the required certificate of need program is to contain the rapidly rising costs of providing health care. In section 2 of Pub. L. 93-641, Congress made the finding that increases in the cost of health care have been both uncontrollable and inflationary. Furthermore, Congress stated that at this time there are insufficient incentives for consumers to utilize alternatives to inpatient hospital care, one of the prime contributors to rising costs. In order to promote the alternatives to inpatient care successfully, as well as to explore opportunities for controlling costs, the certificate of need program must be able to influence all expenditures by health institutions, including expenditures not directly for patient care. Capital expenditures made by a facility affect the cost base which is normally used to calculate a facility's direct charges and reimbursement by third parties. Unnecessary capital expenditures, therefore, contribute directly to unnecessary increases in health care costs.

In answer to the comment that there are no suitable criteria to determine need for such expenditures, the Secretary notes that it is the role of both State Agencies and HSAs to develop criteria for all new institutional health services which are subject to review, based on considerations set forth at § 122.308 and § 123.409 of the regulation.

Some respondents asked for clarification as to when a series of capital expenditures, each less than $150,000, constitutes a single expenditure and therefore is subject to review. As discussed earlier in the Preamble, each State must address such questions in administering its own certificate of need program in order to take into account individual and unique circumstances. In addition, several requests to change the $150,000 level were received. Most favored lowering this dollar level or making it consistent with the section 1122 dollar threshold ($100,000). The dollar threshold for section 1122 programs was established by statute and, therefore, cannot be changed through regulation. Based on (1) the experience of section 1122 and State certificate of need programs; (2) the fact that few significant capital expenditures are less than $150,000; and (3) the inflation in the cost of medical equipment in the years since the enactment by Congress of the section 1122 program, the Secretary has decided to retain the dollar threshold set forth in the proposed rule (§ 122.304 and § 123.404). States desiring a threshold consistent with section 1122 may set their certificate of need threshold at $100,000, since the regulations permit States to be more stringent than the minimums set forth in Federal regulation.

Some respondents favored explicitly covering the acquisition of existing health institutions, through leases as well as changes in ownership by sale or donation. The Secretary feels that the question of coverage of acquisitions of existing health care facilities and health maintenance organizations should be left to the States, and this is specified at § 122.304(a)(2) and § 123.404(a)(2) of the final regulations. It should also be noted that the coverage of "site acquisitions" has been made optional (see the discussion which follows in this Preamble of § 123.405(a) and the regulations at § 123.404).

To summarize the provisions of these regulations with respect to acquisition: (a) Capital expenditures in excess of $150,000 are subject to review, except that site acquisitions and acquisitions of existing health care facilities and health maintenance organizations (whether through sale, lease, or donation) are excluded from this requirement. (States may choose to require review of capital expenditures of less than $150,000, and may choose to require review of site acquisitions and acquisitions of health care facilities and health maintenance organizations.

(b) Coverage is required of any other acquisition (including, for example, expensive medical equipment) through lease or donation if its acquisition by purchase would have required review.

(c) If a State chooses to cover site acquisitions and acquisition of health care facilities and health maintenance organizations by purchase, it need not cover their acquisition by lease or donation since the coverage of such purchases would already exceed the minimum requirements. However, States are encouraged in such cases to complete their coverage by including acquisition by lease or donation.

It was also proposed that the capital expenditure threshold not be applied to the termination of a service, because in many instances (e.g., where services may be duplicative) termination can lead to the kinds of savings and efficiencies the Act is designed to encourage. However, the Secretary, while interested in promoting comprehensive health planning, agrees that States are not required to cover capital expenditures solely for terminations or reductions of beds or health services. Therefore, § 122.304(a)(2) and § 123.404(a)(2) (§ 122.304(b) and § 123.404(a)(2) of the proposed regulation) have been modified accordingly.

With respect to the "bed complement" threshold, several respondents asserted that the term "bed complement," used in §§ 122.304(c) and 123.404(a)(3) of the proposed rule and now in §§ 122.304(a)(3) and 123.404(a)(3) below, was confusing because it is presently used variably to denote: (a) an institution's total licensed beds; (b) an institution's total bed capacity; (c) the beds staffed and in operation for any given period of time; and (d) the allocation of beds to various specialities (e.g., medical/surgical, obstetrics, gynecology, etc.). In order that there be no ambiguity regarding the purpose of this threshold, the word "complement" has been deleted due to the confusion caused by its several different connotations and has been replaced by specific definition of those bed changes requiring review.

Many comments were received regarding coverage of changes in beds. Some asserted that the statute does not provide for review of bed changes because such changes do not necessarily involve the offering of a *new* institutional health service. Others argued that changes of only one bed, as required in §§ 122.304(c) and 123.404(a)(3) of the proposed regulations do not warrant a certification of need review. Still others asked that "conversion" of beds be excluded, as long as the beds in question are all licensed, since conversions would not increase the overall supply of beds. It was also proposed that the capital expenditure threshold not be applied to the reduction of the number of beds. After considering all of the above comments, the Secretary has determined that substantial conversions or additions in beds may affect the delivery and cost of health services. Therefore the term "substantial" has been given operational meaning by the revisions made to §§ 122.304(a)(3) and 123.404(a)(3) which now provide that additions or conversions of more than forty beds or twenty-five percent, whichever is less, over a two year period must be covered regardless of whether any capital expenditure is involved.

On this same subject, one commenter expressed concern that since bed use may change daily from one category to another (e.g., "skilled nursing facility" to "intermediate care facility") it would be impossible for a certificate of need program to regulate these constant variations. Daily bed fluctuation clearly need not be subject to certificate of need review, because States are required by the Federal regulations to review only substantial bed changes. States are, of course, free to require review of those bed changes which are not covered by the Federal regulations.

In addition, a question was raised as to what is meant by "relocation" of beds. The final regulations at § 122.304(a)(3) and § 123.404(a)(3) specify that relocation of beds "from one physical facility or site to another" requires review. If there is any confusion with respect to relocation in particular circumstances, the State Agency must determine whether review is necessary.

Regarding § 122.304(d) of the proposed regulation, § 122.304(a)(4) and § 123.404(a)(4) below, numerous requests were made that the Secretary define the term "new service," that he limit reviews to those for "substantial changes" in service, and that he specifically exclude increases of a type of service already offered. Section 123.404(b) of the proposed regulations, § 123.404(c) of the final regulations, provides that the State Agency shall issue a description of the scope of coverage of its program. In doing so, it will define such terms as necessary.

Numerous questions about whether various specific services are covered can be answered simply: any service is covered if it is included in the scope of coverage developed by the State. This scope of coverage must be at least as broad as the definition of "health services" set forth at § 122.301(d) and § 123.401(d), but may be more comprehensive.

One commenter also suggested that § 122.304(d) of the proposed regulation, § 122.304(a)(4), and § 123.404(a)(4) below, be amended to require review of new services which were not offered on a regular basis within the 12 month period prior to the date of application for review, rather than the 12 month period prior to the time such services would be offered as presently required. Insufficient rationale was presented to support this change and it has not been made.

Three commenters asked what was meant by the phrase "on a regular basis" as used in § 122.304(d) of the proposed regulation, § 122.304(a)(4) and § 123.404(a)(4) below. This phrase serves to modify "new service," and it is expected that it will be given operational meaning by each State.

Questions were received concerning the meaning of "health services offered in or through a health care facility or

health maintenance organization * * *" (emphasis added, in § 122.304(d) of the proposed regulation, and § 122.304(a)(4), and § 123.404(a)(4) below). The effect of the word "through" is that those services not offered physically in the institution subject to review, but which are offered to a substantial extent on behalf of such an institution by others, are required to be reviewed for certificate of need purposes.

One State suggested granting an exception to certificate of need review for "experimental programs" of one year duration if no capital expenditure is involved. The Secretary does not feel that such programs should be exempted from review, since they may have a substantial impact upon the provision of other services and the allocation of resources within the State. However, State Agencies could process such cases expeditiously if the appropriate exception to procedures has been sought from and granted by the Secretary. (See the discussion in this Preamble of § 122.307 and § 123.408.)

In addition, several respondents questioned the requirement for review of changes in physical facilities in emergency situations (e.g., the replacement of a furnace) or in cases where another public regulatory body imposes conditions that the institution must meet in order to continue in operation (e.g., compliance with fire and other safety codes). These sorts of changes, if subject to review under the State program, can be reviewed "expeditiously" if agencies apply for and receive from the Secretary, under § 122.307 and § 123.408 of the regulations, an exception to the procedures required for review.

Finally, because the proposed regulation did not provide sufficient time for States to develop an adequate scope of coverage, the time allowed to publish the scope of services covered has been made more flexible in § 123.404(c) (which was § 123.404(b) of the proposed regulation). Publication is now required before an agency reviews new institutional health services.

§ 123.405 Enforcement.

Several commenters requested specification of a maximum period for commencement of the development or offering of a new institutional health service following the granting of a certificate of need and a maximum number of renewals. Although these comments have merit, the Secretary believes provisions such as these should be developed by the individual States in administration of their own certificate of need programs, rather than by the Federal Government. The Secretary notes that nothing in the Act or in this regulation precludes a State from adopting such a provision. Therefore, these suggestions have not been followed. Another commenter suggested a provision specifying that the maximum life of a certificate should, in no event, exceed the useful or depreciable life of major equipment or facilities. While this suggestion may be followed by any State, the Secretary has not adopted it for the reason given above.

One commenter suggested the addition of a provision requiring the denial of a certificate of need where the applicant is a facility which has received funds under Title VI of the Public Health Service Act (the Hill-Burton program) and has failed to fulfill its assurances of provision of "free care" and "community service." This suggestion was not accepted because there is no statutory basis for such an approach, and because sanctions exist under Title XVI of the Act to deal with this specific problem.

The following additional provision was recommended by one commenter: "In providing for sanctions as required in (b) above, the Governor may request as part of an agreement under section 123.105 and/or section 123.106 (of the proposed regulation governing State Agencies); Federal cooperation through the Intergovernmental Cooperation Act of 1968, pub. L. 90-577; 82 Stat. 1098 (1968) or other appropriate method." The commenter added that by allowing States to request cooperation from the Department and/or through the Federal Intergovernmental Cooperation Act, certain States may be able more effectively and economically to achieve the results desired. Another commenter recommended that as a further sanction the Department should assist the State by prohibiting conveyance of funds within its control (e.g., Medicare and Medicaid reimbursements) to facilities in violation of certificate of need. Neither of these suggestions can be accepted since at this time there is currently no authority, beyond that provided in section 1122 of the Social Security Act, for the Federal Government to act generally to enforce State determinations of need. Moreover, the State's sanctions themselves must be effective in preventing the offering or development of unneeded services and facilities, thus negating any need for the Federal sanctions suggested.

A change in wording of § 123.405(a)(1) was recommended by one commenter, from "only those new institutional health services * * * found to be needed" to "only those new institutional health services * * * found * * * to meet the adopted criteria of the State Agency as well as the appropriate Health System Agency(ies)". This suggestion may be interpreted one of two ways: First, the wording could require that both the State Agency and the HSA would have to agree that a proposed new service met their adopted criteria, which would have the effect of giving HSAs a veto rather than the recommendatory function given them by section 1513(f). Alternatively, the wording could be interpreted to mean that the State Agency would have to adopt any criteria adopted by the HSA. This would be contrary to section 1532(a) of the Act, which mandates that HSAs and State Agencies each develop procedures and criteria. Since either interpretation would be inconsistent with the Act, the suggestion cannot be accepted. Moreover, the Secretary notes that the requirement of a finding of need is derived from the statute and must therefore be kept in the regulation.

Another commenter expressed concern that the language in § 123.405(b) implied that certificate of need and licensure are dependent upon each other and that this is impracticable if tied to § 123.106(b)(6), the review of existing institutional health services for appropriateness, because an entire institution "would be at risk for a small part of its operation that is deemed unnecessary and because of decisions after the fact." The Secretary will issue the regulation governing reviews under § 123.106(b)(6) at a future date and it is important that the distinction between the functions of review of existing institutional health services and review of new institutional health services be clear. A licensure sanction may be used to prevent the offering of a new facility, or a new service in an existing, already licensed facility, if the State selects it as a sanction under its certificate of need program, as set forth in § 123.405(b), although licensure is only one example of a sanction that a State may use. Additionally, it should be reiterated here that the enforcement requirement applies only to certificate of need reviews, not to reviews of proposed new institutional health services under section 1523(a)(5) of the Act or of existing institutional health services. Section 123.405(b) lists several types of sanctions, and States may use one or a combination of the listed sanctions or devise alternatives as long as the resulting provisions ensure that only needed new institutional health services are offered or developed within the State.

One commenter, objecting to the statement in Subpart E of the Preamble to the proposed regulation that "sanctions leading to the denial of reimbursements * * * are not, in themselves, sufficient sanctions * * *," stated that provider sanctions should be viewed on their merits in a particular locale. Denial of reimbursement may be effective in deterring a certificate of need regulation violation. However, Title XV requires that "only those services, facilities and organizations found to be needed shall be offered or developed." Such a sanction would not apply to all institutional health services; for example, it would not affect new services aimed entirely at the private-pay market which might be offered or developed despite a negative finding by a State Agency.

One commenter objected to "criminal penalties," as a sanction (§ 123.405(b)), and another stated that the enumerated sanctions were too severe and should be an individual State prerogative. All types of sanctions listed in § 123.405(b) are examples of sanctions which might be used by States and are intended to be illustrative only.

A commenter requested that the regulation provide for both "conditional" and "partial" certification to permit the State Agency to attach conditions or to approve part of the application. The Secretary believes it is not appropriate

for the regulation either to prohibit or require this. A change has been made in § 123.407(a)(5) to clarify that States may attach conditions to a final decision if the State program provides for such a procedure.

To allow States more flexibility in determining sanctions, one commenter suggested the following word change in paragraph (b): from "* * * which the Secretary finds appropriate * * *" to "* * * which the Secretary finds sufficient * * *". The Secretary agrees that this suggested rewording more clearly reflects the intent of the legislation and, therefore, has incorporated this change in the regulation.

Many commenters stated that the review of predevelopment activities involving a capital expenditure in excess of $150,000 (§ 123.405(a) of the proposed regulation and § 122.304(b) and § 123.404(b) below) would be inappropriate interference with institutional management because the planning for new services is a vital function of a business. One observed that hospitals enter into feasibility studies as part of their long-range planning in the normal course of business, and that health planning agencies would not be performing such activities for institutions. Others remarked that no mention was made of predevelopment activities in the Act. However, the statute does require, at section 1523(a)(4)(B), that State certificate of need programs provide for review and determination of the need for new institutional health services "prior to the time such services, facilities, and organizations are offered or developed or substantial expenditures are undertaken in preparation for such offering or development * * *". Therefore, the required review of certain predevelopment activities must be retained.

Based on the comments received, the Secretary has reconsidered the requirement that site acquisition be reviewed. It has been pointed out that institutions frequently acquire real estate as opportunities arise, often for investment purposes, and with no definite plans for development or expansion. Since the purpose of this threshold is to review actions closely related to the offering or development of health services, the acquisition of land, which is not necessarily development-related, is no longer required by regulation to be reviewed. Also, preliminary plans, surveys, and studies, on the basis of the arguments stated above, could be said to fall within the normal course of business; because they represent a very early and speculative stage of development, the regulation does not require these to be reviewed unless the State program so specifies. Consequently, the terms "site acquisition" and "preliminary plans, surveys, and studies" have been deleted from the definition of predevelopment activities found in § 123.405(a) of the proposed regulation § 122.304(b) and § 123.404(b) below of the regulations. However, the regulation still requires a determination of need prior to substantial expenditures in preparation for the offering or development of a new institutional health service, and any expenditure in excess of $150,000 for architectural designs, plans, working drawings, and specifications remains subject to review. Therefore, this requirement has been retained but moved to § 123.404(b). In addition, language has been added to § 122.304(b) and § 123.404(b) in order to clarify that these activities are to be covered under new institutional health services subject to review.

A commenter pointed out that if a proponent has secured arrangements or commitments for financing a new institutional health service, this might influence a planning agency to approve the offering or development of a proposed new service; conversely, if the proposed service then were not approved, serious financial losses to the applicant might result. For these reasons, this action has been included in § 123.404(b) as a predevelopment activity which may not be undertaken prior to a determination of need.

§ 122.305 and § 123.406 Adoption and public notice of review procedures and criteria.

Proposed § 122.305 and § 123.406 set forth for the HSAs and State Agencies, respectively, the schedule for the adoption of review procedures and criteria and the requirements for publicizing and distributing these procedures and criteria. A number of comments considered these sections to be undue regulation on the part of the Secretary and one commenter felt the sections should be deleted. A further rationale offered for deletion of § 123.406 was that a State can implement the review of new institutional health services only through existing programs such as certificate of need or review under section 1122 of the Social Security Act, and, therefore, there is no need to develop and publish a separate set of procedures and criteria. Another commenter called the regulations burdensome and costly. The statutory basis for inclusion of these sections is section 1532(a) of the Act which requires HSAs and State Agencies to follow procedures, and apply criteria, developed and published in accordance with regulations of the Secretary. The requirements of section 1532 apply equally to reviews of new institutional health services, certificate of need reviews and section 1122 reviews by HSAs and State Agencies, and other reviews of proposed health services by HSAs.

One respondent suggested that the criteria for the present review of capital expenditures in accordance with section 1122 of the Social Security Act should be allowable for use during the conditional designation period, implying that lack of adequate time would require use of temporary measures for proposed procedures and criteria. As explained below, the revised time period will allow sufficient time for development of procedures and criteria.

A large number of commenters expressed opposition to the three-month time period for adoption of procedures and criteria in § 122.305(a) and § 123.406(a). As a result of these comments, the provisions have been changed. Since the HSAs are only recently designated in many areas, and a few State Agencies are still undesignated, the Secretary believes it unwise to require adoption of procedures and criteria by these agencies in such a short period because the HSA and State Agency might be unable to coordinate with each other. The regulations governing the time period for both HSA (§ 122.305) and State Agency (§ 123.406) adoption of procedures and criteria have been revised to require their adoption prior to performance of the review functions. However, under the authority of sections 1515(b)(2) and 1521(b)(2)(A) of the Act, the Secretary may require any conditionally designated State Agency or HSA to adopt review procedures and criteria and to assume a review function at the earliest practicable date when in his judgment that agency is capable of doing so.

Others suggested allowing a specific time period for interested groups to comment on proposed procedures and criteria, and allowing appeals from provider groups affected (§ 122.305(b) and § 123.406(b)). Neither suggestion was adopted since the Secretary believes this is inappropriate detail for these regulations. The State Agency and HSA are required to give interested persons the opportunity to comment, but a time limit may be set. Either agency may also provide for an appeal if it desires to do so.

Several commenters thought the distribution list in § 122.305(b)(1) and § 123.406(b)(1) should be more selective, while others proposed the addition of other persons or groups to receive copies of proposed or adopted procedures and criteria. The Secretary agrees that any agency which establishes rates for health institutions must receive this information so that the various regulatory methods may be coordinated. A provision has been added at § 122.305(b)(1) and § 123.406(b)(1) to this effect.

The requirement at § 122.305(b)(2) and § 123.406(b)(2) for publication of proposed or adopted procedures and criteria elicited numerous comments. Many respondents protested the prohibition on placement of the notice in the legal notice or classified advertisement sections of the newspaper. Two reasons were given: (1) Placement elsewhere in the paper is financially prohibitive; and (2) exact placement of the notice cannot always be assured. This section has been revised to delete the prohibition against the placement of the notice in legal or classified sections. A contrasting suggestion was that publication of the notice be required once a week for three consecutive weeks in the classified or display ads. This suggestion was not followed, since to do so would be unnecessarily burdensome. Another comment suggested that public notice be given by the issuance of press releases to all the news media in the area. This was not adopted because agencies cannot assure that press releases will be used and notice actually given to the public by this

means. One comment dealt specifically with the use of alternative methods for providing notice of proposed procedures and criteria. The suggestion was incorporated into the revised regulation by adding § 122.305(b)(3) and § 123.406(b)(3), which allow the HSA or the State Agency to receive an exception to this requirement in certain instances where a suitable alternative means is proposed.

Other comments involved suggestions for post-adoption actions. These ranged from holding a public hearing to give reasons for not adopting comments to providing for a written appeal after adoption. These suggestions were not accepted because they limit too severely the flexibility of the agencies. However, the State Agency or HSA is free to add these or other provisions, not inconsistent with the regulations, as it deems necessary.

§ 122.305.

One commenter asked for clarification of the term "unit of local government" in § 122.305(b)(1). The term is defined at 42 CFR 122.1(q). To be consistent with this reference, the term has been changed to "units of general local government."

§ 123.406 Adoption and public notice by State Agencies.

One commenter noted that the SHCC and one or more HSAs in the State may not exist at the time the State Agency adopts its procedures and criteria, and, therefore, the regulation should speak to this circumstance in § 123.406(b)(1). No change to the regulation is required, since the State Agency may fulfill its requirement by distribution to those agencies which exist at the time of adoption and to the others upon their establishment.

One commenter suggested that the public notice of procedures and criteria for a State Agency serving a State with an interstate standard metropolitan statistical area should be published throughout that area (§ 123.406(b)(2)). The Secretary believes that sufficient public notice has been provided for in the regulations and that the addition of such a requirement would be unnecessarily burdensome to the State Agency.

§ 122.306 Health systems agency procedures; general comments.

A commenter said that the review of HMOs by HSAs must be more clearly addressed in the regulations if it is to be meaningful. The commenter claimed that existing procedures for review by the Department of HMO grants would make HSA review and comment redundant. However, HSAs are required by section 1513(f) of the Act to review and make recommendations to State Agencies respecting the need for new institutional health services, which would include those provided in or through HMOs, as well as new HMOs themselves. This review would be based on the agencies' criteria, which might well be different from those established by the Secretary for reviewing the HMO grant proposal. The HSAs nonetheless are encouraged to coordinate their reviews with other required reviews of HMO proposals, including for example their reviews of proposed uses of Federal funds under section 1513(e) of the Act, a program for which the Secretary will soon issue regulations.

§ 123.407 State Agency procedures; general comments.

It was suggested that § 123.407 be rewritten to coincide with the procedures for section 1122 of the Social Security Act. It is expected that section 1122 reviews and reviews of new institutional health services (including certificate of need) will be closely coordinated at the State and HSA level. In fact, pursuant to section 1532 of the Act, many of the procedures for reviews under section 1122 are identical to those for reviews of proposed new institutional health services. However, since the authority and responsibility for the section 1122 program rests with the Federal Government, it is necessary that the regulation pertaining to this review provide the necessary detail so that ambiguity and differing State-by-State interpretations do not exist. With respect to reviews of new institutional health services, the Secretary's intent is to provide minimum regulations in order to allow States and HSAs as much flexibility as possible in developing their own review programs to meet State and local needs.

§ 122.306(a) and § 128.407(a) Health systems agency and State Agency procedures; general comments.

Many commenters objected to the duplicate procedural requirements found in § 122.306(a) for HSAs and § 123.407(a) for State Agencies. While section 1532(a) of the Act directs each of these agencies to make provisions for carrying out all the procedural requirements listed in section 1532(b), the Secretary recognizes that four of these procedural requirements need not be actually performed by both agencies in order to achieve the results required by the Act. For this reason, paragraph (c) was added to § 122.306 to relieve HSAs of the requirement of § 122.306(a)(1) for written notification of the beginning of a review, if the State Agency, in performing its function under § 123.407(a)(1) gives such notification. Also § 122.306(d) and § 123.407(c) were added to permit the HSA and State Agency to coordinate the three functions listed so that if one agency provides for performance of the function, the other agency is not required to do so. These three functions are those of requiring certain information from persons subject to review; submission of periodic reports by providers and others respecting development of proposals subject to review; and submission of letters of intent in the case of construction projects. In addition, the HSA's provision of the opportunity for a public hearing during the course of review may satisfy this required procedure for the State Agency, if the State program so specifies.

§ 123.407(a) Procedure of agencies delegated State Agency functions.

A comment was received suggesting the inclusion of language referring to the procedures adopted and utilized by agencies other than the State Agency, when such functions are delegated to such agencies in accordance with § 123.107. It is anticipated that appropriate language will be added to § 123.1 (when Subpart A of Part 123 is finally adopted) to require that reference to the State Agency with respect to a particular function shall be deemed reference to the agency which is performing that function under an appropriate agreement with the State Agency.

§ 122.306(a)(1) and § 123.407(a)(1) Notification of the beginning of a review by health systems agencies and State Agencies.

Several commenters suggested that the notification of the beginning of a review by the HSA or State Agency should be made only upon receipt of a completed application. The Secretary believes that this matter is best left to the agencies to address in their published procedures.

Further, the Secretary, in order to prevent confusion, has defined the "date of notification" for purposes of § 122.306(a)(1) and § 123.407(a)(1) to mean the date on which notice to affected persons is sent or the date on which notification appears in the newspaper, whichever date is later.

Several comments suggested that the minimum 30-day period, required to be allowed for affected persons to request a public hearing, may be too long in emergency situations. In response, the parenthetical phrase, "which period may not be less than 30 days from the date of the written notification required by this subparagraph," has been deleted from § 122.306(a)(1) and § 123.407(a)(1). Section 122.306(a)(7) and § 123.407(a)(7), dealing with public hearings in the course of agency review, have been modified to provide that such hearings must be held within a reasonable period from the date of written notification to affected persons of the beginning of a review.

Other commenters recommended permitting the legal notices section of a newspaper to be the medium for notifying "affected persons." Sections 122.306(a)(1) and 123.407(a)(1) require the HSA and State Agency to notify members of the public through newspapers of general circulation but do not specify the particular section of the newspaper. Thus, there is no need to change this language.

Several commenters requested that certain groups be specifically mentioned in the definition of "affected persons" in § 122.306(a)(1) and § 123.407(a)(1). Among the organizations proposed to be included were hospital councils, Medicare fiscal intermediaries, and PSROs. These organizations have not been named, but the Secretary did consider it necessary to include specific mention of any agency which establishes rates for

health institutions, so that the various regulatory methods may be coordinated. Accordingly, language has been added at § 123.407(a)(1) to include such agencies in the lists of "affected persons" who receive notification of the schedule for review. In addition, HSAs and State agencies may expand this minimum definition to include other individuals and organizations.

It was also suggested by several commenters that notification to "affected persons" should be allowed by means other than direct mail. As indicated in § 122.306(a)(1) and § 123.407(a)(1) of the regulations, these persons may be notified through a regular system of mailed notices, such as newsletters, rather than by individual letters announcing single reviews.

One commenter suggested stronger language to encourage increased utilization of newspapers for public notice. The Secretary has determined that the present language adequately carries out the intent of the statute.

A comment was received requesting the inclusion of language to allow notice through other communications media, in addition to newspapers of general circulation. However, such additional notice is not prohibited by the language of § 122.306(a)(1) and § 123.407(a)(1).

§ 122.306(a)(1) Notification of the beginning of a review by health systems agencies.

One commenter suggested that the responsibility for written notification to affected persons be placed upon the applicant, rather than upon the HSA. Section 1532(b)(1) of the statute requires only that each HSA and State Agency include in its procedures a requirement for written notice to affected persons. The Secretary believes that the assignment of responsibility for this notification is more properly dealt with by HSAs and State Agencies as they develop review procedures, than by Federal regulation.

§ 122.306(a)(2) and § 123.407(a)(2) Health systems agency and State Agency schedules for review.

Comments were received recommending that schedules for reviews by the HSA and State Agency of new institutional health services consist of two separate 90-day review periods, rather than the single 90-day period required in § 122.306(a)(2) and § 123.407(a)(2) of the proposed regulations. Experience with the section 1122 program suggests that a 90-day period is usually adequate to complete the review. In any case, the requirement is that it be 90 days "to the extent practicable." Finally, there is no legislative history to suggest that Congress intended a 180-day period of review for each new proposed service. The 180-day period is longer than the review period normally found in State certificate of need programs, and it could represent a substantial and costly delay to the proponent of a new institutional health service. For these reasons this proposal has not been accepted.

Several commenters recommended that a concurrent review be required by the HSA and State Agency. Other commenters suggested that a sequential review be mandated. The regulation specifies neither, and therefore, allows either type of review to take place within the required time period.

One comment was received suggesting that the review by the State Agency and HSA be a joint review, or that the State Agency waive its option to review proposals. This suggestion is contrary to the statute, which requires distinct reviews by the HSA (section 1513(f)) and the State Agency (sections 1523(a)(4)(b) and 1523(a)(5)) of proposed new institutional health services.

Several comments were received requesting clarification of those activities which must be performed within the 90-day review period. In response, the Secretary expects that agencies will have reached a decision, pursuant to their adopted procedures, within the 90-day review period. The Secretary notes that a public hearing for good cause shown occurs subsequent to a decision, and therefore is excluded from this 90-day time frame. Further, he notes that § 123.407(a)(2) requires agencies to adopt criteria for determining when it would not be practicable to limit a review to 90-days; and that it is likely that these criteria will include provision for those occasions when a public hearing during the course of a review extends beyond the usual time. He further notes that the period allotted for HSA review may not be reduced beyond 60-days without the written consent of the HSAs.

Section 123.407(a)(2) State Agency schedules for reviews.

Several comments were received suggesting modifications that would extend the 90-day review period. However, the present language already provides the opportunity for the State Agency to extend the review period based upon criteria it establishes for determining that the 90-day review period is not practicable.

A recommendation was also received that when a decision by a State Agency is not rendered within the 90-day review period, the proposal shall be deemed to have been approved. The language of the statute does not allow this, as section 1523(a)(4) requires that the State certificate of need program provide that "only those services, facilities and organizations found to be needed shall be offered or developed. * * *" Therefore, provision has been made at § 123.407(a)(15) for cases where a proposal for a new institutional health service has not been reviewed in the appropriate period. The proposal then is deemed to have been found by the State Agency not to be needed.

Two comments concerned cases in which an HSA would not make a recommendation to the State Agency within the time allotted by the State Agency for its review. One commenter recommended that States should be able to act on the application without waiting for the HSA recommendation, while the other felt that the State should not be able to make a final decision until it has received the recommendation. Section 1523(a)(4) and 1523(a)(5) of the statute and § 123.403(b) of the regulation require the State Agency to consider the recommendation of the HSA in conducting its review. However, if the HSA does not make a recommendation in the allotted period of time, the State Agency must make a decision by the end of its review period without waiting for the HSA recommendation. It should be noted, however, that an HSA has the obligation under the statute to make recommendations within the appropriate period.

Some commenters asked about coordination of procedures and review time periods between HSAs and State Agencies. The Secretary notes that § 122.306(a)(2)(i) of the regulations requires that reviews pursuant to section 1513(g) of the Act shall not take longer than the period specified by the State Agency in accordance with 42 CFR 123.407(a)(2). This provision is necessary in order that the State Agency have the necessary flexibility to obtain HSA recommendations on certain types of reviews (for example, reviews under section 1122, which are governed by the provisions of 42 CFR 100).

§ 122.306(a)(3) and § 123.407(a)(3) Submission of information by persons subject to review to health systems agencies and State Agencies.

A comment was received which urged language allowing an applicant to make minor revisions in a submitted application during the course of review if these revisions would not change the scope or content of the application. Others suggested that the Secretary remove provisions in the proposed rules allowing amendment of proposals during a review cycle. The Secretary has decided that this issue should be left to the individual States for resolution.

Further, an addition has been made to these subparagraphs to clarify the regulation on the types of information which agencies may request. The addition permits agencies to vary the informational requirements according to the purpose for which a particular review is conducted or the type of health service being reviewed, provided that the HSAs and State Agencies may require no information of person subject to review which is not prescribed and published as being required for that type of review.

§ 122.306(a)(3) Submission of information to health systems agencies.

Several commenters suggested modifications to the requirement that HSAs prescribe and publish a description of the types of information they will require from persons subject to review. The proposed rules did not contain such a requirement. However, the Secretary has decided that this subparagraph should be changed to require HSAs to prescribe and publish a description of the type of information that is required, in addition to its form and manner.

§ 123.407(a)(3) Submission of information to State agencies.

Other commenters suggested that the State Agency prescribe the information to be submitted to the HSA as well as itself for review purposes. The Secretary has decided not to require this. However, in § 122.107(c)(14) of the regulation governing HSAs, these agencies are required to make their recommendations to State Agencies in accordance with the procedural requirements developed by the State Agency. In other matters, the Secretary encourages coordination between the State Agency and the HSAs within the State, in this and all other review procedures. In fact, provision has been made at § 122.306 (c) and (d), and § 123.407(c), to allow agencies to coordinate performance of certain functions in order to avoid unnecessary duplication of effort (see the discussion under those sections of the Preamble). The submission of required information to the State Agency is a procedure which need not be performed at both the State Agency and HSA level if one agency provides for performance of this function.

§ 122.306(a)(4) and § 123.407(a)(4) Submission of periodic reports by persons subject to review to health systems agencies and State Agencies.

Several commenters suggested that an institution's long-term plan should be deemed sufficient to meet the requirement for "periodic reports" which must be submitted to the health systems agency and the State Agency. It is the responsibility of the HSA and the State Agency to determine the form of periodic report required, and they may consider such plans acceptable. Several commenters suggested that these provisions for periodic reports be deleted, but they are required by section 1532(b)(5) of the Act and cannot be deleted.

Several commenters expressed concern with the content and timing of the submission of periodic reports required by both the State Agency and HSA and suggested a coordinated, common reporting system. As is the case with certain other procedures, § 122.306(d) and § 123.407(c) permit coordination between the State Agency and the HSA; there is, however, no requirement for it in the regulation.

§ 122.306(a)(5) and § 123.407(a)(5) Provisions for written findings by health systems agencies and State Agencies.

A comment was received suggesting that HSAs contiguous to the health service area in which the proposed institutional health service is to be located be included among parties required to receive written findings. The Secretary does not find this additional requirement to be necessary, since a contiguous HSA must be given notice of the beginning of a review and may then request a copy of the written findings, if it wishes to do so.

Section 123.407(a)(5) has been revised to make it clear that if a State Agency wishes to attach conditions to its recommendation or decision, it may do so as long as the established State program permits conditions to be attached. Section 122.306(a)(5) now provides HSAs may attach conditions if the State program does not prohibit such a procedure.

§ 122.306(a)(5) Provision for written findings by health systems agencies.

One comment was received asking for correction of the section references within the parenthetical clause to § 122.309, and the correction has been made.

Many commenters requested deletion of the words "final decision of" from this subparagraph on grounds that HSAs make only recommendations, not decisions. The phrase has been retained for reasons explained below in the discussion of § 122.306(a)(8).

§ 122.306(a)(7) and § 123.407(a)(7) Provision for public hearing in the course of agency review by health systems agencies and State Agencies.

Several comments were received on the minimum definition to "persons directly affected" who are, therefore, entitled to request a public hearing in the course of agency review. Many felt that the definition was too broad and that certain elements of the definition should be deleted to give more flexibility to the HSA and State Agency. Others commented that the definition should include mention of specific groups, such as Medicare intermediaries, health care providers within the region served, or public elected officials, either in addition to, or in place of, current elements of the definition. The Secretary has determined that any agencies which establish rates for health care facilities or HMOs in the State or health service area should be included in this definition. Furthermore, HSAs or State Agencies may expand the definition in their adopted procedures.

Several comments stated that the term "hearing" in many States requires special treatment under State law and suggested that a less formal term be used, such as "public meeting." The term "hearing" is retained in §122.306(a)(7) and § 123.407(a) (7) and (8), since it is the term used in section 1532(b)(8) of the Act. A comment was also received recommending that the regulation provide for the following: right to representation by counsel; right to require the availability of documents; written records of hearings; pre-hearing discovery, and pre-hearing conference; and receipt of testimony under oath. However, specification of the degree of formality of the hearing has been left to the agency's procedures.

Other commenters objected to repetitive public hearings and asked that this paragraph be deleted. Some commenters felt that a single hearing should be held by the HSA while others were of the opinion that only the State Agency should hold a public hearing. Section 1532(b)(8) of the statute requires, however, that each agency make provision for public hearings in the course of agency review. It should be noted, however, that nothing in this regulation requires more than a single public hearing for a proposed new institutional health service, and nothing in it prohibits the holding of a single public hearing for consideration of more than one new institutional health service proposal. The regulations explicitly provide at § 123.407(a)(7)(ii) that the State Agency may consider the provision of an opportunity for a public hearing by the HSA as satisfying the State Agency requirement.

One comment was received asking that the public be allowed to comment at meetings at which the application is scheduled for discussion or other action. All business meetings of the HSA and State Agency must be open to the public and, should the HSA or State Agency decide to use the meeting at which the application is reviewed as a public hearing for the purpose of accepting comments, it may do so. The regulations provide that the procedure for such a public hearing must permit any person to present testimony.

Some commenters asked, without specifying any details, that persons requesting a hearing sometimes be required to bear the cost of the hearing. HSAs and State Agencies are funded for the purpose of carrying out certain functions, including the provision of an opportunity for public hearing. The Secretary feels that for agencies to charge fees expressly for conducting public hearings would unduly restrict public participation, contrary to the intent of the Act. The regulations have been revised at § 122.306(a)(7), § 122.306(a)(8), § 123.407(a)(7) and § 123.407(a)(8) so as to prohibit State Agencies and HSAs from imposing fees for hearings requested by "persons directly affected" or hearings for "good cause shown." This, of course, does not preclude a State's requiring an application fee in its certificate of need program, even though the review process may entail a hearing.

One commenter proposed that the procedures for holding hearings coincide with procedures in the section 1122 regulation. The regulations permit, but do not require, the HSA or State Agency to develop the procedures for hearings to coincide with the section 1122 hearing procedures.

Several comments were received regarding procedures for presenting testimony. Some contended that time limits should be set for each person proposing to testify and that groups should be requested to provide a single speaker. Others urged that a notice of intent to give testimony be required prior to the public hearing, with the applicant being furnished a list of those to testify. Still others sought clarification as to whether written testimony would satisfy the requirement of a public hearing. The regulations leave procedural details of this nature to the HSA and State Agency and do not preclude any of the above. As stated above, § 122.306(a)(7) (for HSAs) and § 123.407(a)(7) (for State Agencies) provide that there must be an opportunity for an open public hearing, at which any person may present testimony.

Comments were received asking that there be clarification as to the notice of public hearings during the review. The regulations provide for the HSA and State Agency to develop the procedure to be used to notify persons of public hearings, and this procedure is required to be provided in the notification of the beginning of a review pursuant to § 122.306 (a)(1) and § 123.407(a)(1).

A comment was received questioning the purpose and procedure for holding a public hearing prior to final decision or recomendation on the proposal. Section 1532(b)(8) of the statute provides for each agency to permit a directly affected person to request a public hearing; the purpose of this provision is to allow such persons who may be affected by the proposal to have, prior to any final decision or recommendations, a forum for presenting facts and expressing their opinions. The hearing for good cause shown, which is to reconsider a decision after it is made, would not achieve this purpose.

§ 122.306(a)(7) Provision for public hearing in the course of agency review by health systems agencies.

Several coments were received recommending that the HSA be required routinely to hold a public hearing during the process of each review. The statute requires only that a hearing be held if requested by a person directly affected; however, the HSA is not precluded from routinely holding such hearings.

Several comments were also received asking that the HSA be required to develop criteria delineating the circumstances under which the application would receive a public hearing. Others asked that the HSA be required to make a determination within set time limits during the review period as to whether an application would receive a public hearing. Still others asked for the inclusion of a definition of "good cause" and that a minimum number of requests be received in order for a hearing to be required. As mentioned above, the statute requires that there be a hearing during the course of review if requested by persons directly affected by the review. The procedures must provide for time frames within which the request for public hearings may be made and time frames for the holding of such hearings prior to the due date of the HSA's recommendations. The HSA may develop other procedures to implement the public hearing provision as long as such procedures do not restrict the ability of any person directly affected by the review to request a public hearing, or relieve the HSA of the responsibility for holding one.

The phrase "health care facilities and health maintenance organizations located in the health service areas of the agency which provide services similar to the proposed services under review" in § 122.306(a)(7) was accidentally repeated. The repetitive phrase has now been deleted.

A comment was received noting that § 123.407(a)(7), concerning State Agencies, included the words "one or more" preceding "persons directly affected" while § 122.306(a)(7), concerning HSAs, did not. For consistency, the words "one or more" have been added to the latter section.

§ 123.407(a)(7) Provision for public hearing in the course of agency review by State Agencies.

Several comments were received suggesting that the State Agency not be required to hold a public hearing if the HSA had provided the opportunity for a public hearing. The regulations now provide at § 122.306(d) and § 123.407(c) that when an opportunity for a public hearing is provided by the appropriate HSA, the State Agency is not required to hold such a hearing, if its procedures so state. However, language has been added to the regulations stating that where the HSA did not provide the opportunity for a public hearing to a person defined as "directly affected" by the State Agency due to a difference in definition of "persons directly affected," the State Agency must provide such an opportunity to that person. The paragraph has been modified to include this requirement.

A comment was received stating that there should be a mandatory public hearing on all inpatient applications. While the regulations do not require such action, there is nothing in the regulation to prevent the State Agency (or HSA) from adopting procedures mandating a public hearing in the case of applications for inpatient services.

§ 122.306(a)(8) and § 123.407(a)(8) Provision for public hearing for review of health systems agency and State Agency decision.

Several comments were received concerning the term "good cause shown." One commenter recommended that the term "good cause" be replaced by "on grounds of arbitrary or capricious" action. This suggestion has not been accepted because the statute uses the term "good cause." Still another commenter requested that the definition be made more exact. This is considered unnecessary because the agencies are expected to give any needed clarity to this requirement in their adopted procedures.

Several commenters also recommended that this section be deleted and replaced by a provision for a public hearing held during, rather than after, the review process. Section 122.306(a)(7) (in the case of HSAs) and § 123.407(a)(7) (in the case of State Agencies) provide for public hearings during the review if requested by persons directly affected by a proposal. The Act requires an additional hearing after the agency decision if requested by any person who has shown good cause. However, because reviews of proposed new institutional health services under section 1513(f), result in "recommendations", not "decisions", by HSAs, the requirement for a post-decision hearing does not apply to these reviews.

Other comments sought specific time limits for requesting and holding hearings for good cause shown in order that decisions would not indefinitely remain under a cloud of doubt. To avoid this possibility, the Secretary has amended § 122.306(a)(8) and § 123.407(a)(8). Section 123.407(a)(8) now requires that to be effective, requests for hearings must be received within thirty days of an agency decision and that the hearing shall commence within thirty days of receipt of such a request. However, where the State law governing the practices and procedures of administrative agencies provides for different time periods, the latter shall govern.

One comment was received requesting that the term "any person" as used in this paragraph be defined to include only those persons who participated in public hearings during the review process. Other comments were received requesting that where a proposal by an HMO has been reviewed, the applicant HMO is the only person who should be able to request a public hearing for good cause shown for review of a decision. These recommendations were unacceptable because the term "any person" is taken from the statute, and the Secretary has no basis for restricting its literal definition.

Several comments were received asking that a request for a public hearing for the purpose of reviewing a decision regarding an HMO be completed within 30 days from receipt of the request. As noted above, time limits have now been placed on the review of an agency decision. Further, as has been explained in the Preamble discussion of § 122.308 and § 123.409, the HSA and State Agency are encouraged to consider the time requirements of those HMOs which are receiving or requesting Federal assistance.

Comments were received noting that the proposed regulations contained no notification requirement for holding a public hearing for the purpose of reviewing a decision; they also recommended that the regulations include minimum notice requirements. This recommendation was accepted, and the language requiring notification has been added in § 122.306(a)(8) and § 123.407(a)(8).

Several comments requested clarification concerning which procedural requirements might be applicable to a reviewed decision. In response, § 122.306 (a)(8) now states that a reviewed decision under that paragraph shall be considered a decision of the HSA and shall be subject to the requirements of § 122.306(a) (5), (6) and (9), regarding written findings, notification of status and results of reviews, and publication of reports of reviews. A similar, but extended, provision has also been added to § 123.407(a)(8), which pertains to the State Agency.

In addition, several commenters asked for clarification of who determines that "good cause" has been shown in order to require review of a decision regarding the need for a new institutional health service. In the case of State Agency decisions, it is the State Agency that determines whether "good cause" is shown, and § 123.407(a)(8) has been adjusted

to clarify this. Similarly, in the case of HSA decisions, it is the HSA that determines whether "good cause" is shown, and § 122.306(a)(8) now clarifies this.

§ 122.306(a)(8) Provision for public hearing for review of health systems agency decision.

Several comments were received questioning the need for review hearings at the HSA level since the HSA makes recommendations, not decisions, to the State Agency, in its reviews of new institutional health services. Such recommendations are not subject to review at a public hearing for good cause shown. However, section 1532(a) of the Act and § 122.302 of the regulations, pertain to required procedures for two types of reviews: Those conducted "pursuant to sub-sections (e), (f), and (g) of section 1513" and "any other reviews of proposed or existing health services." In regard to the former type of review, § 122.306(a)(8) notes that, "an agency recommendation pursuant to section 1513 (f) is not a decision." Therefore, the HSA "recommendation" is not considered a "decision" which requires a hearing for "good cause shown." However, it is the second kind of review to which this paragraph applies, since it is only this latter sort of review in which the HSA may make a decision. Examples of such reviews might be those reviews performed under the provisions of Office of Management and Budget Circular A-95, which, although they are reviews of proposed health services, do not fall within the meaning of reviews of "new institutional health services." Further, this paragraph does not apply to the review functions conducted under section 1513 (e) or (g) of the Act (review and approval of certain proposed uses of Federal funds, and periodic review of existing institutional health services for appropriateness); the regulations pertaining to these reviews will be issued at a later date.

One commenter recommended that the same criteria be included for determining "good cause shown" as are included in § 123.407(a)(8) for State Agencies, and this recommendation has been followed.

§ 123.407(a)(8) Provision for public hearing for review of State Agency decision.

Several commenters stated that this provision for public hearings to review decisions when good cause is shown is unnecessary and should be deleted. Reasons given included duplication of the available appeal procedures provided by State administrative procedure acts, other traditional legal procedures, and the appeals provided for HSAs (§ 123.407(a)(9)) and "the person proposing the new institutional health service" (§ 123.407(a)(10)). It was also stated that hearings on the State Agency decision should be the responsibility of an independent authority. This recommendation was not adopted, as the statute requires the State Agency to make provisions for these public hearings if good cause is shown.

Some commenters recommended that the criteria listed in § 123.407(a)(8)(i–iv) for determining good cause to be expanded to include "failure of the State Agency to apply its own criteria." The Secretary feels that the criteria which are listed at § 123.407(a)(8)(i–iv) are sufficient Federal criteria for determining good cause, and, therefore, this suggestion was not accepted. State Agencies may, of course, adopt additional criteria.

Others recommended that an agency of the State, other than the State Agency, be allowed to determine when good cause has been shown. This recommendation was not adopted because the hearing for good cause shown respecting a State Agency decision is intended to be not a formal appeal but rather the review of a decision by the agency making the decision.

Several comments referred to specific questions of administrative procedures. Some of these comments included suggestions that the regulations specify a time period for requesting hearings as previously discussed in that part of the Preamble concerning § 122.306(a)(8) and 123.407(a)(8). This change has been made in both sections. Others were that there should be a limit on the number of these hearings on a single application; that there should be a procedure for the conduct of hearings covering such matters as board composition, representation of parties, and evidence to be heard; and that there should be procedures for a further hearing by the same agency on a reviewed decision if that decision reversed or modified the original decision. The Secretary encourages the State Agency to address specific proceduressu ch as these in developing its program; however, the addition of such detail to the Federal regulation is viewed as inappropriate.

Other commenters asked that the term "any person" be defined to include entities such as third-party payors and persons who participated in public hearings during the review. Since the term "any person" would include any individual or entity, this modification is not necessary.

§ 123.407(a)(9) Appeal of State Agency decisions requested by health systems agencies.

Several comments recommended amendment of this section to require that in cases where an appeal body makes a determination which is inconsistent with an HSA recommendation or State Agency decision, it also be required to furnish its findings in writing and the basis for its decision, as the State Agency is required to do. The Secretary agrees that such a procedure is consistent with section 1522(b)(13) of the Act since the decision of the appeal agency in section 1522(b)(13)(B) is considered the State Agency decision, which section 1532(b)(6) requires must be in writing. Therefore, this requirement has been added to § 123.407(a)(9).

One commenter proposed that this section clearly identify grounds upon which the State Agency could take action contrary to HSA recommendations. There is no statutory basis for such a limitation on the State Agency, although the regulation does not preclude the State Agency from identifying the grounds for this form of self-limitation. In addition, § 123.407(a)(9) requires a State Agency to provide to the HSA reasons for a decision inconsistent with the HSA's recommendations.

Of concern to several commenters was the lack of time frames for appeal of a State Agency decision. They recommended amendment of the regulations to conform to appropriate parts of the regulations for the section 1122 review program, 42 CFR 100.106(c). This recommendation has been accepted, and a provision has been added to § 123.407(a)(9) which requires that: (1) HSA has 30 days in which to appeal a State Agency decision, except that where State law governing the practices and procedures of administrative agencies provides a different time period, that time period prevails; and (2) the review shall commence within 30 days of the request, again, except where State law provides a different time period.

One commenter suggested that if the tentative decision of the State Agency is not in agreement with the recommendation of the affected HSA, the State Agency should be required to hold a public review (hearing) on the certificate of need request, and should be required to notify the affected HSA, the applicant and "other affected persons." The Secretary is of the opinion that the requirement for a hearing after the State Agency decision is sufficient; to require another one before it would substantially burden the State Agency, although the State is not precluded from adopting such a procedure.

A commenter proposed that § 123.407(a)(9) read "Provision that if a State Agency makes a decision * * * which is not in agreement with a recommendation made with respect thereto by a health systems agency, the State Agency shall submit to such HSA its written findings and recommendations together with reasons for its decision. Such decision * * * shall, upon request of the health systems agency be reviewed, by the Board of Control of the State Agency or under an appeals mechanism as provided under § 123.407(a)(10)." This suggestion has not been accepted because it would not add significantly to the regulations.

One commenter noted that § 123.407(a)(9) did not make it clear that only the HSA within whose area a project is to be located is entitled to an appeal of a State Agency decision. The section has been changed to clarify this provision.

Another commenter wanted this same section expanded to provide for an appeal by any aggrieved party. This has not been accepted because there is no statutory requirement to do so, and to add this as a requirement would add a significant burden to the State Agency. The Secretary notes, however, that

§ 123.407(a)(10) requires that the State Agency permit the person proposing the new institutional health service to appeal the State Agency's decision. Again, States may, if they choose, exceed Federal requirements and allow any person to appeal.

One commenter believed that, since the applicant has the right to appeal under § 123.407(a)(10), there appears to be no reason why an HSA should be allowed to challenge the decision of the State. This position has not been adopted because the HSA's right to appeal is a statutory requirement mandated by section 1522(b)(13)(A). It is likely to be exercised, for example, in the appeal of a State Agency finding of need, which an applicant would be less likely to appeal.

An observation was made that where a State Agency performs HSA functions under the special provisions of section 1536 of the Act, no HSA exists to appeal State Agency findings of need and, therefore, only the applicant has appeal rights. The suggestion was made that any person affected by a State Agency decision in such a State should have appeal rights. This has not been adopted on grounds that such provisions would be burdensome. Further, in such States there is broad-based representation through the Statewide Health Coordinating Council (SHCC), and this organization must be given the opportunity to review and comment prior to each decision of the State Agency (§ 123.110(a)(3)(iv)).

§ 123.407(a)(9) and § 123.407(a)(10) Appeals of State Agency decisions.

Several commenters believed there should be a "good cause" provision allowing an HSA or applicant to request a review by another agency, and suggested language similar to that in § 123.407(a)(8). This suggestion has not been adopted because section 1522(b)(13)(A) of the Act does not limit the HSA to a showing of good cause; rather, it requires that a review be made available whenever the State Agency decision is inconsistent with the HSA's recommendation. The provision for an applicant's appeal has been designed to parallel that for HSAs.

Other commenters were of the opinion that the appeals agency should have the option only of upholding a State Agency decision or remanding to the State Agency for review and should not itself render decisions. These comments could not be accepted, as the reviewing agency is clearly given decision making capability by section 1522(b)(13)(B), which provides that any decision by the reviewing agency is considered to be the decision of the State Agency. However, this section does not require that the reviewing agency make a decision on every appeal. Thus, the reviewing agency has the option to remand the matter to the State Agency for further action.

A commenter believed that the regulations prohibit the State Agency from being the appeals body, even where the certificate of need review function has been delegated to a different agency pursuant to section 1523(b)(1), and objected to such a prohibition. The Secretary believes that there is no such prohibition and intends to amend § 123.104(b)(17) to clarify that the State Agency may be the appeals body where another agency of State government is performing the certificate of need function.

Commenters also asked for clarification as to whether State Courts and the State legislature can be considered agencies of the State other than the State Agency for the purpose of hearing appeals. It is the opinion of the Secretary that State judicial and legislative agencies might qualify for this purpose, but that case-by-case decisions must be made.

§ 123.407(a)(10) Appeal of State Agency decisions requested by proponents.

Several commenters recommended requiring that the person proposing the new instiutional health service file notice of intent to appeal within 30 days and that the State Agency hearing be held within 60 days. In response, a provision has been added to § 123.407(a)(10) requiring that, to be effective, a request for a hearing be made within 30 days of a State Agency decision and that the hearing commence within 30 days of such a request (except where other periods are required by State law).

Other commenters requested provision of a mechanism to appeal State Agency decisions to the Secretary. They noted that such a mechanism exists with respect to capital expenditure reviews pursuant to section 1122 of the Social Security Act. This suggestion was not accepted because the certificate of need program requires that determinations be made by the State as to whether or not a need for the proposed services of facilities exists. The Secretary believes that unlike in the section 1122 program, there is no role envisioned for the Federal government in such individual determinations in the certificate of need and new institutional health service review programs.

Another commenter sought standards for appeal procedures to assure openness and the opportunity for the HSA and applicant to present their cases. Section 1522(b)(13)(A) of the Act and § 123.407(a)(10) require that the appeal mechanism must be consistent with applicable State law. The Secretary believes that, together with § 122.306(a)(9), § 123.407(a)(8), and § 123.407(a)(9), these provisions assure applicants and HSAs of openness in the appeals procedure. Furthermore, because of the varying State laws throughout the country, the Secretary has determined that no additional procedures are practical.

One commenter suggested that any decision made by a State Agency, approval as well as disapproval, should, upon request of the proponent, be reviewed under an appropriate appeals mechanism. This recommendation has been accepted, as the Secretary believes that the proponent should be able to appeal partial or conditional approvals where the State Agency chooses to make that kind of decision.

§ 123.407(a)(11) State Agency decisions inconsistent with health system agency plans.

Several commenters suggested that the regulation should include the language, "the HSA's health systems plan approved by the SHCC." This suggestion has not been accepted because the HSA may, in performing its review functions, have to use a health systems plan (HSP) which has not yet been reviewed by the SHCC and revised as needed. The intent of this provision is to require the State Agency to provide the HSA with a written statement of the reasons for State Agency inconsistency with the HSA's HSP used in review of the new institutional health service. Others requested deleting this provision entirely. This change has not been made because this provision is required by section 1523(c) of the Act.

§ 123.407(a)(12) State Agency reports of reviews.

One commenter requested that, because the requirement for publication of reports by the State Agencies was not based on the law, this provision should be stricken from the regulations. This suggestion has not been followed because section 1532(b)(9) of the Act imposes this requirement upon State Agencies. The regulations have simply interpreted the statutory reference to "regular" reports to mean "at least annually."

Another commenter urged that the publication of reports required by this paragraph be in one or more newspapers of general circulation, and occur once a week for three consecutive weeks in the classified section of the newspaper. This request has not been accepted because it is unduly burdensome. The Secretary believes that the method of publication is best determined by the State Agency.

§ 122.306(a)(9) Health systems agency reports of reviews.

One commenter suggested that where reviews have been completed at the State level, the reports by the HSA on its reviews should include the final determinations of the State Agency as well as whether an appeal was requested. While such information would be helpful, the suggestion has not been adotped, since it is felt that such an additional requirement would be unnecessarily burdensome to the HSA and this information will be available directly from the State Agency, in the report it is required to make under the provisions of § 123.407(a)(12).

§ 123.306(a)(10) Public access to health systems agency material.

One commenter observed that HSA meetings at which decisions are made should be open to the public. The Secretary agrees with this comment and notes that at § 122.109(e)(3) the term "business meetings" is defined broadly to include meetings at which functions under

the Act (including reviews of propsed new institutional health service) are performed. Additionally, the HSA must conduct its business meetings in public and must give adequate notice of such meetings, and must make its data and records available to the public in accordance with the requirement of § 122.114.

§ 123.407(a)(13) Public access to State Agency material.

Several commenters proposed that the regulations be amended to allow State Agencies to adopt as policies for public access to records related to applications, policies which conform to State law governing confidentiality. The Secretary cannot accept this proposal, as the statutory language in section 1522(b)(6) does not allow the State to restrict access to this information.

§§ 122.306(a)(11) and 123.407(a)(14) Letters of intent for construction projects.

Several commenters suggested omitting the requirement for submission of letters of intent, believing that this generates unnecessary paperwork and, in general, serves no useful purpose. This suggestion is not accepted because there is a statutory requirement for submission of letters of intent. Agencies may, of course, limit their requirements for information to be contained in such letters. Others suggested language allowing this requirement to be satisfied by the filing by providers of a long-range development plan with the appropriate agency. Their rationale was that such plans are superior in content to periodic reports. It is, of course, for the State Agency and the HSA to specify the precise detail, as well as the form, of the information to be submitted.

One commenter requested deletion of the requirement that letters of intent be given to both the State Agency and the HSA. Section 1532(b)(11) requires that these letters be submitted to both the HSA and the State Agency, in the case of construction projects, in order to inform these agencies of the scope and nature of the projects at the earliest possible opportunity. After considering this comment, the Secretary has concluded that this requirement would be satisfied if either the HSA or the State Agency has provided for the submission of letters of intent in the case of construction projects, so long as these letters are made available to the other agency. Accordingly, language to this effect has been added to the regulations at §§ 122.306(d) and 123.407(c). Further, it should be pointed out that § 122.307 (in the case of HSAs) and § 123.408 (in the case of State Agencies) of the regulation provide for exceptions to the required procedures for review. The Secretary may grant exceptions to these procedures if he determines that the proposed substitute procedures are less costly or more effective, are consistent with the purposes of the statute, and do not adversely and substantially affect the rights of persons affected by the subject reviews.

§ 122.306(b) and § 123.407(b) Procedures for different types of reviews.

Another commenter asked for interpretation of these paragraphs. The meaning here is that the procedures used by the HSA and the State Agency may vary depending on the type of review or type of service reviewed. However, the procedure for each type of review must meet the minimum requirements of this subpart.

As an example of varying procedures for different types of reviews, the HSA might adopt procedures for A-95 reviews of proposed health services that differ from procedures for review of new institutional health services; both sets of procedures, however, must meet the minimum requirements of this subpart. An example of varying procedures for different types of services reviewed would be the adoption of review procedures for construction proposals which differ from review procedures for proposals to change services not involving construction. Both sets of procedures must, however, meet the minimum requirements of this subpart.

All reviews within a type of review, or type of service reviewed, must follow the procedures adopted for that type. Where the HSA or State Agency wishes to develop procedures not consistent with the requirements of this subpart, § 122.307 or § 123.408 (Exceptions to the use of procedures), respectively, applies.

§ 122.307 and § 123.408 Exceptions to the use of procedures.

One commenter stated that these sections are not clear and asked that grounds for granting exceptions be spelled out. Others felt that these sections should permit non-substantive review, as well as expeditious review or no review at all when changes are required by licensing or accrediting agencies or by emergency conditions. The Secretary believes that the HSAs and State Agencies should determine those instances in which requests for exceptions to the minimum Federal requirements are in order. Examples of reasons for requesting exceptions might include instances when a required procedure is in conflict with State law or regulation, or instances where there is a need for expeditious review in those situations requiring an immediate decision on a proposal before the Agency.

§ 122.307 Exceptions to the use of procedures for health systems agencies.

Several commenters were of the opinion that the procedure for granting an exception to § 122.306 (Procedures for health systems agency review) gives the Secretary unlimited authority, and that the regulations should be changed to require State approval of HSA requests for such exception. Others felt that provider groups should also be given the opportunity to comment on requests for exceptions. Still others suggested requiring a written statement that the State Agency has verified that the proposed procedures are consistent with State law. Although there is no change to the language of the regulations, the Secretary intends to consult with State Agencies prior to the granting of exceptions requested by HSAs to determine whether the proposed substitute procedures are consistent with State law and compatible with the procedures used by the State Agency.

§§ 122.308 and 123.409 Criteria for health systems agency and State Agency reviews.

A number of comments were received which expressed the opinion that the criteria as set forth in these sections are only guidelines and not sufficiently specific to be applied to the review process. In addition, several commenters questioned the ability of the planning agencies to develop and utilize appropriate criteria; they felt that agency staff would be limited by low funding levels and by the heavy responsibilities created by the Act and these regulations.

With respect to these comments, it is pointed out that these sections as well as the statute do not, strictly speaking, specify criteria that must be applied to the review of all proposals for new institutional health services. Rather, § 122.308 and § 123.409 delineate a minimum set of considerations to be included in the review criteria and provide that such criteria may vary "according to the purpose for which a review is being conducted or the type of health service being reviewed." Since these considerations constitute only a minimum mandatory set, HSAs and State Agencies are encouraged to elaborate on these and, in so doing, to incorporate concerns and circumstances appropriate to their health service areas and States. The Secretary will seek to provide technical assistance wherever possible through the Centers for Health Planning and by disseminating appropriate guidelines and suggested standards. National guidelines for health planning will be issued, as provided for in section 1501 of the Act. In addition, planning agencies may also acquire needed information and expertise from the National Health Planning Information Center as well as from other sources, including members of their governing bodies and committees. It should be pointed out, however, that the development of criteria is possible even without direct technical assistance, as much work has already been done in this area, and the results of this work are available in the literature.

Numerous comments were received from several interest groups representing providers and consumers requesting that the Federal regulation include specific criteria to address their special needs and circumstances. The Secretary recognizes these concerns but believes that the problems vary with local conditions and are, therefore, more appropriately addressed by local solutions. As indicated above, the considerations set forth in the regulations are the mini-

mum considerations to be addressed in review of new institutional health services, and HSAs and State Agencies should take local needs and concerns into account as they develop more specific review criteria. Furthermore, these needs and concerns should also be reflected in the HSPs and State Health Plans.

One commenter suggested that exceptions be provided for those HSAs and State Agencies which are not able to apply these considerations. The Secretary has not accepted this suggestion, believing that these considerations are the minimum necessary considerations to achieve the goals of the Act. In addition, § 122.308 and § 123.400(b) stipulate that criteria may vary according to the purpose for which a review is being performed or the type of health service being reviewed.

Several comments were received suggesting that review criteria used by the HSA be consistent with those of the State Agency. In fact, one commenter recommended that this be accomplished by requiring the State Agency to develop a master set of criteria. There is no specific statutory authority for the State Agency to direct the development of criteria by the HSAs; rather each type of agency is required by section 1532(a) to develop its own criteria. However, the HSAs and State Agencies have now been given a more flexible time schedule for completing the development of review criteria and procedures (§ 122.350(a) and § 123.406(a) respectively) and it is expected that they will take advantage of this flexibility to coordinate the development of their procedures and criteria.

The Secretary received several comments urging inclusion of a criterion related to the capability of the applicant to develop or offer the new institutional health service. The Secretary believes that this consideration is implicit in one or more of the considerations already listed in the regulations. In any case, these criteria constitute only the minimum set of considerations; planning agencies are free to include provider capability as an additional specific measure for evaluating a proposed new institutional health service.

Several comments were received suggesting that the regulations should require that categorical disease expertise and patient care standards be used where they exist. The Secretary believes that this matter is not appropriate for Federal regulations; however, HSAs and State Agencies are encouraged to obtain this expertise and information and to use them in performing their reviews.

Another commenter stated that criteria other than those in the Act should not be included in the regulations. These additional considerations were added to address other sections of the statute, particulary section 2 of Pub. L. 93-641, "Findings and Purpose," and section 1502 of the Act, "National Health Priorities." The specific criteria appropriate to the review of a particular new institutional health service proposal must be determined by the agency conducting the review.

§ 122.308(a)(1) and § 123.409(a)(1) Relationship of services reviewed to plans.

One commenter asked whether it is the AIP or the HSP with which a proposed project must be consistent in the event of a conflict between the two plans regarding the proposed project. Another indicated that the regulations should not require conformance to the AIP as a discrete document. The Secretary points out that the regulations do not require that the proposed service be consistent with either the HSP or the AIP. They require only that the planning agency take these plans into consideration in evaluating the proposed project.

On the same general issue, the Secretary received a number of comments suggesting that applications for new institutional health services be examined in terms of compliance with the HSP and the State Medical Facility Plan. However, the Secretary wishes to emphasize that the State Medical Facility Plan must, under Title XVI of the Public Health Service Act, be consistent with the State Health Plan. The latter in turn is made up of HSPs, as revised by the Statewide Health Coordinating Council (SHCC) to "achieve their appropriate coordination or to deal more effectively with Statewide health needs" (section 1524(c)(2)(A)). Since HSPs and State Medical Facilities Plans must be consistent it is not necessary to require in the Federal regulation that both plans be used in conducting reviews.

Several commenters also recommended that the HSP which has been revised by the SHCC in developing the State Health Plan be the only valid HSP for use in reviewing proposals for new institutional health services. The Secretary notes that when the HSP has been revised by the SHCC pursuant to section 1524(c)(2)(A), the HSP as so revised becomes the only effective HSP, and, therefore, which must be used in the process of reviewing new institutional health services. However, until such time as the SHCC has revised the document, the HSP established and adopted by the HSA pursuant to section 1513(b) is the only HSP in existence, and, therefore, must be used for review of new institutional health services.

One commenter advocated that public need for a health service should take precedence over the requirement that the service be considered in light of the HSP. The Secretary has listed the criteria in the regulation in the same order as they are listed in the statute. No priority ranking is implied and, furthermore, an agency is free to develop its own priorities to address the needs of its area.

§ 122.308(a)(2) and § 123.409(a)(2) Relationship of services reviewed to long-range development plans.

Several comments were received requesting deletion of the requirement that proposed new institutional health services "conform" to the applicant's long-range development plan. This consideration is required by the statute and, therefore, cannot be deleted. However, the Secretary wishes to emphasize that this is only one of twelve minimum considerations to be included in the criteria for reviewing the proposed service. Furthermore, conformance to the long-range plan is not required, only consideration of the relationship.

§ 122.308(a)(3) and § 123.409(a)(3) Need for such services.

The Secretary received a comment recommending that this provision be changed from "need * * * for the services" to "appropriateness of the services" for the population to be served. The suggestion was not accepted because the language of the proposed regulations was derived directly from the statute. However, when adopting criteria for the review of new institutional health services, HSAs and State Agencies are encouraged to specify whatever elements of need are proper for particular types of services and for their planning areas.

One commenter said that services designed to meet special needs often cannot be justified when compared to services that meet the general needs of the community. It is the Secretary's view that in evaluating a proposed service to meet a special need, the agency should regard this need as one of many factors to be considered in deciding whether or not to approve the service. The task of balancing multiple criteria is one that the HSA and State Agency must undertake.

A very large number of comments were received from osteopathic physicians, hospitals and their patients, expressing concern that the proposed regulations did not include language in § 122.308(a)(3) and § 123.409(a)(3) which mandated consideration of the availability of both osteopathic and allopathic facilities and services within a community. The Secretary recognizes that this is a pervasive, although largely anticipatory, concern of the osteopathic community. He has thoroughly examined the statute and the arguments for and against separate consideration for osteopathic services and facilities and he has concluded that he cannot administer the statute in accord with its intent and, at the same time, place such a requirement on the HSAs and State Agencies. A basic goal of the law is to require and allow local and State planning agencies to develop health plans which incorporate the unique concerns of their respective planning areas, and, subsequently, to conduct reviews of new institutional health services which utilize these plans as guides in the review process. To include the requested osteopathic consideration in Federal regulations would be a serious interference with the local planning process, especially since the extent of the osteopathic community's concerns varies greatly from state to state.

The Secretary was also persuaded by additional arguments. For example, the intent of Congress was to make health

planning a public process through the requirements specified in the Act. The governing boards of HSAs must include, among others, consumers, public officials, and representatives of various provider groups. Osteopathic concerns may be voiced through these persons. Moreover the statute provides for public hearings before and after review decisions are made by the planning agencies; this constitutes another avenue to ensure that osteopathic concerns are considered. Finally, there is ample opportunity for community input in the development of both the HSP and the State Health Plan. Therefore, the Secretary believes that the structure of the HSA and the planning process afford adequate opportunity for the inclusion of osteopathic concerns, where they exist, in the health plans of the area. These concerns are safeguarded even further by the provision in § 123.407(a)(11) that the State Agency must provide written findings if its decision is counter to the HSP or AIP of the HSA; and § 123.407(a)(9) provides for an appeal hearing at the option of the HSAs if the State Agency's decision is contrary to the recommendations of the HSA. Moreover, although osteopathic physicians and facilities in some areas of the country may have experienced opposition from the allopathic medical community, no evidence has been presented to indicate that osteopaths have received discriminatory treatment from comprehensive health planning agencies in the past.

The Secretary, because of his concern about discrimination against populations who wish to be served by osteopathic services and facilities in their communities, strongly encourages State Agencies and HSAs to incorporate consideration of the needs of the population being served by such services into their health plans. However, he wishes to make clear that he is not advocating the development of duplicate systems of health care and, in particular, does not advocate the duplication of expensive facilities and equipment.

The Secretary is mindful of his continuing obligation to monitor the performance of the HSAs and State Agencies. As a part of this monitoring, he will look at the extent to which plans, recommendations, and review decisions reflect the needs of the population wishing to be served by osteopathic services and facilities. The Secretary also invites public comment on the impact of these regulations on this issue. The reader's attention is also drawn to the "Guidelines Concerning the Development of Health Systems Plans and Annual Implementation Plans," issued December 23, 1976 (page 20), which also drew attention to the concerns of the osteopathic community.

§ 122.308(a)(4) and § 123.409(a)(4) Availability of alternatives.

A commenter argued that the possibility that a less costly alternative service could be developed is too theoretical a ground for determining that a proposed service is not needed. The Secretary wishes to clarify this provision by pointing out that "availability," as used in this provision, refers to existing alternative services or those alternatives which have a reasonable opportunity of being developed, not services which theoretically might be developed in the community.

§ 122.308(a)(5) and § 123.409(a)(5) Financial feasibility.

One commenter remarked that consideration of immediate and long-term financial feasibility of a proposed service is counter-productive and unnecessary, and presumably desired the deletion of this consideration. The Secretary considers the financial feasibility of a proposed service to be an important consideration in reviews, so that agencies may have a basis for preventing adverse effect on the health care costs of the applicant facility and of the community being served through the facility's failure to meet its costs or through substantial rate increases.

Another commenter proposed that where there is a rate review body in a State, that review body, rather than the State Agency, should assume the responsibility for rendering decisions regarding financial feasibility, availability of resources, and cost of proposed construction. The Secretary agrees that rate review body may be useful as a resource to the planning agency; however, the statute requires that decision-making authority for new institutional health service proposals reside with the State Agency, unless the entire function is performed by another agency under an agreement in accordance with section 1523(b)(1). Rate review agencies have now been added to the list of persons to receive certain notifications as specified in § 123.406 and § 123.407, and language has been added to require consideration of the probable impact of the proposal on the costs of and charges for providing services by the person proposing the new institutional health service.

A suggestion was made to amend § 122.308(a)(5) and § 123.409(a)(5) to make the regulations conform with the requirements for grants under Title XVI of the Act. The commenter implied that Congress intended that poverty projects supported by Federal funds be deemed financially feasible. However, the Secretary has concluded that this is not the intent of the law. Section 1604(b)(1)(E) of the Act provides that Federal assistance given to medical facilities in poverty areas or individuals served by them shall be considered as financial support in determining if reasonable assurance can be given that adequate financial support will be available for the projects' maintenance and operation. Thus, Federal funds received by a poverty project can be considered as financial support in determining if the project is financially feasible, but receipt of Federal support should not be equated with financial feasibility. Moreover, section 1513(e) assigns to HSAs the responsibility to review and approve or disapprove certain proposed uses of Federal funds within their health service areas, including proposed assistance under Title XVI. Thus, a Federal determination of need is not contemplated under the statute as being a basis for overlooking State and local determinations of need.

A suggestion was made to amend the financial feasibility provision to include additional specific considerations. The Secretary believes that such detail is not appropriate in Federal regulations but is more appropriately left to the HSAs and State Agencies.

§ 122.308(a)(6) and § 123.409(a)(6) Relationship of proposed services to existing system.

A number of comments recommended that an additional criterion be added to address the impact of a proposed health service on other services offered by the applicant, on third party payors, and on the community. It is the opinion of the Secretary that such concerns are already included in several of the considerations listed in the sections on criteria.

Another commenter suggested that § 122.308(a)(6) and § 123.409(a)(6) be either clarified or deleted. Inasmuch as these provisions are required by statute, they cannot be deleted. However, the Secretary points out that while the relationship of the proposed service to the area's health care system must be considered in reviewing a new institutional health service, the actual measures used to evaluate its impact on the existing system are to be determined by the HSA and State Agency.

One commenter indicated that the proposed regulations did not fully address the problem of limited access by poverty populations to existing facilities. Although this is a valid concern, the solution to this problem lies not in mandating specific standards in Federal regulations but in the incorporation of this concern as a part of the consideration of access in the development of the HSP and AIP. This question of access will be further addressed in technical assistance materials to be issued by the Secretary.

§ 122.308(a)(7) and § 123.409(a)(7) Availability of resources.

One commenter advocated that the determination of whether there are available the resources needed to undertake a new institutional health service be made by the proponent of the service. The Secretary believes that the proponent has an active role to play in this matter and his documentation concerning the availability of resources should be taken into consideration in the review process. However, the planning agency must be the final arbiter on this question.

One commenter suggested that it is not realistic for an agency to disapprove a service which satisfies other appropriate criteria on the grounds that the resources required for the service could have been invested in an alternative service that is more desirable from the

planners' point of view. The Secretary wishes to emphasize that this consideration is only one of twelve required to be applied in evaluating a proposed service. If a project satisfies the other criteria, the planning agency should take that into account in arriving at its decision.

§ 122.308(a)(8) and § 123.409(a)(8) Relationship of proposed services to ancillary services.

A commenter questioned the need for considering the relationship of proposed services to auxiliary or support services. It is the Secretary's view that these factors must be considered, because the full implications of a proposed new institutional health service may not be known unless there is also an assessment of the availability of those services necessary to support the proposed new service (e.g., kidney dialysis in the case of a burn care service) and those services necessary to provide for proper continuity of care (e.g., an immunization or treatment program in the case of a proposed program for screening of early childhood disease).

§ 122.308(a)(9) and § 123.409(a)(9) Special needs of providers serving more than one health service area.

The Secretary received a number of comments recommending that the list of entities receiving special consideration for providing resources or services to individuals residing in adjacent health service areas be extended to include institutions with accredited residency programs, sectarian health care facilities, sectarian homes for the aged and behavioral and biomedical research projects, among others. While the Secretary thinks that it would be inappropriate to list additional examples, he emphasizes that if one or more of these factors is important in any local area, the HSA and State Agency may develop criteria to address these special needs.

Several comments requested that the Secretary require each applicant to submit to the HSA a quantitative estimate of the extent to which the proposed new institutional health service will meet needs outside the health service area and the extent to which it will serve the general community. It is the Secretary's opinion that the importance of this factor may vary from area to area and state to state, and that it therefore is not an appropriate matter for Federal regulations. Furthermore, § 122.306(a)(3) and § 123.407(a)(3) permit planning agencies to require such information if they deem it important.

§ 122.308(a)(10) and § 123.409(a)(10) Special needs of HMOs.

A large number of commenters, fearing an adverse impact on health maintenance organizations (HMOs) as a result of these regulations, strongly favored a Federal requirement that HSAs and State Agencies give special consideration to HMOs and many offered specific criteria to be used in the review process. After considering these comments, the Secretary has amplified the general language contained in section 1532(c)(8) of the statute by including in the regulations the minimum special needs and circumstances of HMOs which shall be given consideration by HSAs and State Agencies in developing review criteria.

In arriving at this provision, the Secretary was persuaded by the following factors. First, inasmuch as the Congress has established and the Department administers a national program under Title XIII of the Act specifically designed to encourage the growth and development of HMOs, this policy should be sustained and supported. Regulations promulgated under Title XV should not counteract the purposes of that program. Second, HMOs represent a different and competing system for the delivery and financing of health services, and they therefore respond to the health industry's need to experiment and innovate so that consumers may be provided with an alternative mode of health care delivery. In order to promote innovation, an environment conducive, or at least not hostile, to experimentation must be fostered. A final factor is the existence of impediments in some states and localities to the development of HMOs and the expansion of their services. These impediments are found in the requirements of some State laws and in opposition from some local planning bodies. Any HSA or State Agency that does not recognize the situations of developmental HMOs may aggravate the problems faced by entities that wish to become HMOs.

Notwithstanding the above, the Secretary points out that when new institutional health services proposed by HMOs involve inpatient facilities, § 122.309 and § 123.410 ("Inpatient facilities; required findings"), as well as § 122.310 and § 123.411 ("Health Maintenance Organizations; required findings"), shall apply.

Comments were also received pointing out that since both Title XIII, Health Maintenance Organizations, and Title XV of the Act govern certain aspects of HMOs, the two titles should be coordinated so as to avoid conflict. Additionally, commenters highlighted the problems of applicants for assistance under Title XIII whose developmental or operational activities could be significantly delayed and possibly jeopardized unless coordination occurred. They feared that either the length of time required by the review and appeals process, or the disapproval of a new institutional health service that is a continuation of an earlier activity for which a certificate of need has already been granted, would undermine the development of HMOs. The Secretary recognizes that HMOs receiving Federal grants under Title XIII are confined to a stringent timetable for completing each phase of their planning and developmental activities. Therefore, the Secretary emphasizes the need for HSAs and State Agencies to establish a flexible review schedule for HMOs and to expedite appeals procedures to meet the needs of applicants under the Federal HMO program.

In addition, new § 122.310 and § 123.411, "Health Maintenance Organizations; required finding" have been added to address the second concern above. These provisions ensure that an HMO will not be denied a certificate of need for a new institutional health service which is consistent with the basic objectives, time schedule, and plans of its previously approved application, if any.

Numerous comments suggested that the review criteria already established under Title XIII be used by HSAs and State Agencies to review HMO proposals for new institutional health services. In accordance with section 117(a) of the recently enacted Health Maintenance Organization Amendment of 1976 (Pub. L. 94-460), the Secretary has added to the regulations the requirement that the criteria established by HSAs and State Agencies under these paragraphs "shall be consistent with the standards and criteria established by the Secretary under section 1306(c) of the Act." Existing regulations under section 1306(c) are found at 42 CFR 110.204; these will be amended shortly to carry out the provisions of Pub. L. 94-460.

The commenters differed on whether an HMO should be exempt from review if it has been determined to be a qualified HMO under Title XIII. Some indicated that they were in favor of exemption while others claimed that since Federal qualification is not an indicator of quality, these HMOs should not be exempt. The Secretary points out that coverage of HMOs under these regulations is required by the statute, and there is no legal basis for their exemption, regardless of whether they have been found to be qualified HMOs under Title XIII.

A few commenters suggested that, in developing criteria for reviews of new institutional health services, HSAs and State Agencies should give special consideration to those HMOs which predominantly serve Medicare and Medicaid beneficiaries as well as those HMOs which serve more than one health service area. While these concerns are important, they should be addressed at the HSA and State level. As HSPs and State Health Plans are established and review criteria developed, HMOs with unique concerns should provide information to the planning agencies so that their particular circumstances are considered.

Objection was raised to the fact that HMOs are placed in a disadvantageous position compared to providers of ambulatory services on a fee-for-service basis and insurance companies (which provide indemnity coverage), since these regulations do not cover either of the latter. Coverage under the regulations is based on the statute, which requires review only of institutional health services, defined in section 1531(5) explicitly to include services provided through health care facilities and HMOs.

A number of commenters recommended that language be added to the regulations to state that the HSA shall recommend, and the State Agency shall grant, certificates of need to HMOs unless the agencies can make written findings that there is an excessive number of HMOs in the area or that the proposed new in-

stitutional health service is available from non-HMO providers in a reasonable and cost effective manner. This recommendation was not accepted because it would be tantamount to creating a separate review process for HMOs. HSAs and State Agencies would be required to show that the proposed new institutional health service is not needed rather than confirming that a need for such services exists. This would result in the planning agencies having minimal authority to exercise any regulatory control over the development or expansion of HMOs. The Secretary believes that this would be contrary to the statute, which specifically requires the review of the need for new institutional health services "provided through health care facilities and health maintenance organizations."

§ 122.308(a)(11) and § 123.409(a)(11) Special needs of research projects.

From several comments, it has become apparent that some confusion exists with respect to the requirement for consideration of the special needs and circumstances of biomedical or behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages. This consideration was included to discourage the disapproval of such projects without at least consideration of their special needs, such as the presence of a highly skilled investigator or access to certain facilities.

A few commenters requested identification of the entity that would be responsible for determining whether a national need was being met by a research project. These commenters suggested that a mechanism be established for a coordinated review of such proposals by Federal, State and local agencies. The Secretary notes that the reviewing agency is the entity which must determine whether a national need would be met, and encourages Federal agencies, State Agencies and HSAs to coordinate their activities in reviewing such research projects.

§ 122.308(a)(12) and § 123.409(a)(12) Construction projects.

Numerous comments were received requesting deletion of the provision requiring consideration of the cost and impact of construction projects. These provisions are required pursuant to section 1532(c)(9) of the statute and, thus, cannot be deleted.

Several commenters suggested that planning agencies review only those construction projects which have an impact on the area's health care system or services and exempt those projects which entail only minor renovation or modernization. The Secretary believes that any construction project covered by these regulations would have an effect on costs. If the construction affects the costs of the applicant in providing health care, it obviously affects the health care costs of the community; the extent of this effect can be determined only by review.

§ 122.308(a)(12)(i) and § 123.409(a)(12)(i) Costs and methods of proposed construction.

A number of commenters opposed the role of HSAs and State Agencies in reviewing the methods of construction to be utilized in a proposed project and requested deletion of these provisions. However, this requirement is set out in section 1532(c)(9)(A) of the Act, and therefore cannot be deleted.

Additional comments were also received suggesting deletion of the requirement that HSAs and State Agencies consider the costs and methods of energy provision. Although this provision is not a statutory requirement, it was included because the costs of providing energy are rapidly increasing and causing significant increases in the costs of construction and on-going operation of facilities. The Secretary has, therefore, concluded that these are necessary conditions. Another commenter suggested that this consideration be broadened to include consideration of energy utilization and the provisions of other utilities. The Secretary feels that this degree of detail is inappropriate for Federal regulations and is best left to the HSA and State Agency.

§ 122.308(b) and § 123.409(b) Criteria for different types of reviews.

One commenter recommended that exceptions be allowed to the use of criteria. This recommendation has not been accepted because the criteria ultimately adopted by an agency need to be applied only as appropriate to a particular proposal. Given this flexibility in the application of criteria, the commenter's concern is satisfied without further provisions in the regulations.

§ 122.309 and § 123.410 Inpatient facilities; required findings; general comments.

Many commenters requested the deletion from these sections of the required findings with respect to the appropriateness of the use of similar existing inpatient services. Deletion was requested for the following reasons: (1) An impartial and objective analysis is impossible to perform and the reviewing agencies are powerless to impose sanctions with respect to existing services or otherwise to correct deficiencies; (2) this requirement provides no incentive for a health facility to operate in an efficient and effective manner; (3) it is actually a disincentive to efficiency in that any provider can discourage competition by being inefficient; and (4) it is vague, indefinite, not reasonably capable of proof and budget constraints do not permit its review. Other commenters indicated that the burden placed on an applicant by this requirement is unfair since the applicant cannot directly influence the behavior of competitors and should therefore not be held responsible for their efficiency. The Secretary is convinced by these arguments and has deleted this provision (§ 122.309(b) and § 123.410(b) of the proposed regulations) as a required finding. However, the appropriateness and efficiency of existing inpatient facilities providing services similar to those being proposed are important factors in the review of an application for a certificate of need. Therefore, the introductory paragraphs of § 122.309 and § 123.410 have been modified to reflect the need for this consideration. This modification also addresses the concerns of those who requested that public charity hospitals and HMOs not be subject to these findings, because in their view such entities would have been penalized by § 122.309(b) and § 123.410(b) of the proposed regulation. The deletion of § 122.309(b) and § 123.410(b) also eliminates any need to combine them with § 122.309(d) and § 123.410(d), as suggested by one commenter.

One commenter requested that the phrase "existing inpatient facilities" be changed to "existing health care system." Although the appropriate and efficient use of all parts of the existing health care system is a goal of certificate of need programs, this change was not included in the amendment to the introductory paragraph in § 122.309 and § 123.410, since the Secretary does not expect an HSA or a State Agency to review the entire health care system in the review of a specific proposal.

One commenter suggested that local providers and provider organizations should be involved in making the findings required by § 122.309(b) and § 123.410(b) of the proposed regulations, to prevent arbitrary decisions on the part of the HSAs. This provision is considered unnecessary in the language now added to the introductory paragraphs, since the agencies may use whatever sources of expertise are available to them but are required to make these findings themselves prior to recommending or approving an inpatient service.

Another commenter requested that the requirement for comparison be modified to ensure that, where existing inpatient facilities of low quality are not being used in an appropriate and efficient manner, they should not be included in the comparison so that competing high quality services would be allowed to develop. This comment has been addressed by deleting the requirement for this finding.

Several commenters suggested clarification or modification of the language of the proposed regulations clearly to indicate the placement of the burden of proof for the required findings on either the provider applicant or the reviewing agency. One commenter suggested that the language should be neutral with respect to the placement of the burden of proof. Related to these comments were many others concerning the time and staff required by the reviewing agencies to implement these sections of the regulations. One commenter stated that the requirements of § 122.309 and § 123.410 would substantially increase the depth and scope of the certificate of need reviews without providing additional bene-

fits and should be deleted. Others suggested limiting the scope of the requirements or delaying the implementation of these requirements for a specified period of time. In all but one instance, those suggestions were not followed. The Secretary has concluded that the language of the proposed regulations is neutral with respect to the placement of the burden of proof and it does not prevent either the HSA or the State agency from requiring the applicant to address all the appropriate criteria enumerated under § 122.309 and § 123.410. The reviewing agency may then accept or reject the applicant's analysis of his conformance with the criteria, but must prepare its own written findings pursuant to § 122.306(a)(5) or § 123.407(a)(5). Since the reviewing agencies are required only to make "findings," not necessarily to perform original analysis, they may base their findings on analysis conducted by the applicant, other institutions, agencies or parties, or any other information available to them. Therefore, comments concerning staffing limitations, which proposed limiting the scope of these requirements and delaying their implementation, were not adopted.

Many commenters indicated that the phrase "service to inpatients" is vague and would seem to cover all aspects of a hospital's operations. One commenter suggested that the introductory paragraph in § 122.309 and § 123.410 be modified to read as follows: "in the case of certain proposed new institutional health services * * *" Another commenter indicated that these sections should apply only to changes in bed capacity, since they duplicate the criteria in § 122.308 and § 123.409. To clarify this issue, the Secretary has revised the regulations to provide that only proposed new institutional health services for th provision of health services to inpatients will require that agencies make the specified findings. Thus, capital expenditures of $150,000 or more relating to food services or other support services for inpatients are examples of inpatient services to which the "required findings" provisions do not apply. Moreover, "required findings" are not mandatory for those hospital services not related to inpatients; examples are ambulatory and emergency medical services.

Many commenters expressed concern regarding the applicability of these requirements to all inpatient facilities and institutional health services. One commenter suggested that it does not appear necessary to accentuate the special nature of inpatient facilities and that these requirements should be deleted here and included under § 122.308 and 123.409 as criteria to be applied to all reviews. Another commenter suggested that these sections be made optional for State certificate of need programs because conditions of excess inpatient beds do not exist uniformly in every state or in every region within a State. Lastly, one commenter claimed that the requirements prohibit any capital expenditure improvements. These suggestions were not accepted because the Secretary considers that a major purpose of a State certificate of need program is to prevent the construction of unnecessary and inappropriate health care facilities. Furthermore, as indicated in the Preamble to proposed regulations, evidence suggests that there is an excess supply of hospital beds in many areas of the country and that some states already have an adequate or excess number of nursing home beds. The findings required by these sections are intended to confront the problem of overbuilding of inpatient facilities and to minimize or eliminate overbuilding. It is not expected that these required findings will create adverse effects in areas where there is a demonstrable shortage of facilities or services.

Another commenter requested that § 122.309 and § 123.410 be limited to proposals which permanently increase or decrease inpatient bed supply. This suggestion was not adopted because, as previously stated, the Secretary has incorporated a time factor in the definition, at § 122.304(a)(3) and § 123.404(a)(3), of the bed changes which must be reviewed.

Several commenters also requested that these sections be expanded to include other than inpatient levels of care, such as outpatient care. However, the major objective of these sections is to confront the overbuilding and excess supply of inpatient beds. Nevertheless, any State may also include other than inpatient services in the findings required for issuance of a certificate of need.

Many commenters suggested that all of these sections be deleted because they are not based on statutory authority as expressed in Pub. L. 93–641. However, section 1523(a)(4)(B) of the Act requires a State to administer a State certificate of need program "which applies to new institutional health services proposed to be offered or developed within the State and which is satisfactory to the Secretary." Because of the findings of section 2(a)(4) of Pub. L. 93–641 which pertain to the previously uncontrollable and inflationary increases in the costs of health care, particularly of inpatient hospital care the Secretary has determined that these required findings for inpatient services are necessary for a satisfactory certificate of need program.

Other commenters requested that § 122.309 and § 123.410 be deleted because the differences between certificate of need, review of new institutional health services, and section 1122 reviews are unnecessary and cumbersome, because these sections are based on the assumption that valid needs for inpatient services do not exist, and because they override local differences and autonomy by establishing absolute standards. These suggestions have not been followed for several reasons. There is a substantial difference between reviews of new institutional health services, including certificate of need reviews, and reviews under section 1122. The former reviews are directed toward proposed new institutional health services, while the section 1122 program is limited to review of proposed capital expenditures. Further, the Secretary recognizes that a need for inpatient services does exist in some areas and, while these sections are directed toward areas of excess supply, they are not expected to hamper the development of additional supply in areas where there is a shortage. Finally, these requirements are not intended to override local differences and autonomy, since HSAs and State Agencies must develop standards and criteria based on these sections, and make the required findings.

One commenter questioned the applicability of these findings in States with a single statewide HSA. The Secretary has indicated in the proposed regulations and in previous regulations that the HSAs and State Agencies are separate bodies and therefore the conduct of this responsibility would be the same as in States with more than one HSA.

One commenter requested that, because of the demand placed upon the resources of the reviewing agencies in making these findings, the State Agency be required only to confirm or reject the findings of the HSA. The Secretary emphasizes that § 122.309 and § 123.410 require that the HSA and the State Agency each make its own findings in writing.

Another commenter suggested that the regulation should be more specific and should define what is meant by an adequate demonstration of findings. This suggestion has not been adopted; whatever standards and additional criteria are used by the reviewing agency will define an adequate demonstration of findings.

One commenter expressed concern that a State Agency would be subject to providing a hearing to any interested person regarding its decision on these findings, while another commenter indicated that a public hearing on these findings is warranted. In response to these comments, the Secretary notes that these findings, as a necessary part of certain agency decisions, are subject to challenge when a hearing on any of these decisions is held.

Two commenters questioned why these findings must be made in writing. They specifically suggested that the State Agency should not have to provide a detailed written statement of any discrepancy between the State Agency's findings and those of the HSA. The Secretary sees the need for written findings and notes that § 123.407(a)(9) requires a detailed statement only if the State Agency's decision differs from the HSA's recommendation.

§ 123.309(a) and § 123.410(a) Alternatives to inpatient services.

Many commenters requested specific changes in the wording of the proposed regulations. One commenter suggested that the phrase "the development of alternatives has been studied" be changed to "the development of alternatives has been reasonably studied." The Secretary has not included this suggestion because such a change would raise additional questions without improving the language of the regulations. As presently stated, the regulations permit agencies the latitude to define the scope and depth of the analysis required to support their

findings. Use of the word "reasonably" would require further guidance from the Secretary and, thus diminish the latitude of the reviewing agencies. Several commenters suggested that the phrase, "less costly, more efficient, or more appropriate alternatives" be changed by substituting "and" for "or." This exact suggestion was not adopted, but § 122.309(a) and § 123.410(a) have been changed to clarify that the purpose of this provision is to ensure that State agencies consider alternatives to the proposal and must find that, at least in terms of cost, efficiency, and appropriateness, these alternatives are not practicable. Further, the Secretary does not agree with suggestions that the word "practicable" should be followed by the phrase, "at the time of the review;" it adds little meaning to this subsection since the reviewing agencies will be aware that what is not practicable immediately may become so in the near future. Another commenter requested that these subsections be ended after the phrase, "not available." This comment was not adopted because if an alternative is not available, yet its development might be practicable, serious consideration should be given to such development.

Two commenters expressed concern that these subsections would deter the development of new institutional health services and the development of alternate methods of health delivery. One was particularly concerned that the language of the proposed regulations was too restrictive and the other indicated that the studies needed to support the required findings would result in delays which would not otherwise occur in granting certificates of need. Regarding the former concerns, the Secretary has indicated that the purpose of this section is to highlight the need for alternate methods of health care delivery and to prevent the development of services and facilities which are not as efficient and appropriate as these alternatives. The Secretary has also noted that the latter concerns may be well founded, but that any ensuing delays should result in better decisions on certificate of need applications.

Two commenters suggested that the terms "more efficient" and "more appropriate" in § 122.309(a) and § 123.410(a) are excessive and vague. In response to these comments, the Secretary points out that the reviewing agencies may define these terms based on local perspectives, as expressed in their adopted plans, criteria and standards.

One commenter indicated with regard to § 122.309(a) and § 123.410(a) that even if alternative services are feasible, the lack of someone to finance and develop them may prevent their establishment. He added that feasible but nonexistent services should not be grounds for denying proposals for services which are otherwise desirable. However, the term "available" as used in this provision implies existing or readily available services, not remote or theoretical services.

§ 122.309(b) and § 123.410(b) Alternatives to new construction.

Many comments requested deletion of § 122.309(c) and § 123.410(c) of the proposed regulations, now § 122.309(b) and § 123.410(b), regarding required findings concerning alternatives to new construction. Most of these commenters argued that the language of the proposed regulations emphasized modernization rather than replacement, and thus might actually encourage wasteful expenditures in some cases. Others indicated that this requirement could not be fulfilled and that it was not based on statutory authority. One commenter requested that the last phrase, "and have been implemented to the extent practicable," be deleted. These comments were not accepted because the regulations require only that modernization has been considered as an alternative. If modernization is more expensive or otherwise not feasible, then a finding may be made that alternatives have been "implemented to the maximum extent practicable."

Several commenters suggested specific modifications to the required finding regarding alternatives to new construction. One requested that the wording be changed to indicate that alternatives to new construction have been explored and found to be either more expensive or not practicable. Another suggested that these alternatives only need to be considered and found not feasible. Others suggested that these alternatives be "reasonably" considered. One commenter suggested that further definition be given to the word "practicable." Another commenter sought clarification of the extent to which alternatives for construction must be considered and implemented. The Secretary has not followed these suggestions because they either excessively weaken the provision or create a need for further clarification. Furthermore, it is intended that the reviewing agencies determine the operational definition of "practicable" based on state and local circumstances.

§ 122.309(c) and § 123.410(c) Problems in obtaining proposed types of service.

A number of commenters requested the deletion of § 122.309(d) and § 123.410(d) of the proposed regulations, now § 122.309(c) and § 123.410(c), which required a finding that patients will experience serious problems in the absence of the proposed new service as a precondition of determining that a proposed new inpatient service is needed. They cited the following reasons: (1) The requirement has no statutory authority; (2) it is inconsistent with sound planning; (3) other parts of § 122.309 and § 123.410 accomplish this intent; and (4) it is impractical and cannot be administered effectively. Another commenter took issue with the word "serious." The Secretary has retained these provisions because an important purpose of the health planning and regulatory programs required by Title XV is to prevent or alleviate the health problems of the population served or to be served. This provision is consistent with sound health planning and can, in the judgment of the Secretary, be administered effectively, based upon the criteria and standards that an agency must develop and use in reviewing a certificate of need application. The one commenter who objected to the term "serious" was joined by others who suggested clarification of this word. To reflect more precisely the intent of the requirement, certain types of serious problems have been specified, while allowing the agencies to add other criteria if they choose.

Another commenter suggested that this criterion be ranked first on the list of required findings. These provisions were not ranked in order of priority, and all of the findings must be made as a condition for recommending or granting a certificate of need.

§ 122.309(d) and § 123.410(d) Consistency with other State plans for long-term care.

State Agencies are required by § 123.410(d) (§ 123.410(a) of the proposed regulations), to make a finding, in the case of proposals for the addition of beds for the provision of skilled nursing or intermediate care services, that the addition will be consistent with the plans of other State Agencies responsible for the financing of long-term care (including home health services). One commenter asked why the Secretary did not, in § 122.309, require HSAs to make the same finding. The Secretary has modified § 122.309 to include a similar provision.

Many commenters suggested that § 123.410(e) of the proposed regulation § 123.410(e) of the proposed regulations be deleted because the State Health Plan is the authoritative document for the State for the development of health resources. One argued that this provision would create confusion concerning the roles of the State Agency and other State agencies. The Secretary concurs with these concerns and has modified the regulation to require "consideration" of the relationship of the proposal to these other agencies' plans, rather than requiring that they be "consistent."

One commenter claimed that this provision would force the reviewing agency to certify levels of care within institutions, to some extent. However, the requirement is only that the finding be made prior to approval of this type of service.

One commenter questioned the inclusion of home health services in this section, since the proposed regulation had excluded home health agencies from coverage under the requirements for a State certificate of need program. The Secretary believes that coverage of home health agencies by certificate of need is not linked with this requirement. Awareness of the plans of State Agencies responible for the provision and financing of home health services brings an addi-

tional factor to the review of an application for a certificate of need and will presumably result in a better decision by the reviewing agency. Therefore, although home health services are not required to be covered for certificate of need, review, the planning agencies should consider them in developing their HSPs.

One commenter suggested that the required findings be enlarged by requiring that there be a utilization review program in place and that such program not be limited to the Medicare and Medicaid programs. The Secretary believes that it is impractical to require an intensive review of this nature for every application; however, there is nothing in the language of the regulations which prevents an agency from employing utilization as a criterion.

Accordingly, 42 CFR Parts 122, 123, and 100 are amended in the manner set forth below.

Effective date: The regulations set forth below are effective February 22, 1977.

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: January 11, 1977.

THEODORE COOPER,
Assistant Secretary for Health.

Approved: January 13, 1977.

DAVID MATHEWS,
Secretary.

PART 100—LIMITATION ON FEDERAL PARTICIPATION FOR CAPITAL EXPENDITURES

3. Paragraph (e) of 42 CFR 100.102 is revised to read as follows:

§ 100.102 Definitions.

* * * * *

(e) "Health care facility" includes hospitals, psychiatric hospitals, tuberculosis hospitals, skilled nursing facilities, kidney disease treatment centers, including freestanding hemodialysis units, intermediate care facilities, and ambulatory surgical facilities, but does not include Christian Science sanatoriums operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts. For purposes of this paragraph:

(1) The term "hospital" means an institution which is primarily engaged in providing to inpatients, by or under supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. Such term does not include psychiatric and tuberculosis hospitals.

(2) The term "psychiatric hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons.

(3) The term "tuberculosis hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, medical services for the diagnosis and treatment of tuberculosis.

(4) The term "skilled nursing facility" means an institution or a distinct part of an institution which is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

(5) The term "intermediate care facility" means an institution which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who because of their mental or physical condition require health-related care and services (above the level of room and board).

(6) The term "ambulatory surgical facility" means a facility, not a part of a hospital, which provides surgical treatment to patients not requiring hospitalization. Such term does not include the offices of private physicians or dentists, whether for individual or group practice.

(Sec. 1122, Social Security Act, 86 Stat. 1386 (42 U.S.C. 1320a-1).)

PART 122—HEALTH SYSTEMS AGENCIES

1. Part 122 of Title 42, CFR, is amended by adding thereto a new Subpart D, to read as follows:

Subpart D—Procedures and Criteria for Review of New Institutional Health Services

Sec.

122.301 Definition.
122.302 Purpose and applicability.
122.303 General.
122.304 New institutional health services subject to review.
122.305 Adoption and public notice of review procedures and criteria.
122.306 Procedures for health systems agency review.
122.307 Exceptions to use of procedures.
122.308 Criteria for health systems agency review.
122.309 Inpatient facilities; required findings.
122.310 Health maintenance organizations; required finding.

AUTHORITY: Sec. 215, 58 Stat. 690 (42 U.S.C. 216); sec. 1532 of the Public Health Service Act, 88 Stat. 2251-53 (42 U.S.C. 300n-1).

§ 122.301 Definitions.

In addition to the terms defined in subpart A of this Part, as used in this subpart:

(a) The term "to develop," when used in connection with health services, means to undertake those activities which on their completion will result in the offer of a new institutional health service or the incurring of a financial obligation, as defined under applicable State law, in relation to the offering of such a service.

(b) The term "health care facility" is defined under section 1531(5) of the Act to have the same meaning as such term as in regulations prescribed under section 1122 of the Social Security Act. Such regulations (42 CFR § 100.102(e)) define the term "health care facility" as including hospitals, psychiatric hospitals, tuberculosis hospitals, skilled nursing facilities, kidney disease treatment centers, including freestanding hemodialysis units, intermediate care facilities, and ambulatory surgical facilities, but does not include Christian Science sanatoriums operated, or listed and certified, by the First Church of Christ Scientist, Boston, Massachusetts. Such regulations also provide that:

(1) The term "hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. Such terms do not include psychiatric and tuberculosis hospitals.

(2) The term "psychiatric hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons.

(3) The term "tuberculosis hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, medical services for the diagnosis and treatment of tuberculosis.

(4) The term "skilled nursing facility" means an institution or a distinct part of an institution which is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing care, or rehabilitition services for the rehabilitation of injured, disabled, or sick persons.

(5) The term "intermediate care facility" means an institution which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who because of their mental or physical condition require health related care and services (above the level of room and board).

(6) The term "ambulatory surgical facility" means a facility, not a part of a hospital, which provides surgical treatment to patients not requiring hospitalization.

Such term does not include the offices of private physicians or dentists, whether for individual or group practice.

(c) The term "health maintenance organization" is defined under section 1531(5) of the Act to have the same meaning as such term has in regulations prescribed under section 1122 of the Social Security Act. Such regulations (42 CFR § 100.102(f)) define the term "health maintenance organization" to mean a public or private organization, organized under the laws of any State, which

(1) Provides or otherwise makes available to enrolled participants health care services, including at least the fol-

lowing basic health care services: Usual physician services, hospitalization, laboratory, X-ray, emergency and preventive services, and out-of-area coverage;

(2) Is compensated (except for copayments) for the provision of the basic health care services listed in paragraph (c)(1) of this section to enrolled participants on a predetermined periodic rate basis; and

(3) Provides physicians' services primarily (i) directly through physicians who are either employees or partners of such organization, or (ii) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(d) The term "health services" means clinically related (i.e., diagnostic, treatment, or rehabilitative) services, and includes alcohol, drug abuse, and mental health services.

(e) The term "institutional health services" means health services provided in or through health care facilities or health maintenance organizations and includes the entities in or through which such services are provided.

(f) The term "to offer," when used in connection with health services, means that the health care facility or health maintenance organization holds itself out as capable of providing, or as having the means for the provision of, specified health services.

(g) The term "person" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies) a State, or a political subdivision or instrumentality (including a municipal corporation) of a State.

§ 122.302 Purpose and applicability.

Section 1513(f) of the Public Health Service Act requires each health systems agency, in order to assist State health planning and development agencies in carrying out their functions under paragraphs (4) and (5) of section 1523(a), to review and make recommendations to the appropriate State Agency respecting the need for new institutional health services proposed to be offered or developed in the health service area of such health systems agency. Section 1532 (a) of the Act requires that in performing its review functions under section 1513(f) of the Act or in conducting any other reviews of proposed health services, each health systems agency shall follow procedures and apply criteria developed and published by the health systems agency in accordance with regulations of the Secretary. This subpart sets forth the minimum procedures and criteria to be utilized by health systems agencies in conducting such reviews and the manner in which such procedures and criteria shall be developed and published.

§ 122.303 General.

Except as provided in § 122.307 of this subpart, each health systems agency shall utilize review procedures and criteria which meet the requirements of § 122.306 and § 122.308, respectively, when conducting reviews of new institutional health services and other reviews of proposed health services. The public shall be given notice of such review procedures and criteria in accordance with the requirements of § 122.305. In addition, in the case of any proposed new institutional health service for the provision of health services to inpatients, the health systems agency shall comply with the requirements of § 122.309; in the case of any proposed new institutional health service proposed for a health maintenance organization, the health systems agency shall comply with the requirements of § 122.310.

§ 122.304 New institutional health services subject to review.

(a) All new institutional health services proposed to be offered or developed within the health service area of the health systems agency shall be subject to review under this subpart. For purposes of this subpart, "new institutional health services" shall include:

(1) The construction, development, or other establishment of a new health care facility or health maintenance organization;

(2) Any expenditure by or on behalf of a health care facility or health maintenance organization in excess of $150,000 (or such lesser amount as the State may specify) which, under generally accepted accounting principles consistently applied, is a capital expenditure, except that this subpart shall not apply to expenditures for (i) site acquisitions; (ii) acquisitions of existing health care facilities and health maintenance organizations; or (iii) expenditures solely for the termination or reduction of beds or of a health service; unless included by the State in its scope of coverage. Where a person makes an acquisition by or on behalf of a health care facility or health maintenance organization under lease or comparable arrangement, or through donation, which would have required review if the acquisition had been by purchase, such acquisition shall be deemed a capital expenditure subject to review.

(3) A change in the bed capacity of a health care facility or health maintenance organization which increases the total number of beds (or distributes beds among various categories, or relocates such beds from one physical facility or site to another) by more than forty beds or more than twenty-five percent of total bed capacity as defined by the State, whichever is less, over a two-year period.

(4) Health services, except home health services, which are offered in or through a health care facility or health maintenance organization and which were not offered on a regular basis in or through such health care facility or health maintenance organization within the twelve month period prior to the time such services would be offered.

(b)(1) Any expenditure by or on behalf of a health care facility or health maintenance organization in excess of $150,000 (or such lesser amount as the State may specify) made in preparation for the offering or development of a new institutional health service and any arrangement or commitment made for financing the offering or development of the new institutional health service shall be subject to review under this subpart.

(2) Nothing in this subpart shall preclude a health systems agency from recommending that a State Agency grant a certificate of need which permits expenditures only for predevelopment activities, but does not authorize the offering or development of the new institutional health service with respect to which such predevelopment activities are proposed. Expenditures in preparation for the offering of a new institutional health service shall include expenditures for architectural designs, plans, working drawings, and specifications. Such expenditures may also include those for site acquisition and preliminary plans, studies, and survey, if these are included by the State Agency in its definition of predevelopment activities.

§ 122.305 Adoption and public notice of review procedures and criteria.

(a) Each health systems agency shall adopt and review and revise as necessary, review procedures and criteria in accordance with the requirements of this subpart prior to its review of new institutional health services and in accordance with its Designation Agreement.

(b) Before adopting the review procedures and criteria required by this subpart or any revisions of such procedures and criteria, the health systems agency shall give interested persons an opportunity to offer written comments on the procedures and criteria, or any revisions thereof, which it proposes to adopt, as follows:

(1) The health systems agency shall distribute copies of its proposed review procedures and criteria, and proposed revisions thereof, to the agencies, institutions and associations with which the agency must coordinate its activities pursuant to section 1513(d) of the Act and its designation agreement, to units of general local government within its health service area, to the State Agency and Statewide Health Coordinating Council of each State in which all or any part of the agency's health service area is located, and to health systems agencies designated for contiguous health service areas, and to any agency which establishes rates for health care facilities or health maintenance organizations in its health service area.

(2) The health systems agency shall publish, in one or more newspapers of general circulation in its health service area, a notice stating that review procedures and criteria, or revisions thereof, have been proposed for adoption and are available at specified addresses for inspection and copying by interested persons.

(3) A health systems agency may request from the Secretary an exception to the requirement of § 122.305(b)(2). Such request shall be in writing, shall contain a detailed explanation of the reasons for the request and of the substitute publication procedures that the

agency intends to follow if the exception is approved. The Secretary may grant such an exception if he determines that the proposed substitute procedures are less costly or more effective and do not adversely and substantially affect the rights of persons affected by the subject reviews.

(c) Each health systems agency shall distribute copies of its adopted review procedures and criteria, and any revisions thereof, to the agencies and organizations specified in paragraph (b)(1) of this section and to the Secretary, and shall provide such copies to other persons upon request.

§ 122.306 Procedures for health systems agency review.

(a) The procedures adopted and utilized by a health systems agency for conducting the reviews covered by this subpart shall include at least the following:

(1) Written notification to affected persons of the beginning of a review, which shall include notification of the proposed schedule for the review, of the period within which a public hearing during the course of the review may be requested by persons directly affected by the review as defined in paragraph (a)(7) of this section, and of the manner in which notification will be provided of the time and place of any hearing so requested. For purposes of this subparagraph, "affected persons" include, at a minimum, the person whose proposal is being reviewed, the State Agency for each State in which all or any part of the agency's health service area is located, health systems agencies serving contiguous health service areas, health care facilities and health maintenance organizations located in the health service area which provide institutional health services, any agency which establishes rates for health care facilities or health maintenance organizations in its health service area, and those members of the public who are to be served by the proposed institutional health services. For purposes of this subparagraph, the date of "notification" is the date on which the notice is sent or the date on which the notice appears in a newspaper of general circulation, whichever is later. Written notification to members of the public may be provided through newspapers of general circulation in the area and public information channels; notification to all other affected persons shall be by mail (which may be as part of a newsletter).

(2)(i) With respect to reviews of proposed new institutional health services pursuant to section 1513(f) of the Act, schedules for reviews which provide that no such review shall take longer than the period specified in accordance with 42 CFR 123.407(a)(2) by the State Agency of the State in which the new institutional health service is proposed to be offered or developed, except that in the case of reviews under section 1122 of the Social Security Act, schedules for reviews shall be in accordance with 42 CFR 100.-106, which govern the State Agency's procedures for review under section 1122 agreements.

(ii) With respect to other reviews of proposed health services, schedules for reviews which provide that no review shall, to the extent practicable, take longer than 90 days from the date of notification made in accordance with paragraph (a)(1) of this section to the date of the written findings made in accordance with paragraph (a)(5) of this section.

(3) Provision for persons subject to a review to submit to the health systems agency in such form and manner, and containing such information, as the agency shall prescribe and publish, such information as the agency may require concerning the subject of such review. Such information requirements may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed; *Provided*, That the health systems agency may require no information of a person subject to review which is not prescribed and published as being required.

(4) Submission of periodic reports by providers of health services and other persons subject to health systems agency review under this subpart respecting the development of proposals subject to review.

(5) Provision for written findings (including, as appropriate, the findings required under § 122.309 and § 122.310 of this subpart) which state the basis for any final decision or recommendation made by the health systems agency. The health systems agency may make its recommendations conditional if the established State program does not prohibit such a procedure. Such findings shall be sent to the person proposing the new institutional health service and to the State Agency for the State in which the new institutional health service is proposed to be offered or developed, and shall be available to others upon request.

(6) Notification, upon request, of providers of health services and other persons subject to health systems agency review under this subpart of the status of the agency review of the proposals subject to review, findings made in the course of such review, and other appropriate information respecting such review.

(7) Provision for public hearing in the course of agency review if requested by one or more persons directly affected by the review. The agency must provide for a reasonable period from the date of written notification of the beginning of a review (see paragraph (a)(1) of this section) within which a public hearing during the course of the review may be requested by persons directly affected by the review. The agency may not impose fees for such a hearing. For purposes of this subparagraph, "persons directly affected" by the review include, at a minimum, the person whose proposal is being reviewed; members of the public who are to be served by the proposed new institutional health services; health care facilities and health maintenance organizations located in the health service area of the agency which provide services similar to the proposed services under review; health care facilities and health maintenance organizations which, prior to receipt by the agency of the proposal being reviewed, have formally indicated an intention to provide such similar services in the future, either through the filing of a letter of intent or by adoption of a plan; and any agency which establishes rates for health care facilities or health maintenance organizations located in the health service area in which the service is proposed to be offered or developed. Where such a hearing is requested, the agency shall, prior to such hearing, provide notice of such hearing, in accordance with its procedure adopted pursuant to paragraph (a)(1) of this section. The procedure for a hearing must provide an opportunity for any person to present testimony.

(8) Provision that any person may, for good cause shown, request in writing a public hearing for purposes of reconsideration of a health systems agency decision. The agency may not impose fees for such a hearing. For purposes of this subparagraph, an agency recommendation pursuant to section 1513(f) is not a decision. A request for a public hearing shall be deemed by the health systems agency to have shown good cause if it (i) presents significant relevant information not previously considered by the health systems agency, (ii) demonstrates that there have been significant changes in factors or circumstances relied upon by the health systems agency in reaching its decision, (iii) demonstrates that the health systems agency has materially failed to follow its adopted procedures in reaching its decision, or (iv) provides such other bases for a public hearing as the health systems agency determines constitutes good cause. To be effective, a request for such a hearing shall be received within 30 days of the health systems agency decision, and the hearing shall commence within 30 days after the receipt of the request; except that where any different time periods for such procedures are established by State law governing the practices and procedures of the health systems agency, the latter shall govern. Notification of such a public hearing shall be sent, prior to the date of the hearing, to the person requesting the hearing and to the person proposing the new health service, and shall be sent to others upon request. The health systems agency shall make written findings which state the basis for its decision within 45 days after the conclusion of such hearing, except that where any different time period is required by State law governing the practices and procedures of administrative agencies, the latter shall govern. A decision of the health systems agency following a public hearing under this subparagraph shall be considered a decision of the health systems agency for purposes of subparagraphs (5), (6), and (9) of this paragraph.

(9) Preparation and publication, at least annually, of reports by the health systems agency of the reviews being conducted (including a statement concerning the status of each such review) and of the reviews completed by the agency since the publication of the last report and a general statement of the findings and decisions made in the course of such reviews.

(10) Access by the general public to all applications reviewed by the health systems agency and to all other written materials pertinent to any agency review.

(11) In the case of construction projects, submission to the health systems agency by the persons proposing such projects of letters of intent in such detail and in such form as may be necessary to inform the agency of the scope and nature of the projects at the earliest possible opportunity in the course of planning of such construction projects.

(b) Procedures adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed.

(c) The procedures shall provide that the requirements of paragraph (a)(1) of this section shall be deemed satisfied if the State Agency, in providing notice of the beginning of the review in accordance with 42 CFR 123.407(a)(1), provides the information described in paragraph (a)(1) of this section.

(d) The procedures may provide that the requirements of subparagraphs (3), (4), or (11) of paragraph (a) of this section shall be deemed satisfied if the State Agency has provided for the corresponding procedure found at 42 CFR 123.407 (a) (3), (4), or (14).

§ 122.307 Exceptions to use of procedures.

After following the procedure set forth in § 122.305(b), an agency may, with respect to any type or group of reviews, request from the Secretary an exception to the requirement of § 122.303 that it utilize review procedures which meet the requirements of § 122.306. Such request shall be in writing, shall contain a detailed explanation of the reasons for the request and of the substitute review procedures that the agency intends to follow if the exception is approved, and shall be accompanied by copies of all written comments submitted under § 122.305(b) to the agency with respect to the request for an exception. The Secretary may grant such an exception if he determines that the proposed substitute procedures are less costly or more effective, are consistent with the purposes of the Act, and do not adversely and substantially affect the rights of persons affected by the subject reviews. The health systems agency shall distribute copies of substitute procedures approved by the Secretary in accordance with the requirements of § 122.305(c) of this subpart.

§ 122.308 Criteria for health systems agency review.

(a) The health systems agency shall adopt, and utilize as appropriate, specific criteria for conducting the reviews covered by this subpart, which criteria shall include at least the following general considerations:

(1) The relationship of the health services being reviewed to the applicable health systems plan and annual implementation plan adopted pursuant to section 1513(b) (2) and (3), respectively, of the Act.

(2) The relationship of services reviewed to the long-range development plan (if any) of the person providing or proposing such services.

(3) The need that the population served or to be served by such services has for such services.

(4) The availability of less costly or more effective alternative methods of providing such services.

(5) The immediate and long-term financial feasibility of the proposal, as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the new institutional health service.

(6) The relationship of the services proposed to be provided to the existing health care system of the area in which such services are proposed to be provided.

(7) The availability of resources (including health manpower, management personnel, and funds for capital and operating needs) for the provision of the services proposed to be provided and the availability of alternative uses of such resources for the provision of other health services.

(8) The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services.

(9) The special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. Such entities may include medical and other health professions schools, multidisciplinary clinics and specialty centers.

(10) The special needs and circumstances of health maintenance organizations for which assistance may be provided under Title XIII of the Act. Such needs and circumstances include the needs of and costs to members and projected members of the health maintenance organization in obtaining health services and the potential for a reduction in the use of inpatient care in the community through an extension of preventive health services and the provision of more systematic and comprehensive health services. The consideration of a new institutional health service proopsed by a health maintenance organization shall also address the availability and cost of obtaining the proposed new institutional health service from the existing providers in the area that are not health maintenance organizations. The criteria established by the health systems agency pursuant to this subparagraph shall be consistent with standards and procedures established by the Secretary under section 1306(c) of the Act (see 42 CFR 110.204).

(11) The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages.

(12) In the case of a construction project—

(i) the costs and methods of the proposed construction, including the costs and methods of energy provision, and

(ii) The probable impact of the construction project reviewed on the costs of providing health services by the person proposing such construction project.

(b) Criteria adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed.

§ 122.309 Inpatient facilities; required findings.

In the case of any proposed new institutional health service for the provision of health services to inpatients, a health systems agency shall not recommend that a State grant a certificate of need under its certificate of need program, or otherwise make a finding that such proposed new institutional health service is needed, unless, after consideration of the appropriateness of the use of existing facilities providing inpatient services similar to those being proposed, the health systems agency makes each of the following findings in writing:

(a) That superior alternatives to such inpatient services in terms of cost, efficiency, and appropriateness do not exist and that the development of such alternatives is not practicable.

(b) That in the case of new construction, alternatives to new construction (e.g., modernization or sharing arrangements) have been considered and have been implemented to the maximum extent practicable;

(c) That patients will experience serious problems in terms of cost, availability, or accessibility, or such other problems as may be identified by the reviewing agency, in obtaining inpatient care of the type proposed in the absence of the proposed new service.

(d) That in the case of a proposal for the addition of beds for the provision of skilled nursing or intermediate care, the relationship of the addition to the plans of agencies of the State responsible for providing and financing long-term care (including home health services) has been considered.

§ 122.310 Health maintenance organizations; required finding.

In the case of any new institutional health service proposed to be provided by or through a health maintenance organization, a health systems agency shall

not recommend that a State Agency deny a certificate of need with respect to such service (or otherwise make a finding under this subpart that such service is not needed) in those cases (a) when the State Agency has granted a certificate of need which authorized the development of the service, or expenditures in preparation for such offering or development (or has otherwise made a finding that such development or expenditure is needed), and (b) when the offering of this new institutional health service will be consistent with the basic objectives, time schedules, and plans of the previously approved application.

PART 123—STATE HEALTH PLANNING AND DEVELOPMENT AGENCIES

2. Part 123 of Title 42, CFR, is amended by adding thereto a new Subpart E, to read as follows:

Subpart E—Certificate of Need and Review of New Institutional Health Services

123.401 Definitions.
123.402 Purpose and applicability.
123.403 General.
123.404 News institutional health services subject to review.
123.405 Enforcement.
123.406 Adoption and public notice of review procedures and criteria.
123.407 Procedure for State Agency review.
123.408 Exceptions to use of procedures.
123.409 Criteria for State Agency review.
123.410 Inpatient facilities; required findings.
123.411 Health maintenance organizations; required finding.

AUTHORITY: Sec. 215, 58 Stat. 690 (42 U.S.C. 216); secs. 1523, 1532 of the Public Health Service Act, 88 Stat. 2246, 2251.

§ 123.401 Definitions.

In addition to the terms defined in subpart A of this Part, as used in this subpart:

(a) The term "to develop," when used in connection with health services, means to undertake those activities which on their completion will result in the offer of a new institutional health service or the incurring of a financial obligation, as defined under applicable State law, in relation to the offering of such a service.

(b) The term "health care facility" is defined under section 1531(5) of the Act to have the same meaning as such term has in regulations prescribed under section 1122 of the Social Security Act. Such regulations (42 CFR § 100.102(e)) define the term "health care facility" as including hospitals, psychiatric hospitals, tuberculosis hospitals, skilled nursing facilities, kidney disease treatment centers, including freestanding hemodialysis units, intermediate care facilities, and ambulatory surgical facilities, but does not include Christian Science sanatoriums operated, or listed and certified by the First Church of Christ Scientist, Boston, Massachusetts. Such regulations also provide that:

(1) The term "hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. Such term does not include psychiatric and tuberculosis hospitals.

(2) The term "psychiatric hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons.

(3) The term "tuberculosis hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, medical services for the diagnosis and treatment of tuberculosis.

(4) The term "skilled nursing facility" means an institution or a distinct part of an institution which is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

(5) The term "intermediate care facility" means an institution which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who because of their mental or physical condition require health related care and services (above the level of room and board).

(6) The term "ambulatory surgical facility" means a facility, not a part of a hospital, which provides surgical treatment to patients not requiring hospitalization. Such term does not include the offices of private physicians or dentists, whether for individual or group practice.

(c) The term "health maintenance organization" is defined under section 1531(5) of the Act to have the same meaning as such term has in regulations prescribed under section 1122 of the Social Security Act. Such regulations (42 CFR § 100.102(f)) define the term "health maintenance organization" to mean a public or private organization, organized under the laws of any State, which:

(1) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: Usual physician services, hospitalization, laboratory, x-ray, emergency and preventive services, and out-of-area coverage;

(2) Is compensated (except for copayments) for the provision of the basic health care services listed in paragraph (c)(1) of this section to enrolled participants on a predetermined periodic rate basis; and

(3) Provides physicians' services primarily (i) directly through physicians who are either employees or partners of such organization, or (ii) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(d) The term "health services" means clinically related (i.e., diagnostic, treatment, or rehabilitative) services, and includes alcohol, drug abuse, and mental health services.

(e) The term "institutional health services" means health services provided in or through health care facilities or health maintenance organizations and includes the entities in or through which such services are provided.

(f) The term "to offer," when used in connection with health services, means that the health care facility or health maintenance organization holds itself out as capable of providing, or as having the means for the provision of, specified health services.

(g) The term "person" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies) a State, or a political subdivision or instrumentality (including a municipal corporation) of a State.

§ 123.402 Purpose and applicability.

(a) (1) Section 1523(a)(4)(B) of the Public Health Service Act requires each State health planning and development agency to administer a State certificate of need program which applies to new institutional health services proposed to be offered or developed within the State and which is satisfactory to the Secretary. The purpose of this subpart is to set forth the requirements and standards that a State certificate of need program must meet in order for the Secretary to find it satisfactory. A State certificate of need program may include additional provisions not inconsistent with the requirements of this subpart.

(2) Section 1523(a)(5) of the Act requires each State Agency, after consideration of recommendations submitted by health systems agencies under section 1513(f) of the Act and 42 CFR Part 122, Subpart D, to make findings as to the need for new institutional health services proposed to be offered within the State. This subpart also sets forth the requirements and standards for State reviews under section 1523(a)(5).

(3) Section 1532(a) of the Act requires that in performing its review functions under section 1523 of the Act (which include reviews conducted pursuant to section 1523(a)(4)(B) and (5)), each State Agency shall (except to the extent approved by the Secretary) follow procedures and apply criteria developed and published by the State Agency in accordance with regulations of the Secretary. This subpart sets forth requirements respecting such procedures and criteria.

(b) The regulations of this subpart are applicable to State certificate of need programs under section 1523(a)(4)(B) of the Act and, except for § 123.405 (Enforcement), to reviews for purposes of making findings as to the need for new institutional health services to be offered within a State under section 1523(a)(5) of the Act.

§ 123.403 General.

(a) Each state health planning and development agency shall (1) administer within the State a certificate of need program meeting the requirements of this subpart; *Provided*, that this requirement shall not apply to a State Agency of a State until the expiration of the first regular session of the legislature of the State which begins after January 4, 1975; and

(2) Make findings as to the need for new institutional health services proposed to be offered or developed in the State, in accordance with the applicable requirements of this subpart.

(b) The State Agency shall consider recommendations made by health systems agencies under section 1513(f) of the Act and in accordance with 42 CFR Part 122, Subpart D, in reviewing any proposed new institutional health service under this subpart.

(c) Except as provided in § 123.408, each State Agency shall adopt and utilize review procedures and criteria which meet the requirements of § 123.407 and § 123.409, respectively, when conducting reviews of new institutional health services. The public shall be given notice of such review procedures and criteria in accordance with the requirements of § 123.406. In addition, in the case of any proposed new institutional health service for the provision of health services to inpatients, the State Agency shall comply with the requirements of § 123.410; in the case of any new institutional health service proposed for a health maintenance organization the State Agency shall comply with the requirements of § 123.411.

§ 123.404 New institutional health services subject to review.

(a) All new institutional health services proposed to be offered or developed within the State by any person shall be subject to review under this subpart. For purposes of this subpart, "new institutional health services" shall include:

(1) The construction, development, or other establishment of a new health care facility or health maintenance organization;

(2) Any expenditure by or on behalf of a health care facility or health maintenance organization in excess of $150,000 (or such lesser amount as the State may specify) which, under generally accepted accounting principles consistently applied, is a capital expenditure; except that this subpart shall not apply to expenditures for (i) site acquisitions; (ii) acquisitions of existing health care facilities and health maintenance organizations; or (iii) expenditures solely for the termination or reduction of beds or of a health service; unless included by the State in its scope of coverage. Where a person makes an acquisition by or on behalf of a health care facility or health maintenance organization under lease or comparable arrangement, or through donation, which would have required review if the acquisition had been by purchase, such acquisition shall be deemed a capital expenditure subject to review.

(3) A change in bed capacity of a health care facility or health maintenance organization which increases the total number of beds (or distributes beds among various categories, or relocates such beds from one physical facility or site to another) by more than forty beds or more than twenty-five percent of total bed capacity as defined by the State, whichever is less, over a two-year period.

(4) Health services, except home health services, which are offered in or through a health care facility or health maintenance organization and which were not offered on a regular basis in or through such health care facility or health maintenance organization within the twelve month period prior to the time such services would be offered.

(b)(1) Any expenditure by or on behalf of a health care facility or health maintenance organization in excess of $150,000 (or such lesser amount as the State may specify) made in preparation for the offering or development of a new institutional health service and any arrangement or commitment made for financing the offering or development of the new institutional health service shall be subject to review under this subpart.

(2) Nothing in this subpart shall preclude a State Agency from granting a certificate of need which permits expenditures only for predevelopment activities, but does not authorize the offering or development of the new institutional health service with respect to which such predevelopment activities are proposed. Expenditures in preparation for the offering of a new institutional health service shall include expenditures for architectural designs, plans, working drawings, and specifications. Such expenditures may also include those for site acquisition and preliminary plans, studies, and surveys, if these are included by the State Agency in its definition of predevelopment activities.

(c) Prior to its review of new institutional health services, each State Agency shall disseminate to all health care facilities and health maintenance organizations within the State, and shall publish in one or more newspapers of general circulation in the State, a description of the scope of coverage of its program for review of new institutional health services. Such description shall include, at a minimum, the coverage required by paragraphs (a) and (b) of this section. Whenever the scope of such coverage is revised, the State Agency shall disseminate and publish a revised description thereof.

§ 123.405 Enforcement.

(a) The State certificate of need program shall provide (1) that only those new institutional health services which are found by the State Agency to be needed shall be granted certificates of need, (2) that only those new institutional health services which are granted certificates of need shall be offered or developed within the State, (3) that no expenditures in excess of $150,000 (or such lesser amount as the State may specify) in preparation for the offering or development of a new institutional health service shall be made by any person unless a certificate of need for such services or expenditures has been granted; and (4) that no arrangement or commitment for financing the offering or development of the new institutional health service shall be made by any person, unless a certificate of need for such arrangement or commitment has been granted.

(b) The State certificate of need program shall provide sanctions, such as the denial or revocation of a license to operate, civil or criminal penalties, or injunctive relief, which the Secretary finds sufficient to assure compliance with the provisions of paragraph (a) of this section.

§ 123.406 Adoption and public notice of review procedures and criteria.

(a) Each State Agency shall adopt, and review and revise as necessary, review procedures and criteria in accordance with the requirements of this subpart prior to its review of new institutional health services, and in accordance with its Designation Agreement.

(b) Before adopting the review procedures and criteria required by this subpart or any revisions of such procedures and criteria, the State Agency shall give interested persons an opportunity to offer written comments on the procedures and criteria, or any revisions thereof, which it proposes to adopt, as follows:

(1) The State Agency shall distribute copies of its proposed review procedures and criteria, and proposed revisions thereof, to Statewide health agencies and organizations, the Statewide Health Coordinating Council, and each health systems agency for a health service area located in whole or in part within the State, and any agency which establishes rates for health care facilities or health maintenance organizations in the State.

(2) The State Agency shall publish, in one or more newspapers of general circulation in the State, a notice stating that review procedures and criteria, or revisions thereof, have been proposed for adoption and are available at specified addresses for inspection and copying by interested persons.

(3) A health systems agency may request from the Secretary an exception to the requirement of § 122.305(b)(2). Such request shall be in writing, shall contain a detailed explanation of the reasons for the request and of the substitute publication procedures that the agency intends to follow if the exception is approved. The Secretary may grant such an exception if he determines that the proposed substitute procedures are less costly or more effective and do not adversely and substantially affect the rights of persons affected by the subject reviews.

(c) Each State Agency shall distribute copies of its adopted review procedures and criteria, and any revisions thereof, to the agencies and organizations specified in paragraph (b)(1) of this section and to the Secretary, and shall provide

such copies to other persons upon request.

§ 123.407 Procedures for State Agency review.

(a) The procedures adopted and utilized by a State Agency for conducting the reviews covered by this subpart shall include at least the following:

(1) Written notification to affected persons of the beginning of a review, which shall include notification of the proposed schedule for the review, of the period within which a public hearing during the course of the review may be requested by persons directly affected by the review as defined in paragraph (a)(7) of this section, and of the manner in which notification will be provided of the time and place of any hearing so requested. For purposes of this subparagraph, "affected persons" include, at a minimum, the person whose proposal is being reviewed, the health systems agency for the health service area in which the proposed new institutional health service is to be offered or developed, health systems agencies serving contiguous health systems areas, health care facilities and health maintenance organizations located in the health service area which provide institutional health services, any agency which establishes rates for health care facilities or health maintenance organizations in the State, and those members of the public who are to be served by the proposed new institutional health services. For purposes of this subparagraph, the date of "notification" is the date on which the notice is sent or the date on which the notice appears in a newspaper of general circulation, whichever is later. Written notification to members of the public may be provided through newspapers of general circulation in such area and public information channels; notification to all other affected persons shall be by mail (which may be as part of a newsletter).

(2) Schedules for reviews which provide that no review shall, to the extent practicable, take longer than 90 days from the date that notification is sent to all affected persons to the date of the written findings made in accordance with paragraph (a)(5) of this section. The State Agency shall adopt criteria for determining when it would not be practicable to complete a review within 90 days. Where a proposed new institutional health service is to be provided in a health service area for which a health systems agency has been designated, such schedule shall set forth the period within which the health systems agency must complete its review under section 1513(f) of the Act and 42 CFR Part 122, subpart D, and provide its recommendation with respect to such new service to the State Agency: *Provided*, That the period allotted by the State Agency to the health systems agency for completion of its review and submission of its recommendations may not be less than 60 days, except with the written consent of the health systems agency.

(3) Provision for persons subject to a review to submit to the State Agency in such form and manner, and containing such information as the State agency shall prescribe and publish, such information as the State Agency may require concerning the subject of such review. Such information requirements may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed; *Provided*, That the State Agency may require no information of a person subject to review which is not prescribed and published as being required.

(4) Submission of periodic reports by providers of health services and other persons subject to State Agency review under section 1523 (a)(4)(B) and (a)(5) of the Act respecting the development of proposals subject to review under this subpart.

(5) Provision for written findings (including, as appropriate, the required findings under § 123.410 and § 123.411) which state the basis for any final decision made by the State Agency. The State Agency may make its final decision conditional if the established State program provides for such a procedure. Such findings shall be sent to the person proposing the new institutional health service and to the health systems agency for the health service area in which the new service is proposed to be offered or developed, and shall be available to others upon request.

(6) Notification, upon request, of providers of health services and other persons subject to review under this subpart of the status of the State Agency review of new institutional health services subject to review, findings made in the course of such review, and other appropriate information respecting such review.

(7) Provision for a public hearing in the course of agency review if requested by one or more persons directly affected by the review. The agency must provide for a reasonable period from the date of written notification of the beginning of a review (see paragraph (a)(1) of this section) within which a public hearing during the course of the review may be requested by persons directly affected by the review. The agency may not impose fees for such a hearing.

(i) For purposes of this subparagraph, "persons directly affected" by the review include, at a minimum, the person whose proposal is being reviewed, members of the public who are to be served by the proposed new institutional health services; health care facilities and health maintenance organizations located in the health service area in which the service is proposed to be offered or developed which provide services similar to the proposed services under review; health care facilities and health maintenance organizations which, prior to receipt by the agency of the proposal being reviewed, have formally indicated an intention to provide such similar services in the future; and any agency which establishes rates for health care facilities or health maintenance organizations located in the health service area in which the service is proposed to be offered or developed. Where such a hearing is requested, the State Agency shall, prior to such hearing, provide notice of such hearing, in accordance with its procedure adopted pursuant to paragraph (a)(1) of this section. The procedure for the hearing must provide an opportunity for any person to present testimony.

(ii) Although paragraph (c) of this section provides that the requirement of this paragraph is satisfied if the appropriate health systems agency has provided for the corresponding procedure found at 42 CFR 122.306(a)(7), in the event that a person qualifying under the State Agency definition of "directly affected" is not provided an opportunity for a public hearing by the health system agency, due to a difference in that agency's definition of "directly affected persons", the State Agency must provide an opportunity for a public hearing.

(8) Provision that any person may, for good cause shown, request in writing a public hearing for purposes of reconsideration of a State Agency decision, and procedures for such a hearing. The agency may not impose fees for such a hearing. For purposes of this subparagraph, a request for a public hearing shall be deemed by the State Agency to have shown good cause if it (i) presents significant, relevant information not previously considered by the State Agency, (ii) demonstrates that there have been significant changes in factors or circumstances relied upon by the State Agency in reaching its decision, (iii) demonstrates that the State Agency has materially failed to follow its adopted procedures in reaching its decision, or (iv) provides such other bases for a public hearing as the State Agency determines constitutes good cause. To be effective, a request for such a hearing shall be received within 30 days of the State Agency decision, and the hearing shall commence within 30 days of receipt of the request, except that where any different time periods for such procedures are established by State law governing the practices and procedures of administrative agencies, the latter shall govern. Notification of such a public hearing shall be sent, prior to the date of the hearing, to the person requesting the hearing, the person proposing the new institutional health service, and the health systems agency for the health service area in which the new institutional health service is proposed to be offered or developed, and shall be sent to others upon request. The State Agency shall make written findings which state the basis for its decision within 45 days after the conclusion of such hearing, except that where any different time period is required by State law governing the practices and procedures of administrative agencies, the latter shall govern. A decision of the State Agency following a public hearing under this subparagraph shall be considered a decision of

the State Agency for purposes of subparagraphs (5), (6), (9), (10), (11), and (12) of this paragraph.

(9) Provision that if the State Agency makes a decision regarding a proposed new institutional health service which is inconsistent with a recommendation made with respect thereto by the health systems agency making such recommendation pursuant to 42 CFR 122.107(c)(14), the State Agency shall submit to such health systems agency a written, detailed statement of the reasons for the inconsistency. Such decision (and the record upon which it was made) shall, upon request of the health systems agency, be reviewed, under an appeals mechanism consistent with State law governing the practices and procedures of administrative agencies, by an agency of the State (other than the State Agency) designated by the Governor. To be effective, the health systems agency's request must be received within 30 days of the State Agency decision, and the hearing shall commence within 30 days of receipt of the request, except that where any different time periods for such procedures are established by State law governing the practices and procedures of administrative agencies, the latter shall govern. The decision of the reviewing agency shall be made in writing within 45 days after the conclusion of such review, except that where any different time period is required by State law governing the practices and procedures of administrative agencies, the latter shall govern. These written findings shall be sent to the person proposing the new institutional health service, to the health systems agency requesting the review, and to the State Agency, and shall be made available by the State Agency to others upon request. The decision of the reviewing agency shall be considered the final decision of the State Agency; however, the reviewing agency may remand the matter to the State Agency for further action or consideration if applicable State law permits such remanding.

(10) Provision that any decision of the State Agency under this subpart (and the record upon which it was made) shall, upon request of the person proposing the new institutional health service, be reviewed, under an appeals mechanism consistent with State law governing the practices and procedures of administrative agencies, by an agency of the State (other than the State Agency) designated by the Governor. To be effective, the request of the person proposing the new institutional health service must be received within 30 days of the State Agency decision, and the hearing shall commence within 30 days of receipt of the request, except that where any different time periods for such procedures are established by State law governing the practices and procedures of administrative agencies, the latter shall govern. The decision of the reviewing agency shall be made in writing within 45 days after the conclusion of such review, except that where any different time period is required by State law governing the practices and procedures of administrative agencies, the latter shall govern. These written findings shall be sent to the person proposing the new institutional health service, the appropriate health systems agency, and to the State Agency, and shall be made available by the State Agency to others upon request. The decision of the reviewing agency shall be considered the final decision of the State Agency; however, the reviewing agency may remand the matter to the State Agency for further action or consideration if applicable State law permits such remanding.

(11) If a State Agency (or a reviewing agency, under subparagraph (a)(9) or (a)(10) of this section) makes a decision regarding a proposed new institutional health service which the State Agency determines is not consistent with the goals of the applicable health systems plan (established under section 1513(b)(2) of the Act) or the priorities of the applicable annual implementation plan (established under section 1513(b)(3) of the Act), the State Agency (or the reviewing agency, as appropriate) shall submit to the appropriate Health Systems Agency a written, detailed statement of the reasons for the inconsistency.

(12) Preparation and publication, at least annually, of reports by the State Agency of the reviews being conducted (including a statement concerning the status of each such review) and of the reviews completed by the agency since the publication of the last report and a general statement of the findings and decisions made in the course of such reviews.

(13) Access by the general public to all applications reviewed by the State Agency and to all other written materials pertinent to any agency review.

(14) In the case of construction projects, submission to the State Agency by the persons proposing such projects of letters of intent in such detail as may be necessary to inform the agency of the scope and nature of the projects at the earliest possible opportunity in the course of planning of such construction projects.

(15) Provision that if the State Agency does not make a decision regarding a proposed new institutional health service within the period of time specified for State Agency review, the proposal shall be deemed to have been found not to be needed.

(b) Procedures adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed.

(c) The procedures may provide that the requirements of paragraph (a)(3), (4), (7), or (14) of this section shall be deemed satisfied if the appropriate health systems agency has provided for the corresponding procedure found at 42 CFR 122.306(a)(3), (4), (7), or (11).

§ 123.408 Exceptions to use of procedures.

After following the procedure set forth at § 123.406(b), a State Agency may, with respect to any type or group or reviews, request from the Secretary an exception to the requirement of § 123.403(c) that it utilize review procedures which meet the requirements of § 123.407. Such request shall be in writing, shall contain a detailed explanation of the reasons for the request and of the substitute review procedures that the agency intends to follow if the exception is approved, and shall be accompanied by copies of all written comments submitted under § 123.406(b) to the State Agency with respect to the request for an exception. The Secretary may grant such an exception if he determines that the proposed substitute procedures are less costly or more effective, are consistent with the purposes of the Act, and do not adversely and substantially affect the rights of persons affected by the subject reviews. The State Agency shall distribute copies of substitute procedures approved by the Secretary in accordance with the requirements of § 123.406(c).

§ 123.409 Criteria for State Agency review.

(a) The State Agency shall adopt, and utilize as appropriate, specific criteria for conducting the reviews covered by this subpart, which criteria shall include at least the following general considerations:

(1) The relationship of the health services being reviewed to the applicable health systems plan and annual implementation plan adopted pursuant to section 1513(b)(2) and (3), respectively, of the Act.

(2) The relationship of services reviewed to the long-range development plan (if any) of the person providing or proposing such services.

(3) The need that the population served or to be served by such services has for such services.

(4) The availability of less costly or more effective alternative methods of providing such services.

(5) The immediate and long-term financial feasibility of the proposal, as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the new institutional health service.

(6) The relationship of the services proposed to be provided to the existing health care system of the area in which such services are proposed to be provided.

(7) The availability of resources (including health manpower, management personnel, and funds for capital and operating needs) for the provision of the services proposed to be provided and the availability of alternative uses of such resources for the provision of other health services.

(8) The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services.

(9) Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in

which the entities are located or in adjacent health service areas. Such entities may include medical and other health professions schools, multidisciplinary clinics and specialty centers.

(10) The special needs and circumstances of health maintenance organizations for which assistance may be provided under title XIII of the Act. Such needs and circumstances include the needs of and costs to members and projected members of the health maintenance organization in obtaining health services and the potential for a reduction in the use of inpatient care in the community through an extension of preventive health services and the provision of more systematic and comprehensive health services. The consideration of a new institutional health service proposed by a health maintenance organization shall also address the availability and cost of obtaining the proposed new institutional health service from the existing providers in the area that are not health maintenance organizations. The criteria established by the State Agency pursuant to this subparagraph shall be consistent with standards and procedures established by the Secretary under section 1306(c) of the Act (see 42 CFR 110.204).

(11) The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages.

(12) In the case of a construction project—

(i) The costs and methods of the proposed construction, including the costs and methods of energy provision, and

(ii) The probable impact of the construction project reviewed on the costs of providing health services by the person proposing such construction project.

(b) Criteria adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed.

§ 123.410 Inpatient facilities: required findings.

In the case of any proposed new institutional health service for the provision of health services to inpatients, a State Agency shall not grant a certificate of need under its certificate of need program, or otherwise make a finding that such proposed new institutional health service is needed, unless, after consideration of the appropriateness of the use of existing facilities providing inpatient services similar to those being proposed, the State Agency makes each of the following findings in writing:

(a) That superior alternatives to such inpatient services in terms of cost, efficiency, and appropriateness do not exist and that the development of such alternatives is not practicable.

(b) That in the case of new construction, alternatives to new construction (e.g., modernization or sharing arrangements) have been considered and have been implemented to the maximum extent practicable;

(c) That patients will experience serious problems in terms of cost, availability, or accessibility, or such other problems as may be identified by the reviewing agency, in obtaining inpatient care of the type proposed in the absence of the proposed new service, and

(d) That in the case of a proposal for the addition of beds for the provision of skilled nursing or intermediate care the relationship of the addition to the plans of other agencies of the State responsible for providing and financing long-term care (including home health services) has been considered.

§ 123.411 Health maintenance organizations: required finding.

In the case of any new institutional health service proposed to be provided by or through a health maintenance organization, a State Agency shall not deny a certificate of need with respect to such service (or otherwise make a finding under this subpart that such service is not needed) in those cases (a) when the State Agency has granted a certificate of need which authorized the development of the service, or expenditures in preparation for such offering or development (or has otherwise made a finding that such development or expenditure is needed), and (b) when the offering of this new institutional health service will be consistent with the basic objectives, time schedules, and plans of the previously approved application: *Provided*, That the State Agency may impose a limitation on the duration of the certificate of need which shall expire at the end of such time unless the health service is offered prior thereto.

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federal register

FRIDAY, JANUARY 21, 1977

PART III

DEPARTMENT OF THE TREASURY

Internal Revenue Service

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

■

EMPLOYEE BENEFIT PLANS

Transfer of Individual Life Insurance Contracts

DEPARTMENT OF THE TREASURY

Internal Revenue Service

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

EMPLOYEE BENEFIT PLANS

Pendency of Proposed Class Exemption Involving the Transfer of Individual Life Insurance Contracts to Employee Benefit Plans

Notice is hereby given of the pendency before the Department of Labor and the Internal Revenue Service (hereinafter collectively referred to as the Agencies) of a proposed class exemption from the restrictions of sections 406(a) and 406 (b)(1) and (2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1954 (the Code), by reason of section 4975(c)(1)(A) through (E) of the Code, for the sale, transfer, or exchange of individual life insurance contracts for their cash surrender value to a defined contribution plan as defined in section 3(34) of the Act and section 414 (i) of the Code or to an employee welfare benefit plan as defined in section 3 (1) of the Act by plan participants or by an employer any of whose employees participate in the plan (the employer). This exemption is proposed pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75–26, 1975–1 C.B. 722.

The Agencies have on file the following applications which request individual exemptions for the sale of individual life insurance contracts to a plan from its participants or from an employer:

Name	*Number*
Hunton, Williams, Gay & Gibson	D–056
St. John's Anesthesia Associates, P.C., Pension Plan and Trust	D–213
Crosby & Henry, Inc. Profit Sharing Plan	D–331
Southwest Factories, Inc. Profit Sharing Plan	D–351
Martin W. Dann, M.D., P.A.	D–361
Norcliffe E. Brown	D–379
Hawkins, Brydon and Swearenger, P.C. Pension Plan and Trust	D–420
R. L. Falender, D.D.S., Inc. Profit Sharing Plan and Trust	D–427
St. Louis-Clayton Orthopaedic Group, Inc. Profit Sharing Plan & Trust	D–449
William T. Adams, A Medical Corporation Profit Sharing Plan & Trust	D–467
Quinn, Gent, Buseck & Leemhuis, Inc. Profit Sharing Trust	D–493
M & W Tool Co.	D–510
National Heat & Power Co., Inc.	D–511
Taylor, Knudson & Lum	D–512
Gordon G. Bennett, DMD, M.D., Inc	D–522
Donald A. Gragen, M.D.	D–539
Rosenthal & Herman, P.C. Employees' Retirement Plan	D–559
Shrewsbury Pizzaria, Inc. Pension Plan and Trust	D–567
Gary Levinson, M.D., A Professional Corporation, Profit Sharing Retirement Plan	D–575
Paniaqua Medical Ltd. Pension Plan and Trust	D–581
Northeast Missouri Assoc., Inc.	D–597
Dr. Carreno Associated	D–623

The applications for individual exemption contain common representations, which are summarized below, with regard to the transaction described in the proposed class exemption. All transactions referred to in the individual exemption applications will be exempted if they satisfy the terms and conditions of the class exemption. Interested persons are referred to the applications on file with the Agencies for the complete representations of the applicants.

Under the provisions of section 3.04 of ERISA Proc. 75–1 and Rev. Proc. 75–26, an application for an individual exemption would not ordinarily be considered separately if a class exemption which would encompass the transaction described in the application for an individual exemption is under consideration by the Agencies. Accordingly, the Agencies are notifying directly each applicant for an individual exemption listed below of the fact that such applicant's application is not being considered separately from this class exemption and that, following the disposition of this proposed class exemption such application would ordinarily be closed and, therefore, such applicant's comments with respect to this class exemption are sought by the Agencies.

Summary of Representations. 1. Plan participants would incur hardship or economic loss if the exemption is not granted because they may be denied the increased insured death benefits that may have been available in the life insurance contracts transferred to the plan. In addition, the plan would incur the increased costs involved in purchasing new life insurance policies. These costs may include substantial initial sales commissions and higher premium payment rates than those paid personally by participants or employers on previously purchased policies. If new policies are purchased, minimal cash values will accrue to the benefit of participants in the early years of such policies. This may, in certain types of plans, ultimately result in a smaller amount of plan assets being available for retirement benefits, or retirement benefits being set at a lower level.

2. The rights of the plan participants and beneficiaries will be protected because the death benefits provided by the life insurance policies will be payable to the beneficiaries designated by the plan participants.

3. The individual life insurance contracts shall be transferred for their cash surrender value which is easily determinable at any time during the life of the policy.

4. Prior to the enactment of the Act, the sale, transfer or exchange of individual life insurance contracts from participants and employers to plans was a common practice.

Section 3.01 of ERISA Procedure 75–1 and Rev. Proc. 75–26 provide that the Agencies may initiate an exemption proceeding on their own motion. Section 408(a) of the Act and section 4975(c)(2) of the Code provide that the Agencies may not grant an exemption unless they find that such exemption is, inter alia, administratively feasible. There have been a substantial number of applications filed seeking individual exemptions for transactions of the subject type, but no individual applicant or association or organization representing parties in interest or disqualified persons with respect to such transactions has requested a class exemption. However, due to the apparent lack of potential for abuse in such transactions and because it appears to be administratively feasible to do so, the Agencies on their own motion have determined to group such applications in a class and to publish notice of an appropriate proposed class exemption for comment.

In making their determination to propose the subject class exemption on their own motion, the Agencies have assumed the existence of certain facts and situations. These assumptions, summarized below, are based in part on representations contained in applications for individual and class exemptions relating to similar, but not identical transactions[1] and on knowledge acquired by the Agencies in the course of their administration of the Act and the Code. The Agencies, however, request the comments of interested persons with respect to the correctness of these assumptions.

[1] See, American Council on Life Insurance (0–231) class exemption application and the following individual applications:

Name	*Number*
McElhinney & Kirk, Inc. Pension Plan	D–157
Provident Life and Accident Insurance Company	D–167
Office Systems, Inc. Pension Trust	D–179
The Bishopric Products Company Pension Plan #1	D–212
WIPO, Inc. Pension Plan	D–219
Maher Terminals Pension Plan	D–254
B & L Disposal Pension Plan Trust	D–285
Reno Disposal Pension Plan Trust	D–286
First National Bank, Evergreen, Employees' Pension Trust	D–337
Security Life Prototype Retirement Plan C (as adopted by Golden State Bank)	D–338
Pension Plan and Trust of Art Theater Guild, Inc. and Affiliates	D–357
Rinaldi Press Inc. Employees Pension Plan	D–388
Data-Design Laboratories Retirement Pension Plan	D–398
Lee Air Conditioners, Inc., Thrift and Profit Sharing Plan	D–403
Gibson Employees Pension Plan	D–413
Blackhawk Foundation Company, Inc. Pension Plan	D–425
Retirement Plan for the Employees of West Texas Equipment Company	D–429
Cory's Gasoline Stations, Inc. Pension Plan and Pension Trust Agreement	D–438
International Travel Brokers Inc. Employees' Pension Plan	D–514

Many pension and profit-sharing plans, particularly those of small employers, provide a pre-retirement death benefit through the purchase of individual life insurance contracts issued on the lives of plan participants. On retirement, the cash surrender value of the policies may be supplemented by monies accumulated on the participants' behalf in a side or auxiliary fund maintained under the plan.

Often, plan participants already own individual life insurance contracts on their own lives when they become plan participatnts or when the trustees determine to fund benefits, in whole or in part, through individual life insurance contracts. In addition, it is not uncommon for employers to maintain individual life insurance contracts on the lives of employees who are participants in the employer's retirement plan.

Prior to the enactment of the Act, it was common for participants and employers to sell or otherwise transfer such contracts to their defined contribution plans. This does not appear to have been a common practice for defined benefit plans. Accordingly, the proposed exemption, if granted, would be limited to cases where the policies are sold or otherwise transferred to defined contribution plans by parties in interest or disqualified persons for the cash surrender value of the policy (the amount the owner would receive if the owner surrendered the policy to the issuing insurance company). The Agencies request the comments of interested persons as to the unavailability of the proposed class exemption with respect to defined benefit plans; whether there is a need for an exemption for transactions involving defined benefit plans; and the conditions and safeguards under which such an exemption would be appropriate.

The proposed exemption relates not only to the prohibitions contained in section 406(a) of the Act and sections 4975(c)(1) (A) through (D) of the Code, but also to the prohibitions contained in section 406(b) (1) and (2) of the Act and section 4975(c)(1)(E) of the Code inasmuch as some of the parties who might be transferring such insurance contracts may be fiduciaries with respect to the plans. The proposed exemption, if granted, will be effective January 1, 1975.

Name	Number
Profit Sharing Trust of Hynson, Wescott & Dunning Inc. Employees	D-518
James P. Gills, M.D., P.A. Pension Trust	D-540
Pension Plan and Trust of Family Dollar Stores, Inc	D-552
Short-Orlando & Associates Pension Plan	D-564
George A. Dean, M.D., Howard B. Schwartz, M.D., P.C. Pension Trust	D-565
Boston Precision Parts Co., Inc. Employees' Pension Trust	D-588
The Nielsen Lithographing Company Employees' Profit-Sharing Retirement Plan	D-589
Myers Group, Inc. Retirement Plan	D-591

A question has been raised under section 406(a)(1) of the Act and section 4975(c)(1) of the Code as to whether a participant or an employer may contribute an individual life insurance contract to a plan in lieu of or in conjunction with its normal cash contribution. The class exemption set forth below is not intended to reflect a decision on this question by the Agencies. Rather the class exemption is proposed, in part, to eliminate the uncertainty that may exist in this area and the adverse effects to plans and their participants and beneficiaries that may be caused by such uncertainty. Thus, to the extent that such a contribution is a prohibited transaction, the exemption sets forth certain conditions under which individual life insurance contracts may be contributed to a plan.

It should be noted that the proposed exemption does not provide any relief from or relaxation of the requirements set forth in section 401(a)(4) of the Code. In order for a plan to qualify under section 401(a) of the Code, section 401 (a)(4) of the Code provides that the contributions or benefits provided under such plan must not discriminate either in form or in operation in favor of employees who are officers, shareholders, or highly compensated. A condition has been included in the proposed exemption imposing a similar non-discrimination requirement for employee welfare benefit plans which desire to purchase life insurance contracts from plan participants.

Further, it should be noted that under section 408(d) of the Act no exemption may be granted under section 408(a) of the Act for transactions of the type described herein between a plan and certain persons such as an owner-employee as defined in section 401(c)(3) of the Code, or a shareholder employee as defined in section 1379 of the Code. This pending class exemption is intended, however, to be applicable to such persons for purposes of section 4975 of the Code.

The individual applicants propose that notice of the exemption requests be provided to all present participants in their individual plans in the form of a written summary and description of the transaction. However, because all participants under defined contribution plans could conceivably be considered interested persons, the only practical form of notice is publication in the FEDERAL REGISTER.

Income Tax Consequences. For Federal income tax purposes, the value of an insurance policy is not the same as, and may exceed, its cash surrender value. See Rev. Rul. 59-195, 1959-1 C.B. 18. The Federal income tax consequences of such a transfer must be determined in accordance with generally applicable rules.

General information. The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) The pending exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Agencies must find that the exemption is administratively feasible, in the interest of the plan or plans and of their participants and beneficiaries, and protective of the rights of participants and beneficiaries of such plan or plans.

(4) The pending exemption, if granted, will be supplemental to, and not in derogation, of any other provisions of the Act and the Code, including statutory exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is in fact a prohibited transaction.

(5) If granted, the pending class exemption will be applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption.

(6) The applications for exemption referred to herein are available for public inspection at the Freedom of Information Reading Room, Internal Revenue Service, Room 1565, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, and at the Public Documents Room of the Pension and Welfare Benefit Programs, Room N-4677, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

All interested persons are invited to submit written comments on the pending class exemption set forth herein. In order to receive consideration, such comments should be received by the Internal Revenue Service on or before February 22, 1977. In addition, any interested person may submit a written request that a hearing be held relating to the pending class exemption. Such written request must be received by the Internal Revenue Service on or before February 22, 1977, and should state the reasons for such person's request for a hearing and the nature of such person's interest in the pending class exemption.

All written comments and all requests for a hearing (preferably six copies) should be addressed to Internal Revenue Service, Employee Plans Division, Pro-

hibited Transactions Staff, Washington, D.C. 20224, Attention: E:EP:PT. All such comments will be made part of the record, and will be available for public inspection at the Freedom of Information Reading Room, Internal Revenue Service, Room 1565, 1111 Constitution Avenue N.W., Washington, D.C. 20224 and at the Public Documents Room of the Pension and Welfare Benefit Programs, Room N-4677, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Pending Exemption. Based on the applications and assumptions hereinabove described the Agencies have under consideration the granting of the following class exemption, under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722 so that, effective January 1, 1975, the restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the transfer of an individual life insurance contract to a plan from a plan participant on whose life the contract was issued or to the transfer of an individual life insurance contract to a plan from an employer of plan participants who contributes an individual life insurance contract with respect to such participant's life to the plan, provided that:

1. The plan is a defined contribution plan within the meaning of section 3(34) of the Act and section 414(i) of the Code or is an employee welfare benefit plan within the meaning of section 3(1) of the Act.

2. The plan pays or exchanges no more than the cash surrender value for the contract.

3. Such transfer does not involve any contract which is subject to a mortgage or similar lien which the plan assumes.

4. Such transfer does ont contravene any provision of the plan or trust document.

5. With regard to any plan which is an employee welfare benefit plan, such plan must not, with respect to such sale, discriminate in form or in operation in favor of plan participants who are officers, shareholders, or highly compensated employees.

Signed at Washington, D.C., this 14th day of January, 1977.

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

WILLIAM J. CHADWICK,
Administrator of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc.77-1709 Filed 1-19-77;8:45 am]

EMPLOYEE BENEFIT PLANS

Pendency of Proposed Class Exemption Involving the Transfer of Individual Life Insurance Contracts and Annuities From Employee Benefit Plans to Plan Participants (Application No. D-281)

Notice is hereby given of the pendency before the Department of Labor and the Internal Revenue Service (hereinafter collectively referred to as the agencies) of a proposed class exemption from the restrictions of sections 406(a) and 406(b) (1) and (2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code), by reason of section 4975 (c)(1) (A) through (E) of the Code, for the sale of individual life insurance contracts and annuities by employee benefit plans to plan participants insured under such policies for the cash surrender value of such policies. No exemption is being proposed for the sale of such contracts or annuities by plans to employers. The Agencies request the comments of interested persons as to the unavailability of the proposed class exemption with respect to the sale of insurance contracts or annuities by plans to employers; whether there is a need for an exemption for such transactions; and the conditions and safeguards, under which an exemption for such transactions would be appropriate.

This exemption is proposed pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722. It is based upon the representations contained in the application for class exemption filed by the American Council of Life Insurance (Application No. D-281). Numerous applications have also been received for individual exemptions covering transactions of the type described in this proposed class exemption.[1] All such transactions will be exempted if they satisfy the terms and conditions of the proposed class exemption. Under the provisions of section 3.04 of ERISA Proc. 75-1 and Rev. Proc. 75-26, an application for an individual exemption would not ordinarily be considered separately if a class exemption which would encompass the transaction described in the application for an individual exemption is under consideration by the Agencies. Accordingly, the Agencies are notifying directly each applicant for an individual exemption listed in footnote 1 of this proposed class exemption of the fact that such applicant's application is not being considered separately from this class exemption, and that, following the disposition of this proposed class exemption, such application would ordinarily be closed, and, therefore, such applicant's comments with respect to this class exemption are sought by the Agencies.

Summary of Representations. The American Council of Life Insurance (the "applicant") requested a class exemption with respect to all sales of individual life insurance policies or annuity policies (or portions thereof) by employee pension benefit plans to participants who are insured under the policies in situations where the policies would otherwise be surrendered by the plan. The exemption would be limited to cases in which a policy is sold to a participant party-in-interest or disqualified person for the cash surrender value of the policy (the amount the plan would receive if it surrendered the policy to the insurance company) and would cover not only the prohibitions contained in section 406(a) of the Act and 4975(c)(1) (A) through (D) of the Code but also the prohibition contained in sections 406(b) (1) and (2) of the Act and 4975(c)(1)(E) of the Code, inasmuch as some of the participants who might purchase such insurance contracts or annuities may be fiduciaries with respect to the plan involved. The cash position of the plan would not be affected in any manner by whether the policy would be sold to the participant or surrendered to the insurance company. The requested exemption would be effective January 1, 1975.

[1] Applications have been received from: McElhinney & Kirk, Inc. Pension Plan, D-157; Provident Life and Accident Insurance Company, D-167; Office Systems, Inc. Pension Trust, D-179; The Bishopric Products Company Pension Plan No. 1, D-212; WIPO, Inc. Pension Plan, D-219; Maher Terminals Pension Plan, D-254; B & L Disposal Pension Plan Trust, D-285; Reno Disposal Pension Plan Trust, D-286; First National Bank, Evergreen, Employees' Pension Trust, D-337; Security Life Prototype Retirement Plan C (as adopted by Golden State Bank), D-338; Pension Plan and Trust of Art Theater Guild, Inc. and Affiliates, D-357; Rinaldi Press Inc. Employees Pension Plan, D-388; Data-Design Laboratories Retirement Pension Plan, D-398; Lee Air Conditioners, Inc., Thrift and Profit Sharing Plan, D-403; Gibson Employees Pension Plan, D-413; Blackhawk Foundation Company, Inc. Pension Plan, D-425; Retirement Plan for the Employees of West Texas Equipment Company, D-429; Cory's Gasoline Stations, Inc. Pension Plan and Pension Trust Agreement, D-438; International Travel Brokers Inc. Employees' Pension Plan, D-514; Profit Sharing Trust of Hynson, Westcott & Dunning D-518; James P. Gills, M.D., P.A. Pension Trust, D-540; Pension Plan and Trust of Family Dollar Stores, Inc., D-552; Short-Orlando & Associates Pension Plan, D-564; George A. Dean, M.D., Howard B. Schwartz, M.D., P.C. Pension Trust, D-565; Boston Precision Parts Co., Inc. Employees' Pension Trust, D-588; The Nielsen Lithographing Company Employees' Profit-Sharing Retirement Plan, D-589; and Myers Group, Inc. Retirement Plan, D-591.

The applicant, which states that it is a trade association with a membership of 378 life insurance companies which, in the aggregate, account for 90 percent of the life insurance force in the United States and hold 99 percent of the assets of insured pension plans, has made the following representations in support of its application for exemption:

Many pension and profit sharing plans, particularly those of small employers, are funded in whole or in part by the purchase of individual life insurance or annuity policies on the lives of the plan's participants.[3] For example, one very common method of funding a defined benefit pension plan which includes a pre-retirement death benefit is for the plan to purchase a life insurance policy, providing the prescribed level of death benefits, on the life of each participant. On retirement, the cash value of the policy, supplemented, if necessary, by monies from a side or auxiliary fund maintained under the plan, is used to provide the retirement benefits called for under the plan.

However, there are various situations under which the plan will not continue the policy in effect until retirement. Historically, many plans have, in these situations, permitted the insured participant to purchase the policy (or a portion thereof) instead of the plan surrendering it.

A common reason why a participant may want to purchase a policy from a plan and keep it in force on his own is to preserve any life insurance protection provided by the policy in a case where he has a medical impairment and may be currently uninsurable or would be otherwise unable to replace that insurance in the open market at standard rates. In the case of annuity contracts with no life insurance protection, a purchase may be desirable from the participant's standpoint in order, for example, to preserve a valuable contract option that may no longer be available or to avoid a higher first year expense loading that would be payable if he purchased a new policy.

Two examples of situations where plans commonly permit participants to purchase policies on their lives are:

Example 1. A participant terminates service without vested rights or with only partially vested rights. He may be permitted to purchase the policy for its cash value or, if he is partially vested, for the portion of the cash value in which he has no vested rights. If he does not purchase the policy, the plan will surrender it and apply the proceeds (in excess of those in which the participant is vested) under the forfeiture provisions of the plan.

Example 2. A plan decides to convert its funding method from individual policies to a group contract. Participants may be permitted to purchase the individual policies on their lives for the cash value. Otherwise, the plan will surrender the policies. In either event, the monies derived from the surrender or sale of the individual contracts will be transferred to the group contract.[4]

Because such sales of policies by plans to participants recur on a continuous basis, there have undoubtedly been sales of the type described prior to the date of the application.

If the exemption is not granted, certain plan participants will lose valuable life insurance protection or other benefits which cannot be replaced in the open market either because the participant is medically impaired or the options are no longer available. Because a policy sale subject to the exemption may be made only in a situation where the plan would otherwise surrender the policy and the measure of the required consideration is based on an objective standard—the cash surrender value which is stated in the policy—the plan will be in precisely the same financial position whether the sale is made or the policy is surrendered by the plan.

Because all participants under individual policy pension and profit sharing plans conceivably could be considered interested persons, the only practical form of notice is publication in the FEDERAL REGISTER.

It should be noted that the proposed exemption does not provide any relief from or relaxation of the requirements set forth in section 401(a)(4) of the Code. In order for a plan to qualify under section 401(a) of the Code, section 401(a)(4) of the Code provides that the contributions or benefits provided under such plan must not discriminate either in form or in operation in favor of employees who are officers, shareholders, or highly compensated. A condition has been included in the proposed exemption imposing a similar non-discrimination requirement for employee welfare benefit plans which desire to make sales of life insurance contracts or annuities to plan participants.

Further, it should be noted that under section 408(d) of the Act no exemption may be granted under section 408(a) of the Act for a transaction of the type described herein between a plan and certain persons, such as an owner-employee as defined in section 401(c)(3) of the Code, or a shareholder employee, as defined in section 1379 of the Code. This pending class exemption is intended, however, to be applicable to such persons for purposes of section 4975 of the Code.

Income Tax Consequences. For Federal income tax purposes, the value of an insurance policy is not the same as, and may exceed, its cash surrender value. See Rev. Rul. 59-195, 1959-1 C.B. 18. Therefore, for Federal income tax purposes, a purchase of an insurance policy at its cash surrender value by a participant may be a purchase of property for less than its fair market value. The Federal income tax consequences to participants of such a bargain purchase must be determined in accordance with generally applicable rules. Any income realized by a participant upon such a purchase under the conditions of this pending class exemption, however, will not be deemed a distribution of benefits from the plan to such participant for purposes of subchapter D of Chapter I of the Internal Revenue Code of 1954, relating to qualified pension, profit-sharing, and stock bonus plans.

General Information. The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of Section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the plan participants and beneficiaries and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) The pending exemption, if granted, will not extend to transactions prohibited under sections 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department and the Service must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan.

(4) The pending exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is in fact a prohibited transaction.

(5) If granted, the pending class exemption will be applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption.

(6) The applications for exemption referred to herein are available for public inspection at the Freedom of Infor-

[3] It is noted that life insurance contracts may be purchased by a plan qualified under section 401(a) of the Code only to the extent that the pre-retirement death benefit provided by the plan is incidental to its primary benefit. See § 1.401-1(b)(1)(i) of the Income Tax Regulations.

[4] Other examples of situations where plans commonly permit participants to purchase policies on their lives, which were set forth in other applications for exemption, and which would be covered by the terms of the proposed exemption if the conditions set forth therein are met, are conversion of the funding medium of a plan from insurance to another funding medium and the termination of a plan.

mation Reading Room, Internal Revenue Service, Room 1565, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 and the Public Documents Room of Pension and Welfare Benefit Programs, Room N-4677, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

All interested persons are invited to submit written comments on the pending class exemption set forth herein. In order to receive consideration, such comments must be received by the Department on or before February 22, 1977. In addition, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, the Department and the Service are required to offer an opportunity for a public hearing where a pending exemption relates to section 406(b) of the Act and section 4975(c)(1) (E) or (F) of the Code. Any interested person may submit a written request that a hearing be held relating to the pending class exemption. Such written request must be received by the Department on or before February 22, 1977 and should state the reasons for such person's request for a hearing and the nature of such person's interest in the pending class exemption.

All written comments and all requests for a hearing (preferably six copies) should be addressed to Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, Washington, D.C. 20216, Attention: Application No. D-281. All such comments and all requests for hearing will be made part of the record and will be available for public inspection at the Public Documents Room of Pension and Welfare Benefit Programs, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20210, and the Freedom of Information Reading Room, Internal Revenue Service, Room 1565, 1111 Constitution Avenue, NW., Washington, D.C. 20224.

Pending Exemption. Based on the application herein before described, the Service and the Department have under consideration the granting of the requested exemption, under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722, so that, effective January 1, 1975, the restrictions of sections 406(a) and (b)(1) and (2) of the Act and the taxes imposed under sections 4975(a) and (b) of the Code, by reason of sections 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of an individual life insurance or annuity contract by an employee benefit plan to a participant under such plan, if

(1) Such participant is the insured under the contract;

(2) The contract would, but for the sales, be surrendered by the plan; and

(3) The amount received by the plan as consideration for the sale is at least equal to the amount necessary to put the plan in the same cash position as it would have been in if it had retained the contract, surrendered it, and made any distribution owing to the participant of his vested interest under the plan.

(4) With regard to any plan which is an employee welfare benefit plan, such plan must not, with respect to such sale, discriminate in form or in operation in favor of plan participants who are officers, shareholders, or highly compensated employees.

Signed at Washington, D.C., this 14th day of January, 1977.

WILLIAM J. CHADWICK,
Administrator of Pension and Welfare Benefit Programs, U.S. Department of Labor.

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

[FR Doc.77-1708 Filed 1-19-77;8:45 am]

federal register

FRIDAY, JANUARY 21, 1977

PART IV

FEDERAL ELECTION COMMISSION

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ADVISORY OPINIONS

Index

FEDERAL ELECTION COMMISSION

[Notice 1977-3]

ADVISORY OPINIONS ISSUED BY THE FEDERAL ELECTION COMMISSION

Index

Today, the Federal Election Commission publishes an index for all 1975 and 1976 advisory opinions which have been issued by the Commission through December 30, 1976.

For a full text of any of the entries included in this index, you may write to the Information Office, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463, or call Area Code 202-382-4733. When ordering any of these items, please specify and order only by Advisory Opinion number.

This is the fourth publication of this index. Its purpose is to assist those who have a current need to be up on Federal election campaign laws and policies issued by the Commission. The Commission welcomes comments on the format and contents of this index, and any suggestions for change to make it more beneficial to its users.

Dated: January 17, 1977.

JOAN D. AIKENS,
Commissioner,
Federal Election Commission.

SUBJECT INDEX TERMS

This list represents index terms used in the subject index to FEC opinions. When searching for opinions on a subject, it might be useful to glance through this list first.

Accountant's fees; see attorneys'/accountants' fees.
Accounts.
Administrative expenses.
Advertising/solicitation.
Allocation.
Appearances by candidate.
Attorneys'/accountants' fees.
Authorized committees/agents.
Banks; see Corporation/labor union/bank.
Cash contributions; see contributions.
Cash, petty; see petty cash fund.
Common control.
Communication exemption (2 USC s. 431(f)(4)(C)).
Conduit; see intermediary.
Conferences, educational; see educational conferences.
Constitutent services costs; see office accounts.
Contribution.
Conventions, national; see nominating conventions, national.
Corporate facilities/goods.
Corporation/labor union/bank.
Credit; see debts.
Debts.
Delegate selection; see nominating conventions, national.
Depository.
Deposits for services.
Dual candidacy.
Earmarking.
Educational conferences.
Election.
Excess funds.
Expenditures.
Family of candidate.
Foreign nationals.
Filing; see reporting.
Franking accounts.
Fundraising.
Get-out-the-vote drives; see voter registration drives.
Gifts.
Government contractors.
Honorarium.
Immediate family funds; see family of candidate.
Independent expenditures; see expenditures—independent.
In-kind contributions; see contribution—in-kind.
Intermediary or conduit.
Intern programs.
Labor unions; see corporation/labor union/bank.
Legislative hearings.
Loan/endorsement.
Local party; see national/state/local party.
Matching funds; see public financing.
Membership organization.
Multi-candidate committee.
National convention; see nominating convention, national.
National/state/local party.
Newsletter accounts; see franking accounts.
Nominating conventions, national.
Office accounts.
Officers of political committees; see political committees.
Opinion polls; see polling.
PACs; see political action committees.
Partnerships.
Personal assets.
Personal services (voluntary); see volunteer services.
Petition effort; see election.
Petty cash fund.
Political action committees.
Political committees.
Polling.
Preemption of state law.
Primary election; see election.
Public funding.
Public utility holding companies; see corporation/labor union/bank.
Raffles; see corporate facilities/goods; fundraising.
Reporting.
Requirements relating to campaign advertising; see advertising/solicitation.
Royalties.
Run-off election; see election.
Separate, segregated funds; see accounts; political action committees.
Sole proprietorship.
Solicitation; see advertising/solicitation; political action committees.
Spouse; see family of candidate.
Special election; see election.
State law; see preemption of state law.
State party; see national/state/local party.
Telethon.
Television appearances; see appearances by candidate.
Transfers.
Trade associations.
Travel expenses.
Trustee plan.
Volunteer services.
Voter registration drives.

CUMULATIVE INDEX—JANUARY 1977

SUBJECT INDEX TO 1975-76 OPINIONS

(ADVISORY OPINIONS)

NOTE.—Numbers of opinions beginning with the digits "75" are 1975 opinions; digits "76" stand for 1976 opinions.

ACCOUNTANT'S FEES

See: Attorneys'/accountants' fees.

ACCOUNTS

Explanation of depository and petty cash fund, AO75/44.

Separate state account for corporate contributions, AO75/59.

Separate state and federal committees vs. total disclosure: political committee, AO75/20; state party committee, AO75/2, 95.

See also: Allocation; fundraising; petty cash fund; family of candidate; transfers.

ADMINISTRATIVE EXPENSES

Allocation as per federal/state support, AO75/21.

Corporation may pay administrative costs of political action committees, AO75/23, 36.

See also: Corporation/labor union/bank; debts; contribution—In-kind.

ADVERTISING/SOLICITATION

"Expenditure" if (i) appears at time of candidacy and (ii) clearly identifies by unambiguous reference, AO75/98.

Name of chairman, treasurer not necessary in disclaimer, AO76/35.

Name of chairman, treasurer on billboards (2 USC § 441d), AO75/67.

Solicitation definition: informing persons of a fundraising activity is a solicitation, AO76/27.

See also: Franking accounts; fundraising; expenditures, independent.

ALLOCATION

Any accounting method which yields allocations reflecting billable time spend by worker on two campaigns acceptable, AO75/61.

No allocation of costs of educational party conference on campaign techniques among participating candidates, AO75/87 (NRCC).

Of contributions/expenditures between primary and general election efforts, AO75/53,120.

Post-nomination contributions related to general election, AO75/44.

See also: Administrative expenses; appearances by candidate; educational conferences; fundraising; partnerships; voter registration drives.

APPEARANCES BY CANDIDATE

Appearances before substantial number of people in electorate: costs are presumable expenditures, AO75/108,125 (travel from office account).

Party building function, AO75/72,108; 76/17.

Televised appearance: compensation not honorarium or contribution, AO75/46.

Televised newsletter of Congressman in nonelection year not expenditure, AO75/107.

See also: Common control; contribution; honorarium; volunteer services.

ATTORNEYS'/ACCOUNTANTS' FEES

Campaign contributions/expenditures, AO75/27.

See also: Litigation costs; partnerships.

AUTHORIZED COMMITTEES/AGENTS

Duties, AO75/16,44.

Expenses incurred are authorized expenditures, AO75/22,44.

Officer of two fundraising committees, AO75/35.

BANKS

See: Corporation/labor union/bank.

CASH CONTRIBUTIONS

See: Contributions.

CASH, PETTY

See: Petty cash fund.

COMMON CONTROL

Control of ownership by political party, political committee, or candidate (2 U.S.C. s.431(f)(4)(A)), AO75/143.

"Dominion and control," AO75/32, 108.

Donation to third party sponsoring candidate appearance not contribution if no common control, AO75/108.

For purposes of contribution/expenditure limits: Political committee independence, AO75/45; state local parties' independence, AO75, 2, 29.

COMMUNICATION EXEMPTION (2 U.S.C. § 431 (f) (4) (C))

Information expenses to committee members, AO75/20.

Newsletter of state/local party, AO75/2.

CONDUIT

See: Intermediary.

CONFERENCES, EDUCATION

See: Educational conferences.

CONSTITUENT SERVICE COSTS

See: Office accounts.

CONTRIBUTION

Anonymous cash contributions: Record-keeping requirements, AO75/140.

Carryover, carryback, AO75/74.

Direct donation is not expenditure, but contribution, AO75/120.

Dominion and control, AO75/32, 108.

Donation to third party sponsoring candidate appearance not contribution if no common control, AO75/108.

Escrowed contributions, AO75/129.

In-kind contribution: Bona fide gifts, AO75/20; public facilities may be offered without charge, AO75/1.

See also: Attorneys'/accountants' fees; advertising/solicitation; corporation facilities/goods; expenditures — independent; fundraising; gifts; national/state/local party; travel expenses; volunteer services.

Purpose test, AO75/1,81.

Refund of prohibited contribution is permissible use of campaign funds, AO76/6.

To unvictorious candidate attributable to $25,000 annual, AO75/74.

Wages for party-building activities paid to field worker who is also candidate are not contributions, AO76/17.

See also: Accounts; advertising/solicitation; common control; corporation/labor union/bank; corporate facilities/goods; debts; dual candidacy; earmarking; educational conferences; excess funds; family of candidate; franking accounts; fundraising; Government contractors; honorarium; litigation costs; loan/endorsement; national/state/local party; nominating convention, national—delegate selection; office accounts; partnerships; political action committees; political committees; polling; preemption of state law; public funding; reporting; sole proprietorship; tax; transfers; trustee plan; volunteer services.

CONVENTIONS, NATIONAL

See: Nominating conventions, national.

CORPORATE FACILITIES/GOODS

Computer, AO75/14.

Nominating convention's use of facilities: see nominating conventions, national.

"Normal and usual charge," AO75/94.

Restaurant, typewriters, airplanes, AO75/94.

Vendor of food/beverage, AO75/94.

See also: Administrative expenses; contribution—in-kind; corporation/labor union/bank; fundraising; nominating convention, national; travel expenses; volunteer services.

CORPORATION/LABOR UNION/BANK

Corporation/Labor union: corporation treasury money may not be used to raise funds from the general public, AO76/18; incorporation exclusively for political/liability purposes, AO75/16,37; leave of absence payment to candidate is prohibited contribution, AO76/70; nonprofit incorporated professional organization, AO75/75; payment for members of Congress to attend courses not an unlawful contribution, AO76/98; payment of production costs of fundraising item is a prohibited contribution, AO76/18,50; prohibited contribution is made if corporation deviates from normal course of business and deviation has effect of extending candidates contract with corporation (billboards), AO76/86; state election contribution allowed only: AO75/59; twice-yearly solicitation under 441b(b)(4)(B); corporation soliciting employees is restricted to twice-yearly procedure, AO76/4.

In general: refund of prohibited contribution is premissable use of campaign funds, AO76/6; stockholder, officer, employee in individual capacity, AO75/31.

See also: Administrative expenses; advertising/solicitation; corporate facilities/goods; debts; educational conferences; excess funds; franking accounts; Government contractors; loan/endorsement; membership organization; nominating convention, national; political action committees; political committees; public funding; trade association; trustee plan; volunteer services.

CREDIT

See: Debts.

DEBTS

Amounts in dispute must be reported, AO76/85.

Discharged by an adjudication of bankruptcy, AO75/102.

Incurred from January 1973 through December 1974, AO75/6, 52, 57, 60, 64, 68, 82, 88, 106.

Incurred prior to January 1, 1973, AO75/5.

Pledges for contribution, AO75/44.

Reporting of short-term or long-term debts, AO75/44.

Settlement: with corporate creditor, AO75/39, 50, 102.

Transfer of outstanding obligation (for loans made by candidate) to candidate's campaign committee is allowed, AO76/60.

Treatment of outstanding obligation, AO75/18,28,102, AO76/68.

See also: Excess funds; family of candidate; Government contractors; litigation costs; loan/endorsement; personal assets; tax; transfers.

DELEGATE SELECTION

See: Nominating conventions, national.

DEPOSITORY

Transfer of funds from political committee to savings account need not be transferred to national or state bank, AO75/25.

See also: Accounts; petty cash fund; political committee; public funding; reporting; transfers.

DUAL CANDIDACY

Any accounting method which yields allocations reflecting billable time spent by worker on two campaigns acceptable, AO75/61.

Congress/Senate limits, AO75/11.

Establish two separate committees, AO75/11.

Senate/Presidential limits, AO75/11.

See also: Allocation; family of candidate; personal assets; transfers.

EARMARKING

"Unearmarked" to committee not attributable to candidate if (i) not single-candidate (ii) not principal campaign committee for authorized (iii) no knowledge, AO75/32,48,81, 129.

"Unearmarked" to multi-candidate committee not attributable to candidate, AO75/74, 129.

See also: Political committees; transfers.

EDUCATIONAL CONFERENCES

Agricultural, AO75/14.

Independent expenditure for educational seminars for dairy farmers, AO75/20.

No allocation of costs of educational party conference on campaign techniques among participating candidates, AO75/87 (NRCC).

See also: Appearances by, candidate; corporation/labor union/bank; office acounts.

ELECTION

Convention or caucus: party convention held to endorse candidate, under circumstances whereby a candidate may be considered party nominee, is a separate election, AO76/58.

Primary: party caucus or convention which does not select nominee is part of primary election, AO75/105,54; petition effort, AO75/53,44; unopposed candidate for primary election, AO75/9.

See also: Allocation.

EXCESS FUNDS

After liquidation of debt, turned over to principal campaign committee—reporting, AO75,60; authorized in writing, AO75/82,88.

Any "lawful purpose": computer terminal, AO75/51 AO76/57; employee compensation, AO76/90.

Transferred to office account, AO75/144.

See also: Candidacy, nominating convention, national; personal assets; transfers.

EXPENDITURES

Any expense "made for purpose" is expenditure (especially travel, advertising), AO75/30, 81, 98.

Direct donation not expenditure, AO75/120.

Disbursements made and reported by campaign committee as expenditures are deemed for the purpose of influencing candidate's election, AO76/17.

Gift to state candidates may be "expenditure" under certain conditions, AO75/111.

See also: Advertising/solicitation; appearances by candidate; authorized committees/agents; educational conferences; fundraising; voter registration drives.

News story, commentary, editorial exception (2 U.S.C. s. 431(f)(4)(A)), AO75/143.

No restrictions on use to which campaign funds may be put, AO76/53, 64.

See also: Advertising/solicitation; allocation; appearances by candidate; attorney's/accountants' fees; authorized committee/agent; candidacy; communication exemption; dual candidacy; educational conferences; franking account; fundraising; litigation costs; national/state/local parties; nominating conventions, national—delegate selection; office accounts; personal assets; political committees; polling; preemption of state law; public funding; reporting; transfers; travel expenses; voter registration drives.

FAMILY OF CANDIDATE

Immediate family funds: contribution to candidate, AO75/65; contribution to candidate made before January 30, 1976, need not be returned if over $1,000 limit so long as not over $25,000 aggregate, AO76/74; contribution to candidate made between January 30, 1976, and May 11, 1976, need not be returned if over $1,000 limit so long as not over $25,000 aggregate, AO76/26; dual President/Senate candidate, AO75/11; limit applicable to pre-1975 campaign debts, AO75/6/106; loans, AO75/57.

Spouse: contribution limit, AO75/31.

FOREIGN NATIONALS

Green card holders are not foreign nationals, AO76/4,9.

FILING

See: Reporting.

FRANKING ACCOUNTS

Corporate contributions prohibited, AO75/7.

Costs of preparing frankable material not expenditure, AO75/3.

Costs of tabulating responses to questionnaires sent under the frank not considered a contribution if not made for primary purpose of influencing on election, AO75/132.

Questionnaire mailed under frank as contribution, AO75/14.

See also: Office accounts.

FUNDRAISING

Corporation's payment of production costs of fundraising item is a prohibited contribution, AO76/18, 50.

Costs as contributions/expenditures, AO75/15, 22, 49, 62, 97 76/50.

Items included in fundraising costs, AO75/47, 78, 97.

Payment out of campaign funds for the printing of labels by a computer firm would be proper under the Act, AO76/32.

Political committee's operation of business to raise "profits"—reporting, AO75/15.

Raffle legitimate activity, AO75/60.

20 percent exemption from expenditure limitation: in general, AO75/62,97; need not be prorated state-by-state for Presidential statewide limits, except where targeted, AO75/33.

Use of lists of contributions on reports filed with Secretary of State, AO75/124.

See also: Accounts; advertising/solicitation; authorized committees/agents; political committees—officers; reporting.

GET-OUT-THE-VOTE DRIVES

See: Voter registration drives.

GIFTS

"Bona fide" not in-kind contributions, AO75/20.

To charity not honorarium or contribution, AO75/55.

See also: Expenditures; contributions—in-kind.

GOVERNMENT CONTRACTORS

Employee contribution in individual capacity, AO75/31.

No difference between negotiated or competitive bid, AO75/110.

Scope: Applies to construction contracts, AO75/110; does not apply to person holding a Federal-aid construction contract with non-Federal agency, AO75/110; Federal elections only, AO75/99, 110.

See also: Debts.

HONORARIUM

"Acceptance" where active or constructive receipt, AO75/8, 55, 89, 93.

Agent's or speaking bureau's fees, AO75/84.

As contributions: No longer contributions under 441i, AO75/119; test and reporting under 1974 amendments, AO75/8, 20, 63.

Award in recognition of public achievements, AO75/85.

Contract for televised commentary stipends, AO75/46.

Royalty for book not honorarium, AO75/77.

Travel and subsistence expenses, AO75/8, 13.

See also: Appearances by candidate; gifts.

IMMEDIATE FAMILY FUNDS

See: Family of candidate.

IN-KIND CONTRIBUTIONS

See: Contributions—in-kind.

INTERMEDIARY OR CONDUIT

Committee serving as a conduit must register and report, AO76/51.

INTERN PROGRAMS

Corporation interns assigned to congressional offices, committees, AO75/100.

Interns' time not a contribution—in-kind so long as they are engaged in pursuit of legislative business or they receive no compensation, AO75/100.

LABOR UNIONS

See: Corporation/labor/union/bank.

LEGISLATIVE HEARINGS

Reimbursed travel, AO75/20.

LOAN/ENDORSEMENT

As "contribution", AO75/4,57.

Existence of written instrument determinative of loan, AO75/69.

Promissory note is "loan" and therefore contribution, AO75/50.

Remains contribution to extent of unpaid balance, AO75/69.

See also: Debts; family of candidate; personal assets; tax; telethon.

LOCAL PARTY

See: National/state/local party.

MATCHING FUNDS

See: Public Financing.

MEMBERSHIP ORGANIZATION

Unincorporated division of an incorporated membership organization is not an appropriate entity to establish and administer a separate segregated fund unless that fund is designated for the corporation, AO76/73.

MULTI-CANDIDATE COMMITTEE

PACS (see also Political Action Committees): Multi-candidate PAC's may give $15,000 to national political party committee, AO76/41.

See also: Political committees.

NATIONAL CONVENTION

See: Nominating convention, national.

NATIONAL/STATE/LOCAL PARTY

Contribution limit: County committee, AO75/29.

Definition of national party, AO76/95.

Direct donation of money not party expenditure under s. 441a(d), AO75/120.

Expenditure limit—s. 441a(d), AO75/2, 120.

See also: Accounts; appearances by candidate; common control; communication exemption; debts; election; nominating convention, national—delegate selection; political committee; reporting; telethon; transfers.

NEWSLETTER ACCOUNTS

See: Franking accounts.

NOMINATING CONVENTIONS, NATIONAL

Defraying delegate costs with public money by national parties (and state and local parties), AO75/91.

Delegate selection: Selection (in general), AO75/12.

"Extraordinary and unforeseen circumstances", AO75/91.

Municipal corporation contribution, AO75/1, 47.

Private corporation contributions—to party convention committee, AO75/1, 47.

Scope of "convention expenses" AO75/1, 47.

See also: Attorneys'/accountants' fees; excess funds; public funding; transfers.

OFFICE ACCOUNTS

Appropriated funds—expenses of mobile office used during but not for the campaign not attributable to contribution/expenditure limits, AO76/44.

Generally, AO75/14.

Reporting obligations, AO75/7.

See also: Account; appearances by candidate; franking accounts; polling; transfers; travel expenses.

OFFICERS OF POLITICAL COMMITTEES

See: Political committees.

OPINION POLLS

See: Polling.

PACS

See: Political action committees.

PARTNERSHIP

Counts against each independent partner's limit in proportion to share of profits, AO75/17, 104.

Partner makes in individual capacity, AO75/31.

Partnership agreements to allocate—necessary provisions, AO75/104.

Statutory maximum limit for a partnership is $1,000, AO75/17.

See also: Corporation/labor union/bank; political action committees.

PERSONAL ASSETS

Advance to political campaign committee by candidate, AO75/57,111.

Applicable to dual Senate/Presidential candidate, AO75/11.

Limitations applicable to pre-1975 debts (unconstitutionality of 18 USC s.608(a)), AO75/65.

See also: Debts; excess funds; litigation costs; loan/endorsement; preemption of State law; transfer; travel expenses.

PERSONAL SERVICES (VOLUNTARY)

See: Volunteer services.

PETITION EFFORT

See election.

PETTY CASH FUND

No check to the order of "cash" may be made for over $100, AO75/44.

See also: Accounts.

POLITICAL ACTION COMMITTEES

Establishment, administration, AO75/23, 36.

Multi-candidate PACs may give $15,000 to national political party committee, AO76/41.

One political committee may not serve as the separate, segregated fund of more than one sponsoring corporation or labor organization, AO76/73.

Partnership, sole proprietor may not establish PAC, AO75/31.

Unlawful to make a contribution or expenditure by money obtained in a commercial transaction, AO76/18.

See also: Corporation/labor union/bank; membership organization; multi-candidate committee; trade association; trustee plan.

POLITICAL COMMITTEES

Administrative expenses, see administrative expenses.

"Affiliated committees" and connected organizations" defined, AO75/44.

Definition: Committee organized to assure "option of alternative independent slate of electors" within definition, AO75/81.

Group of individuals acting in concert who are likely to assert their association when contributing and who collect and distribute checks in a batch to candidates or committees is a political committee, AO76/51.

Research committees funded solely by legislatively appropriated funds are not political committees required to register and report AO76/34.

Officers: National multi-candidate committee can establish State committees which have the same treasurer, AO75/45.

Individuals serving as officers of more than one fundraising committee, AO75/35.
Principal campaign committee: Candidate must designate committee even if committee makes no contributions or expenditures, AO76/100.
May give "occasional, isolated, incidental" support to other Federal candidates, AO76/5.
May make unlimited contributions to non-Federal candidates, AO76/5.
May pay for candidate's living expenses, AO76/53.
May purchase auto for candidate, AO76/64.
May rent office space in candidate's private home, AO76/53.
See also: Reporting.
Termination, AO75/28, 102.
See also: Accounts; administrative expenses; common control; communication exemption; corporation/labor union/bank; dual candidacy; earmarking; excess funds; fund raising; personal assets; polling; reporting; transfers; travel expenses.

POLLING

Expenditure for "attitudinal research" from office account, AO75/7.
See also: Candidacy.

PREEMPTION OF STATE LAW

Ballot access, AO76/8.
Establishment of committees, AO76/8.
Qualifying of candidate, date and place of election, AO75/124, 76/8.

PRIMARY ELECTION

See Election.

PRINCIPAL CAMPAIGN COMMITTEE

See Political committees.

PUBLIC FUNDING

Defraying delegate costs with public money, AO75/91.
See also: Accountants'/attorneys' fees; nominating convention, national; transfers.

PUBLIC UTILITY HOLDING COMPANIES

See: Corporation/labor union/bank.

RAFFLES

See: Corporate facilities/goods; fundraising.

REPORTING

Anonymous cash contribution, AO75/140.
Expenditures must be reported even if other than for the purpose of influencing an election, AO76/64.
"Less than $1,000 in quarter" notification by political committee, AO75/16.
Monthly reporting for Presidential candidates, AO75/44.
Record-keeping of purchasers of tickets to fundraiser, AO75/60,97; concert fundraiser, AO75/49 76/62.
Use of contributor lists on reports filed with Secretary of State, AO75/124.
Waive for candidate reporting, AO75/124.
See also: Accounts; corporation/labor union/bank; debts; excess funds; fundraising; honorarium; nominating convention, national; office accounts; political committees; preemption of state law; transfers; travel expenses.

REQUIREMENTS RELATING TO CAMPAIGN ADVERTISING

See: Advertising/solicitation.

ROYALTIES

As contributions; Books, AO75/77; candidate's image, AO75/15.

RUN-OFF ELECTION

See: Election.

SEPARATE, SEGREGATED FUNDS

See: Accounts; political action committees.

SOLE PROPRIETORSHIP

Contributions in individual capacity, AO 75/31.

SOLICITATION

See: Advertising/solicitation; political action committee.

SPOUSE

See: Family of candidate.

SPECIAL ELECTION

See: Election.

STATE LAW

See: Preemption of state law.

STATE PARTY

See: National/state/local party.

TELETHON

Guarantee/endorsement of loan to telethon, AO75/4.

TELEVISION APPEARANCES

See: Appearances by candidate.

TRADE ASSOCIATION

Solicitations under 441(b)(4): Informing persons of a fundraising activity is a solicitation; permission from member corporations to solicit must be obtained prior to solicitation, AO76/27, 96.

TRANSFERS

Between campaign committees for dual candidate, AO75/11.
From: political campaign committee to another account (savings account, office account), AO75/10, 41, 144 76/25; previous Federal account to political campaign committee, AO75/10, 26, 40, 66; primary to general election account, AO75/53; state election account to principal campaign committee; generally, AO75/10, 66.
See also: Accounts; common control; excess funds; political committees.

TRAVEL EXPENSES

Cost of travel (to a fundraiser) supported by individual is an in-kind contribution: not a contribution or expenditure if traveler is not a candidate, AO75/123.
"Expenditure" if candidate and campaign-related activities (speeches, meetings with advisors), AO75/98.
Reimbursement by political campaign committee to volunteer, AO75/97.
Reimbursement by political committee to members for attending election—related activities, AO75/20.
Reimbursement to candidate by political campaign committee is expenditure, AO75/30.
Related to party building activities are not expenditures, AO75/72.
See also: Appearances by candidate; contributions—in-kind; corporation/labor union/bank; dual candidacy; excess funds; honorarium, legislative hearings; national/state/local party.

TRUSTEE PLAN

Establishment, administration, AO75/23.

VOLUNTEER SERVICES

Entertainment and services not contribution, AO75/97.
On employee time—in-kind? AO75/94.
Use of workers receiving Social Security funds, AO75/124.
Volunteer intern in Congressional office—college credit no treimbursement, AO75/100.
See also: Contribution—in-kind; travel expenses.

VOTER REGISTRATION DRIVES

Allocation of expenses as per state/federal support, AO75/21.
Partisan as independent expenditure, AO75/20.
See also: Communications exemption.

U.S. CODE SECTION INDEX TO 1975–76 OPINIONS (ADVISORY OPINIONS)

NOTE.—Numbers of opinions beginning with the digits "75" are 1975 opinions; digits "76" stand for 1976 opinions.

Code section	*Advisory opinions*
2 U.S.C. section:	
431(a)	75/12.
431(a)(2)	76/58.
431(b)	
431(c)	76/68.
431(d)	75/4,81 76/51.
431(e)	75/15,63.
431(e)(1)	
431(e)(3)	
431(e)(4)	76/70.
431(e)(5)	
431(e)(5)(1)	75/119.
431(f)	76/17.
431(f)(2)	76/85.
431(f)(4)(A)	75/143.
431(f)(4)(C)	
431(k)	76/95.
431(m)	76/95.
432(a)	
432(b)	75/49.
432(c)	76/62.
432(c)(2)	75/140.
432(e)	Unauthorized activities; notice [deleted in 1976 amendments] 75/44.
432(e)(1)	
432(f)	76/5,100
433	75/16.
433(a)	
433(c)	
433(d)	
434	75/18,102,144.
434(a)(1)(C)	75/4 76/64.
434(b)	75/16.
434(b)(1)	75/10,140.
434(b)(2)	76/25.
434(b)(4)	75/40. 75/144.
434(b)(6)	76/62.
434(b)(12)	75/18, 76/85.
434(b)(13)	75/20.
434(c)(2)	
434(e)	75/12.
435	
435(b)	76/35.
436(b)	75/18.
436(b)(1)	76/100.
436(c)	75/18.
437(1)	
437a	Reports by certain persons [deleted in 1976 amendments] 75/ .
437b	
437b(a)	75/41, 76/25.
437b(a)(2)	75/2.
437b(b)	75/44.
437f(a)	
438(a)(4)	75/124.
439	
439(a)	75/144.
439a	75/7,10,14,51,64,82,88. 76/57,90.
439b	
441a. [18 U.S.C. s. 608]	
441a(a). [18 U.S.C. s. 608 (b)]	75/2,9,14,106,108.
441a(a)(1). [18 U.S.C. s. 608 (b)(1)]	75/5,6,10,26,44,52,54,62, 65,81,82,87,132,76/17.
	75/11,17,48,74.

Code section	Advisory opinions
2 U.S.C. section—continued	
441a(a)(1)(A), [18 U.S.C. s. 608(b)(1)]	76/26,68,74.
441a(a)(2), [18 U.S.C. s. 608 (b)(2)]	75/3,11,32,45,74,120,129.
441a(a)(2)(B)	76/41.
441a(a)(3), [18 U.S.C. s. 608 (b)(3)]	75/48,74, 76/26,68,74.
441a(a)(6), [18 U.S.C. s. 608 (b)(5)]	65,81,82,87,132. 76/17.
441a(a)(8), [18 U.S.C. s. 608 (b)(6)]	75/32,48,60, 76/51.
441a(b), [18 U.S.C. s. 608 (c)]	75/7,10,15,22,27,28,30, 54,78,87,98.
441a(b)(1)(A), [18 U.S.C. s. 608(c)(1)(A)]	75/11,33.
441a(b)(2)(B) [18 USC s.608 (c)(2)(B)]	75/12,44.
441a(d) [18 USC s. 608(f)]	
441a(d)(3) [18 USC s.608(f)(3)]	75/2,29.
441a(d)(3)(B) [18 USC s. 608 (f)(3)(B)]	
441b [18 USC s. 610]	75/1,7,13,14,16,21,23,27, 39,47,50,59,75,86,94, 123 76/98.
441b(a)	76/50.
441b(b)(2)	76/50,70.
441b(b)(2)(C)	76/73.
441b(b)(3)(A)	76/18.
441b(b)(4)	76/18,73.
441b(b)(4)(A)(i)	76/73.
441b(b)(4)(C)	76/27.
441b(b)(4)(D)	76/27,73,96.
441c [18 USC s.611]	75/31,99,110.
441d [18 USC s. 612]	75/67, 76/35.
441e	76/9.
441f [18 USC s. 614]	75/104.
4411 [18 USC s. 616]	75/8,20,46,55,63,77,84,85, 89,93,119.
451	
453	75/124, 76/8.
15 U.S.C. section 791(h)	
18 U.S.C. section 591(a)	75/1,44,54,105.
591(a)(2)	
591(b)	
591(e)	75/15,63,87,94.
591(e)(1)	75/4.
591(e)(4)	
591(e)(5)	
591(e)(5)(A)	75/20,97.
591(e)(5)(D)	75/97.
591(e)(5)(E)	
591(f)	75/12,15,22,87,98,107.
591(f)(4)	75/62.
591(f)(4)(B)	75/20.
591(f)(4)(C)	75/2.
591(f)(4)(H)	75/33,78.
591(f)(4)(I)	
604	76/53.
608 *see* 2 USC s. 441a.	
608(a)—Personal funds of candidate and family [deleted in 1976 amendments].	75/30,65. 76/26,74.
608(a)(1)	75/5,6,11.
608(a)(3)	75/57,111.
608(a)(4)	75/57.
608(b) *see* 2 USC s.441a(a).	
608(b)(1) *see* 2 USC s.441a(a)(1).	
608(b)(2) *see* 2 USC s.441a(a)(2).	
608(b)(3) *see* 2 USC s.441a(a)(3).	
608(b)(5) *see* 2 USC s.441a(a)(6).	
608(b)(6) *see* 2 USC s.441a(a)(8).	
608(c) *see* 2 USC s.441a(b).	
608(c)(1)(A) *see* 2 USC s.441a(b)(1)(A).	
608(c)(1)(C)	75/11,53
608(c)(1)(E)	75/3
608(c)(2)(B) *see* 2 USC s.441a(b)(2)(B).	
608(e)—Expenditures relative to clearly identified candidate [deleted in 1976 amendments].	75/12,15,20.
608(f) *see* 2 USC s.441a(d).	
608(f)(3) *see* 2 USC s.441a(d)(3).	
608(f)(3)(B) *see* 2 USC s.441a(d)(3)(B).	
610 *see* 2 USC s.441b.	
611 *see* 2 USC s.441c.	
612 *see* 2 USC s.441d.	
614 *see* 2 USC s.441f.	
616 *see* 2 USC s.441i.	
26 U.S.C. section 9008(b)(1)	
9008(d)	75/1,91.
9008(d)(1)	
9008(e)	75/1.
9008(g)	75/1.
9012(e)	
9033	
39 U.S.C. section 3210	
3210(f)	75/3,7,14.

PROPOSED-REGULATION INDEX TO 1975–76 OPINIONS (ADVISORY OPINIONS)

NOTE: Numbers of opinions beginning with the digits "75" are 1975 opinions; digits "76" stand for 1976 opinions.

Proposed regulation	Advisory opinion
100.4	76/27.
100.4(a)(5)(iii)	75/132.
102.4	76/70.
102.11	76/90.
104	76/100.
104.2(b)(11)	76/64.
109.4	76/85.
110.1(g)	76/35.
110.6	76/68.
114	76/51.
114.7(c)	76/18,86.
114.8	76/73.
114.8(d)(2)	76/73,96.
114.8(d)(3)	76/27.

[FR Doc.77-1684 Filed 1-19-77;8:45 am]

federal register

FRIDAY, JANUARY 21, 1977

PART V

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

■

COASTAL ZONE MANAGEMENT RESEARCH AND TECHNICAL ASSISTANCE

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[15 CFR Part 933]

RESEARCH AND TECHNICAL ASSISTANCE

Eligibility, Guidelines and Procedures

The National Oceanic and Atmospheric Administration (NOAA) hereby proposes to adopt regulations pursuant to section 310 Of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.), hereinafter referred to as the "Act," for the purpose of defining procedures by which NOAA will operate the national research and technical assistance program established in subsection 310(a) of the Act and by which States can apply for and receive the research and technical assistance grants established in subsection 310(b) of the Act and for meeting other provisions of section 310.

Section 310 provides:

(a) The Secretary may conduct a program of research, study, and training to support the development and implementation of management programs. Each department, agency, and instrumentality of the executive branch of the Federal Government may assist the Secretary, on a reimbursable basis or otherwise in carrying out the purposes of this section, including, but not limited to, the furnishing of information to the extent permitted by law, the transfer of personnel with their consent and without prejudice to their position and rating, and the performance of any research, study, and training which does not interfere with the performance of the primary duties of such department, agency or instrumentality. The Secretary may enter into contracts or other arrangements with any qualified person for the purposes of carrying out this subsection.

(b) The Secretary may make grants to coastal states to assist such states in carrying out research, studies, and training required with respect to coastal zone management. The amount of any grant made under this subsection shall not exceed 80 per centum of the cost of such research, studies, and training.

(c)(1) The Secretary shall provide for the coordination of research, studies, and training activities under this section with any other such activities that are conducted by, or subject to the authority of, the Secretary.

(c)(2) The Secretary shall make the results of research conducted pursuant to this section available to any interested person.

To implement this new section, contained in Pub. L. 94–370, signed on July 26, 1976, NOAA proposes a new Part 933.

Part 933 will enhance State efforts to develop and implement coastal zone management programs by supporting necessary research, study and training at State, regional, and national levels. Grants awarded to States will enable them to deal directly and immediately with research and training needs which arise as they develop and/or implement management programs, while the national program will address those broader research and training needs which are regional or national in scope.

The basic intent of subsections 310 (a) and (b) of the Act is to fund research, study, and training which supports the development and implementation of State coastal zone management programs. However, there is a significant difference in focus between the two subsections in that State grants pursuant to subsection 310(b) will be awarded to State coastal zone management agencies for the purpose of meeting State-specific research, study and training needs, while the national program pursuant to subsection 310(a) will work with a variety of entities and will endeavor to address needs which are regional or national in scope.

Subpart A of Part 933, entitled General, contains a discussion of the basic intent of section 310 of the Act, and definitions of the terms "Act," "Secretary," "Associate Administrator," and "person."

Subpart B of Part 933, entitled National Research and Technical Assistance Program, contains a discussion of the entities eligible for funding under subsection 310(a), the types of funding arrangements which may be utilized, and the appropriate uses of these funds. Entities eligible for funding are all those mentioned in the definition of the term "person" in subsection 304(13) of the Act. This term includes other Federal agencies, State and local governments as well as a variety of other entities. Funding arrangements which may be used in addition to contracts include both cost-reimbursable and non-reimbursable arrangements with other Federal agencies as well as grants to State or other units of government or educational or nonprofit institutions, if appropriate.

Research which can be funded under this subsection includes studies, experiments, and other analyses related to State management program development and administration, but with broader application than research funded under subsection 310(b). The term "broader application" is intended to imply both a broader geographic coverage and a broader range of problems. Training which can be funded under subsection 310(a) is not limited solely to the short-term professional skill development contemplated under subsection 310(b). It may include curriculum development, the testing of new approaches to education and training, and exploration of the relationship of coastal zone management to other related fields.

Subpart C of Part 933, entitled Operation of the National Research and Technical Assistance Program, establishes the guidelines and procedures under which the national research and technical assistance program will be operated. Each fiscal year, NOAA's Associate Administrator for Coastal Zone Management will develop an annual plan which sets out research and training priorities. He/she will then solicit proposals or make other arrangements, as appropriate, to accomplish the tasks described in the annual plan. Because of the variety of funding arrangements available under this subsection, application procedures will vary.

Subpart D of Part 933, entitled State Research and Technical Assistance Grants, contains a discussion of the entities eligible for funding under subsection 310(b), the appropriate uses of these funds, and priorities which will be used to determine funding. To be eligible for grants, a State must either be making adequate progress toward the development of a management program or be administering an approved management program. The applicant for funds must be the State agency responsible for developing or administering the management program although these funds may be subcontracted to another entity.

Research which can be funded under this subsection includes studies, experiments, and other analyses of short term duration which can be expected to show results within one year's time. Such research is to be derived from State program needs and is to utilize existing materials to the extent possible. Training which can be funded under this subsection includes the education or other development of such personnel as may be needed to efficiently and effectively develop and/or administer State management programs or to administer coastal energy impact funds.

High funding priority will be given to those research, study and or training activities which most directly support management program development or implementation. Those states which are experiencing difficulty in achieving program approval or in implementing management programs will be given priority over those States which do not appear to be experiencing such difficulty.

Subpart E of Part 933, entitled Applications for State Research and Technical Assistance Grants, contains a discussion of a grantee's administrative and fiscal responsibilities, application procedures for amending approved applications.

Prior to issuance of these proposed regulations, NOAA distributed widely a draft paper on section 310(b)—State Grants for Research and Technical Assistance. Comments were received questioning the requirement (in the draft paper) that States apply for research and training grants at the same time that they apply for section 305 or 306 grants, and also questioning whether research in estuarine sanctuaries, approved pursuant to section 315(1) of the Act, could be funded under subsection 310(b) of the Act.

In response to State comments that tying subsection 310(b) applications to the section 305 or 306 grant applications was unnecessarily restrictive and might not enable States to best respond to research, study and training needs as they arose, regulations permit submission of applications at any time during the fiscal year.

In response to State questions about estuarine sanctuary research, the proposed regulations provide that such research can be funded if it can be shown to be related to program administration.

NOAA has reviewed these proposed regulations pursuant to the National

Environmental Policy Act of 1969 and has determined that promulgation of these regulations will have no significant impact on the environment.

Compliance with Executive Order 11821. The economic and inflationary impact of these proposed regulations has been evaluated in accordance with OMB Circular A-107 and it has been determined that no major inflationary impact will result.

NOAA invites public comment on these proposed regulations so that they may be modified, where necessary and legally permissible, to reflect fully the needs of the public and parties affected by provisions. Written comments should be submitted to the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Page Building 1, 3300 Whitehaven St., N.W., Washington, D.C. 20235 on or before February 21, 1977. Following the close of the comment period, and after review of comments, the Associate Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, may amend these proposed regulations to reflect necessary and permissible changes. The Associate Administrator shall then have final regulations published in the FEDERAL REGISTER.

Dated: January 17, 1977.

T. P. GLEITER,
Assistant Administrator for Administration.

In consideration of the foregoing, Part 933 is proposed as follows:

PART 933—RESEARCH AND TECHNICAL ASSISTANCE

Subpart A—General

Sec.
933.1 Basic purposes.
933.2 Definitions.

Subpart B—National Research and Technical Assistance Program

933.10 General.
933.11 Eligible entities and arrangements.
933.12 Use of funds.

Subpart C—Operation of National Research and Technical Assistance Program

933.20 General.
933.21 Annual plan.
933.22 Funding arrangements.

Subpart D—State Grants for Research and Technical Assistance

933.30 General.
933.31 Eligible entities.
933.32 Use of funds.
933.33 Funding priorities.

Subpart E—Application for State Research and Technical Assistance Grants

933.50 General.
933.51 Applicant responsibility.
933.52 Application procedures.
933.53 Approval of applications.
933.54 Amendments.

AUTHORITY: Sec. 310, Coastal Zone Management Act of 1972 (Pub. L. 92-583, 86 Stat. 1280, as amended by Pub. L. 94-370, 90 Stat. 1013).

Subpart A—General

§ 933.1 Basic purposes.

(a) This section sets forth the basic purposes for which the national research and technical assistance program, pursuant to subsection 310(a) of the Act, will be operated, and for which State research and technical assistance grants, pursuant to subsection 310(b) of the Act, will be awarded. The basic intent of both subsections is to fund research, study, and training which supports the development and administration of State coastal zone management programs. However, there is a significant difference in focus between the two subsections in that State grants pursuant to subsection 310(b) will be awarded to State coastal zone development or management agencies for the purpose of meeting State-specific research and training needs, while the national program pursuant to subsection 310(a) will work with a variety of entities and will endeavor to address needs which are regional or national in scope.

(b) *Comment.* Statutory Citation, Subsection 310(a):

> The Secretary may conduct a program of research, study, and training to support the development and implementation of management programs. * * * The Secretary may enter into contracts or other arrangements with any qualified person for the purposes of carrying out this subsection.

(c) *Comment.* Statutory Citation, Subsection 310(b):

> The Secretary may make grants to coastal states to assist such states in carrying out research, studies, and training required with respect to coastal zone management.

§ 933.2 Definitions.

(a) The term "Act" means the Coastal Zone Management Act of 1972, as amended.

(b) The term "Secretary" means the Secretary of Commerce or his/her designee. Delegations of authority from the Secretary to the Administrator, National Oceanic and Atmospheric Administration (NOAA), have been duly executed by Amendment 5 of Department of Commerce Organization Order 25-5A, dated October 13, 1976 and from the Administrator to the Associate Administrator for Coastal Zone Management, by NOAA Circular 76-82, effective October 13, 1976.

(c) The term "Associate Administrator" means the Associate Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(d) The term "person" is as defined in subsection 304(13) of the Act and means "any individual; any corporation, partnership, association, or other entity organized or existing under the laws of any state; the Federal Government; any state, regional, or local government; or any entity of any such Federal, state, regional, or local government."

Subpart B—National Research and Technical Assistance Program

§ 933.10 General.

(a) The national research and technical assistance program established pursuant to subsection 310(a) of the Act is a program utilizing contracts and other arrangements to support regional and national research, study and training activities which assist State efforts to develop and/or administer coastal zone management programs.

(1) This program will be conducted so as to complement and support work being done by States using grants under sections 305 or 306 of the Act.

(2) Research, study and training efforts will be expected to address the needs of a group of States, a region, or the entire nation or the administration of the national coastal zone management program.

(b) The national research and technical assistance program is differentiated from the interstate grant program, pursuant to section 309 of the Act, by the former's emphasis on technical research, study and training. The interstate program by contrast, focuses upon regional cooperation and coordination with particular attention directed toward the development of common or unified coastal zone policies.

§ 933.11 Eligible entities and arrangements.

(a) The Associate Administrator will enter into contracts or make other arrangements with any qualified person for the performance of work pursuant to subsection 310(a) of the Act.

(1) It should be noted that the term "person" as defined in section 933.2 includes other Federal agencies, State and local governments, as well as a variety of other entities.

(2) For purposes of this subsection, other arrangements include both cost-reimbursable and non-reimbursable arrangements with other Federal agencies. Such arrangements shall include the use of the provisions of the Intergovernmental Personnel Act of 1970 (Pub. L. 91-648; Pub. L. 93-638) both for purposes of training and to provide technical assistance. Other arrangements may also include grants with State agencies or other units of government, or with educational or non-profit institutions, or contracts with persons as defined in subsection 304(13) of the Act, as appropriate and necessary to the accomplishment of national research and training needs as identified by the Associate Administrator pursuant to section 933.21 of these regulations.

§ 933.12 Use of funds.

(a) Research under subsection 310(a) shall include studies, pilot or demonstration projects, or other analyses complimenting or enhancing development and administration of the State coastal management programs, but with broader application than research funded pursuant to subsection 310(b). The term "broader application" is intended to imply both a broader geographic coverage and a broader range of problems.

(1) Research and studies funded under subsection 310(a) can be expected to:

(i) Supplement and enhance work geared towards management program development and administration;

(ii) Aid in the resolution of coastal zone management issues;

(iii) Have application to a group of states, a region, or the entire nation;

(iv) Assist in resolving issues in the administration of the national coastal zone management program; and

(v) Where appropriate, be transferable or usable beyond the study area.

(2) In contrast to State grants pursuant to subsection 310(b), these efforts will not necessarily focus on technical and site-specific studies.

(b) Training under subsection 310(a) need not be limited solely to the short-term, professional skill development anticipated pursuant to subsection 310(b).

(1) Training may include, but is not limited to, the following.

(i) Curriculum development at the high school, college, and graduate school levels;

(ii) Testing of new approaches to education and training;

(iii) Internships; and

(iv) Exploration of the relationship of coastal zone management to other related fields.

(2) Training funded pursuant to subsection 310(a) will be expected to meet the needs of or be tarnsferrable to a group of States or to the nation.

(c) Subsection 310(a) funds may not be used for the following purposes:

(1) State management program activities,

(2) Construction,

(3) Land acquisition.

Subpart C—Operation of National Research and Technical Assistance Program

§ 933.20 General.

This section establishes the guidelines and procedures under which the Associate Administrator will operate the national research and technical assistance program established pursuant to subsection 310(a) of the Act. Each fiscal year, the Associate Administrator will develop an annual plan which sets out research and training priorities. He/she will then solicit proposals or make other arrangements, as appropriate, to accomplish the tasks described in the annual plan. Because of the variety of funding arrangements available to the Associate Administrator pursuant to subsection 310(a), the specific application procedures will vary depending on the nature of appropriate arrangements, and will be in accordance with prescribed procedures applicable to the Federal Government or pursuant to Department of Commerce or NOAA administrative procedures.

§ 933.21 Annual plan.

(a) The Associate Administrator will develop an annual plan for the national research and technical assistance program.

(1) This plan will indicate those issues, subjects, and areas which he/she believes should be the subject of research, study or training in that year and will assign relative priorities to the proposed studies.

(2) Where possible, the plan will also indicate the means by which the Associate Administrator intends to accomplish such studdies (i.e., by request for proposals, transfer of funds to other Federal agencies, grants, etc.) and the timing of such actions.

(b) The priorities expressed in this plan, together with any other relevant information, will be made available to all interested parties at the beginning of each fiscal year.

(c) In order to be responsive to State, regional, and national coastal zone management issues and needs, and to avoid duplication of research being conducted by others, the plan will be developed in consultation with coastal States, other Federal agencies, and other interested parties.

(d) This plan may be revised throughout the course of a year to reflect newly emergent or unanticipated national research, study or training needs.

§ 933.22 Funding arrangements.

(a) To accomplish the national research and technical assistance program, the Associate Administrator may utilize any appropriate procedures, which may include:

(1) Competitive procurement,

(2) Sole source procurement,

(3) Grants to state agencies or other units of government, or educational or non-profit institutions,

(4) Cooperative agreements,

(5) Cost-reimbursement of other Federal agencies, and

(6) Personnel transfers on a reimbursable or non-reimbursable basis.

(b) As a general rule, no more than ten percent of the funds available in any fiscal year shall be allocated to fund projects or proposals that are not responsive to the annual national research and technical assistance plan developed pursuant to § 933.21.

Subpart D—State Grants for Research and Technical Assistance

§ 933.30 General.

(a) The State research and technical assistance program, pursuant to subsection 310(b) of the Act, is a program of grants to States to support research, study and training activities which improve State capability to develop and/or administer coastal zone management programs.

(1) Research, study and training grant applications should develop from needs identified or problems experienced during program development and/or administration.

(2) Applications should be justified in terms of the usefulness of the anticipated results to basic program efforts.

(b) Because of the highly applied nature of research conducted pursuant to subsection 310(b) of the Act, it may be difficult to judge whether an activity is most appropriately funded pursuant to subsection 310(b) or pursuant to sections 305 and 306 of the Act.

(1) Generally speaking, those activities which are essential to meeting the criteria for program approval or which are integral to operating an approved program should be funded pursuant to sections 305 and 306 of the Act.

(2) Those activities which enhance or improve a State's ability to meet the criteria for approval or to operate an approved program should be funded pursuant to subsection 310(b).

(3) It is anticipated that research and studies funded pursuant to section 310 (b) will be more technical in nature or more geographically specific than those activities typically funded pursuant to sections 305 and 306 of the Act.

§ 933.31 Eligible entities.

To be eligible for grants pursuant to subsection 310(b), a State must either be making adequate progress toward the development of a coastal zone management program pursuant to section 305 of the Act or be operating an approved management program pursuant to section 306 of the Act.

§ 933.32 Use of funds.

(a) For purposes of subsection 310(b), research shall include studies, pilot or demonstartion projects, or other analyses of short term duration which can be expected to show results within one year's time. Such research or studies shall be derived from State coastal zone management program development and/or administration needs and shall utilize existing materials to the extent possible.

(1) Such research and studies will tend to focus more on technical and site-specific issues rather than on institutional and managerial issues.

(2) Research and studies related to the coastal energy impact program, established pursuant to section 308 of the Act, may be funded pursuant to subsection 310(b) of the Act if such research and studies are clearly related to a State's ongoing management program efforts and if such research and studies are not otherwise fundable pursuant to section 308 or sections 305 and 306 of the Act.

(3) Research and studies related to or conducted within an estuarine sanctuary established pursuant to section 315(1) of the Act may be funded under subsection 310(b) if such research and studies can be shown to be related to program administration, and otherwise meet the criteria set forth in these regulations.

(b) For purposes of subsection 310(b), training shall refer to the education or other development of such personnel as may be needed to efficiently and effectively develop and/or administer State coastal zone management programs or to administer coastal energy impact funds.

(1) In general, such training should be of short term duration and should be directed toward the development of specific job-related skills.

(2) Such training may be for, but not limited to, the following types of expertise at both the State and local levels: permit reviewers and inspectors, law enforcement officers, natural resource managers, economists, fiscal officers, planners, and persons with specialized training in the natural sciences.

(c) Grants issued pursuant to subsection 310(b) of the Act may not be used for the following purposes:

(1) Basic and/or long-term research or education efforts;

(2) State management program administration activities;

(3) Construction;
(4) Land acquisition; or
(5) Permanent equipment acquisitions, unless susch acquisitions can also be used for program development and/or administration purposes.

§ 933.33 Funding priorities.

(a) The Associate Administrator will not establish priorities between nor allocate funds specifically to research and study activities on the one hand or training activities on the other.

(b) Highest funding priority will be given to those research and/or training activities which directly support program development and/or administration.

(c) Those States which are experiencing difficulty in achieving program approval or in implementing management programs will be given priority over States which do not appear to be experiencing such difficulty.

(d) Lower funding priority will be given to the following:

(1) Activities which have a continuing funding dimension and a long time frame for completion; and

(2) Institutional and/or management studies more appropriately funded pursuant to sections 305 and 306 of the Act;

Subpart E—Application for State Research and Technical Assistance Grants

§ 933.50 General.

(a) The purpose of this section is to define the procedures by which grantees apply for and administer grants under the Act and to provide guidelines regarding the content of applications for State research and technical assistance grants pursuant to subsection 310(b) of the Act. These procedures shall be used and interpreted in conjunction with the Grants Management Manual for Grants under the Coastal Zone Management Act, hereinafter referred to as the "Manual." The Manual incorporates a wide range of Federal requirements, including those established by the Office of Management and Budget, the General Services Administration, the Department of the Treasury, the General Accounting Office, and the Department of Commerce.

(b) Applications for grants under subsection 310(b) of the Act will be accepted by the Associate Administrator at any time during the fiscal year provided that they contain the information required pursuant to § 933.52.

(c) States are encouraged to submit applications for grants under subsection 310(b) at the same time that they submit applications for grants under sections 305 or 306 in order to enable the Associate Administrator to review more comprehensively State management program efforts and to expedite processing at both the State and Federal levels.

(d) States may submit more than one subsection 310(b) application per year if research or technical assistance needs arise that were not anticipated at the time of first application for subsection 310(b) funds.

(e) An application need not contain both research and training elements.

(f) Grants shall not exceed eighty per centum of the total cost of the proposed research and/or training. Federal funds received from other sources cannot be used to match subsection 310(b) grants. Match provided by the applicant may consist of cash or in-kind services as provided in the Manual.

(g) Costs claimed as charges to the grant project must be beneficial and necessary to the objectives of the grant project. As used herein the terms "costs" and "grant project" pertain to both the Federal grant and the matching share. The allowability of costs will be determined in accordance with the provisions of FMC 74–4: Cost Principles Applicable to Grants and Contracts with State and Local Governments.

(h) Grants shall be made for a maximum of one year's duration.

§ 933.51 Applicant responsibility.

(a) The application shall designate the entity to receive and administer grants pursuant to subsection 310(b). The applicant for such grants must be that entity designated by the Governor pursuant to 15 CFR 920.52 where a State is developing a coastal management program or that entity designated by the Governor pursuant to 15 CFR 923.62 where a coastal State is administering an approved management program. This entity may, in turn, pass through funds to, or subcontract with, other entities.

(b) The grantee will be administratively and fiscally responsible for all aspects of the grant, including any subcontracts made by the grantee.

§ 933.52 Application procedure.

(a) All applications are subject to the provisions of OMB Circular A–95 (revised).

(b) The Form SF–424, Application for Federal Assistance (Non-Construction Programs), constitutes the formal application and must be submitted sixty days prior to the desired grant beginning date. The application must be accompanied by evidence of compliance with requirements of OMB Circular A–95, including the resolution of any problems raised about the proposed project. The Associate Administrator will not accept applications that are substantially deficient in adherence to A–95 requirements.

(c) In Part IV, Program Narrative, of the Form SF–424, the applicant shall respond to the following requirements:

(1) A description of the work program to be undertaken during the grant period. This work program shall include:

(i) A precise description of each major research or study task to be undertaken, including an explanation of the need for this task, how it will be accomplished, what existing material it builds on, what results are expected, and how these results will be used in the management program.

(ii) A precise description of each major training task to be undertaken, including an explanation of the need for this training, how it will be accomplished, what existing efforts it builds on, who will benefit from it, and how these benefits will relate to the management program.

(iii) For each task, identify any "Other Entities," as defined in the "Manual," that will be allocated responsibility for carrying out all or portions of the task, and indicate the estimated cost of any subcontract for each allocation. Identify, if any, that portion of the task that will be carried out under contract with consultants and indicate the estimated cost of such contract(s). Where all or part of the work is to be subcontracted, the extent and nature of grantee supervision should be indicated.

(iv) For each task indicate the estimated total cost. Also indicate the estimated total months of effort, if any, allocated to the task from the applicant's staff.

(2) The sum of all tasks in subparagraph (1) above should equal the total estimated grant project cost.

(3) Using two categories, Professional and Clerical, indicate the total number of personnel in each category on the applicant's staff that will be assigned to the grant project. Also indicate the number assigned full-time and the number assigned less than full-time in the two categories. Additionally, indicate the number of new positions created in the two categories as a result of the grant project. Indicate total personnel costs.

§ 933.53 Approval of applications.

(a) An application for a state research, study and/or training grant which complies with the policies and requirements of the Act and the guidance contained in this subpart shall be approved by the Associate Administrator, assuming available funding.

(b) Should an application be found deficient, the Associate Administrator will notify the applicant in writing as to the manner in which the application fails to conform to the requirements of the Act or this subpart. Conferences may be held on these matters. Corrections to the application will provide the basis for resubmittal of the application for further consideration and review.

(c) The Associate Administrator may, upon finding extenuating circumstances relating to application for State research, study and/or training grants, waive appropriate administrative requirements contained herein.

§ 933.54 Amendments.

(a) Amendments to an approved application must be submitted to the Associate Administrator prior to initiation of the contemplated change. Requests for substantial changes should be discussed with the Associate Administrator well in advance. While all amendments must be approved in writing by the NOAA Grants Officer, approval may be presumed for minor amendments if the grantee has not been notified of objections within thirty (30) working days of the date of postmark of the request.

§ 933.55 Copies of products.

(a) In order to insure the ability of the Associate Administrator to make the results of research conducted pursuant to this subsection available to any interested person, grantees shall supply the

Associate Administrator with five (5) copies of any products, reports, studies, etc. financed in whole or in part by subsection 310(b) monies. Such products shall be received by the Associate Administrator no later than three months after the expiration date of the grant.

(b) *Comment.* Statutory Citation, subsection 310(c)(2):

The Secretary shall make the results of research conducted pursuant to this section available to any interested person.

(1) At least one of the copies received by the Associate Administrator shall be transmitted to the National Technical Information Service for purposes of assuring general availability to interested parties.

[FR Doc.77-1917 Filed 1-19-77;8:45 am]

federal register

FRIDAY, JANUARY 21, 1977
PART VI



DEPARTMENT OF JUSTICE

DEPARTMENT OF LABOR

CIVIL SERVICE COMMISSION

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QUESTIONS AND ANSWERS ON THE FEDERAL EXECUTIVE AGENCY GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

DEPARTMENT OF JUSTICE

Office of the Deputy Attorney General

QUESTIONS AND ANSWERS ON THE FEDERAL EXECUTIVE AGENCY GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

Introduction

NOTE: This document is issued jointly by the Department of Justice, the Department of Labor, and the Civil Service Commission. It was originally published in the FEDERAL REGISTER of Wednesday, January 19, 1977, and is reprinted here for the convenience of users who may be following the issuances of the Department of Labor and the Civil Service Commission on the assigned day of the week publication schedule (see 41 FR 32914, Aug. 6, 1976).

The problems addressed by the Federal Executive Agency Guidelines on Employee Selection Procedures (41 FR 51734 et seq., Nov. 23, 1976) are numerous and important, and some of them are complex. The history of the development of those guidelines is set forth in the introduction to them (41 FR 51734–35). The experience of the Department of Labor in administering its earlier Testing and Selection Order (41 CFR Part 60–3) has been that a series of answers to commonly asked questions is helpful in providing guidance not only to employers and other users, but also to psychologists and others who are called upon to conduct validity studies, and to compliance officers and other Federal personnel who have enforcement responsibilities.

The three Federal agencies issuing the guidelines—the Departments of Justice and Labor and the Civil Service Commission—seeking to benefit from the experience of the Department of Labor, and recognizing that the goal of a uniform position on these issues can best be achieved through a common interpretation of the same guidelines, have decided to issue the following Questions and Answers. The material included is intended to interpret and clarify the provisions of the guidelines. The questions selected are commonly asked questions in the field and those suggested by the guidelines themselves and by the extensive comments received on the various sets of proposed guidelines prior to their adoption. Terms are used in the questions and answers as they are defined in the guidelines.

The three agencies recognize that additional questions may be appropriate for similar treatment at a later date, and contemplate working together to provide additional guidance in interpreting the guidelines. Users and other interested persons are invited to submit additional commonly recurring questions they believe warrant answers, and any comments on the questions and answers set forth below to the appropriate issuing agency.

HAROLD R. TYLER, JR.,
Deputy Attorney General.

LAWRENCE Z. LORBER,
Deputy Assistant Secretary, Director, Office of Federal Contract Compliance Programs.

JAMES C. SPRY,
Executive Assistant to the Commissioners, United States Civil Service Commission.

JANUARY 17, 1977.

1. Q. What is the purpose of the Guidelines?

A. The Guidelines are designed to aid in the achievement of our Nation's goal of equal employment opportunity without discrimination on the grounds of race, color, sex, religion or national origin, by providing a set of principles governing use of employment selection procedures that is consistent with applicable legal and psychological standards, is workable, and which the adopting agencies will apply in the discharge of their respective responsibilities. The Guidelines deal only with this one aspect of the overall equal employment opportunity question and do not purport to provide guidance for anything other than use of selection procedures.

2. Q. What is the basic principle of the guidelines?

A. Selection procedures which have an adverse impact on members of a racial, sex or ethnic group and thus operate to exclude them disproportionately are unlawfully discriminatory unless the user validates the procedure in accord with the Guidelines, or the user otherwise justifies them in accord with Federal law. See § 3.[1] The basis for this principle was adopted by the Supreme Court unanimously in *Griggs* v. *Duke Power Co.*, 401 U.S. 424, and was ratified and endorsed by the Congress when it passed the Equal Employment Opportunity Act of 1972.

3. Q. What is adverse impact, and how is it measured?

A. Adverse impact is a substantially different rate of selection in hiring, promotion or other employment decision) which works to the disadvantage of members of a racial, sex or ethnic group. § 4b. Rate of selection for each group is determined by dividing the number of applicants selected from that group by the total number of applicants from that group and by comparing the results with the result derived in the same way for the group with the highest selection rate. For example, a user may have had over a six month period 120 applicants, 80 white, and 40 black; of whom 60 were hired, 48 whites, and 12 blacks. The selection rate for white applicants was thus 48/80=60%; while that for black applicants was 12/40=30%. In this example, the selection process adversely affected the employment opportunities of blacks because their selection rate (30%) was only one half that of whites (60%).

4. Q. What is a substantially different rate of selection?

A. The Guidelines adopt a 4/5 (80%) Rule of thumb for guidance and operational use. See § 4b. If the selection rate for a group is within 4/5 or 80% of the rate for the group with the highest rate, the enforcement agency will generally not consider adverse impact to exist. In the prior example, the selection rate for blacks was 30%, while that for whites was 60%; so that the black selection rate was 1/2 or 50% of the highest group and there was adverse impact. If, on the other hand, there were 120 applicants, of which 80 were white and 40 black, and the user had selected 42 whites and 18 blacks, the selection rate for blacks would be 18/40 or 45%, while that for whites would be 42/80 or 52.5%. Because the selection rate for blacks as compared to that for whites is 45/52.5 or 85.4% (i.e., more than 80% (or 4/5)), the difference in impact would not be regarded as substantial in the absence of additional information.

5. Q. Does the 4/5 rule of thumb mean that the Guidelines will tolerate up to 20% discrimination?

A. No. The 4/5 rule of thumb speaks only to the question of adverse impact, and is not intended to resolve the ultimate question of unlawful discrimination. Regardless of the amount of difference in selection rates, unlawful discrimination may be present, and may be demonstrated through appropriate evidence. The 4/5 rule merely establishes a numerical basis for drawing initial inference and for requiring additional information.

With respect to adverse impact, the Guidelines expressly state (§ 4b) that differences in selection rates of less than 20% may still amount to adverse impact where the differences are significant in both statistical and practical terms. In the absence of differences which are large enough to meet the 4/5ths rule of thumb or a test of statistical significance, there is no reason to assume that the differences are reliable, or that they are based upon anything other than chance.

Two examples will be illustrative. If, for the sake of illustration we assume that nationwide statistics show that use of an arrest record would disqualify 10% of all Spanish-surnamed persons but only 4% of all Anglo persons, the "selection rate" for that selection procedure is 90% for Spanish-surnamed Americans and 96% for Anglos. There-

[1] Section references throughout these questions and answers are to the Sections of the Federal Executive Agency Guidelines on Employee Selection Procedures (herein referred to as "Guidelines") that were published by the Department of Labor, Department of Justice and the U.S. Civil Service Commission on November 23, 1976, at 41 FR 51734 et seq. In the Department of Labor issuance, the section references are preceded by an additional reference to "§ 60–3" (thus, the reference here to § 3 refers to § 60–3.3 in the Labor Department's issuance).

fore, the 4/5 rule of thumb would not indicate the presence of adverse impact (90% is approximately 94% of 96%). But in this example, the sample is large enough to be statistically significant, and the difference (Spanish-surnamed Americans are 2½ times as likely to be disqualified as Anglos) is large enough to be practically significant. Thus, the enforcement agencies would consider use of arrest record alone as having an adverse impact. See *Gregory* v. *Litton Industries*, 472 F.2d 631 (9th Cir., 1972).

Similarly, a difference of more than 20% in rates may not provide a basis for finding adverse impact if the numbers are very small. For example, if the employer selected three men and one woman from an applicant pool of 20 men and 10 women, the 4/5 rule would indicate adverse impact (selection rate for women is 10%; for men 15%; 10/15 or 66⅔% is less than 80%), yet the numbers are so small that a difference in one person hired would show an adverse impact the other way. In these circumstances, the enforcement agency would not require validity evidence in the absence of additional information.

6. Q. Is adverse impact determined on the basis of the overall selection process or for the components in that process?

A. Adverse impact is determined first for the overall selection process for each job category. If there is no adverse impact from the selection process, there is no obligation under the Guidelines to validate the selection procedures used for that job. If the overall selection process has an adverse impact, the adverse impact of the individual selection procedures should be analysed. For any selection procedure in the process having an adverse impact which the user continues to use, the user is expected to have evidence of validity satisfying the guidelines. § 4b and § 5c.

7. Q. If adverse impact is determined initially on the basis of the overall selection process, does this allow discrimination in one selection procedure to be balanced by another discriminatory procedure?

A. No. As shown above (see answer to Question 5), discrimination and adverse impact have different meanings; and these Guidelines do not permit any kind of discrimination. There are, moreover, many methods of determining proficiency. In some cases, proficiency may be best demonstrated by a written examination, while for others a review of experience or an interview, or a combination of all three may be best. Many employers and other users are utilizing alternative or combinations of approaches. Where the overall selection process of a user results in equal employment opportunities for members of racial, sex or ethnic groups for a job, the Guidelines reflect the position that it would be inappropriate for the federal enforcement agencies to expend their limited enforcement resources examining the validity of each procedure utilized in the process.

8. Q. Is the user obliged to keep records which show whether its selection procedures have an adverse impact on race, sex or ethnic groups?

A. Yes. Under the Guidelines the user is obliged to maintain evidence indicating the impact (if any) which their selection procedures have on identifiable racial, sex or ethnic groups. § 4 a and b. If the selection procedure does have an adverse impact on one or more such groups, the user is expected to maintain documentation evidence showing the validity of the procedure. § 13a.

9. Q. What is the relationship between affirmative action and the requirements of the Guidelines?

A. The two subjects are different, although related. The Guidelines state that compliance with these Guidelines does not relieve users of any affirmative action obligations they may have. § 11. The Guidelines, however, encourage the development and effective implementation of affirmative action plans or programs in two ways. First, the Guidelines state (§ 4c) that in determining whether to institute action against a user on the basis of a selection procedure which has adverse impact and which has not been validated, the enforcement agency will take into account the general equal employment opportunity posture of the user with respect to the job classifications for which the procedure is used and the progress which has been made in carrying out any affirmative action program. If the user has demonstrated over a substantial period of time that it is in fact providing equal employment opportunity in the job or job groups in question, the enforcement agency will generally exercise its discretion by not initiating enforcement proceedings. Secondly, the Guidelines encourage affirmative action programs by stating (§ 11) that nothing in them is intended to preclude the use of selection procedures, consistent with Federal law, which assist in the achievement of affirmative action objectives.

10. Q. Does the language of § 4c and § 11 concerning non-discrimination in the making of employment decisions prevent the adoption of effective affirmative action programs?

A. No. The Equal Employment Opportunity Coordinating Council has adopted a policy statement on affirmative action programs (41 Fed. Reg., Sept. 13, 1976). A copy of that statement is attached hereto and incorporated herein. The language of § 4c and § 11 is based upon and merely intended as a reminder of the non-discrimination provisions contained in Title VII and Executive Order 11246. The policy statement on affirmative action contains a similar prohibition for the same reason. The kind of color conscious affirmative action steps outlined in the Coordinating Council's policy statement do not, in the judgment of the enforcement agencies, violate the language of § 4c or § 11 of the Guidelines. This view is consistent with the well established principle that affirmative action programs of this kind do not violate the comparable anti-preference provisions of Title VII or Executive Order 11246.

11. Q. If it is not feasible or appropriate to validate a selection procedure, what obligations does the user of such a procedure have?

A. The Guidelines recognize that it is not always feasible or appropriate to utilize the validation techniques of the psychological profession as contemplated by the Guidelines. If the procedure cannot be validated because it is informal, unstandardized or unscored, the user should insofar as possible eliminate adverse impact, or if feasible modify the procedure to one which is formal, scored or quantified, and then validate the procedure in accord with these Guidelines. If it is not feasible to validate a standardized selection procedure, the user should either adopt an alternative procedure to eliminate adverse impact or modify the procedure to eliminate the adverse impact. The continued use of either a standardized or unstandardized procedure may also be permitted if the user can otherwise justify such use in accord with the federal law. See § 3b.

12. Q. How can users justify continued use in accord with federal laws of a procedure which has an adverse impact and which it is not feasible or appropriate to validate?

A. That subject is one to which the Guidelines are not addressed. In *Griggs* v. *Duke Power Co.*, 401 U.S. 424, the Supreme Court indicated that the burden on the user was a heavy one, but that the selection procedure could be used if there was a "business necessity" for its continued use. The federal agencies will consider evidence which shows "business necessity" to justify continued use of a selection procedure. Evidence of any other justification would have to be considered on a case by case basis.

13. Q. Do the Guidelines apply to the selection procedures utilized by state and local government licensing and certification boards and agencies?

A. The Guidelines neither broaden nor narrow the coverage of the underlying federal law. The Guidelines state however that licensing and certification are employment decisions to the extent that they may be covered by federal law. The courts are divided on that question. The Department of Justice has taken the position that at least some kinds of licensing and certification which deny persons access to employment opportunity may be enjoined in an action brought pursuant to Section 707 of the Civil Rights Act of 1964, as amended. See, *United States* v. *North Carolina*, 400 F. Supp. 343 (E.D. N.C. 1975) (three judge court) (certification of teachers).

14. Q. Where can a user obtain a "certification of validity"?

A. The federal enforcement agencies do not recognize any certification of validity or validation. See § 7a. If a user's selection procedures have an adverse impact, the user is expected to produce evidence of the validity of the procedure, not a certificate that they have been validated. Thus, the assertion by anyone, including a State employment service representative, that a test battery or other selection procedure has been vali-

dated is not sufficient to satisfy the Guidelines.

15. Q. What is the relationship between the Guidelines and other statements of psychological principles, such as the Standards for Education and Psychological tests published by the American Psychological Association (Wash., D.C., 1974) (hereinafter "APA Standards")?

A. The Guidelines are designed to be consistent with the generally accepted standards of the psychological profession. However, to the extent that there may be differences between particular provisions of the Guidelines and expressions of principles found elsewhere, the Guidelines will be given precedence by the enforcement agencies. With respect to any matters not addressed by the Guidelines, users are, of course, free to follow the standards of the profession so long as doing so is consistent with applicable equal employment opportunity requirements.

16. Q. When should a validity study be carried out?

A. The Guidelines call for a validation study whenever a selection procedure has adverse impact on any racial, sex or ethnic group. If a selection procedure has adverse impact, its use in making employment decisions without adequate evidence of validity would be inconsistent with the Guidelines. Waiting until a selection procedure is challenged increases the risk that the user will be found to be discriminating and be liable for back pay awards, plaintiffs' attorneys fees, loss of Federal contracts or grants and the like. Validation studies begun on the eve of litigation have seldom been found to be adequate. Users of selection procedures should consider the potential benefit to their employment systems and the savings in resources which can result from having a validation study completed or well under way before the procedures are administered for use in employment decisions. Public merit systems typically have a special obligation to validate selection procedures regardless of any expectation that adverse impact may result.

17. Q. Are there any special requirements as to who is allowed to perform a validity study?

A. No, a validity study is judged on its own merits, and may be performed by a member of the user's staff, a consultant, or any person knowledgeable of the principles of validity research. However, it is the user's responsibility to see that the study meets these Guidelines which are based upon professionally accepted standards.

18. Q. Can a selection procedure be a valid predictor of performance on a job in a certain location and be invalid for predicting success on a different job or the same job in a different location?

A. Yes. Differences in job duties, locations or study samples can affect validity, so that a selection procedure found to have validity in one situation may not have validity in different circumstances. Conversely, a selection procedure not found to have validity in one situation may have validity in different circumstances.

19. Q. Does the way a selection procedure is used affect its validity?

A. Yes. Selection procedures which have been properly validated can be used in improper ways. For this reason selection procedures must be administered and scored in a standardized manner during the research and must continue to be administered and scored in the same way while being used operationally. § 5d. A selection procedure which has been validated as predicting success on one job might be invalid for predicting success on another job.

Even if the selection procedure is properly administered and scored and the same job is involved, it may be used improperly. For instance, it would be improper to use a selection procedure to rank applicants if the validity study only supported the use of minimum acceptance levels ("pass/fail"). The validity study should reflect the way the selection procedure will be used in practice.

20. Q. Is the user of a selection procedure required to develop the procedure from scratch?

A. No, a selection procedure developed elsewhere may be used. However, the user has the obligation to show that its use for the job in question is consistent with the Guidelines.

21. Q. Is evidence that a selection procedure which has been validated in one context has validity in another context (validity generalization) alone sufficient justification for its use elsewhere (transportability)?

A. No. The conditions governing transportability are stated in § 6 of the Guidelines. While some degree of validity generalization is necessary for transportability, it is not sufficient.

Validity generalization refers to the degree to which the results of a criterion-related validity study conducted on a selection procedure in one situation lead to inferences concerning the degree of validity of that selection procedure or similar selection procedures in other situations. Transportability refers to the permissible use of a selection procedure in more than one context. Validity generalization is a statistical concept concerning validity evidence, while transportability is a judgment concerning use of selection procedure.

22. Q. Under what circumstances can a criterion-related validity study done elsewhere be used as sufficient validity evidence to meet the Guidelines (on other than an interim basis)?

A. A validity study done elsewhere may be used as sufficient evidence if four conditions are met (see § 6b):

1. The weight of the evidence from one or more studies must show that the procedure was valid in its use elsewhere.

2. The job(s) for which the selection procedure will be used must closely match the job(s) in the original study as shown by a comparison of results (in terms of job duties) of the job analyses in both contexts.

3. A fairness study must be contained in the original evidence for those groups constituting a significant factor in the user's labor market (see Answer to Questions 31–34 below).

4. There are no variables in the other study or studies which are likely to affect validity or fairness significantly (see Answer to Question 23 below).

23. Q. Under what circumstances can a selection procedure supported either by criterion-related validity evidence obtained elsewhere or by a partially completed validity study be used on an interim basis?

A. Interim use of criterion-related validity evidence is permitted in three situations:

1. If it is technically feasible for a user to conduct an internal validity study and there are significant differences between the research sample in a study done elsewhere and the user's job applicants in terms of such variables as age, education, job experience, etc., the selection procedure may only be used on an interim basis pending an internal validity study.

2. If validity evidence obtained elsewhere does not contain an investigation of fairness the selection procedure may only be used on an interim basis until evidence of fairness or unfairness is shown either from other sources or the user's own study.

3. If a user has substantial validity evidence either from other sources or from studies being conducted by or for the user, but which are not in complete compliance with the Guidelines, the selection procedure may be used only on an interim basis pending completion of validity studies.

24. Q. What are the potential consequences to a user when a selection procedure is used on an interim basis?

A. The fact that the Guidelines permit interim use of a selection procedure does not immunize the user from liability for back pay, attorney fees and the like, should use of the selection procedures later be found to be in violation of the Guidelines (e.g., because of a showing of unfairness), and for this reason users should take steps to come into full and complete compliance with the guidelines as soon as possible. It is also appropriate for users to consider ways of minimizing adverse impact during the period of interim use.

25. Q. Under what circumstances may a validity study conducted cooperatively among users or in different units of a multi-unit organization be used in locations not included in the validity study?

A. A selection procedure supported by validity evidence obtained from a cooperative or multi-unit study may be used in new situations where the conditions described in the answer to Question 22 are met, and where there are no significant differences between the applicant populations and the research subjects in such characteristics as age, education, job experience, or the like.

26. Q. How does a user choose which validation strategy to use?

A. A user should select the validation strategy which is most appropriate for the type of selection procedure, the job, and the employment situation. Con-

tent validity by itself is inappropriate where the selection procedures are measures of aptitude or personality traits, and for jobs in which the employee is expected to gain the measured skills or knowledges while on the job. In such circumstances criterion-related or construct validation strategies should be used. On the other hand where the selection procedures are work samples or measures of fully developed skills or knowledges, content validity is appropriate although criterion-related validation techniques could be used where technically feasible. Where a sample of sufficient size cannot be obtained, where appropriate measures of employee proficiency to be used as criteria cannot be developed, or where there is a severe range restriction in scores on selection procedures, and this range restriction cannot be reduced or appropriately corrected, criterion-related validity may be technically infeasible.

27. Q. Why don't the Guidelines contain a preference for criterion related validity over content or construct validity?

A. Generally accepted principles of the psychological profession do not recognize any such preference, but contemplate the use of criterion related, content, or construct validity strategies as appropriate. APA Standards, E, pp. 25–26; *Washington* v. *Davis*, ____ U.S. ____, 44 U.S.L.W. 4789, fn. 13. Moreover, the Guidelines normally require criterion related evidence as a component part of any construct validity study § 12d. With respect to content validity, where the content of the selection procedure closely matches the behaviors or activities required for job performance, as in a typing test for typists or a truck driving test for truck drivers, a content validity approach is the most appropriate way of showing validity. Because the Guidelines make it clear that content validity by itself is not appropirate for aptitude, intelligence, personality or interest tests (§ 12c(1)), and that evidence of content validity depends upon the closeness of the resemblance between work behavior and the selection procedure, there is no need or justification for a general preference for criterion related validity over content validity. All three strategies are empirically based. Construct validity requires empirical research evidence, which is normally criterion-related, linking the selection procedure to the job, while content validity requires a factually based linkage of the selection procedure to the activities of the job.

28. Q. Is the use of a content validity strategy appropirate for measuring in the selection process skills or knowledges which are taught in a training academy after initial employment?

A. No. The Guidelines state (§ 12c(1)) that content validity is not appropriate where the slection procedure involves knowledges, skills, or abilities which the employee will be expected to learn "on the job." The phrase "on the job" is intended to apply to training which occurs after hiring, promotion or the like.

29. Q. Is a full job analysis necessary for all validity studies?

A. It is required for all content and construct studies, but not for all criteria in a criterion related study. See § 12a, and § 12b(3). Proper measures of the results or outcomes of job behaviors such as production rate or error rate may be used without a full job analysis where a review of information about the job shows that these criteria are important to the employment situation of the user. Similarly, measures such as absenteeism, tardiness or turnover may be used if these behaviors are shown by a review of information about the job to be important in the specifics situation. A standardized rating of overall job performance may be used if the user can demonstrate its appropriateness for the specific job and employment situation through a study of the job. Measures of overall job performance should be carefully developed and standardized, and their use should be carefully controlled. See, *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405 (1975).

30. Q. Under what circumstances may success in training be used as a criterion in criterion-related validity studies?

A. Success in training is an appropriate criterion when: (1) The job analysis shows that success in training is necessary for successful job performance or related to increasing proficiency on the job; and (2) training success is properly measured. § 12b(3). Where the measure of success in training is a paper and pencil test, the measure should be carefully developed to ensure that factors which are not job related do not unfairly inflate or depress the measures of training success and to ensure that the measures are in fact job related. § 12b(3).

31. Q. What does "unfairness of a selection procedure" mean?

A. When a specific score on a selection procedure has a different meaning in terms of expected job performance for members of one racial, sex or ethnic group than the same score does for members of another group, the use of that selection procedure may be unfair for members of one of the groups. See § 14 (k). For example, if members of one group have an average score of 40 on the selection procedure, but perform on the job as well as another group which has an average score of 50, then the selection procedure is unfair to the members of the lower scoring group. (The concept of test fairness has sometimes been referred to as differential validity or differential prediction).

32. Q. When should the user investigate the question of fairness?

A. Fairness should be investigated generally at the same time that a criterion-related validity study is conducted, or as soon thereafter as feasible.

33. Q. Why do the Guidelines require that users look for evidence of unfairness?

A. The consequences of using unfair selection procedures are severe in terms of discriminating against applicants on the basis of race, sex or ethnic group membership, or in terms of perpetuating the effects of past discrimination. Accordingly, these studies should be performed routinely where technically feasible and appropriate, even if the probability of finding unfairness is small. See *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405, 435. Moreover, the APA Standards published in 1974 call for the investigation of test fairness in criterion related studies wherever feasible (pp. 43–44).

34. Q. What should be done if a selection procedure is unfair for one or more groups in the relevant labor market?

A. The user has three options. See, § 12b(7)(iv). First, the selection instrument may be replaced by another validated instrument which is fair to all groups. Second, the selection instrument may be revised to eliminate the sources of unfairness. For example, certain items may be found to be the only ones which cause the unfairness to a particular group, and these items may be replaced by others. Finally, revisions may be made in the use of the selection procedure to ensure that the probability of being selected is compatible with the probability of successful job performance.

35. Q. If there are not enough members of an adversely affected race, sex or ethnic group in the potential research sample to make it feasible to study test fairness, should the group still be included in the sample?

A. Yes, normally the study should be conducted on a sample which is representative of the expected candidates for the job in question. However, there may be situations in which the members of the race, sex or ethnic group available for the study are so dissimilar from other persons in the sample that the information should not be combined for data analyses.

36. Q. Do the Guidelines require a search for alternative selection procedures?

A. The Guidelines provide that while a validity study is being conducted, the user should attempt to find and apply procedures that have as little adverse impact as possible. However, once that effort has been made and the chosen procedure has been studied and shown to be valid, the Guidelines do not require the user to search further for alternative procedures. The Guidelines do call for a user to take steps to ensure that selection procedures are kept current, and to investigate any alternative procedures shown to have at least equal validity and less adverse impact. The obligation to investigate alternative procedures is greater when the user is in an interim use status.

37. Q. What does a user do if there are not enough persons in a job to conduct a criterion related study?

A. There are a number of options the user should consider, depending upon the particular facts and circumstances.

1. Changing the procedure so as to eliminate adverse impact;

2. Validating the procedure through a content validity strategy, if appropriate (see § 12c and answer to Question 25 and 27);

3. Using a selection procedure validated elsewhere in conformity with the

Guidelines (see § 6 and answers to Questions 22–24);

4. Engaging in a cooperative study with other facilities or users (in cooperation with such users either bilaterally or through industry or trade association), or participating in research studies conducted by the state employment security system. Where different locations are combined, care is needed to insure that the jobs studied are in fact the same and that the study is adequate and in conformity with the Guidelines (see § 6);

5. Combining essentially similar jobs into a single study sample may in some circumstances be consistent with the Guidelines (see § 5g and § 12b).

38. Q. If a user has previously engaged in discrimination against members of a racial, sex or ethnic group, is the user precluded from making its selection procedures more stringent?

A. In such circumstances, the Guidelines provide (§ 9) that the user should afford those members of the group discriminated against, who were available in the relevant job market during the period of discriminatory practices, an opportunity to qualify under the less stringent procedures, unless the user demonstrates that the more stringent procedures are required for the safety or efficiency of the operation. The user is not precluded from using the more stringent procedures for all other persons.

39. Q. If a user has all selection procedures administered by an employment agency or a consultant, does that relieve the user of responsibilities under the Guidelines?

A. No. The user remains responsible for the selection procedures utilized by others on behalf of the user. It is therefore expected that the user will have sufficient information available to show: (a) what selection procedures are being used on its behalf; (b) the adverse impact of those procedures, and evidence of the validity of any such procedures; and (c) the number of persons by race, sex and ethnic group referred, and the total number considered for referral or for job applications.

[FR Doc.77-1932 Filed 1-18-77;9:05 am]

Title 41—Public Contracts and Property Management

CHAPTER 60—OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, EQUAL EMPLOYMENT OPPORTUNITY, DEPARTMENT OF LABOR

PART 60–3—GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

CROSS REFERENCE: For a document issued by the Department of Justice, the Department of Labor, Office of Federal Contract Compliance Programs, and the Civil Service Commission on the subject of questions and answers on the Federal Executive Agency Guidelines on Employee Selection Procedures (41 FR 51744) see FR Doc. 77–1932 also appearing in this Part VI of the issue.

CIVIL SERVICE COMMISSION

EMPLOYEES SELECTION PROCEDURE GUIDELINES

Appendices to Federal Personnel Manual Supplements

CROSS REFERENCE: For a document issued by the Department of Justice, the Department of Labor, Office of Federal Contract Compliance Programs, and the Civil Service Commisison on the subject of questions and answers on the Federal Executive Agency Guidelines on Employee Selection Procedures (41 FR 51752) see FR Doc. 77-1932 also appearing in this Part VI of the issue.

federal register

FRIDAY, JANUARY 21, 1977

PART VII



DEPARTMENT OF LABOR

Employment Standards Administration

■

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

General Wage Determination Decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed in construction activity of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determinations by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, (37 FR 21138) and of Secretary of Labor's Orders, 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General Wage Determination Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

MODIFICATIONS AND SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

Modifications and Supersedeas Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, (37 FR 21138) and of Secretary of Labor's Orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing General Wage Determination Decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and Supersedeas Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Office of Special Wage Standards, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rule-making procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Wage Determination Decision.

MODIFICATIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being modified and their dates of publication in the FEDERAL REGISTER are listed with each State.

Alabama:	
AL76–1134	Dec. 3, 1976.
California:	
CA76–5120; CA76–5121	Dec. 28, 1976.
Illinois:	
IL76–2078; IL76–2080	Aug. 13, 1976.
IL76–2128	Oct. 22, 1976.
IL76–2145	Dec. 3, 1976.
IL76–2153	Nov. 26, 1976.
Iowa:	
IA76–4147	Sept. 10, 1976.
IA76–4150	Sept. 17, 1976.
IA76–4173; IA76–4174	Oct. 15, 1976.
IA76–4185	Nov. 19, 1976.
Louisiana:	
LA76–4187	Do.
Michigan:	
MI76–2139	Do.
Mississippi:	
MS76–1020	Jan. 30, 1976.
New Jersey:	
NJ76–3248; NJ76–3249	Oct. 1, 1976.
Oklahoma:	
OK76–4017	Feb. 6, 1976.
OK76–4138	July 30, 1976.
OK76–4160	Oct. 1, 1976.
Puerto Rico:	
PR76–3089; PR75–3090; PR 75–3091	Aug. 8, 1975.
Texas:	
TX76–4049	Feb. 20, 1976.
TX76–4118	July 16, 1976.
TX76–4164; TX76–4168; TX76–4169; TX76–4170;	
TX76–4171	Oct. 8, 1976.
TX76–4183	Nov. 12, 1976.
TX76–4192	Dec. 17, 1976.
TX76–4193; TX76–4194; TX76–4195; TX76–4197	Dec. 28, 1976.
Virginia:	
AP–805	May 4, 1973.

SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being superseded and their dates of publication in the FEDERAL REGISTER are listed with each State.

Supersedeas Decision numbers are in parentheses following the numbers of the decisions being superseded.

Alaska:	
AK77–5002 (AK77–5009)	Jan. 4, 1977.
Florida:	
AR–4050 (FL77–1003)	Nov. 15, 1974.
Iowa:	
IA76–4099 (IA77–4004)	June 18, 1976.
Nebraska:	
NE76–4180 (NE77–4003)	Oct. 29, 1976.
New Hampshire:	
NH76–2093 (NH77–2001)	July 30, 1976.
NH76–2113 (NH77–2002)	Sep. 17, 1976.
Ohio:	
OH76–2070 (OH77–2005)	June 4, 1976.
OH76–2077 (OH77–2005)	June 18, 1976.
OH76–2086, OH76–2088 (OH77–2005)	July 30, 1976.
OH76–2087 (OH77–2005)	July 23, 1976.
OH76–2115 (OH77–2005)	Sept. 24, 1976.
OH76–2118 (OH77–2005)	Oct. 1, 1976.
South Carolina:	
SC76–1037 (SC77–1008)	Mar. 5, 1976.
Texas:	
TX76–4128 (TX77–4007)	July 23, 1976.
TX76–4152 (TX77–4006)	Sept. 24, 1976.
TX76–4157 (TX77–4005)	Oct. 1, 1976.
Washington:	
AQ–1109 (WA77–5008)	May 24, 1974.

Signed at Washington, D.C., this 14th day of January 1977.

RAY J. DOLAN,
Assistant Administrator,
Wage and Hour Division.

MODIFICATIONS P. 1

Decision # AL76-1134 - Mod. # 2	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
(41 FR 53239 - December 3, 1976) Lawrence, Limestone and Morgan Counties, Alabama.					
Change:					
Laborers (Lawrence County) Laborers, mason tenders, plasterer tenders	5.15	.20	.30		
Air tool operator (jackhammer, vibrator) mortar mixers, pipelayers	5.35	.20	.30		
Sheet metal workers	9.75	.65	.70		.05

MODIFICATIONS P. 2

DECISION NO. CA76-5120 - Mod. #1 (41 FR 56556-December 28, 1976) Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura Counties, California	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Bricklayers; Stonemasons: Los Angeles County (except Cities of Santa Monica, Malibu, Venice, Pasadena, South Pasadena, Arcadia, Monrovia and South of Rosecrans Blvd., including Long Beach)	$ 10.80	.95	$1.15		.30
Santa Barbara and San Luis Obispo Counties	10.47	1.05	1.30		.01
Ventura County	10.97	.85	1.20		.02

DECISION NO. CA76-5121 - Mod. #1 (41 FR 56566-December 28, 1976) Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura Counties, California	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Bricklayers; Stonemasons: Los Angeles County (except Cities of Santa Monica, Malibu, Venice, Pasadena, South Pasadena, Arcadia, Monrovia and South of Rosecrans Blvd., including Long Beach)	$10.80	.95	$ 1.15		.30
Santa Barbara and San Luis Obispo Counties	10.47	1.05	1.30		.01
Ventura County	10.97	.85	1.20		.02

MODIFICATIONS P. 3

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #IL76-2078 - Mod. #1 (41 FR 34493 - August 13, 1976) Madison & St. Clair Counties, Illinois					
CHANGE:					
Boilermakers	$10.90	.65	1.20		.03
Bricklayers: Madison County					
Alton & Granite City and Vicinities					
Building Construction: Bricklayers, Stonemasons, Pointers-Cleaners-Caulkers	9.65		.75	1.00	.05
Residential Construction	8.80		.75	1.00	.05
Edwardsville, Marine, Highland & Troy					
Brickalyers, Stonemasons, Marble-Tile-Terrazzo Workers, Pointers, Caulkers & Cleaners	9.95	.50	.75	1.00	
Bricklayers: St. Clair County					
East St. Louis & Vicinity					
Bricklayers, Stonemasons, Marble-Tile-Terrazzo Workers, Pointers-Cleaners-Caulkers	9.95	.50	.75	1.00	
Belleville & Vicinity					
Bricklayer & Stonemasons	11.00		.30	1.00	
Electricians:					
Alton & Vicinity in Madison County	11.60	.40	1%+.30	6%	.3 of 1%
St. Clair County & the Remainder of Madison County	11.23	4%	1%+.65	6%	.25%
Plumbers & Steamfitters:					
Alton & Northern part of Madison County; north of Mitchell	12.00	.48	.96	.40	

MODIFICATIONS P. 4

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #IL76-2080 - Mod. #1 (41 FR 34475 - August 13, 1976) Bond, Calhoun, Clinton, Greene, Jersey, Monroe, Montgomery, Randolph & Washington Counties, Illinois					
CHANGE:					
Boilermakers	$10.90	.65	1.20		.03
Bricklayers:					
Montgomery County					
Bricklayers, Stonemasons, Marble-Tile-Terrazzo Workers, Cement Masons, Plasterers, Pointers, Cleaners & Caulkers					
Hillsboro & East Thereof	9.75		.25		
Bricklayer, Stonemasons, Pointers-Cleaners & Caulkers					
Remainder of the County	9.65		.75	1.00	.05
Calhoun & Jersey Counties					
Bricklayers, Stonemasons, Marble-Tile & Terrazzo Workers	9.65		.75	1.00	.05
DECISION #IL76-2145 - Mod. #2 (41 FR 53251 - December 3, 1976) Champaign, Clark, Coles, Cumberland, DeWitt, Douglas, Edgar, Macon, Moultrie, Piatt, Shelby & Vermilion Counties, Illinois					
CHANGE:					
Electricians:					
Clark & Edgar Counties	11.00	.40	1%+.50		.01

MODIFICATIONS P. 5

DECISION #IL76-2128 - Mod. #1 (41 FR 46823 - October 22, 1976) Christian, DeWitt, Macon, Macoupin, Moultrie, Piatt & Shelby Counties, Illinois	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Bricklayers & Stonemasons:					
Macoupin County:					
East ½ of County, including Gillespie, Benld, Mt. Olive & Staunton	$9.65		.75	1.00	.05
Plumbers & Steamfitters:					
Macon, DeWitt & Moultrie Counties; Twps. of Pana, Assumption & Radford in Christian County; West of Route #105 in Piatt County	11.25	.35	.75		.11
Power Equipment Operators:					
Moultrie County					
Class I	11.00	.40	.75		.13
Class II	10.95	.40	.75		.13
Class III	10.75	.40	.75		.13
Class IV	7.25	.40	.75		.13

MODIFICATIONS P. 6

DECISION #IL76-2153 - Mod. #2 (41 FR 52253 - November 26, 1976) Clay, Crawford, Edwards, Effingham, Fayette, Hamilton, Jasper, Jefferson, Lawerence, Marion, Richland, Wabash, Wayne & White Counties, Illinois	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Linemen:					
Portion north of Avena, Bear Grove, Sefton & Sharon Twps. in Fayette County					
Groundman Equip. Operator Class 1	$9.85	.35	1%		.5%
Groundman Truck Driver:					
W/Winch	7.38	.35	1%		.5%
WO/Winch	7.03	.35	1%		.5%
Groundman Class "A"	6.71	.35	1%		.5%
Power Equipment Operators:					
Remainder of Counties					
Class I	11.00	.40	.75		.13
Class II	10.95	.40	.75		.13
Class III	10.75	.40	.75		.13
Class IV	7.25	.40	.75		.13

MODIFICATIONS P. 7

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. IA76-4147 Mod. #3 (41 FR 38716 - Sept. 10, 1976) Dubuque County (City of Dubuque & abutting municipalities), Iowa					
Change: Building, Water Treatment Plants, & Sewage Disposal Plants Construction:					
Electricians	$10.32	.30	1%+.25		1%
Plumbers & Steamfitters	10.92	.50	.30		.08
DECISION NO. IA76-4150 - Mod. #1 (41 FR 40393 - Sept. 17,1976) Polk County, Iowa					
Change: Building, Water Treatment Plants, & Sewage Disposal Plants Construction:					
Sheet Metal Workers	$10.27	.50	.66		.07
DECISION NO. IA76-4173 - Mod. #1 (41 FR 45805 - Oct. 15, 1976) Story County (City of Ames and abutting municipalities), Iowa					
Change: Building, Water Treatment Plants & Sewage Disposal Plants Construction:					
Sheet Metal Workers	$10.27	.50	.66		.07

MODIFICATIONS P. 8

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. IA76-4174 - Mod. #2 (41 FR 45808 - Oct. 15, 1976) Webster County (City of Fort Dodge), Iowa					
Change: Building, Water Treatment Plants & Sewage Disposal Plants Construction:					
Electricians	$10.05	.40	1%		1%
DECISION NO. IA76-4185 - Mod. # 1 (41 FR 51285 - Nov. 19, 1976) Pottawattamie County (City of Council Bluffs & the area within 3 miles from the City limits) Iowa					
Change: Building Construction:					
Electricians	$11.83	.58	1%+.55		½%

MODIFICATIONS P. 9

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #LA76-4187 - Mod. #3					
(41 FR 51288 - November 19, 1976)					
Statewide Louisiana					
Change:					
Carpenters:					
Zone 7	$ 8.30				
Zone 8	8.65	.35	.30		.04
Zone 9	8.30				
Zone 11	7.25				
Glaziers:					
Zone 2	7.45				.01
Lathers:					
Zone 3	9.985	.30			.01
Zone 4	10.05				
Zone 5	7.90				.01
Millwrights:					
Zone 5	9.05				
Zone 6	9.35	.35	.30		.04
Zone 7	9.05				
Zone 10	8.15				
Painters:					
Zone 1:					
Group 1	9.41				
Group 2	9.535				
Group 3	9.61				
Group 4	9.755				
Group 5	9.895				
Zone 4:					
Group 1	7.35				
Group 2	7.72				
Zone 6:					
Group 1	7.50				
Group 2	8.00				
Group 3	8.50				
Zone 7:					
Group 1	8.55		.30		.025
Group 2	8.80		.30		.025
Group 3	9.05		.30		.025
Group 4	9.15		.30		.025

MODIFICATIONS P. 10

DECISION #LA76-4187 (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Painters (Cont'd):					
Zone 8:					
Group 1	$ 7.05				
Group 2	8.05				
Group 3	7.55				
Piledrivermen:					
Zone 5	8.80				
Zone 6	8.90	.35	.30		.04
Zone 7	8.80				
Zone 10	8.15				
Plasterers:					
Zone 2	7.75				.01
Zone 7	9.05			1.00	
Plumbers & pipefitters:					
Zone 3	9.95	.45	.55		.10
Zone 5	8.74	.40	.50	.95	.09
Power Equipment Operators (Highway Construction):					
Group 1:					
Zone 3	8.73	.25	.48		.05
Zone 4	8.91	.25	.48		.05
Group 2:					
Zone 3	8.97	.25	.48		.05
Zone 4	9.16	.25	.48		.05
Group 3:					
Zone 3	8.48	.25	.48		.05
Zone 4	8.66	.25	.48		.05
Group 4:					
Zone 3	7.47	.25	.48		.05
Zone 4	7.48	.25	.48		.05
Group 5:					
Zone 3	6.91	.25	.48		.05
Zone 4	6.90	.25	.48		.05
Group 6:					
Zone 3	6.22	.25	.48		.05
Zone 4	6.22	.25	.48		.05
Group 7:					
Zone 3	5.90	.25	.48		.05
Zone 4	5.90	.25	.48		.05
Group 8:					
Zone 3	7.47	.25	.48		.05
Zone 4	7.48	.25	.48		.05

MODIFICATIONS P. 11

DECISION #LA76-4187 (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators (Highway Construction) (Cont'd):					
Group 9:					
Zone 3	$ 7.72	.25	.48		.05
Zone 4	7.73	.25	.48		.05
Group 10:					
Zone 3	6.15	.25	.48		.05
Zone 4	6.15	.25	.48		.05
Roofers:					
Zone 3:					
Roofers	8.16	.35	.50		.04
Roofers' helpers	5.34	.35	.50		.04
Zone 4:					
Roofers, steep	7.35				
Roofers, flat	7.10				
Roofers, kettlemen	6.85				
Roofers' helpers	5.80				
Zone 5:					
Roofers	8.10		.20		.02
Kettlemen	5.62		.20		.02
Roofers' helpers	4.85		.20		.02
Sheet metal workers:					
Zone 4	9.65	3%+.40	.25		.07
Soft floor layers:					
Zone 5	8.30				
Zone 6	8.65	.35	.30		.04
Zone 7	8.30				

MODIFICATIONS P. 12

DECISION #MI76-2139 - Mod. #4 (41 FR 51313 - November 19, 1976) Macomb, Monroe, Oakland, Washtenaw & Wayne Counties, Michigan	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Bricklayers & Stonemasons:					
Washtenaw County	$13.62		.90		
Cement Masons:					
Washtenaw County	13.42		.90		
Plasterers:					
Remainder of Counties & Remainder of Monroe County	11.65		.65		
Sheet Metal Workers:					
Remainder of Counties	10.135	.90+.70	10%	11%	.11
Truck Drivers:					
Building & Heavy Construction					
Pole Trailers; Low Boys; Straddle Carrier; Double Bottoms & Special Load Permits	9.44	a20.00	a25.00		
Semi-Drivers	9.34	a20.00	a25.00		
All Other Truck Drivers	9.19	a20.00	a25.00		
Power Equipment Operators:					
Building & Heavy Construction					
Class A	11.27	.80	.85	11%	.05
Class B	11.05	.80	.85	11%	.05
Class C	10.82	.80	.85	11%	.05
Class D	10.52	.80	.85	11%	.05
Class E	9.51	.80	.85	11%	.05
Class F	8.75	.80	.85	11%	.05
Laborers: Building & Heavy Wayne, Oakland & Macomb Cos:					
Group 1	8.48	.75	.70	.75	
Group 2	8.56	.75	.70	.75	
Group 3	8.66	.75	.70	.75	
Group 4	8.71	.75	.70	.75	
Group 5	8.73	.75	.70	.75	
Group 6	8.81	.75	.70	.75	
Group 7	8.86	.75	.70	.75	
Group 8	9.23	.75	.70	.75	
Decision # MS76-1020 - Mod. 5. (41 FR 4780 - January 30, 1976) Hancock, Harrison, Jackson, and Pearl River Counties, Mississippi.					
ADD:					
Laborers:					
Pipelayers (concrete and clay)	$5.20	.15	.15		

MODIFICATIONS P. 13

DECISION #NJ76-3248 - Mod. #4
(41 FR 43598 - October 1, 1976)
Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean, and Salem Counties, New Jersey

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Laborers, Heavy & Highway Construction:					
Zone 1					
Group 1	$ 8.25	.60	1.00	d	.10
Group 2	7.95	.60	1.00	d	.10
Group 3	7.90	.60	1.00	d	.10
Group 4	7.75	.60	1.00	d	.10
Group 5	7.65	.60	1.00	d	.10
Group 6	7.40	.60	1.00	d	.10
Group 7	7.35	.60	1.00	d	.10
Group 8	7.25	.60	1.00	d	.10
Zone 2					
Group 1	8.75	.60	1.00	d	.10
Group 2	8.60	.60	1.00	d	.10
Group 3	8.35	.60	1.00	d	.10
Group 4	8.30	.60	1.00	d	.10
Group 5	8.20	.60	1.00	d	.10
Group 6	8.10	.60	1.00	d	.10
Group 7	7.85	.60	1.00	d	.10
Group 8	7.70	.60	1.00	d	.10
Group 9	7.65	.60	1.00	d	.10
Free Air Tunnel Jobs					
Group 1	9.12	.60	1.00	d	.10
Group 2	8.72	.60	1.00	d	.10
Group 3	8.56	.60	1.00	d	.10
Group 4	8.05	.60	1.00	d	.10
Laborers, Asphalt Construction:					
Street:					
Head rakers	7.90	.60	1.00	d	.10
Rakers & screed men	7.75	.60	1.00	d	.10
Tampers, smoothers, kettlemen, painters, shovelers & rollers boys	7.50	.60	1.00	d	.10
Plant:					
Scale mixer & burner men	7.75	.60	1.00	d	.10
Feeders & dust men	7.50	.60	1.00	d	.10

MODIFICATIONS P. 14

DECISION #NJ76-3249 - Mod. #4
(41 FR 43613 - October 1, 1976)
Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union, & Warren Counties, New Jersey

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Laborers, Heavy & Highway Construction:					
Group 1	$ 8.75	.60	1.00	e	.10
Group 2	8.60	.60	1.00	e	.10
Group 3	8.35	.60	1.00	e	.10
Group 4	8.30	.60	1.00	e	.10
Group 5	8.20	.60	1.00	e	.10
Group 6	8.10	.60	1.00	e	.10
Group 7	7.85	.60	1.00	e	.10
Group 8	7.70	.60	1.00	e	.10
Group 9	7.65	.60	1.00	e	.10
Free Air Tunnel Jobs:					
Group 1	9.12	.60	1.00	e	.10
Group 2	8.72	.60	1.00	e	.10
Group 3	8.56	.60	1.00	e	.10
Group 4	8.05	.60	1.00	e	.10
Laborers, Asphalt Construction					
Zone 2 - STREET					
Head rakers	7.90	.60	1.00	e,	.10
Rakers & screed men	7.75	.60	1.00	e	.10
Tampers, smoothers, kettlemen, painters, shovelers & roller boys	7.50	.60	1.00	e	.10
Zone 2 - PLANT					
Scale mixer & burner men	7.75	.60	1.00	e	.10
Feeders & dust men	7.50	.60	1.00	e	.10

MODIFICATIONS P. 15

DECISION NO. OK76-4017 - Mod. #6
(41 FR 5346 - February 6, 1976)
Pittsburg County, Oklahoma

CHANGE:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$10.80	.35	.60		.015
BOILERMAKERS	10.00	.35	1.00		.02
BRICKLAYERS-Stonemasons	9.25	.45	.40		.05
CARPENTERS:					
Carpenters	7.35	.25	.25		
Millwrights-Piledrivermen	8.15	.25	.25		
ELECTRICIANS:					
Electricians	9.65	.46	1%+.40	.30	.07
Cable splicers	9.90	.46	1%+.40	.30	.07
GLAZIERS	8.42	.40	.30		.01
IRONWORKERS	9.60	.45	.65		.12
LABORERS:					
Group I	5.85	.25	.30		
Group II	6.15	.25	.30		
Group III	6.35	.25	.30		
POWER EQUIPMENT OPERATORS:					
Group I	10.10	.45	.50		.12
Group II	9.85	.45	.50		.12
Group III	9.60	.45	.50		.12
Group IV	9.35	.45	.50		.12
Group V	9.10	.45	.50		.12
Group VI	8.85	.45	.50		.12
Group VII	8.45	.45	.50		.12
Group VIII	8.35	.45	.50		.12
Group IX	8.15	.45	.50		.12
Group X	7.85	.45	.50		.12
ROOFERS	8.80	.45	.25		.04
SOFT FLOOR LAYERS	7.71		.25	.70+a	.03
PAID HOLIDAYS:					
a - 6 PAID HOLIDAYS - New Year's Day; Memorial Day; July 4th; Labor Day; Thanksgiving Day and Christmas Day..					
TRUCK DRIVERS:					
Group I	8.03				
Group II	8.13				
Group III	8.23				
Group IV	8.18				
Group V	8.33				
PLUMBERS-Pipefitters	10.60	.55	.80		.15

MODIFICATIONS P. 16

DECISION NO. OK76-4138 - Mod. #3
(41 FR 32152 - July 30, 1976)
Comanche County, Oklahoma

CHANGE:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$10.70	.40	.60		.02
BOILERMAKERS	10.00	.35	1.00		.02
BRICKLAYERS-Stonemasons	8.85	.45	.30		.10
CARPENTERS:					
Carpenters	7.70	.35	.25		.04
Millwrights-Piledrivermen	8.20	.35	.25		.04
Power saw operator	7.825	.35	.25		.04
LABORERS:					
Group I	5.65	.25	.30		
Group II	5.90	.25	.30		
Group III	6.50	.25	.30		
IRONWORKERS	9.60	.45	.65		.12
PLUMBERS-Pipefitters	10.27	.60	.75		.10
ROOFERS	8.80	.45	.25		.04
POWER EQUIPMENT OPERATORS:					
Group I	10.10	.45	.50		.12
Group II	9.85	.45	.50		.12
Group III	9.60	.45	.50		.12
Group IV	9.35	.45	.50		.12
Group V	9.10	.45	.50		.12
Group VI	8.85	.45	.50		.12
Group VII	8.45	.45	.50		.12
Group VIII	8.35	.45	.50		.12
Group IX	8.15	.45	.50		.12
Group X	7.85	.45	.50		.12

DECISION NO. OK76-4160 - Mod. #1
(41 FR 43629 - October 1, 1976)
Garfield County, Oklahoma

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ASBESTOS WORKERS	$10.70	.40	.60		.02
BOILERMAKERS	10.00	.35	1.00		.02
BRICKLAYERS-Stonemasons	8.45				
CARPENTERS:					
Carpenters	8.10				
Millwrights-Piledrivermen	8.65				
GLAZIERS	8.60				
IRONWORKERS	9.60	.45	.65		.12
LABORERS:					
Group I	5.50	.25	.30		
Group II	5.70	.25	.30		
Group III	6.35	.25	.30		
POWER EQUIPMENT OPERATORS:					
Group I	10.10	.45	.50		.12
Group II	9.85	.45	.50		.12
Group III	9.60	.45	.50		.12
Group IV	9.35	.45	.50		.12
Group V	9.10	.45	.50		.12
Group VI	8.85	.45	.50		.12
Group VII	8.45	.45	.50		.12
Group VIII	8.35	.45	.50		.12
Group IX	8.15	.45	.50		.12
Group X	7.85	.45	.50		.12
PLUMBERS-Pipefitters	10.27	.60	.75		.10
ROOFERS	8.80	.45	.25		.04

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. PRTS-3090-Mod. #2 (40 FR33843-August 8, 1975) Puerto Rico, Island Wide Change:					
Laborers	$2.10				
DECISION NO. PRTS-3091-Mod. #2 (40 FR 33844-August 8, 1975) Puerto Rico, Island Wide Change:					
Laborers	$2.10				
DECISION NO. PRTS-3089-Mod. #1 (40 FR 33843-August 8, 1975) Puerto Rico, Island Wide Change:					
Laborers	$2.10				

MODIFICATIONS P. 19

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX76-4049 - Mod. #4 (41 FR 7921 - February 20, 1976) Tom Green County, Texas					
Change:					
Carpenters	$ 7.85				.02
Ironworkers:					
Ironworkers	8.23	.55	1.00		.10
On jobs 30 miles or more from the city of San Angelo	8.355	.55	1.00		.10
DECISION #TX76-4118 - Mod. #4 (41 FR 29605 - July 16, 1976) Ector & Midland Counties, Texas					
Change:					
Asbestos workers	9.85	.55	.45		.07
Electricians:					
Zone 1	8.70	.60	1%		1/10%
Zone 2	9.00	.60	1%		1/10%
Ironworkers:					
Structural; Ornamental; Reinforcing	8.23	.55	1.00		.10
All ironworkers on jobs 30 miles or more from Terminal (midway Odessa-Midland)	8.355	.55	1.00		.10
DECISION #TX76-4164 - Mod. #1 (41 FR 44665 - October 8, 1976) Howard County, Texas					
Change:					
Ironworkers, structural & ornamental	8.23	.55	1.00		.10

MODIFICATIONS P. 20

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX76-4168 - Mod. #4 (41 FR 44671 - October 8, 1976) Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Counties, Texas					
Change:					
Asbestos workers	$ 9.85	.55	.45		.07
Carpenters:					
Zone 2:					
Carpenters	8.82	.38	.40		.07
Millwrights	9.32	.38	.40		.07
Glaziers	6.75			a	
Lathers	9.55				.01
Line Construction:					
Zone 2:					
Lineman; Operator	11.26		1%		1/2%
Cable splicer	12.39		1%		1/2%
Groundman, 1st 6 months	6.76		1%		1/2%
Groundman, 2nd 6 months	7.32		1%		1/2%
Groundman, 1 year & over	7.88		1%		1/2%
Marble masons (exterior)	9.30		.30		
Plasterers	9.55				.01
Power Equipment Operators:					
Group 1	8.75	.40	.50		.10
Group 2	8.25	.40	.50		.10
Group 3	6.30	.40	.50		.10

MODIFICATIONS P. 21

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX76-4169 - Mod. #5 (41 FR 44662 - October 8, 1976) Bowie County, Texas					
Change:					
Carpenters:					
Carpenters	$ 7.70				.01
Millwrights	9.60				.04
Piledrivermen	8.30				.01
Ironworkers	9.75	.45	.50		.04
Plumbers & pipefitters	10.00	.40	.55		.05
Soft floor layers	7.70				.01
DECISION #TX76-4170 - Mod. #3 (41 FR 44674 - October 8, 1976) Brazos County, Texas					
Change:					
Line Construction:					
Lineman & cable splicer	11.62	.40	1%		1/2%
Groundman (1st 6 months)	4.07	.40	1%		1/2%
Groundman (2nd 6 months)	4.88	.40	1%		1/2%
Groundman	6.74	.40	1%		1/2%
Plasterers	9.70	.77	.30		.02
Sheet metal workers	10.18	.275	.595	.32	.06

MODIFICATIONS P. 22

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX76-4171 - Mod. #2 (41 FR 44664 - October 8, 1976) Taylor County, Texas					
Change:					
Electricians:					
Electricians	$ 8.85	.60	1%		1/4%
Cable splicers	9.10	.60	1%		1/4%
Line Construction:					
Lineman	8.85	.60	1%		1/4%
Cable splicers	9.10	.60	1%		1/4%
Groundman (over 1 year of experience)	6.64	.60	1%		1/4%
Groundman (under 1 year of experience)	5.31	.60	1%		1/4%
Equipment operator	7.26	.60	1%		1/4%
Flat bed truck driver	5.49	.60	1%		1/4%
Painters:					
Brush, tape & bedding, paperhanger	7.00		.20		
Spray	7.875		.20		
Plumbers & pipefitters	8.05	.25	.55		.03
DECISION #TX76-4183 - Mod. #3 (41 FR 50191 - November 12, 1976) Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Counties, Texas					
Change:					
Carpenters:					
Zone 1:					
Carpenters	9.425	.30	.30		.005
Millwrights	9.825	.30	.30		.005
Piledrivermen	9.925	.30	.30		.005
Line Construction:					
Linemen; Linemen operators	11.26		1%		1/2%
Cable splicers	12.39		1%		1/2%
Groundman, 1st 6 months	6.76		1%		1/2%
Groundman, 2nd 6 months	7.32		1%		1/2%
Groundman, 1 year & over	7.88		1%		1/2%
Sheet metal workers:					
Zone 2	9.675	.45	.33		.055

MODIFICATIONS P. 23

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX76-4192 - Mod. #1 (41 FR 55289 - December 17, 1976) Jefferson & Orange Cos., Texas					
Change:					
Boilermakers	$10.00	.50	1.00		.02
Lathers	9.985	.30			.01
Plasterers	9.70	.77	.30		.02
DECISION #TX76-4193 - Mod. #1 (41 FR 56594 - December 28, 1976) Bee, Kleberg & Nueces Cos., Texas					
Change:					
Laborers:					
Group 1	4.80	.28	.10		
Group 2	5.00	.28	.10		
Group 3	5.15	.28	.10		
Group 4	5.25	.28	.10		
Painters:					
Brush	7.53	.25	.25		2/10%
Spray	7.93	.25	.25		2/10%
Sign	7.78	.25	.25		2/10%
Sheet metal workers	8.67	.23	.275		.01
DECISION #TX76-4194 - Mod. #1 (41 FR 56596 - December 28, 1976) El Paso County, Texas					
Change:					
Sheet metal workers	9.17	3%+.51	.385		.025

MODIFICATIONS P. 24

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX76-4195 - Mod. #1 (41 FR 56598 - December 28, 1976) Galveston & Harris Cos., Texas					
Change:					
Line Construction:					
Lineman & cable splicer	$11.62	.40	1%		1/2%
Groundmen (1st 6 months)	4.07	.40	1%		1/2%
Groundmen (2nd 6 months)	4.88	.40	1%		1/2%
Groundmen	6.74	.40	1%		1/2%
Marble masons:					
Galveston County	9.26				
Plasterers	9.70	.77	.30		.02
Sheet metal workers:					
Galveston County	9.27	.60	.25		.10
Harris County	10.18	.275	.595	.32	.06
Terrazzo workers:					
Galveston County	9.26				
Tile setters:					
Galveston County	9.26				
DECISION #TX76-4197 - Mod. #1 (41 FR 56602 - December 28, 1976) Lubbock County, Texas					
Change:					
Asbestos workers	9.85	.55	.45		.07
Bricklayers & stonemasons	9.25		.30		.03
Carpenters	8.27	.38	.40		.01
Electricians:					
Electricians	9.05	.60	1%		1/10%
Cable splicers	9.30	.60	1%		1/10%
Ironworkers:					
Structural; Ornamental; Reinforcing	8.23	.55	1.00		.10
All ironworkers on jobs 30 miles or more from the city of Lubbock	8.355	.55	1.00		.10

MODIFICATIONS P. 25

DECISION #TX76-4197 (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Laborers:					
Group 1	$ 4.925	.275	.20		
Group 2	5.20	.275	.20		
Group 3	5.125	.275	.20		
Group 4	5.275	.275	.20		
Group 5	5.525	.275	.20		
Line Construction:					
Linemen	9.05	.60	1%		
Operators	80%JR	.60	1%		
Groundmen (more than 1 year experience)	55%JR	.60	1%		
Groundmen (less than 1 year experience)	50%JR	.60	1%		
Flat bed truck driver	70%JR	.60	1%		
Power Equipment Operators:					
Group 1	7.20	.30	.50		.10
Group 2	8.10	.30	.50		.10
Group 3	8.50	.30	.50		.10

DECISION #AP-805 - Mod. #5
(38 FR 11279 - May 4, 1973)
The Counties of Accomack, Greensville, Isle of Wight, James City, Nansemond, Northampton, Southampton, Surry, Sussex, and York. The independent Cities of Emporia, Franklin, Suffolk, and Williamsburg, Virginia

Change:
Mod. #3 published on November, 12, 1976, in Volume 41 of the Federal Register page #50122 to read Mod. #4.

SUPERSEDEAS DECISION

STATE: Alaska COUNTIES: Statewide
DECISION NUMBER: AK77-5009 DATE: Date of Publication
Supersedes Decision No. AK77-5002 dated January 4, 1977, in 42 FR 992
DESCRIPTION OF WORK: Building Construction (including residential construction consisting of single family homes and garden type apartments up to and including 4 stories), Heavy and Highway Construction and Dredging.

AREA I (North of the 63rd Parallel) AREA II (South of the 63rd Parallel and West of the 141st Meridian) AREA III (East of the 141st Meridian)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 17.61	.44	.97		.10
BOILERMAKERS	16.285	.775	1.00	.50	.02
BRICKLAYERS; Blocklayers; Stonemasons	15.68	.90	2.25		.09
CARPENTERS:					
Area I					
Carpenters	15.83	.65	1.50		.10
Powder actuated tool operator	16.05	.65	1.50		.10
DeWalt or similar type saw operator; Marlite and Acoustical; Fire or Floor Repair work applicators; Nailing Machine Operator; Saw Filer	16.11	.65	1.50		.10
Millwrights	16.22	.65	1.50		.10
Piledrivermen	15.67	.65	1.50		.10
Areas and II and III					
Journeyman Carpenters	15.21	.65	1.50		.15
Acoustical and Marlite Applicators; Floor Workers; Radial air saw operators; Fire and Flood Workers	15.59	.65	1.50		.15
Millwrights	15.74	.65	1.50		.15
Piledrivermen	15.67	.65	1.50		.15
CEMENT MASONS:					
Cement Masons, paving (concrete), Curb, Gutter and Sidewalks	14.38	.60	2.35		.15
Operating Screeding and Rodding Machines, Application of all Composition, Mastic, Epoxy, and Plaster Materials	14.91	.60	2.35		.15
Hand powered Grinder	14.91	.60	2.35		.15
Form Setters	14.53	.60	2.35		.15
CULINARY WORKERS:					
Baker of combination Cook-Baker, Head Cook; Working Camp Manager	13.21	.50	2.00		.04

DECISION NO. AK77-5009 Page 2

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CULINARY WORKERS: (Cont'd)					
Cook	12.85	.50	2.00		.04
Butcher	11.96	.50	2.00		.04
Head Waiter or Head Waitress	11.47	.50	2.00		.04
Head Bullcook	11.37	.50	2.00		.04
Camp Worker (waiter, Waitress, Bullcook, General Helper, miscellaneous worker); Bartender		11.21	.50	2.00	
ELECTRICIANS:					
Electricians; Equipment Operators; Technicians	16.95	.70	1%+2.00		.15
Cable Splicers	18.70	.70	1%+2.00		.15
ELEVATOR CONSTRUCTORS	15.715	.495	.32	2%+a	.02
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.495	.32	2%+a	.02
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR				
GLAZIERS:					
Area I	14.35	.65	1.00		
Areas II and III	14.57	.65	1.00		.10
IRONWORKERS:					
Bender Opeator; Bridge; Fence Erector; Machinery Mover; Ornamental; Reinforcing; Sheeter; Structural	15.80	.80	1.75		.18
LATHERS	16.66	.60		1.08	.04
LINE CONSTRUCTION:					
Groundmen	14.95	.70	1%+2.00		.15
Equipment Operators; Linemen; Technicians	16.95	.70	1%+2.00		.15
Cable Splicers	18.70	.70	1%+2.00		.15
MARBLE SETTERS; Terrazzo Workers	15.68	.90	2.25		.09
PAINTERS:					
Area I					
Zone I (Within a 10 mile radius of the Fairbanks P. O. including Ft. Wainwright)					
Zone 2 (Beyond 10 miles and up to 40 miles radius of the Fairbanks P. O. including Elelson Air Force Base and all the Sites within this territory)					

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS: (Cont'd)					
Zone 3 (Beyond 40 miles radius of the Fairbanks P. O.)					
Zone 1 and 3:					
Brush; Paperhangers	16.85	.65	1.60		.05
Carpet and Tile	16.87	.65	1.60		.05
Swing Stage, Sign Painters; Utilidors	17.10	.65	1.60		.05
Hand Tapers	17.12	.65	1.60		.05
Structural Steel; Sand Blasters; Spray Painters; Towers, stacks, bridges, and flagpoles up to and including 40 feet	17.35	.65	1.60		.05
Buffer Operator	17.38	.65	1.60		.05
Machine Tapers	17.52	.65	1.60		.05
Hardwood Floor Finishers	17.60	.65	1.60		.05
Epoxy applicators and spray steel	17.85	.65	1.60		.05
Swing and boom spray	18.10	.65	1.60		.05
Zone 2:					
Brush; Paperhangers	17.70	.65	1.60		.05
Swing Stage; Sign Painters; Utilidors	17.95	.65	1.60		.05
Tapers, hand	17.97	.65	1.60		.05
Structural steel, Sand blasters; Spray painters; Towers, stacks, bridge and flagpoles up to and including 40 feet	18.20	.65	1.60		.05
Hardwood Floor Finishers	18.45	.65	1.60		.05
Tapers, machine	18.47	.65	1.60		.05
Spray Steel; Epoxy Applicator	18.70	.65	1.60		.05
Swing and boom spray	18.45	.65	1.60		.05
Buffer Operator	18.23	.65	1.60		.05
Zones 1, 2, and 3:					
Height Pay: All work on any form of scaffolding or staging over 40 ft. will be paid $.25 more per hour, and for every additional 20 ft. $.25 more per hour will be paid to the employee. The height of work shall be determined from the ground to the point of hook-up.					

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS: (Cont'd)					
Areas II and III					
Hardwood floor sander or finisher; Paperhangers; Sign, brush and roller painters	15.65	.60	1.50		.20
Swing Stage	16.05	.60	1.50		.20
Structural steel; Tapers and Drywall sander	16.05	.60	1.50		.20
Pot Tenders; Sandblasters; Spray	16.25	.60	1.50		.20
Epoxy and tar applicator	16.65	.60	1.50		.20
Steeplejack; Towers painters	17.45	.60	1.50		.20
Height Pay: All classifications, with the exception of steeple jacks and tower painters, a $.25 hourly premium shall be paid for swing stage work on a structure with height in excess of 40 ft. an additional $.25 per hourly height pay shall be paid for each additional 50 ft. thereafter. Height pay on all towers and steeplejack work shall start at the 150 ft. level. $.50 per hour above the scale shall be paid for each additional 100 ft.					
PLASTERERS	15.50	.60	2.35		.15
PLUMBERS; Steamfitters:					
Area I	17.42	.85	1.30		.45
Area II	16.85	.73	1.40		.15
Area III	15.20	1.00	1.20		.10
ROOFERS:					
Area I	15.60	.90	2.00		.10
Areas II and III	15.30	.90	2.00		.10
SHEET METAL WORKERS:					
Area I	17.49	.57	1.00		.17
Areas II and III	17.61	.61	.75		.15

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SOFT FLOOR LAYERS:					
Area I	$ 16.11	.65	1.50		.10
Areas II and III	15.59	.65	.50	4%	.20
SPRINKLER FITTERS	14.82	.60	.90		.08
TERRAZZO WORKERS' AND TILE SETTERS' HELPERS	12.83	.90	2.25		.09
TILE SETTERS	15.01	.90	2.25		.09
RIGGERS: Welder: Receive rates for craft performing operation to which rigging or welding is incidental.					

FOOTNOTE:
a. Employer contributes 4% of basic hourly rate for over 5 years' service and 2% basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. Six Paid Holidays: A through F.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F. Christmas Day.

LABORERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$ 13.10	.60	2.25		.09
Group 2	13.27	.60	2.25		.09
Group 3	13.31	.60	2.25		.09
Group 4	13.34	.60	2.25		.09
Group 5	13.38	.60	2.25		.09
Group 6	13.39	.60	2.25		.09
Group 7	13.44	.60	2.25		.09
Group 8	13.52	.60	2.25		.09
Group 9	13.77	.60	2.25		.09
Group 10	13.80	.60	2.25		.09
Group 11	13.88	.60	2.25		.09
Group 12	13.90	.60	2.25		.09
Group 13	13.91	.60	2.25		.09
Group 14	14.02	.60	2.25		.09
Group 15	14.14	.60	2.25		.09
Group 16	14.27	.60	2.25		.09
Group 17:					
Class A	13.10	.60	2.25		.09
Class B	13.29	.60	2.25		.09
Class C	13.60	.60	2.25		.09
Class D	14.16	.60	2.25		.09
Class E	14.31	.60	2.25		.09
Class F	14.55	.60	2.25		.09

LABORERS

Group 1: Building Laborers; Carpenters Tenders; Material Handlers and Book Tenders; Form Strippers; Signalmen; Riggers; Sandblast Pot Tender; Saw Tenders; General Labor; Dump Man; Pit Man; Brush Cutters; Ditch Diggers; Monolithic Workers; Dryer Man; Window Cleaner; Utiliwalk and Utilidor

Group 2: Base and Floor Machine Man

Group 3: Choke Setters

Group 4: Concrete Labor including Vibratorman; Power Butty and Concrete Power Saw; Curb and Gutterman; General Crew (including Plant Crew) Asphalt

Group 5: Pneumatic or Power Tools

Group 6: Stake Hopper; Grademan; Steampoint or Water Jet Operator

Group 7: Tank Cleaner

Group 8: Jackhammer Operator and Pavement Breaker; Chuck Tender (Wagon and Air Track Drills)

Group 9: Mason Tender and Mud Mixers

Group 10: Gunnite Operator; Pipelayers; Culvert and Multiplate; High Scaler; Sloper (over 20 feet); Chain and Power Saws; Sack or bulk; Sewer Pipelayer; Sewer Caulkers; Timberman; All Monolithic Crews; Pipe Builders; Sandblasters

Group 11: Asphalt Rakers

Group 12: Tenders; Plasterers; Bricklayers; Cement Finisher; Burning and Cutting Torch (except intermittent torch work)

Group 13: Wagon Driller

Group 14: Timber Faller; Air Track Wagon Driller

Group 15: Chain Saw Filer

Group 16: High Riggers and Tree Topper, Powderman

Group 17: TUNNEL OR SHAFT
- Class A: Topman and Bull Gang; Brakeman
- Class B: Muckers, Laborers; Nippers
- Class C: Chuck Tender
- Class D: Retimberman
- Class E: Miners, Shafts and Raises
- Class F: Powderman

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS					
Group 1	$ 13.83	.90	$ 2.50		.15
Group 2	14.72	.90	2.50		.15
Group 3	13.76	.90	2.50		.15
Group 4	13.89	.90	2.50		.15
Group 5	14.78	.90	2.50		.15
Group 6	15.56	.90	2.50		.15
Group 7	14.15	.90	2.50		.15
Group 8	13.32	.90	2.50		.15
Group 9	14.21	.90	2.50		.15
Group 10	14.48	.90	2.50		.15
Group 11	13.97	.90	2.50		.15
Group 12	16.31	.90	2.50		.15
Group 13	13.84	.90	2.50		.15
Group 14	14.24	.90	2.50		.15
Group 15	13.74	.90	2.50		.15
Group 16	14.27	.90	2.50		.15
Group 17	14.57	.90	2.50		.15
Group 18	12.71	.90	2.50		.15
Group 19	13.21	.90	2.50		.15
Group 20	14.16	.90	2.50		.15
Group 21	13.48	.90	2.50		.15
Group 22	12.81	.90	2.50		.15
Group 23	13.25	.90	2.50		.15
Group 24	13.42	.90	2.50		.15
Group 25	17.08	.90	2.50		.15
Group 26	17.75	.90	2.50		.15
Group 27	14.41	.90	2.50		.15
DREDGING					
Group 1	12.28	.75	2.00		
Group 2	12.41	.75	2.00		
Group 3	13.34	.75	2.00		
Group 4	13.40	.75	2.00		
Group 5	13.46	.75	2.00		
Group 6	13.97	.75	2.00		
Group 7					
(a)	14.75	.75	2.00		
(b)	15.50	.75	2.00		

POWER EQUIPMENT OPERATORS

Group 1: Batch Plant Operator; Batch and Mixer, 200 yards per hour and under; Loaders; Elevating - Athey, Barber Greene and similar types; Overhead and front-end, under 2½ yards; Mixers; Concrete Mixers and Batch, 200 yards per hour and under; Pumps; Fuller Kenyon, Pumpcrete and Concrete, Rollers, Tampers and Vibrators: on Plant or Road Mix materials; Tractor, Farmall types, 50 h.p. and over; Trenching Machines, under 16 inches

Group 2: Batch Plant Operator: Batch and Mixers, over 200 yards; Derricks, all; Drilling Machines, Core, Cable Rotary and Exploration; Mixers: Mobile type with hoist combination; Mucking Machines, Mole, Tunnel Drill and/or Shield

Group 3: Brooms, Power Wayne, Saginaw and similar types; Bulldozers, under D6 or similar; Post Hole Diggers, mechanical; Saws, Concrete; Scrapers; Carryall type, single; Nodwell Sno-cat

Group 4: Bulldozers: D6 through D9 or similar; Bump Cutter (Concut Christenson or similar types); Conveyors

Group 5: Bulldozers: TC 12, Quad 9, Pay Dozers, Linked Pusher, H.D. 41 and/or similar; Bulldozers engaged in Yo Yo Operation; Cableways and Highlines, 3 yards and under; Cranes: "A" Frame Trucks, Deck Winches, single power drum; "A" Frame Trucks; Helicopter; Deck Winches (double power drum); Crawler, truck type, Floating Locomotive, Whirley, either 3 yards and under or 150 boom including jibs and under 45 tons and under; Hydralifts or Transporter, Hyster Cat Cranes and attachments, Sidebooms 45 tons and under; Fork Lifts with power broom and swing attachment; Loaders: Overhead and Front-end, 2½ yards and under 4 yards; Motor Patrol Graders: Over Model 14 or similar types; Piledriver Engineers, L. B. Foster Puller or similar paving breaker; Power Plant Turbine Operators; 300 K.W. on highway or airfield construction projects or Quarry operators); Sauerman-Bagley; Shovels: Crawler and truck type, all attachments, 3 yards and under; Sub Grader (Gurries, C.M.I. and similar types); Tractors, Farmall type, used as Backhoes, Rubber-tired (Ford, Ferguson, Case and similar types); Tournapulls; Caterpillar, Euclid Scrapers and similar type equipment, over 25 yards through 40 yards; Bower Crafts, Flex Craft, Helicopter; Transporter; Cableways; Rollagon, Dredge Barge Cable) Highline or Cable Car, Boat Coxswain

POWER EQUIPMENT OPERATORS (Cont'd)

Group 6: Cableways and Highways, over 3 yards; Cranes: Crawler, truck type, Floating, Locomotive, Whirley, either over 3 yards and under 6 yards, over 150' boom, including jibs or over 45 tons; Tower Cranes, Pecco, Lorraine, Bucyrus and similar types; Hyster Cat Cranes and attachments, Sidebooms over 45 tons through 100 tons; Loaders: Overhead and Front-end, 4 yards up to and including 10 yards; Shovels: Crawler and truck type, all attachments, 3 yards and under 6 yards; Tournapulls, Caterpillar, Euclid Scrapers and similar type equipment over 40 yards through 55 yards; Slip Form Paver, C.M.I. and similar types

Group 7: Cement Hogs; Locomotives: Rod and Greared Engines

Group 8: Compressors: Excavating; Locomotives: Dinkey (air, steam, gas, and electric) Speeders

Group 9: Compressors: Steel Erection including Sandblasting, Painting or same, Pile Driving, Hoists on Steel Erection (Towermobiles and Air Tuggers); Loaders: Fork Lifts with tower; Scrapers: Carryall, Tandem

Group 10: Conveyors, Beltcrete with power pack and similar; Loader: Elevating Belt type, Euclid and similar types

Group 11: Cranes: "A" Frame Trucks, Deck Winches, single power drum; Crushers, rock, washing and screening plants; Hoist Air Tuggers, Elevators; Motor Patrol Graders: Model 14 or similar types and under; Power Plant Turbine Operators: under 300 K.W.; Shovels; Tournapulls, Caterpillar, Euclid, Scrapers and similar type equipment 25 yards and under

Group 12: Cranes: Crawler, truck type, Floating, Locomotive, Whirley, either 6 yards or over, or over 200' of boom including jibs or over 150 tons; Hyster Cat Cranes and attachments, Sidebooms over 100 tons; Loaders: Overhead and Front-end, over 10 yards; Shovels: Crawler and truck type, all attachments, 6 yards and over; Tournapulls, Caterpillar, Euclid, Scrapers and similar type equipment over 55 yards through 70 yards

Group 13: Finishing Machine Operator, Concrete Paving, Sidewalk Curb and Gutter Machine; Screen Man or Slurry Operator; Spreaders - Blaw Knox, Cedarapids, Barber Greene, Railroad Wing Spreader or similar types

Group 14: Loaders: Elevating Grader type, Dumor and similar types

Group 15: Loaders: Fork Lifts or Lumber Carrier (on construction job site)

POWER EQUIPMENT OPERATORS (Cont'd)

Group 16: Mechanics, Welders, Machinists, heavy duty

Group 17: Mechanic; Leadman

Group 18: Mechanics' Helpers, heavy duty (shop)

Group 19: Mechanic, light duty; Rollers, Tampers and Vibrators: Other than plants or road mix (where towed, to pay rate or equipment used to pull); Tractors, Farmall type less than 50 h.p.

Group 20: Mixers, Asphalt Mixer

Group 21: Oil, Blower Distributors

Group 22: Grade Checkers - Oiler combination); Safety Observer or Oiler Rigger

Group 23: Journeyman Equipment Service Oilers and Fireman; Oiler, either over 3 yards to over 150' boom or over 45 tons

Group 24: Pumps: Water

Group 25: Tournapulls, Caterpillar, Euclid Scrapers and similar type equipment over 70 yards through 85 yards

Group 26: Tournapulls, Caterpillar, Euclid Scrapers and similar type equipment, over 85 yards through 100 yards

Group 27: Trenching Machines: 16 inches and over or Remote controlled underwater Trenching

POWER EQUIPMENT OPERATORS - DREDGING

Group 1: Assistant Mate (Deckhand)

Group 2: Fireman; Oiler

Group 3: Assistant Engineer (electric, diesel, steam of booster pumps); Mates and Boatmen

Group 4: Engineer Welder; Craneman

Group 5: Assistant Engineer (electric generator operator for primary pump, power barge, or dredge)

Group 6: Leverman, Hydraulic

Group 7: Leverman, Dipper
(a): 5 yards and under
(b): Over 5 yards

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
Group 1	$ 13.22	.88	3.00		.10
Group 2	13.28	.88	3.00		.10
Group 3	12.75	.88	3.00		.10
Group 4	13.60	.88	3.00		.10
Group 5	14.00	.88	3.00		.10
Group 6	14.31	.88	3.00		.10
Group 7	14.60	.88	3.00		.10
Group 8	14.91	.88	3.00		.10
Group 9	15.22	.88	3.00		.10
Group 10	15.53	.88	3.00		.10
Group 11	15.84	.88	3.00		.10
Group 12	16.15	.88	3.00		.10
Group 13	16.45	.88	3.00		.10
Group 14	13.74	.88	3.00		.10
Group 15	12.47	.88	3.00		.10
Group 16	12.90	.88	3.00		.10
Group 17	13.58	.88	3.00		.10
Group 18	13.84	.88	3.00		.10
Group 19	14.11	.88	3.00		.10
Group 20	14.38	.88	3.00		.10
Group 21	14.55	.88	3.00		.10
Group 22	13.52	.88	3.00		.10
Group 23	12.64	.88	3.00		.10

TRUCK DRIVERS

Group 1: Buggymobile; Hyster Operators (handling aggregate), Lumber Carrier

Group 2: Semi or truck and trailer; Dumpsters; Batch Trucks over 5 yards; Dump Trucks, over 5 yards up to and including 10 yards; Fuel Truck; Greasers of Grease Trucks; Flat Beds, dual rear axle; Ready Mix: Over 3 yards up to and including 5 yards; Water Wagon, semi; Water Wagon, dual axle; Winch Trucks; Flat Bed including "A" Frame manufactures rating over 5 tons; Bull Lifts and Fork Lifts over 5 tons; Front End Loader with Forks; Partsman and Outside Expeditor; Bus Operator, over 30 passengers, Track Truck Equipment; (All Terrain Vehicles, Form Distributor Truck, double axle; Loadmaster (air and water operations); Air cushion or similar type vehicle; Fire Trucks - double axle

Group 3: Batch Truck up to and including 5 yards; Dump Trucks (including Rockbuggy and Trucks with pups) up to and including 5 yards; Flat Beds, single rear axle; Water Wagon, single axle; Winch Truck, Flat Bed including "A" Frame manufactured rating 5 tons and under; Bull Lifts and Fork Lifts up to and including 5 tons; Bus Operator, up to 30 passengers; Form Distributor Truck, single axle, Hydro Seeder, single axle, Team Drivers (horses, Mules and similar equipment); Vacuum Trucks and Truck Sweepers - single axle; Fire Trucks - single axle; Ambulance

Group 4: Dump Trucks over 10 yards up to and including 20 yards; Tire Services Man; Lowbed heavy-duty Trailer; Oiler Distributor Drivers; Ready Mix: Compactor (when pulled by rubber-tired equipment)

Group 5: Dump Trucks over 20 yards up to and including 30 yards

Group 6: Dump Trucks over 30 yards up to and including 40 yards

Group 7: Dump Trucks over 40 yards up to and including 50 yards

Group 8: Dump Trucks over 50 yards up to and including 60 yards

Group 9: Dump Trucks over 60 yards up to and including 70 yards

Group 10: Dump Trucks over 70 yards up to and including 80 yards

Group 11: Dump Trucks over 80 yards up to and including 90 yards

TRUCK DRIVERS (Cont'd)

Group 12: Dump Trucks over 90 yards up to and including 100 yards

Group 13: Dump Trucks over 100 yards (above scales to be paid on actual water level measurements)

Group 14: Turn-O-Wagoner DW-10 when not self-loading

Group 15: Gravel Spreader Box Operator on Truck; Pickup (pilot Cats all light-duty vehicles); Warehouseman Class 2: Farm Type rubber-tired tractor (material hauling); Swampers and Riggers

Group 16: Ready Mix: Up to and including 3 yards

Group 17: Ready Mix: Over 5 yards up to and including 7 yards

Group 18: Ready Mix: Over 7 yards up to and including 9 yards

Group 19: Ready Mix: Over 9 yards up to and including 12 yards

Group 20: Ready Mix: 13 yards and over

Group 21: Ready Mix, semi with double bowl mixer

Group 22: Water Wagon, when pulled by Euclid or similar type equipment

Group 23: Warehouseman - Class 1

SUPERSEDEAS DECISION

STATE: Florida COUNTY: Dade
DECISION NUMBER: FL77-1003 DATE: Date of Publication
Supersedes Decision No. AR-4050 dated November 15, 1974 in 39 FR 40404.
DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air conditioning mechanics	5.52	1.08	1.00		.09
Block masons	9.70	.60	.54		.04
Bricklayers	9.70	.60	.54		.04
Carpenters	8.70	.70	.55		.02
Cement masons	9.70	.60	.54		.04
Drywall finishers	9.00	.45	.40		.02
Electricians	9.19				
Elevator constructors	9.34	.495	.32	.06	.02
Elevator constructors' helpers	7.51	.495	.32	.06	.02
Glaziers	7.73				
Insulators	7.50	.70	.55		.01
Ironworkers	9.45	.75	.43		.04
Laborers:					
Mason tenders	6.60	.55	.30		
Pipelayers	6.70				
Plasterer tenders	6.70				
Unskilled	6.19				
Lathers	9.40	.75	.10		.01
Painters	6.61				
Plasterers	9.70	.60	.54		.04
Plumbers	9.55				
Roofers	7.61				
Sheet metal workers	10.55	.75	.50		.10
Soft floor layers	8.49				
Tile setters	9.70	.60	.54		.04
Truck drivers	6.58				
POWER EQUIPMENT OPERATORS:					
Backhoe	8.36				
Bulldozer	7.06	.50	.45		.05
Crane	9.50	.50	.45		.05
Forklift	7.93				
Loader	7.06	.50	.45		.05
Motor grader	7.31	.50	.45		.05
Oiler	7.46	.50	.45		.05
Roller	6.36	.50	.45		.05
Trenching machine	8.01				

SUPERSEDEAS DECISION

STATE: Iowa COUNTY: Cerro Gordo (City of Mason City)
DECISION NO.: IA77-4004 DATE: Date of Publication
Supersedes Decision No. IA76-4099, dated June 18, 1976, in 41 FR 24844
DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories), Heavy and Highway Construction.

BUILDING, WATER TREATMENT PLANTS & SEWAGE DISPOSAL PLANTS CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$10.20	.63	.685		
BOILERMAKERS	10.30	.85	1.00		.02
BRICKLAYERS & STONEMASONS	8.74		.50		
CARPENTERS:					
Carpenters	8.87		.20		.01
Millwrights; Piledrivermen	9.12		.20		.01
CEMENT MASONS	9.25				
ELECTRICIANS	10.45	.45	1%		1%
GLAZIERS	7.75	.50	.25		
IRONWORKERS	9.525	.40	.745		.025
LABORERS:					
GROUP 1 - Construction laborers; Tenders; Power tools, barco operators; Mortar mixers; Concrete saw; Sand point setter	6.89	.30	.30		
GROUP 2 - Caissons, after 6 ft. depth; Dynamite men; Gunniting-nozzle man and backup man; Laborers working on swinging stage work, wood hoist, towers, scaffolds or ladders at a height of 35 ft. or over	7.14	.30	.30		
GROUP 3 - Laborers working on swinging stage work, wood hoist towers, scaffolds or ladders at a height of 75 ft. or over	7.39	.30	.30		
LINE CONSTRUCTION:					
GROUP 1 - Cable splicers; Linemen; Welders; Technicians; All rigs setting assembled "H" fixtures and steel transmission structures	8.75	.35	1%	a	1/2%
GROUP 2 - Groundman; Truck driver (without winch); Experienced (not less than 6 months)	5.69	.35	1%	a	1/2%
GROUP 3 - Groundman; Truck driver (with winch)	5.86	.35	1%	a	1/2%
GROUP 4 - Blaster; Special equipment operations (hole digging machines, all tractors, transmission line pole hauling & setting equipment other than assembled "H" fixtures)	7.00	.35	1%	a	1/2%
GROUP 5 - Groundman-1st 6 mos.	4.81	.35	1%	a	1/2%

DECISION NO. IA77-4004

BUILDING, WATER TREATMENT PLANTS & SEWAGE DISPOSAL PLANTS CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
Brush	$ 6.37		.20		
Tapers	6.47		.20		
Spray	6.87		.20		
PLASTERERS	8.50				
PLUMBERS & STEAMFITTERS	9.85		.35		.02
ROOFERS	7.22				
SHEET METAL WORKERS	8.63	.40	.35		.06
SOFT FLOOR LAYERS	7.29		.20		.01
SPRINKLER FITTERS	11.23	.60	.90		.08
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

FOOTNOTE:
a-Seven paid holidays - A thru G.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day; G-Friday After Thanksgiving

DECISION NO. IA77-4004

BUILDING, WATER TREATMENT PLANTS & SEWAGE DISPOSAL PLANTS CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS					
GROUP 1	$9.56	.50	.50		.05
GROUP 2	9.435	.50	.50		.05
GROUP 3	8.59	.50	.50		.05
GROUP 4	8.265	.50	.50		.05

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - Cranes, including those being used as backhoe, dragline, clamshell, etc.; Tower cranes; Truck cranes & cherry pickers 12½ton & over rated capacity; Derricks; Piledrivers and extractors; Caisson rigs; Side boom and winch truck used for erection of structural steel and moving and setting of heavy machinery; 3 drum hoist; Welders; Mechanics; Locomotive; Dredge (levermen)

GROUP 2 - 1 and 2 drum hoists; Air and electric tuggers (on power plants or setting steel or grating); Ecoomobiles; Plant mixers; Farm type tractors (with loaders, backhoes, attachments, etc.); Scrapers (tournapull, etc.); Endloaders; Dredge (engineer); Side boom and winch truck other than Group No. 1; Motor patrol; Bulldozers; Push cat; Truck cranes & cherry pickers (under 12½ ton); Concrete mixers (1 yard and over); Ditching machine (8" and over); Fork lifts (on steel erection and machinery moving or hoisting above one complete story); Concrete pump; Dewatering pumps; Temporary hoist cage operated; Second man on locomotive; Vibrating concrete spreader (Gomaco, C-450 or equal)

GROUP 3 - Tractors (under 35 HP) with or without attachments; Endloaders (under 35 HP) with ot without attachments; Air compressors (one or a combination of 250 cfm or more); Pumps 3" or over; Welding machines 600 amps or combination thereof; Conveyors; Firemen (Boiler); Generator (75 KW & over); Fork lifts (other than above Group No. 2); Gunnite machine; Self-propelled rollers; Stump chippers; Self-propelled tampers; Air and electric (other than above); Ditching machine under 8"

GROUP 4 - Oilers; Mechanical heaters; Truck crane drivers; Permanent elevators

DECISION NO. IA77-4004

HEAVY & HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS & PILEDRIVERMEN	$ 6.25	.31			
CEMENT MASONS	6.00				
LABORERS:					
Group 1	5.15	.30	.10		
Group 2	4.90	.30	.10		
Group 3	4.65	.30	.10		
Group 4	4.50	.30	.10		
Group 5	4.40	.30	.10		

LABORERS (HEAVY & HIGHWAY CONSTRUCTION) CLASSIFICATION DEFINITIONS

GROUP 1 - Sandblasters; Powderman and blaster; Pipelayer, sewer, water, telephone conduits, etc.; Sewer utility man; Gunnite nozzleman; Diamond and core drills, powered by air; All work performed by laborers working from a bos'n chair, swinging stage, life belt, tag line or block and tackle; Drill operator of air track, wagon drills and similar drills

GROUP 2 - Tree climber; Form setters; Rakers; Boxtenders; Asphalt curb machines; Potmen (not mechanical); Bull float, hand operated; Scalers; Timbermen; Underpinning and shoring; Caissons (over 12 ft.); Grade checker and cutting torches on demolition work

GROUP 3 - Power buggyman; Concrete and paving sawman; Form liner, expansion joint assembler; Bottom man; Caulker and jointer and painter; Timber and chain-saw man; Mechanical grouters; Automatic concrete power curbing machines; Stresser or stretcherman on post-tension or pre-stressed concrete (on or off the job); Powdermen helpers

GROUP 4 - Form tamper; Air, gas and electric tool operator, vibrator, barco hammer, paving breaker, spader, tamper, electric drills, hammer and jack hammer; Tree groundmen; Chuck tender; Drill helpers, tool room men and checkers; Sandblaster helper; Concrete processing material and monitors; Cement finishers' helpers; Stringman on paving work

GROUP 5 - Fence erectors; Handling and placing of metal mesh, dowel bars, reinforcing bars and chairs; Dumpmen and spotters; Carrying reinforcing rods; Corrugated culvert pipe; Concrete drainage pipe; Stake chaser, seeding, mulching and planting of trees, shrubs and flowers; Water boy; Common laborers; Rodmen; Tending to carpenters; Hot asphalt labor

DECISION NO. IA77-4004

HEAVY & HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
Group 1	$ 7.30	.40	.40		.03
Group 2	6.90	.40	.40		.03
Group 3	6.50	.40	.40		.03
TRUCK DRIVERS	5.94	.35			

POWER EQUIPMENT OPERATORS (HEAVY & HIGHWAY CONSTRUCTION) CLASSIFICATION DEFINITIONS

GROUP 1 - Power Shovel, Crane, Backhoe and Dragline; Central Mix Plant Operator; Dredge Engineer; Dredge Leverman; Paver or Spreader Operator; Hoisting Engineer (Steel Erection); Motor Patrol; Piledriver Machine; Concrete Mixer; Tow or Push Boat Operator; Master Mechanic; C.M.I. Paver; C.M.I. Subgrader (or equivalent); Asphalt Plant; Front Endloader; Scraper; Bulldozer; Push cat; Tractor Pulling Scraper; Sideboom Tractor; Churn or Rotary Drill; Trenching Machine (Cleveland 80 or similar capacity); Asphalt Laydown; Asphalt Screed; Asphalt Heater-Planer Unit; Asphalt Roller; Self-Propelled Elevating Grader or similar machine; Spreader(Concrete); Horizontal Boring Machine; Mechanics-Welders; Group Equipment Greaser; Concrete Pump; Self-Propelled Curb Machine

GROUP 2 - Concrete Curb Breaker; Concrete Widening Machine; Paving Breaker; Barber-Greene, Haiss Loader or similar machine; Tractor Pulling Ripper, Disc, Sheepsfoot or Flat Roller; Self-Propelled Sheepsfoot Roller; Self-Propelled Roller (other than asphalt); Distributor; Screening and Washing Plant; Self-Propelled Vibrating Compactor; Trenching Machine (other than above); Steel Placing Machine; Conveyor; Finishing Machine (on concrete); Flexplane; Bull Float; Form Grader

GROUP 3 - Boiler; Mechanical Broom; Oiler or Mechanics Helper or Group Greaser Helper; Farm-type Tractor (pulling disc, harrow or roller); Welding Machine; Pump Operator (other than dredge); Boom and Winch Truck; Compressor; Tank Car Heater (combination boiler and booster); Pumps on Well Points and Deep Wells for Dewatering; Truck Crane Combination Driver-Oiler; Concrete Curbing Machine; Safety Boat Operator; Batch Plant (Dry)

SUPERSEDEAS DECISION

STATE: Nebraska
DECISION NUMBER: NE77-4003
COUNTIES: Douglas and Sarpy
DATE: Date of Publication
Supersedes Decision No. NE76-4180 dated October 29, 1976 in 41 FR 47813
DESCRIPTION OF WORK: Building Construction (including single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$11.87	.40	.51		.015
BOILERMAKERS	10.30	.85	1.00		.02
BRICKLAYERS, Stonemasons	9.43	.50	.40	.75	
CARPENTERS:					
Carpenters	9.16	.50	.40	.60	.05
Millwrights	9.41	.50	.40	.60	.05
Piledrivermen	9.285	.50	.40	.60	.05
CEMENT MASONS	9.82	.50	.40	.	
DRYWALL:					
Tapers and Finishers	9.65	.40	.50		.04
ELECTRICIANS	11.83	.58	1$+.55		.06
ELEVATOR CONSTRUCTORS	10.99	.545	.35	3$+a	.02
ELEVATOR CONSTRUCTORS' HELPERS	70$	.545	.35	3$+a	.02
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50$				
GLAZIERS	10.55	.55	.35	.50	.01
IRONWORKERS	8.88	.50	.55	1.00	.05
LABORERS:					
Common Laborers	6.92	.50	.40	.25	.05
Buggymobile Operators, Mortar Mixers, Mason Tenders	7.065	.50	.40	.25	.05
Pipelayers	7.20	.50	.40	.25	.05
Plasterers Tenders	7.235	.50	.40	.25	.05
LATHERS	8.35	.50	1.00		
MARBLE SETTERS, Tile and Terrazzo Workers	9.45	b	.25		
MARBLE, Tile and Terrazzo Workers Helpers'	7.15	b			
PAINTERS:					
Brush	9.20		.35		.02
Structural Steel and Paperhangers	9.50		.35		.02
Spray, Swing Stage, hazardous and Sandblasting	9.75		.35		.02
PLASTERERS	9.68	.50	.40		
PLUMBERS	11.19	.60	.75		.10
ROOFERS:					
Composition	8.68	.15	.20	.20	.01
Slate; Tile	8.98	.15	.20	.20	.01
ROOFERS HELPERS	50$	.15	.20	.20	.01
SHEET METAL WORKERS	11.14	.50		6$	.06
SOFT FLOOR LAYERS	9.65			C.	.05
SPRINKLER FITTERS	10.55	.50	.80		.08

DECISION NO. NE77-4003

LINE CONSTRUCTION:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Linemen	$9.51	.45	1$		1/2$
Cable Splicers	9.91	.45	1$		1/2$
Truck Driver	6.87	.45	1$		1/2$
Equipment Operators	8.94	.45	1$		1/2$
Groundmen:					
(Inexperienced) 1st 6 months	3.17	.45	1$		1/2$
(Inexperienced) 2nd 6 months	4.67	.45	1$		1/2$
Thereafter	6.20	.45	1$		1/2$
POWER EQUIPMENT OPERATORS:					
Group 1	8.01	.50	.40		
Group 2	8.11	.50	.40		
Group 3	8.36	.50	.40		
Group 4	9.50	.50	.40		
Group 5	9.60	.50	.40		
Group 6	9.85	.50	.40		

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITION

Group 1: Oilers; Greasers; Mechanics helpers

Group 2: Oiler drivers (motor truck crane)

Group 3: Conveyors; Heaters; Tractors, 35 HP or under; Air Compressors; Pump and welding machine operator

Group 4: Bulldozers; Forklifts; Concrete Pumps; Tractors over 35 HP; one drum hoists; Straddle Trucks; Spread Oiler

Group 5: Blades; End Loaders; Self Propelled Scrapers

Group 6: Two drum hoists; Trenching Machines; Pile drivers; Dredges; Heavy duty mechanics; Shovels; Draglines; Clamshells; Orange Peels; Cranes; Derricks; Backhoes; Winch Trucks and side booms or cat booms; Locomotives; Firemen used on high pressure boilers in construction work; Econocrete; Electric Hammers and extractors

DECISION NO. [illegible]

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
TRUCK DRIVERS:					
Single Axle	$8.025	.50	.40		
Tandem Axle	8.10	.50	.40		
Lowboy, Trailer	8.225	.50	.40		
Lumber carriers	8.40	.50	.40		
Welders: Receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day; G- Christmas Eve; H- Day after Thanksgiving.

FOOTNOTES:

a. Employer contributes 4% basic hourly rate for over 5 years' service and 2% basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. Also 6 paid holidays - A through F

b. Employer agrees to provide one-half cost of a Health and Welfare Plan (one-half cost to be paid by employee) which will provide benefits at least equal to the Omaha Construction Industry Health and Welfare Plan shall pay $0.20 per hour in cash.

c. Eight paid Holidays, A thru H; also employees with one years' continuous service with the same employer, but less than 4 years shall receive 1 week's paid vacation; after 4 year's continuous service with the same employer shall receive 2 weeks paid vacation.

SUPERSEDEAS DECISION:

STATE: New Hampshire COUNTY: Hillsboro
DECISION NUMBER: NH77-2001 DATE: Date of Publication
Supersedes Decision No. NH76-2093, dated July 30, 1976 in 41 FR 32162.
DESCRIPTION OF WORK: Building, Heavy and Highway Construction

6-NH-1-2-3-F

BUILDING, HEAVY & HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$10.26	.80	.80		.01
BOILERMAKERS	10.00	.60	10%		.01
BRICKLAYERS, CEMENT MASONS, MARBLE SETTERS, PLASTERERS, STONE MASONS, TERRAZZO WORKERS, AND TILE SETTERS:					
Hillsboro, Antrim, Hancock, N. Branch, Bennington, Hillsboro Upper and Lower Villages	8.19	.55	.40		.01
Remainder of County	7.20	.45	.35		.01
CARPENTERS:					
Pelham & Greenville					
Carpenters & Soft Floor Layers	10.00	.60	1.00		.07
Millwrights	10.28	.60	.50		.07
Remainder of County:					
Carpenters & Soft Floor Layers	7.35	.55	.60		.01
Piledrivermen & Millwrights	8.20	.55	.60		.01
ELECTRICIANS:					
Pelham	10.02	.35	1%+.20		.02
Remainder of County	10.10	.40	1%		.03
ELEVATOR CONSTRUCTORS:					
Constructors	10.665	.495	.32	4%+a+b	.02
Helpers	7.465	.495	.32	4%+a+b	.02
Helpers (Prob.)	5.33	.495	.32	4%+a+b	.02
GLAZIERS	7.87	.52	.59		.03
IRONWORKERS:					
Structural, Ornamental & Reinforcing	9.70	.70	1.00		.02
LABORERS: (Building):					
Common Laborers	6.16	.60	.70		.10
Plasterers tenders	6.31	.60	.70		.10
Pipelayers, fence & guard rail erectors	6.41	.60	.70		.10
Drillers, pavement breakers, pneumatic tool ops., Chipping gun Operator, Blasters, and powdermen	6.66	.60	.70		.10
All other pneumatic tool operators on boiler & stack work	7.06	.60	.70		.10
LABORERS: (Heavy & Highway):					
Laborers & Pipelayers	5.91	.50	.45		.10
Pneumatic tool ops., drillers, pavement breakers, electric chipping hammers	6.41	.50	.45		.10
Blaster & powdermen	6.66	.50	.45		.10

DECISIONNO. NH77-2001

Building, Heavy & Highway Construction	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LEAD BURNERS	$ 9.25	.35		c	.01
LINE CONSTRUCTION:					
Linemen	9.34	.65	1%	d	3/8of1%
Equipment Operator	8.74	.65	1%	d	3/8of1%
Groundman	6.36	.65	1%	d	3/8of1%
Driver Groundman	7.38	.65	1%	d	3/8of1%
MARBLE SETTERS HELPERS	5.05	.15	.10		
PAINTERS:					
Brush	6.90	.25			
Paperhangers	7.15	.25			
Spray & Sandblasting	8.40	.25			
Open Structural Steel	8.15	.25			
Enclosed Structural Steel & Steeple jack	7.90	.25			
PLUMBERS AND STEAMFITTERS:					
Hudson and Pelham	10.52	1.10	.60		.02
Remainder of County	9.90	.53	.55		.02
ROOFERS:					
Roofers	6.65				
Helpers	5.80				
SHEET METAL WORKERS	8.92	.45	.35		.02
SPRINKLER FITTERS	10.21	.60	.90		.08
TERRAZZO WORKERS' HELPERS	7.40	.20	.10		
TILE SETTERS' HELPERS	7.94	.40	.25		
Welders receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D—Labor Day; Thanksgiving Day; E-Christmas Day.

FOOTNOTES:

a. Employer contributes 4% basic hourly rate for 5 years or more of service or 2% basic hourly rate for 6 months to 5 years of service as vacation pay credit.
b. Holidays: A through F.
c. Holidays: A through F, Washington's Birthday, Good Friday & Christmas Eve providing employee has worked 45 full days during the 120 calendar days prior to the holiday, and the regular scheduled work days immediately preceding and following the holiday.
d. Holidays: B through F provided the employee has been employed 5 working days prior to the holiday and provided the employee works the scheduled work days immediately preceding and following the holiday.

DECISION NO. NH77-2001

N .H. 1-PEO Q 1 of 1

POWER EQUIPMENT OPERATORS
BUILDING CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 9.00	.85	.75	a	.05
CLASS 2	8.75	.85	.75	a	.05
CLASS 3	8.55	.85	.75	a	.05
CLASS 4	7.975	.85	.75	a	.05
CLASS 5	7.95	.85	.75	a	.05
CLASS 6	7.30	.85	.75	a	.05
CLASS 7	7.50	.85	.75	a	.05
CLASS 8	10.00	.85	.75	a	.05
CLASS 9	9.50	.85	.75	a	.05

CLASS 1 - Shovel, crane, dragline, derrick, backhoe, elevator which Chicago boom, gradall, elevating grader, dront end loader 6 yds. and over, cherry picker, pile driving rigs, concrete road pavers,a ll three drum hoisting and Trenching machines.
CLASS 2 - Rotary drill with mounted compressor, compressor house (3-6 compressors), rock and earth boring machines excluding McCarthy and similar drills, graders, 4 yds. and over front end loader, two drum hoists, high fork lifts with capacity of 15' & over, scrapers, sonic hammer, vibratory hammer.
CLASS 3 - Bulldozers, push cats, scrapers (tractor drawn), asphalt paver, front end loader 3/4 yds. to 4 yds., well driller, mechanics, pumpcrete machines, concrete pumps and similar type pumps, engineer or firemen on high pressure boiler (on job), self loading batch plant, well point operators including installing, engineer-in-charge of powered grease truck, all automatic elevators permanent or temporary operated manually or by remote controls
CLASS 4 - Single drum hoist, self-powered roller, self-propelled compactors, power pavement breakers, concrete pavement finishing machines, two bag mixers with skip, front end loaders under 3/4 yds. McCarthy and similar drills, batch plant not self loading, bulk cement plants, self-propelled material spreaders, A-frame trucks, fork lifts up to 15'.
CLASS 5 - Compressor 315 cubic ft. and over, (one or two), pumps (4 inches & over total discharge) when total discharge is over 12 inches, classification 3 will be paid, tractor (without blade or bucket) drawing roller compactors or other machines.
CLASS 6 - Compressors (up to 315 cubic feet) small mixers, pumps (up to 4 inches), power heaters, welding machines (When 3 or more heaters or welding machines are used on one job, classsification 4 rate will be paid), conveyor oiler including helpers on grease trucks and grease trucks with hand greasing equipment.
CLASS 7 - Oilers on truck cranes and gradalls.
CLASS 8 - Cranes with boom lengths of 200 feet or more
CLASS 9 - Crane with boom length of 150 feet or more

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day;F-Christmas Day

FOOTNOTE: A. Holidays: A through F, Veterans Day, Washinton's Birthday and Columbus

DECISION NO. NH77-2001

NH 2-PEO-2-3-R

POWER EQUIPMENT OPERATORS
HEAVY & HIGHWAY COSTRUCTION

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 8.75	.80	.75	a	.05
CLASS 2	8.50	.80	.75	a	.05
CLASS 3	8.30	.80	.75	a	.05
CLASS 4	7.75	.80	.75	a	.05
CLASS 5	7.425	.80	.75	a	.05
CLASS 6	6.90	.80	.75	a	.05
CLASS 7	9.25	.80	.75	a	.05

CLASS 1 - Shovels, Crawler & Truck Cranes, Derricks, Backhoes, Trenching Machines, Elevating Graders, Dradall,Piledrivers, Concrete Pavers, Engineers on site processing plant. Dragline, Clamshell, Cableways.
CLASS 2 - Rotary drill (with mounted compressor), Compressor house (3 to 6 compressors) Rock and earth boring machine (excluding McCarthy and similar drills), Grader, Front end loader (4 yds. or over)
CLASS 3 - Bulldozer, Push Cats, Scraper (Self propelled or tractor drawn), Self-powered Asphalt paver, (Front end loader 3/4 to4 yds.), Mechanics, Well driller, Pumpcrete machine, Engineer or Fireman on high pressure boiler (on job) Self-loading Batch plant (on job), Well point operators.
CLASS 4 - Hoists, Conveyors, Self-powered rollers and Compactors, Self-propelled Material spreader, Self-powered concrete finishing machine, Mixers (2 bag with skip), front end loader (under 3/4 yd.), McCarthy & similar drills, Batch plant (not a self-loading), Bulk cement plant.
CLASS 5 - Compressor (315 C.F. or over-one or two),Pump 4" or over, Tractor without blades, Drawing sheeps-foot,rubber roller or other type compactor including machines for pulverizing and aerating soil
CLASS 6 - Compressor (up to 315 C.F.), Small mixers with skip, Oiler, Pumps up to 4", Grease truck, Power heaters, Welding machines (When 3 or more welding machines Class 4 rate applied),A-Frame, Forklifts, (Where grease truck contains powered grease equipment, engineer in charge shall be paid Class 3 rate)
CLASS 7 - Crane with boom length of 200 feet or more including jib.

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTE: a. Holidays: A through F; Washington's Birthday; Veteran's Day; Columbus Day

DECISION NO. NH77-2001

NH 5-PED-4-F 1 of 1

POWER EQUIPMENT OPERATORS MARINE CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 6.335	.275	.30	a	.02
CLASS 2	6.285	.275	.30	a	.02
CLASS 3	6.215	.275	.30	a	.02
CLASS 4	5.965	.275	.30	a	.02
CLASS 5	5.755	.275	.30	a	.02
CLASS 6	5.23	.275	.30	a	.02
CLASS 7	4.555	.275	.30	a	.02
CLASS 8	5.18	.275	.30	a	.02
CLASS 9	4.605	.275	.30	a	.02

Booms over 150' including jib-additional $.25 per hour.
Booms over 185' including jib-additional $.50 per hour.
Booms 220' including jib-additional $.75 per hour.
Booms over 275' including jib-additional $1.00 per hour.

CLASS 1 - Power shovel, crane, truck crane, derrick, cherry picker, pile driver, 2 or more drum machine, lightner, derrick boat, trenching machine, mechanical hoist, pavement breaker, cement concrete paver, dragline, hoisting engine, pumpcrete machine, elevating grader, shovel dozer (except when pushing front end loader (except when pushing), backhoe, gradall, cableway, boring machine, rotary drill, post hole hammer, post hole digger, for, lift
CLASS 2 - Swinger engine
CLASS 3 - Sonic or vibratory hammer, grader, scraper (over 21 yds. struck), tandem scraper concrete pump, Bulldozer, scraper (21 yds. struck or less).
CLASS 4 - Portable steam boiler, portable steam generator, roller, tractor, mechanic (maintenance), concrete mixer with side loader.
CLASS 5 - Assistant engineer (fireman).
CLASS 6 - Pump, compressor, welding machine, heater (power driven), valve controlling pernament plant (air or steam), wellpoint system, auger (powered by independent engine and attached to pile driver), hydraulic saw, generator, lighting plant, syphon, pulsometer, concrete mixer.
CLASS 7 - Oiler (other than truck crane and gradall).
CLASS 8 - Oiler on scow.
CLASS 9 - Oiler on truck crane and gradall.

PAID HOLIDAYS: (WHERE APPLICABLE)
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE: a. Holidays: A through F; Washington's Birthday, Patriot's Day, Columbus Day; & Veteran's Day; Provided the employee has worked 3 days during the week in which the holidays falls and is available for work the days preceding the holidays.

DECISION NO. NH77-2001

NH 1-TD-1-2-3-K

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 4.71	.45	.25	a	
CLASS 2	4.94	.45	.25	a	
CLASS 3	5.17	.45	.25	a	

CLASS 1 - Two Axle equipment
CLASS 2 - Three axle equipment including low beds
CLASS 3 - Special earth hauling equipment other than conventional type on the road truck and semitrailers trailer dumps.

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D- Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE: a Holidays: A through F, plus Washington's Birthday, Veteran's Day and Columbus Day; (provided employee works two days in the calendar week in which the holiday falls; reports for work the last day assigned prior to the holiday and the first assigned following the holiday).

SUPERSEDEAS DECISION

STATE: New Hampshire COUNTY: Merrimack
DECISION NO.: NH77-2002 DATE: Date of Publication
Supersedes Decision No. NH76-2113, dated September 17, 1976 in 41 FR 40396.
DESCRIPTION OF WORK: Building Construction, (excluding single family homes and garden type apartments up to and including 4 stories), heavy, highway, and marine construction.

BUILDING, HEAVY & HIGHWAY CONSTRUCTION:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$10.26	.80	.80		.01
BOILERMAKERS	10.00	.60	10%		.01
BRICKLAYER, CEMENT MASONS, MARBLE SETTERS, PLASTERERS, STONE MASONS, TERRAZZO WORKERS, & TILE SETTERS	8.19	.55	.40		.01
CARPENTERS	7.45	.55	.50		.01
Millwrights & Piledrivers	8.30	.55	.50		.01
ELECTRICIANS:					
Bookset	10.10	.40	1%		.03
Remainder of County	9.50	.60	1%+.50		.02
ELEVATOR CONSTRUCTORS:					
Constructors	10.665	.495	.32	4%+a+b	.02
Helpers	7.465	.495	.32	4%+a+b	.02
Helpers (Prob.)	5.33	.495	.32	4%+a+b	.02
GLAZIERS	7.87	.52	.59		.03
IRONWORKERS - Structural, Ornamental and Reinforcing	9.70	.70	1.00		.02
LABORERS:					
Building:					
Laborers	6.16	.60	.70		.10
Plasterers' tenders	6.31	.60	.70		.10
Pipelayers, fence & guard rail erectors	6.41	.60	.70		.10
Pneumatic tool ops., pavement breakers, drillers, chipping gun ops., powdermen & Blasters, Boiler and Stack work	6.66	.60	.70		.10
All other pneumatic tool ops. on boiler and stack work	7.06	.60	.70		.10
Heavy and Highway:					
Laborers and pipelayers	5.91	.50	.45		.10
Pneumatic tool ops., drillers, concrete vibrators, & electric chipping machines	6.41	.50	.45		.10
Blasterers and powdermen	6.66	.50	.45		.10
LEAD BURNERS	9.25	.35		c	.01
LINE CONSTRUCTION:					
Linemen	9.34	.65	1%	d	3/8of1%
Equipment groundman	8.74	.65	1%	d	3/8of1%
Groundman	6.38	.65	1%	d	3/8of1%
Drivers groundman	7.38	.65	1%	d	3/8of1%

DECISION NO. NH77-2002

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
Brush	$ 6.90	.25			
Open structural steel work to 25'	8.15	.25			
Enclosed structural steel work & steeplejack	7.90	.25			
Paperhangers	7.15	.25			
Spray & Sandblasting	8.40	.25			
PLUMBERS AND STEAMFITTERS	9.90	.53	.55		.02
ROOFERS:					
Roofers	6.65				
Roofer's Helpers	5.80				
SHEET METAL WORKERS	8.92	.45	3%+.35		.02
SOFT FLOOR LAYERS	6.56	.25	.20		.01
SPRINKLER FITTERS	10.21	.60	.90		.09
Welders - receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Employer contributes 4% basic hourly rate for 5 years or more of service or 2% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.

b. Holidays: A through F

c. Holidays: A through F; Washington's Birthday, Christmas Eve and Good Friday, providing employee has worked 45 full days during the 120 calendar days prior to the holiday, and the regular scheduled work days immediately preceding and following the holiday

d. Holidays: B through F, provided the employee has been employed 5 working days prior to the holiday and provided the employee works the scheduled work days immediately preceding and following the holiday.

DECISION NO. NH77-2002

NH 1-PEO Q

POWER EQUIPMENT OPERATORS BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 9.00	.85	.75	a	.05
CLASS 2	8.75	.85	.75	a	.05
CLASS 3	8.55	.85	.75	a	.05
CLASS 4	7.975	.85	.75	a	.05
CLASS 5	7.95	.85	.75	a	.05
CLASS 6	7.30	.85	.75	a	.05
CLASS 7	7.50	.85	.75	a	.05
CLASS 8	10.00	.85	.75	a	.05
CLASS 9	9.50	.85	.75	a	.05

CLASS 1 - Shovel, crane, dragline, derrick, backhoe, elevator which Chicago boom, gradall, elevating grader, dront end loader 6 yds. and over, cherry picker, pile driving rigs, concrete road pavers,a ll three drum hoisting and Trenching machines.
CLASS 2 - Rotary drill with mounted compressor, compressor house (3-6 compressors), rock and earth boring machines excluding McCarthy and similar drills, graders, 4 yds. and over front end loader, two drum hoists, high fork lifts with capacity of 15' & over, scrapers, sonic hammer, vibratory hammer.
CLASS 3 - Bulldozers, push cats, scrapers (tractor drawn), asphalt paver, front end loader 3/4 yds. to 4 yds., well driller, mechanics, pumpcrete machines, concrete pumps and similar type pumps, engineer or firemen on high pressure boiler (on job), self loading batch plant, well point operators including installing, engineer-in-charge of powered grease truck, all automatic elevators permanent or temporary operated manually or by remote controls
CLASS 4 - Single drum hoist, self-powered roller, self-propelled compactors, power pavement breakers, concrete pavement finishing machines, two bag mixers with skip, front end loaders under 3/4 yds. McCarthy and similar drills, batch plant not self loading, bulk cement plants, self-propelled material spreaders, A-frame trucks, fork lifts up to 15'.
CLASS 5 - Compressor 315 cubic ft. and over, (one or two), pumps (4 inches & over total discharge) when total discharge is over 12 inches, classification 3 will be paid, tractor (without blade or bucket) drawing roller compactors or other machines.
CLASS 6 - Compressors (up to 315 cubic feet) small mixers, pumps (up to 4 inches), power heaters, welding machines (When 3 or more heaters or welding machines are used on one job, classsification 4 rate will be paid), conveyor oiler including helpers on grease trucks and grease trucks with hand greasing equipment.
CLASS 7 - Oilers on truck cranes and gradalls.
CLASS 8 - Cranes with boom lengths of 200 feet or more
CLASS 9 - Crane with boom length of 150 feet or more

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day;F-Christmas Day

FOOTNOTE: A. Holidays: A through F, Veterans Day, Washinton's Birthday and Columbus

DECISION NO. NH77-2002

NH 2-PEOp2-3-R

POWER EQUIPMENT OPERATORS HEAVY & HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 8.75	.80	.75	a	.05
CLASS 2	8.50	.80	.75	a	.05
CLASS 3	8.30	.80	.75	a	.05
CLASS 4	7.75	.80	.75	a	.05
CLASS 5	7.425	.80	.75	a	.05
CLASS 6	6.90	.80	.75	a	.05
CLASS 7	9.25	.80	.75	a	.05

CLASS 1 - Shovels, Crawler & Truck Cranes, Derricks, Backhoes, Trenching Machines, Elevating Graders, Dradall,Piledrivers, Concrete Pavers, Engineers on site processing plant, Dragline, Clamshell, Cableways.
CLASS 2 - Rotary drill (with mounted compressor), Compressor house (3 to 6 compressors) Rock and earth boring machine (excluding McCarthy and similar drills), Grader, Front end loader (4 yds. or over)
CLASS 3 - Bulldozer, Push Cats, Scraper (Self propelled or tractor drawn), Self-powered Asphalt paver, (Front end loader 3/4 to4 yds.), Mechanics, Well driller, Pumpcrete machine, Engineer or Fireman on high pressure boiler (on job) Self-loading Batch plant (on job), Well point operators.
CLASS 4 - Hoists, Conveyors, Self-powered rollers and Compactors, Self-propelled Material spreader, Self-powered concrete finishing machine, Mixers (2 bag with skip), front end loader (under 3/4 yd.), McCarthy & similar drills, Batch plant (not a self-loading), Bulk cement plant.
CLASS 5 - Compressor (315 C.F. or over-one or two),Pump 4" or over, Tractor without blades, Drawing sheeps-foot,rubber roller or other type compactor including machines for pulverizing and aerating soil
CLASS 6 - Compressor (up to 315 C.F.), Small mixers with skip, Oiler, Pumps up to 4", Grease truck, Power heaters, Welding machines (When 3 or more welding machines Class 4 rate applied),A-Frame, Forklifts, (Where grease truck contains powered grease equipment, engineer in charge shall be paid Class 3 rate)
CLASS 7 - Crane with boom length of 200 feet or more including jib.

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTE: a. Holidays: A through F; Washington's Birthday; Veteran's Day; Columbus Day

DECISION NO. NH77-2002

NH 5-PBO-4-F

POWER EQUIPMENT OPERATORS
MARINE CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 6.335	.275	.30	a	.02
CLASS 2	6.285	.275	.30	a	.02
CLASS 3	6.215	.275	.30	a	.02
CLASS 4	5.965	.275	.30	a	.02
CLASS 5	5.755	.275	.30	a	.02
CLASS 6	5.23	.275	.30	a	.02
CLASS 7	4.555	.275	.30	a	.02
CLASS 8	5.18	.275	.30	a	.02
CLASS 9	4.605	.275	.30	a	.02

Booms over 150' including jib-additional $.25 per hour.
Booms over 185' including jib-additional $.50 per hour.
Booms 220' including jib-additional $.75 per hour.
Booms over 275' including jib-additional $1.00 per hour.

CLASS 1 - Power shovel, crane, truck crane, derrick, cherry picker, pile driver, 2 or more drum machine, lightner, derrick boat, trenching machine, mechanical hoist, pavement breaker, cement concrete paver, dragline, hoisting engine, pumpcrete machine, elevating grader, shovel dozer (except when pushing front end loader (except when pushing), backhoe, gradall, cableway, boring machine, rotary drill, post hole hammer, post hole digger, for, lift
CLASS 2 - Swinger engine
CLASS 3 - Sonic or vibratory hammer, grader, scraper (over 21 yds. struck), tandem scraper concrete pump, Bulldozer, scraper (21 yds. struck or less).
CLASS 4 - Portable steam boiler, portable steam generator, roller, tractor, mechanic (maintenance), concrete mixer with side loader.
CLASS 5 - Assistant engineer (fireman).
CLASS 6 - Pump, compressor, welding machine, heater (power driven), valve controlling pernament plant (air or steam), wellpoint system, auger (powered by independent engine and attached to pile driver), hydraulic saw, generator, lighting plant, syphon, pulsometer, concrete mixer.
CLASS 7 - Oiler (other than truck crane and gradall).
CLASS 8 - Oiler on scow.
CLASS 9 - Oiler on truck crane and gradall.

PAID HOLIDAYS: (WHERE APPLICABLE)
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE: a. Holidays: A through F; Washington's Birthday, Patriot's Day, Columbus Day; & Veteran's Day; Provided the employee has worked 3 days during the week in which the holidays falls and is available for work the days preceding the holidays.

DECISION NO. NH72-2002

NH 1-TD-1-2-3-K

TRUCK DRIVERS

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 4.71	.45	.25	a	
CLASS 2	4.96	.45	.25	a	
CLASS 3	5.17	.45	.25	a	

CLASS 1 - Two Axle equipment
CLASS 2 - Three axle equipment including low beds
CLASS 3 - Special earth hauling equipment other than conventional type on the road truck and semitrailers trailer dumps.

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D- Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTE: a Holidays: A through F, plus Washington's Birthday, Veteran's Day and Columbus Day; (provided employee works two days in the calendar week in which the holiday falls; reports for work the last day assigned prior to the holiday and the first assigned following the holiday).

STATE: OHIO
COUNTIES: *See Below
DECISION NUMBER: OH77-2005
DATE: Date of Publication

Supersedes Decision Nos.: OH76-2070 dated June 4, 1976, in 41 FR 22730; OH76-2077 dated June 18, 1976, in 41 FR 24849; OH76-2086 dated July 30, 1976, in 41 FR 32169; OH76-2087 dated July 23, 1976, in 41 FR 30559; OH76-2088 dated July 30, 1976, in 41 FR 32089; OH76-2115 dated September 24, 1976, in 41 FR 42129; & OH76-2118 dated October 1, 1976, in 41 FR 43633

DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories)

*Clark, Franklin, Greene, Lawrence, Licking, Madison, Montgomery, Muskingum, Pickaway, Pike, Ross, & Scioto	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
Clark, Greene, & Montgomery Cos.	$11.17	.50	.75		.01
Franklin, Licking, Madison, Muskingum, Pickaway, & Ross Cos.	11.32	.30	.85		.02
Lawrence, Pike, & Scioto Cos.	11.05	.50	.70		.03
BOILERMAKERS	9.40	.75	1.00	1.40	.02
BRICKLAYERS; Caulkers; Cleaners; Marble setters; Pointers; Stonemasons; Terrazzo workers; & Tile setters:					
Clark Co.	10.10				
Franklin, Madison, & Pickaway Cos.:					
Bricklayers; Caulkers; Cleaners; Pointers; & Stonemasons	10.04	.80	.70		.02
Marble setters; Terrazzo workers; & Tile setters	10.25				
Greene, & Montgomery Cos.:					
Bricklayers; Caulkers; Cleaners Pointers; & Stonemasons	10.05	.55	.75		.01
Marble setters; Terrazzo workers; & Tile setters	9.11	.55	.25		
Lawrence Co.	9.00				
Licking & Muskingum Cos.	9.68	.45	.50		.02
Pike & Ross Cos.:					
Bricklayers; Caulkers; Cleaners Pointers; & Stonemasons	10.50				
Scioto Co.:					
Bricklayers; Caulkers; Cleaners Marble setters; Pointers; & Stonemasons	9.90				
CARPENTERS; Millwrights; Piledrivermen; & Soft floor layers:					
Clark, Franklin, Licking, Madison, Muskingum, & Pickaway:					
Carpenters; Soft floor layers	9.67	.40	.50		.02
Millwrights; Piledrivermen	10.27	.40	.50		.02
Greene, & Montgomery Cos.:					
Carpenters; & Piledrivermen	9.60	.60	1.00		.05
Millwrights	9.69	.60	.72		
Soft floor layers	8.85	.60	.60		.05

DECISION NO. OH77-2005

CARPENTERS (CONT'D):	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Lawrence, Pike, Ross, & Scioto Cos.:					
Carpenters; Soft floor layers	$9.72	.40	.50		.03
Piledrivermen	10.01	.40	.50		.03
Millwrights	10.79	.40	.37		.03
CEMENT MASONS:					
Clark Co.	10.10				
Franklin, Licking, Madison, Muskingum, Pickaway, & Ross Cos.	9.55	.50	.20		.03
Greene, & Montgomery Cos.	9.28	.50	.50		.07
Lawrence Co.	9.00				
Pike & Scioto Cos.	10.92				
ELECTRICIANS:					
Clark, & Madison (Twps. of Paint, Pike, Somerford, Stokes, & Union) Cos.	10.09	.45	1%+.65		.04
Franklin, Madison (E. portion), Pickaway (N. & central portions)	10.98	.28	1%+.60		.03
Greene, & Montgomery Cos.:					
Electrical communications installers - Zone I (within 11 mile radius of 3rd & Main Street, Dayton)	11.08	.45	1%+1.00		.5%
Electrical communications installers - Zone II (beyond 11 mile radius of 3rd & Main Street, Dayton)	11.31	.45	1%+1.00		.5%
Lawrence Co.	10.37	.50	1%+.45	1.00	.04
Licking Co.	10.30	.28	1%+.60		.03
Muskingum Co.	10.00	.28	1%+.60		.03
Pickaway (S. part), Pike (N. part), & Ross Cos.	10.95	.29	1%		.02
Pike (S. part), & Scioto Cos.	10.50	.50	1%+.40	.52	.04
ELEVATOR CONSTRUCTORS:					
Clark, Franklin, Licking, Madison, Muskingum, Pickaway, & Ross Cos.:					
Elevator constructors	11.16	.545	.35	4%+a+b	.02
Helpers	70%JR	.545	.35	4%+a+b	.02
Helpers (Prob.)	50%JR				
Greene, & Montgomery Cos.:					
Elevator constructors	10.635	.545	.35	4%+a+b	.02
Helpers	70%JR	.545	.35	4%+a+b	.02
Helpers (Prob.)	50%JR				

DECISION NO. OH77-2005

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELEVATOR CONSTRUCTORS (CONT'D):					
Lawrence, Pike, & Scioto Cos.:					
Elevator constructors	$10.945	.545	.35	4%+a+b	.02
Helpers	70%JR	.545	.35	4%+a+b	.02
Helpers (Prob.)	50%JR				
GLAZIERS:					
Clark, & Montgomery Cos.	9.48		.50		.01
Franklin, Licking, Madison, Muskingum, Pickaway, Pike, & Ross Cos.	9.77	.57			.005
Lawrence, & Scioto Cos.	9.50		.20		
IRONWORKERS:					
Clark (W 3/4), Greene, & Montgomery Cos.:					
Within 15 mile radius of Local Union #290 office	10.51	.75	1.05		.04
Beyond 15 mile radius of Local Union #290 office	10.66	.75	1.05		.04
Clark (E. 1/4), Muskingum, Pike, & Ross Cos.	10.60	.75	1.35		.05
Franklin Co.	10.35	.75	1.35		.05
Lawrence, & Scioto Cos.	10.26	.65	.70		.01
Licking, Madison, & Pickaway Cos.	10.50	.75	1.35		.05
LATHERS:					
Clark, Franklin, Licking, Madison, Muskingum, & Pickaway Cos.	10.25		.10		.01
Greene, & Montgomery Cos.	10.29		.20		.01
Lawrence Co.	9.315		.10		
LEADBURNERS	10.75	.40		c	.01
LINE CONSTRUCTION:					
Clark Co.:					
Cable splicers & Linemen	9.11	.35	1%		.25%
Equipment operators:					
0 to 1/2 yr.	5.49	.35	1%		.25%
1/2 yr. to 1 yr.	6.54	.35	1%		.25%
1 yr. or more	7.66	.35	1%		.25%
Groundmen or Truck drivers:					
0 to 1 yr.	4.47	.35	1%		.25%
1 yr. or more	5.27	.35	1%		.25%

DECISION NO. OH77-2005

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION (CONT'D):					
Franklin Co.:					
Cable splicers & Linemen	$9.20	.35	1%		1/2%
Equipment operators:					
0 to 1/2 yr.	5.87	.35	1%		1/2%
1/2 to 1 yr.	7.00	.35	1%		1/2%
1 yr. or more	8.20	.35	1%		1/2%
Groundmen or Truck drivers:					
0 to 1 yr.	4.78	.35	1%		1/2%
1 yr. or more	5.64	.35	1%		1/2%
Greene, & Montgomery Cos.:					
Linemen within 11 mile radius of 3rd & Main Street, Dayton	11.08	.45	1%+1.00		1/2%
Linemen beyond 11 mile radius of 3rd & Main Street, Dayton	11.31	.45	1%+1.00		1/2%
Lawrence, Pike (Twps. of Camp Creek, Marion, Newton, Scioto, Sunfish, & Union), & Scioto Cos.:					
Linemen; & Operators: All mechanized equipment	10.48	.45	1%+.40	1.00	1/2%
Cable splicers	11.53	.45	1%+.40	1.00	1/2%
Groundmen	8.38	.45	1%+.40	1.00	1/2%
Licking Co.:					
Cable splicers; Equipment ops.; & Linemen	10.83	.35	1%		1/2%
Groundman:					
0 to 6 mos.	5.51	.35	1%		1/2%
After 6 mos.	5.87	.35	1%		1/2%
After 12 mos.	6.26	.35	1%		1/2%
After 18 mos.	6.62	.35	1%		1/2%
Madison Co.(Twps. of Darby, Canaan, Monroe, Deer Creek, Jefferson, Fairfield, Oak Run, Range, & Pleasant); & Pickaway Co.(Twps. of Darby, Circleville, Harrison, Jackson, Madison, Monroe, Muhlenberg, Scioto, Walnut, & Washington):					
Cable splicers; Equipment ops.; Linemen	11.56	.35	1%		1/2%
Groundmen:					
0 to 6 mos.	5.51	.35	1%		1/2%
After 6 mos.	5.87	.35	1%		1/2%
After 12 mos.	6.26	.35	1%		1/2%
After 18 mos.	6.62	.35	1%		1/2%

DECISION NO. OH77-2005

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION (CONT'D):					
Muskingum Co.:					
Cable splicer; Equipment ops.; & Linemen	$10.53	.35	1%		1/2%
Groundmen:					
0 to 6 mos.	5.51	.35	1%		1/2%
After 6 mos.	5.87	.35	1%		1/2%
After 12 mos.	6.26	.35	1%		1/2%
After 18 mos.	6.62	.35	1%		1/2%
Pickaway (Twps. of Deer Creek, Perry, Pickaway, Salt Creek, & Wayne), Pike (N. part), & Ross Cos.:					
Equipment ops. & Linemen	10.95	.28	1%		.02
Truck drivers	6.47	.28	1%		.02
Groundmen	6.17	.28	1%		.02
MARBLE SETTERS' HELPERS; Terrazzo Workers' Helpers; & Tile Setters' Helpers:					
Franklin, Madison, & Pickaway Cos.:					
Marble setters' helpers; Terrazzo workers' helpers; & Tile setters' helpers	8.15				
Terrazzo base grinders	8.50				
Terrazzo floor grinders	8.30				
Greene, & Montgomery Cos.:					
Marble setters' helpers; Terrazzo workers' helpers; & Tile setters' helpers	8.14				
Base machine	8.98				
Lawrence, & Scioto Cos.:					
Marble setters' helpers	9.635				
Terrazzo workers' helpers & grinders	9.585				
Terrazzo base grinders	10.005				
Tile setters' helpers	9.535				
PAINTERS:					
Clark Co.:					
Brush; Paperhangers (Tools furnished)	7.80	.10	.25		
Swing stage	8.15	.10	.25		
Spray	8.50	.10	.25		
Structural steel	8.35	.10	.25		

DECISION NO. OH77-2005

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS (CONT'D):					
Franklin, Madison, & Pickaway Cos.:					
Brush; Paperhanger; Roller; & Wall washing	$9.45	.55	.30		
Spray	9.95	.55	.30		
Structural steel; & Swing stage	9.75	.55	.30		
Sandblasting; Steamcleaning; & Water tanks	10.15	.55	.30		
Drywall tapers & Finishers	9.85	.55	.30		
Greene & Montgomery Cos.:					
Brush; & Roller	10.55	.40	.40		.02
Scaffolds; Structural steel; & Swing stage	10.95	.40	.40		.02
Sandblasting; Spray; & Steam-cleaning	11.05	.40	.40		.02
Paperhangers	10.80	.40	.40		.02
Spackling & Finishing; & Taping	10.90	.40	.40		.02
Steeple jack work	11.30	.40	.40		.02
Lawrence Co.:					
Brush; Roller	7.65				
Drywall taping; & Structural steel	8.50				
Spray	9.00				
Paperhangers; & Wallwashing	8.15				
Licking & Muskingum Cos.:					
Brush; & Paperhangers	7.00				
Structural steel	7.65				
Spray	7.45				
Smoke stacks; Tanks; & Water towers	7.65				
Pike, & Scioto Cos.:					
Brush; Paperhangers; Tapers; Wall covering, washing; Exterior buildings under 40'	10.20		.40		
Rollers; Floor sanding; Power tools	10.45		.40		
Sandblasting; Steamcleaning; Hazardous material; & Burning	11.20		.40		
Ross Co.:					
Brush; Roller; & Taping	8.25				
Structural steel	8.50				
Sandblast; & Spray	9.00				

DECISION NO. OH77-2005

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLASTERERS:					
Clark, Greene, & Montgomery Cos.	$10.45				
Franklin, Licking, Madison, Muskingum, Pickaway, & Ross Cos.	9.54	.50	.30		.02
Lawrence Co.	9.00				
Pike, & Scioto Cos.	10.92				
PLUMBERS; & Steamfitters:					
Clark, Greene (Twps. of Cedarville, Ross, Jefferson, Ceasar Creek, & New Jasper), Madison (W. of Rte. #38 incl. city of London) Cos.	11.01	.58	.80		.04
Franklin, Madison (E. of Rte #38 not incl. city of London), Pickaway, & Ross Cos.	11.82	.55	.80		.05
Greene (exclu. Twps. of Cedarville, Ross, Jefferson, Ceasar Creek, & New Jasper), & Montgomery Cos.	11.41	.55	.80		.03
Lawrence, Pike, & Scioto Cos.	10.87	.55	.75		
Licking Co.	11.47	.55	.80		.05
Muskingum Co.	11.32	.35	.35		.08
ROOFERS:					
Clark, Greene, & Montgomery Cos.:					
Composition, damp, & waterproof workers	10.05	.80	.50		
Slate, Tile, & Asbestos	10.27	.80	.50		
Helpers:					
1st yr.	60%LR	.80	.50		
2nd yr.	70%LR	.80	.50		
3rd yr.	80%LR	.80	.50		
4th yr.	90%LR	.80	.50		
Franklin, Licking, Madison, Pickaway, & Ross Cos.	10.545	.60	.65		.02
Lawrence, Muskingum, Pike, & Scioto Cos.	10.45		.40		
SHEET METAL WORKERS:					
Clark, Greene, & Montgomery Cos.	10.72	.50	.74		.15
Franklin, Lawrence, Licking, Madison, Muskingum, Pickaway, Pike, Ross, & Scioto Cos.	10.42	.42+d	.80		.05
SPRINKLER FITTERS	12.05	.60	.90		.08

DECISION NO. OH77-2005

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; & F-Christmas Day

FOOTNOTES:
a. 6 paid holidays: A through F
b. Employer contributes 4% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years. Employer contributes 2% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years.
c. 9 paid holidays: A through F, plus Washington's Birthday, Good Friday, & Christmas Eve, providing employee has worked 45 full days during the 120 calendar days prior to the holiday, and the regular scheduled work days immediately preceding and following the holiday.
d. 3% of gross earnings to SASMI

DECISION NO. OH77-2005

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Clark Co.:					
Laborers general; Carpenters tenders; Vibrator; Air spade & other small tools; Sewer pipe layer & Bottom man; Asphalt raker & tamper; Waterboy; Flagman & Signalman	$6.28	.45	.20		.02
Plasterers' tenders; Mason tenders; Mortar mixers; Air & machine driven tool ops.; Jackhammer; Barko & chain saw; Wagon drill; Hand spikers; Power concrete & buggies; Powder man & blaster; Gunnite machine op. & nozzle man; Miners for tunnels & caissons; Muckers for tunnels & caissons	6.53	.45	.20		.02
Franklin, Madison & Pickaway Cos.:					
Common laborers; Carpenter tenders; Pouring of all concrete; Cleaning debris; Cleaning of all material; General clean up; Landscape; Sod layers; Salamander; Flagmen; Wire mesh handlers or setters; Loading & unloading all trucks; Handling & conveying all material; Washing of all windows; A man on bucket pouring concrete; Conveyor belt	7.69	.55	.40		.05
Brick tender; Stone mason tender; Plasterers' tenders; Mortar mixers & Operator; Cement mason tender; All scaffold builders (swinging scaffolds); Jack hammer op.; Air or electrical pneumatic tool op.; Power driven tools; Power buggy ops.; Power wheelbarrow ops.; Asphalt &					

DECISION NO. OH77-2005

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (CONT'D):					
blacktop rakers; Wall wrecker & bar man on demolition; Sand & vacuum cleaning; Gunite nozzle man; Wagon & churn drill ops.; Concrete saw op. & brush feeders on pulverizers; Pipelayers; Bottom man; Laser gun, Burners; Sandblasting of concrete; Vibrator man; Signal man; Caisson bottom man; & Forklift op.	7.89	.55	.40		.05
Greene & Montgomery Cos.:					
Unskilled	7.94	.55	.40		.05
All machine & Power driven tools; Power buggies; Vibrators; Chipping hammers, & railroad spikers by hand; Swinging scaffold over 15'	8.09	.55	.40		.05
Jackhammer; Air drill; Sand blaster; Sewer pipe layers; Man-hole builders, & Bottom men	8.14	.55	.40		.05
Caisson work; Scaffold with power tools	8.19	.55	.40		.05
Torch man on wrecking	8.24	.55	.40		.05
Caisson work with jackhammer	8.39	.55	.40		.05
Gunnite op.; Wagon drill op.; & blaster-powder man	8.44	.55	.40		.05
Tenders to bricklayers & masons	8.57	.55	.40		.05
Tenders to lathers & plasterers	8.61	.55	.40		.05
Lawrence, Pike, & Scioto Cos.:					
Common laborers; Signalmen	7.27	.55	.40		.05
Sheeting & Shoring men	7.37	.55	.40		.05
Bottom men; Carpenters' tenders; Mason tenders; Mortar mixers; Plasterers' tenders; & Sewer pipe layers	7.42	.55	.40		.05

DECISION NO. OH77-2005

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (CONT'D):					
Air & machine driven tool op.; Asphalt rakers & smoothers; Burning & cutting torches; Chain saws; & Powered concrete buggies	$7.52	.55	.40		.05
Gunnite machine op.; Gunnite nozzlemen; Powdermen & blasters	7.84	.55	.40		.05
Licking Co.:					
Brick tender; Stonemason tender; Plasterer tender; Mortar mixer & operator; Cement mason tender; All scaffold builders; Swinging scaffolds; Jackhammer ops.; Air or electrical pneumatic tool ops.; Power driven tools; Power buggy ops.; Fork lift ops.; Power wheelbarrow ops.; Asphalt & blacktop rakers; Wall wrecker & bar man on demolition; Sandblasting; Welders on demolitions; Gunite nozzle man; Wagon & churn drill ops.; Concrete saw ops.; Brush feeders on pulverizers; Pipe layers; Bottom man; Laser gun; Burners; Sandblasting of concrete; Vibrator man	7.79	.55	.40		.05
Common laborers; Carpenter tender; Pouring of all concrete; Cleaning of all material; General clean-up incl. vacuum cleaning; Landscape; Sod layers; All portable heaters; Loading & unloading all trucks; Handling & conveying all materials; Washing of all windows; A man on bucket pouring concrete; Conveyor belt; Water pumps up to & incl. 4" intake	7.57	.55	.40		.05

DECISION NO. OH77-2005

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (CONT'D):					
Muskingum Co.:					
Planters (landscape); Tree trimmers; Plumbers' helpers; Carpenters' tenders; Building & construction laborers	$7.77	.55	.40		.05
Air & machine driven tool ops.; Asphalt plant aggremeter ops.; Asphalt plant mixer men; Brick slingers; Car pushers & tunnel laborers; Caulkers; yarners & Wrenchmen; Cement handlers; Concrete puddlers (behind mixers); Curb cutters & setters; Hand spikers ops.; Jackhammer ops.; Muckers; Mason tenders; Mortar mixers; Pipe layers; Proportioning plant ops.; Pump men (under 4"); Road form setters; Sewer bottom men; Stone mason tenders; Sheeting & shoring men; Vibrator op.; Plasterers' tenders; Cutting with burning torches; Dumpmen (batch trucks)	8.02	.55	.40		.05
Brick droppers; Lock tenders; Powdermen or blasters	8.02	.55	.40		.05
Ross Co.:					
Brick tenders; Stonemasons' tenders; Plasterers' tenders; Mortar mixer & ops.; Cement masons' tenders; All scaffold builders (Swinging scaffolds), Jackhammer ops.; Air or electrical pneumatic tool ops.; Power driven tools; Power buggy ops.; Fork lift ops.; Power wheelbarrow ops.; Asphalt & blacktop rakers; Wall wrecker & bar man on demolition; Sandblasting; Welders on demolition; Gunite					

DECISION NO. OH77-2005

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (CONT'D):					
nozzle man; Wagon & churn drill ops.; Concrete saw ops.; Brush feeders on pulverizers; Pipe layers; Bottom man; Laser gun; Burners; Sandblasting of concrete; Vibrator man; Carpenters' tenders	7.46	.55	.40		.05
Common laborers; Pouring of all concrete; Cleaning debris; Clean-up incl. vacuum cleaning; Landscape; Sod layers; Loading & unloading all trucks; Handling & conveying all materials; Washing of all windows; A man on bucket pouring concrete; Conveyor belt; All water pumps up to & incl. 3" intake	7.26	.55	.40		.05
TRUCK DRIVERS:					
Franklin & Pickaway Cos.:					
Dump & Straight	8.06	$17.00a			
Tandem & Semi-farm tractor	8.16	17.00a			
Lowboy	8.26	17.00a			
Footnote: a. Per week per employee					
Greene & Montgomery Cos.:					
General	6.03	$19.00a	$8.00a	b	

Footnotes:
a. Per week per employee
b. 1 yr. of employment - 1 wk's vac., 7 yrs. of employment - 2 wks' vac. providing the employee has been on payroll for 8 months during the previous 12 month period.

DECISION NO. OH77-2005

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS (CONT'D):					
Lawrence(West of Coal Grove & W. of State, Rte. #75), Pike, Ross, & Scioto Cos.:					
Jeep; Station wagons; Pickups; Fuel trucks; Dumps to & incl. 2 tons; Bus drivers (incl. all equipment used for hauling men & materials)	$7.48	$16.50a			
Dumps over 2 tons; Tandems; Semi-tractor; Lowboys; Fork lifts (incl. mason tending work); Euclids	8.40	16.50a			
Footnote: a. Per week per employee					

DECISION NO. OH77-2005

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP A	$11.11	.46	1.00		.11
GROUP B	10.95	.46	1.00		.11
GROUP C	10.59	.46	1.00		.11
GROUP D	9.81	.46	1.00		.11
GROUP E	9.48	.46	1.00		.11
GROUP F	8.03	.46	1.00		.11

CLASSIFICATION DEFINITIONS

GROUP A: A-frame; Air compressor on steel erection; All rotary drills used on caisson work for foundations & sub-structure work; Boiler operator or compressor operator (when compressor or boiler is mounted on crane, piggyback op.); Boom trucks; Cableways; Cherry pickers; Combination concrete mixer & tower; Concrete pumps; Cranes; Derricks; Draglines; Elevating grader or Euclid loader; Floating equipment; Gradalls; Helicopter op. hoisting building materials; Helicopter winch operator hoisting builders material; Hoes; Hoisting engines (2 or more drums); Lift slab or panel jack operators; Locomotives; Maintenance engineer (mechanic or welder); Mixer paving (multiple drum); Mobile concrete pumps w/boom; Panelboard (all types on site); Piledriver; Power shovels; Side booms; Slip form pavers; Straddle carriers (building construction on site); Tower derricks; Trench machines (over 24" wide)

GROUP B: Asphalt paver; Bulldozer; CMI type equipment; End loaders; Koblman type loaders (dirt loading); Mucking machines; Power grader; Power scoops; Power scrapers; Push cats

GROUP C: Air compressor (pressurizing shafts or tunnels); All asphalt rollers; Fork lifts; Hoist (1 drum); House elevators; Man lift; Power boilers (over 15 lbs., pressure); Pump op. installing or operating well points or other type of dewatering system; Pumps (4" & over discharge); Submersible pumps (4" & over discharge); Trenchers (24" & under)

GROUP D: Compressors on building construction; Conveyors (building material); Gunite machines; Mixers (cap. more than 1 bag); Mixers (1 bag cap. side 1 loaders); Post driver; Post hole digger; Pavement breaker (hydraulic or cable); Road widening trencher; Rollers; Welder op.

GROUP E: Back fillers & tampers; Batch plant; Bar & joint installing machine; Bullfloats; Burlap & curing machines; Clefplanes; Concrete spreading machines; Crushers; Drum fireman (asphalt); Farm type tractor (pulling attachments); Finishing machines; Form tranchers; High pressure pumps (over ½' discharge); Hydro seeders; Self-propelled power spreaders; Self-propelled sub-grader; Tire repairman; Tractors pulling sheep foot roller or grader; Vibratory compactors (with integral power)

GROUP F: Oiler; Helper; Signalman; Light plant operator; Power driven heaters (oil fired); Power boilers (less than 15 lbs., pressure); Pumps (under 4" discharge); Submersible pumps (under 4" discharge)

SUPERSEDEAS DECISION

STATE: South Carolina
COUNTIES: Lexington & Richland
DECISION NUMBER SC77-1008
DATE: Date of Publication
Supersedes Decision No. SC76-1037 dated March 5, 1976 in 41 FR 9801.
DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories.)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos workers	6.70				
Bricklayers	6.00				
Carpenters	5.14				
Cement masons	4.83				
Electricians	5.50				
Elevator constructors	6.955	.495	.32	4%+a&b	.02
Elevator constructors' helpers	4.87	.495	.32	4%+a&b	.02
Elevator constructors' helpers (probationary)	3.48				
Glaziers	4.65				
Ironworkers	5.94				
Laborers:					
Unskilled	3.04				
Mason tenders	3.18				
Lathers	6.02				
Millwrights	6.50				
Painters, brush	4.52				
Painters, spray	5.00				
Piledrivermen	7.25				
Plasterers	5.25				
Plumbers & fitters	7.89	.28	.30		.03
Roofers	4.52				
Sheet metal workers	5.86				
Sprinkler fitters	8.52	.50	.80		.08
Truck drivers	3.22				
Welders - rate for craft.					
Power Equipment Operators:					
Asphalt distributors	3.65				
Backhoes	4.25				
Bulldozers	4.26				
Cranes, derricks, draglines	5.00				
Finishing machines	4.00				
Front end loaders	3.75				
Hoists	5.25				
Motor graders	5.50				
Pan operators	3.75				
Trenching machines	4.52				

PAID HOLIDAYS: (Where applicable)
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:
a. Holidays: A through F.

b. Employer contributes 4% basic hourly rate to employee with 5 or more years of service or 2% basic hourly rate to employee with 6 months to 5 years of service as Vacation Pay Credit.

SUPERSEDEAS DECISION

STATE: Texas

COUNTIES: Bell, Bosque, Coryell, Falls, Hill & McLennan

DECISION NO.: TX77-4005

DATE: Date of Publication

Supersedes Decision No. TX76-4157, dated October 1, 1976, in 41 FR 43649

DESCRIPTION OF WORK: Building Construction, (excluding single family homes and garden type apartments up to and including 4 stories). (See current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction in Bosque, Falls, Hill & McLennan Counties).

BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
ZONE 1 - Bell, Coryell & Falls Counties	$ 9.88	.42	.60		.08
ZONE 2 - Bosque, Hill & McLennan Counties	9.38	.325	.685		.025
BOILERMAKERS	10.00	.50	1.00		.02
BRICKLAYERS	8.60		.55		.03
CARPENTERS:					
ZONE 1 - Bell & Coryell Counties:					
Carpenters	8.20				
Millwrights	8.45				
ZONE 2 - Bosque, Falls, Hill & McLennan Counties:					
Carpenters	8.45				
Millwrights	8.85				
CEMENT MASONS	8.69	.40	.30		
ELECTRICIANS:					
ZONE 1 - Bosque, Falls, Hill & McLennan Counties; Parts of Bell & Coryell Counties north of Cowhouse Creek	9.55		1%		1/4%
ZONE 2 - Parts of Bell & Coryell Counties south of Cowhouse Creek	10.60		1%		.8%
ELEVATOR CONSTRUCTORS	9.33	.545	.35	4%+a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.545	.35	4%+a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR				
GLAZIERS	6.90				
IRONWORKERS	9.00	.55	.80		.12
LABORERS:					
Unskilled	2.97				
Mason tenders	3.55				
Mortar mixers	3.55				
LATHERS	8.30			.80	.05
LINE CONSTRUCTION:					
Linemen; Linemen operators	11.26		1%		1/2%
Cable splicer	12.39		1%		1/2%
Groundman, 1st 6 months	6.76		1%		1/2%
Groundman, 2nd 6 months	7.32		1%		1/2%
Groundman, 1 year & over	7.88		1%		1/2%

DECISION NO. TX77-4005

BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
GROUP 1 - Brush	$ 6.80				.04
GROUP 2 - Boiler pipes & steel, structural steel, window jacks, roofs, stage work, smoke stack, water towers, boatswain chair	7.30				.04
GROUP 3 - Ames tools for dry walls	7.40				.04
GROUP 4 - Spray work & self feeding rollers	7.55				.04
GROUP 5 - Steam cleaning, sandblasting & hazardous work	7.90				.04
PLASTERERS	9.54	.35	.20		.01
PLUMBERS & PIPEFITTERS:					
ZONE 1 - Area within a 35 mile radius of Waco, including Temple, Marlin, Clifton & Hillsboro	8.26	.30	.30		.03
ZONE 2 - All other areas	8.66	.30	.30		.03
ROOFERS:					
GROUP 1 - Slate, tile, asbestos, roofing & siding	6.45				.03
GROUP 2 - Composition, built-up, damp & waterproofing	6.30				.03
GROUP 3 - Kettlemen	4.725				.03
SHEET METAL WORKERS:					
ZONE 1 - Within a radius of 20 miles from the McLennan County Courthouse, Waco	8.91				.05
ZONE 2 - Over 20 miles but less than 45 miles	9.41				.05
ZONE 3 - Over 45 miles	9.91				.05
SPRINKLER FITTERS	10.90	.60	.90		.08
TRUCK DRIVERS	2.80				
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

DECISION NO. TX77-4005

BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.

FOOTNOTES:
a - 1st 6 mos. - none; 6 mos. to 5 yrs. - 2%; over 5 yrs. - 4% of basic hourly rate
b - Paid Holidays A thru F

PAID HOLIDAYS
A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

DECISION NO. TX77-4005

BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS					
GROUP 1	$ 8.63		.40		
GROUP 2	7.56		.40		
GROUP 3	6.34		.40		
GROUP 4	6.23		.40		

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - Heavy Duty Mechanic; Blade Grader - Self-propelled; Bull Clam; Back Filler; Derricks, power operated (all types); Dragline; Push Cat Operator; Euclid Operator; Bull Dozer and all types of Cat Tractors; Cable-Way; Back Hoe; Crane, Power Operated (all types); Elevating Grader, self-propelled; Hoist, Motor-Driver, two drums or more; Mix Mobile; High-Lifts & Loaders, over 1/3 cu. yd. capacity; Winch Truck; Locomotive; Mixer, 14 cu. ft. or over; Paving Mixer (all sizes); Scraper; Trenching Machine (all sizes); Gradall; Foundation Boring Machine; Scoopmobile; Shovel, power operated; Pump Crete Machines; Clam Shell Operator; Rock Crusher Operated on Job; Welding Machine, 6 to 12; Two 125 cu. ft. Compressors; Well points, including installations
GROUP 2 - Blade Grader, Towed; Flex Plane; Form Grader; Mixer, less than 14 cu. ft.; Pulsometer; Truck Crane Driver & Oiler, Combination man; Gasoline or Diesel Driven Welding Machine, 3 to 6; Hoist, Single Drum; Pump, 2½ in. or larger; Pneumatic Roller; High-Lifts & Loaders, 1/3 cu. yd. or less; Forklift, 1500 lbs. capacity or less; Air Compressors, anytime there are two or more attachments operating on a 125 cu. ft. compressor, a light equipment operator shall be employed. One 125 cu. ft. air compressor and one welding machine requires no operator. One 125 cu. ft. compressor and two welding machines or any 2 air compressors equivalent to a 125 cu. ft. air compressor requires a light equipment operator
GROUP 3 - Fireman
GROUP 4 - Oiler

DECISION NO. TX77-4005

INCIDENTAL PAVING & UTILITIES (BELL & CORYELL COUNTIES)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air Tool Man	$ 3.00				
Asphalt Heaterman	3.25				
Asphalt Raker	3.90				
Batching Plant Scaleman	4.15				
Carpenter	4.10				
Carpenter Helper	3.00				
Concrete Finisher (Paving)	4.25				
Concrete Finisher Helper (Paving)	3.30				
Concrete Finisher (Structures)	4.25				
Concrete Finisher Helper (Structures)	3.00				
Concrete Rubber	3.35				
Electrician	6.00				
Electrician Helper	4.00				
Form Builder (Structures)	4.25				
Form Builder Helper (Structures)	3.35				
Form Setter (Paving and Curb)	3.85				
Form Setter (Structures)	4.25				
Form Setter Helper (Structures)	3.00				
Laborer, Common	2.50				
Laborer, Utility Man	3.00				
Mechanic	4.45				
Mechanic Helper	3.65				
Oiler	3.65				
Serviceman	3.50				
Painter (Structures)	5.25				
Pipelayer (Concrete & Clay)	3.50				
Pipelayer Helper (Concrete & Clay)	3.25				
Plumbers:					
Zone 1 - 35 miles from Waco, Texas including town of Temple	8.26	.30	.30		.03
Zone 2 - all area not included in Zone 1	8.66	.30	.30		.03
Powderman	4.00				
Reinforcing Steel Setter (Structures)	4.00				
Reinforcing Steel Setter Helper	2.75				
Sign Erector	3.25				
Sign Erector Helper	3.00				
Spreader Box Man	4.00				
Swamper	3.30				

DECISION NO. TX77-4005

INCIDENTAL PAVING & UTILITIES (BELL & CORYELL COUNTIES)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators:					
Asphalt Distributor	$ 3.85				
Asphalt Paving Machine	4.00				
Broom or Sweeper Operator	3.15				
Bulldozer, 150 HP and Less	3.75				
Bulldozer, over 150 HP	4.00				
Concrete Paving Curing Machine	3.50				
Concrete Paving Saw	3.50				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	4.00				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and Over)	4.25				
Crusher or Screening Plant Op.	4.00				
Foundation Drill Op. (Crawler Mounted)	3.50				
Foundation Drill Op. (Truck Mounted)	5.35				
Foundation Drill Op. Helper	3.00				
Front End Loader (2½ CY & Less)	3.75				
Front End Loader (Over 2½ CY)	4.00				
Motor Grader Op., Fine Grade	5.00				
Motor Grader Operator	4.25				
Roller, Steel Wheel (Plant-Mix Pavements)	3.25				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	3.25				
Roller, Pneumatic (Self-Propelled)	3.20				
Scrapers (17 CY and Less)	3.75				
Scrapers (Over 17 CY)	4.00				
Tractor (Crawler Type) 150 HP and Less	3.50				
Tractor (Crawler Type) over 150 HP	4.25				
Tractor (Pneumatic) 80 HP & Less	2.75				
Tractor (Pneumatic) over 80 HP	3.75				
Traveling Mixer	3.60				
Trenching Machine, Light	3.25				
Trenching Machine, Heavy	4.00				
Wagon Drill, Boring Machine or Post Hole Driller Operator	3.60				
Truck Drivers:					
Single Axle, Light	3.15				
Lowboy-Float	3.35				
Weighman (Truck Scales)	2.50				
Welder	4.35				
Welder Helper	3.25				

SUPERSEDEAS DECISION

Page 2

STATE: Texas COUNTY: Travis
DECISION NO.: TX77-4006 DATE: Date of Publication
Supersedes Decision No. TX76-4152, dated September 24, 1976, in 41 FR 42152.
DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories). (See current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 9.88	.42	.60		.08
BOILERMAKERS	10.00	.50	1.00		.02
BRICKLAYERS & STONEMASONS	9.29	.45	.30		.04
CARPENTERS:					
Carpenters	9.41	.38	.40		.04
Millwrights	9.66	.38	.40		.04
CEMENT MASONS	8.69	.40	.30		
ELECTRICIANS & CABLE SPLICERS	10.60		1%		.8%
ELEVATOR CONSTRUCTORS	8.79	.495	.32	4%+a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.495	.32	4%+a+b	.01
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR				
GLAZIERS	7.81		.20		.01
IRONWORKERS	9.00	.55	.80		.12
LABORERS:					
GROUP 1 - General laborer and pier hole men	5.355	.275	.30		.02
GROUP 2 - Mason tender; Pipelayer (concrete & clay); Cement finisher tender; Scaffold builder; Gunnite & cement work mixer & power tool operator	5.505	.275	.30		.02
GROUP 3 - Plaster tender; Hod carrier; Mortar mixers; Lather tender; Water or damp proofers	5.68	.275	.30		.02
GROUP 4 - Gunnite over 1½" thick; Nozzlemen; Machine operator; Powderman & blaster	5.755	.275	.30		.02
LATHERS	9.825				.01
LINE CONSTRUCTION:					
Linemen	10.20	.40	1%		1/2%
Groundmen	5.61	.40	1%		1/2%
Groundmen (1st year)	5.10	.40	1%		1/2%
MARBLE SETTERS	7.95				
MARBLE SETTERS' HELPERS	5.37				

DECISION NO. TX77-4006

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
GROUP 1 - Brush; Taping & floating of sheetrock	$ 7.95				
GROUP 2 - Paperhangers; Chipper, burner, torch; Skeleton steelwork erected	8.20				
GROUP 3 - Spray; Steam cleaning, sand blast & other powered equipment	8.45				
Swinging stage, bosun chair, window jack or scaffold (above 2nd floor) - 25c per hour above all base rates					
PLASTERERS	9.54	.35	.20		.01
PLUMBERS & STEAMFITTERS	9.70	.30	.35		.05
ROOFERS:					
Roofers	5.23				.01
Kettlemen	5.08				.01
SHEET METAL WORKERS	9.75	3%+.30	.50		.07
SOFT FLOOR LAYERS	9.17	.35	.45		.09
SPRINKLER FITTERS	10.90	.60	.90		.08
TERRAZZO WORKERS	7.95				
TERRAZZO WORKERS' HELPERS:					
Terrazzo helpers	5.37				
Floor machine operators	5.57				
Base machine operators	5.72				
TILE SETTERS	7.95				
TILE SETTERS' HELPERS	5.37				
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

FOOTNOTES:
a - 1st 6 mos. - none; 6 mos. to 5 yrs. - 2%; over 5 yrs. - 4% of basic hourly rate
b - Paid Holidays A thru F

PAID HOLIDAYS
A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

DECISION NO. TX77-4006

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS					
GROUP 1	$ 8.63		.40		
GROUP 2	7.56		.40		
GROUP 3	6.34		.40		
GROUP 4	6.23		.40		

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - Heavy Duty Mechanic; Blade Grader - Self-propelled; Bull Clam; Back Filler; Derricks, power operated (all types); Dragline; Push Cat Operator; Euclid Operator; Bull Dozer and all types of Cat Tractors; Cable-Way; Back Hoe; Crane, Power Operated (all types); Elevating Grader, self-propelled; Hoist, Motor Driven, two drums or more; Mix Mobile; High-Lifts & loaders, over 1/3 cu. yd. capacity; Winch Truck; Locomotive; Mixer, 14 cu. ft. or over; Paving Mixer (all sizes); Scraper; Trenching Machine (all sizes); Gradall; Foundation Boring Machine; Scoopmobile; Shovel, Power Operated; Pump Crete Machine; Clam Shell Operator; Rock Crusher, Operated on Job; Welding Machine, 6 to 12, Two 125 cu. ft. Compressors; Well Points, including installations

GROUP 2 - Blade Grader, Towed; Flex Plane; Form Grader; Mixer, less than 14 cu. ft.; Pulsometer; Truck Crane Driver & Oiler, Combination man; Gasoline or Diesel Driven Welding Machine, 3 to 6; Hoist, Single Drum; Pump, 2½ in. or larger; Pneumatic Roller; High-Lifts & Loader, 1/3 cu. yd. or less; Forklift, 1500 lbs. capacity or less; Air Compressors, anytime there are two or more attachments operating on a 125 cu. ft. compressor, a light equipment operator shall be employed. One 125 cu. ft. air compressor and one welding machine requires no operator. One 125 cu. ft. compressor and two welding machines or any 2 air compressors equivalent to a 125 cu. ft. air compressor requires a light equipment operator

GROUP 3 - Firemen

GROUP 4 - Oiler

SUPERSEDEAS DECISION

STATE: Texas COUNTY: Wichita
DECISION NO.: TX77-4007 DATE: Date of Publication
Supersedes Decision No. TX76-4128, dated July 23, 1976, in 41 Fr 30566.
DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories). (See current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 9.38	.325	.685		.025
BOILERMAKERS	10.00	.50	1.00		.02
BRICKLAYERS & STONEMASONS	9.64		.30		.05
CARPENTERS:					
Carpenters	8.82	.38	.40		.07
Millwrights	9.32	.38	.40		.07
CEMENT MASONS	8.20				
ELECTRICIANS:					
ZONE 1 - Worker performed within a road mile radius from the Local Union 681 business office up to 30 miles:					
Electricians	9.60	.30	1%		1/4%
Cable splicers	9.85	.30	1%		1/4%
ZONE 2 - All work performed beyond Zone 1:					
Electricians	9.95	.30	1%		1/4%
Cable splicers	10.20	.30	1%		1/4%
ELEVATOR CONSTRUCTORS	9.33	.545	.35	4%+a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.545	.35	4%+a+b	.02
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR				
GLAZIERS	4.97				
IRONWORKERS:					
Structural; Ornamental; Reinforcing	8.23	.55	1.00		.10
Ironworkers on jobs 30 miles or more from the city of Wichita Falls	8.355	.55	1.00		.10
LABORERS:					
GROUP 1 - General laborers	4.90	.275	.20		
GROUP 2 - Pipelayer (concrete & clay); Power buggy operator; Gunite mixer; Cement work mixer; Power tool operator; Bell hole man (piers)	5.025	.275	.20		
GROUP 3 - Mason tender; Mason mortar mixer; Plasterer tender; Hod carrier; Plasterer mortar mixer; Gunite over 1½" thick; Nozzleman & machine operator	5.15	.275	.20		
GROUP 4 - Powderman, blaster	5.40	.275	.20		

DECISION NO. TX77-4007

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS	$ 7.65				.01
LINE CONSTRUCTION:					
Lineman; Lineman operator	11.26		1%		1/2%
Cable splicer	12.39		1%		1/2%
Groundman, 1st 6 months	6.76		1%		1/2%
Groundman, 2nd 6 months	7.32		1%		1/2%
Groundman, 1 year & over	7.88		1%		1/2%
MARBLE SETTERS	8.61				
PAINTERS:					
Brush	7.50				
Spray	8.50				
PLASTERERS	9.07				.01
PLUMBERS & PIPEFITTERS:					
ZONE 1 - Within 25 miles of Wichita Falls City limits	9.15	.35	.55		.02
ZONE 2 - Between 25 and 40 miles of Wichita Falls City limits	9.65	.35	.55		.02
ZONE 3 - Between 40 and 70 miles of Wichita Falls City limits	9.95	.35	.55		.02
ZONE 4 - Between 70 and 100 miles of Wichita Falls City limits	10.25	.35	.55		.02
ZONE 5 - Over 100 miles of Wichita Falls City limits	10.55	.35	.55		.02
ROOFERS	5.42				
SHEET METAL WORKERS	9.72				.03
SOFT FLOOR LAYERS	5.50				
TERRAZZO WORKERS	7.50				
TILE SETTERS	6.50				
TRUCK DRIVERS	2.30				
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

FOOTNOTES:
a - 1st 6 mos. - none; 6 mos. to 5 yrs. - 2%; over 5 yrs. - 4% of basic hourly rate
b - Paid Holidays A thru F

PAID HOLIDAYS
A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

DECISION NO. TX77-4007

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS					
GROUP 1	$ 7.20	.30	.50		.10
GROUP 2	8.10	.30	.50		.10
GROUP 3	8.50	.30	.50		.10

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - Oiler-Fireman

GROUP 2 - Air Compressors, Pumps, Welding Machines, Throttle Valves, Light Plants (3 to 6 machines); Conveyor; Wagon Drill; Elevators Building; Form Graders; Hoist, Single Drum; Ford Tractor including blade and mower on rear; Mixers less than 14 cubic feet; Screening Plants; Crushing Plants; Fork Lifts (short, under 25 feet); Concrete Pumps (all types); Bobcat type equipment; Ford tractor or like with any attachments (except blade and mower on rear); All other equipment of similar nature coming under the Light Equipment Class, when power operated

GROUP 3 - Backhoe; Drilling Machines (all types); Scoopmobiles; Hoists, two drums or more; Fork Lifts (over 25 feet); Winch Truck; Six Wheel Truck, when used continuously for 5 days; Mixermobile; Locomotives; Mixers, 14 cubic feet or over; Blade Graders, self-propelled; Cableways; Cranes-power operated (to 100 feet of boom); Derricks, power operated (all types); Gradall; Hy-Ho; Hop-To; Paving Mixer (all types); File Drivers; Mobile Concrete Mixers over 14 cu. ft.; Bulldozers, Loaders, Tractovators; Scrapers and Pulls; Welders; Trenching Machines; Roller, ten tons or over; Air Compressors, Pumps, Welding Machines and Light Plants (7 to 12 Machines); Air compressor & Air Tugger; Boilers, two or more fired by one man; Heavy Duty Mechanic; All other equipment of similar nature coming under the Heavy Equipment Class, when power operated

SUPERSEDEAS DECISION

STATE: Washington
COUNTY: Yakima
DECISION NUMBER: WA77-5008
DATE: Date of Publication
Supersedes Decision No. AQ-1109 dated May 24, 1974, in 39 FR 18416
DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS	$7.00				
CARPENTERS	7.96	.50	.60		.01
CEMENT MASONS	7.00	.50	.50		.01
ELECTRICIANS	6.44	.35	1%+.40		.02
LABORERS:					
General Laborer	4.98	.45	.50		.03
Mortar Man and Hod Carrier	5.28	.45	.50		.03
PAINTERS, Brush	7.05				
PLUMBERS	9.00				
ROOFERS	6.95	.20	.20		
SHEET METAL WORKERS	7.65	.32	.50		
SOFT FLOOR LAYERS	8.14	.56	.60	.28	.02
TAPERS	9.67	.40	.70		.02

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